



WARRANTY ASSIGNMENT AND CONSENT (VARIANT 1), 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 1), 2012 (**WACV1**). This User's Guide should be used only in connection with the WACV1 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 WACV1 by providing practical guidance on the terms thereof. This User's Guide does not include a comprehensive analysis of every term of the WACV1, nor does it explain how each provision of the WACV1 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 WACV1 may be used by any transaction party, whether or not such party is a member of AWG or IATA. The WACV1 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 WACV1 should be used in a particular transaction or on whether the positions reflected in the WACV1 or in this User's Guide are appropriate for any particular transaction parties. Transaction parties may deviate from the terms of the WACV1 when using or negotiating the WACV1.

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 1)

CLAUSE 1 : ASSIGNMENT

1. The WACV1 is intended for use in a transaction involving a single tier lease structure where the relevant lease agreement provides for the assignment of manufacturers warranties by Lessor to Lessee for the duration of the lease term. For transactions involving a single tier lease structure where there is an assignment in favour of a security trustee, please see the Warranty Assignment and Consent Variant 2, 2012.
2. The WACV1 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.
3. Pursuant to Clause 1, Lessor assigns to Lessee all of its right, title and interest in and to the warranties and rights set out in **part I of annex 1** to the WACV1. Accordingly, transaction parties will amend **part I of annex 1** to list the transaction specific warranties and rights (the **Warranty Rights**) relating to the airframe or engines to be assigned by Lessor to Lessee.
4. The assignment of such Warranty Rights by Lessor includes Lessor's right to make claims under the relevant warranties, subject to any liabilities and disclaimers that may be specified by the parties in **part I of annex 1**. As such, Lessee shall be subject to any obligations, restrictions, conditions or limitations applicable to Lessor pursuant to the underlying agreement(s).

SECTION 2

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

CLAUSE 2 : TERMINATION AND REASSIGNMENT

The assignment of Warranty Rights under Clause 1 of the WACV1 is 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. 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 1)

CLAUSE 3 : NO RELEASE

This provision confirms that notwithstanding the assignment of rights to Lessee under the WACV1, Lessor shall remain liable for its obligations to manufacturer under the relevant agreement(s). It is further confirmed that nothing in the WACV1 will result in the modification of the terms of such agreement(s).

SECTION 4

CLAUSE 4 OF THE WARRANTY ASSIGNMENT AND CONSENT (VARIANT 1)

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 manufacturer receives a termination notice from Lessor. Following receipt of such termination notice, Lessor will be

exclusively entitled to exercise the Warranty Rights, subject in each case to the limitations as specified by the parties in **part I** of **annex 1** to the WACV1.

2. The parties are required to insert the relevant manufacturer's address in **part II** of **annex 1** to the WACV1. Sub-clause (b) affords additional protection to the relevant manufacturer by stating that manufacturer shall not be considered to have knowledge of the termination 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 WACV1.

SECTION 5

CLAUSE 5 OF THE WARRANTY ASSIGNMENT AND CONSENT (VARIANT 1)

CLAUSE 5 : MISCELLANEOUS

1. For the purposes of serving any notices under the WACV1, the parties will amend **part III** of **annex 1** to the WACV1 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 WACV1 is being utilised. If the New York law form of WACV1 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 WACV1 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 WACV1.
4. The WACV1 provides that each party will take such actions as are reasonably requested by the other party to carry out the intent of the WACV1.
5. The WACV1 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 other person without the prior written consent of both Lessor and manufacturer.