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## **MASTER AIRCRAFT LEASE NOVATION AGREEMENT, 2012**

## **MASTER AIRCRAFT LEASE ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT, 2012**

## **USER'S GUIDE AND COMMENTARY**

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**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 – IATA for use in conjunction with the Master Aircraft Lease Novation Agreement, 2012 (***MALNA***) and the Master Aircraft Lease Assignment, Assumption and Amendment Agreement, 2012 (***MALAAAA***). This User's Guide should be used only in connection with the MALNA and the MALAAAA and should not be used or relied upon for any other purpose.

It is intended that the MALNA will primarily be used in English law governed transactions, with the MALAAAA being used in transactions governed by the laws of the State of New York.

The purpose of this User's Guide is to provide technical assistance to users of the MALNA and the MALAAAA by providing practical guidance on the terms thereof. This User's Guide does not include a comprehensive analysis of every term of the MALNA or MALAAAA, nor does it explain how each provision of the MALNA or MALAAAA 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 MALNA or the MALAAAA, and this User's Guide, may be used by any transaction party, whether or not such party is a member of AWG or IATA. Each of the MALNA and MALAAAA is designated as a template document and is intended as a framework for efficient negotiations, as the transaction parties deem fit. Neither AWG nor IATA express a view on whether the MALNA or the MALAAAA should be used in a particular transaction or on whether the positions reflected in the MALNA, the MALAAAA or in this User's Guide are appropriate for any particular transaction parties. Transaction parties may deviate from the terms of the MALNA or the MALAAAA when using or negotiating the MALNA or the MALAAAA, as the case may be.

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 MALNA or Annex 1 (*Definitions and Rules of Interpretation*) to the MALAAAA (as applicable).

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

## COMMENTARY

### SECTION 1

#### CLAUSE 2 OF THE MALNA / MALAAAA

#### 1. CLAUSE 2.1 : TERMS OF NOVATION AGREEMENT / TERMS OF ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT

##### SUB-CLAUSE 2.1.2

- 1.1. The structure of each of the MALNA and the MALAAAA is that of a master agreement containing a set of standard terms relating to the novation of a lease agreement or the assignment, assumption and amendment of a lease agreement (as applicable).

Attached to the MALNA and the MALAAAA are the following Annexes:-

- **Annex 1** : Definitions and Rules of Interpretation.
  - **Annex 2** : Form of Novation Agreement (the **Novation Agreement**) or Form of Assignment, Assumption and Amendment Agreement (the **Assignment Agreement**). The lease to be novated pursuant to the MALNA (the **Existing Lease**) is identified in the Novation Agreement. The lease to be assigned pursuant to the MALAAAA (the **Lease**) is identified in the Assignment Agreement. The amendments to the Existing Lease and Lease that will take effect as of the Effective Time and a form of Effective Time Acknowledgement are each attached to the Novation Agreement and the Assignment Agreement as Appendix A and Appendix B, respectively. The Novation Agreement or the Assignment Agreement are entered into and signed by New Lessor, Existing Lessor and Lessee.
  - **Annex 3** : Conditions Precedent. Part A comprises the Conditions Precedent to be delivered to Existing Lessor, Part B comprises Conditions Precedent to be delivered to New Lessor and Part C comprises Conditions Precedent to be delivered to Lessee.
- 1.2. The Novation Agreement refers to and incorporates the terms of the MALNA, as amended by the parties. Amendments to be made to the MALNA in respect of the Existing Lease are outlined in the Novation Agreement. The Assignment Agreement refers to and incorporates the terms of the MALAAAA, as amended by the parties. Amendments to be made to the MALAAAA in respect of the Lease are outlined in the Assignment Agreement.
- 1.3. The MALNA, as amended pursuant to the Novation Agreement, is then read as a single contract. The Existing Lease as novated and amended by the Novation Agreement is referred to as the **Novated Lease**. Similarly, the MALAAAA, as amended pursuant to the Assignment Agreement, is then read as a single contract. The Lease as assigned and amended by the Assignment Agreement is referred to as the **Lease**.
- 1.4. Only the Novation Agreement or the Assignment Agreement, being the operative part of the MALNA or the MALAAAA (as applicable), is signed by Existing Lessor, New Lessor and Lessee. Neither the MALNA or the MALAAAA is signed by any party.
- 1.5. When specifying the Existing Lease in the Novation Agreement (**part I, point 4 of the Novation Agreement**) or the Lease in the Assignment Agreement (**part I, point 4 of the Assignment Agreement**) parties should ensure that all prior amendments and supplements to the Existing Lease or Lease are outlined and therefore captured in the definition of “Existing Lease” or “Lease” (as applicable).
- 1.6. It should be noted that the parties may deviate from, amend or supplement any of the terms of the MALNA or the MALAAAA (as applicable) and any such deviations, amendments or supplementary provisions agreed between the parties should be included in Part II of the Novation Agreement or the Assignment Agreement (as applicable).

