

- Corporate bond markets need to be developed, inter alia, to **encourage** increasing the number of **companies issuing debt instruments** as an alternative source of financing and to provide investors with more alternative investment possibilities.
- The documentation provides **a platform for** drafting terms and conditions for bond issues by a **non-investment grade issuer**. The documentation includes **alternative model terms and conditions** that can be used where applicable.
- The model terms are also intended to form a **basis for discussion in planning an issue** and thus improve the efficiency of the bond markets.
- The aim is also to **decrease issuers' and investors' costs** related to the documentation by facilitating the development of best bond market practices on market terms.
- The model documentation is not binding on any party.

The model documentation consists of two parts:

- A template including model terms and conditions (other than commercial undertakings) for a non-investment grade issue.
- A list of alternative model conditions for commercial undertakings (Model Terms for General Undertakings).

Model terms and conditions for non-commercial parts include essential choices that need to be made based on the characteristics of the planned issue. In addition to specific explanations included in the document, the following is to be noted:

- It is assumed in the template that a third party agent represents the bondholders and the bond is entered into the book-entry system.
- The terms and conditions necessitate elections to be made on key matters such as whether the issued notes are listed on the stock exchange or an alternative market (such as First North) as well as whether the loan is secured or guaranteed.
- The terms and conditions require no modification if retail investors are included in the issue to widen investor base.

The list of alternative model conditions for commercial undertakings **is not meant to be included in all issues** and the content of the list does not indicate or imply any attempt to standardize commercial undertakings to be included in the terms of non-investment grade issues.

- The purpose is solely to provide model wordings for some possible undertakings.
- The need for undertakings varies between secured and unsecured issues.
- Undertakings need to take into consideration the financial position, financing structure and future financing needs of the issuer and allow for the flexibility needed for the issuer's business.
- Including an undertaking in a specific issue is a decision that is subject to commercial negotiation between the parties and requires that the undertaking in question is relevant and balanced in the context of the particular issue and with respect to the issuer in question.
- Typically, only few financial undertakings are used in a single issue, if any.

*The Confederation of Finnish Industries (EK) and the Advisory Board of Listed Companies established a working group to draft model terms and undertakings to facilitate the development of the Finnish corporate bond market as an alternative source of corporate finance, and especially focusing on non-investment grade issues. Swedish and Norwegian market practices were benchmarked by the working group.*

*The working group included representatives of EK, issuers, bond investors, banks involved in arranging bond issuances and law firms. A public consultation was also organized on the final draft by the working group. These documents, dated xxx December 2013 are the result of this work.*

30 December 2013

[Individual parties are always free to depart from the terms and conditions in this document and should always ascertain that they understand the implications of its use.]

[The purpose and use of this document is described in a separate cover sheet. These terms and conditions have been drafted assuming that the issuer is a private or public limited liability company, the Notes are denominated in euro and issued in the Finnish book-entry securities system. If the issuer is in a legal form other than a limited liability company or Notes denominated in another currency or not issued in the Finnish book-entry securities system, these terms and conditions will have to be amended accordingly.]

[Logo]

**TERMS AND CONDITIONS<sup>1</sup> FOR**

**[ISSUER]**

**[[UP TO] EUR [●]]**

**[SENIOR UNSECURED / SENIOR SECURED] [FIXED /  
FLOATING] RATE NOTES**

**ISIN: FI[●]**

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*[Appropriate disclaimers to be included]<sup>2</sup>*

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A working group established by the Confederation of Finnish Industries (“EK”) has prepared these outline Terms and Conditions. EK accepts no legal liability of the usage of these Terms and Conditions and recommends that issuers and lenders should always have the benefit of independent legal advice.

EK consents to the use and reproduction of this document for issuances of debt securities. EK does not consent to the use, reproduction, distribution or communication to the public of this document for any other purpose, in any other manner and expressly reserves all other rights.

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<sup>1</sup> This document does not contain terms and conditions for the offering or subscription of the Notes. The users of this document should familiarise themselves with and observe the requirements applicable to the offering and/or listing of the Notes, e.g. where applicable Commission Regulation (EC) No 809/2004, as amended, regulating the content of an offering or listing prospectus.

<sup>2</sup> If the Terms and Conditions are available as a separate document in accordance with Clause 10.3, the need to include in these Terms and Conditions disclaimers typically set out in prospectuses should be considered.

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## 1. DEFINITIONS AND CONSTRUCTION

### 1.1 Definitions

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

“**Accounting Principles**” means [international financial reporting standards (IFRS) within the meaning of Regulation 1606/2002/EC on the application of international accounting standards (or as otherwise adopted or amended from time to time, except where specifically stated to refer to such standards as in force on the [First] Issue Date)]/[the generally accepted accounting principles, standards and practices in Finland as applied by the Issuer in preparing its annual [consolidated] financial statements].

“**Adjusted Nominal Amount**” means the Total Nominal Amount less the Nominal Amount of all Notes owned by a Group Company [or an Affiliate of the Issuer], irrespective of whether such Group Company [or an Affiliate of the Issuer] is directly registered as owner of such Notes.

“**Affiliate**” means, in relation to any specified Person, another Person directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purpose of this definition, “control” when used with respect to any Person means the power to direct the management or 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.

“**Agency Agreement**” means the agency agreement entered into on or before the [First]<sup>3</sup> Issue Date, between the Issuer and [*name of the initial Agent*], or any replacement agency agreement entered into after the [First] Issue Date between the Issuer and a replacing Agent.

“**Agent**” means [*Name*], incorporated under the laws of [*Jurisdiction*] with corporate registration number [*number*], acting for and on behalf of the Noteholders in accordance with these Terms and Conditions, or another party replacing it, as Agent, in accordance with these Terms and Conditions.

[“**Applicable Premium**”<sup>4</sup> means the higher of:

- (a) [1.00/[●]] per cent. of the Nominal Amount; and
- (b) an amount equal to
  - (i) [100/[●]] per cent. of the Nominal Amount [plus [●] per cent. of the Interest Rate (calculated on the Nominal Amount for one year)]; plus
  - (ii) all remaining scheduled Interest payments [(assuming that the Interest Rate for the period from the relevant Redemption Date to the [First Call Date/Final Maturity Date] will be equal to the Interest Rate in effect on the

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<sup>3</sup> If the Subsequent Notes mechanism is not included in these Terms and Conditions, references to “First Issue Date” should be replaced with the term “Issue Date” and “Initial Notes” and “Subsequent Notes” should be replaced with “Notes”. Additionally, the definition of “Issuance Certificate” and any references to the same may then be removed.

<sup>4</sup>Used in Clauses 8.3.1(a) and 12.6.

date on which the applicable notice of redemption is given)) on the Note until the [First Call Date/Final Maturity Date] (but excluding accrued but unpaid Interest up to the relevant Redemption Date),

discounted (for the time period starting from the relevant Redemption Date to the [First Call Date/Final Maturity Date] or the relevant Interest Payment Date, as the case may be) using a discount rate equal to the yield to maturity of [Bundesobligation]/[the Finnish Government Bond] with a maturity date on or about the [First Call Date/Final Maturity Date] plus [0.50] per cent., minus

(iii) the Nominal Amount.

[The Applicable Premium shall be calculated and determined by [●].]

”**Book-Entry Securities System**” means the [RM/OM] system being part of the book-entry register maintained by the CSD or any other replacing book-entry securities system.

”**Book-Entry System Act**” means the Finnish Act on Book-Entry System and Clearing Operations (Fin: *Laki arvo-osuusjärjestelmästä ja selvitystoiminnasta* 749/2012, as amended).

”**Business Day**” means a day on which the deposit banks are generally open for business in Helsinki.

”**Business Day Convention**” means [the first following day that is a CSD Business Day] / [the first following day that is a CSD Business Day unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a CSD Business Day].

[”**Change of Control Event**<sup>5</sup>” means the occurrence of an event or series of events whereby [one or more Persons, [not being the present shareholders (or an Affiliate of the present shareholders),] acting in concert (Fin: *yksissä tuumin toimiminen*), acquire control over]/[the [*present controlling shareholder(s)*] cease to control] the Issuer and where ”control” means (a) acquiring or controlling, directly or indirectly, more than [50] per cent of the total voting rights represented by the shares of the Issuer (being votes which are capable of being cast at general meetings of shareholders), or (b) the right to, directly or indirectly, appoint or remove at least a majority of the members of the board of directors of the Issuer.]

”**CSD**” means Euroclear Finland Oy, business identity code 1061446-0, Urho Kekkosen katu 5 C, P.O. Box 1110, 00101 Helsinki, Finland or any entity replacing the same as a central securities depository.

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<sup>5</sup> A shareholder in a listed company has to make a mandatory takeover bid when the voting rights held by the same exceed 30 or 50 per cent of the total voting rights in the company. The definition should be revised if it is intended to be applied in connection with the mandatory takeover bid.

“**CSD Business Day**” means a day on which the Book-Entry Securities System is open in accordance with the regulations of the CSD.<sup>6</sup>

[“**Debt Instruments**” means bonds, notes or other debt securities (however defined), which are or are intended to be or capable of being quoted, listed, traded or otherwise admitted to trading on a regulated market or multilateral trading facility (each as defined in Directive 2004/39/EC on markets in financial instruments)]<sup>7</sup>.

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

[“**EURIBOR**” means:

- (a) the applicable percentage rate *per annum* displayed on Reuters screen EURIBOR01 (or through another system or website replacing it) as of or around 11.00 a.m. (Brussels time) on the Quotation Day for the offering of deposits in Euro and for a period comparable to the relevant Interest Period; or
- (b) if no screen rate is available for the relevant Interest Period, the arithmetic mean of the rates (rounded upwards to four decimal places), as supplied to the Issuing Agent at its request quoted by [[*bank*], [*bank*], and [*bank*] (or such other banks as may be appointed by the Issuing Agent in consultation with the Issuer)] / [banks reasonably selected by the Issuing Agent], for deposits of EUR 10,000,000 for the relevant period; or
- (c) if no quotation is available pursuant to paragraph (b), the interest rate which according to the reasonable assessment of the Issuing Agent best reflects the interest rate for deposits in Euro offered for the relevant period; and

if any such rate is below zero, EURIBOR will be deemed to be zero<sup>8</sup>].]

“**Event of Default**” means an event or circumstance specified in paragraphs (a) to ([ ]) of Clause 12.1.

“**Final Maturity Date**” means [●].

“**Finance Documents**” means these Terms and Conditions, [each Issuance Certificate,] [the Security Documents] [, the Guarantee] and any other document designated by the Issuer and the Agent as a Finance Document.<sup>9</sup>

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<sup>6</sup> The business hours of the OM and RM systems are not similar. In the OM system, the registration days are basically all days on which the deposit banks are generally open for the public in Finland for the purpose of carrying banking business. As for the RM system, the system is open when also the TARGET2 subsystem is being operated. The Managing Director of Euroclear Finland may, however, for special reasons change the opening hours of the systems from the said principal rules with certain limitations.

<sup>7</sup> Used only in Clause 8.3.1 (d).

<sup>8</sup> To be verified that the proposed wording works with possible interest rate hedging.

<sup>9</sup> Agency Agreement is not a Finance Document but the liabilities under the Agency Agreement enjoy priority according to the waterfall in Clause 13.1.

“**Financial Indebtedness**” means:

- (a) moneys borrowed (including under any bank financing);
- (b) the amount of any liability under any lease or hire purchase contracts which would, in accordance with the Accounting Principles be treated as a finance lease or a capital lease);
- (c) receivables sold or discounted (other than on a non-recourse basis, provided that the requirements for de-recognition under the Accounting Principles are met);
- (d) any amount raised pursuant to any note purchase facility or the issue of any bond or note or similar instrument;
- (e) any other transaction (including the obligation to pay deferred purchase price) having the commercial effect of a borrowing or otherwise being classified as borrowing under the Accounting Principles;
- (f) the marked-to-market value of derivative transactions entered into in connection with protection against, or in order to benefit from, the fluctuation in any rate or price (if any actual amount is due as a result of a termination or a close-out, such amount shall be used instead);
- (g) counter-indemnity obligations in respect of guarantees or other instruments issued by a bank or financial institution; and
- (h) liabilities under guarantees or indemnities for any of the obligations referred to in paragraphs (a) to (g) above.

[“**First Call Date**” means [●].]

[“**First Issue Date**” means [●].]

“**Force Majeure Event**” has the meaning set forth in Clause 23.1.

“**Group**” means the Issuer and its Subsidiaries from time to time (each a “**Group Company**”).

[“**Guarantee**” means a guarantee issued or to be issued by [●] on or prior to the [First] Issue Date in respect of the Secured Obligations.]

[“**Initial Nominal Amount**” has the meaning set forth in Clause 2.4.]

[“**Initial Notes**” means the Notes issued on the First Issue Date.]

“**Insolvent**” means, in respect of a relevant Person, that it (i) is deemed to be insolvent within the meaning of Section 1 of Chapter 2 of the Finnish Bankruptcy Act (Fin: *Konkurssilaki* 120/2004, as amended) (or its equivalent in any other jurisdiction), (ii) admits inability to pay its debts as they fall due, (iii) suspends making payments on any of its debts, (iv) by reason of actual financial difficulties commences negotiations with its creditors (other than the Noteholders) with a view to rescheduling any of its indebtedness (including company reorganisation under the Finnish Act on Company Reorganisation (Fin: *Laki yrityksen saneerauksesta* 47/1993, as amended) (or its equivalent in any other jurisdiction)) or (v) is subject to involuntary winding-up, dissolution or liquidation.

