

**STAKEHOLDER AGREEMENT (US Dollar)**

**Dated; X............................................................. X**

**Between**

**X................................................................................................. X**

**of (insert address) X.......................................................................................... X**

**(“the Broker”)**

**X.............................................................................................. X**

**of (insert address) X........................................................................................... X**

**(“the Operator”)**

**and**

**BACA Escrow Services Limited.**

**of The Baltic Exchange, 38 St. Mary Axe, London EC3A 8BH (“BESL”)**

**INTRODUCTION:**

1. Broker and Operator [have entered into] / [on or about the date of this Agreement will enter into] the Charter Agreement.
2. Broker and Operator have agreed that payment of the Charter Price or Deposit will be made on performance by the Operator of the Charter Flight. It is also a condition of the Charter Agreement that the Charter Price or Deposit is paid to a stakeholder by Broker prior to the performance by the Operator of the Charter Flight.
3. Broker and Operator have agreed to appoint BESL as stakeholder and BESL has agreed to act as stakeholder on and subject to the following terms and conditions.

**IT IS AGREED** as follows:

# DEFINITIONS AND INTERPRETATION

## **Definitions**

In this Agreement, the following words shall have the following meanings, unless the context otherwise requires:

"Business Day" means a day (other than a Saturday or a Sunday or a bank holiday) on which banks are open for business in London and New York;

"Charter Agreement" shall have the meaning given in paragraph 1 of Schedule 2;

"Charter Aircraft" shall have the meaning given in paragraph 2 of Schedule 2;

"Charter Flight" shall have the meaning given in paragraph 3 of Schedule 2;

"Charter Price or Deposit" shall have the meaning given in paragraph 4 of Schedule 2;

“Dollar, US$ or $ means the lawful currency of the United States of America;

"Party" means a party to this Agreement;

"Stakeholder Fee" shall have the meaning given in Clause 8.1;

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying the same); and

"VAT" means any value added tax, turnover tax or similar tax or duty.

## **Interpretation**

### Unless a contrary indication appears, any reference in this Agreement to:

#### "Clauses" or "Schedule" are to be construed as references to the clauses of, and Schedules to this Agreement;

#### the words "include(s)", "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;

#### the words "other" and "otherwise" shall not be construed so as to limit any preceding words where a wider construction is possible;

#### any "person" or "Party" includes one or more of that person's assigns, transferees, successors in title, delegates, sub-delegates and appointees (in the case of a Party, in so far as such assigns, transferees, successors in title, delegates, sub-delegates and appointees are permitted) and any individual, firm, body corporate, corporation, limited liability company, joint stock company, joint venture, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality);

#### a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

#### any "statute" or "statutory provision" includes any statute or statutory provision which amends, extends, consolidates or replaces it, or which has been amended, extended, consolidates or replaced by it, and any orders, regulations, instruments or other subordinate legislation made under it;

#### this "Agreement", the "Charter Agreement" or any other agreement or instrument is a reference to this Agreement, the Charter Agreement or that agreement or instrument (as the case may be) as amended, restated, varied, novated, supplemented or replaced from time to time;

#### a time of day is a reference to London time;

#### any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court official or any legal concept or thing shall, in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term; and

#### an "obligation" includes all obligations, whether actual or contingent.

### Section and clause headings are for ease of reference only.

# APPOINTMENT OF BESL AS STAKEHOLDER

## Broker and Operator hereby appoint BESL as stakeholder. Acceptance by BESL of its duties under this Agreement is subject to the following terms and conditions which each of Broker and Operator accept:

### BESL shall perform only those duties which are expressly set out in this Agreement and shall be fully relieved and discharged of all liability with respect to any payment made by it under this Agreement immediately upon the making of such payment. Broker and Operator agree that BESL shall not be liable for its acts or omissions in acting as stakeholder under this Agreement unless such acts or omissions constitute wilful misconduct or recklessness on its part.

