



MASTER SHORT-TERM ENGINE LEASE AGREEMENT, 2012

(IATA Document No. 5016-01)

USER'S GUIDE AND COMMENTARY

Prepared jointly by AWG and IATA

DISCLAIMER

THIS USER'S GUIDE DOES NOT PURPORT TO RENDER LEGAL OR OTHER ADVICE. NEITHER AWG NOR IATA ACCEPT ANY LEGAL RESPONSIBILITY WHATSOEVER FOR THE CONSEQUENCES THAT MAY ARISE FROM ERRORS OR OMISSIONS, OR FROM ANY OPINIONS OR GUIDANCE GIVEN. IN NO EVENT SHALL AWG OR IATA (OR ANY MEMBER THEREOF) HAVE ANY LEGAL RESPONSIBILITY FOR, OR DUTY OR RESPONSIBILITY TO PROVIDE ANY UPDATES IN RESPECT OF, THE SUBJECT MATTER OF THIS USER'S GUIDE.

INTRODUCTION AND DISCLAIMER

This User's Guide and Commentary (***User's Guide***) has been jointly prepared by AWG and IATA for use in conjunction with the Master Short-Term Engine Lease Agreement, 2012 (the **STEEL**). This User's Guide should be used only in connection with the STEEL and should not be used or relied upon for any other purpose.

The purpose of this User's Guide is to provide technical assistance to users of the STEEL and to provide practical guidance on the terms thereof. This User's Guide does not include a comprehensive analysis of every term of the STEEL, nor does it explain how each provision of the STEEL operates. Practitioners should not rely on this User's Guide when engaging in any transaction or providing any advice in respect of the subject matter covered hereby.

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The STEEL and this User's Guide may be used by any transaction party, whether or not such party is a member of AWG or IATA. Neither AWG nor IATA express a view on whether the STEEL should be used in a particular transaction or on whether the positions reflected in the STEEL or in this User's Guide are appropriate for any particular transaction parties. Transaction parties may deviate from the terms of the STEEL when using or negotiating the STEEL.

Capitalised terms used in this User's Guide but not otherwise defined have the meanings ascribed to them in Annex 1 (*Definitions and Rules of Interpretation*) to the STEEL.

AWG – IATA thanks Freshfields Bruckhaus Deringer LLP for its assistance in the preparation of this User's Guide.

COMMENTARY

The STEEL was first adopted by IATA and AWG in 2002 and has been periodically updated to reflect changes in industry practice and standards. This User's Guide relates to the 2012 Revision of the STEEL.

The STEEL was developed to address the necessity for prompt leasing of spare engines in emergency scenarios, including aircraft-on-ground (**AOG**) situations. The STEEL provides a standard set of "middle market" lease provisions that may be adopted by parties for the purposes of short-term leasing arrangements, thereby reducing time spent negotiating leasing documentation and facilitating the timely return to service of an aircraft.

The STEEL is intended to be used for a short term, which is considered to be a period of six months or less. All comments in this User Guide assume a short leasing term. Parties wishing to enter into a longer term leasing arrangement should consider another form of agreement as certain terms of the STEEL (for example, those relating to maintenance payments) may not be appropriate for a longer-term leasing arrangement.

The STEEL is drafted on the basis that Lessee is an airline or other operator of engines. To the extent Lessee is not an airline or other operator of engines, **Annex 2, Part II** of the Lease Agreement may be amended by the parties to include reference to the relevant Lessee.

In addition, it should be noted that the STEEL is designed for use in circumstances where Lessee is not responsible for the performance of any maintenance on the engine other than on-line maintenance associated with the operation of the aircraft to which the leased engine is attached. There being no other maintenance obligations, the Master Agreement assumes (a) payment of a "use fee" by Lessee with respect to the engine's hourly and/or cyclic use (which amounts may be specified by the parties in the Lease Agreement (**Annex 2, Part I, point 33 and point 34 of the Lease Agreement**)); (b) minimal engine return condition obligations; and (c) the leasing of the engine will terminate without penalty if the engine becomes unserviceable during the term, with Lessee not being responsible for the cost of returning the engine to a serviceable condition except in limited, enumerated circumstances.

THE STEEL

MASTER AGREEMENT

1. CLAUSE 2: TERMS OF LEASE AGREEMENT

CLAUSE 2.1: AGREEMENT TO LEASE AND TERMS OF LEASING

- 1.1. The structure of the STEEL is that of a Master Agreement (**Master Agreement**) containing a set of standard terms relating to the short term leasing of a single Engine and its related Engine Documentation (collectively referred to as the **Engine Package**).
- 1.2. The standard terms as set out in the Master Agreement are incorporated by reference into the Lease Agreement. The Lease Agreement is completed by the parties to (i) outline the specific commercial terms of the relevant leasing transaction and (ii) to modify, if need be, the terms of the Master Agreement. The Master Agreement and the Lease Agreement, once completed by the parties, are then read as a single contract, and is thereafter referred to throughout the Master Agreement as "**this Agreement**." Only the Lease Agreement is signed by Lessor and Lessee. The Master Agreement is not signed.

Attached to the STEEL are five Annexes:

- **Annex 1:** Definitions and Rules of Interpretation.
- **Annex 2:** Form of Lease Agreement (**Lease Agreement**). The components of the Engine Package to be leased are identified in the Lease Agreement. The Lease Agreement is in four Parts:-
 - **Part I** includes the provisions of the Master Agreement pursuant to which the parties outline the specific commercial terms of the leasing arrangement. Part I contains sequentially numbered sections into which details of the leasing arrangement are inputted, with each section cross-referenced to its corresponding provision in the Master Agreement.
 - **Part II** allows the parties to stipulate certain agreed provisions in situations where Lessee is not an airline or operator of engines.
 - **Part III** outlines any further modifications or derogations in respect of the Master Agreement agreed between the parties
 - **Part IV** references the Acceptance Certificate, the form of which is attached as Appendix A to Annex 2.

