

Terms and Conditions



Hertha BSC GmbH & Co. KGaA

Up to EUR 40,000,000

Senior Unsecured Callable Bonds

ISIN: SE0011337054

6 November 2018

as amended 10 December 2018

Other than the registration of the Bonds under Swedish law, no action is being taken in any jurisdiction that would or is intended to permit a public offering of the Bonds or the possession, circulation or distribution of this document or any other material relating to the Issuer or the Bonds in any jurisdiction where action for that purpose is required. Persons into whose possession this document comes are required by the Issuer to inform themselves about, and to observe, any applicable restrictions.

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1. Definitions and Construction

1.1 Definitions

In these terms and conditions (the "**Terms and Conditions**"):

"**Account Operator**" means a bank or other party duly authorised to operate as an account operator pursuant to the Financial Instruments Accounts Act and through which a Bondholder has opened a Securities Account in respect of its Bonds.

"**Accounting Principles**" means the generally accepted accounting principles, standards, and practices in Germany as applied by the Issuer in preparing its annual consolidated financial statements.

"**Adjusted Nominal Amount**" means the Total Nominal Amount less the Nominal Amount of all Bonds owned by a Group Company or an Affiliate, irrespective of whether such person is directly registered as owner of such Bonds.

"**Advance Purchase Agreements**" means:

- (a) an advance or deferred purchase agreement if the agreement is in respect of the supply of assets or services and payment in the normal course of business with credit periods which are normal for the relevant type of project contracts;
- (b) advance payments of Sponsoring Amounts;
- (c) the staggered payments to be received or payable in connection with Player Transfers; or
- (d) any other trade credit incurred in the ordinary course of business.

"**Affiliate**" means any Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purpose of this definition, "**control**" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Agent**" means Nordic Trustee & Agency AB (publ), reg. no. 556882-1879, P.O. Box 7329, SE-103 90 Stockholm, Sweden or another party replacing it, as Agent in accordance with these Terms and Conditions.

"**Agency Agreement**" means the agency agreement entered into on or before the Issue Date, between the Issuer and the Agent, or any replacement agency agreement entered into after the Issue Date between the Issuer and a Agent.

"**Bank Facilities**" means the bank facilities provided by each of Berliner Volksbank, Commerzbank, Deutsche Bank, Deutsche Kreditbank, Macquarie Bank International and VR-Bank Bad Salzungen Schmalkalden e.G. (or any replacement thereof with reputable banks or financial institutions and with substantially the same margin).

"**Bond**" means a debt instrument (Sw. *skuldförbindelse*) for the Nominal Amount and of the type set forth in Chapter 1 Section 3 of the Financial Instruments Accounts Act and which is governed by and issued under these Terms and Conditions, including the Bonds.

"**Bondholder**" means the person who is registered on a Securities Account as direct registered owner (Sw. *ägare*) or nominee (Sw. *förvaltare*) with respect to a Bond.

"**Bondholders' Meeting**" means a meeting among the Bondholders held in accordance with Clause 16 (*Bondholders' Meeting*).

"**Bond Issue**" means the issuance of the Bonds.

"**Business Day**" means a day in Stockholm and Berlin other than a Sunday or other public holiday. Saturdays, Midsummer Eve (Sw. *midsommarafton*), Christmas Eve (Sw. *julafton*) and New Year's Eve (Sw. *nyårsafton*) shall for the purpose of this definition be deemed to be public holidays.

"**Call Option Amount**" means the amount set out in Clause 9.3 (*Voluntary total redemption (call option)*).

"**Change of Control Event**" means the occurrence of an event or series of events whereby:

- (a) Hertha Berliner Sport-Club (Hertha B.S.C) e.V. ceases to control, directly or indirectly, more than 50 per cent. of the voting shares of the Issuer's general partner, or the right to, directly or indirectly, appoint or remove the whole or a majority of the directors of the board of directors of the Issuer's general partner; or
- (b) the Issuer's general partner ceases to (i) be the general partner of the Issuer, or (ii) control the Issuer.

"**Compliance Certificate**" means a certificate, in the agreed form between the Agent and the Issuer, signed by the Issuer certifying that so far as it is aware no Event of Default is continuing or, if it is aware that such event is continuing, specifying the event and steps, if any, being taken to remedy it. The certificate shall confirm satisfaction of the Incurrence Test and include calculations and figures in respect of the Incurrence Test and, when delivered in connection with the annual audited financial statements, confirm compliance with Clause 12.9 (*Clean Down of Working Capital Facility*).

"**Cortland Agreements**" means, *inter alia*, the forfeiting agreement and the income share agreement entered into between the Issuer and Cortland Investors S.à r.l., which will be terminated in conjunction with the Bond Issue against a payment by the Issuer to Cortland Investors S.à r.l. of approximately EUR 43,600,000.

"**CSD**" means the Issuer's central securities depository and registrar in respect of the Bonds, from time to time, initially Euroclear Sweden AB, Swedish Reg. No. 556112-8074, P.O. Box 191, 101 23 Stockholm, Sweden.

"**CSD Business Day**" means a day in Sweden other than a Sunday or other public holiday. Saturdays, Midsummer Eve (Sw. *midsommarafton*), Christmas Eve (Sw. *julafton*) and

New Year's Eve (Sw. *nyårsafton*) shall for the purpose of this definition be deemed to be public holidays.

"CSD Business Day Convention" means the first following day that is a CSD Business Day.

"EBITDA" means, in respect of the Reference Period, the consolidated profit of the Group from ordinary activities according to the latest Financial Report(s):

- (a) before deducting any amount of tax on profits, gains or income paid or payable by any Group Company;
- (b) before deducting any Net Finance Charges;
- (c) before taking into account any extraordinary items which are not in line with the ordinary course of business;
- (d) before taking into account any Transaction Costs;
- (e) not including any accrued interest owing to any Group Company;
- (f) before taking into account any unrealised gains or losses on any derivative instrument (other than any derivative instruments which is accounted for on a hedge account basis);
- (g) after adding back or deducting, as the case may be, the amount of any loss or gain against book value arising on a disposal of any asset (other than in the ordinary course of trading) and any loss or gain arising from an upward or downward revaluation of any asset;
- (h) after deducting the amount of any profit (or adding back the amount of any loss) of any Group Company which is attributable to minority interests;
- (i) plus or minus the Group's share of the profits or losses of entities which are not part of the Group; and
- (j) after adding back any amount attributable to the amortisation, depreciation or depletion of assets of members of the Group.

"Euro" and **"EUR"** means the single currency of the participating member states in accordance with the legislation of the European Community relating to Economic and Monetary Union.

"Event of Default" means an event or circumstance specified in any of the Clauses 13.1 (*Non-Payment*) to and including Clause 13.8 (*Continuation of the Business*).

"Factoring and Prepayment" means certain prepayments made to the Issuer by a financial services provider, secured by an account pledge and a pledge over Sponsoring and Hospitality proceeds.

"Final Maturity Date" means 8 November 2023.

"Finance Charges" means, for the Reference Period, the aggregate amount of the accrued interest, commission, fees, discounts, payment fees, premiums or charges and other finance payments in respect of Financial Indebtedness whether paid, payable or capitalised by any Group Company according to the latest Financial Report(s) (calculated on a consolidated basis) other than Transaction Costs, interest in respect of any loan owing to any Group Company or any capitalised interest in respect of any Subordinated Loan and taking no account of any unrealised gains or losses on any derivative instruments other than any derivative instrument which are accounted for on a hedge accounting basis.

"Finance Documents" means:

- (a) these Terms and Conditions;
- (b) any Subordination Agreement;
- (c) the Agency Agreement; and
- (d) any other document designated to be a Finance Document by the Issuer and the Agent.

"Finance Leases" means any finance leases, to the extent the arrangement is or would have been treated as a finance lease in accordance with the Accounting Principles applicable on the Issue Date (a lease which in the accounts of the Group is treated as an asset and a corresponding liability), and for the avoidance of doubt, any leases treated as operating leases under the Accounting Principles as applicable on the Issue Date shall not, regardless of any subsequent changes or amendments of the Accounting Principles, be considered as finance or capital leases.

"Financial Indebtedness" means any indebtedness in respect of:

- (a) monies borrowed or raised, including Market Loans;
- (b) the amount of any liability in respect of any Finance Leases;
- (c) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (d) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (e) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value shall be taken into account, provided that if any actual amount is due as a result of a termination or a close-out, such amount shall be used instead);
- (f) any counter indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

- (g) (without double counting) any guarantee or other assurance against financial loss in respect of a type referred to in the above items (a)-(f).

"Financial Instruments Accounts Act" means the Swedish Financial Instruments Accounts Act (*Sw. lag (1998:1479) om värdepapperscentraler och kontoföring av finansiella instrument*).

"Financial Report" means the Group's annual audited consolidated financial statements and half-year interim unaudited consolidated reports, which shall be prepared and made available according to Clauses 10.1(a)(i) and 10.1(a)(ii).

"First Call Date" means the date falling 30 months after the Issue Date.

"Force Majeure Event" has the meaning set forth in Clause 24(a).

"Group" means the Issuer and its Subsidiaries from time to time and a **"Group Company"** means each of the Issuer and its Subsidiaries.

"Incurrence Test" means the incurrence test as set out in Clause 11 (*Incurrence Test*).

"Insolvent" means, in respect of a relevant person, that it is deemed to be insolvent, within the meaning of Chapter 2, Sections 7-9 of the Swedish Bankruptcy Act (*Sw. konkurslagen (1987:672)*) (or its equivalent in any other jurisdiction), admits inability to pay its debts as they fall due, suspends making payments on any of its debts or by reason of actual financial difficulties commences negotiations with its creditors with a view to rescheduling any of its indebtedness (including company reorganisation under the Swedish Company Reorganisation Act (*Sw. lag (1996:764) om företagsrekonstruktion*) (or its equivalent in any other jurisdiction)) or is subject to involuntary winding-up, dissolution or liquidation.

"Interest" means the interest on the Bonds calculated in accordance with Clauses 8(a) to 8(d).