### BESL may rely upon any written notice, instructions or request furnished to it pursuant to this Agreement and believed by it to be genuine and to have been presented and/or signed by the proper Parties designated in this Agreement. BESL shall not be responsible for the effectiveness, enforceability, validity or due execution of this Agreement, the Charter Agreement or any notice or document ancillary to either of those agreements.

# STAKEHOLDER ACCOUNT

## Broker shall pay the [balance of the] Charter Price [Deposit] of **XUS$**.................... **X** to BESL for value no later than **X**......... **X** Business Days prior to [after] the scheduled performance of the Charter Flight in accordance with the terms of the Charter Agreement. Broker shall make such payment together with the Stakeholder Fee to BESL in accordance with the following payment instructions:

To: **BACA Escrow Services Ltd**,

Account no. **10177699** (UK Sterling account)

At: **Royal Bank of Scotland**

Sort Code: **16-30-24**

IBAN: **GB06RBOS16302410177699**

## BESL will confirm receipt to each of Broker and Operator of the Charter Price [Deposit] as soon as is reasonably practicable but in any event [not later than the day] before the scheduled performance of the Charter Flight in accordance with the terms of the Charter Agreement.

## The Bank is not a party to this Agreement and shall not be responsible for the effectiveness, enforceability, validity or due execution of this Agreement, the Charter Agreement or any notice or document ancillary to either of those agreements.

# INTEREST

Interest will accrue on the Charter Price [Deposit], following its clearance by the Bank, at the Bank's interest rate for the time being paid on the account. Interest earned shall be for the account of BESL.

# RELEASE OF CHARTER PRICE OR DEPOSIT

## BESL shall hold the Charter Price or Deposit as stakeholder and shall pay the same, after deducting any amounts owing to BESL pursuant to Clause 8.2 (if applicable), upon receipt of the following:

### signed instructions substantially in the form of Schedule 3 from both Broker and Operator to pay the Charter Price or Deposit to Operator; or

### in the absence of such instructions, a copy of a final judgment of a court of competent jurisdiction, ordering the application of the Charter Price or Deposit.

## Any instructions given by Broker and Operator pursuant to (a) above, may be given jointly or separately and shall be given by facsimile to BESL in accordance with Clause 11. If BESL receives separate facsimiles from each of Broker and the Operator, it shall issue the payment instructions to the Bank promptly following receipt of the second signed instructions. Promptly following receipt of such facsimile (or facsimiles, as the case may be), BESL shall issue the requisite payment instructions to the Bank to make payment to Operator's account at:

To: **X**..................................................................... **X**

Sort Code: **X**..................................................................... **X**

Account Designation: **X**..................................................................... **X**

Account No: **X**..................................................................... **X**

Reference: **X**..................................................................... **X**

BESL shall confirm to each Party by facsimile that such instructions have been issued.

5.3 Any instructions given pursuant to Clause 5.1(a) shall be signed, respectively, by **X**.......................**X** on behalf of Broker and **X**.......................**X** on behalf of Operator.

# CHARTER FLIGHT CANCELLATION

## In the event that Operator and Broker each notifies BESL by way of written notice in the form of Schedule 4, in accordance with the provisions of Clause 11, that the Charter Flight has been cancelled in accordance with the terms of the Charter Agreement, BESL shall refund to Broker all payments made to BESL in respect of the Charter Flight after deduction by BESL of any cancellation charges payable to Operator under the Charter Agreement and BESL shall pay such cancellation charges to Operator’s account specified in Clause 5.2. In the absence of any such notification from Operator and Broker, BESL shall pay the Charter Price or Deposit in accordance with the terms of a judgment of a court of competent jurisdiction, ordering the application of the Charter Price or Deposit.

6.2 Any instructions given by Broker and Operator pursuant to Clause 6.1 above may be given jointly or separately and shall be given by facsimile to BESL in accordance with Clause 11.