- **Annex 3:** Conditions Precedent. This Annex contains conditions precedent to Lessor's obligations only.
- **Annex 4:** Insurance Requirements.
- **Annex 5:** Recognition Agreement. This Annex contains a short form acknowledgment to be issued by a financier or other person with a proprietary interest in the aircraft confirming that it will not claim an interest in the Engine as a result of its attachment to the relevant aircraft (**Recognition Agreement**).

1.3. The STEEL has been drafted on the basis that a separate Lease Agreement will be executed for each engine leased between the parties. The possible execution of a single Lease Agreement with the parties entering into a separate supplement for each engine leased thereunder was also considered when preparing the STEEL. However, having considered various submissions of industry participants, it was determined that having multiple supplements may present unnecessary complications in circumstances of remedial/termination or insolvency.

1.4. It should be noted that the Parties may deviate from, amend or supplement any of the terms of the STEEL and any such deviations, amendments or supplementary provisions agreed between the Parties should be included in Part II or Part III of the Lease Agreement (as applicable).

CLAUSE 2.2: CHARACTERISATIONS OF LEASE AND TITLE TO ENGINE PACKAGE

1.5. In Clause 2.2 the parties stipulate that the Lease Agreement is a true lease, that it is not intended as security, that Lessor either has title or the right to lease the Engine, and that no other proprietary rights or interests in the Engine Package are being conveyed beyond the right to possession and use during the Term. Users are nonetheless cautioned to consider the registration of international interests in the Engine in circumstances where the Cape Town Convention applies (or may apply) and/or whether any other filings or registrations are required to be made in the relevant jurisdictions in connection with the short-term leasing arrangement.

CLAUSE 2.3: CONDITIONS PRECEDENT

1.6. Clause 2.3 sets out the conditions precedent to be satisfied by both Lessor and Lessee before commencement of the leasing arrangements.

1.7. The conditions precedent to be satisfied by Lessor relate to the condition of the Engine. Any additional conditions to be satisfied by Lessor agreed between the Parties may be specified in the Lease Agreement (**Part I, point 3A of the Lease Agreement**). Further, Clause 2.3.2 requires the parties to specify in the Lease Agreement a timeframe within which Lessor must satisfy the relevant conditions precedent (**Part I, point 4 of the Lease Agreement**), failing which Lessee may, provided Lessee has not operated the Engine, return the Engine Package without liability. The conditions precedent to be satisfied by Lessee are set out in Annex 3 to the STEEL. Any additional conditions to be satisfied by Lessee agreed between the parties may be specified in the Lease Agreement (**Part I, point 3B of the Lease Agreement**).

1.8. Clause 2.4 outlines the date of commencement of the Term and, if specified by the parties in the Lease Agreement (**Part I, point 6 of the Lease Agreement**), requires Lessee to deliver an Acceptance Certificate.

2. CLAUSE 3: PAYMENTS, CHARGES, AND TAXES

2.1. Pursuant to Clause 3, parties may specify in the Lease Agreement (**Part I, point 7 of the Lease Agreement**), the following commercial terms of the leasing arrangement: (1) the Rent, (2) the Rent Payment Date, (3) the cash deposit (if any) or the terms of a security letter of credit (if any) (including the terms of its utilization, replenishment, replacement and the allocation of costs), (4) the use fees, if any, whether cyclic or hourly or both, (5) the allocation of transaction costs, (6) the Default Rate, (7) the Agreed Currency, and (8) the details of the Payment Account.

2.2. In relation to use fees, Clause 3.3 provides that such fees shall be non-refundable to Lessee and are due on the fifteenth day of a month for the immediately preceding calendar month. It should be noted that for use fees, Clause 4.2.4 requires Lessee to provide a monthly utilization report substantiating the prior month's utilization concurrently with its payment of use fees to Lessor (see **paragraph 4.2 below**).

- 2.3. Consistent with market norms for operating lease transactions, the following key provisions have been included in the STEEL:-

Clause 3.6 – net lease / “hell-or-high water” provision: this requires Lessee to make all payments on an absolute and unconditional basis; without setoff for any reason whatsoever.

Clause 3.8 – net of withholding tax provision: this requires all payments to be made without deduction or withholding of any Tax to the extent permitted by law, and further requires Lessee to gross-up any payment to the extent that such Tax is legally required to be withheld.

- 2.4. Certain payments to be made by Lessee under the STEEL, such as rent and use fees, will be due without the requirement of notice or demand by Lessor. Clause 3.7 provides a general rule that, save as otherwise specified in the STEEL, all payments from Lessee shall be payable on demand. If parties require invoicing by Lessor or any other variation on these payment terms, an amendment should be made in Part III of the Lease Agreement.

3. **CLAUSE 4: INFORMATIONAL, OPERATIONAL AND COMPLIANCE UNDERTAKINGS**

- 3.1. Clause 4 contains the operational covenants governing Lessee’s performance. It is divided into eight sections: (1) maintenance of rights, licenses and privileges and compliance with laws, (2) information, documentation, records and reports (3) operation of engines and related consents (4) proprietary rights, possession and related items (5) inspections, (6) maintenance and repair, (7) removal and interchange of parts, and (8) non-discrimination.

- 3.2. Parties may amend the Lease Agreement to include additional obligations regarding the operation and maintenance of the Engine pursuant to the following provisions of Clause 4:-

Clause 4.2.1: parties may specify with particularity the Engine Documentation to be kept complete and current by Lessee.