“**Interest**” means the interest on the Notes calculated in accordance with Clauses 7.1 to 7.3.

“**Interest Payment Date**” means [[*date*], [*date*],] [*date*] and [*date*] of each year or, to the extent such day is not a CSD Business Day, the CSD Business Day following from the application of the Business Day Convention. The first Interest Payment Date for the Notes shall be [*date*] and the last Interest Payment Date shall be the relevant Redemption Date.

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

“**Interest Rate**” means [[ $\bullet$ ] per cent. *per annum*]/[EURIBOR] plus [ $\bullet$ ] per cent. *per annum*].

[“**Issuance Certificate**” means an issuance certificate relating to the issuance of Subsequent Notes, in the form of Appendix 1 hereto, duly completed and signed by the Issuer.]

“**Issue Date**” means [ $\bullet$ ] / [, in respect of the Initial Notes, the First Issue Date and, in respect of any Subsequent Notes, the date specified in the relevant Issuance Certificate].

“**Issuer**” means [*Issuer*], a [public] [limited liability company] incorporated under the laws of Finland with business identity code [*number*].

“**Issuing Agency Agreement**” means the agreement dated [ $\bullet$ ] regarding services related to the Notes entered into by and between the Issuer and the Issuing Agent in connection with the issuance of the [Initial] Notes (as amended and restated from time to time).

“**Issuing Agent**” means [*Issuing Agent*] acting as [issue agent (Fin: *liikkeeseenlaskijan asiamies*)]<sup>10</sup> / [issue administrator (Fin: *liikkeeseenlaskun hoitaja*)]<sup>11</sup> and paying agent of the Notes for and on behalf of the Issuer, or any other party replacing the same as Issuing Agent in accordance with the regulations of the CSD.

[“**Material Group Company**” means [ $\bullet$ ].]

“**Nominal Amount**” [has the meaning set forth in Clause 2.4] / [means in respect of each Note the Initial Nominal Amount, less the aggregate amount by which that Note has been redeemed in part pursuant to Clause 8.4 ([*Voluntary/Mandatory*] *partial redemption (call option)*)].

“**Noteholder**” means the Person who is registered in the register maintained by the CSD pursuant to paragraph 2 of Section 3 of Chapter 6 of the Book-Entry System Act as direct registered owner (Fin: *omistaja*) or nominee (Fin: *hallintarekisteröinnin hoitaja*) with respect to a Note.

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<sup>10</sup> Applicable in OM system.

<sup>11</sup> Applicable in RM system.



“**Noteholders’ Meeting**” means a meeting among the Noteholders held in accordance with Clause 16 (*Noteholders’ Meeting*).

“**Notes**” means debt instruments, each for the Nominal Amount and of the type referred to in paragraph 1 of Section 34 of the Act on Promissory Notes (Fin: *Velkakirjalaki 622/1947*, as amended) (Fin: *joukkovelkakirja*) and which are governed by and issued under these Terms and Conditions[, including the Initial Notes and any Subsequent Notes].

[“**Obligor**” means the Issuer and [●].]

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

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

“**Record Time**” means:

- (a) in relation to a payment of Interest, default interest and/or redemption of the Notes when such payment is made through the Book-Entry Securities System, the end of the first CSD Business Day prior to, as applicable, (i) an Interest Payment Date, (ii) the day on which default interest is paid, (iii) a Redemption Date or (iv) a date on which a payment to the Noteholders is to be made under Clause 13 (*Distribution of proceeds*); and
- (b) in relation to a Noteholders’ Meeting and Written Procedure, the end of the CSD Business Day specified in the communication pursuant to Clause 16.3 or Clause 17.3, as applicable; and
- (c) otherwise, the end of the [fifth] CSD Business Day prior to another relevant date.

“**Redemption Date**” means the date on which the relevant Notes are to be redeemed or repurchased in accordance with Clause 8 (*Redemption and repurchase of the Notes*).

[“**Relevant Market**” means the [Helsinki Stock Exchange/First North Finland] maintained by NASDAQ OMX Helsinki Ltd.]

[“**Secured Obligations**” means all present and future obligations and liabilities of the Issuer to the Secured Parties under the Finance Documents[, the Issuing Agency Agreement]<sup>12</sup> and the Agency Agreement.]

[“**Secured Parties**” means the Noteholders [and] the Agent (including in its capacity as Agent under the Agency Agreement) [and the Issuing Agent].]

“**Security**” means a mortgage, charge, pledge, lien, security assignment or other security interest securing any obligation of any Person, or any other agreement or arrangement having a similar effect.

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<sup>12</sup> If the Issuing Agency Agreement is included in this definition, the Issuing Agent should also be included in the definition of the Secured Parties. Further, the obligations of the Issuing Agent should be included in Clause 13.1(a).

[“**Security Documents**” means *[description]*.]

[“**Subsequent Notes**” means any Notes issued after the First Issue Date on one or more occasions.]

“**Subsidiary**” means, in relation to any Person, any Finnish or foreign legal entity (whether incorporated or not), [which at the time is a subsidiary (Fin: *tytäryhteisö*) to such Person, directly or indirectly, as defined in the Finnish Companies Act (Fin: *Osaakeyhtiölaki* 624/2006, as amended)] / [in respect of which such Person, directly or indirectly, (i) owns shares or ownership rights representing more than fifty (50) per cent. of the total number of votes held by the owners, (ii) otherwise controls more than fifty (50) per cent. of the total number of votes held by the owners, (iii) has the power to appoint and remove all, or the majority of, the members of the board of directors or other governing body, or (iv) exercises control as determined in accordance with the international financial reporting standards (IFRS) within the meaning of Regulation 1606/2002/EC on the application of international accounting standards (or as otherwise adopted or amended from time to time)].

“**Total Nominal Amount**” means the aggregate Nominal Amount of all the Notes outstanding at the relevant time.

[“**Transaction Security**” means the Security provided for the Secured Obligations pursuant to the Security Documents.]

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

## 1.2 Construction

1.2.1 Unless a contrary indication appears, any reference in these Terms and Conditions to:

- (a) “**assets**” includes present and future properties, revenues and rights of every description;
- (b) any agreement or instrument is a reference to that agreement or instrument as supplemented, amended, novated, extended, restated or replaced from time to time;
- (c) an Event of Default is continuing if it has not been remedied or waived;
- (d) a provision of law is a reference to that provision as amended or re-enacted;
- (e) words denoting the singular number shall include the plural and vice versa; and
- (f) a time of day is a reference to Helsinki time.

1.2.2 [When ascertaining whether a limit or threshold specified in Euro has been attained or broken, an amount in another currency shall be counted on the basis of the rate of exchange for such currency against Euro for the previous Business Day, as published by the European Central Bank on its website ([www.ecb.int](http://www.ecb.int)). If no such rate is available, the most recent rate published by the European Central Bank shall be used instead.]

1.2.3 No delay or omission of the Agent or of any Noteholder to exercise any right or remedy under the Finance Documents shall impair or operate as a waiver of any such right or remedy.

## 2. ISSUANCE AND STATUS OF THE NOTES

- 2.1 The Notes are denominated in Euro and each Note is constituted by these Terms and Conditions.
- 2.2 The Notes are offered for subscription in a minimum amount of EUR [●] [by way of a public offering]/[by way of a private placement].
- 2.3 By subscribing for Notes, each initial Noteholder, and, by acquiring Notes, each subsequent Noteholder (i) agrees that the Notes shall benefit from and be subject to the Finance Documents and (ii) agrees to be bound by these Terms and Conditions [and the other Finance Documents].
- 2.4 The [initial] nominal amount (Fin: *arvo-osuuden yksikkökoko*) of each [Initial] Note is EUR [amount] (the “[**Initial**] **Nominal Amount**”). [The aggregate nominal amount of the [Initial] Notes is EUR [amount].] All [Initial] Notes are issued on the [First] Issue Date on a fully paid basis at an issue price of [amount] per cent. of the [Initial] Nominal Amount.
- 2.5 [Provided that [(i)] no Event of Default is continuing or would result from such issue [and (ii) [●]], the Issuer may, on one or several occasions, issue Subsequent Notes the total Nominal Amount, issue price and the Issue Date of which shall be set out in an Issuance Certificate duly signed by the Issuer. Subsequent Notes shall benefit from and be subject to the Finance Documents, and, for the avoidance of doubt, the ISIN, the interest rate, the nominal amount and the final maturity applicable to the Initial Notes shall apply to Subsequent Notes. The issue price of the Subsequent Notes may be set at a discount or at a premium compared to the Nominal Amount. [[The maximum aggregate nominal amount of the Notes (the Initial Notes and all Subsequent Notes) may not exceed EUR [amount] unless a consent from the Noteholders is obtained in accordance with Clause 15.5(a)]/ [The aggregate nominal amount of Subsequent Notes is not limited].] Each Subsequent Note shall entitle its holder to Interest in accordance with Clause 7.1, and such holder otherwise have the same rights as the holders of the Initial Notes.]
- 2.6 The Notes constitute direct, unconditional[, / and] [unsubordinated] [and [secured]/[unsecured] obligations of the Issuer and shall at all times rank *pari passu* and without any preference among them.<sup>13</sup>
- 2.7 Each Note is freely transferable after it has been registered into the respective book-entry account of a Noteholder but the Noteholders may be subject to purchase or transfer restrictions with regard to the Notes, as applicable, under local laws to which a Noteholder may be subject. Each Noteholder must ensure compliance with such restrictions at its own cost and expense.

## 3. USE OF PROCEEDS

The Issuer shall use the proceeds from the issue of the Notes, less the costs and expenses incurred by the Issuer in connection with the issue of the Notes, for [purpose].

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<sup>13</sup> Potential contractual subordination of the Notes should be disclosed in connection with this Clause and reflected also elsewhere throughout these Terms and Conditions as appropriate.

#### 4. [CONDITIONS FOR DISBURSEMENT]

- 4.1 The Issuing Agent shall pay the net proceeds from the issuance of the [Initial] Notes to the Issuer on the later of (i) the [First] Issue Date and (ii) the day on which the Agent notifies the Issuing Agent that it has received the following, in form and substance satisfactory to it:
- (a) the Finance Documents, the Issuing Agency Agreement and the Agency Agreement duly executed by the parties thereto;
  - (b) a copy of a resolution from the board of directors of the Issuer [and each other Obligor] approving the issue of the [Initial] Notes and [the terms of the Finance Documents, the Issuing Agency Agreement and the Agency Agreement, and resolving to enter into such documents and any other documents necessary in connection therewith][authorising specified Person(s) to approve and execute any documents and take any other action necessary to consummate such issue];
  - (c) evidence that the Person(s) who has/have signed the Finance Documents, the Issuing Agency Agreement, the Agency Agreement and any other documents in connection therewith on behalf of the Issuer [and each other Obligor] is/are duly authorised to do so;
  - (d) [evidence that [*existing financing*] will be repaid in full on the [First] Issue Date [and that all Security provided for such financing will be simultaneously released];]
  - (e) [a legal opinion issued by a reputable law firm;]
  - (f) [*other conditions*]; and
  - (g) such other documents and information as is agreed between the Agent and the Issuer.
- 4.2 [The Issuing Agent shall pay the net proceeds from the issuance of any Subsequent Notes to the Issuer on the later of (i) the Issue Date of such Subsequent Notes and (ii) the day on which the Agent notifies the Issuing Agent that it has received the following in form and substance satisfactory to it:
- (a) a copy of a resolution from the board of directors of the Issuer approving the issue of the Subsequent Notes and resolving to enter into documents necessary in connection therewith;
  - (b) a certificate from the Issuer confirming that no Event of Default is continuing or would result from the issue of the Subsequent Notes [and [●]]<sup>14</sup>;
  - (c) [*other conditions*]; and
  - (d) such other documents and information as is agreed between the Agent and the Issuer].

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<sup>14</sup> A reference to condition(s) potentially added in Clause 2.5.

4.3 The Agent may assume that the documentation delivered to it pursuant to Clause 4.1 [and 4.2] is accurate, correct and complete unless it has actual knowledge that this is not the case, and the Agent does not have to verify the contents of any such documentation.

4.4 The Agent shall confirm to the Issuing Agent when it has received the documents and evidence referred to in Clause 4.1 [and 4.2, as the case may be].

## **5. NOTES IN BOOK-ENTRY FORM**

5.1 The Notes will be issued in dematerialised form in the Book-Entry Securities System in accordance with the Book-Entry System Act and regulations of the CSD and no physical notes will be issued.

5.2 Each Noteholder consents to the Issuer having a right to obtain information on the Noteholders, their contact details and their holdings of the Notes registered in the Book-Entry Securities System, such as information recorded in the lists referred to in paragraphs 2 and 3 of Section 3 of Chapter 6 of the Book-Entry System Act kept by the CSD in respect of the Notes and the CSD shall be entitled to provide such information upon request. At the request of the Agent or the Issuing Agent, the Issuer shall (and shall be entitled to do so) promptly obtain such information and provide it to the Agent or the Issuing Agent, as applicable.