# EARLY TERMINATION

## **Term**

The terms and conditions of this Agreement shall commence on the date of this Agreement and shall continue until the earlier of:

### [ ] ***[date here would be if BESL has not received payment from Broker prior to the Charter Flight taking place within the timescale envisaged by Clause 3.1]***; and

### such time as the Charter Price or Deposit has been paid by BESL pursuant to Clause 5,

## **Early Termination**

If the Charter Price or Deposit has not been received by BESL within the time provided for in Clause 3.1, then this Agreement shall terminate and each of the Parties shall be released from any further duties, obligations or liabilities under this Agreement.

# BESL FEES AND EXPENSES

## Without prejudice to Clause 9 (a), (b) and (c), the fees payable to BESL for acting as stakeholder pursuant to this Agreement together with any VAT thereon and any applicable disbursements shall be borne solely by Broker (the "**Stakeholder Fee**"). Stakeholder Fee shall be as shown in Schedule 1.

## Broker and Operator agree that BESL may deduct from the Charter Price or Deposit any amounts owed by Broker or Operator to BESL hereunder.

## All charges made by the Bank (or its correspondent bank(s)) on receipt and release of the Charter Price or Deposit shall be for the account of Broker and shall be met by Broker.

# DISAGREEMENTS/DISPUTES

### If there is any disagreement between any of the Parties to this Agreement or between any of them and any other person, resulting in divergent or adverse claims or demands being made in connection with the subject matter of this Agreement, or if BESL in good faith is in doubt as to what action should be taken under this Agreement, BESL may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action under this Agreement so long as such disagreement continues or doubt exists. In any such event, BESL shall not be or become liable in any way or to any person for its good faith failure or refusal to act and shall be entitled to continue to so refrain from acting until (i) the rights of the Parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all doubt or differences have been resolved and BESL has been notified thereof in writing by all the other Parties. Neither Broker nor Operator shall take any action to prevent BESL from acting in accordance with this Clause.

### In the event of any dispute regarding the subject matter of this Agreement, BESL may also in its sole discretion, if it deems appropriate, institute appropriate legal action in any court of competent jurisdiction to determine the rights of the Parties involved. Should action be instituted or should BESL become involved in litigation in any manner whatsoever on account of or concerning this Agreement, the Charter Price or Deposit or in connection with any notice, instructions or request furnished to it pursuant to this Agreement, Broker and Operator jointly and severally agree to pay on demand in full and without any deduction or set-off whatsoever all legal fees reasonably incurred by BESL including the retention of counsel as well as any other disbursements, expenses, losses, costs and damages in connection with or resulting from such litigation except any as are caused by the wilful misconduct or recklessness of BESL. BESL shall not be required to take any action or defend any legal proceedings which may be instituted against it in respect of this Agreement unless and until it has been indemnified to its satisfaction against any cost or expense it may incur in connection therewith.

### Without prejudice to Clause 9 (a) and (b), Broker will reimburse and indemnify BESL and hold BESL harmless against any loss, damage, liability, costs, expenses and Taxes including those which Broker has agreed to pay pursuant to the terms of this Agreement and those which have been reasonably incurred by BESL arising out of or the performance of its duties and obligations under this Agreement or in defending any claim or liability arising out of this Agreement or taking any action in connection with this Agreement.

### Broker and Operator further agree that BESL shall not be liable for any loss or damage as may result from the failure of or any act or omission or delay by the Bank (or its correspondent bank(s)).

# MISCELLANEOUS

## **Entire Agreement**

This Agreement constitutes the entire agreement of the Parties relating to the subject matter of this Agreement and, as of the date of this Agreement, its terms and provisions shall supersede all other agreements between the Parties with respect to the matters contained in it. This Agreement shall not be amended, altered or otherwise modified except by written agreement signed by all of the Parties.

## **Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall, for the purposes of this Agreement, be deemed an original, and all of which together shall constitute one and the same instrument.

## **Rights of Third Parties**

### The Bank shall have the benefit of clause 3.3 and the Parties agree that Clause 3.3 shall not be varied or removed without the prior written consent of the Bank.

