

# **ATTACHMENT 5**

## **Seller Warranties**

### **1. CAPACITY AND AUTHORITY**

#### **1.1 Right, power, authority and action**

- (a) The Seller and each Lessor Entity is validly incorporated, in existence and duly registered under the laws of its jurisdiction of incorporation and has right, power and authority to conduct its business as conducted on the date of this Agreement.
- (b) The Seller and each Lessor Entity has the right, power and authority, and has taken all action necessary, to execute, deliver and exercise its rights, and perform its obligations under this Agreement and each Sale Document to be executed by it at or before any Closing.

#### **1.2 Binding agreements**

The obligations of each of the Seller and each Lessor Entity under the Sale Documents to which it is or is to be a party are, or when the relevant document is executed will constitute, binding obligations of such party in accordance with their respective terms.

#### **1.3 No insolvency or breach**

- (a) None of the Seller nor any Affiliate of the Seller which may, due to its materiality to the Seller, give rise to a similar event for the Seller (a “**Relevant Seller Affiliate**”) is insolvent under the laws of its jurisdiction of incorporation, unable to pay its debts as they fall due or has proposed or is liable to any arrangement (whether by court process or otherwise) under which its creditors (or any group of them) would receive less than the amounts due to them. There are no proceedings in relation to any compromise or arrangement with creditors or any winding up or insolvency proceedings concerning any or all of the Seller or the Relevant Seller Affiliates and no events have occurred which would justify such proceedings.
- (b) No steps have been taken to enforce any security over any Aircraft (or any part of any thereof) and, so far as the Seller is aware, no event has occurred to give the right to enforce such security.
- (c) The execution and delivery by each of the Seller and each Lessor Entity of this Agreement and the Transaction Document (or any of them) to which it is or is to be a party, and the performance by each thereof of its respective obligations thereunder will not:
  - (i) result in a breach of any provision of its memorandum or articles of association, operating agreement, or by-laws or equivalent constitutional documents;
  - (ii) result in a breach or termination of, constitute a default under, accelerate the maturity of, or create any Lien over the assets of the Seller under, any agreement or instrument to which it is a party, or by which it is bound or affected;

- (iii) result in a violation of any applicable law or breach of any Order, judgment or decree of any Governmental Agency to which it is a party or by which it is bound or submits;
  - (iv) require it to obtain any consent or approval of, or give any notice to or make any registration with, any Governmental Agency which has not been obtained or made at the date hereof both on an unconditional basis and on a basis which cannot be revoked; or
  - (v) require it to obtain any consent or approval of any of its shareholders, members, trustees or any other person.
- (d) So far as the Seller is aware, none of the Seller, any Lessor Entity or any Relevant Seller Affiliate is subject to any Order, judgement, direction, investigation or other proceeding by any Governmental Agency which will, or (in the opinion of the Seller, acting reasonably) is likely to, prevent or delay the fulfilment of any of the conditions precedent set out in Section 5 of this Agreement.

## 2. THE ENTITIES

- 2.1 The particulars of the Lessor Entities set out in Schedule 5 are true and accurate in all material respects.
- 2.2 The Shares comprise the whole of the allotted and issued share capital of each of the Lessor Entities.
- 2.3 The constitutional documents relating to each Lessor Entity on record with the UK's Registrar of Companies are complete and accurate in all material respects.
- 2.4 No Lessor Entity has an interest in, nor has agreed to acquire an interest in or merge or consolidate with, a corporate body or any other person.
- 2.5 The Shares in each Lessor Entity are legally and beneficially owned by the Seller alone and are fully paid or credited as fully paid.
- 2.6 There is no Lien, and there are no agreements, arrangements or obligations to create or give any Lien, over or in relation to the Shares in any Lessor Entity.
- 2.7 Other than this Agreement, there is no agreement, arrangement or obligation requiring the creation, allotment, issue, transfer, redemption or repayment of, or the grant to a person of the right (conditional or not) to require the allotment, issue, transfer, redemption or repayment of, a share in the capital of any Lessor Entity (including an option or right of pre-emption or conversion).
- 2.8 Other than powers of attorney issued in connection with the execution of documents related to the transaction contemplated hereby, there are no powers of attorney issued by any Lessor Entity that are currently in force.