"Interest Payment Date" means 8 February, 8 May, 8 August and 8 November each year. The first Interest Payment Date shall be 8 February 2019. The last Interest Payment Date shall be the applicable Final Maturity Date (or such earlier date on which the Bonds are redeemed in full). To the extent any of the above dates is not a CSD Business Day, the first following day that is a CSD Business Day.

"Interest Period" means (i) in respect of the first Interest Period, the period from (but excluding) the Issue Date to (and including) the first Interest Payment Date, and (ii) in respect of subsequent Interest Periods, the period from (but excluding) an Interest Payment Date to (and including) the next succeeding Interest Payment Date (or a shorter period if relevant). An Interest Period shall not be adjusted due to an application of the CSD Business Day Convention.

"Interest Rate" means a fixed rate of 6.50 per cent. *per annum*, payable quarterly in arrears.

"Issuer" means Hertha BSC GmbH & Co. KGaA, a German partnership limited by shares (De. *Kommanditgesellschaft auf Aktien*) registered with the local court (De. *Amtsgericht*) of Charlottenburg, with the registration number HRB 84666 B.

"Issuing Agent" means Pareto Securities AB, or another party replacing it, as Issuing Agent, in accordance with these Terms and Conditions.

"Issue Date" means 8 November 2018.

"Joint Bookrunners" means Pareto Securities AB and equinet Bank AG.

"Leverage Ratio" means the ratio of Net Interest Bearing Debt to EBITDA.

"Market Loan" means any loan or other indebtedness where an entity issues commercial paper, certificates, subordinated debentures, bonds or any other debt securities (including, for the avoidance of doubt, medium term note programmes and other market funding programmes), provided in each case that such instruments and securities are or can be subject to trade on Nasdaq Stockholm or any other regulated or unregulated recognised market place.

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, financial condition or operations of the Group taken as a whole;
- (b) the Group's ability to perform its payment obligations under the Finance Documents; or
- (c) the validity or enforceability of the Finance Documents.

"Material Group Company" means the Issuer and any other Group Company with earnings before interest, tax, depreciation and amortisation calculated on the same basis as EBITDA representing 5.00 per cent or more of EBITDA and which has total assets representing 5.00 per cent or more of the total assets of the Group, calculated on a consolidated basis according to the latest Financial Report.

"MTF" means any multilateral trading facility as defined in the Markets in Financial Instruments Directive 2014/65/EU (MiFID II), as amended.

"Net Finance Charges" means, for the Reference Period, the Finance Charges according to the latest Financial Report(s), after deducting any interest payable for that Reference Period to any Group Company and any interest income relating to cash or cash equivalent investment (and excluding any interest capitalised on Subordinated Loans).

"Net Interest Bearing Debt" means the aggregate interest bearing debt (including Finance Leases, but no other leases) less cash and cash equivalents of the Group in accordance with the applicable Accounting Principles of the Group from time to time (for the avoidance of doubt, excluding guarantees, counter indemnities in respect of bank guarantees, Subordinated Loans and interest bearing debt borrowed from any Group Company).

"**Net Proceeds**" means the proceeds from the Bond Issue after deduction has been made for the Transaction Costs payable by the Issuer to the Sole Bookrunner and its legal advisors and the Issuing Agent for the services provided in relation to the placement and issuance of the Bonds.

"**Nominal Amount**" means EUR 1,000.

"**Other Instruments**" means:

- (a) the participation rights agreement amounting to EUR 4,000,000 entered by and between the Issuer as issuer and F.U.G.E Beteiligungen GmbH & Co. KG as subscriber, dated 14 December 2007;
- (b) the participation rights agreement amounting to EUR 500,000 entered by and between the Issuer as issuer and F.U.G.E Beteiligungen GmbH & Co. KG as subscriber, dated 30 June 2010;
- (c) the convertible mezzanine agreement amounting to EUR 6,000,000 entered into by and between, among others, the Issuer and Dual Voltage (Schweiz) AG, dated 18 June 2014;
- (d) the convertible mezzanine agreement amounting to EUR 3,500,000 entered into by and between, among others, the Issuer and F.U.G.E Beteiligungen GmbH & Co. KG, dated 14 December 2015;
- (e) the convertible mezzanine agreement amounting to EUR 3,000,000 entered into by and between, among others, the Issuer and Dual Voltage (Schweiz) AG, dated 28 December 2015;
- (f) the digital financing agreement amounting to EUR 1,000,000 entered into by and between, among others, the Issuer and Kapilendo (Fidor Bank AG), dated 14 March 2016;
- (g) the digital financing agreement amounting to EUR 1,500,000 entered into by and between, among others, the Issuer and Kapilendo (Fidor Bank AG);
- (h) a loan amounting to EUR 2,500,000 entered into by and between, among others, the Issuer and a private individual (the "**Private Loan**"), dated 20 October 2016; and
- (i) the profit participating certificate (De. *Genussschein*) amounting to EUR 1,250,000 entered into by and between the Issuer and RTF GmbH & Co. KG dated 10 March 2011;
- (j) the profit participating certificate (De. *Genussschein*) amounting to EUR 600,000 entered into by and between the Issuer and RTF GmbH & Co. KG dated 14 October 2015; and
- (k) the profit participating certificate (De. *Genussschein*) amounting to EUR 2,000,000 entered into by and between the Issuer and RTF GmbH & Co. KG dated 30 June 2017.

"Permitted Debt" means any Financial Indebtedness:

- (a) incurred under the Bonds;
- (b) incurred by any Group Company under any Working Capital Facility;
- (c) arising under a foreign exchange transaction or a commodity transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates or prices where the exposure arises in the ordinary course of business or in respect of payments to be made under the Terms and Conditions, but not any transaction for investment or speculative purposes;
- (d) of the Group under any guarantee issued by a Group Company in the ordinary course of business;
- (e) incurred by a Group Company from another Group Company (including any cash pool arrangements);
- (f) incurred under any Subordinated Loans;
- (g) incurred by the Issuer if such Financial Indebtedness meets the Incurrence Test tested pro forma including such incurrence and ranks *pari passu* with the obligations of the Issuer under the Finance Documents and has a final maturity date or, when applicable, early redemption dates or instalment dates which occur on or after the Final Maturity Date;
- (h) arising under any interest rate hedging transactions in respect of payments to be made under the Terms and Conditions, but not any transaction for investment or speculative purposes;
- (i) incurred under Advance Purchase Agreements;
- (j) incurred under any pension and tax liabilities in the ordinary course of business by any Group Company;
- (k) taken up from a Group Company;
- (l) incurred in connection with the redemption of the Bonds in order to fully or partially refinance the Bonds and provided further that such Financial Indebtedness is subject to an escrow arrangement up until the redemption of the Bonds (taking into account the rules and regulations of the CSD), for the purpose of securing, inter alia, the redemption of the Bonds;
- (m) under the Bank Facilities in an aggregate amount not exceeding EUR 35,000,000;
- (n) incurred with respect to the Factoring and Prepayment in an amount not exceeding EUR 20,000,000;
- (o) incurred under the Other Instruments; and

- (p) any other Financial Indebtedness incurred by Group Companies not in aggregate exceeding EUR 100,000.

"Permitted Security" means any Security:

- (a) provided under the Finance Documents;
- (b) arising by operation of law or in the ordinary course of business (including collateral or retention of title arrangements in connection with Advance Purchase Agreements but, for the avoidance of doubt, not including guarantees or Security in respect of any monies borrowed or raised);
- (c) provided in relation to any lease agreement entered into by a Group Company;
- (d) provided over collection accounts in connection with any non-recourse factoring agreements entered into by a Group Company;
- (e) provided under the Cortland Agreements (Security to be released upon cancellation and repayment of all amounts outstanding under the Cortland Agreements immediately after Disbursement of the Net Proceeds);
- (f) arising under any netting or set off arrangements under financial derivatives transactions or bank account arrangements, including group cash pool arrangements;
- (g) provided under the Bank Facilities (such Security to consist of security assignments of claims in respect of media money rights against Deutsche Fußballliga GmbH and pledges over certain bank accounts);
- (h) provided under the Private Loan; and
- (i) provided pursuant to items (b), (c), (h), (m), (n) and (p) of the definition of **"Permitted Debt"**.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organisation, government, or any agency or political subdivision thereof or any other entity, whether or not having a separate legal personality.

"Player Transfer" means the transfer of any football players (amateurs, professional or licensed players) to or from any of the teams of the Issuer.

"Preferred Shares" means the non-par value registered common shares of the Issuer with preferred rights issued to Cortland Investors S.à r.l. under the investment and shareholders' agreement regarding the Issuer dated 14 January 2014, as amended by certain amendment agreements dated 21 December 2016, 29 September 2017, and 15/16/18 November 2017, and certain investment and security agreements entered into in connection therewith.

"Proceeds Account" means a bank account of the Issuer, into which the Net Proceeds from the Bond Issue will be transferred and which has been pledged in favour of the

Agent and the bondholders (represented by the Agent) under the Proceeds Account Pledge Agreement.

"Proceeds Account Pledge Agreement" means the pledge agreement entered into between the Issuer and the Agent on or about the Issue Date in respect of a first priority pledge over the Proceeds Account and all funds held on the Proceeds Account from time to time, granted in favour of the Agent and the Bondholders (represented by the Agent).

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two (2) Business Days before the first day of that period.

"Record Date" means the fifth (5) CSD Business Day prior to (i) an Interest Payment Date, (ii) a Redemption Date, (iii) a date on which a payment to the Bondholders is to be made under Clause 14 (*Distribution of Proceeds*), (iv) the date of a Bondholders' Meeting, or (v) another relevant date, or in each case such other CSD Business Day falling prior to a relevant date if generally applicable on the Swedish bond market.

"Redemption Date" means the date on which the relevant Bonds are to be redeemed or repurchased in accordance with Clause 9 (*Redemption and Repurchase of the Bonds*).

"Reference Period" means each period of 12 consecutive calendar months.

"Regulated Market" means any regulated market as defined in the Markets in Financial Instruments Directive 2014/65/EU (MiFID II), as amended).

"Securities Account" means the account for dematerialised securities maintained by the CSD pursuant to the Financial Instruments Accounts Act in which (i) an owner of such security is directly registered or (ii) an owner's holding of securities is registered in the name of a nominee.