## **2. CLAUSE 2.2: NOVATION / ASSIGNMENT AND ASSUMPTION**

### **SUB-CLAUSE 2.2.1**

- 2.1.** The novation or the assignment (as applicable) each become effective at the Effective Time. The Effective Time will take place at Delivery (as defined in the Purchase Agreement between Existing Lessor as seller and New Lessor as purchaser) and will be specified in the Effective Time Acknowledgement (***annex 2, appendix B to the Novation Agreement*** and ***annex 2, appendix B to the Assignment Agreement***).
- 2.2.** With effect from the Effective Time (i) all rights, interests, obligations and liabilities of Existing Lessor under the Existing Lease or Lease (as applicable) are assigned and transferred to New Lessor and New Lessor agrees to assume and perform such rights, interests, obligations and liabilities arising on or after the Effective Time, and (ii) Existing Lessor and Lessee agree to release each other from their respective obligations under the Existing Lease or Lease (as applicable) arising on or after the Effective Time.
- 2.3.** In addition, Existing Lessor and Lessee will each agree that it does not have any further rights against the other party under the Existing Lease or the Lease (as applicable) for obligations, covenants, undertakings, duties and liabilities arising under the Existing Lease or Lease (as applicable).

### **SUB-CLAUSE 2.2.4**

- 2.4.** The effect of the Novation Agreement is to cancel the Existing Lease between Existing Lessor and Lessee, and to create a new contract between New Lessor and Lessee; and the effect of the Assignment Agreement is to assign the Lease from Existing Lessor to New Lessor, who will assume all of Existing Lessor's rights and obligations under, in and to the Lease.
- 2.5.** However, Existing Lessor and Lessee will each want to ensure that the cancellation of the Existing Lease pursuant to the Novation Agreement and the assignment of the Lease pursuant to the Assignment Agreement, does not extinguish any of Existing Lessor's and Lessee's rights and obligations that arise prior to the Effective Time. Accordingly, any such rights and obligations of Existing Lessor and Lessee are confirmed pursuant to this clause.

### **SUB-CLAUSE 2.2.5**

- 2.6.** New Lessor should not be liable for events occurring prior to the Effective Time and similarly, Existing Lessor should not be liable for events occurring on or following the Effective Time.
- 2.7.** Consequently, Lessee is required to agree that it shall not assert any claim or defence against New Lessor in respect of any event attributable to the period prior to the Effective Time and shall not assert any claim or defence against Existing Lessor in respect of any event attributable to the period on or following to the Effective Time.

## **3. CLAUSE 2.3: AMENDMENT**

- 3.1.** Certain general amendments are required be made to ensure that the documents reflect the new transaction entered into between New Lessor and Lessee for example, from the Effective Time any reference to "Lessor" is to be construed to refer to New Lessor.

In addition, a number of consequential changes will be required such as inserting new account details for receipt of payments by Lessee under the Novated Lease or the Lease (as applicable), insertion of the amended text of airframe and engine identification plates and insertion of notice details for New Lessor.

