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## SUBSCRIPTION AGREEMENT

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Dated [\_\_]

between

[\_\_]

As Issuer

and

[\_\_]

and

[\_\_]

As Subscriber[s]

In respect of

the issue by the Issuer of its € [\_\_] [\_\_] per cent. Notes  
due [\_\_]

### Notice

This form documentation is provided solely for information purposes. It is intended to provide a practical illustration of the note documentation that can be used within the scope of the Euro PP Charter. It is designed to be adapted as per the negotiations between the Issuer and the Subscribers.

This form documentation was drafted for use in the context of an unlisted, unrated, unsecured issue of notes, bearing interest at a fixed rate, in registered form and admitted to the operations of Euroclear France, by a company that has not already issued listed (equity or debt) securities.

It will be necessary to adapt this documentation for any issue which may fall outside the scope of the aforementioned framework. Special attention is drawn to the importance for each party to negotiate the contractual terms of each transaction (particularly the information and undertakings clauses, for which the corresponding provisions of the form loan agreement may be used), which will vary based, *inter alia*, on the specific characteristics of the transaction in question, the Issuer's circumstances, and market conditions.

The relationship between the arranger(s) and/or the dealers of the transaction, if any, and the Issuer, are governed by a mandate agreement to be drawn up and negotiated separately or via a modification of this subscription agreement, whichever option the parties prefer.

The need, if applicable, to ensure the confidentiality of the information communicated by the Issuer at the time of the preparation of the issue and/or during the life of the notes issue can be covered in the non-disclosure agreement, a form of which can be found in the Euro PP Charter, and/or within the scope of this documentation (in which case, such provisions should be supplemented).

None of the contributors (direct or indirect, authors or participants in the various working groups and market consultations) to the preparation of this documentation shall incur any liability due to its content.

<sup>(\*)</sup> Acknowledgements for their contribution to the drafting of this document to CMS Bureau Francis Lefebvre, Gide Loyrette Nouel and Kramer Levin Naftalis & Frankel

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**THIS SUBSCRIPTION AGREEMENT (THE "AGREEMENT") IS ENTERED INTO BETWEEN:**

1. [\_\_], a [\_\_] company having its registered office at [\_\_]  
(the "**Issuer**"), on the first part, and
2. [\_\_], a [\_\_] company having its registered office at [\_\_],  
[\_\_], a [\_\_] company having its registered office at [\_\_],  
(the "**Subscriber[s]**"), on the second part.

**WHEREAS:**

(A) The Issuer proposes to issue [€] [\_\_] [\_\_] per cent. notes due [\_\_] (the "**Notes**"). The terms and conditions of the Notes (the "**Conditions**", "**Condition**" referring to a specific article of the Conditions) are set out in Schedule 1 of this Agreement.  
If permitted by the context and unless otherwise set forth, the terms and expressions defined in the Conditions shall have the same meaning in this Agreement.

(B) The issue of the Notes by the Issuer was authorised pursuant to a resolution [of the general meeting/the [board of directors/executive board/manager]] of the Issuer dated [\_\_].

(C) The Notes shall be issued in dematerialised registered form (*au nominatif*) in the denomination of [€] [100,000] each. Title to the Notes shall be evidenced by book-entries (*inscription en compte*), in accordance with Article L. 211-3 of the French Monetary and Financial Code. No physical document of title (including *certificats représentatifs* pursuant to article R. 211-7 of the French Monetary and Financial Code) will be issued in respect of the Notes.

(D) A fiscal agency agreement relating to the Notes (the "**Fiscal Agency Agreement**") shall be entered into between the Issuer and [\_\_], as fiscal agent, paying agent, [calculation agent], put agent and registrar (the "**Fiscal Agent**") at the latest on the Settlement Date.

**IT HAS BEEN DECIDED AND AGREED AS FOLLOWS:**

**1. SUBSCRIPTION**

Subject to the provisions of this Agreement, the Issuer undertakes to issue the Notes and the Subscriber[s] [, jointly but not severally] undertake[s] to subscribe and pay for [the Notes/the number of Notes as indicated for each of them in Schedule 2 of this Agreement (the "**Subscription Commitment**")]] on the Settlement Date (as defined in Article 2) at a price equal to [\_\_] % of the total nominal amount of the Notes (the "**Subscription Price**").

**2. SETTLEMENT<sup>1</sup>**

Subject to the satisfaction of all of the conditions precedent mentioned in Article 6, the Fiscal Agent shall pay the Issuer the Subscription Price at the latest by [11 a.m. (Paris time)] on [\_\_] or at any other time and/or date as may be agreed between the Issuer and the Fiscal Agent (the "**Settlement Date**") in immediately available funds by transfer to, or to the order of, the Issuer. Such payment shall be made subject to (i) the Issuer having taken all necessary steps for said payment and having obtained (or a representative acting in its name and on its behalf having obtained) confirmation by Euroclear France that the Notes are inscribed in the books of the Fiscal Agent on the Settlement Date, and (ii) the Fiscal Agent

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<sup>1</sup> To be adapted for issues not subject to French law.

having received from the Subscriber[s] [, acting jointly but not severally,] the payment [of the Subscription Price/of their respective Subscription Commitments].

The Issuer confirms that it has instructed the Fiscal Agent to deliver to Euroclear France in its name and on its behalf, in accordance with the DSD Forms (as defined below), an accounting letter (*lettre comptable*) relating to the Notes, at the latest one (1) Business Day prior to the Settlement Date. The Notes shall be held by Euroclear France to the order of the Issuer until payment of the Subscription Price by the Fiscal Agent.

On the Settlement Date, the Issuer shall cause the Notes to be credited to the account of the Fiscal Agent through Euroclear France. Upon settlement, the Fiscal Agent shall immediately credit the Notes on the account of the Subscriber[s] with the Registrar and/or the relevant Account Holder, as the case may be, through Euroclear France.

For the purposes hereof "**DSD Forms**" mean the forms published by Euroclear France within the detailed description of its services.

### **3. ISSUER'S UNDERTAKINGS**

The Issuer undertakes to [the] Subscriber[s] that:

- (a) it will execute the Fiscal Agency Agreement at the latest on the Settlement Date;
- (b) it will bear and pay (i) any stamp or other duties or taxes, including interest and penalties, payable on or in connection with the issue of the Notes and the execution of this Agreement and the Fiscal Agency Agreement or the enforcement thereof, and (ii) any value added, turnover or similar tax payable in connection with any amount payable by it under this Agreement or otherwise in connection with the transactions envisaged by this Agreement;
- (c) it will not, and will procure that no Subsidiary and none of their respective directors, executives or employees make, between the date of this Agreement and the Settlement Date (both dates inclusive), without the prior approval of the Subscriber[s], any announcement on the issue of the Notes, unless it is required to do so by law, and in such case, after consulting the Subscriber[s] on such announcement;
- (d) it will maintain the centre of its main interests (as such term is used in Article 3(1) of the Council of the European Union Regulation No. 1346/2000 of 29 May 2000 relating to insolvency proceedings) in a Member State of the European Union;<sup>2</sup> and
- (e) it will use the Subscription Price for the purposes of [\_\_].

### **4. EXPENSES**

The Issuer shall bear and pay for any and all fees, costs and expenses and reimburse the Subscriber[s] for any and all fees, costs and expenses that the latter may incur as a result of, or in connection with, the issue of the Notes, pursuant to the terms and conditions set out in the fee letter signed between the Issuer and [the] Subscriber[s] dated [\_\_].

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<sup>2</sup> This undertaking is particularly important if a Subscriber is a French "fonds de prêt à l'économie" ("FPE") [a type of fund enabling French insurers to finance non-financial sectors of the economy].

## 5. ISSUER'S REPRESENTATIONS AND WARRANTIES <sup>3</sup>

(A) As a condition of the undertaking by the Subscriber[s] [acting jointly but not severally] to subscribe and pay for the Notes on the Settlement Date, the Issuer represents and warrants to the Subscriber[s], on the date of this Agreement, that:

(i) **Incorporation and authority**

- (a) The Issuer and its Subsidiaries are validly incorporated companies, duly registered and validly existing under French law (or, as the case may be, under the laws of the jurisdiction in which the relevant company is registered).
- (b) The Issuer and its Subsidiaries are the valid owners of their assets and have full power and authority to conduct their business as they currently do.
- (c) The Issuer has the capacity to enter into this Agreement and the Fiscal Agency Agreement and to perform its obligations thereunder; execution and performance of this Agreement and of the Fiscal Agency Agreement by the Issuer conform to its corporate purpose.

(ii) **Binding force**

The obligations of the Issuer under this Agreement, the Conditions and the Fiscal Agency Agreement comply with the laws of the country of its registered office, are valid, binding on it and capable of being enforced before a court.

(iii) **Relationship with other obligations**

The signing of this Agreement and the Fiscal Agency Agreement and the performance of the obligations resulting therefrom and from the Conditions for the Issuer do not conflict and will not conflict:

- (a) with any law or regulation that is applicable to it;
- (b) with any of its incorporation documents or with any of the incorporation documents of its Subsidiaries (or equivalent documents); or
- (c) with any agreement or other instrument having a binding effect on the Issuer or any of its Subsidiaries, or by which any of their assets are bound.

(iv) **Authorisations and powers**

- (a) The entering into and performance of this Agreement and of the Fiscal Agency Agreement have been duly authorised by the Issuer's competent management bodies.
- (b) Each of the signatories of this Agreement and of the Fiscal Agency Agreement has full power and capacity to execute said agreements on behalf of the Issuer.

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<sup>3</sup> The representations and warranties contained in Article 5(A) are indicative and their content must be modified to reflect each transaction based on the Issuer's identity and activity. The parties must, in particular, agree on the scope of the representations and warranties made by the Issuer depending on whether they are made concerning only the Issuer, or regarding the Issuer and all of its Subsidiaries or, alternatively, with respect to the Issuer and the Material Subsidiaries.

(v) **Authorised nominal amount**

The issue of the Notes on the Settlement Date shall not exceed the limit of the nominal amount authorised by the deliberation [of the general meeting/of the [board of directors/executive board]] of the Issuer on [\_\_].