"Security" means a mortgage, charge, pledge, lien, security assignment or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

"Share Repurchase" means:

- (a) the repurchase of Preferred Shares for an approximate consideration of EUR 27,800,000; and
- (b) the Share Reduction.

"Share Reduction" means the proposed reduction of share capital of the Issuer by cancellation of shares in a simplified cancellation procedure by a total amount of EUR 381,394.00 through the redemption of 381,394 fully paid-up non-par value shares of the Issuer.

"Sponsoring Amount" means any amounts received by the Issuer under or in connection with arrangements relating to any marketing activities of the Issuer (including marketing in relation to its teams, brands or individual players), in particular, any amounts received under sponsoring and similar partnership agreements.

"Sponsoring and Hospitality Proceeds" means the proceeds received by a Group Company from certain sponsoring and hospitality agreements that are subject to a set of financing and security arrangements dated 29 June 2018 and 28 September 2018 entered into with a financial services provider in connection with the Factoring and Prepayment.

"Subordination Agreement" means any subordination agreement entered into between the Issuer, the Agent and any provider of Subordinated Loans.

"Subordinated Loans" means any loan made to the Issuer, if such loan

- (a) is subordinated to the obligations of the Issuer under the Terms and Conditions pursuant to a Subordination Agreement;
- (b) according to its terms has a final redemption date or, when applicable, early redemption dated or instalment dates which occur after the Final Maturity Date; and
- (c) according to its terms yield only payment in kind interest (other than any cash interest permitted to be paid pursuant to Clause 12.2 (Distributions)).

"Subsidiary" means, in respect of the which such Person, directly or indirectly:

- (a) owns shares or ownership rights representing more than fifty (50) per cent. of the total number of votes held by the owners;
- (b) otherwise controls more than fifty (50) per cent. of the total number of votes held by the owners; or
- (c) has the power to appoint and remove all, or the majority of, the members of the board of directors or other governing body.

"Total Nominal Amount" means the total aggregate Nominal Amount of the Bonds outstanding at the relevant time.

"Transaction Costs" means all fees, costs and expenses, stamp, registration and other taxes incurred by the Issuer or any other Group Company in connection with (i) the Bond Issue and (ii) the listing of the Bonds.

"Working Capital Facility" means any working capital facility provided for the general corporate purposes of the Group in the maximum aggregate amount of EUR 22,500,000.

"Written Procedure" means the written or electronic procedure for decision making among the Bondholders in accordance with Clause 17 (*Written Procedure*).

1.2 Construction

- (a) Unless a contrary indication appears, any reference in these Terms and Conditions to:

- (i) "assets" includes present and future properties, revenues and rights of every description;
 - (ii) any agreement or instrument is a reference to that agreement or instrument as supplemented, amended, novated, extended, restated or replaced from time to time;
 - (iii) a "regulation" includes any regulation, rule or official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (iv) an Event of Default is continuing if it has not been remedied or waived;
 - (v) a provision of law is a reference to that provision as amended or re-enacted; and
 - (vi) a time of day is a reference to Stockholm time.
- (b) When ascertaining whether a limit or threshold specified in Euro has been attained or broken, an amount in another currency shall be counted on the basis of the rate of exchange for such currency against Euro for the previous Business Day, as published by the European Central Bank on its website (www.ecb.europa.eu). If no such rate is available, the most recently published rate shall be used instead.
- (c) A notice shall be deemed to be sent by way of press release if it is made available to the public within the European Economic Area promptly and in a non-discriminatory manner.
- (d) No delay or omission of the Agent or of any Bondholder to exercise any right or remedy under the Finance Documents shall impair or operate as a waiver of any such right or remedy.

2. Status of the Bonds

- (a) The Bonds are denominated in Euro and each Bond is constituted by these Terms and Conditions. The Issuer undertakes to make payments in relation to the Bonds and to comply with these Terms and Conditions.
- (b) By subscribing for Bonds, each initial Bondholder agrees that the Bonds shall benefit from and be subject to the Finance Documents and by acquiring Bonds, each subsequent Bondholder confirms such agreement.
- (c) The initial nominal amount of each Bond is EUR 1,000. The maximum total nominal amount of the Bonds is EUR 40,000,000. All Bonds are issued on a fully paid basis at an issue price of 100 per cent. of the Nominal Amount.
- (d) The minimum permissible investment in the Bond Issue is EUR 100,000

- (e) The Bonds constitute direct, general, unconditional, unsubordinated and unsecured obligations of the Issuer and shall at all times rank at least *pari passu* with all other direct, unconditional, unsubordinated and unsecured obligations of the Issuer, except those obligations which are mandatorily preferred by law, and without any preference among them.
- (f) The Bonds are freely transferable but the Bondholders may be subject to purchase or transfer restrictions with regard to the Bonds, as applicable, under local laws to which a Bondholder may be subject. Each Bondholder must ensure compliance with such restrictions at its own cost and expense.
- (g) No action is being taken in any jurisdiction that would or is intended to permit a public offering of the Bonds or the possession, circulation or distribution of any document or other material relating to the Issuer or the Bonds in any jurisdiction other than Sweden, where action for that purpose is required. Each Bondholder must inform itself about, and observe, any applicable restrictions to the transfer of material relating to the Issuer or the Bonds.

3. Use of Proceeds

The proceeds from the Bond Issue shall be used to fully or partially finance the Share Repurchase, (ii) fully or partially finance the cancellation of the Cortland Agreements, (iii) finance Transaction Costs, and (iv) finance general corporate purposes.

4. Conditions Precedent

- (a) The payment of the Net Proceeds from the Bond Issue to the Proceeds Account is subject to the Agent having received documents and evidence of the Proceeds Account Pledge Agreement being duly executed and perfected.
- (b) The Issuer shall provide, or procure the provision of, the following to the satisfaction of the Agent:
 - (i) constitutional documents and corporate resolutions for the Issuer and each other Group Company that is a party to a Finance Document;
 - (ii) copies of the Finance Documents, duly executed;
 - (iii) evidence satisfactory to the Agent that the Share Repurchase and the cancellation of the Cortland Agreements will be made immediately after disbursement of the Net Proceeds;
 - (iv) an agreed form Compliance Certificate; and
 - (v) legal opinion(s) on the capacity and due execution in respect of the Issuer.
- (c) The Agent may assume that the documentation and evidence delivered to it pursuant to Clause 4(a)-(b) is accurate, legally valid, enforceable, correct, true

and complete unless it has actual knowledge to the contrary, and the Agent does not have to verify or assess the contents of any such documentation. The Agent does not have any obligation to review the documentation and evidence referred to in Clause 4(a)-(b) above from a legal or commercial perspective of the Bondholders.

- (d) When the conditions precedent for disbursement set out in Clause 4(a)-(b) have been received to the satisfaction of the Agent (acting reasonably), the Agent shall instruct the bank (with which the Issuer holds the Proceeds Account) to transfer the funds from the Proceeds Account for the purpose set out in Clause 3 (*Use of Proceeds*), and the Agent shall thereafter or in connection therewith release the pledge over the Proceeds Account.
- (e) If the applicable conditions precedent for disbursement set out in Clause 4(a)-(b) have not been fulfilled to the satisfaction of the Agent (acting reasonably) or waived by the Agent within sixty (60) Business Days from the Issue Date, the Issuer shall repurchase all Bonds at a price equal to 100 per cent. of the Nominal Amount together with any accrued interest. Any funds distributed by the Agent to the Bondholders in accordance with the Proceeds Account Pledge Agreement shall be deemed to be paid by the Issuer for the redemption under this Clause 4.1(e). Any shortfall shall be covered by the Issuer. The repurchase date shall fall no later than thirty (30) Business Days after the ending of the sixty (60) Business Days period referred to above.

5. Bonds in Book-Entry Form

- (a) The Bonds will be registered for the Bondholders on their respective Securities Accounts and no physical notes will be issued. Accordingly, the Bonds will be registered in accordance with the Financial Instruments Accounts Act. Registration requests relating to the Bonds shall be directed to an Account Operator.
- (b) Those who according to assignment, Security, the provisions of the Swedish Children and Parents Code (*Sw. föräldrabalken (1949:381)*), conditions of will or deed of gift or otherwise have acquired a right to receive payments in respect of a Bond, shall register their entitlements to receive payment in accordance with the Financial Instruments Accounts Act.
- (c) The Issuer (and the Agent when permitted under the CSD's applicable regulations) shall be entitled to obtain information from the debt register (*Sw. skuldbok*) kept by the CSD in respect of the Bonds. At the request of the Agent, the Issuer shall promptly obtain such information and provide it to the Agent.
- (d) For the purpose of or in connection with any Bondholders' Meeting or any Written Procedure, the Issuing Agent shall be entitled to obtain information from the debt register kept by the CSD in respect of the Bonds.
- (e) The Issuer shall issue any necessary power of attorney to such persons employed by the Agent, as notified by the Agent, in order for such individuals to independently obtain information directly from the debt register kept by the

CSD in respect of the Bonds. The Issuer may not revoke any such power of attorney unless directed by the Agent or unless consent thereto is given by the Bondholders.

6. Right to Act on Behalf of a Bondholder

- (a) If any Person other than a Bondholder wishes to exercise any rights under the Finance Documents, it must obtain a power of attorney or other proof of authorisation from the Bondholder or a successive, coherent chain of powers of attorney or proofs of authorisation starting with the Bondholder and authorising such Person.
- (b) A Bondholder may issue one or several powers of attorney or other authorisation to third parties to represent it in relation to some or all of the Bonds held by it. Any such representative may act independently under the Finance Documents in relation to the Bonds for which such representative is entitled to represent the Bondholder and may further delegate its right to represent the Bondholder by way of a further power of attorney.
- (c) The Agent shall only have to examine the face of a power of attorney or other proof of authorisation that has been provided to it pursuant to Clause 6(b) and may assume that it has been duly authorised, is valid, has not been revoked or superseded and that it is in full force and effect, unless otherwise is apparent from its face.