### 3. **INSOLVENCY, WINDING UP ETC.**

- 3.1 No Order has been made and no petition has been presented or resolution passed for the winding up of any Lessor Entity or for the appointment of a liquidator or provisional liquidator to any Lessor Entity.
- 3.2 No administrator, examiner, or interim examiner has been appointed in relation to any Lessor Entity. No notice has been given or filed with the court of an intention to appoint an administrator, an examiner or an interim examiner. No petition or application has been presented or Order made for the appointment of an administrator, examiner or interim examiner in respect of any Lessor Entity.
- 3.3 No receiver or administrative receiver has been appointed, nor any notice given of the appointment of any such person, over the whole or part of any of a Lessor Entity's business or assets.
- 3.4 No moratorium has been sought or has been granted or imposed under section 1A of the UK's Insolvency Act 1986 in respect of any Lessor Entity.
- 3.5 No voluntary arrangement has been proposed under section 1 of the UK's Insolvency Act 1986 in respect of any Lessor Entity.
- 3.6 No compromise or arrangement has been proposed, agreed to or sanctioned under Part 26 (*Arrangements and Reconstructions*) of the UK's Companies Act 2006 in respect of any Lessor Entity, nor has any application been made to, or filed with, the court for permission to convene a meeting to vote on a proposal for any such compromise or arrangement in respect of any Lessor Entity.
- 3.7 No Lessor Entity is unable to pay its debts within the meaning of section 123 of the UK's Insolvency Act 1986.
- 3.8 So far as the Seller is aware, no action is being taken by the UK's Registrar of Companies to strike any Lessor Entity off the register under section 1000 of the UK's Companies Act 2006.

### 4. **LIABILITIES**

- 4.1 At Closing with respect to any Aircraft: (a) no Lessor Entity (if any) associated with such Aircraft will owe any Financial Debt to any person; and (b) no asset forming part of such Aircraft will be subject to any Lien.
- 4.2 No Lessor Entity is party to any swap or other hedging instruments.
- 4.3 No Lessor Entity is a party to nor is liable under a guarantee, indemnity or other agreement to secure or incur a financial or other obligation with respect to another person's obligation.

## 5. TAX

- 5.1 All Tax Returns required to be filed with any Tax Authority by or on behalf of any Lessor Entity have been timely filed in accordance with applicable law and all such Tax Returns were correct and complete in all material respects. All Taxes shown as due and payable on such Tax Returns have been timely paid to the appropriate Tax Authority.
- 5.2 No audit or other administrative proceeding has been notified to a Lessor Entity or (so far as the Seller is aware) is threatened, and no judicial proceeding has been notified to a Lessor Entity or (so far as the Seller is aware) is threatened, that involves any Tax or Tax Return filed or paid by or on behalf of any Lessor Entity. No Lessor Entity has in the last six years been the subject of any non-routine investigation, audit or review by a Tax Authority that has led to a Tax assessment of the Lessor Entity, and no Lessor Entity has in that time been liable to pay any penalty, fine or interest in relation to Taxes.
- 5.3 No Lessor Entity is party to any Tax Sharing Agreement other than as a result of being a party to an arrangement contemplated by section 59F Taxes Management Act 1970.
- 5.4 The tax residency, if any, of each Lessor Entity is, and has at all times since the incorporation date of each Lessor Entity been, as set forth in Schedule 4.
- 5.5 No Lessor Entity is required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after that Lessor Entity's Closing Date as a result of (i) any change in method of accounting for a taxable period ending on or prior to that Lessor Entity's Closing Date (save for any change that arises from, or as a result of, as an Event under the control of Buyer) or (ii) any agreement or arrangement with a Tax Authority entered into on or prior to that Lessor Entity's Closing Date.
- 5.6 No Lessor Entity has given any currently effective waivers extending the statutory period of limitation applicable to any Tax Return for any period or agreed to an extension of time with respect to a Tax assessment or deficiency, or has in effect any power of attorney or authorisation to any other Person with respect to Taxes.
- 5.7 There have been no significant intra-group restructurings or other transactions in respect of which Relief was required to be claimed by an Entity from a Tax Authority in order to avoid a Tax cost.
- 5.8 No Lessor Entity has any permanent establishment other than in its country of tax residency.
- 5.9 Neither Lessor Entity is, or has ever been since their incorporation, entitled to UK capital allowances in relation to their respective leased aircraft.
- 5.10 Neither Lessor Entity is registered for VAT in its country of tax residence.
- 5.11 No Tax filing position or transaction undertaken in the course of a Lessor Entity's leasing business is dependent on any ruling obtained by it from a Tax Authority.