(vi) **Validity and admissibility as proof**

All of the authorisations, approvals, deliberations, exemptions, registrations, notarised affidavits and all consents, permits or registrations necessary needed for:

- (a) the Issuer to be able to sign this Agreement and the Fiscal Agency Agreement to which it is a party, exercise the resulting rights and perform the resulting obligations and those that result from the Conditions; and
- (b) this Agreement and the Fiscal Agency Agreement to which the Issuer is a party to be admissible as proof before the courts of the country of its registered office,

have been obtained and are in force.

(vii) **Absence of court-ordered insolvency procedures**

No action the purpose of which is to announce the liquidation, dissolution [(other than, as regards a Subsidiary of the Issuer, with respect to a solvent restructuring not having or not likely to have a Material Adverse Effect)], receivership, safeguard (including accelerated safeguard and accelerated financial safeguard), the commencement of conciliation proceedings or the designation of an *ad hoc* administrator (or any equivalent proceedings in any competent jurisdiction, including an attachment procedure) concerning the Issuer or regarding one of its Subsidiaries is in progress, to the best of its knowledge, nor is one imminent or foreseeable.

(viii) **Tax deduction**

Pursuant to the regulations currently in force, the payments that will be made by the Issuer for the Notes to persons who have their tax domicile or their registered office outside France are not liable for any tax in France by deduction or withholding at the source to which the Issuer is bound or that the Issuer must carry out.

(ix) **Registration and stamp fees**

The law of the country of its registered office does not require the filing, registration or publicity of this Agreement or of the Fiscal Agency Agreement with any jurisdiction or authority nor the collection of a stamp or registration fee or similar tax concerning said agreements or for the transactions referred to in said documents.

(x) **Events of Default**

No Event of Default is continuing or is reasonably likely to occur, due to the issue of the Notes.

(xi) **Accuracy of the information and documents**

- (a) All of the information provided to the Subscriber[s] by the Issuer and its Subsidiaries prior to the date of this Agreement was accurate, complete and up-to-date [in all of its significant aspects] on the date on which it was provided or, if applicable, on the date to which it relates and is not likely to mislead the Subscriber[s] on any [significant] point, due to an omission,

the occurrence of new facts or as a result of information communicated or not disclosed.

(b) The documents (other than the financial documents mentioned in Article 5(A)(xii)) submitted to the Subscriber[s] and the information communicated to the Subscriber[s] by the Issuer in accordance with this Agreement and the Fiscal Agency Agreement, are accurate, complete and up-to-date on the date on which they were submitted.

(xii) **Financial statements – Accounting and financial documents**

(a) The Original Financial Statements (as such term is defined in the Conditions), prepared in accordance with GAAP (as such term is defined in the Conditions), are lawful and truthful and give a faithful image of the Issuer's assets, financial situation and earnings, as well as of the consolidated financial situation and the consolidated earnings of the Group (as such term is defined in the Conditions) for the tax year to which they refer.

(b) The accounting and financial documents submitted by the Issuer pursuant to this Agreement, prepared in accord with GAAP, are lawful and truthful and give a faithful image of the Issuer's assets, financial situation and earnings, as well as of the Group's consolidated financial situation and the Group's consolidated earnings for the tax year to which they refer.

(c) No event having had or that could potentially have a Material Adverse Effect has taken place since the date of the Issuer's most recent financial statements.

(xiii) ***Pari passu*<sup>4</sup>**

The Notes constitute direct, unconditional, unsubordinated and unsecured obligations of the Issuer, ranking equally between themselves and (with the exception of the mandatory provisions of French law) equally with all other present or future unsubordinated and unsecured obligations (with the exception of those benefiting from a preference in accordance with the law) of the Issuer.

(xiv) **Disputes**

No judicial, arbitral or administrative proceedings have been brought or, to the best of its knowledge, are likely to be brought against it or against one [of its Subsidiaries/of the Material Subsidiaries] before a court, an arbitration tribunal or any authority, the outcome of which, if it were unfavourable, would be likely to give rise to a disbursement (i) of a unit amount in excess of [ ] euros (EUR[ ]) (or the equivalent in euros of such amount in any other currency) or (ii) of a cumulative amount in excess of [ ] euros (EUR [ ]) (or the equivalent in euros of such amount in any other currency).<sup>5</sup>

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<sup>4</sup> Key points:

- In most cases, the Notes constitute an unsecured debt of the Issuer.
- The ranking of the Notes is *pari passu* with that of the Issuer's debt having equivalent characteristics, save for a duly documented exception (for example, the limitation of the security interests, which is covered in the Issuer's undertakings).

In the event that the Notes are secured, a ranking agreement (or inter-creditor agreement) can be entered into between the various creditors benefiting from the security interests.

<sup>5</sup> This representation may possibly be qualified or limited based on the information, if any, already communicated to the Subscriber[s].

(xv) **Assets free of Security Interests**

Neither the Issuer nor any [of its Subsidiaries/of the Material Subsidiaries] has given a Security Interest affecting its assets other than the Security Interests authorised by the Conditions.<sup>6</sup>

(xvi) **Insurance**

The Issuer and [its Subsidiaries/the Material Subsidiaries] have taken out and are maintaining in effect insurance policies with leading insurers for amounts and coverage of risk and liabilities in accordance with the practices generally accepted in their area of activity.

(xvii) **Taxes and contributions**

- (a) The taxes or contributions (Social Security or those of any other type) notified or declared by the Issuer and [its Subsidiaries/the Material Subsidiaries] have been effectively paid within the time limits stipulated by the competent authority, in accordance with the applicable tax or social security legislation [except where challenged in good faith].<sup>7</sup>
- (b) No claim by the competent tax authority is continuing against the Issuer or one [of its Subsidiaries/of the Material Subsidiaries] [(with the exception of claims contested in good faith)].

(xviii) **Sanctions**

Neither the Issuer nor, to the best of the Issuer's knowledge, any of its [Subsidiaries/Material Subsidiaries], or any of their respective representatives, agents, employees [or affiliates] is currently subject to any Sanction; and the Issuer shall not allocate in any manner the proceeds of the issue of the Notes, nor will it lend, contribute or otherwise make available these proceeds, to a joint venture or to any other person or entity, for the purpose of financing the activities of any person currently subject to Sanctions.

For the purpose of the above representation:

**"Sanctions"** means the sanctions imposed by the European Union, the French Republic [and/or Her Majesty's Treasury and/or the OFAC Regulations (as defined below)]<sup>8</sup> or any other sanctions or equivalent measures (including any sanction or measure regarding any embargo) imposed by [the United States of America,]<sup>9</sup> the United Nations or any other competent authority vis-a-vis the Issuer; and

**["OFAC Regulations"]** means the regulations of the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC").]<sup>10</sup>

(xix) **Anti-Corruption**

Neither the Issuer, nor any of its representatives, agents or employees or any other person associated with it or acting on its behalf, nor, to the best of the Issuer's knowledge, one of its [Subsidiaries/Material Subsidiaries], or any of their representatives, agents or employees or any other person associated with them, or

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<sup>6</sup> Insertion of a threshold to be discussed based on the economics of the transaction and on the Issuer's circumstances.

<sup>7</sup> Insertion of a threshold to be discussed based on the economics of the transaction and on the Issuer's circumstances.

<sup>8</sup> As the "extraterritorial" scope of the sanctions applied on the basis of foreign law can be open to discussion and should therefore be interpreted carefully, the insertion in this stipulation of the US and/or UK regulation is subject to negotiation between the parties and a case-by-case examination of the Issuer's circumstances.

<sup>9</sup> *Idem.*

<sup>10</sup> *Idem.*

acting on its behalf has (i) made [whether directly or indirectly] an unlawful payment to an employee or to an official representative of the French government or of a foreign government with the funds of the Issuer or of the [Subsidiary/Material Subsidiary] in question or (ii) violated, or is in violation of the applicable corruption laws and regulations (whether active or passive);

(xx) **Anti-Money Laundering**

The operations of the Issuer and, to the best of the Issuer's knowledge, of its [Subsidiaries/Material Subsidiaries] are carried out in accordance with the requirements governing financial record keeping and monitoring and with money laundering prevention regulations applicable in France and in all jurisdictions in which the Issuer and its [Subsidiaries/Material Subsidiaries] have an activity, with the associated rules and regulations, and with all of the resulting rules, regulations [or recommendations], issued, managed or imposed by any governmental authority (collectively, the "**Anti-Money Laundering Laws**") [and the Issuer and its [Subsidiaries/Material Subsidiaries] are not parties to any court action, suit or proceedings open and continuing before any court or entity, government authority or agency or before any arbitrator concerning Anti-Money Laundering Laws and, to the best of the Issuer's knowledge, no such court action or proceedings are threatened;

(xxi) **[Directed Selling Efforts**

Neither the Issuer nor its affiliates as defined by Rule 405 implementing the U.S. Securities Act of 1933, as amended (the "**U.S. Securities Act**"), nor any person acting on its behalf or on behalf of such affiliated entities has engaged, or will engage in, any directed selling efforts, as defined by Regulation S ("**Regulation S**") of the U.S. Securities Act with respect to the Notes;

(xxii) **Foreign Private Issuer**

The Issuer is a foreign private issuer as defined by Regulation S;

(xxiii) **Substantial U.S. Market Interest**

There is no substantial U.S. market interest (as such expression is defined by Regulation S) in the Issuer's debt securities;<sup>11</sup>

(xxiv) **Selling restrictions regarding the United Kingdom**

Neither the Issuer, nor any person acting on its behalf has communicated or caused to be communicated, and shall not communicate or cause to be communicated, any inducement or invitation to engage in investment activities (as defined in section 21 of the Financial Services and Markets Act 2000 ("**FSMA**")) received by it in connection with the issue or sale of the Notes, except in circumstances in which section 21(1) of the FSMA does not apply to the Issuer; and the Issuer and any person acting on its behalf has complied with and will comply with, all applicable provisions of the FSMA with respect to anything done by it in relation to the Notes in, from or otherwise involving the United Kingdom;

(xxv) **Selling restrictions regarding France**

Neither the Issuer nor any person acting on its behalf has offered or sold or will offer or sell, directly or indirectly any Notes, to the public in France, or has distributed or caused to be distributed, or will distribute or cause to be distributed to the public in France the Conditions or any other offering document concerning the Notes and such offers, sales or distributions have been and will be made in France

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<sup>11</sup> Representations (xxi), (xxii) and (xxiii) are applicable to Category 1 issuers according to Regulation S.

only to (i) persons providing investment services relating to portfolio management for the account of third parties, (ii) qualified investors and/or (iii) a restricted circle of investors, all as defined, and in accordance with, Articles L. 411-1, L. 411-2, D. 411-1 and D. 411-4 of the French Monetary and Financial Code; and

(xxvi) **Others**

To the best of its knowledge, no measure has been or will be taken in any country or territory by the Issuer, that would make possible an offering to the public of the Notes, or the holding or distribution of the Conditions or of any other promotional document concerning the Notes, in a country or territory in which measures are necessary to do so and the Notes must not be offered or sold, directly or indirectly, and neither the Conditions, nor any other document, advertisement, or any other promotional document concerning the Notes, can be distributed in or from, or published in, any country or any jurisdiction except in compliance with any applicable law or regulation.