Clause 4.2.4 parties may specify any additional information to be reported monthly in addition to hours and cycles from the previous month.

Clause 4.2.6: parties may agree that Lessee shall report airframe installation or removal information.

Clause 4.4.6: parties may specify with particularity the steps Lessee is required to take to record Lessor’s interest in the Engine, such as the making of public filings or the affixing of plates or stickers to the Engine.

CLAUSE 4.2: INFORMATION, DOCUMENTATION, RECORDS AND REPORTS

- 3.3. All Engine Documentation is required to be kept in the English language (unless agreed otherwise), and in accordance with the rules of the relevant Aviation Authority and the generally applicable rules of the manufacturer.

- 3.4. Clause 4.2.4 provides that Lessee shall issue a monthly report of utilization by hour and cycle and that such report is provided “concurrently with the payment of Use Fees”. As outlined above, parties may amend the Lease Agreement to specify any timing or invoicing requirements that vary from that provided as standard.

- 3.5. The concept of “*Threshold Amount*” is introduced in Clause 4.2.5. If an Engine is damaged and the cost of repairing such damage does not exceed the Threshold Amount, provided that the Engine is not rendered Unserviceable, Lessee has no obligation to notify Lessor of the damage to the Engine. The Threshold Amount also has significance under **paragraph 6 of Annex 4**, which provides that in the event of a Partial Loss, being damage to the Engine that does not constitute a Total Loss, payment will be settled jointly between Lessor and Lessee, save where the payment is below the Threshold Amount. The Threshold Amount will be specified in the Lease Agreement (**Part I, point 38 of the Lease Agreement**). Lessee is required by Clause 4.2.5 to provide notice to Lessor in the event of a Total Loss.

CLAUSE 4.4: PROPRIETARY RIGHTS, POSSESSION AND RELATED ITEMS

- 3.6. Pursuant to Clause 4.4.4, Lessee agrees that it shall not install the Engine on an aircraft unless the holders of a proprietary interest in that aircraft have either (a) signed a Recognition Agreement, or (b) otherwise acknowledged in writing (for example, in existing lease or financing documentation), that they will not claim or assert any right or an interest in the Engine as a result of the installation of the Engine on such aircraft. This clause recognises that the Engine is likely to be installed on a leased or financed aircraft.

It has become common practice for aircraft lessors or mortgagees to expressly permit temporary engine installation on an airframe and to agree, in general terms, not to assert any right or interest in a

temporarily installed engine. The purpose of this clause is to permit installation of the Engine on an airframe in an emergency situation, without requiring the potentially difficult procedural hurdle of having to obtain third-party consent prior to installation, so long as the minimum requirements specified in Clause 4.4.4 are satisfied.

- 3.7. Clause 4.4.5 requires Lessee to take all reasonable steps to protect Lessor's interest in the Engine, including making filings and registrations and affixing identification materials to the Engine itself. Parties may also specify additional actions to be taken by Lessee in this regard (**Part I, point 16 of the Lease Agreement**), including in relation to Additional Indemnities or with respect to other jurisdictions. Cape Town registrations are dealt with in Clause 16.

CLAUSE 4.6: MAINTENANCE AND REPAIR

- 3.8. Lessee's general maintenance obligations are contained in Clause 4.6. Consistent with the short term nature of the STEEL, these obligations are limited to routine scheduled, condition-monitored, and on-condition line maintenance only. Such maintenance must comply with Applicable Engine Standards, rules of the relevant Aviation Authority and be undertaken to a standard that is consistent with industry practices.
- 3.9. Lessee is liable for costs of repairs arising from Lessee's negligence, misuse, beyond-limits operation or foreign object damage however, Lessee is not permitted or obliged perform the corrective maintenance unless agreed between the parties pursuant to 4.6.3.

CLAUSE 4.7: REMOVAL AND INTERCHANGE OF PARTS

- 3.10. Clause 4.7 outlines the standards to be applied in respect of any replacement Parts, with Clause 4.7.2 authorising use of non-qualifying replacement Parts on an emergency basis.

4. CLAUSE 5: DISCLAIMERS AND WAIVERS

- 4.1. The Engine is delivered and leased on an "as is, where is" basis. This disclaimer is made without prejudice to:-
- (i) **Clause 2.2.2:** Lessor's representation that it has title to the Engine or has the right to lease the Engine;
 - (ii) **Clause 2.3:** the conditions precedent to be satisfied by Lessor;
 - (iii) **Clause 9:** the covenant of quiet enjoyment in favour of Lessee; and
 - (iv) **Clause 12:** provisions relating to unserviceability.

In relation to (ii) above, before accepting the Engine Package Lessee may satisfy itself that the Engine Package meets any specified delivery conditions, including the technical conditions in Clause 2.3.1. If the Engine Package fails to satisfy these specified conditions, Lessee may decide not to accept the Engine and the term will not commence. It is important to note that Lessor makes no representation or warranty regarding the condition of the Engine Package, and any specified delivery conditions will not constitute representations or warranties by Lessor that have relevance after acceptance by Lessee of the Engine Package.

Regarding item (iv) above, whilst the Engine is delivered on an "as is, where is" basis, if the Engine should become Unserviceable, the STEEL provides (consistent with the short term nature of the arrangement) that, the Lease Agreement will terminate and the Engine Package will be returned to Lessor. Clause 12, and the provisions referred to therein, determine financial responsibility for the unserviceability as between Lessor and Lessee.