5.3 The Agent and the Issuing Agent shall have the right to obtain information referred to in Clause 5.2 from the CSD in respect of the Notes if so permitted under the regulation of the CSD. The Issuer agrees that each of the Agent and the Issuing Agent is at any time on its behalf entitled to obtain information referred to in Clause 5.2 from the CSD in respect of the Notes.

5.4 The Issuer shall issue any necessary power of attorney to such persons employed by the Agent as are notified by the Agent, in order for such individuals to independently obtain information referred to in Clause 5.2 directly from the CSD in respect of the Notes. The Issuer may not revoke any such power of attorney unless directed by the Agent or unless consent thereto is given by the Noteholders.

5.5 The Issuer, the Agent and the Issuing Agent may use the information referred to in Clause 5.2 only for the purposes of carrying out their duties and exercising their rights in accordance with these Terms and Conditions with respect to the Notes and shall not disclose such information to any Noteholder or third party unless necessary for the before-mentioned purposes.

## **6. PAYMENTS IN RESPECT OF THE NOTES**

6.1 Any payments under or in respect of the Notes pursuant to these Terms and Conditions shall be made to the Person who is registered as a Noteholder at the Record Time prior to an Interest Payment Date or other relevant due date in accordance with the Finnish legislation governing the Book-Entry Securities System and book-entry accounts as well as the regulations of the CSD.

6.2 If, due to any obstacle affecting the CSD, the Issuer cannot make a payment, such payment may be postponed until the obstacle has been removed. Any such postponement shall not affect the Record Time.

6.3 The Issuer is not liable to gross-up any payments under the Finance Documents by virtue of any withholding tax, public levy or the similar.

6.4 All payments to be made by the Issuer pursuant to these Terms and Conditions shall be made without (and free and clear of any deduction for) set-off or counterclaim.

## **7. INTEREST**

7.1 Each [Initial] Note carries Interest at the Interest Rate from (and including) the [First] Issue Date up to (but excluding) the relevant Redemption Date. [Any Subsequent Note will carry Interest at the Interest Rate from (and including) the Interest Payment Date falling immediately prior to its issuance up to (but excluding) the relevant Redemption Date.]

7.2 Interest accrues during an Interest Period. Payment of Interest in respect of the Notes shall be made to the Noteholders on each Interest Payment Date for the preceding Interest Period.

7.3 [Interest shall be calculated on the basis of a 360-day year comprised of twelve months of 30 days each and, in case of an incomplete month, the actual number of days elapsed (30/360-days basis).]<sup>15</sup> / [Interest shall be calculated on the basis of the actual number of days in the Interest Period in respect of which payment is being made divided by 360 (actual/360-days basis).]<sup>16</sup> / [Interest shall be calculated on the “actual/actual ICMA” basis as specified by the International Capital Market Association.]<sup>17</sup>

7.4 If the Issuer fails to pay any amount payable by it on its due date, default interest shall accrue on the overdue amount from (and including) the due date up to (but excluding) the date of actual payment at a rate which is [●] ([●]) percentage points higher than the Interest Rate. Accrued default interest shall not be capitalised. No default interest shall accrue where the failure to pay was solely attributable to the Agent, the Issuing Agent or the CSD, in which case the Interest Rate shall apply instead.

## **8. REDEMPTION AND REPURCHASE OF THE NOTES**

### **8.1 Redemption at maturity**

The Issuer shall redeem all of the outstanding Notes in full on the Final Maturity Date with an amount per Note equal to the Nominal Amount together with accrued but unpaid Interest. If the Final Maturity Date is not a CSD Business Day, then the redemption shall occur on the CSD Business Day determined by application of the Business Day Convention.

### **8.2 Issuer’s purchase of Notes**

The Issuer may at any time and at any price purchase any Notes on the market or in any other way[, provided that if purchases are made through a tender offer, the possibility to tender must be made available to all Noteholders on equal terms]. The Notes held by the Issuer [may at the Issuer’s discretion be retained, sold or cancelled by the Issuer / shall be promptly cancelled by the Issuer].

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<sup>15</sup> Applicable if fixed interest rate and semiannual payments of interest.

<sup>16</sup> Applicable if variable interest rate.

<sup>17</sup> Applicable if fixed interest rate and annual interest payments.

**8.3 [Voluntary total redemption (call option)]<sup>18</sup>**

- 8.3.1 [The Issuer may redeem all, but not only some, of the outstanding Notes in full:
- (a) any time prior to the [First Call Date/Final Maturity Date]<sup>19</sup>, at an amount per Note equal to 100 per cent. of the Nominal Amount together with accrued but unpaid Interest, plus the Applicable Premium;]
  - (b) [any time from and including the First Call Date to, but excluding, the first CSD Business Day falling [●] ([●]) years after the [First] Issue Date at an amount per Note equal to [100/[●]] per cent. of the Nominal Amount [plus [●] per cent. of the Interest Rate (calculated on the Nominal Amount for one year)], together with accrued but unpaid Interest;]
  - (c) [any time from and including the first CSD Business Day falling [●] ([●]) years after the [First] Issue Date to, but excluding, the Final Maturity Date at an amount per Note equal to [100/[●]] per cent. of the Nominal Amount [plus [●] per cent. of the Interest Rate (calculated on the Nominal Amount for one year)], together with accrued but unpaid Interest;] [and/or]
  - (d) [provided that the redemption is financed [to at least [●] per cent.] by way of an issue of Debt Instruments [in which each Noteholder has a right to subscribe for such Debt Instruments,] any time from and including the first CSD Business Day falling [●] ([●]) [months/days] prior to the Final Maturity Date to, but excluding, the Final Maturity Date, at an amount equal to 100 per cent. of the Nominal Amount together with accrued but unpaid Interest.]
- 8.3.2 Redemption in accordance with Clause 8.3.1 shall be made by the Issuer giving not less than fifteen (15) Business Days' notice to the Noteholders and the Agent. Any such notice is irrevocable [but may, at the Issuer's discretion, contain one or more conditions precedent]. Upon expiry of such notice and the fulfilment of the conditions precedent (if any), the Issuer is bound to redeem the Notes in full at the applicable amounts.

**8.4 [[Voluntary/Mandatory] partial redemption (call option)]**

- 8.4.1 [*Include provision*]
- 8.4.2 Partial redemption in accordance with Clause 8.4.1 shall be made by the Issuer giving not less than fifteen (15) Business Days' notice to the Noteholders and the Agent. Any such notice is irrevocable and, upon expiry of such notice, the Issuer is bound to redeem the Notes in part on the immediately following Interest Payment Date at the applicable amounts. The applicable amount shall be an even amount in Euro and paid to the Person who is registered as a Noteholder at the Record Time prior to the relevant repurchase date.

**8.5 Early redemption due to illegality (call option)**

- 8.5.1 The Issuer may redeem all, but not only some, of the outstanding Notes at an amount per Note equal to the Nominal Amount together with accrued but unpaid Interest on a date

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<sup>18</sup> Paragraph (a): early redemption with the principle of full compensation (make-whole); paragraph (b)-(c): early redemption with the agreed premium; and paragraph (d): early redemption without a premium in connection with a refinancing with Debt Instruments.

<sup>19</sup> If paragraphs (b)-(c) are not included in the Terms and Conditions, elect "Final Maturity Date".

determined by the Issuer if it is or becomes unlawful for the Issuer to perform its obligations under the Finance Documents.

8.5.2 The Issuer shall give notice of any redemption pursuant to Clause 8.5.1 no later than twenty (20) Business Days after having received actual knowledge of any event specified therein (after which time period such right shall lapse).

8.5.3 A notice of redemption in accordance with Clause 8.5.1 is irrevocable and, on the date specified in such notice, the Issuer is bound to redeem the Notes in full at the applicable amounts.

## **8.6 [Mandatory repurchase due to a Change of Control Event (put option)]**

8.6.1 Upon the occurrence of a Change of Control Event, each Noteholder shall have the right to request that all[, or only some], of its Notes be repurchased at a price per Note equal to [●] per cent. of the Nominal Amount together with accrued but unpaid Interest, during a period of twenty (20) Business Days following a notice from the Issuer of the Change of Control Event pursuant to Clause 10.1.2 (after which time period such right shall lapse). [However, such period may not start earlier than upon the occurrence of the Change of Control Event.]

8.6.2 The notice from the Issuer pursuant to Clause 10.1.2 shall specify the repurchase date that is a CSD Business Day and include instructions about the actions that a Noteholder needs to take if it wants Notes held by it to be repurchased. If a Noteholder has so requested, and acted in accordance with the instructions in the notice from the Issuer, the Issuer shall, or shall procure that a Person designated by the Issuer will, 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 10.1.2. [The repurchase date must fall no later than [forty (40) Business Days] after the end of the period referred to in Clause 8.6.1.]

8.6.3 [If Noteholders representing more than [●] per cent. of the [Total]/[Adjusted] Nominal Amount have requested that Notes held by them are repurchased pursuant to this Clause 8.6, the Issuer shall send a notice to the remaining Noteholders giving them a further opportunity to request that Notes held by them be repurchased on the same terms during a period of twenty (20) Business Days following such notice. Such notice shall specify the repurchase date that is a CSD Business Day and include instructions about the actions that a Noteholder needs to take if it wants Notes held by it to be repurchased. If a Noteholder has so requested, and acted in accordance with the instructions in the notice from the Issuer, the Issuer shall, or shall procure that a Person designated by the Issuer will, 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 this Clause 8.6.3. The repurchase date must fall no later than forty (40) Business Days after the end of the period of twenty (20) Business Days referred to in this Clause 8.6.3.]

8.6.4 The Issuer shall comply with the requirements of any applicable securities laws and 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 8.6, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Clause 8.6 by virtue of the conflict.

8.6.5 Any Notes repurchased by the Issuer pursuant to this Clause 8.6 [may at the Issuer's discretion be retained, sold or cancelled / shall be promptly cancelled by the Issuer].



- 8.6.6 [The Issuer shall not be required to repurchase any Notes pursuant to this Clause 8.6, if a third party in connection with the occurrence of a Change of Control Event offers to purchase the Notes in the manner and on the terms set out in this Clause 8.6 (or on terms more favourable to the Noteholders) and purchases all Notes validly tendered in accordance with such offer. If the Notes tendered are not purchased within the time limits stipulated in this Clause 8.6, the Issuer shall repurchase any such Notes within five (5) Business Days after the expiry of the time limit.][The Issuer shall not be required to repurchase any Notes pursuant to this Clause 8.6 if it has exercised its right to redeem all of the Notes in accordance with Clause 8.3 prior to the occurrence of the Change of Control Event.]
- 8.6.7 [If Notes representing more than [75] per cent of the aggregate nominal principal amount of the Notes have been repurchased pursuant to this Clause 8.6, the Issuer is entitled to repurchase all the remaining outstanding Notes at the price stated in Clause 8.6.1 above by notifying the remaining Noteholders of its intention to do so no later than fifteen (15) Business Days after the latest possible repurchase date pursuant to Clause 8.6.2 [or Clause 8.6.3, as applicable]. Such prepayment may occur at the earliest on the tenth CSD Business Day following the date of such notice.]
- 9. [TRANSACTION SECURITY AND GUARANTEE]**
- 9.1 [As continuing Security for the due and punctual fulfilment of the Secured Obligations, the Issuer shall (and shall procure that each other Obligor will) [at the latest] on the [First] Issue Date grant the Transaction Security for the benefit of the Secured Parties. The Transaction Security shall be provided and perfected pursuant to, and subject to the terms of, the Security Documents entered into or to be entered into by and between the Issuer [and the other Obligors] as pledgors and the Agent as pledgee acting on behalf of the Secured Parties. The Agent shall hold the Transaction Security on behalf of the Secured Parties in accordance with the Security Documents.]
- 9.2 [The Transaction Security and the Guarantee are or are to be granted only for the benefit of the Secured Parties. The Security Documents and the Guarantee provide and will provide that only the Agent may exercise the rights under the Security Documents and the Guarantee and only the Agent has the right to enforce the Security Documents and the Guarantee. As a consequence, the Secured Parties shall not be entitled, individually or collectively, to take any direct action to enforce any rights in their favor under the Security Documents and the Guarantee.]
- 9.3 [Unless and until the Agent has received instructions from the Noteholders in accordance with Clause 14 (*Decisions by Noteholders*), the Agent shall (without first having to obtain the Noteholders' consent) be entitled to enter into agreements with the Issuer or a third party or take any other actions, if it is, in the Agent's opinion, necessary for the purpose of maintaining, altering, releasing or enforcing the Transaction Security and the Guarantee, creating further Security [or guarantees] for the benefit of the [Noteholders / Secured Parties] or for the purpose of settling the Noteholders' or the Obligors' rights to the Transaction Security, in each case in accordance with the terms of the Finance Documents.]
- 9.4 [The Agent shall be entitled to release all Transaction Security and the Guarantee upon the discharge in full of the Secured Obligations.]

