

TERMS AND CONDITIONS OF THE NOTES

§ 1 Definitions and Construction

(1) **Definitions.** In these terms and conditions (these “**Terms and Conditions**”):

“**Accounting Principles**” means the international financial reporting standards (IFRS) within the meaning of Regulation 1606/2002/EC (or as otherwise adopted or amended from time to time).

“**Additional Amounts**” means any deduction or withholding for, or on account of, any Taxes imposed or levied by or on behalf of any Relevant Taxing Jurisdiction on any payment by the Obligors of principal or interest or any other payment in relation to the Notes under the Finance Documents.

“**Additional Guarantor**” has the meaning set forth in Clause 10.10 (Additional Guarantee).

“**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 is due not more than ninety (90) calendar days after the date of supply or (b) any other trade credit incurred in the ordinary course of business.

“**Affiliate**” means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person and/or any Person that is related in a straight line of descent with such specified Person or a brother or a sister of such specified Person (each a “**Related Person**”) and/or any Person, directly or indirectly, controlled by such Related 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 the Holders' agent under these Terms and Conditions and, if relevant, the other Finance Documents, from time to time; initially hww hermann wienberg wilhelm Legal & Service Rechtsanwälte Partnerschaft, Widenmayerstraße 16, 80538 Munich, Germany.

“**Agent Agreement**” means the fee agreement entered into on or about the Existing Notes Issue Date between the Issuer and the Agent, or any replacement agent agreement entered into after the Existing Notes Issue Date between the Issuer and an Agent.

“**Bond Issue**” means the issuance of the Notes on the Issue Date.

“**Business Day**” means any day on which banking institutions are open for business in Frankfurt am Main and payments in Euro may be settled via the Trans-European Automated Real-time Gross settlement Express Transfer system 2 (TARGET 2). Saturdays, Christmas Eve (German: *Heiligabend*) and New Year's Eve (German: *Silvester*) shall for the purpose of this definition be deemed to be public holidays.

“**Business Day Convention**” means the first following day that is a Business Day.

“**Call Option Amount**” means:

- (a) the Make Whole Amount if the Call Option is exercised before the First Call Date;
- (b) 106.00 per cent. of the Nominal Amount if the call option is exercised on or after the First Call Date up to (but excluding) the date falling thirty (30) months after the Existing Notes Issue Date;
- (c) 104.00 per cent. of the Nominal Amount if the call option is exercised on or after the date falling thirty (30) months after the Existing Notes Issue Date up to (but excluding) the date falling on 23 ~~September 2022~~November 2024;
- (d) 103.00 per cent. of the Nominal Amount if the call option is exercised on or after the date falling on 23 ~~September 2022~~November 2024 up to (but excluding) the date falling on 23 ~~February 2023~~May 2025;
- (e) 102.00 per cent. of the Nominal Amount if the call option is exercised on or after the date falling on 23 ~~February 2023~~May 2025 up to (but excluding) the date falling on 23 ~~September 2023~~May 2026;
- (f) 100.00 per cent. of the Nominal Amount if the call option is exercised on or after the date falling on 23 ~~September 2023~~May 2026 up to (but excluding) the Final Redemption Date.

“Capital Lease Obligations” means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalised on a balance sheet prepared in accordance with the Accounting Principles, and the scheduled maturity date thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

“Capital Stock” means:

- (a) in the case of a corporation, corporate stock;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and
- (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“Capitalisation Ratio” means, for Holdco as of any date of determination, the result (expressed as a percentage) obtained by dividing (x) Consolidated Net Worth of Holdco (calculated as of the end of the Relevant Period ending on the last day of the period covered by the most recent Financial Report prior to the date of the transaction

giving rise to the need to calculate Consolidated Net Worth) by (y) Net Loan Portfolio as of such date of determination.

“Cash and Cash Equivalents” means cash and cash equivalents in accordance with the Accounting Principles.

“Change in Tax Law” means (a) any change in, or amendment to, the law or treaties (or any regulations or rulings promulgated thereunder) of a Relevant Taxing Jurisdiction affecting taxation or (b) any change in, or amendment to, or the introduction of, an official position regarding the application, administration or interpretation of such laws, treaties, regulations or rulings (including a holding, judgment or order by a court of competent jurisdiction) of a Relevant Taxing Jurisdiction.

“Change of Control Event” means (a) the direct or indirect sale or other disposal, in one or a series of related transactions, of all or substantially all of the properties or assets of Holdco and the Restricted Subsidiaries taken as a whole to any Person other than Holdco, a Restricted Subsidiary or one or more Current Shareholders and (b) the occurrence of an event or series of events whereby one or more Persons, not being a Current Shareholder or a Group Company, acting together, acquire control over Holdco and where **“control”** means (i) acquiring or controlling, directly or indirectly, more than 50.00 per cent. of the shares or voting rights in Holdco (but where such Person is deemed to be acting together with a Current Shareholder, excluding that Current Shareholder's direct or indirect holding of shares or voting rights in Holdco) or (ii) the right to, directly or indirectly, appoint or remove the whole or a majority of the directors of the board of directors of Holdco, the Issuer or any of the Subsidiary Guarantors (but where such Person is deemed to be acting together with a Current Shareholder, any direct or indirect right (including through the exercise of voting rights) that such Current Shareholder has to appoint directors of Holdco, the Issuer or any of the Subsidiary Guarantors shall be disregarded).

“Compliance Certificate” means a certificate, in form and substance reasonably satisfactory to the Agent, signed by the Issuer certifying (a) 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 and (b) if provided in connection with an application of the Incurrence Test, that the Incurrence Test is met and including calculations and figures in respect of the Interest Coverage Ratio and the Capitalisation Ratio.

“Consolidated Leverage” means, as of any date of determination, the sum of the total amount of Financial Indebtedness, less the amount of Cash and Cash Equivalents of Holdco and the Restricted Subsidiaries on a consolidated basis.

“Consolidated Leverage Ratio” means the ratio of (x) the Consolidated Leverage as of the date of the declaration of the contemplated Permitted Payment to (y) the EBITDA for the Relevant Period ending on the last day of the period covered by the most recent Financial Report prior to such testing date. For purposes of calculating the EBITDA for such Relevant Period, entities acquired or disposed of by the Group during the Relevant Period, or after the end of the Relevant Period but before the relevant

testing date, shall be included or excluded (as applicable), *pro forma*, for the entire Relevant Period.

“Consolidated Net Worth” means, for Holdco at any time, the sum of paid in capital, retained earnings and reserves of the Group as set forth on the consolidated balance sheet as of the Relevant Period ending on the last day of the period covered by the most recent Financial Report prepared in accordance with the Accounting Principles, less (without duplication) amounts attributable to Disqualified Stock of Holdco.

“Consolidated Total Assets” means the total assets of Holdco and the Restricted Subsidiaries as of the Relevant Period ending on the last day of the period covered by the most recent Financial Report, calculated on a consolidated basis in accordance with the Accounting Principles.

“CSD” means the Issuer’s central securities depository and registrar in respect of the Notes from time to time; initially Clearstream Banking S.A., Luxembourg.

“Current Shareholders” means (i) until 4 July 2017, the shareholders of Holdco as of the Issue Date, being directly 4finance Group S.A. (99.997%) and AS 4finance (0.003%) and indirectly Tirona Limited and beneficial owners thereof and their Affiliates, (ii) from 4 July 2017 until the Re-domiciliation Effective Date, being directly 4finance Group S.A. and indirectly Tirona Limited and beneficial owners thereof and their Affiliates and (iii) as of the Re-domiciliation Effective Date, the shareholders of Holdco, being directly 4finance Group Limited and indirectly Tirona Limited, Voya Prism Limited and Koppela Limited and beneficial owners thereof and their Affiliates.

“Derivative Transaction” has the meaning set forth in item (g) of the definition “Permitted Debt” below.

“Disqualified Stock” means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is ninety-one (91) days after the date on which the Notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require Holdco to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that Holdco may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with the restrictions set out in Clause 10.1 (*Distributions*). The amount of Disqualified Stock deemed to be outstanding at any time for purposes of these Terms and Conditions will be the maximum amount that Holdco and the Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

“EBITDA” means, in respect of the Relevant Period, the consolidated profit of the Group from ordinary activities according to the latest Financial Report:

- (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 exceptional 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) after adding back or deducting, as the case may be, 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 Group Companies.

"Equity Interest" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"Equity Listing Event" means an initial public offering of Capital Stock in Holdco or a Restricted Subsidiary, or any direct or indirect parent company of Holdco (the **"Listed Entity"**), from time to time, resulting in that such shares are quoted, listed, traded or otherwise admitted to trading on a Regulated Market or a recognised unregulated marketplace.

"Equity Listing Market Capitalisation" means an amount equal to (x) the total number of issued and outstanding shares of common stock or common equity interests of the Listed Entity at the time of closing of the Equity Listing Event multiplied by (y) the price per share at which such shares of common stock or common equity interests are sold in such Equity Listing Event.

"EUR" means the currency used by the institutions of the European Union and is the official currency of the Eurozone.

"Event of Default" means an event, circumstance or situation specified in Clause 11.1.

"Existing Bonds" means the (i) USD 200 million 11.75% senior unsecured notes due 2019 issued by the Issuer under an indenture dated 14 August 2014 between the Issuer, the Guarantors, TMF Trustee Limited as Trustee and Banque Internationale à Luxembourg S.A. as Transfer Agent, Paying Agent, Registrar and Authentication

Agent, including the guarantees provided by the Guarantors under such indenture, and the (ii) SEK 375 million 11.75 % senior unsecured callable fixed rate notes due 2018, issued by the Issuer on 27 March 2015.

“Existing Debt” means all Financial Indebtedness of Holdco and the Restricted Subsidiaries in existence on the Issue Date, including without limitation Financial Indebtedness provided under the Existing Shareholders’ Loan Agreement, the TKB Credit Line Agreement, the Existing Bonds and the guarantees provided by the Guarantors in relation to the Existing Bonds, the Existing Notes and the guarantees provided by the Guarantors in relation to the Existing Notes.

“Existing Notes Issue Date” means 23 May 2016.

“Existing Security” means all Security provided by Holdco and the Restricted Subsidiaries in existence on the Issue Date, including without limitation the Security provided for the Financial Indebtedness under the TKB Credit Line Agreement.

“Existing Shareholders’ Loan Agreement” means the revolving credit line agreement between AS 4finance and the Group’s majority shareholder Tirona Limited dated 29 May 2012.

“Final Redemption Date” means 23 ~~February 2025~~ May 2028.

“Finance Charges” means, for the Relevant 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 (calculated on a consolidated basis) without taking into account any (a) Transaction Costs, (b) unrealised gains or losses on any derivative instruments other than any derivative instruments which are accounted for on a hedge accounting basis, (c) losses arising on foreign currency revaluations of intercompany balances or (d) charges on pension balances.

“Finance Documents” means these Terms and Conditions, the Guarantees, the Agent Agreement, any Intercreditor Agreement and any other document designated by the Issuer and the Agent as a Finance Document.

“Financial Indebtedness” means any indebtedness in respect of:

- (a) monies borrowed or raised, including Market Loans, Shareholder Loans, and shareholders’ loans granted on arm lengths terms and conditions;
- (b) any Capital Lease Obligation (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 Capital Lease Obligation);
- (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 and treated as

- a borrowing under the Accounting Principles;
- (e) any Derivative Transaction (and, when calculating the value of any derivative transaction, only the mark to market value shall be taken into account);
 - (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 Report” means the annual audited consolidated financial statements of Holdco and the quarterly interim unaudited consolidated reports of Holdco, which shall be prepared and made available according to Clause 10.13.

“First Call Date” means the date falling twenty-four (24) months after the Existing Notes Issue Date or, to the extent such day is not a Business Day, the Business Day following from an application of the Business Day Convention.

“German Government Bond Rate” means the yield to maturity at the time of computation of direct obligations of Germany, acting through the Federal German Finance Agency (Ger. *Bundesrepublik Deutschland – Finanzagentur GmbH*) with a constant maturity (such yield to be the weekly average yield as officially compiled and published in the most recent financial statistics that has become publicly available at least two (2) Business Days (but not more than five (5) Business Days) prior to the relevant Redemption Date (or, if such financial statistics are not so published or available, any publicly available source of similar market data selected by the Issuer in good faith)) most nearly equal to the period from the relevant Redemption Date to the First Call Date; provided, however, that if the period from the relevant Redemption Date to the First Call Date is not equal to the constant maturity of a direct obligation of Sweden, acting through the Federal German Finance Agency for which a weekly average yield is given, the German Government Bond Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth (1/12) of a year) from the weekly average yields of direct obligations of Germany, acting through the Federal German Finance Agency, for which such yields are given, except that if the period from such Redemption Date to the First Call Date is less than one year, the weekly average yield on actually traded direct obligations of Germany, acting through the Federal German Finance Agency, adjusted to a constant maturity of one year shall be used.