- 4.2. Clauses 5(I) and (II) provide that, save as expressly stated in the Agreement, Lessor makes no warranties, guarantees or representations of any kind, and Lessee waives all rights and remedies and damages, including consequential damages. Lessor's legal liability arising from gross negligence or wilful misconduct is expressly excluded from Lessee's waiver.

5. CLAUSE 6: EXPORTATION AND IMPORTATION

Clause 6 stipulates that Lessee will be exporter and importer of record and will obtain any Consents as may be necessary and Lessor agrees to furnish information reasonably required by Lessee in connection with its

obligations under Clause 6. Parties should consider carefully whether more detailed provisions relating to compliance with export controls or trade sanction requirements are necessary.

6. CLAUSE 7: LOSS AND DAMAGE

Clause 7.1 confirms that risk of loss or damage to the Engine resides with Lessee throughout the Term.

CLAUSE 7.2: PARTIAL LOSS

6.1. Upon the occurrence of damage constituting a Partial Loss, Lessee is responsible for the cost of restoring the Engine to its prior condition. The parties will agree whether following a Partial Loss, the Engine will either (a) continue to be leased, or (b) returned to Lessor, and will reflect their agreement on this point in the Lease Agreement (**Part I, point 17 of the Lease Agreement**).

If the parties have agreed that the leasing of the Engine is to continue, Lessee must deliver the Engine to an Agreed Maintenance Performer (and Rent continues to be payable). If, however, the parties have agreed that the Engine is to be returned to Lessor in accordance with Clause 12, the Term will terminate and Lessee's obligation to pay rent will terminate after the Engine repair is completed. In this regard, it should be noted that the Lessor is obliged to repair the Engine promptly pursuant to Clause 12.3.

In either case, proceeds of insurance payable with respect to the Partial Loss are payable to the repairer, and secondly to reimburse Lessee for its costs incurred in connection therewith.

CLAUSE 7.3: TOTAL LOSS

6.2. If a Total Loss occurs, and provided that Lessor has not received insurance proceeds, Lessee is obligated to pay the Stipulated Amount (as specified by the parties in **Part I, point 18 of the Lease Agreement**) to Lessor on the earlier of (a) ninety days following the date of the Total Loss or (b) the second business day following receipt by Lessee of Total Loss proceeds. Notwithstanding loss of use of the Engine by Lessee, Rent continues to be due and payable until Lessor receives the Stipulated Amount. If the Scheduled Final Date has passed and the Stipulated Amount has not yet been paid, the Term is automatically extended until receipt of such amount. Lessor is obligated to transfer title to the Engine to Lessee or its designee or assignee (at Lessee's expense) on an "as is, where is" basis upon receipt by Lessor of the Stipulated Amount.

7. CLAUSE 8: INSURANCE

Lessee is required to maintain the hull, liability, and war risk insurance as outlined in Annex 4 to the STEEL. In addition, if agreed between the parties, Lessee shall maintain reinsurance as specified in **Part I, point 19 of the Lease Agreement**. Customary confirmations and broker's certifications apply. The requirements of Annex 4 should be reviewed by Lessor's and Lessee's insurance advisors to ensure that such requirements are applicable to their transaction.

8. CLAUSE 9: QUIET ENJOYMENT

Pursuant to Clause 9 Lessor provides a standard quiet enjoyment undertaking in favour of Lessee, whereby Lessor confirms Lessee's right to the use of the Engine Package throughout the Term without the interference of Lessor or any party claiming through Lessor. This undertaking will not prevent Lessor exercising any of its rights or remedies under the Agreement.

9. CLAUSE 10: INDEMNITIES

9.1. The indemnity provisions in the STEEL have been drafted to reflect current market norms whilst adopting a neutral position favouring neither Lessor nor Lessee. Further, the provisions extend certain protections to third parties (primarily financing parties with proprietary interests in the Engine, thereby facilitating financing), and reflect risks traditionally imposed on Lessee and that Lessee is, in turn, largely able to cover through insurance where the General Indemnity applies.

CLAUSE 10.1: GENERAL INDEMNITY

9.2. The general indemnity protects Lessor and third parties with proprietary interests in the Engine (e.g., a mortgage holder, a head lessor, an indenture trustee or owner trustee) from claims arising, for example, by virtue of Lessee's possession, operation, and maintenance of the Engine (Clause 10.1.2). Exclusions from the general indemnity are outlined in Clause 10.1.3 and include, willful misconduct, gross negligence or contractual breach of that particular Indemnatee (i.e. by way of example, gross negligence of a Lessor will not vitiate general indemnification protection afforded to a mortgage holder

in respect of the Engine) and liability arising as a result of legal relations with Lessee independent of the Agreement. Clause 10.1.3(iii) is of particular importance as it excludes events or circumstances occurring before or after the Term which are not attributable to an act or omission that occurred during the Term.

CLAUSE 10.2: TAXATION INDEMNITY

- 9.3. Clause 10.2.2 provides a list of Taxation Indemnity Events, with certain exclusions to such indemnities outlined in Clause 10.2.3 including willful misconduct, gross negligence or contractual breach of that particular Indemnatee, non-payment of Taxes that does not give rise to a material risk of seizure, sale or other loss of the Engine and Lessor Taxes. Although Clause 10.2.3(iii) relates to Taxes being contested in good faith by Lessee, there is no contest provision that would give Lessee a right to contest a tax liability in the name of an Indemnatee. As a tax indemnity payment may itself generate a tax liability, all Tax Indemnity payments are required to be made on an After-Tax Basis.

CLAUSE 10.3: CURRENCY INDEMNITY

- 9.4. Clause 10.3 requires Lessee to make all payments in the Agreed Currency specified by the parties in the Lease Agreement (**Part I, point 11 of the Lease Agreement**), failing which Lessee is liable to pay Lessor any deficiency caused by payments in a currency other than the Agreed Currency.