7. Payments in Respect of the Bonds

- (a) Any payment or repayment under the Finance Documents, or any amount due in respect of a repurchase of any Bonds, shall be made to such Person who is registered as a Bondholder on the Record Date prior to an Interest Payment Date or other relevant due date, or to such other Person who is registered with the CSD on such date as being entitled to receive the relevant payment, repayment or repurchase amount.
- (b) If a Bondholder has registered, through an Account Operator, that principal and interest shall be deposited in a certain bank account, such deposits will be effected by the CSD on the relevant payment date. In other cases, payments will be transferred by the CSD to the Bondholder at the address registered with the CSD on the Record Date. Should the CSD, due to a delay on behalf of the Issuer or some other obstacle, not be able to effect payments as aforesaid, the Issuer shall procure that such amounts are paid to the Persons who are registered as Bondholders on the relevant Record Date as soon as possible after such obstacle has been removed.
- (c) If, due to any obstacle for the CSD, the Issuer cannot make a payment or repayment, such payment or repayment may be postponed until the obstacle has been removed. Interest shall accrue in accordance with Clause 8(d) during such postponement.

- (d) If payment or repayment is made in accordance with this Clause 7, the Issuer and the CSD shall be deemed to have fulfilled their obligation to pay, irrespective of whether such payment was made to a person not entitled to receive such amount.
- (e) The Issuer is not liable to gross-up any payments under the Finance Documents by virtue of any withholding tax, public levy or the similar.

8. Interest

- (a) Each Bond carries Interest at the Interest Rate applied to the Nominal Amount from (but excluding) the Issue Date up to (and including) the relevant Redemption Date.
- (b) The Interest shall be payable quarterly in arrears on the Interest Payment Dates each year.
- (c) Interest accrues during an Interest Period. Payment of Interest in respect of the Bonds shall be made to the Bondholders on each Interest Payment Date for the preceding Interest Period.
- (d) Interest shall be calculated on the basis of a 360-day year comprised of twelve months of 30 days each and, in case of an incomplete month, the actual number of days elapsed (30/360-days basis)
- (e) If the Issuer fails to pay any amount payable by it on its due date, default interest shall accrue on the overdue amount from (but excluding) the due date up to (and including) the date of actual payment at a rate which is two (2) per cent. higher than the Interest Rate. Accrued default interest shall not be capitalised. No default interest shall accrue where the failure to pay was solely attributable to the Agent or the CSD, in which case the Interest Rate shall apply instead.

9. Redemption and Repurchase of the Bonds

9.1 Redemption at maturity

The Issuer shall redeem all, but not only some, of the outstanding Bonds in full on the Final Maturity Date with an amount per Bond equal to the Nominal Amount together with accrued but unpaid Interest. If the Final Maturity Date is not a CSD Business Day, then the redemption shall occur on the first following CSD Business Day.

9.2 Issuer's purchase of Bonds

The Issuer may, subject to applicable law, at any time and at any price purchase Bonds on the market or in any other way. The Bonds held by the Issuer may at the Issuer's discretion be retained or sold, but not cancelled.

9.3 Voluntary total redemption (call option)

- (a) The Issuer may redeem all, but not only some, of the outstanding Bonds in full:

- (i) any time from and including the Issue Date to, but excluding, the First Call Date, at an amount per Bond equal to (i) 103.25 per cent. of the Nominal Amount and, (ii) the remaining interest payments up to and including the First Call Date together with accrued but unpaid Interest (the relevant record date shall be agreed upon between the Issuer, the CSD and the Agent in connection with such redemption);
 - (ii) any time from and including the First Call Date to, but excluding, the first CSD Business Day falling 36 months after the Issue Date at an amount per Bond equal 103.25% per cent. of the Nominal Amount, together with accrued but unpaid Interest;
 - (iii) any time from and including the first CSD Business Day falling 36 months after the Issue Date to, but excluding, the date falling 42 months after the Issue Date at an amount per Bond equal to 102.60 per cent. of the Nominal Amount, together with accrued but unpaid Interest;
 - (iv) any time from and including the first CSD Business Day falling 42 months after the Issue Date to, but excluding, the date falling 48 months after the Issue Date at an amount per Bond equal to 101.95 per cent. of the Nominal Amount, together with accrued but unpaid Interest;
 - (v) any time from and including the first CSD Business Day falling 48 months after the Issue Date to, but excluding, the date falling 54 months after the Issue Date at an amount per Bond equal to 101.30 per cent. of the Nominal Amount, together with accrued but unpaid Interest;
 - (vi) any time from and including the first CSD Business Day falling 54 months after the Issue Date to, but excluding, the Final Maturity Date at an amount per Bond equal to 100.65% per cent. of the Nominal Amount, together with accrued but unpaid Interest.
- (b) Redemption in accordance with Clause 9.3(a) shall be made by the Issuer giving not less than fifteen (15) Business Days' notice to the Bondholders and the Agent. Any such notice is irrevocable but may, at the Issuer's discretion, contain one or more conditions precedent. Upon expiry of such notice and the fulfillment of the conditions precedent (if any), the Issuer is bound to redeem the Bonds in full at the applicable amounts.
- (c) For the purpose of calculating the remaining interest payments pursuant to Clause 9.3(a)(i) it shall be assumed that the Interest Rate for the period from the relevant record date to the First Call Date will be equal to the Interest Rate in effect on the date on which notice of redemption is given to the Bondholders. The relevant record date shall be agreed upon between the Issuer, the CSD and the Agent in connection with such repayment.

9.4 Mandatory repurchase due to a Change of Control Event (put option)

- (a) Upon the occurrence of a Change of Control Event each Bondholder shall have the right to request that all, or some only, of its Bonds be repurchased at a price

per Bond equal to 101 per cent. of the Nominal Amount together with accrued but unpaid Interest, during a period of sixty (60) Business Days following a notice from the Issuer of the Change of Control Event pursuant to Clause 10.1(c) (after which time period such rights lapse). However, such period may not start earlier than upon the occurrence of the Change of Control Event.

- (b) The notice from the Issuer pursuant to Clause 10.1(c) shall specify the repurchase date and include instructions about the actions that a Bondholder needs to take if it wants Bonds held by it to be repurchased. If a Bondholder has so requested, and acted in accordance with the instructions in the notice from the Issuer, the Issuer, or a person designated by the Issuer, shall repurchase the relevant Bonds and the repurchase amount shall fall due on the repurchase date specified in the notice given by the Issuer pursuant to Clause 10.1(c). The repurchase date must fall no later than twenty (20) Business Days after the end of the period referred to in Clause 9.4(a).
- (c) The Issuer shall comply with the requirements of any applicable securities laws or regulations in connection with the repurchase of Bonds. To the extent that the provisions of such laws and regulations conflict with the provisions in this Clause 9.4, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Clause 9.4 by virtue of the conflict.
- (d) Any Bonds repurchased by the Issuer pursuant to this Clause 9.4 or otherwise may at the Issuer's discretion be retained or sold, but not cancelled.

10. Information to Bondholders

10.1 Information from the Issuer

- (a) The Issuer shall make the following information available in the English language by way of press release and by publication on the website of the Group:
 - (i) as soon as the same become available, but in any event within four (4) months after the end of each financial year, the annual audited consolidated financial statements of the Group, including a profit and loss account (De. *Gewinn- und Verlustrechnung*), a balance sheet (De. *Bilanz*), a cash flow statement (De. *Kapitalflussrechnung*), notes (De. *Anhang*) and a management report (De. *Lagebericht*) from the managing directors of the Issuer's general partner;
 - (ii) as soon as the same become available, but in any event within two (2) months after the expiry of each relevant interim period, semi-annual interim unaudited consolidated reports of the Group, including a profit and loss account (De. *Gewinn und Verlustrechnung*), a balance sheet (De. *Bilanz*), a cash flow statement (De. *Kapitalflussrechnung*), notes (De. *Anhang*) and a management report (De. *Lagebericht*) from the managing directors of the Issuer's general partner; and

- (iii) any other information required by the Swedish Securities Markets Act (*Sw. lag (2007:528) om värdepappersmarknaden*) and the rules and regulations of the relevant exchange on which the Bonds are admitted to trading.
- (b) When the financial statements and other information are made available to the Bondholders pursuant to Clause 10.1(a) in an electronic form, the Issuer shall send copies of such financial statements and other information to the Agent. The first semi-annual report to be made available pursuant to 10.1(a) above shall be for the period ending on 31 December 2018.
- (c) The Issuer shall promptly notify the Agent and the Bondholders upon becoming aware of the occurrence of a Change of Control Event and shall provide the Agent with such further information as the Agent may request (acting reasonably) following receipt of such notice. A notice regarding a Change of Control Event may be given in advance of the occurrence of a Change of Control Event, conditioned upon the occurrence of such Change of Control Event, if a definitive agreement is in place providing for such Change of Control Event.
- (d) The Issuer shall promptly notify the Agent (with full particulars) upon becoming aware of the occurrence of any event or circumstance which constitutes an Event of Default, or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing) constitute an Event of Default, and shall provide the Agent with such further information as it may reasonably request in writing following receipt of such notice. Should the Agent not receive such information, the Agent is entitled to assume that no such event or circumstance exists or can be expected to occur, provided that the Agent does not have actual knowledge of such event or circumstance.
- (e) The Issuer shall submit a duly executed Compliance Certificate to the Agent:
 - (i) in connection with the incurrence of Financial Indebtedness under item (g) in the definition of "Permitted Debt"; and
 - (ii) for the reporting of compliance with Clause 12.9 (*Clean Down of Working Capital Facility*), in connection with the annual audited financial statements of the Group delivered pursuant to paragraph (a)(i) above.
- (f) The Agent may assume that any information provided by the Issuer in the Compliance Certificate delivered pursuant to paragraph (e) above is correct, and the Agent shall not be responsible or liable for the adequacy, accuracy or completeness of such information.
- (g) The Issuer is only obliged to inform the Agent according to this Clause 10.1 if informing the Agent would not conflict with any applicable laws or, when the Bonds are listed, the Issuer's registration contract with the Regulated Market. If such a conflict would exist pursuant to the listing contract with the Regulated Market or otherwise, the Issuer shall however be obliged to either seek approval

from the Regulated Market or undertake other reasonable measures, including entering into a non-disclosure agreement with the Agent, in order to be able to timely inform the Agent according to this Clause 10.1.