In a novation or assignment transaction between Existing Lessor and New Lessor, Lessee will typically be considered an accommodation party and accordingly, any amendments made to the Existing Lease or Lease (as the case may be) should not vary the rights, interests, obligations and/or liabilities of Lessee. Similarly, the terms of the Existing Lease will require Lessee to cooperate with the novation or assignment process and, provided that Lessee's rights, interests, obligations and liabilities are not varied as a result of the novation or assignment, Lessee should provide its cooperation without seeking to improve its position or, requesting deviations from or additions to the terms of the Existing Lease or Lease (as the case may be).

- 3.2. Pursuant to each of the MALNA and the MALAAAA, the agreed amendments to the Existing Lease or Lease are set out in **annex 2, appendix A** to the **Novation Agreement** and **annex 2, appendix A** to the **Assignment Agreement**, respectively. Alternatively, the parties may agree to attach a complete text of the amended and restated lease to the MALNA or to the MALAAAA.

#### 4. **CLAUSE 2.4: EFFECTIVE TIME**

##### **SUB-CLAUSE 2.4.1**

The MALNA and the MALAAAA will each become effective at the Effective Time. Provided that the Conditions Precedent (**see Section 2 below**) have been satisfied, the parties are obliged to deliver the executed Effective Time Acknowledgment on the date of Delivery. A party may elect to provide its executed counterpart of Effective Time Acknowledgment to another party or a representative for release upon confirmation of the location of the equipment. To facilitate scheduling of the Effective Time, Lessee agrees to provide details of flight schedules in advance.

Delivery and the Effective Time will normally occur at a time when the Airframe and each of the Engines are in jurisdictions acceptable to Existing Lessor, New Lessor and Lessee. There may be one or more Effective Time Acknowledgements depending on the agreement of the parties in this regard and the particular circumstances applicable to the novation or assignment in question. However, the consequences of having separate Effective Time Acknowledgments for an Airframe and one or more Engines should be carefully considered by the parties, in particular with regard to payment and closing logistics for purposes of the Purchase Agreement.

## **SECTION 2**

### **CLAUSE 3 OF THE MALNA / MALAAAA**

#### 1. **CLAUSE 3 : CONDITIONS PRECEDENT**

##### **SUB-CLAUSES 3.1.1., 3.1.2 AND 3.1.3**

- 1.1. The obligation of each of Existing Lessor, New Lessor and Lessee to sign the Effective Time Acknowledgement is subject to fulfilment, or discretionary waiver, of the relevant conditions precedent by each party (**Part A, Part B and Part C of annex 3 to the Novation Agreement** and **Part A, Part B and Part C of annex 3 to the Assignment Agreement**)
- 1.2. It is acknowledged that the list of Conditions Precedent will need to be adjusted for each particular transaction. As such, if agreed between the parties the MALNA and the MALAAAA (as applicable) can be amended to include additional conditions precedent not listed in annex 3 (**Part I, point 6A, point 6B and point 7 of the Novation Agreement** and **Part I, point 6A, point 6B and point 7 of the Assignment Agreement**) for example, New Lessor may require a Eurocontrol letter confirming that information in relation to air navigation charges can be disclosed to New Lessor, or may require re-issuance or re-execution of other documents originally provided to Existing Lessor under the Existing Lease or Lease (as applicable).

## **SECTION 3**

### **CLAUSE 4 OF THE MALNA / MALAAAA**

#### 1. **CLAUSE 4.1: RENT**

##### **SUB-CLAUSES 4.1.1 AND 4.1.2**

- 1.3. It is important from Lessee's perspective that its obligation to pay rent is not duplicated as a result of the novation or the assignment (as applicable). Accordingly, New Lessor will agree that if Lessee has paid rent to Existing Lessor prior to the Effective Time, but such rent payment relates to a period occurring after the Effective Time, Lessee will not have any further obligation in relation to the payment

of rent for that period. This provision is linked to clause 4.1.2 of the MALNA and the MALAAAA, which deals with apportionment of rent.