(B) The undertaking by the Subscriber[s] [,acting jointly but not severally,] to subscribe and pay for the Notes on the Settlement Date having been made on the basis of the aforementioned representations, warranties and undertakings and with the certainty that the latter shall remain true and accurate up to and including the Settlement Date, the Issuer undertakes to hold harmless the Subscriber[s] as well as [its/their] affiliates, representatives, directors, executives and employees, each as concerns it, (the "**Indemnified Person**") against any loss, liability, claim, court action, proceedings, demand, damages, expenditures and any expenses and costs duly evidenced (including, but not limited to, any costs and expenses incurred or borne for the defence of the above) that the Indemnified Person may incur or sustain as a result of or due to any false representation or any violation or any breach of any one of the undertakings made, representations made or warranties given, or any inaccuracy or omission, actual or alleged, of this Agreement or of the Conditions, except in the case of gross negligence, bad faith, or wilful misconduct of such Indemnified Person. In the event that a claim or a court action shall be brought against an Indemnified Person in respect of which indemnification may be sought from the Issuer, pursuant to the terms of this Agreement, the Subscriber[s] shall promptly inform the Issuer of the progress of such claim or court action and shall consult it to the full extent possible concerning the manner in which to manage said situation. The Issuer undertakes vis-a-vis the Subscriber[s], each as concerns it, to immediately notify [it/them] of any substantial change that affects or that would or would be likely to affect, at any moment, up to the payment of the Issuer on the Settlement Date, any one of the above-mentioned undertakings, representations and warranties, and undertakes to take all measures that can be reasonably requested by the Subscriber[s] to remedy such situation.

(C) The aforementioned representations, warranties and undertakings on the part of the Issuer, shall remain in full force and effect notwithstanding (i) the completion of the arrangements contained in this Agreement for the issue of the Notes or (ii) the enforcement of Articles 6 and 7 of this Agreement.

## 6. CONDITIONS PRECEDENT <sup>12</sup>

The undertaking by the Subscriber[s] [,acting jointly but not severally,] to subscribe and pay for the Notes on the Settlement Date is subject to the following conditions precedent:

(a) (i) the absence, on the Settlement Date, of any event or change rendering any one of the undertakings made or any one of the representations made or warranties given, under the terms of Articles 3 and 5(A) of this Agreement untrue or incorrect, in the same terms as if they had been formulated, given or made on such Settlement Date, (ii) the absence, on the Settlement Date, of any event having or likely to have a Material Adverse Effect, and (iii) the performance by the Issuer of all of its obligations under this Agreement up to and including the Settlement Date;

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<sup>12</sup> The conditions precedent listed below constitute an indicative list and their content must be adjusted to each transaction.

- (b) the submission to the Subscriber[s], at the latest by the Settlement Date, of the following documents:
  - (i) [a statement of the debts of the Issuer [and those of its Subsidiaries/Material Subsidiaries];]
  - (ii) [a list of the security interests and guarantees granted by the members of the Group on the Settlement Date;]
  - (iii) [a copy certified by an authorised representative of the Issuer, of an organisational chart of the Group up-to-date on the date of this Agreement;]
  - (iv) [a copy certified by an authorised representative of the Issuer, of the Original Financial Statements and of the related reports of the statutory auditors;]
  - (v) [a signed original of a legal opinion by the law firm [\_\_], as counsel of the Subscriber[s], on the Settlement Date, drawn up in the form and with the content that can be reasonably requested by the Subscriber[s];]
  - (vi) [a signed original of a legal opinion by the law firm [\_\_] as counsel of the Issuer, on the Settlement Date, drawn up in the form and with the content that can be reasonably requested by the Subscriber[s];]
  - (vii) a certificate signed by a duly authorised representative of the Issuer confirming the items mentioned in paragraph (a) of this Article; and
  - (viii) [\_\_] ([\_\_]) copies certified by a duly authorised representative of the Issuer, of the authorisations of the Issuer's management bodies regarding the issue of the Notes, [\_\_] ([\_\_]) copies certified by a duly authorised representative of the Issuer, and up-to-date on the Settlement Date of the by-laws of the Issuer and [\_\_] ([\_\_]) incorporation certificates issued less than [\_\_] ([\_\_]) calendar days preceding the Settlement Date; and
- (c) the execution of the Fiscal Agency Agreement.

If any one of the above-mentioned conditions is not satisfied on or before the Settlement Date, the Subscriber[s] shall be entitled, at [its/their] sole discretion, to terminate this Agreement, in which case the parties thereto shall be under no further liability arising out of this Agreement (except for any liability arising under Articles 3, 4 and 5(B) and except as otherwise specifically provided and except for any liability arising before or in relation to such termination); it is understood that the Subscriber[s] [shall have] the discretionary right to waive the total or partial satisfaction of any one of the above-mentioned conditions.

## 7. TERMINATION

Notwithstanding anything to the contrary contained in this Agreement, the Subscriber[s] may by simple notice to the Issuer, terminate this Agreement at any time prior to the payment of the net proceeds of the subscription of the Notes, (i) in the event that a condition precedent mentioned in Article 6 of this Agreement has not been satisfied on or before the Settlement Date and notwithstanding the fact that the non-satisfaction of a condition precedent is, or is not, under the control of the Issuer or which could be under the control of the Issuer or (ii) in the event of a failure of the Issuer to perform any of its obligations pursuant to this Agreement, or (iii) if they are of the opinion, after consultation with the Issuer, if practicable under the circumstances, that there has been such a change in the national or international financial, political or economic situation, or in the currency exchange control regulation as would, in their view, prejudice or be likely to prejudice materially the issue of the Notes or their dealing on the secondary market.

As soon as such notification has been given, the parties to this Agreement shall be discharged from all of the obligations they respectively owe pursuant to this Agreement (except for any liability arising under Articles 3, 4 and 5(B) and except as otherwise specifically provided and except for any liability arising before or in relation to such termination).

## **8. [COMMUNICATION TO A SUPPLIER OF NUMBERING SERVICES**

[[The/Each] Subscriber can, without prejudice to the provisions of Articles L. 511-33 and L. 511-34 of the French Monetary and Financial Code, as the case may be, communicate to any domestic or international supplier of numbering services designated by it in order to supply numbering and identification services as regards the Notes and/or the Issuer the following information necessary to such supplier of services:

- the company name of the Issuer (and of the guarantor, if applicable),
- the Issuer's country of registration,
- the Notes' settlement date and the modifications, if any, to the Conditions,
- the Note format of the transaction,
- the name of the arranger(s) and/or of the placement agent(s),
- additional information on the Issuer (date of incorporation, type of company according to the INSEE [France's National Institute of Economics and Statistical Studies], activity sector, turnover and credit profile),
- the amount and the currency,
- the maturity date,
- the interest rate,
- the ranking,
- the main legal conditions,
- and any other information agreed between such Subscriber and the Issuer.]]<sup>13</sup>

## **9. NOTIFICATIONS**

All required notifications can be delivered in person or sent by letter, email or fax to the following addresses:

(a) For the Issuer:

[Name of the Issuer]  
[Address]  
Telephone: [xxx]  
Fax: [xxx]  
E-mail address: [xxx]  
Attn.: [xxx]

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<sup>13</sup> Within the scope of the work of the Charter, Euro PP market participants have highlighted the need to organise a certain degree of transparency of Euro PP transactions. In addition to the fact that doing so avoids the random communications that can be seen on certain private placements markets, transparency promotes the market and provides references for the structuring and pricing of new transactions; it also facilitates monitoring by financial stability authorities.

In any case, depending on its circumstances and its specific constraints, an Issuer can choose to maintain the confidentiality of all or some of the terms of the transaction and to reject this communication clause.

Except in certain cases (e.g., the publication of a press release by the Issuer), the communication by the arranger (or by the main Subscriber in the case of Euro PP without an arranger, or by the Issuer itself) of the authorised information must not take place prior to the Euro PP settlement date.

(b) For the Subscriber[s]:  
[Name of the Subscriber[s]]  
[Address]  
Telephone: [xxx]  
Fax: [xxx]  
E-mail address: [xxx]  
Attn: [xxx]

[Address]  
Telephone: [xxx]  
Fax: [xxx]  
E-mail address: [xxx]  
Attn.: [xxx]

or to any other address, fax number, or to the attention of another person, if any, indicated by one of the parties to the other parties for such purpose.

All notifications shall take effect (i) if they are delivered in person, at the time they are delivered, and (ii) if they are sent by mail, by email or fax, at the time they are sent.

## 10. GOVERNING LAW AND JURISDICTION <sup>14</sup>

This Agreement and its interpretation are governed by French law.

Any dispute arising out of this Agreement (including any dispute regarding the existence, validity or termination of this Agreement) shall be submitted to the exclusive jurisdiction of the [Paris] Commercial Court.

Signed in [Place], on [date], in [\_\_] ([\_\_]) originals.

