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**To the bondholders in:**

**ISIN: NO 001 067557.2 - "3mN+6.75 per cent Western Bulk Senior Unsecured Bond Issue 2013/2017"**

Oslo, 5. February 2016

**Summons to Bondholders' Meeting**

Nordic Trustee ASA acts as trustee (the "**Trustee**") for the holders of the bonds (the "**Bondholders**") in the above mentioned bond issue with ISIN NO 001 067557.2 (the "**Bond Issue**") originally issued by Western Bulk ASA (the "**Original Issuer**") which is contemplate to be transferred to Kistefos Equity Operations AS (to be renamed) as the new issuer ("**Issuer**" or the "**Company**").

All capitalized terms used herein shall have the meaning assigned to them in the bond agreement dated 17 April 2013, amended on 15 August 2014 and as further amended and restated on 11 January 2016, made between the Trustee and the Original Issuer (the "**Bond Agreement**"), unless otherwise stated herein. References to Clauses and paragraphs are references to Clauses and paragraphs of the Bond Agreement.

*The information in this summons regarding the Original Issuer and market conditions are provided by the Original Issuer, and the Bond Trustee expressly disclaims all liability whatsoever related to such information.*

**1 BACKGROUND**

The Original Issuer is exposed to an increasingly challenging market situation with dramatically low dry bulk charter rates and guarantees granted by the Original Issuer for charters related to certain lease agreements and ship owners.

This has resulted in significant strains on the Original Issuer's short term liquidity situation. Based on the above the Board of Directors of the Original Issuer has, in order to protect the interests of all stakeholders, including the interests of the Original Issuer's creditors and shareholders, considered available options and initiated a process to explore strategic alternatives. In doing so the Board is observing its fiduciary obligations and is acting in the best common interest of the Original Issuer and its shareholders as well as its creditors and employees. Pareto Securities has been engaged as financial advisor for the strategic process.

Based on the above, the Original Issuer has on 1 February 2016 executed a sale and purchase agreement (the "**SPA**") in respect of:

- a. its 100 % owned subsidiary Western Bulk Chartering AS ("**WB Chartering**"); and

- b. the Original Issuer's Bonds,

to the Company (the "**Transaction**"). The Company is indirectly wholly owned by Kistefos AS. The Transaction is entered into on market terms with regard to the need for an accelerated sales process. The enterprise value in the Transaction is approximately MUSD 47. The cash consideration to the Original Issuer is MUSD 16, to be received upon final completion of the Transaction. Under the terms of the Transaction, the Company is to assume all of the Original Issuer's obligations under the Bond Issue (as set out in the Proposal) on the date on which the Company becomes the issuer under the Bond Issue (the "**Transfer Date**"). All bonds held in treasury by the Original Issuer shall be transferred to the Company as part of the Transaction.

## 2 PROPOSAL

In accordance with Clause 16.2 of the Bond Agreement, the Original Issuer has approached the Bond Trustee to convene a Bondholders' Meeting in order to obtain the Bondholders' approval to:

- (a) the waivers and consents required in connection with the Transaction and the completion of the Transaction; and
- (b) the proposed amendments to the Bond Agreement as set out in the appended form of amended and restated bond agreement (the "**Amended and Restated Bond Agreement**"),

pursuant to the authority given to the Bondholders' Meeting under Clause 16.3 of the Bond Agreement.

The Issuer proposes the following (the "**Proposal**"):

### 2.1 Consent to transfer of shares and waiver of any breach as a result thereof

The Bondholders' Meeting consents to the transfer of the shares in WB Chartering from the Original Issuer to the Company and irrevocably waive any right they would otherwise have (towards any person) as a result of the Original Issuer's failure to comply with the Bond Agreement as a result thereof (including, without limitation, clause 13.5 (a) of the Bond Agreement).

### 2.2 Consent to transfer of the Original Issuer's Bonds and waiver of any breach as a result thereof

The Bondholders' Meeting consents to the transfer of the Original Issuer's Bonds from the Original Issuer to the Company and irrevocably waive any right they would otherwise have (towards any person) as a result of the Original Issuer's failure to comply with the Bond Agreement as a result thereof (including, without limitation, clause 12 of the Bond Agreement).

### 2.3 Consent to the Company's granting of security over the shares in Western Bulk Chartering AS, in favour of the Original Issuer

The Bondholders' Meeting consents to the granting of security over the shares in WB Chartering by the Company in favour of the Original Issuer, as security for the Company's obligations under the SPA. It being understood that the share pledge shall be released, as soon as reasonably practicable, upon the payment by the Company of its obligations under the SPA.