### Subject to Clause 10.3(a) above, the Parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

## **Benefit of the Agreement**

No Party shall, without the prior written consent of each other Party, assign, charge or otherwise encumber, create any trust over or deal in any other manner with this Agreement or any right, benefit or interest under it, nor transfer any of that Party's obligations under it. Nothing in this Clause or Agreement is intended to prevent or otherwise adversely affect the implementation or enforcement of its terms.

## **Further Assurance**

Each of Broker and Operator agrees at their own cost and at no cost to BESL from time to time to do and perform such other and further acts and execute and deliver any and all such other instruments as may be required by law or reasonably requested by BESL for it to carry out the intent and purpose of this Agreement.

## **Rights Cumulative**

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

## **Invalidity**

If at any time any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, that shall not in any way affect or impair:

### the validity, legality or enforceability in that jurisdiction of any other provision of this Agreement; or

### the validity, legality or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

## **Confidentiality**

The parties hereto hereby agree that the contents of this Agreement shall at all times remain confidential and each party hereby agrees that it shall not disclose to any third party the contents of this Agreement without the prior written approval of the other parties.

# NOTICES

## **Method and Delivery**

Any notice or communication under or in connection with this Agreement shall be in English, shall be given in writing and shall be served personally, or by facsimile transmission to the respective addresses or facsimile numbers given below or such other address or facsimile number as the recipient may have notified to the sender in writing. Any notice shall be deemed received upon actual receipt thereof or, if earlier in the case of a facsimile transmission, on the Business Day immediately following the date of despatch.

## The addresses and number of the Parties for the purposes of Clause 11.1 are:

### **The BrokerX................................................................ X**

address; **X**.................................................................................................... **X**

Attention: **X**............................................... **X** Fax No: **X**............................. **X**

### **The Operator**

address; **X**........................................................................................................ **X**

Attention: **X**............................................... **X**  Fax No: **X**............................... **X**

### **BESL**

The Baltic Exchange, 38 St. Mary Axe, London EC3A 8BH

Attention: **X** .............................................. **X** Fax No: +44 (0) 20 7369 1622

# GOVERNING LAW

This Agreement shall be governed by & construed in accordance with English law.

# JURISDICTION

## In relation to any dispute arising out of or in connection with this Agreement, Broker and Operator irrevocably and unconditionally submit to the jurisdiction of the High Court of Justice of England and Wales and waive any objection to proceedings with respect to this Agreement in such court on the grounds of venue or inconvenient forum or otherwise. Neither Broker nor Operator shall commence proceedings (other than proceedings to enforce any judgment obtained in accordance with this Clause) relating to this Agreement or its subject matter in any jurisdiction other than England and Wales, but BESL may, should it so choose proceed under this Agreement in the courts of any other country having jurisdiction in respect of this Agreement.

13.2 ***[Note: Process Agent may need to be appointed if Operator is not English incorporated entity or does not maintain a place of business here]*** Operator appoints the law firm of **X**.............................................................**X** (or its successors) located at **X**............................................................... **X** (attention: **X**..................................... **X**) as its agent for service of process in respect of proceedings before such court and each of Broker and Operator undertakes to maintain an agent in England for such purposes throughout the term of this Agreement.

**SCHEDULE 1**

**STAKEHOLDER FEE**

The Stakeholder Fee shall be an amount equal to 1% of the Charter Price or Deposit, subject to a minimum of US200 and a maximum of US$600.