“Governmental Authority” means any nation, sovereign or government, any state, province, territory or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial, regulatory, self-regulatory or administrative functions of or pertaining to government, including a central bank or stock exchange.

“Group” means the Issuer, Holdco and all its Subsidiaries from time to time. **“Group Company”** means the Issuer, Holdco or any of its Subsidiaries.

“Guaranteed Obligations” means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other

capacity whatsoever) of each Obligor to the Holders and the Agent (or any of them) under each Finance Document, together with all costs, charges and expenses incurred by any Holder or the Agent in connection with the protection, preservation or enforcement of its respective rights under the Finance Documents, or any other document evidencing such liabilities.

“**Guarantee**” has the meaning set forth in Clause 4.

“**Guarantors**” means Holdco and the Subsidiary Guarantors.

“**Holdco**” means the indirect parent company of the Issuer, i.e., (i) until the Re-domiciliation Effective Date 4finance Holding S.A., a public limited liability company (*société anonyme*) incorporated and existing under the laws of Luxembourg, registered with the Luxembourg Trade and Companies Register (Registre de Commerce et des Sociétés de Luxembourg) under number B 171059, and with its registered office located at 8-10, Avenue de la Gare, L-1610 Luxembourg, Grand Duchy of Luxembourg, and (ii) as of the Re-domiciliation Effective Date 4finance Holding Limited, a limited liability company, incorporated and existing under the laws of England and Wales, registered with the Companies House under Company number 13457443, and with its registered office located at 1 Mark Square, London, United Kingdom EC2A 4EG.

“**Holder**” means the Person who is registered on a Securities Account as direct registered owner (Ger: *Inhaber*) or nominee (Ger: *Treuhänder*) with respect to a Note.

“**Holders’ Meeting**” means a noteholders’ meeting among the Holders held in accordance with Clause 16.2 (*Holders’ Meeting*).

“**Incurrence Test**” is met if:

- (a) the Interest Coverage Ratio for the Relevant Period ending on the last day of the period covered by the most recent Financial Report (immediately preceding the date on which such additional Financial Indebtedness is incurred, such Disqualified Stock or such preferred stock is issued or such distribution, payment or merger is made, as the case may be) would have been at least 2.0 to 1.0, determined on a *pro forma* basis (including a *pro forma* application of any net proceeds therefrom), as if the additional Financial Indebtedness had been incurred, the Disqualified Stock or the preferred stock had been issued or the distribution, payment or merger had been made, as the case may be, at the beginning of such Relevant Period; and
- (b) the Capitalisation Ratio of Holdco on a consolidated basis is greater than 20.00 per cent, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), at the time of and immediately after giving *pro forma* effect to such incurrence;

provided that the figures for calculating the Interest Coverage Ratio (including the figures for EBITDA, Finance Charges and Net Finance Charges) *pro forma* in accordance with the above shall (as applicable) be adjusted so that:

- (i) any Financial Indebtedness that has been repaid, repurchased and cancelled by any Group Company during the Relevant Period, or after the end of the Relevant Period but before the relevant testing date, shall be excluded, *pro forma*, for the entire Relevant Period;
- (ii) entities acquired or disposed of by the Group during the Relevant Period, or after the end of the Relevant Period but before the relevant testing date, shall be included or excluded (as applicable), *pro forma*, for the entire Relevant Period; and
- (iii) any entity to be acquired with the proceeds from new Financial Indebtedness shall be included, *pro forma*, for the entire Relevant Period.

“Intercreditor Agreement” means an intercreditor agreement satisfactory to the Agent entered into by the Agent (on behalf of itself and the Holders) as senior creditor, any subordinated creditor and Holdco or any Restricted Subsidiary, as relevant, as borrower, on or about the Existing Notes Issue Date.

“Interest” means the interest on the Notes calculated in accordance with Clauses 5.1 to 5.3.

“Interest Coverage Ratio” means the ratio of EBITDA to Net Finance Charges.

“Interest Payment Date” means (i) until 23 November 2021, on the 23 May and 23 November of each year (with the first Interest Payment Date of the Existing Notes being on 23 November 2016, the first Interest Payment Date of the Notes being 23 May 2017 and the last Interest Payment Date being the Final Redemption Date) and (ii) after 23 November 2021, on the 23 February, 23 May, 23 August and 23 November of each year, or, to the extent any such day is not a Business Day, the Business Day following from an application of the Business Day Convention.

“Interest Period” means, with respect to the Existing Notes, each period beginning on (and including) the Existing Notes Issue Date or any Interest Payment Date and ending on (but excluding) the next succeeding Interest Payment Date (or a shorter period if relevant) and, in respect of the Notes or any notes subsequently issued, each period beginning on (and including) the Interest Payment Date falling immediately prior to its issuance and ending on (but excluding) the next succeeding Interest Payment Date (or a shorter period if relevant), in no case adjusted due to an application of the Business Day Convention.

“Interest Rate” means a fixed interest rate of 11.25 per cent per annum.

“Issue Date” means 23 November 2016.

“Issuer” means 4finance S.A., a public limited liability company (*société anonyme*) incorporated and existing under the laws of Luxembourg, registered with the Luxembourg Trade and Companies Register (*Registre de Commerce et des Sociétés de Luxembourg*) under number B 173403, and with its registered office located at 8-10, Avenue de la Gare, L-1610 Luxembourg, Grand Duchy of Luxembourg.

“Lead Manager” means Wallich & Matthes B.V.

“Listed Entity” has the meaning set forth in the definition “Equity Listing Event” above.

“Luxembourg” means the Grand Duchy of Luxembourg and, when used in a geographical sense, means the territory of the Grand Duchy of Luxembourg.

“Luxembourg Company Law” means the Luxembourg law of 10 August 1915, on commercial companies, as amended from time to time.

“Make Whole Amount” means an amount equal to the sum of:

- (x) the present value on the relevant Record Date of 106.00 per cent. of the Nominal Amount as if such payment originally should have taken place on the First Call Date; and
- (y) the present value on the relevant Record Date of the remaining Interest payments (excluding accrued but unpaid Interest up to the relevant Redemption Date) up to and including the First Call Date;

both calculated by using a discount rate of fifty (50) basis points over the comparable German Government Bond Rate (*i.e.* comparable to the remaining duration of the Notes until the First Call Date).

“Management Repurchase” means the repurchase, redemption or other acquisition or retirement for value of any Equity Interest of Holdco or any Restricted Subsidiary held by any future, current or former officer, consultant, director or employee of Holdco or any Restricted Subsidiary (or any permitted transferee of such current or former officers, directors, consultants or employees) pursuant to any equity subscription agreement, stock option agreement, shareholders’ agreement or similar agreement; provided that the aggregate price paid for all such repurchased redeemed, acquired or retired Equity Interest may not exceed EUR 5,000,000 in any fiscal year or EUR 10,000,000 in the aggregate; provided, further, that such amount in any fiscal year may be increased by (x) the cash proceeds of any key-man life insurance policies received by Holdco and the Restricted Subsidiaries and (y) an amount not to exceed the cash proceeds from the sale of Equity Interests of Holdco to members of management or directors of Holdco, any of the Restricted Subsidiaries or any of its direct or indirect parent companies to the extent the cash proceeds from the sale of Equity Interests have not otherwise been applied to the making of Restricted Payments.

“Market Capitalisation” means an amount equal to the total number of issued and outstanding shares of common stock or common equity interests of the Listed Entity on the date of the declaration of the contemplated Permitted Payment multiplied by the arithmetic mean of the closing prices per share of such common stock or common equity interests for the thirty (30) consecutive Business Days immediately preceding the date of declaration of such contemplated Permitted Payment.

“Market Loan” means any loan or other indebtedness where an entity issues commercial paper, certificates, convertibles, 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 Frankfurt Stock Exchange or any other Regulated Market 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 Issuer’s or the Guarantors’ ability or willingness to perform and comply with its payment and other undertakings under the Finance Documents or (c) the validity or enforceability of the Finance Documents.

“Material Group Company” means Holdco, the Issuer and each Guarantor and any other Restricted Subsidiary representing more than 5.00 per cent. of either (a) the total assets of the Group on a consolidated basis (for the avoidance of doubt, excluding any intra-group transactions) or (b) the EBITDA of the Group on a consolidated basis according to the latest Financial Report.

“Net Finance Charges” means, for the Relevant Period, the Finance Charges according to the latest consolidated Financial Report, after deducting any interest payable for the relevant period to any Group Company and any interest income relating to Cash and Cash Equivalents investments of the Group (and excluding any (a) payment-in-kind interest capitalized on Shareholder Loans, (b) gains arising on foreign currency revaluations of intercompany balances or (c) income on pension balances).

“Net Loan Portfolio” means, as of any date of determination, the sum of loans, securities, investments, receivables and reserves minus allowances for loss of Holdco and the Restricted Subsidiaries as set forth on the consolidated balance sheet as of the Relevant Period ending on the last day of the period covered by the most recent Financial Report, prepared in accordance with the Accounting Principles.

“Net Proceeds” means the proceeds from the Bond Issue, after deduction has been made for the transaction costs payable by the Issuer to the Lead Manager for the services provided in relation to the placement and issuance of the Notes.

“Nominal Amount” has the meaning set forth in Clause 2.1.

“Note” means a debt instrument (Ger: *Schuldverschreibung*) for the Nominal Amount pursuant to Sec. 793 et seq. of the German Civil Code (Ger: *Bürgerliches Gesetzbuch*) and which are governed by and issued under these Terms and Conditions, including any Subsequent Bond.

“Obligors” means the Issuer and the Guarantors.

“Permitted Basket” has the meaning set forth in item (n) of the definition “Permitted Debt” below.

“Permitted Business” means any businesses, services or activities that are the same as, or reasonably related, ancillary or complementary to, any of the businesses, services or activities in which Holdco and its Restricted Subsidiaries are engaged on the Issue Date, and reasonable extensions, developments or expansions of such businesses, services or activities.

“Permitted Debt” means any Financial Indebtedness:

- (a) incurred by Holdco or any of the Restricted Subsidiaries under the Finance Documents (including pursuant to any Subsequent Bond Issue, if such incurrence meets the Incurrence Test calculated on a *pro forma* basis as if such incurrence had been made at the beginning of the Relevant Period ending on the last day of the period covered by the most recent Financial Report);
- (b) incurred by Holdco or any of the Restricted Subsidiaries under any Existing Debt;
- (c) the incurrence by Holdco or any of the Restricted Subsidiaries of Financial Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations or other financings, in each case, incurred for the purpose of financing or refinancing all or any part of the purchase price or cost of design, development, construction, lease, installation or improvement of property, plant or equipment used in the business of Holdco or any of the Restricted Subsidiaries and including any reasonable related fees or expenses incurred in connection with such acquisition or development, in an aggregate principal amount not to exceed the greater of (i) EUR 5,000,000 and (ii) 2.00 per cent. of Consolidated Total Assets at any time outstanding;
- (d) the incurrence by Holdco or any of the Restricted Subsidiaries of Financial Indebtedness (for the purpose of this definition, "**Refinancing Indebtedness**") issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge (for the purpose of this definition, "**Refinance**") any Financial Indebtedness, provided that: (i) the principal amount (or accreted value, if applicable) of the Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Financial Indebtedness to be Refinanced; (ii) the tenor of the Refinancing Indebtedness expires at a later date than the tenor of the Financial Indebtedness to be Refinanced; (iii) if the Financial Indebtedness to be Refinanced is subordinated in right of payment to the Notes, such subordination shall apply also to the Refinancing Indebtedness; and (iv) the obligors (including the debtor, guarantors and entities providing security) under the Refinancing Indebtedness are the same as under the Financial Indebtedness to be refinanced;
- (e) incurred by Holdco or any of the Restricted Subsidiaries as intercompany Financial Indebtedness provided by Holdco or a Restricted Subsidiary, provided, however, that: (i) if (A) the Issuer or any Guarantor is the obligor of any such Financial Indebtedness and (B) the payee is not the Issuer or a Guarantor, then such Financial Indebtedness must be unsecured and expressly subordinated to the prior payment in full in cash of all obligations then due under the Finance Documents; and (ii) (A) any subsequent issuance or transfer of Equity Interests that results in any Financial Indebtedness incurred under this clause being held by a Person other than Holdco or a Restricted Subsidiary of Holdco; and (B) any sale or other transfer of any Financial Indebtedness incurred under this clause to a Person that is not either Holdco or a Restricted Subsidiary of Holdco will be deemed, in each case, to constitute an incurrence of such Financial Indebtedness by Holdco or such Restricted Subsidiary, as the case may be, that was not

permitted by this clause;