9.5 [Other terms regarding e.g. the granting of further guarantees and security in the future, release of guarantees and security in certain circumstances and sharing of security to be added as applicable]

## 10. INFORMATION TO NOTEHOLDERS

### 10.1 Information from the Issuer

10.1.1 The Issuer will make the following information available to the Noteholders by publication on the website of the [Issuer/Group]:

- (a) as soon as the same become available, but in any event within [four] [(4)] months after the end of each financial year, its audited [consolidated] financial statements for that financial year and annual report;
- (b) [as soon as the same become available, but in any event within [two] [(2)] months after the end of each [quarter/interim half] of its financial year, its [audited/unaudited] [consolidated] financial statements or the year-end report (Fin: *tilinpäätöstiedote*) (as applicable) for such period;]
- (c) as soon as practicable following an acquisition or disposal of Notes by a Group Company, the aggregate Nominal Amount held by the Group Companies, or the amount of Notes cancelled by the Issuer;
- (d) [any other information required to be disclosed under the Finnish Securities Markets Act (Fin: *Arvopaperimarkkinalaki* 746/2012, as amended) and the rules and regulations of the Relevant Market]<sup>20</sup>; and
- (e) [any other information that would, if the Notes were as of the [First] Issue Date listed on the [Helsinki Stock Exchange/First North Finland] maintained by NASDAQ OMX Helsinki Ltd, be required pursuant to the Rules of the [Exchange/First North Finland] of NASDAQ OMX Helsinki Ltd (as in force from time to time and on the [First] Issue Date being [Rules 4.3.2.3 (*Auditor's report*) and 4.3.3 (*Continuous disclosure requirements*)]<sup>21</sup> / [●]) / [alternative relevant information undertakings]<sup>22</sup>.

10.1.2 [The Issuer shall immediately notify the Noteholders and the Agent upon becoming aware of the occurrence of a Change of Control Event. Such notice may be given in advance of the occurrence of a Change of Control Event and be conditional upon the occurrence of such Change of Control Event if a definitive agreement is in place providing for a Change of Control Event.]

10.1.3 When the financial statements and other information are made available to the Noteholders pursuant to Clause 10.1.1, the Issuer shall send copies of such financial statements and other information to the Agent.

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<sup>20</sup> Applicable if the notes or the shares of the Issuer are listed on the stock exchange or on the First North Finland.

<sup>21</sup> Applicable if the reference is made to the Rules of NASDAQ OMX Helsinki.

<sup>22</sup> Applicable if the notes are not traded on the stock exchange or on the First North Finland. The first option in the square brackets includes an obligation to disclose information pursuant to the Rules of the NASDAQ OMX Helsinki/ First North Finland (in respect of the Rules of the NASDAQ OMX Helsinki, however excluding obligations relating to the preparation of the financial statements in accordance with IFRS).

10.1.4 The Issuer shall: [APPLICABLE ONLY IF FINANCIAL UNDERTAKINGS ARE INCLUDED.]

- (a) together with the financial statements[; and
- (b) [prior to]/[upon] the incurrence of Financial Indebtedness or upon a Restricted Payment [*add other matters subject to incurrence covenants*],]<sup>23</sup>

submit to the Agent a compliance certificate in the form of Appendix 2 hereto (i) setting out calculations and figures as to compliance with Clause [ ] (*Financial undertakings*), (ii) containing a confirmation that no Event of Default has occurred (or if an Event of Default has occurred, what steps have been taken to remedy it[, and (iii) attaching copies of any notices sent to the Relevant Market].

10.1.5 The Issuer shall immediately notify the Agent (with full particulars) upon becoming aware of the occurrence of any event or circumstance which constitutes an Event of Default, or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing) constitute an Event of Default, and shall provide the Agent with such further information as it may reasonably request in writing following receipt of such notice. Should the Agent not receive such information, the Agent is entitled to assume that no such event or circumstance exists or can be expected to occur, provided that the Agent does not have actual knowledge of such event or circumstance.

## **10.2 Information from the Agent**

10.2.1 Subject to the restrictions of a non-disclosure agreement entered into by the Agent with the Issuer, the Agent is entitled to disclose to the Noteholders any event or circumstance directly or indirectly relating to the Issuer or the Notes. Notwithstanding the foregoing, the Agent shall notify the Noteholders of the occurrence of an Event of Default in accordance with Clause 12.3.

## **10.3 Publication of Finance Documents**

10.3.1 The latest version of these Terms and Conditions (including any document amending these Terms and Conditions)[and any Issuance Certificate] shall be available on the websites of the [Issuer/Group] and the Agent.

10.3.2 The latest versions of the Finance Documents shall be available to the Noteholders at the office of the Agent during normal business hours.

## **11. GENERAL UNDERTAKINGS**

### **11.1 [Admission to trading]**

11.1.1 [The Issuer shall use its best efforts to ensure that the loan constituted by these Terms and Conditions and evidenced by the Notes is admitted to trading on the Relevant Market [within [●] ([●]) months after issuance/at the [First] Issue Date], and that it remains admitted or, if such admission to trading is not possible to obtain or maintain, admitted to trading or traded on another regulated market or multilateral trading facility (each as defined in Directive 2004/39/EC on markets in financial instruments).

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<sup>23</sup> Applicable if incurrence covenants.

11.1.2 Following an admission to trading, the Issuer shall take all actions on its part to maintain the admission for as long as any Notes are outstanding, but not longer than up to and including the last day on which the admission to trading reasonably can, pursuant to the then applicable regulations of the Relevant Market and the CSD, subsist.]

## 11.2 Undertakings relating to the Agency Agreement<sup>24</sup>

11.2.1 The Issuer shall, in accordance with the Agency Agreement:

- (a) pay fees to the Agent;
- (b) indemnify the Agent for costs, losses and liabilities;
- (c) furnish to the Agent all information requested by or otherwise required to be delivered to the Agent; and
- (d) not act in a way which would give the Agent a legal or contractual right to terminate the Agency Agreement.

11.2.2 The Issuer and the Agent shall not amend any provisions of the Agency Agreement without the prior consent of the Noteholders if the amendment would be detrimental to the interests of the Noteholders.

## 12. ACCELERATION OF THE NOTES

12.1 The Agent is entitled to, and shall [following a demand in writing from a Noteholder (or Noteholders) representing at least [twenty-five/fifty] [(25)/(50)] per cent. of the Adjusted Nominal Amount (such demand may only be validly made by a Person who is a Noteholder at the end of the Business Day on which the demand is received by the Agent and shall, if made by several Noteholders, be made by them jointly) or] following an instruction given pursuant to Clause 12.4, on behalf of the Noteholders (i) by notice to the Issuer, declare all[, but not only some,] of the outstanding Notes due and payable together with any other amounts payable under the Finance Documents, immediately or at such later date as the Agent determines, and/or (ii) exercise any or all of its rights, remedies, powers and discretions under the Finance Documents, if:<sup>25</sup>

- (a) the Issuer does not pay on the due date any amount payable by it under the Finance Documents, unless the non-payment:
  - (i) is caused by technical or administrative error; and
  - (ii) is remedied within [●] ([●]) Business Days from the due date;
- (b) the Issuer [or any other Person (other than the Agent)]<sup>26</sup> does not comply with [any material terms or conditions of the Finance Documents to which it is a party (other than those terms referred to in paragraph (a) above)]/[insert references to specific terms], unless the non-compliance:

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<sup>24</sup> To be revised to conform to the obligations of the Issuer under the Agency Agreement as deemed necessary.

<sup>25</sup> The scope of application (e.g. only certain Group Companies) and the threshold of application (e.g. materiality) to be revised as deemed necessary.

<sup>26</sup> To be used if a guarantee or a third party security is granted for the obligations of the Issuer under the Notes.

- (i) is capable of remedy; and
  - (ii) is remedied within [●] ([●]) Business Days of the earlier of the Agent giving notice and the Issuer [or the relevant other Person] becoming aware of the non-compliance;
- (c) any Finance Document becomes invalid, ineffective or varied (other than in accordance with the provisions of the Finance Documents), and such invalidity, ineffectiveness or variation has a detrimental effect on the interests of the Noteholders;
- (d) any [Material] Group Company is, or is deemed for the purposes of any applicable law to be, Insolvent;
- (e) any attachment, sequestration, distress or execution, or any analogous process in any jurisdiction, affects [any material asset / substantially all assets] of a [Material] Group Company and is not discharged within [●] ([●]) Business Days; [or]
- (f) [(i)] any Financial Indebtedness of a [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 (however described), [(ii)] any commitment for any Financial Indebtedness of a [Material] Group Company is cancelled or suspended by a creditor as a result of an event of default (however described), or [(iii)] any creditor of a [Material] Group Company becomes entitled to declare any Financial Indebtedness of a [Material] Group Company due and payable prior to its specified maturity as a result of an event of default (however described)], provided that no Event of Default will occur under this paragraph (f) if (i) any relevant payment to be made is contested in good faith and as long as it has not resulted in a payment obligation of the relevant member of the Group (confirmed by a court, arbitral tribunal or a government authority, subject to Clause 12.5) or (ii) the aggregate amount of Financial Indebtedness [or commitment for Financial Indebtedness] referred to herein is less than EUR [amount]; [or]
- (g) [*additional Event of Default*].
- 12.2 The Agent may not accelerate the Notes in accordance with Clause 12.1 by reference to a specific Event of Default if it is no longer continuing.
- 12.3 The Agent shall notify the Noteholders of an Event of Default within [five] ([5]) Business Days of the date on which the Agent received actual knowledge of that an Event of Default has occurred and is continuing, except if the Event of Default does not relate to a payment failure in respect of the Notes and the Agent considers that withholding the notice is not detrimental to the interests of the Noteholders. The Agent shall, within [twenty] ([20]) Business Days of the date on which the Agent received actual knowledge of that an Event of Default has occurred and is continuing (and if the Event of Default does not relate to a payment failure in respect of the Notes, within [sixty] ([60]) Business Days, decide if the Notes shall be so accelerated. If the Agent decides not to accelerate the Notes, the Agent shall promptly seek instructions from the Noteholders in accordance with Clause 15 (*Decisions by Noteholders*). The Agent shall always be entitled to take the time necessary to consider carefully whether an occurred event or circumstance constitutes an Event of Default.

- 12.4 If the Noteholders instruct the Agent to accelerate the Notes [or any part thereof], the Agent shall promptly declare the Notes due and payable and take such actions as may, in the opinion of the Agent, be necessary or desirable to enforce the rights of the Noteholders under the Finance Documents, unless the relevant Event of Default is no longer continuing.
- 12.5 If the right to accelerate the Notes is based upon a decision of a court of law, an arbitral tribunal or a government authority, it is not necessary that the decision has become enforceable under law or that the period of appeal has expired in order for cause of acceleration to be deemed to exist.
- 12.6 In the event of an acceleration of the Notes in accordance with this Clause 12, [up to, but excluding, the First Call Date] the Issuer shall redeem [all] Notes at an amount per Note equal to 100 per cent. of the Nominal Amount [plus the Applicable Premium] [and thereafter, as applicable considering when the acceleration occurs, the redemption amount specified in Clause 8.3 (*Voluntary total redemption (call option)*) / [● ] per cent. of the Nominal Amount]].

### 13. DISTRIBUTION OF PROCEEDS

- 13.1 All payments by the Issuer relating to the Notes and the Finance Documents following an acceleration of the Notes in accordance with Clause 12 (*Acceleration of the Notes*) [and any proceeds received from an enforcement of the Transaction Security and the Guarantee (in each case to the extent proceeds from the Transaction Security and the Guarantee can be applied towards satisfaction of the Secured Obligations)] shall be distributed in the following order of priority, in accordance with the instructions of the Agent:
- (a) *first*, in or towards payment *pro rata* of (i) all unpaid fees, costs, expenses and indemnities payable by the Issuer to the Agent in accordance with the Agency Agreement (other than any indemnity given for liability against the Noteholders) [and/or the Issuing Agent in accordance with the Issuing Agency Agreement], (ii) other costs, expenses and indemnities relating to the acceleration of the Notes, [the enforcement of the Transaction Security] or the protection of the Noteholders' rights in each case as may have been incurred by the Agent, (iii) any costs incurred by the Agent for external experts that have not been reimbursed by the Issuer in accordance with Clause 19.2.7, and (iv) any costs and expenses incurred by the Agent in relation to a Noteholders' Meeting or a Written Procedure that have not been reimbursed by the Issuer in accordance with Clause 15.12;
  - (b) *secondly*, in or towards payment *pro rata* of accrued but unpaid Interest under the Notes (Interest due on an earlier Interest Payment Date to be paid before any Interest due on a later Interest Payment Date) and default interest payable pursuant to Clause 7.4;
  - (c) *thirdly*, in or towards payment *pro rata* of any unpaid principal under the Notes; and
  - (d) *fourthly*, in or towards payment *pro rata* of any other costs or outstanding amounts unpaid under the Finance Documents.

Any excess funds after the application of proceeds in accordance with paragraphs (a) to (d) above shall be paid to the Issuer [or the Group Companies that provided Transaction Security that was enforced, as appropriate].

- 13.2 If a Noteholder or another party has with the consent of the Agent paid any fees, costs, expenses or indemnities referred to in Clause 13.1(a) [or (b)], such Noteholder or other party shall be entitled to reimbursement by way of a corresponding distribution in accordance with Clause 13.1(a) [or (b)].
- 13.3 Funds that the Agent receives (directly or indirectly) in connection with the acceleration of the Notes [or the enforcement of the Transaction Security] constitute escrow funds and must be held on a separate interest-bearing account on behalf of the Noteholders and the other interested parties. The Agent shall arrange for payments of such funds in accordance with this Clause 13 as soon as reasonably practicable.
- 13.4 If the Issuer or the Agent shall make any payment under this Clause 13, the Issuer or the Agent, as applicable, shall notify the Noteholders of any such payment at least fifteen (15) Business Days before the payment is made. Such notice shall specify the Record Time, the payment date and the amount to be paid. Notwithstanding the foregoing, for any Interest due but unpaid the Record Time specified in Clause 6.1 shall apply [and for any partial redemption in accordance with Clause 8.4 (*Voluntary/Mandatory*) *partial redemption (call option)*) due but not made, the Record Time specified in Clause 8.4.2 shall apply].