**SCHEDULE 2**

**Details of Charter Agreement**

1. **Charter Agreement**

Date: **X**............................................ **X**

(1) The Broker (as charterer) **X**.......................................................................... **X**

(2) The Operator **X**...................................................................................................... **X**

2. **Charter Aircraft**

**X**................................................... **X** aircraft [or such substitute aircraft as each of Broker and Operator have agreed]

3. **Charter Flight details**

**X**........................................................................................................................................ **X**

4. **Charter Price or Deposit**

**XUS$............................................................................................................. X**

**SCHEDULE 3**

**Letter of confirmation**

**[To be typed on letter head of Broker/Operator]**

BACA Escrow Services Limited

38, St. Mary Axe,

London EC3A 8BH

Attn: **X**............................................................ **X**

Fax No: +44 (0) 20 7369 1622

Date: **X**........................................................... **X**

Dear Sirs

**Stakeholder Agreement dated X......................................... X between**

**(1) X............................................................................. X [ the Broker]**

**(2) X.............................................................................. X [the Operator], and (3) BACA Escrow Services Limited (as stakeholder) relating to an aircraft charter agreement for aircraft X .............................. X (the "Agreement")**

We refer to the Agreement. Unless otherwise defined in this letter, terms defined in the Agreement shall mean the same when used in this letter.

We refer to Clause 5.1(a) of the Agreement.

We confirm that [you may now pay the Charter Price or Deposit to the Operator] **or** [the Charter Flight has been performed in accordance with the Charter Agreement] and, accordingly, we hereby instruct you to make payment of the Charter Price [Deposit] of **XUS$**................................... **X**  to **X**.................................... **X** [Operator] to the account referred to in Clause 5.2 of the Agreement as soon as practicable.

This letter shall be governed and construed in accordance with English law.

Yours faithfully

**X** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **X**

for and on behalf of

**[Broker] / [Operator]** \*

(\* delete as appropriate)

**SCHEDULE 4  
  
Letter of Cancellation of Charter Flight**

**[To be typed on letter head of Broker/Operator]**

BACA Escrow Services Limited

38, St. Mary Axe,

London EC3A 8BH Fax No: +44 (0) 20 7369 1622

Attn: **X**..................................................... **X** Date: **X**........................................................... **X**

Dear Sirs

**Stakeholder Agreement dated X......................................... X between**

**(1) X.................................................. X [the Broker ]**

**(2) X......................................... X [the Operator ] and**

**(3) BACA Escrow Services Limited (as stakeholder) relating to an aircraft charter**

**agreement for aircraft X ......................... X (the "Agreement")**

We refer to the Agreement. Unless otherwise defined in this letter, terms defined in the Agreement shall mean the same when used in this letter.

We refer to Clause 6.1 of the Agreement. We confirm that the Charter Flight the subject of the Agreement has been cancelled in accordance with the provisions of the Agreement. Accordingly, cancellation charges amounting to **X**........% **X** of the Charter Price or Deposit [in an amount of **XUS$**................................. **X**] (“the Cancellation Charges”) are payable to Operator under the Agreement and, accordingly, we hereby instruct you to make payment of the Cancellation Charges, after deduction of the Stakeholder Fee, to Operator to the account referred to in Clause 5.2 of the Agreement as soon as practicable. Any balance remaining from the Charter Price or Deposit, after deduction of the Cancellation Charges and the Stakeholder Fee shall be refunded by you to Broker as soon as practicable.

## [ Broker to add bank account details to their copy of the Schedule;

## Name: **X**............................................................................... **X**

Bank: **X**............................................................................... **X**

Account No: **X**................................................................... **X**

Sort Code: **X**................................................................... **X**

Reference: **X**................................................................... **X**

[ BESL shall confirm to each Party by facsimile that such instructions have been issued. If BESL receives separate facsimiles from each of Broker and the Operator, it shall issue the payment instructions to the Bank promptly following receipt of the second signed instructions. ]

This letter shall be governed and construed in accordance with English law.

Yours faithfully

**X** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **X**

for and on behalf of

**[Broker]/ [Operator]** \*

(\* delete as appropriate)

**Signed by the duly authorised representatives of the parties**

Signed by **X**..................................................... **X** Position **X...................................... X**

for and on behalf of **X............................................................. X** [the Broker]

Signed by **X**..................................................... **X** Position **X...................................... X**

for and on behalf of **X............................................................. X** [the Operator]

Signed by **X**..................................................... **X**

For and on behalf of BACA Escrow Services Limited