- (f) the issuance by any Restricted Subsidiary to Holdco or another Restricted Subsidiary of shares of preferred stock; provided, however, that: (i) any subsequent issuance or transfer of Equity Interests that results in any such preferred stock being held by a Person other than Holdco or a Restricted Subsidiary of Holdco; and (ii) any sale or other transfer of any such preferred stock to a Person that is not either Holdco or a Restricted Subsidiary of Holdco, will be deemed, in each case, to constitute an issuance of such preferred stock by such Restricted Subsidiary that was not permitted by this item (f);
- (g) arising under a derivative transaction entered into by a Holdco or a Restricted Subsidiary in connection with protection against or benefit from fluctuation in any rate or price where such exposure arises in the ordinary course of business or in respect of payments to be made under these Terms and Conditions (excluding for the avoidance of doubt any derivative transaction which in itself is entered into for investment or speculative purposes) (“**Derivative Transaction**”);
- (h) the guarantee by Holdco or any Restricted Subsidiary of Financial Indebtedness of Holdco or a Restricted Subsidiary, to the extent that the guaranteed Financial Indebtedness was permitted to be incurred by another provision of these Terms and Conditions; provided that, if the Financial Indebtedness being guaranteed is subordinated to or *pari passu* with the Notes, then the Guarantee must be subordinated or *pari passu*, as applicable, to the same extent as the Financial Indebtedness guaranteed;
- (i) incurred by Holdco or any of the Restricted Subsidiaries as a result from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Financial Indebtedness is covered within five (5) Business Days;
- (j) incurred as a result of Holdco or a Restricted Subsidiary acquiring or merging with another entity and which is due to the fact that such entity holds Financial Indebtedness, provided that: either (i) Holdco would be permitted to incur at least EUR 1.00 of additional Financial Indebtedness pursuant to the Incurrence Test (calculated on a *pro forma* basis including the acquired or merged entity, as the case may be, as if acquired or merged, as the case may be, at the beginning of the relevant Period ending on the last day of the period covered by the most recent Financial Report); or (ii) each of the Interest Coverage Ratio and the Capitalisation Ratio of Holdco and its Restricted Subsidiaries would not be lower than it was immediately prior to giving effect to such acquisition or merger (in each case calculated on a *pro forma* basis including the acquired or merged entity, as the case may be);
- (k) incurred by Holdco or any of the Restricted Subsidiaries under a Shareholder Loan;
- (l) incurred by Holdco or any of the Restricted Subsidiaries in the ordinary course of business (including Financial Indebtedness incurred under Advance

Purchase Agreements, under any pension and tax liabilities and related to any agreements under which Holdco or a Restricted Subsidiary leases office space or other premises);

- (m) Financial Indebtedness consisting of local lines of credit or working capital facilities not exceeding EUR 3,000,000 at any one time outstanding; and
- (n) Financial Indebtedness in an aggregate principal amount (or accreted value, as applicable) which, when taken together with the principal amount of any other Financial Indebtedness incurred under this item (n) and outstanding will not exceed EUR 10,000,000; provided that the aggregate outstanding principal amount of Financial Indebtedness incurred under this item (n) by Restricted Subsidiaries that are not Guarantors does not exceed EUR 3,000,000 (all such Financial Indebtedness is together referred to as the “**Permitted Basket**”).

“**Permitted Loans**” means:

- (a) any loan granted by Holdco or any of the Restricted Subsidiaries as intercompany Financial Indebtedness to Holdco or a Restricted Subsidiary;
- (b) any guarantee of Financial Indebtedness permitted to be incurred under Clause 10.4 (Financial Indebtedness and Disqualified Stock) and the definition “Permitted Debt” above;
- (c) any loan arising under a Derivative Transaction;
- (d) any loan existing on the Issue Date; provided that the amount of any such loan may be increased (i) as required by the terms of such loan (as in existence on the Issue Date) and (ii) as otherwise permitted under these Terms and Conditions;
- (e) any loan acquired after the Issue Date as a result of the acquisition by Holdco or any Restricted Subsidiary or another Person (including by way of a merger, amalgamation or consolidation with or into Holdco or any Restricted Subsidiary) in a transaction that is permitted under these Terms and Conditions;
- (f) any loan granted in the ordinary course of business (including accounts receivable, cash deposits, prepayments, supplier credit and consumer loans or participations therein arising in the ordinary course of business);
- (g) loans or advances to employees made in the ordinary course of business of Holdco or any Restricted Subsidiary of Holdco in an aggregate principal amount not to exceed EUR 2,000,000 at any time outstanding;
- (h) loans, advances or guarantees to directors, officers and employees of Holdco or any Restricted Subsidiary to cover, travel, entertainment or moving-related expenses enacted in the ordinary course of business; and
- (i) loans to any Group Company or another entity in which a Group Company holds at least 10.00 per cent. Equity Interest which is engaged in a Permitted Business,

provided that such loans shall not exceed the greater of EUR 5,000,000 and 2.00 per cent of Consolidated Total Assets.

“Permitted Payments” means:

- (a) any Management Repurchase;
- (b) so long as no Event of Default has occurred and is continuing (or would result therefrom), the declaration and payment of regularly scheduled or accrued dividends to holders of any class or series of Disqualified Stock of Holdco or any preferred stock of any Restricted Subsidiary issued on or after the Issue Date in accordance with these Terms and Conditions; and
- (c) so long as no Event of Default has occurred and is continuing (or would result therefrom), the declaration and payment by Holdco or a Restricted Subsidiary of, or loans, advances, dividends or distributions to any parent company of Holdco or a Restricted Subsidiary to pay, dividends or distributions on, or repurchases, redemptions, acquisitions or retirements of, the common stock or common equity interests of Holdco or a Restricted Subsidiary or any direct or indirect parent company of Holdco or a Restricted Subsidiary following an Equity Listing Event of such common stock or common equity interests, in an amount not to exceed in any financial year the greater of:
 - (d) 6.00 per cent. of the net cash proceeds received from such Equity Listing Event by Holdco or a Restricted Subsidiary, or the net cash proceeds of any such Equity Listing Event of Capital Stock of any direct or indirect parent company of Holdco or a Restricted Subsidiary that are contributed in cash to Holdco’s or the Restricted Subsidiary’s equity (other than through the issuance of Disqualified Stock); and
 - (e) an amount equal to the greater of (A) 6.00 per cent. of the Market Capitalisation and (B) 6.00 per cent. of the Equity Listing Market Capitalisation; provided that in the case of this item (ii), after giving *pro forma* effect to any such contemplated Permitted Payment, the Consolidated Leverage Ratio of Holdco would not exceed 1.50 to 1.00.

“Permitted Security” means any Security:

- (a) provided in accordance with the Finance Documents;
- (b) which is an Existing Security;
- (c) provided in relation to any agreement under which Holdco or a Restricted Subsidiary leases office space or other premises provided such lease constitutes Permitted Debt;
- (d) arising by operation of law or in the ordinary course of business (including collateral or retention of title arrangements in connection with but, for the avoidance of doubt, not including guarantees or security in respect of any monies borrowed or

raised);

- (e) provided in relation to a Derivative Transaction and not consisting of security interests in shares in Holdco or any Restricted Subsidiary;
- (f) incurred as a result of Holdco or a Restricted Subsidiary acquiring another entity and which is due to that such acquired entity has provided security, provided that the debt secured with such security constitutes Permitted Debt in accordance with item (j) of the definition “Permitted Debt” above;
- (g) provided to secure Financial Indebtedness permitted by item (c) of the definition “Permitted Debt” above, covering only the assets acquired with or financed by such Financial Indebtedness;
- (h) provided to secure Financial Indebtedness permitted by item (d) of the definition “Permitted Debt” above, provided, however, (i) the new Security is limited to all or part of the same property and assets that secured the existing Financial Indebtedness or, under the written agreements pursuant to which the original Security arose, could secure the original Security (plus improvements and accessions to, such property or proceeds or distributions thereof); and (ii) the Financial Indebtedness secured by the new Security is not increased to any amount greater than the sum of (A) the outstanding principal amount, or, if greater, committed amount, of the Financial Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged with such new Financial Indebtedness and (B) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge;
- (i) provided to secure Financial Indebtedness permitted by item (m) of the definition “Permitted Debt” above;
- (j) over assets or property of a Restricted Subsidiary that is not a Guarantor securing Financial Indebtedness of any Restricted Subsidiary that is not a Guarantor;
- (k) over assets or property of Holdco or any Restricted Subsidiary securing Financial Indebtedness or other obligations of Holdco or such Restricted Subsidiary owing to Holdco or another Restricted Subsidiary, or Security in favour of Holdco or any Restricted Subsidiary; and
- (l) provided in relation to the Permitted Basket and not consisting of security interests in shares in any Guarantor.

“**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.

“**Record Date**” means the Business Day prior to (a) an Interest Payment Date, (b) a Redemption Date, (c) a date on which a payment to the Holders is to be made, (d) the date of a Holders’ Meeting or (e) another relevant date, or in each case such

other Business Day falling prior to a relevant date if generally applicable on the German bond market.

“Redemption Date” means the date on which the relevant Notes are to be redeemed or repurchased in accordance with Clause 6 (*Maturity, Redemption, Early Redemption, Repurchase*).

“Re-domiciliation” means the transfer of shares of 4finance Holding S.A. from 4finance Group S.A. to 4finance Holding Limited, without the occurrence of a Change of Control Event as of the Re-domiciliation Effective Date.

“Re-domiciliation Effective Date” means the date on which the Re-domiciliation becomes effective.

“Regulated Market” means any regulated market (as defined in Directive 2004/39/EC on markets in financial instruments).

“Relevant Period” means each period of twelve (12) consecutive calendar months.

“Restricted Payment” has the meaning set forth in Clause 10.1 (*Distributions*).

“Relevant Taxing Jurisdiction” means (a) Latvia, Luxembourg or any political subdivision or Governmental Authority thereof or therein having power to tax, (b) any jurisdiction from or through which payment on any Note or Guarantee is made by the Issuer, any Guarantor or their agents, or any political subdivision or Governmental Authority thereof or therein having the power to tax or (c) any other jurisdiction in which the Issuer or Guarantors are incorporated or organised, resident for tax purposes.

“Restricted Subsidiaries” means any Subsidiary of Holdco, including the Issuer and the Subsidiary Guarantors that is not an Unrestricted Subsidiary.

“SchVG” means the German Act on Issues of Debt Securities (Ger: *Gesetz über Schuldverschreibungen aus Gesamtemissionen* – in short: *Schuldverschreibungsgesetz*)

“Security” has the meaning set forth in Clause 10.5 (*Negative pledge*).

“Shareholder Loan” means any loan raised by Holdco or a Restricted Subsidiary from its current or previous direct or indirect shareholders (excluding Holdco and other Restricted Subsidiaries), if such shareholder loan (a) according to its terms and pursuant to an Intercreditor Agreement, is subordinated to the obligations of the Obligors under the Finance Documents, (b) according to its terms have a final redemption date or, when applicable, early redemption dates or instalment dates which occur after the Final Redemption Date and according to its terms yield only payment-in-kind interest or where payment of principal and interest can only be made under Clause 10.1 (*Distributions*).

“Subsidiary” means, in relation to any person, any legal entity (whether incorporated or not), in respect of which such person, directly or indirectly, (a) owns shares or ownership rights representing more than 50.00 per cent. of the total number of

votes held by the owners, (b) otherwise controls more than 50.00 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.

“Subsidiary Guarantors” means AS 4finance, 4finance ApS, UAB 4finance, 4finance Oy (until 23 December 2020), 4finance AB, Vivus Finance Sp. z o.o., Vivus Finance S.A., UAB Credit Service, 4finance LLC (until 4 February 2020), Zaplo Finance s.r.o. (as of 25 August 2020) and 4finance Holding S.A. (as of the Re-domiciliation Effective Date), together with any Additional Guarantor.

“Taxes” means all present and future taxes, levies, imposts, deductions, charges, duties and withholdings and any charges of a similar nature (including, without limitation, interest, penalties and other liabilities with respect thereto) that are imposed by any government or other taxing authority.

“Third Party” means any Person other than Holdco or the Restricted Subsidiaries.

“TKB Credit Line Agreement” means the credit line agreement between AS 4finance and AS Trasta Komerbanka No.KL-11/2011 dated 17 May 2011.

“Transaction Costs” means all fees, costs and expenses incurred by a Group Company in connection with (a) the Bond Issue or a Subsequent Bond Issue and (b) the listing of the Notes on Frankfurt Stock Exchange.

