



WARRANTY ASSIGNMENT AND CONSENT (VARIANT 2), 2012

USER'S GUIDE AND COMMENTARY

Prepared jointly by AWG and IATA

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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 Warranty Assignment and Consent (Variant 2), 2012 (**WACV2**). This User's Guide should be used only in connection with the WACV2 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 WACV2 by providing practical guidance on the terms thereof. This User's Guide does not include a comprehensive analysis of every term of the WACV2, nor does it explain how each provision of the WACV2 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 WACV2 may be used by any transaction party, whether or not such party is a member of AWG or IATA. The WACV2 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 WACV2 should be used in a particular transaction or on whether the positions reflected in the WACV2 or in this User's Guide are appropriate for any particular transaction parties. Transaction parties may deviate from the terms of the WACV2 when using or negotiating the WACV2.

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

COMMENTARY

SECTION 1

CLAUSE 1 OF THE WARRANTY ASSIGNMENT AND CONSENT (VARIANT 2)

CLAUSE 1 : ASSIGNMENT

1. The WACV2 is intended for use in a transaction involving a single tier lease structure where there is a security assignment in favour of a security trustee (**Security Trustee**) in connection with a financing of the aircraft or engine by the Lessor. For transactions involving a single tier lease structure where there is no assignment in favour of a security trustee, please see the Warranty Assignment and Consent Variant 1, 2012.
2. The terms of the underlying loan agreement will provide that in order to secure the obligations of Lessor (as borrower) under the loan agreement, Lessor is required to assign by way of security in favour of Security Trustee, all of its right, title and interest in and to the relevant manufacturers warranties.
3. The WACV2 may be used for the assignment of warranties relating to either an aircraft or engines. The consent of the relevant airframe or engine manufacturer is required.
4. Pursuant to Clause 1(a), Lessor assigns by way of security to Security Trustee all of its right, title, benefit and interest in and to the warranties and other rights set out in **part I of annex 1** to the WACV2. The parties will amend **part I of annex 1** to the WACV2 to list the transaction specific warranties and rights (the **Warranty Rights**) relating to the airframe or engines to be assigned by way of security by Lessor to Security Trustee. Pursuant to Clause 1(b), Lessor assigns to Lessee all of its right, title and interest in and to the Warranty Rights relating to the airframe or engines.
5. Notwithstanding the creation of the security in favour of Security Trustee pursuant to Clause 1(a), Security Trustee acknowledges and consents to the assignment by Lessor of the Warranty Rights to Lessee so that Lessee shall receive the benefit of and make claims under the Warranty Rights. These benefits will be available to Lessee until such time as a notice is served on Lessee by Lessor terminating the leasing of the aircraft.
6. Accordingly, if Lessor is in default of its obligations to Security Trustee and the security granted by Lessor under the WACV2 becomes enforceable, Security Trustee can serve a Security Trustee Enforcement Notice (as defined below) on Manufacturer whereby Security Trustee is then permitted to exercise all rights and remedies of Lessor in relation to the Warranty Rights.
7. However, it should be noted that even if Security Trustee has served a Security Trustee Enforcement Notice (as defined below) on Lessor, Security Trustee is not permitted to interfere with Lessee's right to receive the benefit of, and make claims under, the Warranty Rights, unless and until a termination notice has been served by Lessor on Lessee informing Lessee that the assignment of Warranty Rights under Clause 1(b) of the WACV2 is terminated and the leasing of the aircraft or engines has also terminated, or has otherwise expired.

SECTION 2

CLAUSE 2 OF THE WARRANTY ASSIGNMENT AND CONSENT (VARIANT 2)

CLAUSE 2 : TERMINATION AND REASSIGNMENT

1. If the security granted by Lessor in favour of Security Trustee under Clause 1(a) of the WACV2 becomes enforceable, Security Trustee will serve notice upon the relevant manufacturer (with a copy to Lessor and Lessee) (the **Security Trustee Enforcement Notice**), and thereafter Security Trustee shall be entitled to exercise all rights of Lessor in relation to the Warranty Rights provided however, that unless and until a termination notice has been served by Lessor on Lessee, Security Trustee shall not be permitted to exercise any such rights in a manner which would affect the Lessee's right to receive the benefits of the Warranty Rights.

2. Accordingly, unless Lessor has served a termination notice on Lessee informing Lessee that the assignment of Warranty Rights under Clause 1(b) of the WACV2 is terminated and the leasing of the aircraft or engines has also terminated, or has otherwise expired, in accordance with the terms of the lease agreement, Security Trustee cannot interfere with Lessee's rights in respect of the Warranty Rights.
3. In the English law governed WACV2, Clause 2(a) provides that Section 103 of the Law of Property Act 1925 shall not apply. This is a standard exclusion in English law governed security documents. Section 103 of the Law of Property Act 1925 requires the security holder to give the debtor three months notice to repay before the security holder can exercise its power of sale.
4. The assignment of Warranty Rights by Lessor in favour of Lessee pursuant to Clause 1(b) of the WACV2 will be terminated by written notice issued by Lessor to the relevant manufacturer confirming that leasing of the aircraft or engines has terminated, or has otherwise expired, in accordance with the terms of the lease agreement. A copy of the notice of termination must also be delivered to Lessee. In the event that a Security Trustee Enforcement Notice has been served pursuant to Clause 2(a), Security Trustee shall serve notice on Lessee in place of Lessor.
5. Upon termination, the assignment of Warranty Rights will terminate and will be deemed to be re-assigned to Lessor, without the requirement for any further action.