#### **14. RIGHT TO ACT ON BEHALF OF A NOTEHOLDER**

- 14.1 If any Person other than a Noteholder wishes to exercise any rights specifically allocated to Noteholders under the Finance Documents, it must obtain a power of attorney from the Noteholder or a successive, coherent chain of powers of attorney starting with the Noteholder and authorising such Person or provide other evidence of ownership or authorisation satisfactory to the Agent.
- 14.2 A Noteholder may issue one or several powers of attorney to third parties to represent it in relation to some or all of the Notes held by it. Any such representative may act independently under the Finance Documents in relation to the Notes for which such representative is entitled to represent the Noteholder and may further delegate its right to represent the Noteholder by way of a further power of attorney.
- 14.3 The Agent shall only have to examine the face of a power of attorney or other evidence of authorisation that has been provided to it pursuant to Clause 14.1 and may assume that it has been duly authorised, is valid, has not been revoked or superseded and that it is in full force and effect, unless otherwise is apparent from its face or is otherwise notified to the Agent.

#### **15. DECISIONS BY NOTEHOLDERS**

- 15.1 A request by the Agent for a decision by the Noteholders on a matter relating to the Finance Documents shall (at the option of the Agent) be dealt with at a Noteholders' Meeting or by way of a Written Procedure.
- 15.2 Any request from the Issuer or a Noteholder (or Noteholders) representing at least ten (10) per cent. of the Adjusted Nominal Amount (such request may only be validly made by a Person who is a Noteholder on the Business Day immediately preceding the day on which the request is received by the Agent and shall, if made by several Noteholders, be made by them jointly) for a decision by the Noteholders on a matter relating to the Finance Documents shall be directed to the Agent and dealt with at a Noteholders' Meeting or by way of a Written Procedure, as determined by the Agent. The Person requesting the decision may suggest the form for decision making, but if it is in the Agent's opinion more

appropriate that a matter is dealt with at a Noteholders' Meeting or by way of a Written Procedure, the Agent shall have the right to decide where such matter shall be dealt with.

15.3 The Agent may refrain from convening a Noteholders' Meeting or instigating a Written Procedure if (i) the suggested decision must be approved by any Person in addition to the Noteholders and such Person has informed the Agent that an approval will not be given, or (ii) the suggested decision is not in accordance with applicable laws.

15.4 Only a Person who is, or who, directly or indirectly, has been provided with a power of attorney pursuant to Clause 14 (*Right to act on behalf of a Noteholder*) from a Person who is registered as a Noteholder:

- (a) at the Record Time on the CSD Business Day specified in the communication pursuant to Clause 16.3, in respect of a Noteholders' Meeting, or
- (b) at the Record Time on the CSD Business Day specified in the communication pursuant to Clause 17.3, in respect of a Written Procedure,

may exercise voting rights as a Noteholder at such Noteholders' Meeting or in such Written Procedure in respect of Notes held by such Person at the relevant Record Time, provided that the relevant Notes are included in the Adjusted Nominal Amount.

15.5 The following matters shall require the consent of Noteholders representing at least [75] per cent. of the Adjusted Nominal Amount for which Noteholders are voting at a Noteholders' Meeting or for which Noteholders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 17.3:

- (a) [the issue of any Subsequent Notes, if the total nominal amount of the Notes exceeds, or if such issue would cause the total nominal amount of the Notes to at any time exceed, EUR [amount] (for the avoidance of doubt, for which consent shall be required at each occasion such Subsequent Notes are issued);]
- (b) a change to the terms of any of Clause 2.1, and Clauses 2.6 and 2.7;
- (c) [a reduction of the premium payable upon the redemption or repurchase of any Note pursuant to Clause 8 (*Redemption and repurchase of the Notes*);]
- (d) a change to the Interest Rate or the Nominal Amount [(other than as a result of an application of Clause 8.4 ([*Voluntary/Mandatory*] *partial redemption (call option)*))];
- (e) a change to the terms for the distribution of proceeds set out in Clause 13 (*Distribution of proceeds*);
- (f) a change to the terms dealing with the requirements for Noteholders' consent set out in this Clause 15;
- (g) a change of issuer, an extension of the tenor of the Notes or any delay of the due date for payment of any principal or interest on the Notes;
- (h) [a release of the Transaction Security[, except in accordance with the terms of the Security Documents];]
- (i) a mandatory exchange of the Notes for other securities;



- (j) [other matters]; and
  - (k) early redemption of the Notes, other than upon an acceleration of the Notes pursuant to Clause 12 (*Acceleration of the Notes*) or as otherwise permitted or required by these Terms and Conditions.
- 15.6 Any matter not covered by Clause 15.5 shall require the consent of Noteholders representing more than 50 per cent. of the Adjusted Nominal Amount for which Noteholders are voting at a Noteholders' Meeting or for which Noteholders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 17.3. This includes, but is not limited to, any amendment to, or waiver of, the terms of any Finance Document that does not require a higher majority (other than an amendment permitted pursuant to Clause 18.1(a) or (b)), an acceleration of the Notes[ or the enforcement of any Transaction Security].
- 15.7 Quorum at a Noteholders' Meeting or in respect of a Written Procedure only exists if a Noteholder (or Noteholders) representing at least fifty (50) per cent. of the Adjusted Nominal Amount in case of a matter pursuant to Clause 15.5, and otherwise twenty (20) per cent. of the Adjusted Nominal Amount:
- (a) if at a Noteholders' Meeting, attend the meeting in person [or by telephone conference] (or appear through duly authorised representatives); or
  - (b) if in respect of a Written Procedure, reply to the request.
- 15.8 If a quorum does not exist at a Noteholders' Meeting or in respect of a Written Procedure, the Agent or the Issuer shall convene a second Noteholders' Meeting (in accordance with Clause 16.1) or initiate a second Written Procedure (in accordance with Clause 17.1), as the case may be, provided that the relevant proposal has not been withdrawn by the Person(s) who initiated the procedure for Noteholders' consent. The quorum requirement in Clause 15.7 shall not apply to such second Noteholders' Meeting or Written Procedure.
- 15.9 Any decision which extends or increases the obligations of the Issuer or the Agent, or limits, reduces or extinguishes the rights or benefits of the Issuer or the Agent, under the Finance Documents shall be subject to the Issuer's or the Agent's consent, as applicable.
- 15.10 The Issuer may not, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Noteholder for or as inducement to any consent under these Terms and Conditions, unless such consideration is offered to all Noteholders that consent at the relevant Noteholders' Meeting or in a Written Procedure within the time period stipulated for the consideration to be payable or the time period for replies in the Written Procedure, as the case may be.
- 15.11 A matter decided at a duly convened and held Noteholders' Meeting or by way of a Written Procedure is binding on all Noteholders, irrespective of them being present or represented at the Noteholders' Meeting or responding in the Written Procedure.
- 15.12 All costs and expenses incurred by the Issuer or the Agent for the purpose of convening a Noteholders' Meeting or for the purpose of carrying out a Written Procedure, including reasonable fees to the Agent, shall be paid by the Issuer.
- 15.13 If a decision is to be taken by the Noteholders on a matter relating to the Finance Documents, the Issuer shall promptly at the request of the Agent provide the Agent with a certificate specifying the number of Notes owned by Group Companies [or (to the

knowledge of the Issuer) its Affiliates], irrespective of whether such Person is directly registered as owner of such Notes. The Agent shall not be responsible for the accuracy of such certificate or otherwise be responsible for determining whether a Note is owned by a Group Company [or an Affiliate of the Issuer].

- 15.14 Information about decisions taken at a Noteholders' Meeting or by way of a Written Procedure shall promptly be sent by notice to the Noteholders and published on the websites of the [Issuer/Group] and the Agent, provided that a failure to do so shall not invalidate any decision made or voting result achieved. The minutes from the relevant Noteholders' Meeting or Written Procedure shall at the request of a Noteholder be sent to it by the Issuer or the Agent, as applicable.

## **16. NOTEHOLDERS' MEETING**

- 16.1 The Agent shall convene a Noteholders' Meeting by sending a notice thereof to [the CSD and]<sup>27</sup> each Noteholder no later than five (5) Business Days after receipt of a valid request from the Issuer or the Noteholder(s) (or such later date as may be necessary for technical or administrative reasons).
- 16.2 Should the Issuer want to replace the Agent, it may convene a Noteholders' Meeting in accordance with Clause 16.1 with a copy to the Agent. After a request from the Noteholders pursuant to Clause 19.4.4, the Issuer shall no later than five (5) Business Days after receipt of such request (or such later date as may be necessary for technical or administrative reasons) convene a Noteholders' Meeting in accordance with Clause 16.1.
- 16.3 The notice pursuant to Clause 16.1 shall include (i) time for the meeting, (ii) place for the meeting, (iii) agenda for the meeting (including each request for a decision by the Noteholders), (iv) a specification of the CSD Business Day at the end of which a Person must be registered as a Noteholder in order to be entitled to exercise voting rights at the meeting and (v) a form of power of attorney. Only matters that have been included in the notice<sup>27</sup> may be resolved upon at the Noteholders' Meeting. Should prior notification by the Noteholders be required in order to attend the Noteholders' Meeting, such requirement shall be included in the notice.
- 16.4 The Noteholders' Meeting shall be held no earlier than ten (10) Business Days and no later than thirty (30) Business Days from the date of the notice.
- 16.5 Without amending or varying these Terms and Conditions, the Agent may prescribe such further regulations regarding the convening and holding of a Noteholders' Meeting as the Agent may deem appropriate.

## **17. WRITTEN PROCEDURE**

- 17.1 The Agent shall instigate a Written Procedure no later than five (5) Business Days after receipt of a valid request from the Issuer or the Noteholder(s) (or such later date as may be necessary for technical or administrative reasons) by sending a communication to the CSD and each Person who is registered as a Noteholder at the Record Time prior to the date on which the communication is sent.

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<sup>27</sup> According to the current regulations of the CSD, the CSD must be notified of a Noteholders' Meeting.

- 17.2 Should the Issuer want to replace the Agent, it may send a communication in accordance with Clause 17.1 to each Noteholder with a copy to the Agent.
- 17.3 A communication pursuant to Clause 17.1 shall include (i) each request for a decision by the Noteholders, (ii) a description of the reasons for each request, (iii) a specification of the CSD Business Day at the end of which a Person must be registered as a Noteholder in order to be entitled to exercise voting rights, (iv) instructions and directions on where to receive a form for replying to the request (such form to include an option to vote yes or no for each request) as well as a form of power of attorney, and (v) the stipulated time period within which the Noteholder must reply to the request (such time period to last at least fifteen (15) Business Days from the communication pursuant to Clause 17.1). If the voting is to be made electronically, instructions for such voting shall be included in the communication.
- 17.4 When a consent from the Noteholders representing the requisite majority of the total Adjusted Nominal Amount pursuant to Clauses 15.5 or 15.6 has been received in a Written Procedure, the relevant decision shall be deemed to be adopted pursuant to Clause 15.5 or 15.6, as the case may be, even if the time period for replies in the Written Procedure has not yet expired.

## **18. AMENDMENTS AND WAIVERS**

- 18.1 The Issuer and the Agent (acting on behalf of the Noteholders) may agree to amend the Finance Documents or waive a past default or anticipated failure to comply with any provision in a Finance Document, provided that:
- (a) such amendment or waiver is not detrimental to the interest of the Noteholders in any material respect, or is made solely for the purpose of rectifying obvious errors and mistakes;
  - (b) such amendment or waiver is required by applicable law, a court ruling or a decision by a relevant authority; or
  - (c) such amendment or waiver has been duly approved by the Noteholders in accordance with Clause 15 (*Decisions by Noteholders*).
- 18.2 The consent of the Noteholders is not necessary to approve the particular form of any amendment to the Finance Documents. It is sufficient if such consent approves the substance of the amendment.
- 18.3 The Agent shall promptly notify the Noteholders of any amendments or waivers made in accordance with Clause 18.1, setting out the date from which the amendment or waiver will be effective, and ensure that any amendments to the Finance Documents are published in the manner stipulated in Clause 10.3 (*Publication of Finance Documents*). The Issuer shall ensure that any amendments to these Terms and Conditions are duly registered with the CSD and each other relevant organisation or authority.
- 18.4 An amendment to the Finance Documents shall take effect on the date determined by the Noteholders Meeting, in the Written Procedure or by the Agent, as the case may be.