“Unrestricted Subsidiary” means any Subsidiary of Holdco other than the Issuer or the Guarantors that is designated by the board of directors of Holdco as an Unrestricted Subsidiary pursuant to a resolution of the board of directors, but only to the extent that such Subsidiary:

- (a) has no Financial Indebtedness other than Financial Indebtedness (i) as to which neither Holdco nor any of the Restricted Subsidiaries (A) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Financial Indebtedness) or (B) is directly or indirectly liable as a guarantor or otherwise and (ii) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of Holdco or any of the Restricted Subsidiaries (other than the Equity Interests of an Unrestricted Subsidiary); except to the extent that Holdco or the relevant Restricted Subsidiary would be permitted to provide credit support, or be directly or indirectly liable as a guarantor or otherwise, pursuant to Clause 10.4 (*Financial Indebtedness and Disqualified Stock*);
- (b) except as permitted under these Terms and Conditions, is not party to any agreement, contract, arrangement or understanding with Holdco or any Restricted Subsidiary unless the terms of any such agreement, contract, arrangement or understanding are no less favourable to Holdco or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of Holdco;
- (c) is a Person with respect to which neither Holdco nor any of the Restricted Subsidiaries has any direct or indirect obligation (i) to subscribe or additional Equity

Interests or (ii) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and

- (d) has not guaranteed or otherwise directly or indirectly provided credit support for any Financial Indebtedness of Holdco or any of the Restricted Subsidiaries.

"Vote without Meeting" means the written procedure for decision making among the Holders in accordance with Clause 16.3 (*Vote without Meeting*).

(2) Construction

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

- **"assets"** includes present and future properties, revenues and rights of every description;
- any agreement or instrument is a reference to that agreement or instrument as supplemented, amended, novated, extended, restated or replaced from time to time;
- a **"regulation"** includes any regulation, rule or official directive (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency or department;
- an Event of Default is continuing if it has not been remedied or waived;
- an **"enforcement"** of a Guarantee means making a demand for payment under a Guarantee;
- a provision of law is a reference to that provision as amended or re-enacted; and
- a time of day is a reference to Frankfurt/Main time.

- (b) When ascertaining whether a limit or threshold specified in EUR 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 EUR for the previous Business Day, as published by the German Central Bank (Ger: *Deutsche Bundesbank*) on its website (www.bundesbank.de). 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 Germany promptly and in a non-discriminatory manner.

- (d) No delay or omission of the Agent or of any Holder to exercise any right or remedy under these Terms and Conditions shall impair or operate as a waiver of any such right or remedy.

§ 2 Currency, Form, Principal Amount and Denomination, Global Certificate

- (1) **Principal Amount, Currency and Denomination.** This issue of 4finance S.A., Luxembourg (the "**Issuer**"), in the aggregate principal amount of EUR 50,000,000.00 (in words: fifty million Euros (the "**Issue Currency**")) is divided into notes (the "**Notes**") payable to the bearer and ranking *pari passu* among themselves in the denomination of EUR 1,000.00 (the "**Nominal Amount**") each, to be consolidated and form a single series with the existing EUR 100,000,000.00 (in words: one hundred million Euros) 11.25 % Senior Notes 2016/~~2025~~2028 with a term from 23 May 2016 until 23 ~~February 2025~~May 2028 (the "**Existing Notes**") as from the Issue Date.
- (2) The Notes are being issued in bearer form (German: "*Inhaberschuldverschreibung*").
- (3) **Global Certificate and Custody.** The Notes will initially be represented for the whole life of the Notes by a temporary global bearer certificate (the "**Temporary Global Note**") without interest coupons, which will be exchanged not earlier than 40 days and not later than 180 days after the Issue Date against a permanent global bearer certificate (the "**Permanent Global Note**") without interest coupons. Such exchange shall only be made upon delivery of certifications to the effect that the beneficial owner or owners of the Notes represented by the Temporary Global Note is not a U.S. person (other than certain financial institutions or certain persons holding Notes through such financial institutions) in accordance with the rules and operating procedures of the Clearing System. Payments of interest on Notes represented by a Temporary Global Note will be made only after delivery of such certifications. A separate certification shall be required in respect of each such payment of interest. Any such certification received on or after the 40th day after the date of issue of the Notes represented by the Temporary Global Note will be treated as a request to exchange such Temporary Global Note pursuant to this paragraph (2). Any securities delivered in exchange for the Temporary Global Note shall be delivered only outside of the United States.
- (4) The Temporary Global Note and the Permanent Global Note shall only be valid if each bears the handwritten signature of representatives of the Issuer in a number required for the representation of the Issuer. Each such Temporary Global Note and Permanent Global Note will be deposited with, or on behalf of, a common depository and registered in the name of such nominee of the common depository for the accounts of Clearstream and Euroclear. The Temporary Global Note and the Permanent Global Note (both referred to as "**Global Certificate**") will be deposited with Clearstream Banking S.A. Luxembourg, business address 42, av. J.-F. Kennedy, L-1855 Luxembourg, together with any successor in such capacity (the "**Clearing System**") until all obligations of the Issuer under the Notes have been satisfied. The Holders have no right to require the issue of definitive Notes or interest coupons.
- (5) **Delivery of Notes.** The holders of the Notes (the "**Holders**") are entitled to proportionate co-ownership shares regarding the Global Certificate, which shall be transferable pursuant to the rules of the Clearing System and, outside the Federal Republic of Germany,

of Clearstream Banking S.A., Luxembourg („**Clearstream Luxembourg**“), and Euroclear Bank S.A/N.V., Brussels, as operator of the Euroclear system („**Euroclear**“).

§ 3 Status of the Notes

- (1) **Status.** The Notes constitute direct, unconditional, unsubordinated and unsecured obligations of the Issuer and shall at all times rank *pari passu* with all general, direct, unconditional, unsubordinated and unsecured obligations of the Issuer and without any preference among themselves and at least *pari passu* with any present or future obligation which (i) is issued by the Issuer and the obligations under which rank or are expressed to rank *pari passu* with the Issuer's obligations under the Notes, or (ii) benefits from a guarantee or support agreement expressed to rank *pari passu* with its obligations under the Notes, save for certain mandatory exceptions provided by statutory law.
- (2) **Guarantee.** Holdco and the Subsidiary Guarantors (the "**Guarantor(s)**") have given an unconditional and irrevocable guarantee (the "**Guarantee**") for the due and punctual payment of principal of, and interest on, and any other amounts payable under any Notes. The Guarantee constitutes an independent payment obligation (Ger: *selbständiges Zahlungsversprechen*) in the form of a contract for the benefit of the Holders from time to time as third party beneficiaries (Ger: *Vertrag zugunsten Dritter*) in accordance with section 328 paragraph 1 of the German Civil Code (*Bürgerliches Gesetzbuch*), giving rise to the right of each Holder to require performance of the Guarantee directly from the Guarantor and to enforce the Guarantee directly against the Guarantor, notwithstanding the possibility to enforce the Guarantee through the Agent under these Terms and Conditions. Copies of the Guarantee may be obtained free of charge at the specified office of the Agent.

§ 4 Guarantee

- (1) **Status of the Guarantee.** The Guarantee will rank *pari passu* with all of the Guarantors' existing and future senior unsecured debt and senior to all of their existing and future subordinated debt, notwithstanding certain limitation under the laws of the relevant Guarantor's jurisdiction.
- (2) **Limitations by Statutory Law.** The obligations and liabilities of and the guarantee issued by each Guarantor under the Guarantee shall be limited if required (but only if and to the extent required) under any applicable law or regulation in the respective jurisdiction in which each of the Guarantors are incorporated.
- (3) In accordance with the Guarantee, and in addition to the payment guarantees described in Clause 4.1:
 - (a) Holdco shall undertake to comply and to procure that, to the extent applicable to the Issuer and/or the other Group Companies, the Issuer and each other Group Company complies with Clauses 10.1 (*Distributions*), 10.2 (*Listing of Notes*), 10.3 (*Nature of business*), 10.4 (*Financial Indebtedness and Disqualified Stock*), 10.5 (*Negative pledge*), 10.6 (*Loans out*), 10.7 (*Disposals of assets*), 10.8 (*Mergers*),

10.9 (*Dividend and other payment restrictions*), 10.10 (*Additional Guarantee*), 10.11 (*Dealings with related parties*), 10.12 (*Compliance with law*) and 10.13 (*Financial reporting and information*); and

(b) the Subsidiary Guarantors shall undertake to comply with Clauses 10.1 (*Distributions*), 10.3 (*Nature of business*), 10.4 (*Financial Indebtedness and Disqualified Stock*), 10.5 (*Negative pledge*), 10.6 (*Loans out*), 10.7 (*Disposals of assets*), 10.8 (*Mergers*), 10.9 (*Dividend and other payment restrictions*), 10.10 (*Additional Guarantee*), 10.11 (*Dealings with related parties*) and 10.12 (*Compliance with law*).

- (4) Pursuant to the Guarantee the Issuer and Holdco shall procure that the Guarantees and all documents relating thereto are duly executed by the relevant Guarantor in favour of the Holders and that such documents are legally valid, enforceable and in full force and effect according to their terms. The Issuer shall procure the execution of such further documentation by the Guarantors as the Agent may reasonably require in order for the Holders to at all times maintain the guarantee position envisaged under these Terms and Conditions and the Guarantees.
- (5) If a Holders' Meeting (Clause 16.2) has been convened, or a Vote without Meeting (Clause 16.3) instigated, to decide on the termination of the Notes and/or the enforcement of all or any of the Guarantees, the Agent is obligated, to take actions in accordance with the Holders' decision regarding the Guarantees. However, if the Notes are not terminated due to that the cause for termination has ceased or due to any other circumstance mentioned in these Terms and Conditions, the Agent shall not enforce any of the Guarantees. If the Holders, without any prior initiative from the Agent or the Issuer, have made a decision regarding termination of the Notes and enforcement of any of the Guarantees in accordance with the procedures set out in Clauses 16.2 (*Holders' Meeting*) and 16.3 (*Vote without Meeting*), the Agent shall promptly declare the Notes terminated and enforce the Guarantees. The Agent is however not liable to take action if the Agent considers cause for termination and/or acceleration not to be at hand, unless the instructing Holders in writing commit to holding the Agent indemnified and, at the Agent's own discretion, grant sufficient security for the obligation.
- (6) For the purpose of exercising the rights of the Holders and the Agent under these Terms and Conditions and for the purpose of distributing any funds originating from the enforcement of any Guarantees, the Issuer irrevocably authorizes and empowers the Agent to act in the name of the Issuer, and on behalf of the Issuer, to instruct the CSD to arrange for payment to the Holders. To the extent permissible by law, the powers set out in this Clause 4.5 are irrevocable and shall be valid for as long as any Notes remain outstanding. The Issuer shall immediately upon request by the Agent provide the Agent with any such documents, including a written power of attorney (in form and substance to the Agent's satisfaction), which the Agent deems necessary for the purpose of carrying out its duties.
- (7) The Agent shall, upon the Issuer's written request and expense, promptly release a Guarantor from its obligations under a Guarantee:
 - (a) except in the case of the Guarantees provided by Holdco or AS 4finance, in connection with (i) any sale or other disposal of Equity Interests whether by direct sale

or sale of a holding company (other than Holdco or AS 4finance) of that Guarantor (other than Holdco or AS 4finance) or by way of merger, consolidation or otherwise or (ii) any sale or other disposal of all or substantially all of the assets of that Guarantor (other than Holdco or AS 4finance); to a Person that is not (either before or after giving effect to such transaction) Holdco or a Restricted Subsidiary, provided however, that such sale or other disposal does not violate Clause 10.7 (*Disposals of assets*) or Clause 10.8 (*Mergers*) and the relevant

- (b) Guarantor ceases to be a Restricted Subsidiary as a result of the sale or other disposition;
- (c) in the case of any Additional Guarantor that after the Issue Date is required to provide a new Guarantee pursuant to Clause 10.10 (*Additional Guarantee*), upon the release or discharge of its guarantee of Financial Indebtedness which resulted in the obligation to provide such new Guarantee so long as no other Financial Indebtedness is at that time guaranteed by the Additional Guarantor that would result in the requirement to provide a new Guarantee pursuant to Clause 10.10 (*Additional Guarantee*); and
- (d) when all the Guaranteed Obligations have been duly and irrevocably paid and discharged in full.