SECTION 3

CLAUSE 3 OF THE WARRANTY ASSIGNMENT AND CONSENT (VARIANT 2)

CLAUSE 3 : NO RELEASE

This provision confirms that notwithstanding the assignment of rights by Lessor under the WACV2, Lessor shall remain liable for its obligations to manufacturer under the relevant agreement(s). It is further confirmed that nothing in the WACV2 will result in Security Trustee having any liability or obligation of any kind in respect of the underlying agreement(s) arising out of the WACV2, and that Security Trustee shall not be obliged to perform any duties or obligations under or pursuant to the underlying agreement(s).

SECTION 4

CLAUSE 4 OF THE WARRANTY ASSIGNMENT AND CONSENT (VARIANT 2)

CLAUSE 4 : MANUFACTURER PROTECTIONS

1. Sub-clause (a) provides standard protections to the relevant manufacturer by confirming that, insofar as manufacturer is concerned, Lessee is exclusively entitled to exercise the Warranty Rights until it receives a termination notice from Lessor, and whether or not a Security Trustee Enforcement Notice has been served by Security Trustee.
2. Following receipt of such termination notice, Lessor shall be exclusively entitled to exercise the Warranty Rights unless and until the manufacturer receives a Security Trustee Enforcement Notice from the Security Trustee, in which case, Security Trustee only shall be entitled to exercise the Warranty Rights.
3. The exercise of Warranty Rights by any of Lessee, Lessor or Security Trustee shall in each case be subject to the limitations as specified by the parties in **part I of annex 1** to the WACV2.
4. The parties are required to insert the relevant manufacturer's address in **part II of annex 1** to the WACV2. Sub-clause (b) affords additional protection to the relevant manufacturer by stating that manufacturer shall not be considered to have knowledge of any termination notice from Lessor or Security Trustee Enforcement Notice until such notice is received at the specified address. The sub-clause provides that manufacturer may rely on any notice received without having to enquire as to the validity of the notice, or the matters stated therein. In addition, no further, duplicative or multiple liability will be imposed on manufacturer merely as a result of the WACV2.

SECTION 5

CLAUSE 5 OF THE WARRANTY ASSIGNMENT AND CONSENT (VARIANT 2)

CLAUSE 5 : SECURITY

1. Sub-clause (a) contains a standard covenant to pay pursuant to which Lessor agrees to discharge the secured obligations (as such term is defined in the underlying loan agreement) and acknowledges that the amount secured by the WACV2 is enforceable in respect of the full amount of such secured obligations.
2. Security Trustee agrees that once the secured obligations have been fully discharged and satisfied, Security Trustee will re-assign the Warranty Rights to Lessor and execute such other documents as Lessor may reasonably request to effect this re-assignment. Any such re-assignment shall not prejudice the rights of Lessee in respect of the Warranty Rights provided that no notice of termination has been served by Lessor on Lessee.

SECTION 6

CLAUSE 6 OF THE WARRANTY ASSIGNMENT AND CONSENT (VARIANT 2)

CLAUSE 6 : MISCELLANEOUS

1. For the purposes of serving any notices under the WACV2, the parties will amend **part III of annex 1** to the WACV2 to specify the delivery location for such notices and the manner in which the notices are to be delivered.
2. In **part IV of annex 1** the parties will insert a transaction specific "Business Day" definition. This definition will generally provide that a "Business Day" is any day, other than a Saturday or Sunday, on which banks are open for business in London, New York or other city where the parties are located.
3. Governing law provisions are set out in Sub-clause (d), which will be either the laws of England or the laws of the State of New York, depending on which form of WACV2 is being utilised. If the New York law form of WACV2 is used, (i) sub-clause (e) will provide for the submission by the parties to the jurisdiction of the court named therein. Such attornment can be either exclusive or non-exclusive and the parties will complete part V of annex 1 to the WACV2 to identify their choice; and (ii) sub-clause (f) will provide for the waiver by the parties, of any right, to a trial by jury in respect of proceedings regarding the WACV2.
4. The WACV2 provides that each party will take such actions as are reasonably requested by the other party to carry out the intent of the WACV2.
5. The WACV2 also provides that Lessee shall bear the costs of pursuing any claims or enforcing any of the Warranty Rights prior to the service of a termination notice on manufacturer; and Lessor shall be liable for any such costs thereafter.
6. Lessee is prohibited from transferring any Warranty Rights to any person other than Lessor (or if a Security Trustee Enforcement Notice has been issued by Lessor to manufacturer, Security Trustee) without the prior written consent of Lessor, Security Trustee and manufacturer. Security Trustee is prohibited from transferring any Warranty Rights to any person other than Lessor without Lessor's or manufacturer's prior written consent and any transfer by Security Trustee shall be without prejudice to Lessee's rights prior to delivery to manufacturer of a termination notice.
7. Parties should consider whether any filings or registrations are required to be made in the relevant jurisdictions in connection with the entry by the parties into the WACV2 and the creation of security thereunder.