## 6. LITIGATION

- 6.1 No Lessor Entity is involved in a civil, criminal, arbitration, administrative or other proceeding. So far as Seller is aware, no material civil, criminal, arbitration, administrative or other proceeding is pending or threatened by or against any Lessor Entity.
- 6.2 There is no outstanding judgment or Order against any Lessor Entity.
- 6.3 No Lessor Entity has at any time received written notice of any current or pending investigation by a Governmental Agency concerning any Lessor Entity.

## 7. ACCOUNTS

- 7.1 The 2015 Accounts for each Lessor Entity show a true and fair view of the state of affairs of that Lessor Entity at the Accounts Date and its profits for the accounting reference period ended on that date, in compliance with International Financial Reporting Standards or other accounting standards applicable to an English company and with the requirements of the UK's Companies Act 2006 and all other applicable legislation.
- 7.2 Having regard to the purposes for which the Management Accounts are prepared, and acknowledging that they have not been subject to audit, the Management Accounts are not misleading in any material respect and neither materially overstate the value of the assets nor materially understate the liabilities of the relevant Lessor Entity at the date of the Management Accounts and do not materially overstate the profits of that Entity for the period to which they relate.

## 8. CHANGES SINCE THE ACCOUNTS DATE

- 8.1 Since the Accounts Date, each Lessor Entity:
- (a) has in all material respects conducted its business in the ordinary course;
  - (b) has not suffered a material adverse change in its turnover or financial position;
  - (c) has not been subject to a resolution of its shareholders other than as routine business of annual general meetings;
  - (d) has not disposed of or acquired any current assets save in the ordinary course;
  - (e) except as provided in the 2015 Accounts has not declared, made or paid any dividend or other distribution of profits or assets; and
  - (f) except as provided in the 2015 Accounts has not purchased, redeemed, reduced, forfeited or repaid any of its own share capital.

## 9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 Neither Lessor Entity has any Intellectual Property Rights.

## 10. **PROPERTY**

10.1 No Lessor Entity has any right of ownership, or any other legal or equitable right, estate or interest in, or affecting, any land or buildings or has had since that Lessor Entity's incorporation.

## 11. **MATERIAL AGREEMENTS**

11.1 No Lessor Entity is a party to any contract, agreement or arrangement:

- (a) which is of material importance to the business, profits or assets of such Lessor Entity other than the Lease Documents or corporate service arrangements to which such Lessor Entity is party;
- (b) which involves partnership, joint venture, consortium, joint development, shareholder or similar arrangements;
- (c) with the Seller or any Affiliate of the Seller other than the Lease Documents to which such Lessor Entity is party; or
- (d) with a director or other officer of any of the Seller or any Affiliate of the Seller.

## 12. **BUSINESS**

12.1 No Lessor Entity is engaged in any form of business or trading other than its business of owning and/or leasing the Aircraft owned and/or leased by that Lessor Entity and the engines and parts relating to that Aircraft and activities reasonably ancillary or incidental thereto.

## 13. **LICENCES AND CONSENTS**

13.1 Each Lessor Entity holds all licences, consents, permits and authorities required to carry on its business (for the purposes of this paragraph 13 the "**Consents**"), and the Consents are in full force and effect.

13.2 No notice has been received by the Seller, any Lessor Entity or any or any Affiliate of the Seller indicating that any Consent referable to any Lessor Entity is likely to be suspended, cancelled, revoked or not renewed.

13.3 Each Lessor Entity has complied in all material respects with all relevant law binding on it.

## 14. **BRIBERY ACT COMPLIANCE**

14.1 Neither the Seller nor any Lessor Entity nor any Person (including an employee, agent or subsidiary) who performs or has performed services for or on the Seller or a Lessor Entity's behalf has at any time engaged in any activity, practice or conduct which would or could constitute an offence under the UK's Bribery Act 2010 or other applicable anti-corruption laws.

15. **EMPLOYMENT**

- 15.1 No Lessor Entity employs any person or persons or has done so since that Lessor Entity's incorporation.
- 15.2 No Lessor Entity has any obligation (whether or not legally binding) to provide or contribute towards pension, lump-sum, death, ill-health, disability, accident or similar benefits.

16. **BROKERAGE FEES**

- 16.1 No Lessor Entity has any obligation to pay any finder's fee, brokerage or other commission in connection with the transactions contemplated by this Agreement.