§ 5 Interest

- (1) **Interest Rate and Interest Payment Dates.** The Notes shall bear interest at the rate of 11.25 % per annum on their Principal Amount from 23 November 2016 (the “**Interest Commencement Date**”). Interest shall be payable (i) until 23 November 2021, semi-annually in arrears on the 23 May and 23 November of each year and (ii) after 23 November 2021, quarterly in arrears on the 23 February, 23 May, 23 August and 23 November of each year and, with respect to the final Interest payment, on the Final Redemption Date (each, an “**Interest Payment Date**”), commencing on 23 May 2017. Interest shall cease to accrue with the expiration of the day preceding the day of repayment.
- (2) **Default Interest.** If the Issuer fails to redeem the Notes on the day on which they become due for redemption within five Business Days, 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 2 % higher than the Interest Rate.
- (3) **Day Count Fraction.** Where interest is to be calculated in respect of a period which is shorter than or equal to a full Interest Period, the interest will be calculated on the basis of Rule 251 ICMA (ACT/ACT).

§ 6 Maturity, Redemption, Early Redemption, Repurchase

- (1) **Redemption at maturity.** The Issuer shall redeem all, but not only some, of the Notes in full on the Final Redemption Date (or, to the extent such day is not a Business Day, on the Business Day following from an application of the Business Day Convention) with an amount per Note equal to the Nominal Amount together with accrued but unpaid Interest.
- (2) **The Group Companies’ purchase of Notes.** Any Group Company may, subject to applicable law, at any time and at any price purchase Notes. Notes held by a Group Company may at such Group Company’s discretion be retained, sold or, if held by the Issuer, cancelled.
- (3) **Early voluntary redemption by the Issuer (call option)**
 - (a) The Issuer may redeem all, but not only some, of the outstanding Notes in full on any Business Day before the Final Redemption Date at the applicable Call Option Amount together with accrued but unpaid Interest.
 - (b) Redemption in accordance with Clause 6.3 shall be made by the Issuer giving not less than fifteen (15) Business Days’ notice to the Holders and the Agent. Any such notice shall state the Redemption Date and the relevant Record Date and is irrevocable but may, at the Issuer’s discretion, contain one or more conditions precedent. Upon expiry of such notice and the fulfilment of the conditions precedent (if any), the Issuer is bound to redeem the Notes in full at the applicable amounts.

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

- (a) Upon a Change of Control Event occurring, each Holder shall have the right to request that all, or only some, of its Notes are repurchased (whereby the Issuer shall have the obligation to repurchase such Notes) at a price per Note equal to 101.00 per cent. of the Nominal Amount together with accrued but unpaid Interest; during a period of thirty (30) calendar days following a notice from the Issuer of the Change of Control Event pursuant to Clause 10.13. The thirty (30) calendar days' period may not start earlier than upon the occurrence of the Change of Control Event.
- (b) The notice from the Issuer pursuant to Clause 10.13 shall specify the repurchase date and include instructions about the actions that a Holder needs to take if it wants Notes held by it to be repurchased. If a Holder 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 Notes and the repurchase amount shall fall due on the repurchase date specified in the notice given by the Issuer pursuant to Clause 10.13. The repurchase date must fall no later than twenty (20) Business Days after the end of the period referred to in Clause 6.4 a).
- (c) The Issuer shall comply with the requirements of any applicable securities laws or regulations in connection with the repurchase of Notes. To the extent that the provisions of such laws and regulations conflict with the provisions in this Clause 6.4, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Clause 6.4 by virtue of the conflict.
- (d) Any Notes repurchased by the Issuer pursuant to this Clause 6.4 may at the Issuer's discretion be retained, sold or cancelled in accordance with Clause 6.2 (*The Group Companies' purchase of Notes*).

(5) Optional redemption for taxation reasons

- (a) If the Issuer or any Guarantor determines in good faith that, as a result of a Change in Tax Law, the Issuer or any Guarantor is, or on the next Interest Payment Date would be, required to pay any Additional Amounts, and such obligation cannot be avoided by taking reasonable measures available to the Issuer or the relevant Guarantor, the Issuer may, in its absolute discretion, decide to redeem all, but not only some, of the outstanding Notes in full on any Business Day before the Final Redemption Date. The Issuer shall give not less than twenty (20) and not more than forty (40) Business Days' notice of the redemption to the Agent and the Holders and the repayment per Bond shall be made at 100.00 per cent. of the Nominal Amount (together with accrued but unpaid Interest).
- (b) The notice from the Issuer pursuant to Clause 6.5 a) shall not be given (a) earlier than ninety (90) calendar days prior to the earliest date on which the Issuer or the Guarantor, as the case may be, would be obliged to make the relevant payment of Additional Amounts if a payment in respect of the Notes were then due and (b) unless at the time such notice is given, such obligation to pay the relevant Additional

Amounts remains in effect. Prior to giving any notice of redemption pursuant to the foregoing, the Issuer shall deliver to the Agent (i) a declaration in writing stating that it is entitled to effect such redemption and setting forth a statement of facts showing that a Change in Tax Law is at hand and that it would not be able to avoid the obligation to pay Additional Amounts by taking reasonable measures available to it and (ii) a written opinion of an independent tax counsel of recognised standing who is qualified to provide tax advice under the laws of the Relevant Taxing Jurisdiction to the effect that the Issuer or Guarantor has or have been or will become obligated to pay the relevant Additional Amounts as a result of a Change in Tax Law. The Agent shall accept such declaration and opinion as sufficient evidence that a Change in Tax Law is at hand without further inquiry, in which event it shall be conclusive and binding on the Holders.

(c) In the case of redemption due to withholding as a result of a Change in Tax Law such Change in Tax Law must become effective on or after the Issue Date.

(6) **Equity claw back.** Upon an Equity Listing Event, the Issuer may on one occasion repay up to 35.00 per cent. of the total Initial Nominal Amount (provided at least 65.00 per cent. of the total Initial Nominal Amount remains outstanding after such repayment), in which case all outstanding Notes shall be partially repaid by way of reducing the Nominal Amount of each Note *pro rata*. The repayment must occur on an Interest Payment Date within one hundred eighty (180) calendar days after such Equity Listing Event and be made with funds in an aggregate amount not exceeding the cash proceeds received by Holdco or the Restricted Subsidiaries as a result of such Equity Listing Event (net of fees, charges and commissions actually incurred in connection with such offering and net of taxes paid or payable as a result of such offering). The Issuer shall give not less than twenty (20) Business Days' notice of the repayment to the Agent and the Holders and the repayment per Note shall be made at 106.00 per cent of the Nominal Amount or at the relevant Call Option Amount, if such amount is lower (rounded down to the nearest EUR 100.00)

(7) **Repurchase (put option) due to the amendment of these Terms and Conditions**

(a) Each Holder shall have the right to request that all, or only some, of its Notes are repurchased (whereby the Issuer shall have the obligation to repurchase such Notes) at a price per Note equal to 100.00 per cent. of the Nominal Amount together with accrued but unpaid Interest, during a period of twenty (20) calendar days following a notice from the Issuer in accordance with these Terms and Conditions to be issued [\(i\) during the month of January 2022 \(the "Put Option Notice 1"\) and \(ii\) during the month of February 2025 \(the "Put Option Notice 2" and, together with the Put Option Notice 1, the "Put Option Notice"\)](#), provided [that in each case](#) the total aggregate Nominal Amount of the Notes to be repurchased by the Issuer (the "**Put Option Aggregate Amount**") shall not exceed EUR 15,000,000.00 (the "**Put Option Cap**").

(b) The Put Option Notice shall specify the repurchase date and include instructions about the actions that a Holder needs to take if it wants Notes held by it to be repurchased. If a Holder 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 Notes and the repurchase amount shall fall due on the repurchase date specified in the Put Option Notice up to the Put Option Cap. Should the Put Option Aggregate Amount exceed the Put Option Cap, the Notes shall be repurchased *pro rata* as further specified in the Put Option Notice. The repurchase date must fall no later than twenty (20) Business Days after the end of the twenty (20) calendar days' period following [\(i\) the Put Option Notice 1](#) and, in any case, 23 February 2022 [and \(ii\) the Put Option Notice 2](#).

- (c) The Issuer shall comply with the requirements of any applicable securities laws or regulations in connection with the repurchase of Notes. To the extent that the provisions of such laws and regulations conflict with the provisions in this Clause 6.7, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Clause 6.7 by virtue of the conflict.
- (d) Any Notes repurchased by the Issuer pursuant to this Clause 6.7 may at the Issuer's discretion be retained, sold or cancelled in accordance with Clause 6.2 (*The Group Companies' purchase of Notes*).

(8) Conditional repurchase (put option) due to the outstanding USD bonds

- (a) Provided that the Issuer has not repaid or otherwise defeased in full the USD 200 million 10.75% Senior Notes due 2022 issued by the Issuer prior to 23 February 2022, each Holder shall have the right to request that all, or only some, of its Notes are repurchased (whereby the Issuer shall have the obligation to repurchase such Notes) at a price per Note equal to 100.00 per cent. of the Nominal Amount together with accrued but unpaid Interest, during a period of twenty (20) calendar days following a notice from the Issuer in accordance with these Terms and Conditions, to be issued no later than 23 February 2022 (the "**USD Bond Put Option Notice**").
- (b) The USD Bond Put Option Notice shall specify the repurchase date and include instructions about the actions that a Holder needs to take if it wants Notes held by it to be repurchased. If a Holder 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 Notes and the repurchase amount shall fall due on the repurchase date specified in the USD Bond Put Option Notice. The repurchase date must fall no later than 31 March 2022.
- (c) The Issuer shall comply with the requirements of any applicable securities laws or regulations in connection with the repurchase of Notes. To the extent that the provisions of such laws and regulations conflict with the provisions in this Clause 6.8, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Clause 6.8 by virtue of the conflict.

- (d) Any Notes repurchased by the Issuer pursuant to this Clause 6.8 may at the Issuer's discretion be retained, sold or cancelled in accordance with Clause 6.2 (*The Group Companies' purchase of Notes*).

§ 7 Payments

- (1) **Currency.** All payments on the Notes shall be made by the Issuer in Euro.
- (2) **Payments.** Payments of principal, interest and all other cash payments payable on the Notes shall be made by the Issuer on the relevant due date to the Paying Agent (Clause 13), for on-payment to the Clearing System for credit to the accounts of the respective accountholders in the Clearing System. All payments made to the Clearing System or to its order shall discharge the liability of the Issuer under the Notes to the extent of the amounts so paid.
- (3) **Payment Date/Due Date.** For the purposes of these Terms and Conditions, „**payment date**“ means the day on which the payment is actually to be made, and „**due date**“ means the payment date provided for herein, without taking account of such adjustment.
- (4) **Depositing in Court.** The Issuer may deposit with the local court (*Amtsgericht*) in Frankfurt am Main any amounts payable on the Notes not claimed by Holders of the Notes. To the extent that the Issuer waives its right to withdraw such deposited amounts, the relevant claims of the Holders against the Issuer shall cease.

§ 8 Taxes

- (1) **Withholding Tax.** All payments under Clauses 5, 6 and 7 in respect of the Notes will be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed (i) by the relevant tax authority or any political subdivision or any authority therein that has power to tax or (ii) pursuant to an agreement described in Section 1471(b) of the U.S. Internal Revenue Code of 1986 (the “**Code**”) or otherwise imposed pursuant to Sections 1471 through 1474 of the Code and any regulations or agreements thereunder or official interpretations thereof (“**FATCA**”) or any law implementing an intergovernmental approach to FATCA, unless that withholding or deduction is required by law (including pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to FATCA or any law implementing an intergovernmental approach to FATCA). In that event, the Issuer will pay such additional amounts (the “**Additional Amounts**”) as the Holders would have received if no such withholding or deduction had been required, except if such Additional Amounts:
 - (a) are payable by any person acting as custodian bank or collecting agent on behalf of a Holder, or otherwise in any manner which does not constitute a deduction or withholding by the Issuer from payments of principal or interest made by it under the Note; or

- (b) are deducted or withheld pursuant to (i) the Savings Directive (2003/48/EC) or (ii) any provision of law implementing, or complying with, or introduced to conform with, the Savings Directive (2003/48/EC), or such treaty or understanding; or
 - (c) are payable by reason of a change in law that becomes effective more than 30 (thirty) days after the relevant payment becomes due, or is duly provided for and notice thereof is published in accordance with Clause 18 (Notices), whichever occurs later; or
 - (d) are required by reason of an agreement described in Section 1471(b) of the Code or otherwise required by FATCA or any law implementing an intergovernmental approach to FATCA.
- (2) **Prepayment.** If, as a result of any change in, or amendment to, the laws or regulations prevailing in the relevant tax jurisdiction, which change or amendment becomes effective on or after the Issue Date or as a result of any application or official interpretation of such laws or regulations not generally known before that date, taxes or duties are or will be leviable on payments of principal or interest under the Notes and, by reason of the obligation to pay Additional Amounts as provided in the provision above or otherwise such taxes or duties are to be borne by the Issuer, Clause 6.5 (Optional Redemption for Taxation Reasons) applies.