## **19. APPOINTMENT AND REPLACEMENT OF THE AGENT**

### **19.1 Appointment of Agent**

- 19.1.1 By subscribing for Notes, each initial Noteholder, and, by acquiring Notes, each subsequent Noteholder:
- (a) agrees to and accepts the appointment of the Agent to act as its agent and representative 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 relating to the Notes held by such Noteholder [including any legal or arbitration proceeding relating to the perfection, preservation, protection or enforcement of the Transaction Security] and to exercise such rights, powers, authorities and discretions as are specifically delegated to the Agent by these Terms and Conditions [and the Security Documents] together with all such rights, powers, authorities and discretions as are incidental thereto]; and
  - (b) agrees to and accepts that, upon the Agent delivering an acceleration notice in accordance with Clause 12.1, it will be considered to have irrevocably transferred to the Agent all its procedural rights and legal authority to claim and collect any and all receivables under the Notes, enforce any Transaction Security and to receive any funds in respect of the Notes or under the Security Documents (Fin: *prokurasiirto*) as a result of which transfer, the Agent shall be irrevocably entitled to take all such action in its own name but on behalf of and for the benefit of each Noteholder (at the expense of the Noteholders).
- 19.1.2 Each Noteholder shall immediately upon request provide the Agent with any such documents (in form and substance satisfactory to the Agent) that the Agent deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents. [The Agent is under no obligation to represent a Noteholder which does not comply with such request if due to such failure the Agent is unable to represent such Noteholder.]
- 19.1.3 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.
- 19.1.4 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 Agency Agreement and the Agent's obligations as Agent under the Finance Documents are conditioned upon the due payment of such fees and indemnifications.
- 19.1.5 The Agent may act as agent or other representative for several issues of securities issued by or relating to the Issuer and other Group Companies notwithstanding potential conflicts of interest.
- ### **19.2 Duties of the Agent**
- 19.2.1 The Agent shall represent the Noteholders in accordance with the Finance Documents, [including, *inter alia*, holding the Transaction Security pursuant to the Security Documents on behalf of the Noteholders and, where relevant, enforcing the Transaction Security on

- behalf of the Noteholders]. [Except as specified in Clause 4 (*Conditions for disbursement*), / However,] the Agent is not responsible for the execution or enforceability of the Finance Documents [or the perfection of the Transaction Security].
- 19.2.2 When acting in accordance with the Finance Documents, the Agent is always acting with binding effect on behalf of the Noteholders. The Agent shall carry out its duties under the Finance Documents in a reasonable, proficient and professional manner, with reasonable care and skill.
- 19.2.3 The Agent shall monitor the compliance by the Issuer with its obligations under the Finance Documents on the basis of information made available to it pursuant to the Finance Documents or received from a Noteholder. The Agent is not obligated to assess the Issuer's financial situation other than as expressly set out in these Terms and Conditions.
- 19.2.4 The Agent is entitled to take any step it in its sole discretion considers necessary or advisable to protect the rights of the Noteholders pursuant to these Terms and Conditions.
- 19.2.5 The Agent is entitled to delegate its duties to other professional parties, but the Agent shall remain liable for the actions of such parties under the Finance Documents.
- 19.2.6 The Agent shall treat all Noteholders equally and, when acting pursuant to the Finance Documents, act with regard only to the interests of the Noteholders and shall not be required to have regard to the interests or to act upon or comply with any direction or request of any other Person, other than as explicitly stated in the Finance Documents.
- 19.2.7 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 reasonably incurred for external experts engaged after the occurrence of an Event of Default, or for the purpose of investigating or considering (i) an event or circumstance which the Agent reasonably believes is or may lead to an Event of Default or (ii) a matter relating to the Issuer [or the Transaction Security] which the Agent reasonably believes may be detrimental to the interests of the Noteholders under the Finance Documents. Any compensation for damages or other recoveries received by the Agent from external experts engaged by it for the purpose of carrying out its duties under the Finance Documents shall be distributed in accordance with Clause 13 (*Distribution of proceeds*).
- 19.2.8 Notwithstanding any other provision of the Finance Documents to the contrary, the Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation.
- 19.2.9 If in the Agent's reasonable opinion the cost, loss or liability which it may incur (including reasonable fees to the Agent) in complying with instructions of the Noteholders, or taking any action at its own initiative, will not be covered by the Issuer, the Agent may refrain from acting in accordance with such instructions, or taking such action, until it has received such funding or indemnities (or adequate Security has been provided therefore) as it may reasonably require.
- 19.2.10 The Agent shall give a notice to the Noteholders (i) before it ceases to perform its obligations under the Finance Documents by reason of the non-payment by the Issuer of any fee or indemnity due to the Agent under the Finance Documents or the Agency Agreement or (ii) if it refrains from acting for any reason described in Clause 19.2.9.

19.2.11 [The Agent shall at all times maintain and keep all certificates and other documents that are bearers of right relating to the Transaction Security in safe custody on behalf of the Secured Parties in accordance with the terms and conditions of the Finance Documents [and deposit such certificates and other documents [in the custody of a reputable bank]]. The Agent shall not be responsible for or required to insure against any loss incurred in connection with such safe custody. The Agent shall hold amounts recovered, net of costs (including legal costs) and expenses incurred in connection with the recovery, separated for the account of the Secured Parties and distribute such amounts recovered promptly to the Secured Parties in accordance with these Terms and Conditions.]

### **19.3 Limited liability for the Agent<sup>28</sup>**

19.3.1 The Agent will not be liable to the Noteholders for damage or loss caused by any action taken or omitted by it under or in connection with any Finance Document, unless directly caused by its negligence or wilful misconduct. The Agent shall never be responsible for indirect loss.

19.3.2 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 Noteholders to delay the action in order to first obtain instructions from the Noteholders.

19.3.3 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 Noteholders, 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.

19.3.4 The Agent shall have no liability to the Noteholders for damage caused by the Agent acting in accordance with instructions of the Noteholders given in accordance with Clause 15 (*Decisions by Noteholders*) [or a demand by Noteholders given pursuant to Clause 12.1].

19.3.5 Any liability towards the Issuer which is incurred by the Agent in acting under, or in relation to, the Finance Documents shall not be subject to set-off against the obligations of the Issuer to the Noteholders under the Finance Documents.

### **19.4 Replacement of the Agent**

19.4.1 Subject to Clause 19.4.7, the Agent may resign by giving notice to the Issuer and the Noteholders, in which case the Noteholders shall in consultation with the Issuer appoint a successor Agent at a Noteholders' Meeting convened by the retiring Agent or by way of a Written Procedure initiated by the retiring Agent.

19.4.2 Subject to Clause 19.4.7, if the Agent is Insolvent, the Agent shall be deemed to resign as Agent and the Issuer shall within [ten (10)] Business Days appoint a successor Agent.

19.4.3 Any successor Agent appointed pursuant to this Clause 19.4 must be an independent financial institution or other reputable company which regularly acts as agent under debt issuances.

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<sup>28</sup> The obligations of the Agent vis-à-vis the Issuer are agreed in the Agency Agreement.

- 19.4.4 A Noteholder (or Noteholders) representing at least ten (10) per cent. of the Adjusted Nominal Amount may, by notice to the Issuer (such notice may only be validly given by a Person who is a Noteholder at the end of the Business Day on which the notice is received by the Issuer and shall, if given by several Noteholders, be given by them jointly), require that a Noteholders' Meeting is held for the purpose of dismissing the Agent and appointing a new Agent. The Issuer may, at a Noteholders' Meeting convened by it or by way of a Written Procedure initiated by it, propose to the Noteholders that the Agent be dismissed and a new Agent appointed.
- 19.4.5 If the Noteholders have not appointed a successor Agent within ninety (90) days after (i) the earlier of the notice of resignation was given or the resignation otherwise took place or (ii) the Agent was dismissed through a decision by the Noteholders, the Issuer shall appoint a successor Agent.
- 19.4.6 The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- 19.4.7 The Agent's resignation or dismissal shall only take effect upon the appointment of a successor Agent and acceptance by such successor Agent of such appointment and the execution of all necessary documentation to effectively substitute the retiring Agent.
- 19.4.8 Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall, in respect of any action which it took or failed to take whilst acting as Agent, (a) remain entitled to the benefit of the Finance Documents and (b) remain liable under the Finance Documents. Its successor, the Issuer and each of the Noteholders shall have the same rights and obligations amongst themselves under the Finance Documents as they would have had if such successor had been the original Agent.
- 19.4.9 In the event that there is a change of the Agent in accordance with this Clause 19.4, the Issuer shall execute such documents and take such actions as the new Agent may reasonably require for the purpose of vesting in such new Agent the rights, powers and obligation of the Agent and releasing the retiring Agent from its further obligations under the Finance Documents and the Agency Agreement. Unless the Issuer and the new Agent agree otherwise, the new Agent shall be entitled to the same fees and the same indemnities as the retiring Agent.

## **20. NO DIRECT ACTIONS BY NOTEHOLDERS**

- 20.1 A Noteholder may not take any steps whatsoever against the Issuer [or with respect to the Transaction Security or the Guarantee] to enforce or recover any amount due or owing to it pursuant to the Finance Documents, or to initiate, support or procure the winding-up, dissolution, liquidation, company reorganisation (Fin: *yrittysaneeraus*) or bankruptcy (Fin: *konkurssi*) (or its equivalent in any other jurisdiction) of the Issuer in relation to any of the obligations of the Issuer under the Finance Documents.
- 20.2 Clause 20.1 shall not apply if:
- (a) the Agent has been instructed by the Noteholders in accordance with the Finance Documents to take any of the actions referred to in Clause 20.1 but fails for any reason to take, or is unable to take (for any reason other than a failure by a Noteholder to provide documents in accordance with Clause 19.1.2), such actions

within a reasonable period of time and such failure or inability is continuing. However, if the failure to take such actions is caused by the non-payment by the Issuer of any fee or indemnity due to the Agent under the Finance Documents or the Agency Agreement or by any reason described in Clause 19.2.9, such failure must continue for at least forty (40) Business Days after notice pursuant to Clause 19.2.10 before a Noteholder may take any action referred to in Clause 20.1; and

- (b) [the Noteholders have resolved pursuant to these Terms and Conditions that, upon the occurrence of a failure by the Agent referred to in (a) above, a Noteholder shall have the right to take any action referred to in Clause 20.1.]

20.3 The provisions of Clause 20.1 shall not in any way limit an individual Noteholder's right to claim and enforce [payments which are due to it under Clause 8.6 (*Mandatory repurchase due to a Change of Control Event (call option)*) or other] payments which are due by the Issuer to some but not all Noteholders.

## 21. PRESCRIPTION

21.1 The right to receive payment of the principal of or interest on the Notes shall be prescribed and become void three (3) years from the date on which such payment became due.

21.2 If a limitation period is duly interrupted in accordance with the Finnish Act on Limitations (Fin: *Laki velan vanhentumisesta* 728/2003, as amended), a new limitation period of at least three (3) years will commence.

## 22. NOTICES AND PRESS RELEASES

### 22.1 Notices

22.1.1 Any notice or other communication to be made under or in connection with the Finance Documents:

- (a) if to the Agent, shall be given at the address [registered with the [*Jurisdiction*] Companies Registration Office] / [specified on its website [www.\[name\].\[●\]](http://www.[name].[●])] on the Business Day prior to dispatch;
- (b) if to the Issuing Agent, shall be given at the address [registered with the Finnish Trade Register] / [specified on its website [www.\[name\].\[fi/com\]](http://www.[name].[fi/com])] on the Business Day prior to dispatch and designated "To the attention of [●]";
- (c) if to the Issuer, shall be given at the address [registered with the Finnish Trade Register] / [specified on its website [www.\[name\].\[fi/com\]](http://www.[name].[fi/com])] on the Business Day prior to dispatch and designated "To the attention of [●]"; and
- (d) if to the Noteholders, shall be given at their addresses as registered with the CSD, at the Record Time prior to dispatch, and by either courier delivery or letter for all Noteholders. A Notice to the Noteholders shall also be published on the websites of the [Issuer/Group] and the Agent.

22.1.2 Any notice or other communication made by one Person to another under or in connection with the Finance Documents shall be in English and sent by way of courier, fax, e-mail, personal delivery or letter and will become effective, in the case of courier or personal delivery, when it has been left at the address specified in Clause 22.1.1 or, in the case of letter, [three (3)] Business Days after being deposited postage prepaid in an envelope



addressed to the address specified in Clause 22.1.1 or, in the case of fax or e-mail, when actually received in a readable form.

22.1.3 Failure to send a notice or other communication to a Noteholder or any defect in it shall not affect its sufficiency with respect to other Noteholders.

## 22.2 [Press releases<sup>29</sup>

22.2.1 Any notice that the Issuer or the Agent shall send to the Noteholders pursuant to Clauses [8.3 (*Voluntary total redemption (call option)*),] [8.4 (*Voluntary/Mandatory partial redemption (call option)*),] [8.5 (*Early redemption due to illegality (call option)*)], [10.1.2,] [12.3], [15.14], [16.1], [17.1] and [18.3] shall also be published [by way of press release by the Issuer or the Agent, as applicable] / [by a notice published in Kauppalehti, Helsingin Sanomat or any other major Finnish newspaper selected by the Issuer, or if applicable, the Agent. Any such notice shall be deemed to have been received by the Noteholders when published in any manner specified in this Clause 22.2.1].

22.2.2 [A notice shall be deemed to be sent by way of press release if it is made available to the public within the European Economic Area promptly and in a non-discriminatory manner.]

22.2.3 In addition to Clause 22.2.1, if any information relating to the Notes or the [Issuer/Group] contained in a notice the Agent may send to the Noteholders under these Terms and Conditions has not already been made public in accordance with these Terms and Conditions, the Agent shall before it sends such information to the Noteholders give the Issuer the opportunity to make public such information in accordance with these Terms and Conditions. If the Issuer does not promptly make public such information and the Agent considers it necessary to make such information public in accordance with Clause 22.2.1 before it can lawfully send a notice containing such information to the Noteholders, the Agent shall be entitled to do so.]