10.2 Information from the Agent

- (a) Subject to the restrictions of a non-disclosure agreement entered into by the Agent in accordance with Clause 10.2(b), the Agent is entitled to disclose to the Bondholders any event or circumstance directly or indirectly relating to the Issuer or the Bonds. Notwithstanding the foregoing, the Agent may if it considers it to be beneficial to the interests of the Bondholders delay disclosure or refrain from disclosing certain information other than in respect of an Event of Default that has occurred and is continuing.
- (b) If a committee representing the Bondholders' interests under the Finance Documents has been appointed by the Bondholders in accordance with Clause 15 (Decisions by Bondholders), the members of such committee may agree with the Issuer not to disclose information received from the Issuer, provided that it, in the reasonable opinion of such members, is beneficial to the interests of the Bondholders. The Agent shall be a party to such agreement and receive the same information from the Issuer as the members of the committee.

10.3 Publication of Finance Documents

- (a) The latest version of these Terms and Conditions (including any documents amending these Terms and Conditions) shall be available on the websites of the Group and the Agent.
- (b) The latest version of the Finance Documents shall be available to the Bondholders at the office of the Agent during the Agent's normal business hours.

11. Incurrence Test

The Incurrence Test is met if:

- (i) for the period from, and including, the Issue Date to, and including, 31 December 2019, the ratio of Net Interest Bearing Debt to EBITDA is not greater than 4.5x;
- (ii) for the period from, and including, 1 January 2020 to, and including, 31 December 2020, the ratio of Net Interest Bearing Debt to EBITDA is not greater than 4.00x;
- (iii) for the period from, and including, 1 January 2021 to, and including, the Final Maturity Date, the ratio of Net Interest Bearing Debt to EBITDA is not greater than 3.50x; and
- (iv) no Event of Default is continuing or would occur upon the incurrence.

11.2 Testing of the Incurrence Test

- (a) The Leverage Ratio for purpose of the Incurrence Test shall be calculated as follows:
 - (i) the calculation shall be made as per a testing date determined by the Issuer, falling no more than two (2) months prior to the incurrence of the new Financial Indebtedness; and
 - (ii) the amount of Net Interest Bearing Debt shall be measured on the relevant testing date so determined, but include any new Financial Indebtedness, but exclude any Financial Indebtedness to the extent refinanced with the new Financial Indebtedness incurred (however, any cash balance resulting from the incurrence of any new Financial Indebtedness shall not reduce the Net Interest Bearing Debt).
- (b) If the Incurrence Test is tested in connection with the incurrence of Financial Indebtedness to be used for an acquisition, the calculation of the ratio of Net Interest Bearing Debt to EBITDA shall be made based on the Net Interest Bearing Debt to EBITDA for the Group including the target company on a consolidated basis. The Net Interest Bearing Debt shall be measured for the Group including the target company on a consolidated basis on the relevant testing date so determined, and include the new Financial Indebtedness incurred by the Group for the acquisition.

11.3 Adjustments

The figures for EBITDA for the Reference Period ending on the last date of the period covered by the most recent Financial Report shall be used for the Incurrence Test, but adjusted so that:

- (a) entities acquired or disposed of by the Group during the Reference Period, or after the end of the Reference Period but before the relevant testing date, shall be included or excluded (as applicable), pro forma, for the entire Reference Period; and
- (b) any entity to be acquired with the proceeds from new Financial Indebtedness shall be included, pro forma, for the entire Reference Period.

12. General Undertakings

12.1 General

The Issuer undertakes to (and shall, where applicable, procure that each other Group Company will comply with) the undertakings set out in this Clause 12 for as long as any Bonds remain outstanding.

12.2 Distributions

- (a) The Issuer shall not, and shall procure that none of its Subsidiaries will:

- (i) pay any dividend in respect of its shares (other than to the Issuer or a wholly-owned Subsidiary of the Issuer);
- (ii) repurchase or redeem any of its own shares (other than the Share Repurchase);
- (iii) redeem or reduce its share capital or other restricted or unrestricted equity with repayment to its shareholders (other than the Share Repurchase);
- (iv) repay any Subordinated Loans or capitalised or accrued interest thereunder (provided that the Issuer may make due payments of principal and interest with respect to the Other Instruments); or
- (v) make any other similar distribution or transfers of value to any Person (other than to the Issuer or a wholly-owned Subsidiary of the Issuer).

(paragraphs (i)-(v) above are together and individually referred to as a "**Restricted Payment**").

12.3 Listing

The Issuer shall ensure that:

- (a) the Bonds are listed on the Frankfurt Stock Exchange Open Market on or about the Issue Date and the Nasdaq First North Stockholm within sixty (60) days after the Issue Date (with the intention to list the initial Bonds within thirty (30) days after the Issue Date) or, if such admission to trading is not possible to obtain or maintain or if the Issuer determines in its reasonable discretion that a different MTF, admitted to trading on another MTF within sixty (60) days after the Issue Date.
- (b) The Issuer shall ensure that, once the Bonds are listed on the Nasdaq First North Stockholm and the Frankfurt Stock Exchange Open Market, the Bonds continue being listed on Nasdaq First North Stockholm and the Frankfurt Stock Exchange Open Market for as long as any Bond is outstanding (however, taking into account the rules and regulations of the relevant exchange and the CSD (as amended from time to time) preventing trading in the Bonds in close connection to the redemption of the Bonds).

12.4 Nature of Business

The Issuer shall procure that no substantial change is made to the general nature of the business carried on by the Group if such substantial change would have a Material Adverse Effect.

12.5 Financial Indebtedness

The Issuer shall not, and shall procure that none of its Subsidiaries will, incur any Financial Indebtedness, other than Permitted Debt.

12.6 Disposal of Assets

The Issuer shall not, and shall procure that no Subsidiary, sell or otherwise dispose of shares in any Material Group Company or of all or substantially all of its or that Material Group Company's assets, or operations to any Person not being the Issuer or any of its wholly-owned Subsidiaries, unless the transaction (i) is carried out at fair market value and on arm's length terms and (ii) (other than in the case of a Player Transfer) does not have a Material Adverse Effect.

12.7 Negative Pledge

The Issuer shall not, and shall procure that none of its Subsidiaries will, provide, prolong or renew any Security over any of its/their assets (present or future), other than any Permitted Security.

12.8 Loans Out

The Issuer shall not, and shall procure that none of its Subsidiaries will, extend any loans in any form to any other party other than:

- (a) to other Group Companies; or
- (b) in the ordinary course of business.

12.9 Clean Down of Working Capital Facility

The Issuer shall procure that during each calendar year there shall be a period of three (3) consecutive days during which the amount outstanding under the Working Capital Facility, less cash and cash equivalents of the Group, amounts to zero (0) or less. Not less than six (6) months shall elapse between two such periods. The clean down shall be confirmed in a Compliance Certificate delivered pursuant to Clause 10.1(e)(ii).

12.10 Dealings with related parties

The Issuer shall, and shall procure that its Subsidiaries will, conduct all dealings with their direct and indirect shareholders (excluding the Issuer and any of its Subsidiaries) and/or any Affiliates of such direct and indirect shareholders on arm's length terms.

13. Events of Default and Acceleration of the Bonds

Each of the events or circumstances set out in this Clause 13 (other than Clause 13.9 (*Acceleration of the Bonds*)) is an Event of Default.

13.1 Non-Payment

The Issuer fails to pay an amount on the date it is due in accordance with the Finance Documents unless:

- (a) its failure to pay is caused by administrative or technical error; and
- (b) payment is made within five (5) Business Days of the due date.

13.2 Other Obligations

A party (other than the Agent) does not comply with its obligations under the Finance Documents, in any other way than as set out under Clause 13.1 above, provided that the Agent has requested the Issuer in writing to remedy such failure and the Issuer has not remedied the failure within 15 Business Days from such request (if the failure or violation is not capable of being remedied, the Agent may declare the Bonds due and payable without such prior written request).

13.3 Cross-acceleration

Any Financial Indebtedness of a Material Group Company is not paid when due as extended by any originally applicable grace period, or is declared to be due and payable prior to its specified maturity as a result of an event of default (however described), provided that no Event of Default will occur under this clause 13.3 if the aggregate amount of Financial Indebtedness that has fallen due is less than EUR 2,000,000 and provided that it does not apply to any Financial Indebtedness owed to a Group Company.

13.4 Insolvency

- (a) Any Material Group Company is unable or admits inability to pay its debts as they fall due or is declared to be unable to pay its debts under applicable law, suspends making payments on its debts generally or, by reason of actual or anticipated financial difficulties, commences negotiations with its creditors generally (except for holders of Bonds) with a view to rescheduling its Financial Indebtedness; or
- (b) a moratorium is declared in respect of the Financial Indebtedness of any Material Group Company.

13.5 Insolvency Proceedings

Any corporate action, legal proceedings or other procedures are taken (other than (i) proceedings or petitions which are being disputed in good faith and are discharged, stayed or dismissed within 60 days of commencement or, if earlier, the date on which it is advertised and (ii), in relation to Subsidiaries, solvent liquidations) in relation to:

- (a) the suspension of payments, winding-up, dissolution, administration or reorganisation (by way of voluntary agreement, scheme of arrangement or otherwise) of any Material Group Company; and
- (b) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Material Group Company or any of its assets or any analogous procedure or step is taken in any jurisdiction in respect of any Material Group Company.

13.6 Creditors' Process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Material Group Company

having an aggregate value of an amount equal to or exceeding EUR 2,000,000 and is not discharged within 60 days.

13.7 Mergers and demergers

A decision is made that any Material Group Company shall be demerged or merged if such merger or demerger is likely to have a Material Adverse Effect, provided that a merger between Subsidiaries only or between the Issuer and a Subsidiary, where the Issuer is the surviving entity, shall not be an Event of Default and a merger involving the Issuer, where the Issuer is not the surviving entity, shall always be considered an Event of Default and provided that the Issuer may not be demerged.

13.8 Continuation of the Business

The Issuer or any other Material Group Company ceases to carry on its business if such discontinuation is likely to have a Material Adverse Effect.