## **2.4 Consent to the amendments and transactions contemplated in the Amended and Restated Bond Agreement**

- (a) The Bondholders' Meeting consents to the amendments and the transactions contemplated in, and/or which are contemplated to have taken place in, the Amended and Restated Bond Agreement, including (without limitation) the transfer by the Original Issuer to the Company of all its rights and obligations under the Bond Agreement from and including the Transfer Date.
- (b) The Bondholders' Meeting irrevocably agrees and accepts that, from and including the Transfer Date:
  - (i) all of the rights and obligations of the Original Issuer under the Bond Agreement shall be irrevocably released and discharged;
  - (ii) all of the rights and obligations of the Original Issuer under the Bond Agreement shall be irrevocably assumed and undertaken by the Company; and
  - (iii) the rights and obligations assumed and undertaken by the Company in accordance with paragraph (ii) above, shall immediately be amended and replaced by the terms of the Amended and Restated Bond Agreement, so that the rights and obligations of the parties thereto relating their performance under the Bond Agreement, with effect from and including the Transfer Date, shall be governed by, and construed in accordance with, the terms of the Amended and Restated Bond Agreement.
- (c) The Bondholders' Meeting irrevocably authorise the Bond Trustee to negotiate, agree, execute and deliver, on behalf of the Bondholders, any document, agreement and/or instrument as the Bond Trustee (in its sole discretion, but with a duty to negotiate in good faith towards the Original Issuer and the Company) may deem required in order to effect the transactions contemplated to have taken place in the Amended and Restated Bond Agreement, including (without limitation) the terms of an amendments and restatement agreement relating to the Bond Agreement (to be entered into between the Company, the Original Issuer and the Bond Trustee) which may contain:
  - (i) a guarantee confirmation from the existing guarantors under the Bond Agreement;
  - (ii) a transfer provision as between the Original Issuer and the Company, reflecting the transaction contemplated in paragraph (b)(i) and (b)(ii) above; and
  - (iii) conditions precedent for the Amended and Restated Bond Agreement to become effective in the form of board resolutions from the Original Issuer, the Company and each Guarantor under the Bond Agreement (it being understood that no legal opinions, fees and/or other conditions precedent documents and/or evidence will be required).

## **2.5 Authorisation of the Bond Trustee**

Without prejudice to anything set out in clause 2.1-2.4 above, the Bondholders' Meeting irrevocably authorise the Bond Trustee to negotiate, agree, execute and deliver, on behalf of the Bondholders, any document, agreement and/or instrument as the Bond Trustee (in its sole discretion, but with a duty to negotiate in good faith towards the Original Issuer and the Company) may deem required in order to effect any of the transactions contemplated in clause

2.1-2.4 above, in each case, without any liability for the Bond Trustee or its employees except in the case of the Bond Trustee only, fraud or wilful misconduct.

### **3 EVALUATION OF THE PROPOSED AMENDMENTS**

#### **3.1 The Original Issuer's evaluation**

In the opinion of the Original Issuer, the Transaction constitutes the best possible outcome for the Bondholders, given the situation the Original Issuer is faced with. For additional information on the Original Issuer's evaluation of the Proposal, the Original Issuer has deferred to the press release dated 1 February 2016. Bondholders are also encouraged to contact Pareto Securities AS Fixed Income Sales desk at +47 22 87 87 70 for additional queries not addressed in that press release.

#### **3.2 Support from the Bondholders**

Prior to this summons letter being distributed, the Original Issuer has informed the Bond Trustee that they have received support for the proposal from Bondholders representing more than 2/3 of the Voting Bonds.

#### **3.3 The Bond Trustee's disclaimer/non-reliance**

Nothing herein shall constitute a recommendation to the Bondholders from the Bond Trustee. Each Bondholder should independently evaluate the Proposal and vote accordingly.

The information in this summons regarding the legal, operational and financial status of the Original Issuer is provided by the Original Issuer. The Bond Trustee expressly disclaims any and all liability whatsoever related to such information given from the Original Issuer.

### **4 BONDHOLDERS' MEETING**

The Original Issuer has requested the Bond Trustee to summon a Bondholders' meeting to consider the approval of the Proposal.

The request is put forward to the Bondholders without further evaluation or recommendations from the Bond Trustee. The Bondholders must independently evaluate whether the proposed changes are acceptable.

#### **Bondholders' meeting:**

Bondholders are hereby summoned to a Bondholders' meeting:

**Time:** 22. February 2016 at 13:00 hours (Oslo time),  
**Place:** The premises of Nordic Trustee ASA, Haakon  
VII's gt 1, 0161 Oslo - 6<sup>th</sup> floor

#### **Agenda:**

1. Approval of the summons.
2. Approval of the agenda.
3. Election of two persons to co-sign the minutes together with the chairman.
4. Request for adoption of the Proposal.