## 23. [FORCE MAJEURE AND LIMITATION OF LIABILITY

23.1 Neither [the Issuer, ]the Agent nor the Issuing Agent shall be held responsible for any damage arising out of any legal enactment, or any measure taken by a public authority, or war, strike, lockout, boycott, blockade or any other similar circumstance (a “**Force Majeure Event**”). The reservation in respect of strikes, lockouts, boycotts and blockades applies even if the Agent or the Issuing Agent itself takes such measures, or is subject to such measures.

23.2 The Issuing Agent shall have no liability to the Noteholders if it has observed reasonable care. The Issuing Agent shall never be responsible for indirect damage with exception of gross negligence and wilful misconduct.

23.3 Should a Force Majeure Event arise which prevents [the Issuer, ]the Agent or the Issuing Agent from taking any action required to comply with these Terms and Conditions, such action may be postponed until the obstacle has been removed.

23.4 The provisions in this Clause 23 apply unless they are inconsistent with the provisions of the Book-Entry System Act which provisions shall take precedence.]

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<sup>29</sup> The requirement for publishing notices by way of press releases should be considered on a case-by-case basis.

**24. GOVERNING LAW AND JURISDICTION**

- 24.1 These Terms and Conditions, and any non-contractual obligations arising out of or in connection therewith, shall be governed by and construed in accordance with the laws of Finland.
- 24.2 The Issuer submits to the non-exclusive jurisdiction of the Finnish courts with the [District Court of Helsinki (Fin: *Helsingin käräjäoikeus*) as the court of first instance].
- 

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

Place:

Date:

[ISSUER]  
as Issuer

---

Name:

\_\_\_\_\_

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

Place:

Date:

[AGENT]  
as Agent

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

**[APPENDIX 1 (*Issuance Certificate*)**

## ISSUANCE CERTIFICATE

Reference is made to the terms and conditions relating to [Senior Unsecured / Senior Secured / Subordinated] [Fixed / Floating] Rate Notes due [●] issued by [Issuer] (the “Terms and Conditions”)

We hereby confirm the issuance of Subsequent Notes as follows:

Issue Date: [date]

Issue price: [●] per cent. of the Nominal Amount

Total Nominal Amount: [amount]

The Terms and Conditions shall apply to the above Subsequent Notes.

In [●], on the [●] day of [●] 20[●]

[ISSUER]

as Issuer

\_\_\_\_\_  
Name:]

**APPENDIX 2 (*Compliance Certificate*)**

COMPLIANCE CERTIFICATE

[●]

In [●], on the [●] day of [●] 20[●]

[ISSUER]  
as Issuer

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

## MODEL TERMS FOR GENERAL UNDERTAKINGS

This document includes model terms for the following general undertakings:

- Financial Indebtedness
- Restricted payments
- Continuation of business
- Mergers and de-mergers
- Disposals
- Negative pledge
- Compliance with laws
- Authorisations
- *Pari passu* ranking
- Related party transactions
- Restrictions on Subsidiaries' distributions
- Financial undertakings

Capitalized terms used but not defined in this document (e.g., "Group Company" and "Financial Indebtedness") have the meanings assigned to them in the model terms and conditions.

### DISCLAIMER

*While care has been taken in the preparation of these model terms, no representation or warranty is given by EK or the members of the working group:*

- *as to the suitability of the model terms for any particular issuance*
- *that the model terms will cover any particular eventuality*

*While efforts have been made to benchmark the model terms against the Swedish and Norwegian market for sub-investment grade bonds, the working group emphasizes that they do not necessarily reflect what is the market standard for non-investment grade bond issuances. In addition, the general undertakings, if any, are entirely a matter for commercial negotiation between the parties.*

*Users of the model terms should in particular bear in mind the following:*

- *The terms should always be customized to the issuance at hand.*
- *The terms have been drafted on the basis that the Issuer's subsidiaries do not guarantee the Notes. Changes will be required if there are such guarantees.*

*EK and the members of the working group accept no liability for the use of these Model Terms for General Undertakings and recommend that issuers and investors always have the benefit of independent legal advice.*

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## UNDERTAKINGS

The Issuer undertakes to (and shall, where applicable, procure that the other Group Companies<sup>1</sup> will) comply with the undertakings set forth in this Clause [●] for so long as the Notes remain outstanding.

### 1. FINANCIAL INDEBTEDNESS

1.1 Except as provided under Clause 1.2, the Issuer shall not [(and shall procure that no other [Material] Group Company will)] incur[, prolong or refinance] any Financial Indebtedness[.]

**[THE REST OF THIS CLAUSE 1.1 IS ONLY APPLICABLE IF THE INCURRENCE BASED UNDERTAKING IN CLAUSE 12.3 IS APPLIED:]**

[, provided that the Issuer [and such [Material] Group Company] may incur[, prolong or refinance] Financial Indebtedness if:

- (a) [no [Event of] Default is continuing [or would occur as a result thereof];]
- (b) [the Incurrence Test is met;] [and]
- (c) [such Financial Indebtedness (other than any Financial Indebtedness incurred as a result of the issuance of Subsequent Notes) is stated to mature after the Final Maturity Date.]

1.2 Notwithstanding Clause 1.1, the Issuer [and any other [Group Company]] may incur[, prolong or refinance] Financial Indebtedness:

- (a) arising under the Finance Documents;
- (b) [arising under [credit facility] with a financial institution in a maximum aggregate principal amount at any time outstanding not exceeding EUR [●];]
- (c) arising under any Permitted Guarantees;
- (d) [in respect of which a [Material] Group Company is the creditor;]
- (e) [arising under non-speculative hedging transactions entered into in the ordinary course of business in connection with protection against interest rate[, currency [or commodity price] fluctuations;]
- (f) [pertaining to any acquired asset, business or entity and existing on the date of its acquisition, but not created in the contemplation of its acquisition[, provided that any such Financial Indebtedness has been discharged within [four months] after the date of the acquisition of the asset, business or entity];]<sup>2</sup>

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<sup>1</sup> This refers to all Group Companies "where applicable" because in some of the covenants it may be necessary to refer to all Group Companies, while others may only apply to the Issuer only or the Issuer and other Material Group Companies. It is a commercial question to what extent the covenants apply to subsidiaries of the Issuer.

<sup>2</sup> May not be appropriate, e.g., if incurrence of debt is permitted under the Incurrence Test.

- (g) [arising under finance or capital leases of vehicles, plant, equipment or computers, provided that the aggregate capital value of all such items so leased under outstanding leases by [Group Companies] does not exceed EUR [●] at any time;]<sup>3</sup>
- (h) [arising under any pension liabilities or guarantees of such liabilities;]
- (i) arising in the ordinary course of business with suppliers of goods [with a maximum duration of [90] days]; [and]
- (j) [not permitted by the preceding paragraphs and the outstanding principal amount of which does not exceed EUR [●] in aggregate for the [the Issuer]/[Group] at any time;] [and]
- (k) [●].

## 2. RESTRICTED PAYMENTS<sup>4</sup>

2.1 Except as provided under Clause 2.2, the Issuer shall not [(and shall procure that no other Group Company will)] (each of which is a "**Restricted Payment**" and which are collectively referred to as "**Restricted Payments**"):

- (a) declare or pay any dividend in respect of its shares or declare or make any group contributions (Fin: *konserniavustus*) (other than to the Issuer or [to a Subsidiary of the Issuer]/[, in the case of a Group Company other than the Issuer, to the direct shareholder(s) of such Group Company on a *pro rata* basis based on the share ownership in such Group Company]<sup>5</sup>;
- (b) repurchase or redeem its own shares;
- (c) redeem or reduce its share capital or other restricted equity;<sup>6</sup>
- (d) make any distribution or transfers of value (including but not limited to any distribution from the fund of invested unrestricted equity (Fin: *sijoitetun vapaan oman pääoman rahasto*)) to the direct or indirect shareholders of the Issuer, or any Affiliates of the Issuer (other than to a [wholly-owned] Subsidiary of the Issuer); [or]
- (e) [grant any loans (other than [(i)] to [the Issuer or] a [wholly-owned] Subsidiary of the Issuer [or [(ii) Permitted Loans]);] [or]

<sup>3</sup> If the Issuer prepares financial statements in accordance with IFRS, consider tying the basket amount to the accounting treatment for leases as at the [First] Issue Date (since IFRS treatment of leases is expected to materially change in the future). See definition of "Accounting Principles".

<sup>4</sup> If used, this clause in particular needs to be customized to the circumstances at hand. Several factors are relevant, such as if subsidiaries provide upstream guarantees, if there are subordinated obligations, if the Notes are structurally subordinated, if the issuer is private-equity-owned, etc.

<sup>5</sup> Choose the latter option if group contributions can only be effected through dividend payments to the payor's immediate parent company.

<sup>6</sup> In some instances, issuers may wish to include a provision whereby the Noteholders waive their right based on the Finnish Companies Act to object to a reduction in share capital (see equivalent provisions in Clause 4.3 in respect of mergers/demergers).



(f) [●].

2.2 Notwithstanding Clause 2.1, [the Issuer] may [make a Restricted Payment]<sup>7</sup> if:

- (a) no [Event of] Default is continuing or would occur as a result of such [Restricted Payment]; [and]
- (b) [**ONLY APPLICABLE IF INCURRENCE BASED UNDERTAKING IN CLAUSE 12.3 IS APPLIED;**]  
the Incurrence Test is met [after giving effect on a *pro forma* basis to such [Restricted Payment]]; [and]
- (c) such [Restricted Payment] (together with all other [Restricted Payments] made in the same financial year) does not exceed [50] per cent of the Issuer's [consolidated net profit after tax] based on the audited annual accounts from the previous financial year.

### 3. CONTINUATION OF BUSINESS

The Issuer shall procure that no [substantial]/[material] change is made to the general nature [or scope] of the business from that carried on by the Group on the [First] Issue Date.

### 4. MERGERS AND DE-MERGERS

4.1 [Except as provided under Clause 4.2,] [t]he Issuer shall not (and shall procure that no other [Material] Group Company will) carry out:

- (a) any merger (or other business combination or corporate reorganisation involving the consolidation of assets and obligations) of the Issuer [or such other [Material] Group Company] with any other Person (other than [a Group Company]/[the Issuer or its wholly-owned Subsidiary]) [if such merger, combination or reorganisation would have a Material Adverse Effect]; [or]
- (b) any demerger (or a corporate reorganisation having the same or equivalent effect) of the Issuer [or such other [Material] Group Company] [if such demerger or reorganisation would have a Material Adverse Effect]; [or]
- (c) [any merger involving the Issuer where the Issuer is not the surviving entity [or any liquidation of the Issuer].]

4.2 [Clause 4.1 shall not apply to:

[●].]

4.3 [Each Noteholder agrees, with respect to the Notes it holds, not to exercise, and hereby waives in advance, its right in accordance with the Finnish Companies Act (Fin: *Osakeyhtiölaki* 624/2006, as amended) to object to any merger or demerger if (and only if) such merger or demerger (as applicable) (a) is not prohibited under these Terms and Conditions or (b) has been consented to by the Noteholders in a Noteholders' Meeting or by way of a Written Procedure.]

<sup>7</sup> Consider restricting to dividend payments (as opposed to Restricted Payments) to Issuer's shareholders.

## 5. DISPOSALS

[The Issuer shall not (and shall procure that no other [Material] Group Company will) sell, transfer or otherwise dispose of all or [a substantial part]/[substantially all] of [the Group's]/[its] assets (including shares or other securities in any Person) or operations (other than to [a Group Company]/[the Issuer or its wholly-owned Subsidiary]), unless such sale, transfer or disposal:

- (a) is carried out at fair market value on terms and conditions customary for such transactions; [and]
- (b) [would not have a Material Adverse Effect;] [and]
- (c) [*financial ratio/metric test*].

[**AND/OR**]

[The Issuer shall not (and shall procure that no other [Material] Group Company will) sell, transfer or otherwise dispose of any shares in any [Material] Group Company (other than to [a Group Company]/[the Issuer or its wholly-owned Subsidiary]).]<sup>8</sup>

## 6. NEGATIVE PLEDGE

6.1 Except as provided under Clause 6.2, the Issuer shall not (and shall procure that no other [Material] Group Company will):

- (a) create or allow to subsist any Security over any of its assets [or any guarantee in respect of any obligation of any Person];
- (b) [sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or reacquired by any Group Company;]
- (c) [sell, transfer or otherwise dispose of any of its receivables on recourse terms;]
- (d) [enter into any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts;] [or]
- (e) [enter into any other preferential arrangement having a similar effect,]

[in respect of items (b) to (e), in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.]

6.2 Clause 6.1 does not apply to:

- (a) [any Security provided under the Finance Documents;]

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<sup>8</sup> Consider including provisions concerning the application of proceeds from disposals. For example, it can be provided that all or a portion of the proceeds can be used to repay the Notes and/or other debt of the Issuer or Group.