CLAUSE 10.4: INDEPENDENCE AND SURVIVAL OF INDEMNITIES

- 9.5. Clause 10.4 requires the rights, duties and obligations of the general, tax, and currency indemnities to continue in full force following the expiry of the Term. Such a survival clause has become market standard and ensures that the liability of Lessee for indemnifiable events during the Term are not avoided merely by virtue of the cessation of the Term (where the General Indemnity is concerned, that continuing exposure should remain generally insurable).

10. CLAUSE 11: REDELIVERY OF ENGINE PACKAGE

- 10.1. Consistent with the short-term nature of the STEEL, as Lessee's maintenance obligations under the Agreement relate only to routine scheduled, condition-monitored, and on-condition line maintenance (as set out above in Section 3.8), the return conditions imposed on Lessee on the Final Date are limited. In addition, the Engine is required to be free of Liens (other than Lessor Liens) on the Final Date.

CLAUSE 11.2: REDELIVERY REQUIREMENTS AND CONDITIONS

- 10.2. These conditions are set out in Clause 11.2 and include the Engine being returned with an FAA or JAA serviceability tag (to be specified in **Part I, point 1 of the Lease Agreement**), being in good operating and physical condition with only normal wear and tear, being in the same configuration as when delivered, and having a complete set of Parts.

CLAUSE 11.3: FINAL INSPECTION

- 10.3. The Engine must have undergone a hot and cold section borescope inspection and other performance tests (if any), agreed between the parties and specified in the Lease Agreement (**Part I, point 22 of the Lease Agreement**).

CLAUSE 11.4: ENGINE DOCUMENTATION ON REDELIVERY

- 10.4. Clause 11.4 outlines the return requirements for the Engine Documentation. The Engine Documentation to be returned includes not only the documentation initially delivered with the Engine but also items such as trend monitoring data, pilot reports, maintenance write-ups, logs, preservation and serviceability tags, and a comprehensive non-incident statement. All such documentation is required to be kept in the ordinary course of aircraft operations and imposes no additional burden on lessees. Any additional documentation to be provided as agreed between the parties may be specified in the Lease Agreement (**Part I, point 23 of the Lease Agreement**).

- 10.5. The provisions of Clauses 11.2, 11.3, and 11.4 do not apply if the Engine is returned because it has become Unserviceable, but such noncompliance is permitted only to the extent that compliance is not possible due to the Unserviceability. For instance, the requirement for a serviceability tag cannot be met by an unserviceable engine, but that does not relieve Lessee from its responsibility to return all Parts not affected by the Unserviceability.

CLAUSE 11.5: PREPARATION AND TRANSPORTATION REQUIREMENTS

- 10.6. The Engine is required to be prepared for return shipment in accordance with manufacturer recommendations. The parties may further stipulate other shipping requirements in **Part I, point 23 of the Lease Agreement**.

CLAUSE 11.6: EFFECT OF NON-COMPLIANCE WITH REDELIVERY REQUIREMENTS

- 10.7. Should Lessee fail to return the Engine in compliance with Clause 11, the Term shall be deemed to be extended until the date on which the Engine is brought into compliance. In such event, Lessee remains liable to pay Rent up to the date that the Engine is brought into compliance, in addition to which Lessee may also be liable for other damages suffered by Lessor as a result of the failure by Lessee to return the Engine in the required condition by the Scheduled Final Date.
- 10.8. If the Engine is determined to be Unserviceable during the final inspection under Clause 11, then the terms of Clause 12 will apply as though the Unserviceability had occurred prior to the commencement of the final inspection.

11. CLAUSE 12: UNSERVICEABILITY

- 11.1. The Engine is "Unserviceable" if it no longer qualifies for a serviceability tag, unless such disqualification is as a result of the failure by Lessee to perform its ongoing limited maintenance obligations under Clause 4.6.1.
- 11.2. If the Engine becomes Unserviceable Lessee is required to return the Engine to Lessor, save in the following circumstances (i) if the Unserviceability relates to damage which Lessee is otherwise obligated to repair or cause to be repaired, (ii) where Unserviceability can be cured by use of a Qualifying Emergency Part, and (iii) where the parties have agreed that the lease will continue in the event of a Partial Loss and the Engine is delivered to a repairer by Lessee.
- 11.3. If an Unserviceable Engine is returned to Lessor but the Unserviceability is due to a condition the repair of which is Lessee's responsibility, then notwithstanding Lessee's surrender of possession of the Engine, Lessee shall remain liable to pay Rent until the Engine is repaired, provided that Lessor notifies Lessee that the Engine was returned to Lessor in an Unserviceable condition within 30 Business Days of the return of the Engine to Lessor. In such event Lessor is obligated to cause the Engine to be repaired "as promptly as practicable" (Clause 12.3).