### The Issuer

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*Issuer*  
By: [name and title]

### The Subscriber[s]

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*Subscriber*  
By: [name and title]

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*Subscriber*  
By: [name and title]

<sup>14</sup> To be modified if the Agreement is not subject to French law

## SCHEDULE 1 TO THE AGREEMENT TERMS AND CONDITIONS OF THE NOTES

*The terms and conditions of the Notes (the "Conditions") are as follows:*

The issue by [\_\_], [\_\_] with a share capital of [\_\_] [euros], having its registered office at [\_\_][and registered at the *Registre du commerce et des sociétés* of [\_\_] under number [\_\_]]<sup>15</sup> (the "**Issuer**") of its [€] [\_\_] [\_\_] per cent. notes due [\_\_] (the "**Notes**") was authorised pursuant to a resolution [of the general meeting/the [board of directors/executive board/manager]] of the Issuer dated [\_\_] and decided by [\_\_] of the Issuer on [\_\_].

A fiscal agency agreement relating to the Notes (the "**Fiscal Agency Agreement**") shall be entered into at the latest by [\_\_] between the Issuer and [\_\_], as fiscal agent, paying agent[, calculation agent], put agent and registrar (the "**Fiscal Agent**", the "**Paying Agent**", the "**Calculation Agent**"], the "**Put Agent**" and the "**Registrar**", which expression shall, where the context so admits, include any successor for the time being as fiscal agent, paying agent[, calculation agent], put agent or registrar). A copy of the Fiscal Agency Agreement will be available to the Noteholders at the registered office of the Issuer, [\_\_] and at the registered office of the Fiscal Agent, [\_\_].

Any reference in these Conditions to the "**Noteholders**" refers to the holders of Notes.

Any reference in these Conditions to "**Articles**" refers to the numbered articles below.

### 1. DEFINITIONS

**"Account Holder"** has the meaning given in Article 2 (*Form, denomination and title*).

**"Alternate Representative of the Masse"** has the meaning given in Article 11 (*Representation of the Noteholders*).

**"Benchmark Rate"** means, at the Make-whole Redemption Date, the annual rate equivalent to the yield at maturity of the [French government bond (*Obligations Assimilables du Trésor - "OAT"*)]<sup>16</sup> bearing interest at a rate of [\_\_] % *per annum* and maturing on [\_\_] (ISIN : FRI[\_\_]), as determined on the Calculation Date. If [the OAT] chosen as benchmark is no longer outstanding, a Similar Security shall be chosen by the Calculation Agent, acting independently.

**"Business Day"** means a day (other than a Saturday or a Sunday) on which the banks are open in Paris and [:

- (a) in the case of a day on which a payment or a purchase must be made in a currency other than euro, a day on which the banks of the main financial center of the country of such currency are open; and
- (b) in the case of a day on which a payment or a purchase must be made in euros, a day on which Euroclear is operating and which is a TARGET Day.]<sup>17</sup>

**"Calculation Date"** means the [\_\_] ([\_\_]) Business Day preceding the Make-whole Redemption Date.

**"Change of Control"** means any event following which [*Definition of Change of Control to be determined based on the Issuer's shareholder structure*].

**"Change of Control Notice"** has the meaning given to it in Article 6.3 (*Early redemption at the option of the Noteholders following a Change of Control*).

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<sup>15</sup> For French issuers.

<sup>16</sup> To be determined on a case-by-case basis.

<sup>17</sup> To be modified based on the payment currency.

**"Clearstream, Luxembourg"** has the meaning given in Article 2 (*Form, denomination and title*).

**"Compliance Certificate"** means a certificate relating to the Financial Covenants, substantially in the form as set out in Schedule 1 to the Conditions.

**"Early Redemption Date following a Change of Control"** has the meaning given in Article 6.3 (*Early redemption at the option of the Noteholders following a Change of Control*).

**"EBITDA"** means [\_\_].

**"Euroclear"** has the meaning given in Article 2 (*Form, denomination and title*).

**"Euroclear France"** has the meaning given in Article 2 (*Form, denomination and title*).

**"Event of Default"** means any event referred to in Article 9 (*Events of default*).

**"Financial Debt"** means any debt regarding:

- (a) [borrowed monies;]
- (b) funds raised by a third-party's acceptance of bills of exchange (*lettres de change*) (or any equivalent instrument in dematerialised form);
- (c) funds raised as a result of the purchase of promissory notes (*billets à ordre*) or raised by an issue of bonds, treasury bills (*bons de caisse*), commercial paper (*billets de trésorerie*) or other debt securities;
- (d) rental or leasing commitments qualified as financial leases (*location financière*) under GAAP;
- (e) receivables discounting (*escompte de créances*) or any other receivables mobilisation process (unless the discount or other process is without recourse);
- (f) funds raised under any other transaction (including forward sales and purchases, as well as all deferred payment obligations contracted to acquire any asset) qualified as a loan or as debt under GAAP;
- (g) derivative transactions entered into in order to hedge risk or benefit from fluctuations in rates or market prices (it being specified that only the market value of such a transaction will be taken into account in calculating the transaction's value);
- (h) any contingent liability with respect to the reimbursement as principal of any guarantee (*cautionnement* or *garantie*), any standby or documentary letter of credit (*lettre de crédit*) or any other signed commitment issued by a bank or a financial institution concerning one of the types of debt listed in sub-paragraphs (a) to (g) above; and
- (i) any personal guarantee granted over any indebtedness listed in sub-paragraphs (a) to (h) above.]<sup>18</sup>

**"Financial Covenants"** means [Ratio [R1] and Ratio [R2]].

**"GAAP"** means the accounting principles generally accepted in France [(including IFRS standards)]<sup>19</sup>.

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<sup>18</sup> The definition of Financial Debt can vary depending on the type of Issuer and its situation. It must be modified on a case-by-case basis.

<sup>19</sup> To be modified if the Issuer is not French.

**"Group"** means the Issuer and its Subsidiaries at a specified time and **"member of the Group"** means any of these entities.

[**"IFRS"** means international accounting standards within the meaning of the Regulation (EC) No. 1606/2002 on IAS standards, as amended to the extent applicable to the relevant financial statements.]<sup>20</sup>

**"Interest Payment Date"** has the meaning given in Article 5 (*Interest*).

**"Interest Period"** means the period beginning on (and including) the Issue Date and ending on (but excluding) the first Interest Payment Date and each successive period beginning on (and including) an Interest Payment Date and ending on (but excluding) the following Interest Payment Date.

**"Interest Rate"** has the meaning given in Article 5 (*Interest*).

**"Issue Date"** has the meaning given in Article 5 (*Interest*).

**"Make Whole Amount"** means the amount in Euros calculated for each Note by the Calculation Agent, rounded to the nearest cent ([0.005] being rounded upwards) being the greater of (x) [\_\_] per cent. of the nominal value of such Note and (y) the sum of the remaining scheduled payments in principal and interest on such Note (excluding accrued interest up to the Make-Whole Redemption Date (excluded)), determined on the Make-Whole Redemption Date on an annual basis [(Exact/Exact ICMA)] at the Make-Whole Redemption Rate plus, in each of the cases (x) and (y) above, interest accrued on such Note up to the Make-Whole Redemption Date (excluded).]<sup>21</sup>

**"Make-Whole Redemption"** has the meaning given in Article 6.4 (*Early redemption at the option of the Issuer at the Make-Whole Amount*).

**"Make-Whole Redemption Rate"** means the sum of the Benchmark Rate and the Make-Whole Redemption Margin.]<sup>22</sup>

**"Make-Whole Redemption Margin"** means [\_\_]% *per annum*.]

**"Material Adverse Effect"** means a material adverse effect on [\_\_].<sup>23</sup>

**"Material Subsidiary"** means, based on the Issuer's consolidated financial statements and on the non-consolidated financial statements of the members of the Group transmitted pursuant to Article 4.2.1 (*Financial Statements*), any Subsidiary (i) whose turnover exceeds [\_\_]% of the consolidated turnover the Group, (ii) whose EBITDA exceeds [\_\_]% of the consolidated EBITDA of the Group or (iii) holding fixed assets whose net book value exceeds [\_\_]% of the consolidated net book value of the Group's fixed assets, insofar as the sum of the turnover, EBITDA and/or the net book value of the fixed assets of all Material Subsidiaries represents at all times at least [\_\_]% of the consolidated turnover of the Group, the consolidated EBITDA of the Group and the net book value of the Group's consolidated fixed assets. If the last condition is not satisfied, the Fiscal Agent and the Issuer will determine by joint agreement the Subsidiaries which will be considered as Material Subsidiaries such that this condition is satisfied.<sup>24</sup>

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<sup>20</sup> To be inserted in accordance with the GAAP definition.

<sup>21</sup> Definitions to be inserted in case of early redemption at the option of the Issuer at the Make Whole Amount.

<sup>22</sup> To be inserted in case of early redemption at the option of the Issuer at the Make Whole Amount.

<sup>23</sup> The existence and scope of the definition of "Material Adverse Effect" are to be negotiated and modified based on the economics of the transaction and on the Issuer's circumstances. This definition can, for example, refer to the Issuer's capacity to perform its obligations pursuant to the Conditions, the Subscription Agreement and the Fiscal Agency Agreement and/or only certain of these (for example, payment obligations and obligations to comply with Financial Covenants) and/or to the Issuer's transactions, assets and economic or financial prospects.

<sup>24</sup> This definition is provided as an example. The determination criteria of the Material Subsidiaries must be established (if applicable) based on accounting and financial criteria (EBITDA, assets, turnover, etc.) in consideration of the composition of the

**"Maturity Date"** has the meaning given in Article 5 (*Interest*).

**"Notification of Exercise"** has the meaning given in Article 6.3 (*Early redemption at the option of the Noteholders following a Change of Control*).

**"Original Financial Statements"** means [the audited consolidated financial statements and] the audited non-consolidated financial statements of the Issuer for the year ended [\_\_], as certified by its statutory auditors.

**"Put Option following a Change of Control"** has the meaning given in Article 6.3 (*Early redemption at the option of the Noteholders following a Change of Control*).

**"Put Period"** has the meaning given in Article 6.3 (*Early redemption at the option of the Noteholders following a Change of Control*).