To approve the above resolution, Bondholders representing at least 2/3 of the Bonds represented in person or by proxy at the meeting must vote in favour of the resolution. In order to have a quorum, at least 5/10 of the voting Bonds must be represented at the meeting. If the proposal is not adopted, the Bond Agreement will remain unchanged.

Please find attached a Bondholder's Form from the Securities Depository (VPS), indicating your bondholding at the printing date. The Bondholder's Form will serve as proof of ownership of the Bonds and of the voting rights at the bondholders' meeting. (If the bonds are held in custody - i.e. the owner is not registered directly in the VPS - the custodian must confirm; (i) the owner of the bonds, (ii) the aggregate nominal amount of the bonds and (iii) the account number in VPS on which the bonds are registered.)

The individual bondholder may authorise the Nordic Trustee to vote on its behalf, in which case the Bondholder's Form also serves as a proxy. A duly signed Bondholder's Form, authorising Nordic Trustee to vote, must then be returned to Nordic Trustee in due time before the meeting is scheduled (by scanned e-mail, telefax or post – please see the first page of this letter for further details).

In the event that Bonds have been transferred to a new owner after the Bondholder's Form was made, the new Bondholder must bring to the Bondholders' meeting or enclose with the proxy, as the case may be, evidence which the Bond Trustee accepts as sufficient proof of the ownership of the Bonds.

For practical purposes, we request those who intend to attend the bondholders' meeting, either in person or by proxy other than to Nordic Trustee, to notify Nordic Trustee by telephone or by e-mail ([www.mail@trustee.no](mailto:www.mail@trustee.no)) within 16:00 hours (4 pm) (Oslo time) the Banking Day before the meeting takes place.

Yours sincerely

**Nordic Trustee ASA**



Enclosed:

Appendix: Form of amended and restated bond agreement

**Appendix – Form of amended and restated bond agreement**

ISIN NO 001 067 557.2

## **BOND AGREEMENT**

dated 17 April 2013

as amended by an amendment agreement dated 15 August ~~2014~~2014.

~~and~~

as amended and restated by an amendment and restatement agreement dated 11 January 2016

and

as amended and restated by an amendment and restatement agreement dated [ ] February 2016

between

~~Western Bulk AS~~ Kistefos Equity Operations AS  
(to be renamed)

(Issuer)

and

**Norsk Tillitsmann ASA**

(Bond Trustee)

on behalf of

**the Bondholders**

in the bond issue

FRN Western Bulk AS Senior Unsecured Bond Issue 2013/2017



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This agreement has been entered into on 17 April 2013, as amended on 15 August ~~2014~~ and 2014, as further amended and restated on ~~the~~ Effective Date 1 and as further amended and restated on Effective Date 2 and is made between

- (1) ~~Western Bulk~~ Kistefos Equity Operations AS (to be renamed) (a company existing under the laws of Norway with registration number ~~980-747-026916 656 319~~) as issuer (the “**Issuer**”); and
- (2) Nordic Trustee ASA (formerly known as Norsk Tillitsmann ASA) (a company existing under the laws of Norway with registration number 963 342 624) as bond trustee (the “**Bond Trustee**”).

## 1 Interpretation

### 1.1 Definitions

In this Bond Agreement, the following terms shall have the following meanings:

“**Account Manager**” means a Bondholder’s account manager in the Securities Depository.

“**Affiliate**” means (i) the main shareholder of the Issuer as of ~~the Issue~~ Effective Date 2 and thereafter the main shareholder from time to time, and (ii) any entity (being owned more than 50% directly or indirectly by the ultimate main shareholder as of ~~the Issue~~ Effective Date 2) from time to time which is not a member of the Group.

“**Amendment and Restatement Agreement**” means Amendment and Restatement Agreement 1 or Amendment and Restatement Agreement 2.

“**Amendment and Restatement Agreement 1**” means the amendment and restatement agreement dated 11 January 2016 made between the Parties in respect hereof.

“**Amendment and Restatement Agreement 2**” means the amendment and restatement agreement dated [ ] February 2016 made between the Parties in respect hereof and Western Bulk ASA.

“**Attachments**” means the attachments to this Bond Agreement.

“**Bond Agreement**” means this bond agreement, including any Attachments to it, each as amended from time to time.

“**Bond Issue**” means the bond issue constituted by the Bonds.

“**Bond Reference Rate**” means three months NIBOR.