§ 9 Agent

(1) Role and Duties of the Agent

- (a) By subscribing for Notes, each initial Holder appoints the Agent to act as its agent in all matters relating to the Notes 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 as well as certain legal acts as stipulated under these Terms and Conditions (*inter alia* information rights pursuant to Clause 10.13, termination rights pursuant to Clause 11) relating to the Notes held by such Holder. By acquiring Notes, each subsequent Holder confirms such appointment and authorisation for the Agent to act on its behalf. The Agent shall represent the Holders in accordance with the Finance Documents. However, the Agent is not responsible for the execution or enforceability of the Finance Documents. The Agent shall keep the latest version of these Terms and Conditions (including any document amending these Terms and Conditions) available upon request of any Holder.
- (b) 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.
- (c) 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 and security agent under the Finance Documents are conditioned upon the due payment of such fees and indemnifications.

- (d) The Agent may act as agent and/or security trustee for several issues of securities issued by or relating to the Issuer and other Group Companies notwithstanding potential conflicts of interest.
- (e) The Issuer appoints the Agent also as noteholders' representative (Ger: *Gemeinsamer Vertreter*) for the Holders in accordance with § 7 et seq. of the German Act on Issues of Debt Securities (*Schuldverschreibungsgesetz - SchVG*) (as amended from time to time).
- (f) 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 (a) after the occurrence of an Event of Default, (b) for the purpose of investigating or considering an event which the Agent reasonably believes is or may lead to an Event of Default or a matter relating to the Issuer which the Agent reasonably believes may be detrimental to the interests of the Holders under the Finance Documents or (c) when the Agent is to make a determination under the Finance Documents.

(2) **Limited liability for the Agent**

- (a) The Agent will only be liable to the Holders for damage or loss caused by any action taken or omitted by it under or in connection with any Finance Document and such liability being limited to an amount which corresponds to the tenfold amount of its annual fees, unless any damages are directly caused by gross negligence or wilful misconduct.
- (b) The Agent shall not be considered to have acted negligently if it has acted in accordance with advice from or opinions of reputable external experts engaged by the Agent or if the Agent has acted with reasonable care in a situation when the Agent considers that it is detrimental to the interests of the Holders to delay the action in order to first obtain instructions from the Holders.
- (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 the Agent to the Holders, provided that the Agent 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 the Agent for that purpose.
- (d) The Agent shall have no liability to the Holders for damage caused by the Agent acting in accordance with instructions of the Holders given in accordance with Clause 16 (*Passing of Resolutions, Holders' Meeting, Vote without Meeting*).

(3) **Replacement of the Agent**

- (a) The Agent may resign by giving notice to the Issuer and the Holders, in which case the Holders shall appoint a successor Agent at a Holders' Meeting convened by the retiring Agent or the Issuer or by way of Written Procedure initiated by the retiring Agent or the Issuer.
- (b) For the replacement of the Agent by appointment of a successor Agent pursuant to Clause 9.3 (a), the provisions under Clause 16 (*Passing of Resolutions, Holders' Meeting, Vote without Meeting*) and Clause 17 (*Appointment of Noteholders' Representative*) apply as well as the statutory provisions of the German SchVG.

§ 10 Special Undertakings

So long as any Note remains outstanding, the Issuer undertakes to comply with the special undertakings set forth in this Clause 10.

(1) Distributions

- (a) The Issuer shall not, and Holdco and the Subsidiary Guarantors have undertaken in the Guarantee not to, directly or indirectly, (a) pay any dividend or make any other payment or distribution on its respective Equity Interests or make any other similar distribution or transfers of value to Holdco's or the Restricted Subsidiaries' direct or indirect shareholders or the Affiliates of such direct and indirect shareholders (other than dividend or distributions payable in Equity Interests (other than Disqualified Stock) of Holdco), (b) repurchase or redeem any of its respective Equity Interest or the Equity Interest of Holdco or any direct or indirect parent of Holdco (including repurchase and redemption with payment to shareholders) or (c) repay principal or pay cash interest under any Shareholder Loans, (items (a)–(c) above are together and individually referred to as a "**Restricted Payment**"); provided, however, that, if such Restricted Payment is permitted by law and no Event of Default is continuing or would result from such Restricted Payment, any such Restricted Payment can be made (i) by Holdco or any Restricted Subsidiary if such Restricted Payment is made to Holdco or another Restricted Subsidiary and, if made by any Restricted Subsidiary which is not directly or indirectly wholly-owned by Holdco, to other Persons on a *pro rata* basis and (ii) by Holdco or any Restricted Subsidiary, provided that Holdco would, at the time of such Restricted Payment, have been permitted to incur at least EUR 1.00 of additional Financial Indebtedness pursuant to the Incurrence Test (calculated on a *pro forma* basis including the relevant Restricted Payment as if the Restricted Payment had been made at the beginning of the Relevant Period ending on the last day of the period covered by the most recent Financial Report); and (B) (1) the aggregate amount of all Restricted Payments (including the Restricted Payment in question but excluding any Restricted Payment made in accordance with item (i) above and any Permitted Payment) of the Group made in a financial year does not exceed 50.00 per cent. of the Group's consolidated net income according to the annual audited financial statements for the previous financial year of Holdco; or (2) if an Equity Listing Event has occurred, the aggregate amount of all Restricted Payments (including the

Restricted Payment in question but excluding any Restricted Payment made in accordance with item (i) above and any Permitted Payment) of the Group made during the period from and including the date of such Equity Listing Event up to and including the date of the Restricted Payment in question, does not exceed 50.00 per cent. of the Group's accumulated consolidated net income according to the annual audited financial statements for the financial year(s) of Holdco ended during such period.

(b) As long as no Event of Default has occurred and is continuing (or would result therefrom), the restrictions under Clause 10.1 a) shall not prohibit Permitted Payments.

(2) **Listing of Notes.** The Issuer shall ensure (a) within ten (10) Business Days after the Issue Date that the Notes are admitted to trading on a Regulated Market (presumably Prime Standard for Corporate Bonds of Frankfurt Stock Exchange, but also any other Regulated Market) at Frankfurt Stock Exchange or another comparable trading segment within the EU, continue being listed thereon (however, taking into account the rules and regulations of the relevant Regulated Market) and the CSD (as amended from time to time) preventing trading in the Notes in close connection to the redemption of the Notes) and (b) that, upon any further issues of Notes pursuant to Clause 14, the volume of Notes listed on the relevant Regulated Market promptly, and not later than ten (10) Business Days after the relevant issue date, is increased accordingly.

(3) **Nature of business.** Holdco and the Subsidiary Guarantors have undertaken in the Guarantee that no substantial change is made to the general nature of the business as carried out by Holdco or any of the Restricted Subsidiaries on the Issue Date.

(4) **Financial Indebtedness and Disqualified Stock**

(a) The Issuer shall not, and Holdco and the Subsidiary Guarantors have undertaken in the Guarantee not to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively for the purpose of this Clause 10.4 "incur") any Financial Indebtedness or issue any Disqualified Stock and shall procure that Holdco does not permit any of the Restricted Subsidiaries to issue any shares of preferred stock, provided, however, that Holdco may incur Financial Indebtedness or issue Disqualified Stock, the Issuer may incur Financial Indebtedness and the Subsidiary Guarantors may incur Financial Indebtedness and issue preferred stock if: (a) the Incurrence Test is met (calculated on a pro forma basis as if the additional Financial Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, at the beginning of the Relevant Period ending on the last day of the period covered by the most recent Financial Report); and, if a Financial Indebtedness is to be incurred, (b) such Financial Indebtedness ranks pari passu with or is unsecured or is subordinated to the obligations of the Issuer or the Guarantors under the Finance Documents. The foregoing shall not prohibit the incurrence of any Permitted Debt.

- (b) The Issuer shall not incur, and Holdco and the Subsidiary Guarantors have undertaken in the Guarantee not to incur, any Financial Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Financial Indebtedness of the Issuer or such Guarantor unless such Financial Indebtedness is also contractually subordinated in right of payment under the Finance Documents on substantially identical terms; provided, however, that no Financial Indebtedness shall be deemed to be contractually subordinated in right of payment to any other Financial Indebtedness of the Issuer or any Guarantor solely by virtue of being unsecured or by virtue of being secured on a junior priority basis.
- (5) **Negative pledge** The Issuer shall not, and Holdco and the Subsidiary Guarantors have undertaken in the Guarantee not to, directly or indirectly, create or allow to subsist, retain, provide, prolong or renew any security of any kind (including any mortgage, lien, pledge, charge, security interest or encumbrance) (“**Security**”) over any of their assets (present or future) to secure any Financial Indebtedness, provided, however, that Holdco and the Restricted Subsidiaries have a right to create or allow to subsist, retain, provide, prolong and renew (a) any Permitted Security and (b) Security, other than Permitted Security, over any of their assets (present or future) (for the purpose of this Clause 10.5 “**New Security Assets**”) to secure Financial Indebtedness of any Person (for the purpose of this Clause 10.5 the “**New Security Beneficiary**”), provided (i) that the New Security Assets are also granted as security for the full and punctual payment by the Obligors of the Guaranteed Obligations for as long as the Financial Indebtedness provided by the New Security Beneficiary is so secured and (ii) that such Security ranks *pari passu* with, or prior to in case of subordinated Financial Indebtedness, with the Security of the New Security Beneficiary.
- (6) **Loans out.** The Issuer shall not, and Holdco and the Subsidiary Guarantors have undertaken in the Guarantee not to, except for Permitted Loans, be the creditor or guarantor of any Financial Indebtedness.
- (7) **Disposals of assets**
- (a) The Issuer shall not, and Holdco and the Subsidiary Guarantors have undertaken in the Guarantee not to, sell or otherwise dispose of Equity Interest in any Restricted Subsidiary or of all or substantially all of Holdco’s or any Restricted Subsidiary’s assets or operations to any Person (including Holdco and the Restricted Subsidiaries). The above shall not prevent the following transactions:
- the sale or other disposal of Equity Interest in any Restricted Subsidiary, other than the Issuer and the Subsidiary Guarantors, or of all or substantially all of the assets or operations of any Restricted Subsidiary, other than the Issuer and the Subsidiary Guarantors, (i) to Holdco or the Restricted Subsidiaries and (ii) to a Person other than Holdco and the Restricted Subsidiaries provided that the transaction is carried out at fair market value and on terms and conditions customary for such transaction and provided that it does not have a Material Adverse Effect;

- the sale or other disposal of Equity Interest in the Issuer or in any of the Subsidiary Guarantors or of all or substantially all of the assets or operations of the Issuer or any Guarantor to the Issuer or a Guarantor;
- the sale or other disposal of Equity Interest in any Subsidiary Guarantor (other than AS 4finance) to a Person other than the Issuer and the Guarantors provided that: (i) the seller of the Equity Interest in the Subsidiary Guarantor (other than AS 4finance) is the Issuer or a Guarantor and that the proceeds from the sale are paid to the Issuer or a Guarantor, as applicable; (ii) the transaction is carried out at fair market value and on terms and conditions customary for such transactions; and (iii) such transaction does not have a Material Adverse Effect; and
- the sale or other disposal of all or substantially all of the assets or operations of any Subsidiary Guarantor (other than AS 4finance), to a Person other than the Issuer or a Guarantor provided that: (i) the proceeds from the sale or other disposal are paid to the Issuer or a Guarantor, as applicable; (ii) the transaction is carried out at fair market value and on terms and conditions customary for such transactions; and (iii) such transaction does not have a Material Adverse Effect.

(b) For the avoidance of doubt, the sale or disposal of all or substantially all of the assets or operations in Holdco and the Restricted Subsidiaries taken as a whole shall be governed by Clause 6.4 (*Mandatory repurchase due to a Change of Control Event (put option)*).