**"Quasi-Security Interest"** has the meaning given in Article 3.2 (*Negative Pledge*).

**"Ratio [R1]"** means the ratio of [\_\_] over [\_\_].

**"Ratio [R2]"** means the ratio of [\_\_] over [\_\_].

**"Representative of the Masse"** has the meaning given in Article 11 (*Representation of the Noteholders*).

**"Request for Early Redemption following a Change of Control"** has the meaning given in Article 6.3 (*Early redemption at the option of the Noteholders following a Change of Control*).

**"Security Interest"** means any mortgage, charge, pledge, lien, trust by way of security, transfer of ownership as collateral and any other collateral guaranteeing the obligations of a person, as well as any other agreement or accord having a similar effect.<sup>25</sup>

**"Similar Security"** means one or more reference bonds issued by [the French government] having a maturity comparable with the remaining term of the Notes up to the Maturity Date of the Notes, that would be utilised, at the time of selection and in accordance with customary market practices, in pricing new issues of corporate debt securities of comparable maturity up to the Maturity Date of the Notes.]<sup>26</sup>

**"Subsidiary"** means any company which is controlled directly or indirectly by another within the meaning of Article L. 233-3 of the French Commercial Code.<sup>27</sup>

**"TARGET Day"** means any day on which the TARGET System, or any succeeding system, is operating.

**"Test Period"** means, for the calculation of the Financial Covenants, any period of [twelve (12)] months ending on [31 December] of each fiscal year, for which the Financial Covenants have to be tested.<sup>28</sup>

**"The Noteholders"** has the meaning given in Article 11 (*Representation of the Noteholders*).

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Group and the economics of the transaction. The concept of "Material Subsidiary" is used to describe representations, commitments and Events of Default.

<sup>25</sup> Definition to be modified, if applicable, if the concept of security interest must be assessed more broadly than based solely on French law.

<sup>26</sup> To be inserted in case of early redemption at the option of the Issuer at the Make Whole Amount.

<sup>27</sup> Definition to be modified, if applicable, if the concept of control must be assessed more broadly than based solely on French law.

<sup>28</sup> To be modified in the event that the Financial Covenants are tested more than once a year.

## 2. FORM, DENOMINATION AND TITLE <sup>29</sup>

The Notes will be issued in dematerialised registered form in denominations of [€][100,000] each. Title to the Notes will be evidenced by book-entries (*inscription en compte*), in accordance with Articles L. 211-3 *et seq.* of the French Monetary and Financial Code.

The Noteholders' rights shall be evidenced by a book entry on a securities account open in their name in the books, at the option of the Noteholder:

- (a) of [Registrar], acting on behalf of the Issuer, for Notes in fully registered form (*au nominatif pur*); or
- (b) of an authorised financial intermediary of their choice and of [Registrar], acting on behalf of the Issuer, for Notes in administered registered form (*au nominatif administré*).

No physical document of title (including *certificats représentatifs* pursuant to Article R. 211-7 of the French Monetary and Financial Code) will be issued in respect of the Notes. The ISIN code of the Notes is FR [\_\_].

The Notes will, upon issue, be inscribed in the books of Euroclear France ("Euroclear France") which will credit the account[s] [of the] Registrars and/or [of the relevant] Account Holder[s]. For the purposes hereof, "Account Holder" shall mean any intermediary entitled to hold, directly or indirectly, accounts on behalf of its customers with Euroclear France and includes Euroclear Bank S.A./N.V. ("Euroclear") and Clearstream Banking, *société anonyme*, Luxembourg ("Clearstream, Luxembourg").

## 3. STATUS OF THE NOTES AND NEGATIVE PLEDGE

### 3.1 Status of the Notes <sup>30</sup>

The Notes constitute direct, unconditional, unsubordinated and unsecured (subject to Article 3.2(a)) obligations of the Issuer and ranking equally between themselves and (with the exception of the mandatory provisions of French law) equally with all other present or future unsubordinated and unsecured obligations (with the exception of those benefitting from a preference in accordance with the law) of the Issuer.

### 3.2 Negative Pledge <sup>31</sup>

- (a) So long as any of the Notes remains outstanding, the Issuer will not (and will ensure that none [of its Subsidiaries/of the Material Subsidiaries] will) grant or

<sup>29</sup> For issues subject to French law; to be modified if the issue is subject to another law.

<sup>30</sup> Key points:

- In most cases, the Notes constitute unsecured debts of the Issuer.
- The rank of the Notes is *pari passu* with that of the debt having equivalent characteristics, save for a duly documented exception (in that case, the limitation, if any, of security interests, is addressed in the negative pledge clause).
- In the case of security interests given to guarantee the Notes, an agreement on the rank (or inter-creditor agreement) can be entered into between the various creditors who are beneficiaries of security interests.

<sup>31</sup> The wording of this article regarding limitations on the granting of security interests (negative pledge) is merely an example and must be examined on a case-by-case basis as a function of the Issuer's identity and activity.

This condition must be worded in light of the negative pledge clause used in the other financial documentation to which the Issuer is a party (if any), particularly, as regards exceptions and thresholds (acquisitions), in order for the investors to be able to benefit from the same protections as those of the Issuer's other financial debts having equivalent characteristics. Alternatively, it is possible to provide for a negative pledge clause that differs from that of the other financing agreements, for example, by granting security interests to a certain percentage of the value of the assets, excluding any other exception.

The Material Subsidiaries or all of the Subsidiaries may be covered by the negative pledge clause.

A list of the existing security interests may be prepared by the Issuer and submitted to the Noteholder[s] (unless it is already mentioned in the conditions precedent).

The negative pledge clause may concern, as the case may be, all or part of the debt (bonds, bank debt or financial debt, such as leasing and factoring), with, if applicable, a list of the authorised security interests and exceptions.

permit to subsist any Security Interest upon the whole or any part of its assets or its revenues unless, at the same time or prior thereto, the Issuer's obligations under the Notes are equally and rateably secured therewith.

(b) So long as any of the Notes remains outstanding, the Issuer will not (and will ensure that none [of its Subsidiaries/of the Material Subsidiaries] will):

- (i) assign or dispose in any manner whatsoever, of assets intended, or that could potentially be intended, to be leased or acquired by the Issuer or any other member of the Group;
- (ii) carry out any assignment of receivables with recourse;
- (iii) consent to an amount of money, a bank account or any other account from being used for a special purpose, a merger or for setting off with other amounts; and
- (iv) enter into a preferential agreement having an effect that is similar to the above;

if the agreement is entered into or the transaction is executed primarily in order to contract a Financial Debt or to finance the acquisition of an asset.

(c) Paragraphs (a) and (b) above do not apply:

- (i) to Security Interests granted after the Issue Date with the prior consent of the Masse;
- (ii) to any Security Interest and/or Quasi-Security Interest existing on the Issue Date, contained in the list set out in Schedule 2 to these Conditions, that are maintained or rolled over after the Issue Date, unless the principal amount they guarantee exceeds the amount indicated in such list or if such Security Interests or Quasi-Security Interests are not rolled over to guarantee the same obligations as those they guarantee on the Issue Date;
- (iii) to the reservation of title clauses, rights of retention or merger or set off clauses resulting from the continuation of the activities or from the normal course of business of the relevant entity or in accordance with the standard terms and conditions of its suppliers; and<sup>32</sup>
- (iv) to the statutory preferential rights regarding the management of the day-to-day business of the relevant entity.

In this Article 3.2 (*Negative Pledge*), "**Quasi-Security Interest**" means any agreement or transaction described in paragraph (b) above.

#### 4. **UNDERTAKINGS**

So long as any of the Notes remains outstanding, the Issuer shall comply with the covenants described in this Article 4 (*Undertakings*).

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<sup>32</sup> The scope of application of this exception must be worded based on the Issuer's circumstances (particularly, if applicable, in order to cover setting-off of derivatives pursuant to a master agreement).

#### 4.1 Financial covenants<sup>33</sup>

**[Financial covenants (Financial Covenants, restrictions on investment and external growth transactions, etc.) to be determined between the Issuer and the Subscriber[s]]**

#### 4.2 Information covenants

##### 4.2.1 Financial statements<sup>34</sup>

- (a) The Issuer undertakes to deliver to the Representative of the Masse and to the Fiscal Agent, for transmission to the Noteholders, promptly after the same are available and in any event within [\_\_] ([\_\_]) calendar days after the end of the relevant fiscal year, a copy, certified by an authorised representative of the Issuer, of its consolidated annual financial statements certified by its statutory auditors regarding the relevant fiscal year, together with the related report of the statutory auditors.
- (b) The Issuer undertakes to deliver to the Representative of the Masse and to the Fiscal Agent, for transmission to the Noteholders, promptly after the same are available and in any event within [\_\_] ([\_\_]) calendar days after the end of the relevant fiscal year, a copy, certified by an authorised representative of the relevant entity, of the annual non-consolidated financial statements of the Issuer and [of its Subsidiaries/of the Material Subsidiaries], certified by the statutory auditors, together with the related report(s) of the statutory auditors.
- (c) The Issuer undertakes to deliver to the Representative of the Masse and to the Fiscal Agent, for transmission to the Noteholders, promptly after the same are available and in any event within [\_\_] ([\_\_]) calendar days after the end of the first sixth month-period of the relevant fiscal year, a copy, certified by an authorised representative of the Issuer, of its consolidated semi-annual financial statements of the relevant six-month period.

##### 4.2.2 Compliance Certificate

The Issuer undertakes to deliver to the Representative of the Masse and to the Fiscal Agent, for transmission to the Noteholders with the financial statements supplied in accordance with paragraph (a) of Article 4.2.1 (*Financial Statements*), a Compliance Certificate (signed by an authorised representative of the Issuer [and the Issuer's statutory auditors]) substantially in the form set out in Schedule 1 to these Conditions, presenting in a sufficiently detailed manner the calculations of the Financial Covenants for the relevant Test Period.