- 1.4. The parties will amend the MALNA or the MALAAAA to specify details of the account into which Lessee will make all payments on and from the Effective Time (**annex 2, Appendix A** of the **Novation Agreement** and **annex 2, Appendix A** of the **Assignment Agreement**).
- 1.5. If the Effective Time occurs part-way through a rent period and Lessee has paid rent to Existing Lessor but such rent payment relates to a period occurring after the Effective Time, Existing Lessor is obliged to transfer to New Lessor the portion of the rent relating to the period occurring after the Effective Time. Existing Lessor and New Lessor may separately agree, for instance in the Purchase Agreement, that this transfer will be accomplished by netting such portion of the rent against payments owing from New Lessor to Existing Lessor at Delivery.

## **2. CLAUSE 4.2: DEPOSIT, SUPPLEMENTAL RENT OR MAINTENANCE RESERVES**

### **SUB-CLAUSES 4.2.1**

Any moneys paid by Lessee to Existing Lessor as a deposit, maintenance reserves or supplemental rent prior to the Effective Time will be treated as having been paid by Lessee in accordance with the Novated Lease or Lease (as applicable), and will be dealt with by New Lessor in accordance with the terms of the Novated Lease or Lease (as applicable).

## **3. CLAUSE 4.3: ACKNOWLEDGEMENT OF RELEVANT AMOUNTS**

- 3.1. The amount of rent (if any) relating to the period on or following the Effective Time together with the deposit, maintenance reserves or supplemental rent paid by Lessee to Existing Lessor will be specified in the MALNA (**Part I, point 8** of the **Novation Agreement**) or the MALAAAA (**Part I, point 8** of the **Assignment Agreement**). These amounts may be transferred to New Lessor by Existing Lessor on or about the Effective Time or Existing Lessor and New Lessor may separately agree that this transfer will be accomplished by netting such portion of the rent against payments owing from New Lessor to Existing Lessor at Delivery. Alternatively, Existing Lessor and New Lessor may agree to calculate the Purchase Price on the basis that the actual transfer of such amounts is not required. The key purpose of this clause is to establish these amounts as having been paid between New Lessor and Lessee under the Novation Agreement or Assignment Agreement (as applicable).
- 3.2. Some leases may contain charging language in relation to the deposit paid by Lessee to Existing Lessor. It should be noted that if such language is present, it may be necessary to include charging language in the MALNA in favour of New Lessor. As there is no "charging" concept under New York law, this comment is limited to English law governed documentation.

## **SECTION 4**

### **CLAUSE 5 OF THE MALNA / MALAAAA**

#### **1. CLAUSE 5: DELIVERY**

As the Aircraft will be in the possession of Lessee at the Effective Time, each party is required to acknowledge that there will be no physical delivery of the Aircraft from Existing Lessor to New Lessor.

## **SECTION 5**

### **CLAUSE 6 OF THE MALNA / MALAAAA**

#### **1. CLAUSE 6.1 : IDENTIFICATION PLATES**

- 1.1. Lessee is required to have replacement airframe and engine identification plates affixed to the airframe and engines inscribed with amended text acceptable to New Lessor. The agreed text is specified in the Novation Agreement (**Part I, point 9** of the **Novation Agreement**) and in the Assignment Agreement (**Part I, point 9** of the **Assignment Agreement**).

- 1.2. New Lessor will generally require that this be completed as soon as practicable following the Effective Time, taking into account Lessee's operational and maintenance schedule considerations with respect to the Aircraft.

## 2. **CLAUSE 6.2 : WARRANTY CONSENTS**

Where Existing Lessor has assigned in favour of New Lessor its rights under airframe or engine warranties, New Lessor undertakes to provide Lessee with the consents from the relevant Manufacturer relating to any such assignment. Any such assignment under airframe or engine warranties should not affect Lessee's rights in respect thereof.