(8) **Mergers.** The Issuer shall not, and Holdco and the Subsidiary Guarantors have undertaken in the Guarantee not to, directly or indirectly, consolidate or merge with or into another Person. The above shall not prevent the following mergers, provided that they do not have a Material Adverse Effect:

- mergers between or among Restricted Subsidiaries, other than the Issuer and the Subsidiary Guarantors;
- mergers of the Restricted Subsidiaries into Holdco;
- mergers between or among the Issuer or a Subsidiary Guarantor and other Subsidiary Guarantors;
- mergers between or among the Restricted Subsidiaries (including the Issuer and the Subsidiary Guarantors), provided, in the case of a merger of the Issuer or a Subsidiary Guarantor, that the Person formed by or surviving any such merger (if other than the Issuer or a Subsidiary Guarantor, as the case may be) assumes all the obligations of the Issuer or the Subsidiary Guarantor, as the case may be, under these Terms and Conditions and the Guarantee (as applicable) pursuant to accession agreements reasonably satisfactory to the Agent;

- mergers of Holdco or a Restricted Subsidiary on the one side and a Third Party on the other side, provided that: (i) Holdco or the Restricted Subsidiary, as applicable, is the surviving Person; and (ii) Holdco would, on the date of the merger, have been permitted to incur at least EUR 1.00 of additional Financial Indebtedness pursuant to the Incurrence Test (calculated on a *pro forma* basis as if the merger had been made at the beginning of the Relevant Period ending on the last day of the period covered by the most recent Financial Report) or have, both an Interest Coverage Ratio and a Capitalisation Ratio not lower than it was immediately prior to giving effect to such transaction;
- mergers of a Restricted Subsidiary, other than the Issuer or the Subsidiary Guarantors, on the one side and a Third Party on the other side, where the Person formed by or surviving such merger is the Third Party, provided that: (i) the shares in the surviving entity received as consideration and any other consideration will be held by the Group Company that held the shares of the Restricted Subsidiary previous to the merger; and (ii) the merger is carried out at fair market value and on terms and conditions customary for such mergers; and
- mergers of a Subsidiary Guarantor (other than AS 4finance) on the one side and a Third Party on the other side, where the Person formed by or surviving such merger is the Third Party, provided that: (i) the shares in the surviving entity received as consideration and any other consideration are held by the Issuer or a Guarantor, as applicable, post the merger; and (ii) the merger is carried out at fair market value and on terms and conditions customary for such mergers.

(9) **Dividend and other payment restrictions.** The Issuer shall not, and Holdco and the Subsidiary Guarantors have undertaken in the Guarantee not to create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to: (a) pay dividends or make any other distributions on its Capital Stock to Holdco or any of the Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any Financial Indebtedness owed to Holdco or any of the Restricted Subsidiaries; (b) make loans or advances to Holdco or any of the Restricted Subsidiaries; or (c) sell, lease or transfer any of its properties or assets to Holdco or any of the Restricted Subsidiaries; in each case, only if such encumbrance or restriction result in a Material Adverse Effect and unless such encumbrance or restriction is contained in or related to Financial Indebtedness constituting a Permitted Debt, Permitted Security or Permitted Loan or is otherwise permitted to be incurred under these Terms and Conditions and the terms and conditions for the Existing Bonds.

(10) **Additional Guarantee.** The Issuer shall not, and Holdco and the Subsidiary Guarantors have undertaken in the Guarantee not to, directly or indirectly, guarantee any Financial Indebtedness of Holdco or any Restricted Subsidiary, and any refinancing thereof in

whole or in part, unless such Restricted Subsidiary becomes a guarantor of the Notes (an “**Additional Guarantor**”) on the date on which such other guarantee is incurred and, if applicable, executes and delivers to the Agent a Guarantee, substantially in the same form as the Subsidiary Guarantors’ Guarantees pursuant to which such Additional Guarantor will provide a Guarantee, which will be senior to or *pari passu* with its guarantee of such other Financial Indebtedness. Such Additional Guarantor shall be a “Subsidiary Guarantor” and such new Guarantee shall be a “Subsidiary Guarantor Guarantee” for the purpose of these Terms and Conditions. Notwithstanding the foregoing, Holdco shall not be obligated to cause such Restricted Subsidiary to guarantee the Notes to the extent that such new Guarantee by such Restricted Subsidiary would reasonably be expected to give rise to or result in a violation of applicable law which, in any case, cannot be prevented or otherwise avoided through measures reasonably available to Holdco or the Restricted Subsidiary or any liability for the officers, directors or shareholders of such Restricted Subsidiary.

- (11) **Dealings with related parties.** The Issuer shall, and Holdco and the Subsidiary Guarantors have undertaken in the Guarantee to conduct all dealings with the direct and indirect shareholders of the Group Companies (excluding other Group Companies) and/or any Affiliates of such direct and indirect shareholders at arm’s length terms.
- (12) **Compliance with laws.** The Issuer shall, and Holdco and the Subsidiary Guarantors have undertaken in the Guarantee to (a) comply in all material respects with all laws and regulations applicable from time to time and (b) obtain, maintain, and in all material respects comply with, the terms and conditions of any authorisation, approval, licence or other permit required for the business carried out by a Group Company.
- (13) **Financial reporting and information**
- (a) The Issuer shall and/or Holdco has undertaken in the Guarantee:
- to prepare and make available the annual audited unconsolidated and consolidated financial statements of Holdco, including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from Holdco’s board of directors, to the Agent and on its website not later than four (4) months after the expiry of each financial year;
 - to prepare and make available the quarterly interim unaudited consolidated reports of Holdco, including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from Holdco’s board of directors, to the Agent and on its website not later than two (2) months after the expiry of each relevant interim period;
 - to issue a Compliance Certificate to the Agent (i) in connection with the incurrence of Financial Indebtedness, the issuance of Disqualified Stock or preferred stock, the payment or distribution of any Restricted Payment and a merger under Clause 10.8 (*Mergers*) which requires that the Incurrence Test is met, (ii) in connection with the Financial Reports being made available and

- (iii) at the Agent's request, within twenty (20) calendar days from such request;
- to keep the latest version of these Terms and Conditions (including documents amending these Terms and Conditions) available on its website; and
 - to promptly notify the Agent (and, as regards a Change of Control Event, the Holders) upon becoming aware of the occurrence of (i) a Change of Control Event or an Equity Listing Event, (ii) an Event of Default or (iii) a default or an event of default, howsoever described, under the Existing Bonds, and shall provide the Agent with such further information as the Agent may request (acting reasonably) following receipt of such notice.
- (b) The Issuer shall notify the Agent of any transaction referred to in Clause 10.7 (*Disposals of assets*) and shall, upon request by the Agent, provide the Agent with (a) any information relating to the transaction which the Agent deems necessary (acting reasonably) and, if applicable, (b) a determination from the Issuer which states whether the transaction is carried out at fair market value and on terms and conditions customary for such transaction and whether it has a Material Adverse Effect or not. The Agent may assume that any information provided by the Issuer is correct, and the Agent shall not be responsible or liable for the adequacy, accuracy or completeness of such information. The Agent is not responsible for assessing if the transaction is carried out at fair market value and on terms and conditions customary for such transaction and whether it has a Material Adverse Effect, but is not bound by the Issuer's determination under item (b) above.
- (c) The Issuer shall notify the Agent of any merger referred to in Clause 10.8 (*Mergers*) and shall, upon request by the Agent, provide the Agent with (a) any information relating to the merger which the Agent deems necessary (acting reasonably), including, in case of a merger where the Issuer or a Subsidiary Guarantor is not the surviving entity pursuant to Clause 10.8 an opinion by legal counsel, that the accession agreement executed in connection therewith, these Terms and Conditions and/or the Guarantee are legally valid and binding obligations of the successor Person in accordance with their terms.

(14) Agent Agreement

- (a) The Issuer shall, in accordance with the Agent Agreement:
- pay fees to the Agent;
 - indemnify the Agent for costs, losses and liabilities;
 - furnish to the Agent all information reasonably requested by or otherwise required to be delivered to the Agent; and
 - not act in a way which would give the Agent a legal or contractual right to terminate the Agent Agreement.

- (b) The Issuer and the Agent shall not agree to amend any provisions of the Agent Agreement without the prior consent of the Holders if the amendment would be detrimental to the interests of the Holders.

§ 11 Termination of the Notes

- (1) The Agent is entitled, on behalf of the Holders, to terminate the Notes and to declare all, but not only some, of the Notes due for payment immediately or at such later date as the Agent determines (such later date not falling later than twenty (20) Business Days from the date on which the Agent made such declaration), if:

(a) **Non-payment:** any Obligor fails to pay an amount on the date it is due in accordance with the Finance Documents unless its failure to pay is due to technical or administrative error and is remedied within ten (10) Business Days of the due date;

(b) **Other obligations:** the Issuer or any other Group Company does not comply with the Finance Documents in any other way than as set out under item (a) (Non-payment) above, unless the non-compliance (i) is capable of being remedied and (ii) is remedied within fifteen (15) Business Days of the earlier of the Agent giving notice and the Issuer becoming aware of the non-compliance (if the failure or violation is not capable of being remedied, the Agent may declare the Notes payable without such prior written request);

(c) **Cross-default and cross-acceleration:**

- an event of default, howsoever described, occurs under the Existing Bonds;
- any Financial Indebtedness of any Material Group Company is not paid when due nor within any originally applicable grace period or is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default howsoever described under any document relating to Financial Indebtedness of any Material Group Company; or
- any security interest securing Financial Indebtedness over any asset of any Material Group Company is enforced;

provided however that the amount of Financial Indebtedness referred to under item(ii) and/or (iii) above, individually or in the aggregate exceeds an amount corresponding to EUR 10,000,000 (or its equivalent in any other currency) and provided that it does not apply to any Financial Indebtedness owed to a Group Company;

(d) **Insolvency:**

- 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

(other than under these Terms and Conditions) with a view to rescheduling its Financial Indebtedness other than the Notes; or

- a moratorium is declared in respect of the Financial Indebtedness of any Material Group Company;

(e) **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 thirty (30) calendar days of commencement or, if earlier, the date on which it is advertised and (ii), in relation to the Group Companies other than the Issuer or the Guarantors, solvent liquidations) in relation to:

- 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;
- 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;

(f) **Mergers and demergers:** unless allowed under Clause 10.8 (*Mergers*), the Issuer or any Guarantor merges with a Person other than the Issuer or a Guarantor, or is subject to a demerger, with the effect that the Issuer or the Guarantor is not the surviving entity;

(g) **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 equal to or exceeding EUR 10,000,000 (or its equivalent in any other currency) and where such process (i) is not discharged within thirty (30) calendar days or (ii) is being made in bad faith by the claimant, as evidenced by the Issuer to the Agent (such evidence to be accepted or dismissed by the Agent in its sole discretion);

(h) **Impossibility or illegality:** it is or becomes impossible or unlawful for the Issuer or the Guarantors to fulfil or perform any of the provisions of the Finance Documents or if the obligations under the Finance Documents are not, or cease to be, legal, valid, binding and enforceable; or

(i) **Continuation of the business:** any Material Group Company ceases to carry on its business (except if due to a merger or a disposal of assets as permitted under Clauses 10.7 (*Disposals of assets*) and 10.8 (*Mergers*)).

(2) Termination for payment prematurely may only occur if the cause of termination is continuing at the time of the Agent's declaration. However, if a moratorium occurs, the ending of that moratorium will not prevent termination for payment prematurely on the ground mentioned in Clause 11.1 d) (*Insolvency*).

- (3) If the right to terminate the Notes 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 termination to be deemed to exist.
- (4) The Issuer is obligated to inform the Agent immediately if any circumstance of the type specified in Clause 11.1 should occur. Should the Agent not receive such information, the Agent is entitled to assume that no such circumstance exists or can be expected to occur, provided that the Agent does not have knowledge of such circumstance. The Agent is under no obligations to make any investigations relating to the circumstances specified in Clause 11.1. The Issuer shall further, at the request of the Agent, provide the Agent with details of any circumstances referred to in Clause 11.1 and provide the Agent with all documents that may be of significance for the application of this Clause 11.
- (5) The Issuer is only obligated to inform the Agent according to Clause 11.4 if informing the Agent would not conflict with any statute or the Issuer's registration contract with Frankfurt Stock Exchange (or any other Regulated Market, as applicable). If such a conflict would exist pursuant to the listing contract with the relevant Regulated Market or otherwise, the Issuer shall however be obligated to either seek the approval from the relevant 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 Clause 11.4.
- (6) If the Agent has been notified by the Issuer or has otherwise determined that there is a default under these Terms and Conditions according to Clause 11.1, the Agent shall decide, within twenty (20) Business Days of the day of notification or determination, if the Notes shall be declared terminated. If the Agent has decided not to terminate the Notes, the Agent shall, at the earliest possible date, notify the Holders that there exists a right of termination and obtain instructions from the Holders according to the provisions in Clause 16 (*Passing of Resolutions, Holders' Meeting, Vote without Meeting*). If the Holders vote in favor of termination and instruct the Agent to terminate the Notes, the Agent shall promptly declare the Notes terminated. However, if the cause for termination according to the Agent's appraisal has ceased before the termination, the Agent shall not terminate the Notes. The Agent shall in such case, at the earliest possible date, notify the Holders that the cause for termination has ceased. The Agent shall always be entitled to take the time necessary to consider whether an occurred event constitutes an Event of Default and whether such event has a Material Adverse Effect.
- (7) If the Holders, without any prior initiative to decision from the Agent or the Issuer, have made a decision regarding termination in accordance with Clause 16 (*Passing of Resolutions, Holders' Meeting, Vote without Meeting*), the Agent shall promptly declare the Notes terminated. The Agent is however not liable to take action if the Agent considers cause for termination not to be at hand, unless the instructing Holders agree in writing to indemnify and hold the Agent harmless from any loss or liability and, if requested by the Agent in its discretion, grant sufficient security for such indemnity.