Upon receipt of the Compliance Certificate, the Fiscal Agent shall promptly deliver to the Noteholders, in accordance with Article 12 (*Notices*), (i) a copy of the Compliance Certificate

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<sup>33</sup> Key points:

- Financial Covenants that the Issuer undertakes to comply with and to integrate (example: gearing ratio, leverage ratio, interest cover ratio, etc.) while specifically defining each component of each ratio.
- The Financial Covenants must be worded in light of those used in the other financial documents to which the Issuer is a party, if any. It is important to define these clearly in order to avoid differences among the documents.
- Calculation frequency of the Financial Covenants (at least annually, or more often, based on the regulatory requirements applicable to investors).
- Issuance by the Issuer of a Compliance Certificate:
  - The calculation of the Financial Covenants must be approved at least once a year after the end of the year by a representative of the Issuer and its statutory auditors and if more frequently, by a representative of the Issuer; the Compliance Certificate is sent to the Fiscal Agent within a certain period of time (to be defined with the Issuer) following the end of the year. In principle, the Compliance Certificate must contain the breakdown of the calculation of the Financial Covenants.
  - If this task is not entrusted to the Fiscal Agent by the documentation, the Noteholders shall be responsible for verifying compliance with the Financial Covenants and can demand early redemption of the Notes if the Financial Covenants are not complied with.

<sup>34</sup> To be modified if the Issuer does not prepare consolidated financial statements and/or semi-annual financial statements.

or (ii) if for any reason whatsoever it did not receive the Compliance Certificate within the stipulated time limits, a notice to this effect, substantially in the form set out in a Schedule to the Fiscal Agency Agreement.

#### 4.2.3 [Subsidiaries/Material Subsidiaries]

The Issuer undertakes to deliver to the Representative of the Masse and to the Fiscal Agent, for transmission to the Noteholders with the financial statements supplied in accordance with Article 4.2.1 (*Financial Statements*), a list of the [Subsidiaries/Material Subsidiaries].]

#### 4.2.4 Form of financial statements

- (a) The financial statements supplied in accordance with Article 4.2.1 (*Financial Statements*) must contain a balance sheet, a profit and loss account and explanatory notes to the financial statements.
- (b) The Issuer shall ensure that all of the financial statements delivered in accordance with Article 4.2.1 (*Financial Statements*) are prepared in accordance with GAAP and as regards reference periods similar to those used during the preparation of the Original Financial Statements, unless it informs the Representative of the Masse and the Fiscal Agent, for notification to the Noteholders, of a change made to the GAAP or to the reference periods and that its statutory auditors submit to the Representative of the Masse and to the Fiscal Agent, for transmission to the Noteholders:
  - (i) a description of the adjustments to be made in order for these financial statements to reflect the GAAP and the reference periods having been used as the basis for the preparation of the Original Financial Statements; and
  - (ii) any information necessary, consistent with the substance and form that the Representative of the Masse, on its own initiative or upon request by a Noteholder, can reasonably request, in order to enable the Noteholders to assess if the undertakings contained in Article 4.3 (*Other undertakings*) have been complied with and to accurately compare the financial situation of the Issuer or, as the case may be, of the Group, in accordance with these financial statements and with the financial situation indicated by the Original Financial Statements.

Any reference in the Conditions to the "**financial statements**" refers to the financial statements adjusted, as the case may be, in order to reflect the application of the principles applied for the preparation of the Original Financial Statements.

#### 4.2.5 [Information]

- (a) The Issuer undertakes to promptly deliver to the Representative of the Masse and to the Fiscal Agent, for transmission to the Noteholders, upon request of [any Noteholder or] the Representative of the Masse acting at the request of any Noteholder, any information concerning the legal or financial situation, activity or operations of any member of the Group, [and, in particular, any information concerning [\_\_]] or any judicial, arbitration or administrative proceedings against any member of the Group, which the Representative of the Masse or a Noteholder may reasonably require; and

*[N.B.: Unless the economics of the transaction and/or the Issuer's circumstances do not justify this, it is conceivable to insert specific information undertakings concerning, in particular, but without limitation, compliance with laws and regulations applicable to the Issuer, compliance with or maintenance of regulatory authorisations, as well as certain types of transactions (restructuring, joint ventures and equivalent transactions, changes of activity, status or registered office, restrictions on disposals, derivatives, granting of loans, securities, guarantees and sureties, distribution of dividends, reduction or amortisation of share capital, repayment of current account advances and other shareholder loans, etc.)]*

- (b) The Issuer undertakes to promptly organise, if requested [by any Noteholder or] the Representative of the Masse acting at the request of any Noteholder, an information meeting concerning any information referred to in (a) of this Article.]

#### 4.2.6 Notification of an Event of Default

- (a) The Issuer shall notify the Representative of the Masse and the Fiscal Agent of any Event of Default (and the steps, if any, to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly upon request made by the Representative of the Masse, acting on its own initiative or at the request of any Noteholder, the Issuer shall send a certificate from an authorised representative specifying that no Event of Default is continuing or, if an Event of Default is continuing, its nature and the steps, if any, to remedy its occurrence.

#### 4.2.7 Material Adverse Effect

The Issuer undertakes to promptly notify the Representative of the Masse and the Fiscal Agent, for notification to the Noteholders, of any fact or event having or that could possibly have a Material Adverse Effect.

#### 4.3 [Other undertakings]

*[N.B.: Based on the economics of the transaction and on the Issuer's circumstances, it is conceivable, though not automatic or mandatory, to consider inserting other undertakings concerning, in particular, but without limitation, compliance with laws and regulations applicable to the Issuer, compliance with or maintenance of regulatory authorisations, as well as restrictions (or even prohibitions) concerning several types of transactions (restructuring, joint ventures and the equivalent, changes of activity, status or registered office, restrictions on disposals, derivatives, granting of loans, securities, guarantees and sureties, distribution of dividends, reduction or amortisation of share capital, repayment of current account advances and other shareholder loans, etc.)] <sup>35</sup>*

### 5. INTEREST

The Notes bear interest from (and including) [\_\_] (the "Issue Date") to (but excluding) [\_\_] (the "Maturity Date") at the rate of [\_\_] per annum (the "Interest Rate"), payable annually in arrears on [\_\_] in each year (each an "Interest Payment Date") and for the first time on [\_\_].

Each Note shall cease to bear interest from its due date for redemption, unless payment of principal is improperly refused or withheld. In such event, it shall continue to bear interest at the rate of [\_\_] (both before and after judgement) until the day (included) on which all sums due in respect of such Note up to that day are received by or on behalf of the relevant Noteholder.

The amount of interest due for each Note will be calculated by reference to the aggregate outstanding principal amount of the Notes held by each Noteholder; the amount of such payment being rounded to the nearest second (2<sup>nd</sup>) decimal (half-a cent being rounded upwards).

Where interest is to be calculated in respect of a period of less than one year, it shall be calculated on an [exact/exact] basis for each period, on the basis of the number of calendar days elapsed in the relevant Interest Period divided by [365 (or 366 in the case of a leap year)], such result being rounded to the nearest second (2<sup>nd</sup>) decimal (half-percent's being rounded upwards).

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<sup>35</sup> In the event that there are plans to insert certain of these undertakings, an example of their wording is contained in Article 15.3 of the model Loan Agreement published by the Euro PP Working Group at the same time as this document and available on the website [www.euro-privateplacement.com](http://www.euro-privateplacement.com).

## 6. REDEMPTION AND PURCHASE

The Notes may not be redeemed otherwise than in accordance with the provisions of this Article 6 (*Redemption and purchase*), Article 8 (*Taxation*) or Article 9 (*Events of default*).

### 6.1 Redemption at maturity

Unless previously redeemed or purchased and cancelled in accordance with this Article 6 (*Redemption and purchase*), Article 8 (*Taxation*) or Article 9 (*Events of default*), the Notes will be redeemed at their nominal value on the Maturity Date.

### 6.2 Early redemption for taxation reasons

The Notes may, and in certain circumstances shall, be redeemed prior to the Maturity Date in the event that certain French taxes are imposed, in accordance with Article 8 (*Taxation*).

### 6.3 Early redemption at the option of the Noteholders following a Change of Control

If at any time while any of the Notes is outstanding a Change of Control occurs, each Noteholder will have the option to require the Issuer to redeem all or parts of its Notes (the "**Put Option following a Change of Control**"), at their nominal value, together with interest accrued from (and including) the last Interest Payment Date (or, if applicable, from (and including) the Issue Date) to (but excluding) the date fixed for redemption (the "**Early Redemption Date following a Change of Control**").

If a Change of Control occurs, the Issuer shall inform the Fiscal Agent, the Representative of the Masse and the Noteholders (the "**Change of Control Notice**") in accordance with Article 12 (*Notices*), at the latest within [\_\_] ([\_\_]) calendar days following the effective Change of Control. The Change of Control Notice shall specify the right of each Noteholder to request the early redemption of all or parts of its Notes and (i) the Early Redemption Date following a Change of Control which must fall between the [\_\_]<sup>th</sup> ([\_\_]<sup>th</sup>) and the [\_\_]<sup>th</sup> ([\_\_]<sup>th</sup>) Business day following the delivery of the Change of Control Notice, (ii) the amount of the redemption and (iii) the period, of at least [\_\_] ([\_\_]) Business Days from the delivery of the Change of Control Notice, during which the requests for early redemption of the Notes and the related Notes shall reach the Put Agent (the "**Put Period**").

To exercise the Put Option, each Noteholder, at the latest by [4 pm] (Paris time) on the last day of the Put Period, transfer (or cause to be transferred) its Notes to be so redeemed to the account of the Put Agent (details of which are specified in the Change of Control Notice), together with a duly signed and completed notice of exercise, substantially in the form as set out in a Schedule to the Fiscal Agency Agreement (a "**Notification of Exercise**") and in which the Noteholder may specify an account denominated in euro to which payment is to be made under this Article. Any Notification of Exercise shall be irrevocable from its receipt by the Put Agent.

Payments on the Notes under which the Put Option following a Change of Control will be validly exercised in the above-mentioned conditions shall be made in euros on the Early Redemption Date following a Change of Control on the account specified in the relevant Notification of Exercise.