## 3. **CLAUSE 6.3 : REGISTRATION OF AIRCRAFT**

- 3.1. As soon as practicable following the Effective Time, Lessee is required to procure that the registration of the aircraft is modified to reflect the change of lessor and owner.
- 3.2. In some jurisdictions the aircraft register may not be a register of title and as such, Lessee or operator will be named as the "registered owner" of the Aircraft on the aircraft register. In such circumstances New Lessor should consider requiring Lessee to execute a de-registration power of attorney or Irrevocable Deregistration and Export Request and Authorisation (**IDERA**) in favour of New Lessor. If a de-registration power of attorney or IDERA was delivered or filed in favour of Existing Lessor, this should be revoked and withdrawn from the register and terminated by agreement between Existing Lessor and Lessee.

## 4. **CLAUSE 6.4 : CAPE TOWN CONVENTION**

- 4.1. If the Cape Town Convention is applicable to the transaction, the interest of New Lessor (as creditor) in the airframe and engines pursuant to the Novated Lease or Lease (as applicable) should be registered with the International Registry.
- 4.2. The MALNA and MALAAAA can each be amended by the parties to specify which party will be responsible for the costs of registration with the International Registry (**Part I, point 17** of the **Novation Agreement** and **Part I, point 18** of the **Assignment Agreement**)

# SECTION 6

## CLAUSE 7 OF THE MALNA / MALAAAA

## 1. **CLAUSE 7.1 AND 7.2 : REPRESENTATIONS AND WARRANTIES**

- 1.1. Each of New Lessor, Existing Lessor and Lessee is required to provide standard representations and warranties in relation to due incorporation, capacity, due execution and consents.
- 1.2. Existing Lessor and Lessee each make specific representations to New Lessor in relation to the Existing Lease or Lease (as applicable) and confirm that no event of default has occurred under the Existing Lease or Lease (as applicable). If required, these specific representations may be amended, supplemented or excluded by parties pursuant to the Novation Agreement (**Part I, point 13** of the **Novation Agreement**) and the Assignment Agreement (**Part I, point 13** of the **Assignment Agreement**).
- 1.3. The representations and warranties to be provided to New Lessor will need to be adjusted to reflect the particular facts of each transaction and New Lessor may seek additional lease specific representations and warranties in relation to the Existing Lease or Lease (as applicable) for example, no material damage to the Aircraft or no lease extension or purchase option has been exercised.
- 1.4. If applicable, the MALNA and the MALAAAA may also be amended to include representations and warranties to be made by New Lessor (**Part I, point 13** of the **Novation Agreement** and **Part I, point 13** of the **Assignment Agreement**). However, to the extent that New Lessor requires lease-related representations from Existing Lessor, it would be common practice to include such representations in

the sale and purchase agreement relating to the Aircraft rather than in the novation or assignment document.

- 1.5. It should be noted that the representations and warranties are made by New Lessor, Existing Lessor and Lessee on the date of entry into the MALNA or the MALAAAA (as applicable). New Lessor, Existing Lessor and Lessee will then provide a bringdown certificate at the Effective Time confirming that the representations and warranties are true and accurate on such date (**annex 3 to Novation Agreement** and **annex 3 to Assignment Agreement**). In lieu of providing such a bringdown certificate, the parties may wish to consider including an amendment in Part II of the Novation Agreement or Assignment Agreement to the effect that delivery of the Effective Time Acknowledgment will constitute confirmation by each party that its representations and warranties are true and accurate on such date.

## SECTION 7

### CLAUSE 8 OF THE MALNA / MALAAAA

#### 1. CLAUSES 8.6 AND 8.7 : GOVERNING LAW AND JURISDICTION

- 1.1. Governing law provisions are set out in Clause 8.6 of each of the MALNA and MALAAAA.
- 1.2. The jurisdiction provisions applicable to the MALNA will be specified in the Novation Agreement (**Part 1, point 15 of the Novation Agreement**).
- 1.3. The jurisdiction provisions applicable to the MALAAAA are specified in Clause 8.7 of the MALAAAA.