12. CLAUSE 13: TERMINATION EVENTS

CLAUSE 13.1: WAR AND ALLIED PERILS INSURANCE

- 12.1. The STEEL was completed shortly after the terrorist attacks of September 11, 2001. The events of that day led to the complete withdrawal of war risk insurance coverage by all aviation insurers and the cancellation of existing war risk policies. Those cancellations triggered defaults under most aircraft financing and leasing transactions. Commercial war risk insurance later returned to the market, but on terms that were considerably more expensive. Although some governments agreed to provide insurance-like war risk indemnity for their national carriers on more commercially reasonable terms, not all governments did. The governments that agreed to provide this support later terminated the programs, forcing their national airlines to return to the commercial markets. International efforts to address terrorism risks to commercial aviation on a global scale have to date failed to produce a widely accepted structure for the reallocation or sharing of terrorism risk.
- 12.2. Clause 13.1 addresses the issue of the wholesale withdrawal of war risk insurance products, or an unanticipated increase in its cost to commercially unreasonable levels. In such an event, if Lessee decides not to purchase war risk cover, then Lessor may either waive Lessee's noncompliance with Clause 8, or terminate the Lease Agreement. If Lessor elects to terminate, Lessee is obligated at that point to return the Engine in accordance with Clause 11 and to pay Lessor the Termination Damage Amount. Termination Damage Amount is the sum of (i) amounts then due under the Lease Agreement, (ii) amounts due to correct return condition anomalies or other events of default, and (iii) all future Rent that would have been due to Lessor had the termination not occurred (discounted to date of payment at the Calculation Discount Rate to be specified in the Lease Agreement (**part I, point 37 of the Lease Agreement**)).

CLAUSE 13.2: CERTAIN NO-FAULT EVENTS

- 12.3. Clause 13.2 outlines the following three “no-fault” events pursuant to which the Lease Agreement will terminate for reasons not caused by Lessor and not related to a Lessee breach; (i) Lessor’s title to the Engine is adversely affected, (ii) leasing or associated payments become illegal, or (iii) the Lease Agreement becomes invalid or unenforceable. Upon the occurrence of any such event, the Lease Agreement terminates automatically and Lessee is obliged to return the Engine accordance with Clause 11 and to pay Lessor the Termination Damage Amount (except that portion relating to the present value of future Rent).

13. CLAUSE 14: DEFAULTS AND REMEDIES

- 13.1. A primary objective of the STEEL is to provide a concise contract that balances competing interests of lessors and lessees. Consistent with this aim, the default provisions in the STEEL are deliberately uncomplicated and succinct. There are six Events of Default in total, relating to: (i) non-payment, (ii) failure to maintain insurance, (iii) failed redelivery of the Engine Package at the end of the Term, (iv) a failure to comply with any other obligations, (v) bankruptcy or insolvency of Lessee, and (vi) limited cross-default.
- 13.2. It should be noted that pursuant to Clause 14, it is expressly agreed that the listed Events of Default are “*defaults*” for purposes of the Cape Town Convention. This is consistent with Article 17.1 of the Consolidated Text, which provides that the parties are free “at any time to agree in writing as to the events that constitute a default...”
- 13.3. Non-payment: Clause 14.1(i) provides for a five day grace period following which an Event of Default occurs. However, this provision also affords parties the opportunity to select a different grace period and to specify same in **Part I, point 26 of the Lease Agreement**. It should be noted that there is no notice requirement for an Event of Default to arise under this provision; non-payment and the mere passage of time cause the Event of Default to mature.
- 13.4. Failure to maintain insurance: Clause 14.1(ii) provides that an Event of Default arises upon the failure by Lessee to maintain any of the insurances required pursuant to the terms of the Agreement. Failure to maintain war risk insurance when the provisions of Clause 13.1 apply is however, specifically excluded as an Event of Default under this provision. It should be noted that consistent with market practice, there is no grace period and no notice requirement, thereby highlighting the fundamental importance of Lessee’s obligation to maintain all required insurance.
- 13.5. Failure to comply with other obligations: Clause 14.1(iv) relates to the failure by Lessee to comply with any of its other duties under the Lease Agreement, a misrepresentation under Clause 15 (*Representations and Warranties*), or the loss of rights under a Consent (a “Consent” being any type of governmental authorisation to possess and operate the Engine). However, no Event of Default will occur if that failure, misrepresentation or loss of right: (i) does not have a “material adverse effect on the rights of Lessor *and* the value of the Engine Package” (emphasis added), or (ii) is capable of remedy, and is in fact remedied, within 15 days of the event occurring. It should be noted that there is no requirement for notice to be given in order to trigger an Event of Default; therefore, the 15-day cure period begins to run when the disqualifying event occurs, not when Lessor may demand rectification by written notice. This approach has been adopted on the basis that a materiality threshold has been applied and given the short term of the lease (six months or less), Lessee should not be excused from covenant compliance, misrepresentation, or Consent issues until such time as Lessor actually identifies default and issues a notice.
- 13.6. Insolvency: the Events of Default relating to insolvency are set out in Clause 14.1(v) and contemplates four scenarios pursuant to which an Event of Default may arise; where Lessee (i) is deemed to be or states in writing that it is insolvent (ii) is subject to insolvency or other proceedings in which its assets are subject to control or supervision of the court (for example, where a possibility of reorganisation exists such as under US Chapter 11 proceedings) (iii) suspends or declares an intention to suspend payments to creditors, or suspends or ceases its business or part thereof, or (iv) takes steps or is subject to actions analogous to those set out at (i) to (iii).

In relation to the events outlined in (i) and (iii), the Event of Default arises automatically upon the occurrence of the relevant event. In relation to the events outlined at (ii) and (iv), no Event of Default shall occur for the lesser of (a) a period 60 days, and (b) the period of the proceedings or reorganisation. This exception is very limited however and relates only to circumstances where the proceedings are initiated by a third party, lack merit under applicable law, and will not result in financial loss to Lessor. If all three elements are satisfied, then an Event of Default shall not occur for sixty days after commencement of the proceeding (or less, if Lessor is legally entitled to enforce its rights under

the Lease Agreement at an earlier point). To the extent a proceeding “lacks merit” and is instituted by a third party, a Lessee should be able to have the proceeding dismissed within sixty days. Following considerable analysis and detailed discussions with industry participants, this clause was drafted to be deliberately concise, yet broad enough to address all possible insolvency scenarios.