### 6.4 [Early redemption at the Make Whole Amount

The Issuer may, at any time prior to the Maturity Date and on giving (i) not less than [\_\_] ([\_\_]) calendar days nor more than ([\_\_] ([\_\_]) calendar days' prior notice to the Noteholders and (ii) not less than ([\_\_] ([\_\_]) calendar days before the giving of the notice referred to in (i) above, notice to the Fiscal Agent and the Calculation Agent (which notices shall be irrevocable and shall specify the date fixed for redemption (the "**Make-Whole Redemption Date**")), redeem the Notes, in whole but not in part, then outstanding at their Make-Whole Redemption Amount. On the Calculation Date, the Calculation Agent shall calculate the Make-Whole Redemption Rate applicable on the relevant Make-Whole Redemption Date and determine the relevant Make-Whole Redemption Amount and, promptly on or not later than the Business Day

immediately following the Calculation Date, the Calculation Agent shall notify the Issuer, the Fiscal Agent, the Noteholders.

In this respect, the determination of any rate or amount and the making of each determination or calculation by the Calculation Agent shall (in the absence of manifest error) be final and binding upon all parties. The Calculation Agent shall act as an independent expert and not as agent for the Issuer or the Noteholders.]<sup>36</sup>

#### **6.5 Early redemption at the option of the Issuer**

The Issuer may, at any time from ([ ]) ([ ]) months before the Maturity Date and on giving (i) not less than [ ] ([ ]) calendar days nor more than ([ ]) ([ ]) calendar days' prior notice to the Noteholders and (ii) not less than ([ ]) ([ ]) calendar days before the giving of the notice referred to in (i) above, notice to the Fiscal Agent and the Calculation Agent (which notices shall be irrevocable and shall specify the date fixed for redemption), redeem the Notes, in whole but not in part only, then outstanding at their nominal value together with any accrued interest thereon from and including the last Interest Payment Date to, but excluding the date fixed for redemption.

#### **6.6 Purchases**

The Issuer may at any time purchase Notes, at any price, in accordance with applicable laws and regulations.

#### **6.7 Cancellation**

The Notes redeemed or purchased in accordance with this Article 6 (*Redemption and purchase*) will be cancelled and may not be resold. The Issuer shall be released from any obligations in respect of the cancelled Notes.

### **7. PAYMENTS**

#### **7.1 Payment method**

Payment of principal and/or interest in respect of the Notes will be made in euros by credit or transfer to a euro-denominated account (or any other account on which credits or transfers may be made in euros) open in the books of the relevant Account Holders for administered registered Notes (*au nominatif administré*) or of a bank having access to the TARGET System designated by the relevant Noteholder for fully registered Notes (*au nominatif pur*).

Payments will be subject to any tax or other laws or regulations applicable thereto, but without prejudice to the provisions of Article 8 (*Taxation*). No commission or expenses shall be charged to the Noteholders in respect of such payments.

#### **7.2 Payments on Business Days**

If any due date for payment of principal or interest in respect of any Note is not a Business Day, then the Noteholder thereof shall not be entitled to payment of the amount due until the next following day which is a Business Day and shall not be entitled to any interest or other additional sums in respect of such postponed payment.

#### **7.3 Fiscal Agent, Paying Agent[, Calculation Agent], Put Agent and Registrar**

The Fiscal Agent, the Paying Agent[, the Calculation Agent], the Put Agent and the initial Registrar and their specified offices are as follows:

[Postal address and electronic address]

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<sup>36</sup> To be inserted in the event of early redemption at the option of the Issuer at the Make Whole Amount.

The Issuer reserves the right at any time to vary or terminate the appointment of the Fiscal Agent, the Paying Agent[, the Calculation Agent], the Put Agent and/or the Registrar and/or appoint another Fiscal Agent, Paying Agent[, Calculation Agent], Put Agent or Registrar or additional Paying Agents subject to having given not more than [\_\_] ([\_\_]) nor less than [\_\_] ([\_\_]) calendar days' prior notice to the Noteholders, in accordance with Article 12 (*Notices*) and as long there will at all times be a Fiscal Agent and a Put Agent having an office in a city of a Member State of the European Union.

Any change of Fiscal Agent shall be notified to the Noteholders in accordance with the provisions of Article 12 (*Notices*).

## 8. TAX

8.1 All payments of principal and interest by or on behalf of the Issuer in respect of the Notes shall be made free and clear of, and without deduction or withholding for, any taxes of whatever nature imposed, levied or collected by or within any jurisdiction, unless such withholding or deduction is required by law.

8.2 If French law should require that any payment of interest or principal in respect of the Notes be subject to deduction or withholding with respect to any present or future taxes, duties or charges, the Issuer will, to the fullest extent then permitted by law, pay such additional amounts as may be necessary in order that the Noteholders, after such withholding or deduction, receive the full amount provided in such Notes to be then due and payable; provided, however, that if by reason of a change in any law or regulation of France or any change in the official application or interpretation of such law or regulation, becoming effective after the Issue Date, and if the Issuer would, on the occasion of the next payment of principal or interest due in respect of the Notes, not be able to make such payment without having to pay additional amounts (and such payments cannot be avoided by reasonable measures taken by the Issuer), the Issuer may at any time, but no earlier than [\_\_] ([\_\_]) calendar days prior to the effective date of the such change, redeem all of the Notes then outstanding, at their nominal value, together with the interest accrued to the date fixed for redemption.

The provisions of the above paragraph do not apply:

(a) where the holder of such Notes is subject to such taxes, duties or charges by reason of its having some connection with France other than the mere holding of such Notes; or

(b) where such withholding or deduction is imposed pursuant to the Directive of the Council of the European Union 2003/48/EC dated 3 June 2003, as amended by Directive 2014/48/EU dated 24 March 2014, or with any other European Union Directive implementing the conclusion of the ECOFIN Council meeting of 26 and 27 November 2000 on the taxation of savings income or in accordance with any law implementing or complying with, or introduced in order to conform to, such Directive.

8.3 If the Issuer is required to make additional payments in accordance with the provisions of Article 8.2 above and if the Issuer would be prevented by law from making payment to the Noteholders of the full amount then due and payable (and the obligation to make such additional payments cannot be avoided by reasonable measures taken by the Issuer), the Issuer shall redeem all of the then outstanding Notes, at their nominal value, together with interest accrued to the date fixed for redemption, at the earliest [\_\_] ([\_\_]) calendar days prior to the effective date of the change referred to in Article 8.2 above and at the latest on the date on which the additional payments should have been made.

8.4 In the event of a redemption made in accordance with the provisions of Article 8.3 above, the Issuer will provide, or cause to be provided, notice of such redemption, pursuant to the provisions of Article 12 (*Notices*), at the earliest [\_\_] ([\_\_]) calendar days and at the latest [\_\_] ([\_\_]) calendar days prior to the date fixed for redemption. In the case of redemption made in accordance with the provisions of Article 8.3 above, the Issuer will provide, or cause to be provided, notice, of such redemption in the same manner, at the earliest [\_\_] ([\_\_]) calendar days and at the latest [\_\_] ([\_\_]) calendar days prior to the date fixed for redemption.

## 9. EVENTS OF DEFAULT

Any Noteholder may, upon written notice sent to the Issuer by registered mail with return receipt (copy to the Fiscal Agent), given before all continuing event of defaults shall have been cured, cause all, but not some only, of the Notes held by such Noteholder to become immediately due and payable, at their nominal value together with any accrued interest thereon from the last Interest Payment Date (or, if applicable, the Issue Date) until their actual redemption date if any of the following events (each an "**Event of Default**") shall have occurred:

### 9.1 Non-Payment

The Issuer defaults in any payment of any amount under the Conditions when the same shall become due and payable, unless [the non-payment results from an administrative or technical error and] the payment is made within [\_\_] ([\_\_]) Business Days following its due date.

### 9.2 Breach of the financial covenants

Default by the Issuer in the due performance of any one of the obligations set forth in Article 4.1 (*Financial covenants*).

### 9.3 Breach of other obligations under the Conditions

Default by the Issuer in the due performance of any of its obligations under the Conditions (other than those referred to in Article 9.1 (*Non-Payment*) and in Article 9.2 (*Breach of the financial covenants*)) if, to the extent that such breach can be cured, it has not been cured within [\_\_] ([\_\_]) calendar days from the first of the following dates: (i) the date on which the Issuer becomes aware of this breach and (ii) the date on which any Noteholder notifies such breach to the Issuer, requesting that it be cured.

### 9.4 Cross Default<sup>37</sup>

- (a) The Issuer or one [of its Subsidiaries/of the Material Subsidiaries] defaults in payment of any amount with respect to Financial Debt, on its due date, or after any applicable grace period; or fails to pay when due any amount payable by it under any guarantee in respect of such Financial Debt when such guarantee is called, provided that the amount of Financial Debt referred to above exceeds [\_\_] euros ([EUR] [\_\_])).
- (b) Any Financial Indebtedness of the Issuer or of one [of its Subsidiaries/of the Material Subsidiaries], as the case may be, is or becomes due and payable prior to its stated maturity by reason of occurrence of a default (howsoever described) thereunder, provided that the amount of Financial Debt referred to above exceeds [\_\_] euros ([EUR] [\_\_])).<sup>38</sup>
- (c) Any creditor from whom the Issuer or one [of its Subsidiaries/of the Material Subsidiaries] contracted a Financial Debt terminates or suspends its obligation thereunder by reason of occurrence of a default (howsoever described) thereunder, provided that the amount of Financial Debt referred to above exceeds [\_\_] euros ([EUR] [\_\_])).<sup>39</sup>
- (d) Any creditor of the Issuer or of one [of its Subsidiaries/of the Material Subsidiaries] is entitled to declare a Financial Debt of a member of the Group due prior to its due date, by reason of occurrence of a default (howsoever described) thereunder, provided that the amount of Financial Indebtedness referred to above exceeds [\_\_] euros ([EUR] [\_\_])).

<sup>37</sup> Case of cross default to be examined on a case-by-case basis.

<sup>38</sup> Insertion of a threshold to be discussed.

<sup>39</sup> Insertion of a threshold to be discussed.