13.9 Acceleration of the Bonds

- (a) Upon the occurrence of an Event of Default which is continuing the Agent is entitled to, and shall following a demand in writing from a Bondholder (or Bondholders) representing at least fifty (50) per cent. of the Adjusted Nominal Amount (such demand may only be validly made by a Person who is a Bondholder on the Business Day immediately following the day on which the demand is received by the Agent and shall, if made by several Bondholders, be made by them jointly) or following an instruction given pursuant to Clause 13.9(d), on behalf of the Bondholders (i) by notice to the Issuer, declare all, but not some only, of the outstanding Bonds due and payable together with any other amounts payable under the Finance Documents, immediately or at such later date as the Agent determines, and (ii) exercise any or all of its rights, remedies, powers and discretions under the Finance Documents.
- (b) The Agent may not accelerate the Bonds in accordance with Clause 13.9(a) by reference to a specific Event of Default if it is no longer continuing or if it has been decided, on a Bondholders Meeting or by way of a Written Procedure, to waive such Event of Default (temporarily or permanently).
- (c) The Agent shall notify the Bondholders of an Event of Default within five (5) Business Days of the date on which the Agent received actual knowledge of that an Event of Default has occurred and is continuing. The Agent shall, within twenty (20) Business Days of the date on which the Agent received actual knowledge of that an Event of Default has occurred and is continuing, decide if the Bonds shall be so accelerated. If the Agent decides not to accelerate the Bonds, the Agent shall promptly seek instructions from the Bondholders in accordance with Clause 15 (*Decisions by Bondholders*). The Agent shall always be entitled to take the time necessary to consider whether an occurred event constitutes an Event of Default.
- (d) If the Bondholders (in accordance with these Terms and Conditions) instruct the Agent to accelerate the Bonds, the Agent shall promptly declare the Bonds due

and payable and take such actions as may, in the opinion of the Agent, be necessary or desirable to enforce the rights of the Bondholders under the Finance Documents, unless the relevant Event of Default is no longer continuing.

- (e) If the right to accelerate the Bonds is based upon a decision of a court of law or a government authority, it is not necessary that the decision has become enforceable under law or that the period of appeal has expired in order for cause of acceleration to be deemed to exist.
- (f) In the event of an acceleration of the Bonds in accordance with this Clause 13.9, the Issuer shall redeem all Bonds with an amount per Bond together with a premium on the due and payable amount as set forth in the Call Option Amount for the relevant period and, shall for the non-call period (until the First Call Date) be the price set out in Clause 9.3(a)(ii) (plus accrued but unpaid interest).

14. Distribution of Proceeds

All payments by the Issuer relating to the Bonds and the Finance Documents following an acceleration of the Bonds in accordance with Clause 13 (*Events of Default and Acceleration of the Bonds*) shall be distributed in the following order of priority:

- (a) first, in or towards payment *pro rata* of (i) all unpaid fees, costs, expenses and indemnities payable by the Issuer to the Agent in accordance with the Agency Agreement (other than any indemnity given for liability against the Bondholders), (ii) other costs, expenses and indemnities relating to the acceleration of the Bonds, or the protection of the Bondholders' rights as may have been incurred by the Agent, (iii) any costs incurred by the Agent for external experts that have not been reimbursed by the Issuer in accordance with Clause 19.2(g), and (iv) any costs and expenses incurred by the Agent in relation to a Bondholders' Meeting or a Written Procedure that have not been reimbursed by the Issuer in accordance with Clause 15(m);
- (b) secondly, in or towards payment *pro rata* of accrued but unpaid Interest under the Bonds (Interest due on an earlier Interest Payment Date to be paid before any Interest due on a later Interest Payment Date);
- (c) thirdly, in or towards payment *pro rata* of any unpaid principal under the Bonds; and
- (d) fourthly, in or towards payment *pro rata* of any other costs or outstanding amounts unpaid under the Finance Documents.

Any excess funds after the application of proceeds in accordance with paragraphs (a) to (d) above shall be paid to the Issuer.

15. Decisions by Bondholders

- (a) A request by the Agent for a decision by the Bondholders on a matter relating to the Finance Documents shall (at the option of the Agent) be dealt with at a Bondholders' Meeting or by way of a Written Procedure.

- (b) Any request from the Issuer or a Bondholder (or Bondholders) representing at least ten (10) per cent. of the Adjusted Nominal Amount (such request may only be validly made by a person who is a Bondholder on the Business Day immediately following the day on which the request is received by the Agent and shall, if made by several Bondholders, be made by them jointly) for a decision by the Bondholders on a matter relating to the Finance Documents shall be directed to the Agent and dealt with at a Bondholders' Meeting or by way of a Written Procedure, as determined by the Agent. The person requesting the decision may suggest the form for decision making, but if it is in the Agent's opinion more appropriate that a matter is dealt with at a Bondholders' Meeting than by way of a Written Procedure, it shall be dealt with at a Bondholders' Meeting.
- (c) The Agent may refrain from convening a Bondholders' Meeting or instigating a Written Procedure if (i) the suggested decision must be approved by any person in addition to the Bondholders and such person has informed the Agent that an approval will not be given, or (ii) the suggested decision is not in accordance with applicable laws.
- (d) Only a person who is, or who has been provided with a power of attorney pursuant to Clause 6 (*Right to Act on Behalf of a Bondholder*) from a person who is, registered as a Bondholder:
- (i) on the Record Date prior to the date of the Bondholders' Meeting, in respect of a Bondholders' Meeting, or
 - (ii) on the Business Day specified in the communication pursuant to Clause 17(c), in respect of a Written Procedure,
- may exercise voting rights as a Bondholder at such Bondholders' Meeting or in such Written Procedure, provided that the relevant Bonds are included in the definition of Adjusted Nominal Amount.
- (e) The following matters shall require the consent of Bondholders representing at least sixty-six and two thirds ($66 \frac{2}{3}$) per cent. of the Adjusted Nominal Amount for which Bondholders are voting at a Bondholders' Meeting or for which Bondholders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 17(c):
- (i) waive a breach of or amend an undertaking set out in Clause 12 (*General Undertakings*);
 - (ii) a change to the terms of any of Clause 2(a), and Clauses 2(e) to 2(g);
 - (iii) a reduction of the premium payable upon the redemption or repurchase of any Bond pursuant to Clause 9 (*Redemption and Repurchase of the Bonds*);
 - (iv) a change to the Interest Rate or the Nominal Amount;

- (v) a change to the terms for the distribution of proceeds set out in Clause 14 (*Distribution of Proceeds*);
 - (vi) a change to the terms dealing with the requirements for Bondholders' consent set out in this Clause 15;
 - (vii) a change of issuer, an extension of the tenor of the Bonds or any delay of the due date for payment of any principal or interest on the Bonds;
 - (viii) a mandatory exchange of the Bonds for other securities; and
 - (ix) early redemption of the Bonds, other than upon an acceleration of the Bonds pursuant to Clause 13 (*Events of Default and Acceleration of the Bonds*) or as otherwise permitted or required by these Terms and Conditions.
- (f) Any matter not covered by Clause 15(e) shall require the consent of Bondholders representing more than 50 per cent. of the Adjusted Nominal Amount for which Bondholders are voting at a Bondholders' Meeting or for which Bondholders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 17(c). This includes, but is not limited to, any amendment to, or waiver of, the terms of any Finance Document that does not require a higher majority (other than an amendment permitted pursuant to Clause 18(a)(i) or (18(a)(ii))), and an acceleration of the Bonds.
- (g) Quorum at a Bondholders' Meeting or in respect of a Written Procedure only exists if a Bondholder (or Bondholders) representing at least fifty (50) per cent. of the Adjusted Nominal Amount in case of a matter pursuant to Clause 15(e), and otherwise twenty (20) per cent. of the Adjusted Nominal Amount:
- (i) if at a Bondholders' Meeting, attend the meeting in person or by telephone conference (or appear through duly authorised representatives); or
 - (ii) if in respect of a Written Procedure, reply to the request.
- If a quorum exists for some, but not all, of the matters to be dealt with at a Bondholders' Meeting or by a Written Procedure, decisions may be taken in the matters for which a quorum exists.
- (h) If a quorum does not exist at a Bondholders' Meeting or in respect of a Written Procedure, the Agent or the Issuer shall convene a second Bondholders' Meeting (in accordance with Clause 16(a)) or initiate a second Written Procedure (in accordance with Clause 17(a)), as the case may be, provided that the relevant proposal has not been withdrawn by the person(s) who initiated the procedure for Bondholders' consent. The quorum requirement in Clause 15(g) shall not apply to such second Bondholders' Meeting or Written Procedure.
- (i) Any decision which extends or increases the obligations of the Issuer or the Agent, or limits, reduces or extinguishes the rights or benefits of the Issuer or

the Agent, under the Finance Documents shall be subject to the Issuer's or the Agent's consent, as appropriate.

- (j) A Bondholder holding more than one Bond need not use all its votes or cast all the votes to which it is entitled in the same way and may in its discretion use or cast some of its votes only.
- (k) The Issuer may not, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Bondholder for or as inducement to any consent under these Terms and Conditions, unless such consideration is offered to all Bondholders that consent at the relevant Bondholders' Meeting or in a Written Procedure within the time period stipulated for the consideration to be payable or the time period for replies in the Written Procedure, as the case may be.
- (l) A matter decided at a duly convened and held Bondholders' Meeting or by way of Written Procedure is binding on all Bondholders, irrespective of them being present or represented at the Bondholders' Meeting or responding in the Written Procedure. The Bondholders that have not adopted or voted for a decision shall not be liable for any damages that this may cause other Bondholders.
- (m) All costs and expenses incurred by the Issuer or the Agent for the purpose of convening a Bondholders' Meeting or for the purpose of carrying out a Written Procedure, including reasonable fees to the Agent, shall be paid by the Issuer.
- (n) If a decision shall be taken by the Bondholders on a matter relating to the Finance Documents, the Issuer shall promptly at the request of the Agent provide the Agent with a certificate specifying the number of Bonds owned by Group Companies or (to the knowledge of the Issuer) Affiliates, irrespective of whether such person is directly registered as owner of such Bonds. The Agent shall not be responsible for the accuracy of such certificate or otherwise be responsible to determine whether a Bond is owned by a Group Company or an Affiliate.
- (o) Information about decisions taken at a Bondholders' Meeting or by way of a Written Procedure shall promptly be sent by notice to the Bondholders and published on the websites of the Group and the Agent, provided that a failure to do so shall not invalidate any decision made or voting result achieved. The minutes from the relevant Bondholders' Meeting or Written Procedure shall at the request of a Bondholder be sent to it by the Issuer or the Agent, as applicable.