#### 2. CLAUSE 8.11 : COSTS AND EXPENSES

- 2.1. Each of the MALNA and the MALAAAA provide that each of Existing Lessor and New Lessor shall bear its own costs and expenses unless otherwise specified (**Part 1, point 17 of the Novation Agreement** and **Part 1, point 18 of the Assignment Agreement**).
- 2.2. Parties can specify who will be responsible for payment of Lessee's costs (**Part 1, point 17 of the Novation Agreement** and **Part 1, point 18 of the Assignment Agreement**). Often, the Existing Lease or Lease (as applicable) will provide that Lessee will not be obliged to incur any out-of-pocket costs in connection with a transfer and assignment of the Existing Lessor's rights, and in such a case, the parties should specify in **Part 1, point 17 of the Novation Agreement** or **Part 1, point 18 of the Assignment Agreement** (as applicable) whether Existing Lessor or New Lessor will be responsible therefor.

#### 3. CLAUSE 8.15 : THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 is only applicable to English law governed documents and accordingly this provision is excluded from the MALAAAA.

## SECTION 8

### EXECUTION FORMALITIES

#### 1. EXECUTION FORMALITIES

Execution formalities are determined by a number of factors including the governing law of the relevant document, 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 MALNA, the following points should be considered:-

(i) **execution as a deed or execution under hand** : the MALNA has been drafted as an agreement to be executed under hand however, the parties may amend the MALNA so that it is constituted a deed. A document may be executed as a deed for a number of reasons, including:-

- if there is a perceived lack of consideration
- if the parties wish to take advantage of a longer limitation period (12 years)
- if the document includes a power of attorney by one party in favour of another, or
- the document is a security document and is drafted as a deed so as to incorporate the statutory powers conferred on mortgagees under Section 101 of the Law of Property Act, 1925.

If it is determined by the parties that the MALNA is to be executed as a deed, parties should take care to ensure the correct execution block is inserted for the relevant signatory company. Sample execution blocks for an English company executing the MALNA 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 a company's constitutional documents.

If a party is incorporated outside England, the form of execution block to be used for the party when executing a deed 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 or a guarantee will differ from 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 and deeds.

### 1.2. New York law

Where the parties are entering into the MALAAAA, the following points should be considered:-

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  
Part A**

**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

**Deed executed by English company**

If two authorised signatories are being used:

Executed as a deed by [NAME OF EXECUTING COMPANY]

acting by [NAME OF DIRECTOR], a director  
and [NAME OF DIRECTOR or SECRETARY]  
[a director OR its secretary]

.....  
Director

.....  
Director / Secretary

**Deed executed by English company**

If only one director is signing his signature should be witnessed:

Executed as a deed by [NAME OF EXECUTING COMPANY]

acting by [NAME OF DIRECTOR], a director  
in the presence of  
[NAME OF WITNESS] :  
[NAME AND ADDRESS OF WITNESS]

.....  
Director

**Deed executed by an attorney on behalf of English company**

Executed as a deed by [NAME OF ATTORNEY]  
as attorney for [NAME OF EXECUTING COMPANY]

in the presence of  
[NAME OF WITNESS]:  
[NAME AND ADDRESS OF WITNESS]

.....  
Attorney

**Schedule I  
Part B**

**Sample Signature Block for a New York Law governed document**

**Simple Contract executed by individual on behalf of entity**

[INSERT NAME OF ENTITY]

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

## **Schedule II**

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

#### **Simple contracts and Deeds**

- (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.
- (c) Each signatory prints and signs the signature page only (there is no need to print off the full document).
- (d) 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
  - (iii) in the case of any document that is a deed, confirming that its dating and release will constitute delivery of the deed by the signatory or by the entity on whose behalf the deed was signed
- (e) At or shortly after signing/closing, a final version of the duly executed and fully dated document (including all executed signature pages) should be circulated to all parties to evidence execution of the final document.