- (8) If the Notes are declared due and payable in accordance with the provisions in this Clause 11, the Agent shall take every reasonable measure necessary to recover the amounts outstanding under the Notes.
- (9) For the avoidance of doubt, the Notes cannot be terminated and become due for payment prematurely according to this Clause 11 without relevant decision by the Agent or following instructions from the Holders' pursuant to Clause 16 (*Passing of Resolutions, Holders' Meeting, Vote without Meeting*).
- (10) If the Notes are declared due and payable in accordance with the provisions in this Clause 11, the Issuer shall redeem all Notes with an amount per Note equal to the applicable Call Option Amount.

§ 12 Presentation Period

Term for Presentation. The term for presentation of the Notes with respect to principal as set forth in Sec. 801 para. (1) sentence 1 of the German Civil Code (Ger: *Bürgerliches Gesetzbuch*) shall be reduced to ten years. The term for presentation of the Notes with respect to interest shall be four years after the date on which payment thereof first becomes due and payable.

§ 13 Paying Agent

- (1) **Paying Agent.** The Issuer has appointed Banque Internationale à Luxembourg, to act as paying agent (the „**Paying Agent**“). The Paying Agent is exempt from the restrictions of Sec. 181 of the German Civil Code (Ger: *Bürgerliches Gesetzbuch*). Changes of address shall be notified in accordance with Clause 18. In no event will the specified office of the Paying Agent be within the United States or its possessions.
- (2) **Calculation Agent.** The Issuer has appointed Banque Internationale à Luxembourg, to act as calculation agent (the „**Calculation Agent**“). The Calculation Agent is exempt from the restrictions of Sec 181 of the German Civil Code (Ger: *Bürgerliches Gesetzbuch*). Changes of address shall be published in accordance with § 18 (*Notices*). In no event will the specified office of the Calculation Agent be within the United States or its possessions.
- (3) **Substitution.** The Issuer will procure that there will at all times be a paying agent as well as a calculation agent. The Issuer may at any time, by giving not less than 30 days' notice appoint another bank of good reputation as Paying Agent. Furthermore, the Issuer is entitled to terminate the appointment of any bank as Paying Agent. In the event of such termination or any of such bank being unable or unwilling to continue to act as Agent in the relevant capacity, the Issuer will appoint another bank of good reputation as Agent in the relevant capacity. Such appointment or termination will be published without undue delay in accordance with Clause 18 (*Notices*), or, should this not be possible, be published in another appropriate manner.

- (4) **Binding Determinations.** All determinations, calculations and adjustments made by any Agent will be made in conjunction with the Issuer and will, in the absence of manifest error, be conclusive in all respects and binding upon the Issuer and all Holders.

§ 14 Further Issues

The Issuer reserves the right to issue from time to time, without the consent of the Holders, additional notes with substantially identical terms as the Notes (as the case may be, except for the issue date, interest, commencement date and/or issue price), including in a manner that the same can be consolidated to form a single series of notes and increase the aggregate principal amount of the Notes. The term "**Note**" will, in the event of such consolidation, also comprise such additionally issued notes. The issuer shall, however, not be limited in issuing additional notes, which are not consolidated with the Notes and which provide for different terms, as well as in issuing any other debt securities.

§ 15 Amendments to the Terms and Conditions

- (1) **Amendments to the Terms and Conditions.** The Issuer may agree with the Holders on Amendments to the Terms and Conditions or on other matters by virtue of a majority resolution of the Holders pursuant to § 5 et seq. of the German Act on Issues of Debt Securities (*Schuldverschreibungsgesetz – SchVG*) as amended from time to time. In particular, the Holders may consent to amendments which materially change the substance of the Terms and Conditions, including such measures as provided for under § 5(3) of the SchVG, by resolutions passed by qualified majority of the votes of the Holders as stated under Clause 16 below. A duly passed majority resolution shall be binding equally upon all Holders.
- (2) **Majority/Qualified Majority.** Except as provided by the following sentence and provided that the quorum requirements (Clause 16.4) are being met, the Holders may pass resolutions by simple majority of the voting rights participating in the vote. Resolutions which materially change the substance of the Terms and Conditions, in particular in the cases of § 5 (3) No. 1 - 9 of the SchVG, or relating to material other matters may only be passed by a majority of at least 75 % of the voting rights participating in the vote (a "**Qualified Majority**"). Pursuant to § 5 (3) No. 1 – 9 of the SchVG, the following matters are deemed as material, requiring the Qualified Majority:
- Amendments to the principal claim (due date, amount, currency, rank, debtors, object of performance);
 - Amendment to ancillary claims (due date, amount, exclusion, currency, rank, debtors, object of performance);
 - Amendments to or removal of ancillary conditions of the Notes;
 - Modification or waiver of a right of termination and removal of the effect of the collective right of termination;

- Substitution and release of a security, unless provided for in the Terms and Conditions;
- Conversion of the Notes into shares, other securities or other obligations.

The matters deemed material by § 5 (3) No. 1 – 9 of the SchVG is not conclusive and other matters which materially change the substance of the Terms and Conditions – particularly if detrimental to the Holders – require a Qualified Majority.

§ 16 Passing of Resolutions, Holders' Meeting, Vote without Meeting

- (1) **Passing of Resolutions.** The Holders can pass resolutions in a meeting (Ger: *Gläubigerversammlung*) in accordance with § 5 et seq. of the SchVG ("**Holders' Meeting**") or by means of a vote without a meeting (Ger: *Abstimmung ohne Versammlung*) in accordance with § 18 and § 5 et seq. of the SchVG ("**Vote without Meeting**").
- (2) **Holders' Meeting.** If resolutions of the Holders shall be made by means of a meeting, the convening notice (Ger: *Einberufung*) will provide for further details relating to the resolutions and the voting procedure. The subject matter of the vote as well as the proposed resolutions shall be notified to the Holders together with the convening notice. Attendance at the meeting and exercise of voting rights is subject to the Holders' registration. Any such registration must be received at the address stated in the convening notice no later than the third day preceding the meeting. As part of the registration, Holders must demonstrate their eligibility to participate in the vote by means of a special confirmation of the Depository Bank in accordance with Clause 19.4 of these Terms and Conditions in text form and by submission of a blocking instruction by the Depository Bank stating that the relevant notes are not transferrable from and including the day such registration has been sent until and including the stated end of the meeting.
- (3) **Vote without Meeting.** If resolutions of the Holders shall be made by means of a Vote without Meeting, the request for voting (Ger: *Aufforderung zur Stimmabgabe*) will provide for further details relating to the resolutions and the voting procedure. The subject matter of the vote as well as the proposed resolutions shall be notified to the Holders together with a request for voting. The exercise of voting rights is subject to the Holders' registration. The registration must be received at the address stated in the request for voting no later than the third day preceding beginning of the voting period. As part of the registration, Holders demonstrate their eligibility to participate in the vote by means of a special confirmation of the Depository Bank in accordance with Clause 19.4 of these Terms and Conditions in text form and by submission of a blocking instruction by the Depository Bank stating that the relevant notes are not transferrable from and including the day such registration has been sent until and including the day the voting period ends.
- (4) **Quorum.** A resolution in a Holders' Meeting as well as a resolution by way of Vote without Meeting each can only be passed if a quorum of at least 50 % of the outstanding aggregate and in principal amount of the Notes is represented either in the meeting or

in case of a Vote without Meeting if a quorum of at least 50 % of the outstanding Notes by value participates in the vote during the voting period.

- (5) **Second Meeting.** If it is ascertained, that no quorum exists for the Holders' Meeting pursuant to Clause 16.2 or the Vote without Meeting pursuant to Clause 16.3, in case of a Holders' Meeting, the chairman (Ger: *Vorsitzender*) may convene a second meeting in accordance with § 15 (3) sentence 2 of the SchVG or in case of a Vote without Meeting, the scrutineer (Ger: *Abstimmungsleiter*) may convene a second meeting within the meaning of § 15 (3) sentence 3 of the SchVG. Attendance at the second meeting and exercise of voting rights are subject to the Holders' registration. The registration must be received at the address stated in the convening notice no later than the third day preceding the second meeting. As part of the registration, Holders must demonstrate their eligibility to participate in the vote by means of a special confirmation of the Depository Bank in accordance with Clause 19.4 of these Terms and Conditions in text form and by submission of a blocking instruction by the Depository Bank stating that the relevant Notes are not transferrable from and including the day such registration has been sent until and including the day the voting period ends.

§ 17 Appointment of Noteholders' Representative

- (1) The Holders may by majority resolution provide for the dismissal of the Agent who acts pursuant to Clause 9.1 e) also as noteholders' representative (Ger: *Gemeinsamer Vertreter*) and shall provide by majority resolution for the appointment of another noteholders' representative. Such appointment of the noteholders' representative may at the same time also include the appointment as agent under Clause 9. In the event that such noteholders' representative/Agent is to be authorized to consent to a material change in the substance of the Terms and Conditions or other material matters, the appointment may only be passed by a Qualified Majority.
- (2) If the noteholders' representative is also appointed in its capacity as Agent pursuant to Clause 9, the provisions of Clause 9 apply to such appointed noteholders' representative and Agent.

§ 18 Notices

- (1) Any notice or other communication to be made under or in connection with these Terms and Conditions:
- (a) if to the Agent, shall be given at the address Widenmayerstraße 16, 80538 Munich, Germany on the Business Day prior to dispatch or, if sent by email by the Issuer, to such email address as notified by the Agent to the Issuer from time to time;
- (b) if to the Issuer, shall be given at the address 8-10, Avenue de la Gare, L-1610 Luxembourg, Grand Duchy of Luxembourg or such address notified by the Issuer to the Agent from time to time or, if sent by email by the Agent, to such email address as notified by the Issuer to the Agent from time to time;

- (c) if to a Guarantor, shall be given to the address stated in the Guarantee or such address notified by the Guarantor to the Agent from time to time or, if sent by email by the Agent, to such email address as notified by the Guarantor to the Agent from time to time; and
 - (d) if to the Holders, shall be published in the electronic Federal Gazette (*Bundesanzeiger*), on the Issuer's website and/or otherwise in accordance with the provisions of legal regulations. A notice will be deemed to be made on the day of its publication (in case of more than one publication, on the day of the first publication). The Issuer is also entitled to make notifications to the clearing system for communication by the clearing system to the Holders or directly to the Holders, provided this complies with the rules of the stock exchange on which the Notes are listed. Notifications vis-à-vis the clearing system will be deemed to be effected seven (7) days after the notification of the clearing system, direct notifications of the Holders will be deemed to be effected upon their receipt.
- (2) Any notice or other communication made by one Person to another under or in connection with these Terms and Conditions shall be sent by way of courier, personal delivery or letter (and, if between the Agent and the Issuer, by email) and will only be effective, in case of courier or personal delivery, when it has been left at the address specified in Clause 18.1 or, in case of letter, three (3) Business Days after being deposited postage prepaid in an envelope addressed to the address specified in Clause 18.1 or, in case of email to the Agent or the Issuer, when received in legible form by the email address specified in Clause 18.1.
 - (3) Failure to send a notice or other communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

§ 19 Applicable Law, Place of Jurisdiction; Enforcement

- (1) **Governing Law.** The Notes, with regard to both form and content, as well as all rights and obligations arising from these Terms and Conditions for the Holders and the Issuer shall in all respects be governed by the laws of the Federal Republic of Germany. The provisions of articles 470-3 to 470-19 of the Luxembourg Company Law shall not apply.
- (2) **Place of Performance.** Place of performance shall be Frankfurt am Main, Federal Republic of Germany.
- (3) **Place of Jurisdiction.** The place of jurisdiction for all proceedings arising from matters provided for in these Terms and Conditions shall, to the extent legally permitted, be Frankfurt am Main, Germany.
- (4) **Enforcement of claims.** Any Holder may in any proceedings against the Issuer or to which the Holder and the Issuer are parties protect and enforce in its own name its rights arising under its Notes by submitting the following documents: a certificate issued by its Depository Bank (i) stating the full name and address of the Holder and (ii) specifying an aggregate principal amount of Notes credited on the date of such statement to such Holders' securities deposit account maintained with such Depository Bank. For purposes

of the foregoing, „**Depository Bank**“ means any bank or other financial institution authorized to engage in securities deposit business with which the Holder maintains a securities deposit account in respect of any Notes, and includes the Clearing System, Clearstream Luxembourg and Euroclear.