16. Bondholders' Meeting

- (a) The Agent shall convene a Bondholders' Meeting by sending a notice thereof to each Bondholder no later than five (5) Business Days after receipt of a request from the Issuer or the Bondholder(s) in accordance with Clause 15(b) (or such later date as may be necessary for technical or administrative reasons).

- (b) Should the Issuer want to replace the Agent, it may convene a Bondholders' Meeting in accordance with Clause 16(a) with a copy to the Agent. After a request from the Bondholders pursuant to Clause 19.4(c), the Issuer shall no later than five (5) Business Days after receipt of such request (or such later date as may be necessary for technical or administrative reasons) convene a Bondholders' Meeting in accordance with Clause 16(a).
- (c) The notice pursuant to Clause 16(a) shall include (i) time for the meeting, (ii) place for the meeting, (iii) agenda for the meeting (including each request for a decision by the Bondholders) and (iv) a form of power of attorney. Only matters that have been included in the notice may be resolved upon at the Bondholders' Meeting. Should prior notification by the Bondholders be required in order to attend the Bondholders' Meeting, such requirement shall be included in the notice.
- (d) The Bondholders' Meeting shall be held no earlier than fifteen (15) Business Days and no later than thirty (30) Business Days from the notice.
- (e) Without amending or varying these Terms and Conditions, the Agent may prescribe such further regulations regarding the convening and holding of a Bondholders' Meeting as the Agent may deem appropriate. Such regulations may include a possibility for Bondholders to vote without attending the meeting in person.

17. Written Procedure

- (a) The Agent shall instigate a Written Procedure (which may be conducted electronically in a manner determined by the Agent) no later than five (5) Business Days after receipt of a request from the Issuer or the Bondholder(s) in accordance with Clause 15(b) (or such later date as may be necessary for technical or administrative reasons) by sending a communication to each such person who is registered as a Bondholder on the Business Day prior to the date on which the communication is sent.
- (b) Should the Issuer want to replace the Agent, it may send a communication in accordance with Clause 17(a) to each Bondholder with a copy to the Agent.
- (c) A communication pursuant to Clause 17(a) shall include (i) each request for a decision by the Bondholders, (ii) a description of the reasons for each request, (iii) a specification of the Business Day on which a person must be registered as a Bondholder in order to be entitled to exercise voting rights, (iv) instructions and directions on where to receive a form for replying to the request (such form to include an option to vote yes or no for each request) as well as a form of power of attorney, and (v) the stipulated time period within which the Bondholder must reply to the request (such time period to last at least fifteen (15) Business Days from the communication pursuant to Clause 17(a)). If the voting shall be made electronically, instructions for such voting shall be included in the communication.

- (d) When the requisite majority consents of the total Adjusted Nominal Amount pursuant to Clauses 15(e) and 15(f) have been received in a Written Procedure, the relevant decision shall be deemed to be adopted pursuant to Clause 15(e) or 15(f), as the case may be, even if the time period for replies in the Written Procedure has not yet expired.

18. Amendments and Waivers

- (a) The Issuer and the Agent (as applicable) (in each case acting on behalf of the Bondholders) may agree to amend the Finance Documents or waive any provision in a Finance Document, provided that:
 - (i) such amendment or waiver is not detrimental to the interest of the Bondholders, or is made solely for the purpose of rectifying obvious errors and mistakes;
 - (ii) such amendment or waiver is required by applicable law, a court ruling or a decision by a relevant authority; or
 - (iii) such amendment or waiver has been duly approved by the Bondholders in accordance with Clause 15 (*Decisions by Bondholders*).
- (b) The consent of the Bondholders is not necessary to approve the particular form of any amendment to the Finance Documents. It is sufficient if such consent approves the substance of the amendment.
- (c) The Agent shall promptly notify the Bondholders of any amendments or waivers made in accordance with Clause 18(a), setting out the date from which the amendment or waiver will be effective, and ensure that any amendments to the Finance Documents are published in the manner stipulated in Clause 10.3 (*Publication of Finance Documents*). The Issuer shall ensure that any amendments to the Finance Documents are duly registered with the CSD and each other relevant organisation or authority, to the extent such registration is possible with the rules of the relevant CSD.
- (d) An amendment to the Finance Documents shall take effect on the date determined by the Bondholders Meeting, in the Written Procedure or by the Agent, as the case may be.

19. Appointment and Replacement of the Agent

19.1 Appointment of Agent

- (a) By subscribing for Bonds, each initial Bondholder appoints the Agent to act as its agent in all matters relating to the Bonds and the Finance Documents, and authorises the Agent to act on its behalf (without first having to obtain its consent, unless such consent is specifically required by these Terms and Conditions) in any legal or arbitration proceedings relating to the Bonds held by such Bondholder.

- (b) Each Bondholder shall immediately upon request provide the Agent with any such documents, including a written power of attorney (in form and substance satisfactory to the Agent), that the Agent deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents. The Agent is not under any obligation to represent a Bondholder which does not comply with such request.
- (c) The Issuer shall promptly upon request provide the Agent with any documents and other assistance (in form and substance satisfactory to the Agent), that the Agent deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents.
- (d) The Agent is entitled to fees for its work and to be indemnified for costs, losses and liabilities on the terms set out in the Finance Documents and the Agent's obligations as agent under the Finance Documents are conditioned upon the due payment of such fees and indemnifications.
- (e) The Agent may act as agent or Agent for several issues of securities issued by or relating to the Issuer and other Group Companies notwithstanding potential conflicts of interest.
- (f) By acquiring Bonds, each subsequent Bondholder confirms the appointment and authorisation for the Agent to act on its behalf, as set forth in Clause 19.1(a) and 19.1(e) above and hereby ratifies and approves all acts done by the Agent on such Bondholder's behalf.

19.2 Duties of the Agent

- (a) The Agent shall represent the Bondholders subject to and in accordance with the Finance Documents. The Agent is not responsible for the content, valid execution, legal validity or enforceability of the Finance Documents.
- (b) When acting in accordance with the Finance Documents, the Agent is always acting with binding effect on behalf of the Bondholders. The Agent shall carry out its duties under the Finance Documents in a reasonable, proficient and professional manner, with reasonable care and skill.
- (c) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature and the Agent only acts in accordance with the Finance Documents and upon instructions from the Bondholders, unless otherwise set out in the Finance Documents. In particular, the Agent is not acting as an advisor (whether legal, financial or otherwise) to the Bondholders or any other Person.
- (d) The Agent is not obligated to assess or monitor the financial condition of the Issuer or compliance by the Issuer of the terms of the Finance Documents unless to the extent expressly set out in the Finance Documents, or to take any steps to ascertain whether any Event of Default (or any event that may lead to an Event of Default) has occurred. Until it has actual knowledge to the contrary, the Agent is entitled to assume that no Event of Default (or any event that may lead to an Event of Default) has occurred.

- (e) The Agent is entitled to delegate its duties to other professional parties, but each of them shall remain liable for the actions of such parties under the Finance Documents.
- (f) The Agent shall treat all Bondholders equally and, when acting pursuant to the Finance Documents, act with regard only to the interests of the Bondholders and shall not be required to have regard to the interests or to act upon or comply with any direction or request of any other Person, other than as explicitly stated in the Finance Documents.
- (g) The Agent is entitled to engage external experts when carrying out its duties under the Finance Documents. The Issuer shall on demand by the Agent pay all costs for external experts engaged after the occurrence of an Event of Default, or for the purpose of investigating or considering (i) an event which the Agent reasonably believes is or may lead to an Event of Default, (ii) a matter relating to the Issuer which the Agent reasonably believes may be detrimental to the interests of the Bondholders under the Finance Documents or (iii) as otherwise agreed between the Agent and the Issuer. Any compensation for damages or other recoveries received by the Agent from external experts engaged by it for the purpose of carrying out its duties under the Finance Documents shall be distributed in accordance with Clause 14 (*Distribution of Proceeds*).
- (h) Notwithstanding any other provision of the Finance Documents to the contrary, the Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation.
- (i) If in the Agent's reasonable opinion the cost, loss or liability which it may incur (including its respective reasonable fees) in complying with instructions of the Bondholders, or taking any action at its own initiative, will not be covered by the Issuer, or the Bondholders (as applicable), the Agent may refrain from acting in accordance with such instructions, or taking such action, until it has received such funding or indemnities (or adequate Security has been provided therefore) as it may reasonably require.
- (j) Unless it has actual knowledge to the contrary, the Agent may assume that all information provided by or on behalf of the Issuer (including by its advisors) is correct, true and complete in all aspects.
- (k) The Agent shall give a notice to the Bondholders (i) before it ceases to perform its obligations under the Finance Documents by reason of the non-payment by the Issuer of any fee or indemnity due to the Agent under the Finance Documents or the Agency Agreement or (ii) if it refrains from acting for any reason described in Clause 19.2(i).

19.3 Limited liability for the Agent

- (a) The Agent will not be liable to the Bondholders for damage or loss caused by any action taken or omitted by it under or in connection with any Finance Document, unless directly caused by its negligence or wilful misconduct. The Agent shall not be responsible for indirect loss.

- (b) The Agent shall not be considered to have acted negligently if it has acted in accordance with advice addressed to it from or opinions of reputable external experts or if it has acted with reasonable care in a situation when it considers that it is detrimental to the interests of the Bondholders to delay the action in order to first obtain instructions from the Bondholders.
- (c) The Agent shall not be liable for any delay (or any related consequences) in crediting an account with an amount required pursuant to the Finance Documents to be paid by it to the Bondholders, provided that it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by it for that purpose.
- (d) The Agent shall not have any liability to the Bondholders for damage caused by it acting in accordance with instructions of the Bondholders given in accordance with the Finance Documents.
- (e) Any liability towards the Issuer which is incurred by the Agent in acting under, or in relation to, the Finance Documents shall not be subject to set-off against the obligations of the Issuer to the Bondholders under the Finance Documents.
- (f) The Agent is not liable for information provided to the Bondholders by or on behalf of the Issuer or any other Person.