- 13.7. Cross-default: As outlined above, the STEEL has been drafted as a Master Agreement containing standard terms that are incorporated by reference into a Lease Agreement. A separate Lease Agreement is then executed for each Engine leased between the parties. Clause 14.1(vi) provides that an Event of Default under one Lease Agreement shall occur if there is an “Event of Default” under any other Lease Agreement between the parties utilising the Master Agreement. This structure was adopted to minimize problems associated with the exercise of remedies under multiple lease supplements, in particular with regard to termination of leasing arrangements. The one-Lease Agreement-per-Engine structure allows each lease to stand alone, and be dealt with, on its own terms. By adopting this structure, it was recognised that Lessors may be unable to deal with all emergency engines on a collective basis, and for that reason this very limited cross-default provision has been included in the Agreement. Further, guided by the principle that the exigencies of the circumstances should not favour one party over the other, the cross-default provision was drafted so that it does not extend to any *other* agreements (unrelated to the Master Agreement) entered into between Lessor and Lessee.

CLAUSE 14.2: DEFAULT REMEDIES

- 13.8. Clause 14.2.1 provides that the occurrence of an Event of Default is considered a repudiation by Lessee, and in such event Lessor may choose to terminate the Lease Agreement (a **Lease Termination**), to take action to seek performance and/or to recover damages (an **Enforcement Action**), or both. In the event of a Lease Termination, Lessee becomes obligated to pay the Termination Damage Amount and immediately loses its proprietary rights in the Engine Package. In an Enforcement Action, Lessee agrees (i) that Lessor may take possession of the Engine without the need for court authorisation (to the extent permitted by law), (ii) that Lessor is entitled to any expedited or interim judicial relief, (iii) to redeliver the Engine immediately, and (iv) that Lessor is appointed as Lessee’s attorney-in-fact to execute documents and enter premises (for repossession purposes) in Lessee’s name.
- 13.9. The several references in the STEEL to the right of Lessor to self-help repossession reflect the strong trend among nations in making the self-help declaration in their process of ratifying or acceding to the Cape Town Convention. It also reflects the inclusion of the self-help declaration in the OECD Aircraft Sector Understanding’s list of Cape Town Convention Qualifying Declarations.

14. CLAUSE 15: REPRESENTATIONS AND WARRANTIES

CLAUSE 15.1: GENERAL REPRESENTATIONS

- 14.1. Each of Lessee and Lessor is required to provide standard representations and warranties in relation to due incorporation, capacity, due execution, Consents and valid and legally binding obligations.

CLAUSE 15.2: SPECIFIC REPRESENTATIONS

- 14.2. In addition to the General Representations outlined above, Lessee is generally required to give three further specific representations relating to (i) no Event of Default existing (ii) no further action is necessary to protect Lessor’s interest in the Engine, and (iii) save as outlined in a local law opinion issued pursuant to Clause 17.12.2 of the Agreement (*Legal Opinions*), no change of law in respect of enforceability of the Agreement, obligations of Lessee and the rights and obligations of Lessor.
- 14.3. Each representation is made on the “Commencement Date”. Any misrepresentation of the matters set out in Clause 15 will constitute an Event of Default under Clause 14.1(iv) unless such event comes within one of the exceptions outlined in that clause.

15. CLAUSE 16: CAPE TOWN CONVENTION

- 15.1. Clause 16.1 is a new addition in the 2012 Revision of the STEEL. This Clause provides that the Cape Town Convention will apply to the maximum extent permitted by law, that the Lease Agreement constitutes an “international interest” and that a registration of it as an international interest will be made at the International Registry. In order to determine whether the Cape Town Convention will apply, the parties must consider certain factors including if the airframe is registered in a contracting state or if Lessee is situated in a contracting state on the effective date of the Lease Agreement.

- 15.2.** Although the necessity of registering an international interest as an absolute protection of Lessor's title in an Engine may be debatable as a purely legal question, the practical benefits of doing so are apparent. As more and more nations have ratified or acceded to the Cape Town Convention, the International Registry has grown proportionately. The Registry's instant electronic access and efficient search functionality have greatly facilitated the sale and leasing of spare engines, and have provided a degree of comfort to Lessors leasing Engines into jurisdictions where there is no other way, legally or practically, to put the world on notice of the fact that a Lessee's possessory interest in an Engine is subordinated to Lessor's. See 4.72, 4.73 and 4.76 of the *Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment: Official Commentary – Revised Edition* for a more detailed discussion of a Lessee's "power to dispose" under simple operating leases, and the registration of international interest as an effective countermeasure.
- 15.3.** Clause 16.2 confirms the "right to receive speedy relief" under the Cape Town Convention. Reflecting current market practice, it also contains Lessee's agreement that Article 20.4 is disapplied, as that provision may be inconsistent with remedies contained elsewhere in Clause 14.2 of the Agreement.

16. CLAUSE 17: MISCELLANEOUS PROVISIONS

- 16.1.** Standard miscellaneous provisions are contained in this section of the Agreement and include amendments to the Agreement, no waiver of rights, entire agreement of the parties and notice provisions. It should be noted that parties are required to provide notice details in the Lease Agreement (**Part I, point 27 of the Lease Agreement**), and further may describe a process for signing by facsimile or electronic media (**Part I, point 28 of the Lease Agreement**).