## 9.5 Insolvency

- (a) The Issuer or one [of its Subsidiaries/of the Material Subsidiaries] is unable or recognises its inability to, pay its debts on a timely basis, suspends the payment of its debts or, due to current or anticipated financial problems, initiates negotiations with one or more of its creditors with a view to rescheduling its debt.
- (b) The Issuer or one [of its Subsidiaries/of the Material Subsidiaries] is insolvent (*état de cessation de paiement*), or any member of the Group becomes insolvent (*état de cessation de paiement*) as defined by any applicable insolvency law.
- (c) A moratorium is declared on the debt of the Issuer or of one [of its Subsidiaries/of the Material Subsidiaries].

## 9.6 Court-ordered insolvency procedures <sup>40</sup>

To the extent permitted by law:

- (a) a decision by a management body is taken or judicial proceedings or other measure is initiated with a view to:
  - (i) suspension of the payments, obtaining of a moratorium on all or some of the debts, dissolution, the initiation of safeguard proceedings (*procédure de sauvegarde*), accelerated safeguard proceedings (*procédure de sauvegarde accélérée*), accelerated financial safeguard proceedings (*procédure de sauvegarde financière accélérée*), judicial reorganisation (*redressement judiciaire*), judicial liquidation (*liquidation judiciaire*) or restructuring (in particular, within the scope of an *ad hoc* mandate (*mandat ad hoc*) or conciliation (*conciliation*)) of the Issuer [or of one of its Subsidiaries] [with the exception, however, of the liquidation or the amicable restructuring of one of the Issuer's Subsidiaries]; or
  - (ii) the entering into by the Issuer or one [of its Subsidiaries/of the Material Subsidiaries] an adjustment, assignment or rescheduling agreement with a creditor due to present or anticipated financial problems; or
  - (iii) the appointment vis-à-vis the Issuer or one [of its Subsidiaries/of the Material Subsidiaries] or all or some of their respective assets, of a liquidator, court-appointed administrator, receiver, provisional administrator, *ad hoc* administrator, conciliator or of any other person performing similar duties [with the exception, however, of the appointment of a liquidator within the scope of the amicable liquidation of one of the Issuer's Subsidiaries];
- (b) The Issuer or one [of its Subsidiaries/of the Material Subsidiaries] requests for the appointment of an *ad hoc* administrator (*administrateur ad hoc*) or the initiation of a conciliation procedure (*procédure de conciliation*) in accordance with Articles L. 611-3 to L. 611-15 of the French Commercial Code;
- (c) a judgment for the opening of a (*procédure de sauvegarde*), accelerated safeguard proceedings (*procédure de sauvegarde accélérée*), accelerated financial safeguard proceedings (*procédure de sauvegarde financière accélérée*), judicial reorganisation (*redressement judiciaire*), judicial liquidation (*liquidation judiciaire*) or for the judicial transfer of the whole of the business (*cession totale de l'entreprise*) or the partial transfer of the business (*cession partielle de l'entreprise*) is issued in respect of the Issuer or one [of its Subsidiaries/of Material Subsidiaries] pursuant to Articles L. 620-1 to L. 670-8 of the French Commercial Code; or

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<sup>40</sup> Clause to be modified if the Issuer is not French. Certain of these provisions may not be enforceable depending on the insolvency law applicable in the country in which the Issuer, its Subsidiaries and/or its Material Subsidiaries, as the case may be, are registered or have their centre of main interests.

- (d) the Issuer or any [of its Subsidiaries/of the Material Subsidiaries is subject to any proceeding or claim or any judgment issued which has an analogous effect to any of the proceedings referred to in paragraphs (a) to (b) above.

#### 9.7 Cessation or suspension of activity

Any suspension or cessation by the Issuer or by one [of its Subsidiaries/of the Material Subsidiaries] of all or part of its business.<sup>41</sup>

*[N.B.: Based on the economics of the transaction and on the Issuer's circumstances, it is possible, though not automatic or mandatory, to insert other Events of Default such as, in particular, but without limitation, the sale of all or of a substantial part of its assets by the Issuer or one [of its Subsidiaries/of the Material Subsidiaries], illegality, the occurrence of an event having or that could potentially have a Material Adverse Effect, the occurrence of judicial, arbitration or administrative proceedings concerning the Issuer or one [of its Subsidiaries/of the Material Subsidiaries], the implementation of a procedure involving the enforcement or realisation of security interests, or reservations regarding or a refusal to certify the financial statements by the statutory auditors, etc.]<sup>42</sup>*

### 10. PRESCRIPTION

All claims against the Issuer for the payment of principal or interest in respect of the Notes shall lapse after ten (10) years (in the case of principal) and five (5) years (in the case of interest) from the due date for payment thereof.

### 11. REPRESENTATION OF THE NOTEHOLDERS

The Noteholders will be grouped automatically for the defence of their common interests in a masse (hereinafter referred to as the "**Masse**"). The Masse will be governed by the provisions of Articles L. 228-46 et seq. of the French Commercial Code.

The Masse will be a separate legal entity and will act in part through a representative (the "**Representative of the Masse**")<sup>43</sup> and in part through general meetings of the Noteholders.

In accordance with the provisions of Article R. 228-71 of the French Commercial Code, the rights of each Noteholder to participate in the general meetings will be evidenced by entries in the books of the Registrar and/or of the relevant Account Holder[s] in the name of such Noteholder at midnight (Paris time) on the third (3<sup>rd</sup>) Business Day preceding the date set for the relevant general meeting.

Decisions at general meetings shall be taken by a two-third (2/3) majority of votes cast by Noteholders attending such general meetings or represented thereat, in accordance with Article L. 228-65 II of the French Commercial Code.

The name and contact information of the initial Representative of the Masse are:

[  ]

[Postal address and electronic address]

The name and contact information of the alternate Representative (the "**Alternate Representative of the Masse**") are:

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<sup>41</sup> Wording of this Event of Default to be modified based on the structure of the Group.

<sup>42</sup> In the event that it is envisaged to insert certain of these Events of Default, an example of their wording is shown in Article 16.1 of the model Loan Agreement published by the Euro PP working group at the same time as this document and available on the web site [www.euro-privateplacement.com](http://www.euro-privateplacement.com).

<sup>43</sup> Key point: the representative of the Noteholders must be chosen based on its technical capacity to fulfil the assignments entrusted to it, in particular, if its assignment is to verify compliance with Financial Covenants and/or other commitments of the Issuer, which implies a corresponding remuneration.

[  ]

[Postal address and electronic address]

The Alternate Representative of the Masse shall replace the Initial Representative of the Masse if the latter were to resign or were unable to perform its duties. In the event of death, resignation or revocation of the Alternate Representative of the Masse, its replacement(s) will be elected by the general meeting of the Noteholders.

The Representative will receive remuneration for the performance of its services in the amount of [  ] euros (before taxes) per year, payable on each Interest Payment Date, with a first payment on the Issue Date.

All interested Noteholders may at all times obtain the names and addresses of the Representative of the Masse and the Alternate Representative of the Masse at the registered office of the Issuer and the specified office of any Paying Agent.]<sup>44</sup>

## **12. NOTICES**

Any notice to the Representative of the Masse shall be duly given if it is sent by regular postal mail or by e-mail. In such case it shall be deemed to have been given on the second (2<sup>nd</sup>) Business Day after it was sent.

Any notice to the Noteholders shall be duly given if sent by regular postal mail to their respective postal addresses. In such case it shall be deemed to have been given on the second (2nd) Business Day after it was sent.

## **13. [FURTHER ISSUES**

The Issuer may, without the consent of the Noteholders, issue further notes to be assimilated (*assimilables*) with the Notes, provided that such further notes and the Notes shall carry identical rights in all respects (or in all respects except for the issue price and the first payment of interest thereon) and that the terms of such further notes shall provide for such assimilation.

In the case of such assimilation, the holders of such further notes and the Noteholders will be grouped in a single masse. References in these Conditions to the Notes include any other notes issued pursuant to this Article and assimilated with the Notes.]<sup>45</sup>

## **14. GOVERNING LAW AND JURISDICTION**

The Notes are governed by French law.

Any dispute arising out of the Conditions shall be submitted to the exclusive jurisdiction of the [Paris] Commercial Court.

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<sup>44</sup> It is possible to insert "Contractual Masse" clause [known in France as a "masse allegée" clause] in the case of bonds issued outside France.

<sup>45</sup> To be inserted in the event that the issue of assimilated (*assimilables*) Notes is not excluded.

**SCHEDULE 1 TO THE TERMS AND CONDITIONS OF THE NOTES  
FORM OF COMPLIANCE CERTIFICATE**

**Compliance Certificate**

**From:** [Issuer], as Issuer

**To:** [Representative of the Masse], as Representative of the Masse

**Copy:** [Fiscal Agent], as Fiscal Agent

**Date:** [ ]

This certificate constitutes a Compliance Certificate issued in accordance with the provisions of Article 4.1 (*Financial covenants*). The terms defined in the Conditions have the same meaning in this Compliance Certificate.

This Compliance Certificate is issued in respect of the Test Period commencing on [ ] and ending on [ ].

For the Test Period covered by this Compliance Certificate, the level of each of the Financial Covenants is indicated in the table below:

Financial Covenants	Level
Ratio [ ]	[ ]
Ratio [ ]	[ ]

The Financial Covenants contained in the table above were calculated on the basis of the following figures, in accordance with the financial statements for the Test Period concerned by this Compliance Certificate:

[financial item]	EUR [ ]

In addition, we hereby inform you that, for the Test Period covered by this Compliance Certificate: [to be filled out if applicable, if the Issuer wishes to inform the Noteholders of any financial information].

We hereby confirm that no Event of Default is pending on the date hereof.

Yours sincerely,

.....  
[Issuer]  
By: [ ]

For certification, the statutory auditors:

[*The Issuer's statutory auditors*]

By: [\*\*\*]

**SCHEDULE 2 TO THE TERMS AND CONDITIONS OF THE NOTES  
LIST OF SECURITY INTERESTS AND/OR QUASI-SECURITY INTERESTS EXISTING ON THE  
ISSUE DATE**

**SCHEDULE 2 TO THE AGREEMENT  
SUBSCRIPTION COMMITMENTS**