19.4 Replacement of the Agent

- (a) Subject to Clause 19.4(f), the Agent may resign by giving notice to the Issuer and the Bondholders, in which case the Bondholders shall appoint a successor Agent at a Bondholders' Meeting convened by the retiring Agent or by way of Written Procedure initiated by the retiring Agent.
- (b) Subject to Clause 19.4(f), if the Agent is Insolvent, the Agent shall be deemed to resign as Agent and the Issuer shall within ten (10) Business Days appoint a successor Agent which shall be an independent financial institution or other reputable company which regularly acts as agent under debt issuances.
- (c) A Bondholder (or Bondholders) representing at least ten (10) per cent. of the Adjusted Nominal Amount may, by notice to the Issuer (such notice may only be validly given by a Person who is a Bondholder on the Business Day immediately following the day on which the notice is received by the Issuer and shall, if given by several Bondholders, be given by them jointly), require that a Bondholders' Meeting is held for the purpose of dismissing the Agent and appointing a new Agent. The Issuer may, at a Bondholders' Meeting convened by it or by way of Written Procedure initiated by it, propose to the Bondholders that the Agent be dismissed and a new Agent be appointed.
- (d) If the Bondholders have not appointed a successor Agent within ninety (90) days after (i) the earlier of the notice of resignation was given or the resignation otherwise took place or (ii) the Agent was dismissed through a decision by the Bondholders, the Issuer shall appoint a successor Agent which shall be an

independent financial institution or other reputable company which regularly acts as agent under debt issuances.

- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation or dismissal shall only take effect upon the appointment of a successor Agent and acceptance by such successor Agent of such appointment and the execution of all necessary documentation to effectively substitute the retiring Agent.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of the Finance Documents and remain liable under the Finance Documents in respect of any action which it took or failed to take whilst acting as Agent. Its successor, the Issuer and each of the Bondholders shall have the same rights and obligations amongst themselves under the Finance Documents as they would have had if such successor had been the original Agent.
- (h) In the event that there is a change of the Agent in accordance with this Clause 19.4, the Issuer shall execute such documents and take such actions as the new Agent may reasonably require for the purpose of vesting in such new Agent the rights, powers and obligation of the Agent and releasing the retiring Agent from its further obligations under the Finance Documents. Unless the Issuer and the new Agent agrees otherwise, the new Agent shall be entitled to the same fees and the same indemnities as the retiring Agent.

20. Appointment and Replacement of the Issuing Agent

- (a) The Issuer appoints the Issuing Agent to manage certain specified tasks under these Terms and Conditions and in accordance with the legislation, rules and regulations applicable to and/or issued by the CSD and relating to the Bonds.
- (b) The Issuing Agent may retire from its assignment or be dismissed by the Issuer, provided that the Issuer has approved that a commercial bank or securities institution approved by the CSD accedes as new Issuing Agent at the same time as the old Issuing Agent retires or is dismissed. If the Issuing Agent is Insolvent, the Issuer shall immediately appoint a new Issuing Agent, which shall replace the old Issuing Agent as issuing agent in accordance with these Terms and Conditions.

21. No Direct Actions by Bondholders

- (a) A Bondholder may not take any steps whatsoever against the Issuer to enforce or recover any amount due or owing to it pursuant to the Finance Documents, or to initiate, support or procure the winding-up, dissolution, liquidation, company reorganisation (Sw. *företagsrekonstruktion*) or bankruptcy (Sw.

konkurs) (or its equivalent in any other jurisdiction) of the Issuer in relation to any of the liabilities of the Issuer under the Finance Documents.

- (b) Clause 21(a) shall not apply if the Agent has been instructed by the Bondholders in accordance with the Finance Documents to take certain actions but fails for any reason to take, or is unable to take (for any reason other than a failure by a Bondholder to provide documents in accordance with Clause 19.1(b)), such actions within a reasonable period of time and such failure or inability is continuing. However, if the failure to take certain actions is caused by the non-payment by the Issuer of any fee or indemnity due to the Agent under the Finance Documents or the Agency Agreement or by any reason described in Clause 19.2(i), such failure must continue for at least forty (40) Business Days after notice pursuant to Clause 19.2(k) before a Bondholder may take any action referred to in Clause 21(a).
- (c) The provisions of Clause 21(a) shall not in any way limit an individual Bondholder's right to claim and enforce payments which are due to it under Clause 9.4 (*Mandatory repurchase due to a Change of Control Event (put option)*) or other payments which are due by the Issuer to some but not all Bondholders.

22. Prescription

- (a) The right to receive repayment of the principal of the Bonds shall be prescribed and become void ten (10) years from the Redemption Date. The right to receive payment of interest (excluding any capitalised interest) shall be prescribed and become void three (3) years from the relevant due date for payment. The Issuer is entitled to any funds set aside for payments in respect of which the Bondholders' right to receive payment has been prescribed and has become void.
- (b) If a limitation period is duly interrupted in accordance with the Swedish Act on Limitations (*Sw. preskriptionslag (1981:130)*), a new limitation period of ten (10) years with respect to the right to receive repayment of the principal of the Bonds, and of three (3) years with respect to receive payment of interest (excluding capitalised interest) will commence, in both cases calculated from the date of interruption of the limitation period, as such date is determined pursuant to the provisions of the Swedish Act on Limitations.

23. Notices and Press Releases

23.1 Notices

- (a) Any notice or other communication to be made under or in connection with the Finance Documents:
 - (i) if to the Agent, shall be given at the address registered with the Swedish Companies Registration Office (*Sw. Bolagsverket*) on the Business Day prior to dispatch;

- (ii) if to the Issuer, to the following address:
 - (A) Hertha BSC GmbH & Co. KGaA
z.Hd. Herrn Ingo Schiller
Hanns-Braun-Str., Friesenhaus 2, 14053 Berlin
 - (B) if sent by email by the Agent, to the email address notified by the Issuer to the Agent from time to time.
- (iii) if to the Bondholders, shall be given at their addresses as registered with the CSD, on the CSD Business Day prior to dispatch, and by either courier delivery or letter for all Bondholders. A Notice to the Bondholders shall also be published on the websites of the Group and the Agent.
- (b) Any notice or other communication made by one person to another under or in connection with the Finance Documents shall be sent by way of courier, personal delivery or letter and will only be effective, in case of courier or personal delivery, when it has been left at the address specified in Clause 23.1(a) or, in case of letter, three (3) Business Days after being deposited postage prepaid in an envelope addressed to the address specified in Clause 23.1(a).
- (c) Failure to send a notice or other communication to a Bondholder or any defect in it shall not affect its sufficiency with respect to other Bondholders.
- (d) If an Event of Default is continuing, any notice or other communication made by the Agent to the Issuer under or in connection with the Finance Documents may, provided that the Agent deems it necessary in order to preserve the Bondholders' rights under the Finance Documents, be sent by email and will be effective on the day of dispatch (unless a delivery failure message was received by the Agent), save that any notice or other communication sent by email that is sent after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day. Any notice or other communication to be sent by email by the Agent to the Issuer in accordance with this paragraph (c) shall be sent to the CFO or the CEO of the Issuer, to the email addresses most recently notified by the Issuer to the Agent.

23.2 Press releases

- (a) Any notice that the Issuer or the Agent shall send to the Bondholders pursuant to Clauses 9.3 (*Voluntary total redemption (call option)*), 13.9(c), 15(o), 16(a), 17(a) and 18(c) shall also be published by way of press release by the Issuer or the Agent, as applicable.
- (b) In addition to Clause 23.2(a), if any information relating to the Bonds or the Group contained in a notice the Agent may send to the Bondholders under these Terms and Conditions has not already been made public by way of a press release, the Agent shall before it sends such information to the Bondholders give the Issuer the opportunity to issue a press release containing such information. If the Issuer does not promptly issue a press release and the Agent considers it necessary to issue a press release containing such information before it can

lawfully send a notice containing such information to the Bondholders, the Agent shall be entitled to issue such press release.

24. Force Majeure and Limitation of Liability

- (a) Neither the Agent nor the Issuing Agent shall be held responsible for any damage arising out of any legal enactment, or any measure taken by a public authority, or war, strike, lockout, boycott, blockade or any other similar circumstance (a "**Force Majeure Event**"). The reservation in respect of strikes, lockouts, boycotts and blockades applies even if the Agent or the Issuing Agent itself takes such measures, or is subject to such measures.
- (b) The Issuing Agent shall have no liability to the Bondholders if it has observed reasonable care. The Issuing Agent shall never be responsible for indirect damage with exception of gross negligence and wilful misconduct.
- (c) Should a Force Majeure Event arise which prevents the Agent or the Issuing Agent from taking any action required to comply with these Terms and Conditions, such action may be postponed until the obstacle has been removed.
- (d) The provisions in this Clause 24 apply unless they are inconsistent with the provisions of the Financial Instruments Accounts Act which provisions shall take precedence.

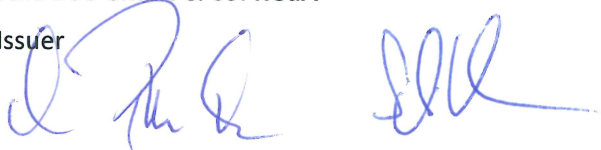
25. Governing Law and Jurisdiction

- (a) These Terms and Conditions, and any non-contractual obligations arising out of or in connection therewith, shall be governed by and construed in accordance with the laws of Sweden.
- (b) The Issuer submits to the non-exclusive jurisdiction of the City Court of Stockholm (Sw. *Stockholms tingsrätt*).

We hereby certify that the above terms and conditions are binding upon ourselves.

Hertha BSC GmbH & Co. KGaA

as Issuer



Name: MICHAEL PREETZ , INGO SCHILLER

We hereby undertake to act in accordance with the above terms and conditions to the extent they refer to us.

Nordic Agent and Agency AB (publ)

as Agent

Name:

We hereby certify that the above terms and conditions are binding upon ourselves.

Hertha BSC GmbH & Co. KGaA

as Issuer

Name:

We hereby undertake to act in accordance with the above terms and conditions to the extent they refer to us.

Nordic Agent and Agency AB (publ)

as Agent



Name:

Christoffer Andersson
VD / CEO