CLAUSES 17.7 AND 17.8: GOVERNING LAW AND JURISDICTION

- 16.2.** The parties are required to designate their choice of either English law or New York law (**Part I, point 29 of the Lease Agreement**) as the governing law of the Agreement. Similarly, parties must designate their submission to non-exclusive jurisdiction of the courts of England or New York in the Lease Agreement (**Part I, point 30 of the Lease Agreement**). Whilst the legal regimes of England and New York are the preferred options for aircraft financing transactions, the parties may deviate from the selection of either one of these two governing laws and from the submission to non-exclusive jurisdiction. The parties would reflect any such choice in **Part I, point 29** and **Part I, point 30** of the Lease Agreement.
- 16.3.** The STEEL does not mandate the identification of an agent for service process. The parties may however designate an agent for service of process and in such circumstances, a letter confirming such designation should be delivered prior to the Commencement Date.

CLAUSE 17.12: LEGAL OPINIONS

- 16.4.** Clause 17.12.1 requires Lessee to provide a legal opinion in a form satisfactory to Lessor and issued by local counsel reasonably satisfactory to Lessor. The parties are free to waive this requirement should they so agree.

CLAUSE 17.14: TAXATION CHARACTERISATION

- 16.5.** Where Lessee is a U.S. entity, the statement of intention in the second sentence of 17.14 should be noted pursuant to which it is stated that the Lease Agreement as a "lease for federal income tax purposes". This is included for purposes of Section 1110 of the US bankruptcy code and is designed to ensure the Lease Agreement will be subject to the provisions thereof.

EXECUTION FORMALITIES

1. EXECUTION FORMALITIES

The execution formalities will be determined by a number of factors including the governing law of the Agreement as selected by the parties, the jurisdiction of incorporation of the signatories and the constitutional documents of the signatories.

It should be highlighted that each transaction is to be approached according to its own facts and there may be other procedures, restrictions or requirements relating to the particular transaction or party that need to be considered. Neither AWG nor IATA express any view on whether the suggested signing procedure should be adopted in a particular transaction.

1.1. English law

Where the laws of England have been selected as the governing law of the Agreement, the following points should be considered:-

(i) **execution** : the Agreement has been drafted as an agreement to be executed under hand. Sample execution blocks for an English company executing the Agreement are attached at Schedule I. The constitutional documents of a company may dictate the form of execution block to be used (i.e. whether the signatures of a single director or two directors is required) and accordingly, the constitutional documents of a company should be reviewed to ensure the execution block used conforms with the requirements set out in the company's constitutional documents.

If a party is incorporated outside England, the form of execution block to be used for the party will be determined by the laws of the jurisdiction of incorporation of that party. Accordingly, local counsel advice should be sought to ensure that all local law execution formalities have been complied with.

(ii) **virtual signing** : where it is not possible or practical to have a physical closing with all parties attending a closing meeting and signing the documents, it may be necessary for signing to take place by email. It is important to note that as a result of the decision of the English High Court in R (on the Application of Mercury Tax Group Limited and another) v HMRC, where documents are governed by English law and signing is to take place by email, formal signing procedures should be followed.

The signing procedure to be implemented will vary depending on the form of document to be executed for example, the signing procedure for a deed will differ to that for a simple contract. Set out in Schedule II is a suggested procedure which may be used for dealing with virtual signings and closings of English law governed simple contracts.

1.2. New York law

Under New York law, for a party to be bound by an agreement, such party must execute the agreement with the intention of being bound. The intention of a party to be bound by the terms of an agreement is demonstrated by such party delivering an executed copy of such agreement to the other parties. If the agreement expressly so provides, an agreement may be executed and delivered in counterparts, each of which shall constitute an original, but all of which taken together shall constitute a single contract. If desired, an agreement can expressly provide for electronic delivery of such counterparts.

A counterpart is a copy of the entire agreement. Delivery of an executed unattached signature page does not, in and of itself, demonstrate a party's intention to be bound to the terms of an agreement. If for some reason it is deemed necessary for parties to deliver executed unattached signature pages, there are various ways for a party to demonstrate its intention to be bound by the particular text of an agreement, none of which have been judicially sanctioned. Schedule II suggests an approach that could be used in connection with New York law agreements, but counsel will have to satisfy themselves that whatever approach is used will permit them to demonstrate in court that a party has evidenced an intention to be bound by a particular text of the agreement

Schedule I

Sample Execution Blocks for an English company

Simple Contract executed by individual on behalf of English company

Executed by [NAME OF DIRECTOR],
director, for and on behalf of

[NAME OF EXECUTING COMPANY]

.....
Director

Simple Contract executed by an attorney on behalf of English company

Executed by [NAME OF ATTORNEY]
as attorney for

[NAME OF DONOR/EXECUTING COMPANY]

.....
Attorney

Schedule II

Suggested signing procedure for virtual closings where documents governed by English law

Simple contracts

- (a) The proposed arrangements for the virtual signing/closing should be agreed between all parties' lawyers in advance of closing
- (b) Once the documents are finalised, the final execution versions should be emailed (as complete pdf or Word attachments) to all parties and/or their lawyers. To facilitate ease of process, a separate pdf or Word document containing only the relevant signature page may be attached.
- (a) Each signatory prints and signs the signature page only (there is no need to print off the full document).
- (b) Each party then returns by email (a) the final execution version of each document and (b) each signed signature page (as a pdf attachment), to its lawyers / the lawyers co-ordinating the signing/closing. For the avoidance of doubt the execution versions of the documents and the pdf signature pages should both be attached to the same email.
The email should include the following confirmations / authorisations by the signing party in favour of the lawyers co-ordinating the signing/closing:-
 - (i) granting authority to attach the relevant signature page to the final execution version of the document
 - (ii) granting authority to date the document and release it to the other parties once all signature pages have been received
- (c) At or shortly after signing/closing, a final version of the duly executed document (including all executed signature pages) should be circulated to all parties to evidence execution of the final document.