- (b) [any Security granted in respect of a [credit facility] that is permitted under Clause 1.2(b);]
- (c) any netting or set-off arrangement entered into by [the Issuer]/[a Group Company] in the ordinary course of its banking arrangement for the purpose of netting debit and credit balances;
- (d) [any payment or close out netting or set-off arrangement arising under non-speculative hedging transactions entered into in the ordinary course of business which is permitted under Clause 1.2(e);]
- (e) any lien or other security interest arising by operation of law and in the ordinary course of business and not as a result of any default or omission by any Group Company;
- (f) [any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a Group Company [in the ordinary course of business and on the supplier's standard or usual terms and not arising as a result of any default or omission by any Group Company]<sup>9</sup>];]
- (g) [any Security not permitted by paragraphs (a) to [(f)] above, securing indebtedness the principal amount of which does not in aggregate exceed EUR [●] for the Group taken as a whole;] [and]
- (h) [any Permitted Guarantee; [and]]
- (i) [●].

## 7. COMPLIANCE WITH LAWS

[The Issuer shall (and shall procure that each other [Material] Group Company will) comply with all laws and regulations to which it may be subject from time to time, if failure so to comply would materially impair its ability to perform its [payment obligations under the Notes]/[obligations under these Terms and Conditions.]

[OR]

[The Issuer shall (and shall procure that each [Material] Group Company will) comply with all laws and regulations to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.]

## 8. [AUTHORISATIONS]

The Issuer shall (and shall procure that each other [Material] Group Company will) obtain, maintain and comply with the terms of any authorisation, approval, license and consent required for the conduct of its business if a failure to do so would have Material Adverse Effect.]

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<sup>9</sup> Consider adding specific carve-out for security interests encumbering assets of acquired companies.

**9. PARI PASSU RANKING**

[The Issuer shall ensure that its payment obligations under the Finance Documents rank at least *pari passu* with all its [other] present and future unsecured payment obligations, except for obligations mandatorily preferred by law applying to companies generally.]

**10. RELATED PARTY TRANSACTIONS**

[The Issuer shall not (and shall procure that no other [Group Company] will) enter into any transaction with its Related Party unless such transaction [(i) is on terms that are not materially less favourable to the Issuer or such Group Company, as applicable, than those that could be obtained at the time of such transaction in arm's-length dealings with a Person that is not such an Related Party [or (ii) is a distribution that is permitted under Clause 2.1 or 2.2].]

[OR]

[The Issuer shall (and shall procure that each other [Group Company] will) conduct all dealings [(other than a distribution that is permitted under Clause 2.1 or 2.2)] with the direct and indirect shareholders of the Group Companies (excluding other Group Companies) and/or any Affiliates of such direct or indirect shareholders at arm's length.]

**11. [RESTRICTIONS ON SUBSIDIARIES' DISTRIBUTIONS]<sup>10</sup>**

11.1 Except as provided under Clause 11.2, the Issuer shall procure that none of its Subsidiaries [that is a Material Group Company] creates or otherwise permits to exist or become effective any consensual Security or restriction on the ability of such Subsidiary to:

- (a) pay dividends or make other distributions to its shareholder(s);
- (b) make any loans or advances to the Person of which it is a Subsidiary;
- (c) pay any Financial Indebtedness owed to the Issuer or the Person of which it is a Subsidiary;
- (d) transfer any assets or properties to the Person of which it is a Subsidiary.

11.2 Clause 11.1 shall not apply to any Security or restriction existing under or by reason of:

- (a) [the Finance Documents;]
- (b) any agreement, instrument or arrangement permitted under Clause [insert *reference to chosen undertakings*], provided that such Security or restriction is customary for such agreement, instrument or arrangement (as determined by the Issuer in good faith);
- (c) applicable law or regulation or governmental license, permit or concession;
- (d) under agreements or arrangements entered into in the ordinary course of business; and

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<sup>10</sup> This provision may be appropriate, e.g., in circumstances in which the Notes are structurally subordinated.

(e) [●].]

## 12. FINANCIAL UNDERTAKINGS<sup>11</sup>

**[MAINTENANCE COVENANTS – IF APPLICABLE, CHOOSE RELEVANT UNDERTAKING:]**<sup>12</sup>

12.1 The Issuer shall ensure that:

- (a) *[Interest cover]*: the ratio of Adjusted EBITDA to [Net] Finance Charges in respect of any Measurement Period shall not be less than [●]:1;]
- (b) *[Leverage ratio]*: the ratio of Total [Net] Debt on the last day of any Measurement Period to Adjusted EBITDA in respect of that Measurement Period shall not exceed [●]:1;]
- (c) *[Loan-to-value]*: [on each Reference Date], the Loan to [Security Asset] Value Ratio shall not exceed [●]:1;]
- (d) *[Equity ratio]*: on each Reference Date, the ratio of the Group's Book Equity to Total Assets shall not be less than [●]:1;]
- (e) *[Gearing]*: on each Reference Date, the ratio of Total [Net] Debt to the Group's Book Equity shall not exceed [●]:1;]
- (f) *[Minimum equity]*: on each Reference Date, the Group's Book Equity shall be equal to at least EUR [●];]

12.2 **[ONLY APPLICABLE IF UNDERTAKING 12.1 (a) - (f) IS SELECTED:]**

The **[reference to relevant financial metric]** for purposes of the financial covenants in Clause 12.1 shall be calculated as follows:

- (a) The **[relevant financial metric]** shall be calculated based on the latest available Financial Report(s).
- (b) **[Calculation methods and adjustments, if any]**.<sup>13</sup>

<sup>11</sup> This clause contains two types of financial undertakings either or both of which may be used in issuances: maintenance covenants and incurrence covenants. In maintenance covenants, the relevant financial ratio or metric is tested periodically (e.g., every calendar quarter). Failure by the Issuer or the Group to meet the financial ratio or metric results in an Event of Default. In incurrence covenants, the relevant financial ratio or metric is not tested periodically; rather, it is tested only when the Issuer (or a Group Company) carries out a transaction to which the incurrence test applies. Such transactions typically include the payment of dividends (or equivalent payments) from the Issuer and the Issuer's (or a Group Company's) incurrence of additional debt. The incurrence test can also apply to other transactions or events.

The assumption in the financial covenants is that the relevant financial metric (e.g., Adjusted EBITDA or Total [Net] Debt) is calculated on consolidated basis for the entire Group (i.e., including all Group Companies).

<sup>12</sup> Appropriate financial ratio, if any, to be selected for the individual issuance.

<sup>13</sup> In certain circumstances it may be appropriate to use adjustments in the calculations of the maintenance covenants, such as *pro forma* adjustments for acquisitions and divestments made during the Measurement Period.

**[INCURRENCE COVENANTS – IF APPLICABLE, CHOOSE RELEVANT INCURRENCE BASED UNDERTAKING:]<sup>14</sup>**

12.3 The Incurrence Test is met if:

- (a) *[Interest cover: the ratio of Adjusted EBITDA to [Net] Finance Charges in respect of the relevant Measurement Period equals or exceeds [●]:1;]* [and]
- (b) *[Leverage: the ratio of Total [Net] Debt [on the last day of the relevant Measurement Period]<sup>15</sup> to Adjusted EBITDA in respect of that Measurement Period does not exceed [●]:1,]*

calculated in accordance with the calculation principles set out in Clause 12.4.

12.4 **[ONLY APPLICABLE IF INCURRENCE BASED UNDERTAKING 12.3 (a) - (b) IS SELECTED:]**

The ratio of [Adjusted EBITDA to [Net] Finance Charges] [and] [Total [Net] Debt to Adjusted EBITDA] for purposes of the Incurrence Test shall be calculated as follows:

*[Add adjustments/calculation methods].<sup>16</sup>*

**[Definitions]**

["**Adjusted EBITDA** " means, in respect of any Measurement Period, the consolidated operating profit of the Group from ordinary activities according to the latest Financial Report(s):

- (a) before deducting any amount of tax on profits, gains or income paid or payable by any Group Company;
- (b) before deducting any [Net] Finance Charges;
- (c) not including any accrued interest owing to any Group Company;
- (d) before taking into account any exceptional or extraordinary items in accordance with the Accounting Principles;
- (e) before taking into account any unrealised gains or losses on any derivative instruments (other than any derivative instruments that are accounted for on a hedge account basis);

<sup>14</sup> To be used if any of the covenants (e.g., "Financial Indebtedness" or "Restricted payments") contain incurrence tests. The model wording assumes that the Incurrence Test only applies to the incurrence of debt and Restricted Payments. Changes are necessary if other events (e.g., disposals or mergers) are to be subject to the Incurrence Test.

<sup>15</sup> The amount of Total [Net] Debt can also be determined as per another date, e.g., as per a date determined by the Issuer that falls no more than one month prior to the event giving rise to the need for the Incurrence Test.

<sup>16</sup> Typically calculation methods are specified in the incurrence covenant. For example, the event giving rise to the need for the incurrence test (e.g., a payment of a dividend or debt incurrence) is typically given *pro forma* effect in the calculation. Users may also wish to consider giving *pro forma* effect to any acquisitions or divestments during the testing period, debt incurrences that have taken place before the event given rise to the need for the incurrence test, etc.

- (f) 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 of business) and any loss or gain arising from any upward or downward revaluation of any asset;
- (g) 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;
- (h) plus or minus the Group's share of the profits or losses (after finance costs and tax) of entities that are not part of the Group; [and]
- (i) after adding back any amount attributable to the amortisation, depreciation[,]/[or] depletion [or impairment] of assets of members of the Group; [and]
- (j) [●].

in each case, to the extent added, deducted or taking into account, as the case may be, for the purposes of determining operating profit of the Group from ordinary activities.]

["**Book Equity**"] means the consolidated book value of the Group's aggregate shareholders' equity [(including subordinated loans) plus minority interests minus goodwill].]

["**Cash**"] means, in respect of the Group, and at any time, immediately available funds at bank accounts [(excluding]/[including] any available unused credit limits)].]

["**Cash Equivalent Investments**"] means, in respect of the Group, and at any time, marketable debt securities or other instruments maturing within one year held for cash management purposes that can be realised promptly.]

["**Finance Charges**"] means, for any Measurement Period the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Financial Indebtedness paid [or payable] by any member of the Group (calculated on a consolidated basis) in cash [or capitalised] in respect of that Measurement Period [without taking into account any unrealised gains or losses on any derivative instruments (other than any derivative instruments that are accounted for on a hedge account basis)] and [*other adjustments*];]

"**Financial Report**" means the financial statements delivered in accordance with Clause [10.1.1(a) and (b)].

"**guarantee**" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any Person or to make an investment in or loan to any Person or to purchase assets of any Person where, in each case, such obligation is assumed in order to maintain or assist the ability of such Person to meet its indebtedness.

"**incurrence**" or "**incur**" includes the issuance, assumption, guarantee of, or otherwise becoming liable for, any Financial Indebtedness (including through acquiring an asset, business or entity).

"**Incurrence Test**" means the test set forth in Clauses 12.3 and 12.4.

["**Loan to [Security Asset] Value Ratio**" means[, at any time, the aggregate outstanding principal amount under the Notes divided by the value of the Transaction Security determined by [●]].]

["**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 ability to [perform its [payment] obligations under these Terms and Conditions [and the other Finance Documents]/[comply with its undertakings set out in Clause [●]] or (c) the validity or enforceability of these Terms and Conditions [or the other Finance Documents].]

["**Measurement Period**"

[*maintenance covenants*:] means a twelve month period ending on a Reference Date [or such shorter period as the context may require];

[*incurrence covenants*:] means, for purposes of the Incurrence Test, the latest twelve month period for which financial statements are available.]

["**Net Finance Charges**" means, for any Measurement Period, the Finance Charges for that Measurement Period after deducting any interest paid in that Measurement Period to any member of the Group (other than by another member of the Group) on any Cash or Cash Equivalent Investment.]

"**Permitted Guarantee**" means:

- (a) [any endorsement of negotiable instruments in the ordinary course of business;]
- (b) [any guarantee granted in respect of [*identify bank loan*];]
- (c) any guarantee of the performance by a Group Company under any contract entered into in the ordinary course of business;
- (d) [any guarantee given in respect of the netting or set-off arrangements permitted under Clause 6.2;]
- (e) [any guarantees of Financial Indebtedness not permitted by paragraphs (a) to [(d)] above where the outstanding principal amount of such guarantees does not exceed EUR [●];]
- (f) [●].

"**Permitted Loan**" means [●].

"**Reference Date**"

[*maintenance covenants*:] means [31 March], [30 June], [30 September] and [31 December] in each year. The first Reference Date shall be [●];

"**Related Party**" has the meaning assigned to it in International Accounting Standard (IAS) 24 issued or adopted by the International Accounting Standards Board.

"**Restricted Payment**" has the meaning assigned to it in Clause 2.1.



["**Total Assets**" means the consolidated book value of the Group's total assets [minus advance payments received minus goodwill].]

["**Total [Net] Debt**" means, at any time, the aggregate amount of all obligations of members of the Group for or in respect of Financial Indebtedness<sup>17</sup> at that time [deducted by the aggregate amount of Cash and Cash Equivalent Investments held by any member of the Group at that time.]<sup>18</sup>

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<sup>17</sup> Users of these models terms should bear in mind that the model definition of "Financial Indebtedness" in the model terms and conditions includes certain obligations that may not be classified as borrowings for accounting purposes.

<sup>18</sup> If the Issuer prepares financial statements in accordance with IFRS, consider tying the Total [Net] Debt to the accounting treatment as at the [First] Issue Date (since IFRS treatment may materially change in the future, in particular with respect to leases).