“**Bondholder**” means a holder of Bond(s), as registered in the Securities Depository, from time to time.

“**Bondholders’ Meeting**” means a meeting of Bondholders, as set out in Clause 16.



“**Bonds**” means the debt instruments issued by the Issuer pursuant to this Bond Agreement.

“**Book Equity**” means the aggregate book value (on a consolidated basis) of the Group’s total equity treated as equity in accordance with NGAAP, as illustrated in the then most recent financial statements (annual or quarterly (as the case may be)) of the Issuer.

~~“**Book Equity Ratio**” means the ratio of Book Equity to Total Assets.~~

“**Business Day**” means any day on which commercial banks are open for general business and can settle foreign currency transactions in Oslo.

“**Business Day Convention**” means that if the relevant Payment Date originally falls on a day that is not a Business Day, an adjustment of the Payment Date will be made so that the relevant Payment Date will be the first following day that is a Business Day unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Business Day (*Modified Following Business Day Convention*).

“**Calculation Date**” means 31 March, 30 June, 30 September and 31 December each year.

“**Call Option**” shall have the meaning set out in Clause 10.2.

“**Change of Control Event**” means:

- a) any person or group (as such term is defined in the Norwegian Limited Liability Companies Act § 1-3), other than Kistefos AS (registration number 951 408 743), becomes the owner, directly or indirectly, of more than 50% of the outstanding shares of the Issuer; or
- b) if Kistefos AS reduces its ownership to below 30% of the outstanding shares of the Issuer; or
- c) a de-listing of the Issuer’s shares (if listed).

~~“**Chartering Group**” means the Chartering Holdco and all its current and future Subsidiaries, each a “Chartering Subsidiary”.~~

“**Chartering Holdco**” means Western Bulk Chartering AS (organisation number 892 873 232), a 100% directly owned subsidiary of the Issuer.

“**Compliance Certificate**” shall have the meaning given to it in Clause 13.2.2.

~~“**Co-Investment**” means the Group's existing (as of the Issue Date) investment of USD 26.1 million in shares which is co-invested with Kistefos AS, including the Fund Investment.~~

“**Credit Facilities**” means any credit facility of an aggregate maximum amount of USD 8 million consisting of loans and guarantees (or similar instruments) provided

by a financial institution to the Group and which may be secured by the Permitted Security.

“**Decisive Influence**” means a person having, as a result of an agreement or through the ownership of shares or interests in another person:

- (a) a majority of the voting rights in that other person; or
- (b) a right to elect or remove a majority of the members of the board of directors of that other person.

When determining the relevant person’s number of voting rights in the other person or the right to elect and remove members of the board of directors, rights held by the parent company of the relevant person and the parent company’s Subsidiaries shall be included.

“**Defeasance Pledge**” shall have the meaning given to it in Clause 18.2.

“**Disclosed Litigation**” means that a Subsidiary of the Issuer is involved in a litigation for events dating back to 2004/2005 where the Subsidiary originally was claiming collection of a debt from a third party of about USD 7 million, and has since been counter-claimed for about USD 15 million relating to allegations of wrongful attachment. The outcome of the case is uncertain both with regards to timing and any amounts receivable or payable by the Subsidiary.

“**Effective Date 1**” means 4 December 2015.

~~“**Equity Issue**” means the contemplated equity issue of the NOK equivalent to USD 15 million, of which the NOK equivalent to USD 10 million is guaranteed by Kistefos AS, where the extraordinary general meeting of the Issuer shall, in accordance with the principles set out in the Norwegian Limited Liability Companies Act § 10-1 e.f. § 10-4, resolve an issuance of new shares with gross proceeds equal to the minimum NOK amount equivalent to USD 10 million and the maximum NOK amount equivalent to USD 15 million, with issuance of tradable subscription rights based on the NOK amount equivalent to USD 15 million. When calculating the NOK amounts the calculation shall be based on the Exchange Rate.~~  
“**Effective Date 2**” means [ ] February 2016.

“**Escrow Account**” means an account(s) in the name of the Issuer to which the net proceeds from the Bond Issue shall be transferred in connection with the issuance of the Bonds. The Escrow Account shall be pledged in favour of the Bond Trustee and blocked on first priority as security for the Issuer’s obligations under the Finance Documents.

“**Escrow Account Pledge**” means the pledge over the Escrow Account, where the bank operating the account has waived any set-off rights.

“**Event of Default**” means the occurrence of an event or circumstance specified in Clause 15.1.



“**Exchange**” means (i) a securities exchange or other reputable regulated market, or (ii) Oslo Alternative Bond Market, on which the Bonds are listed, or where the Issuer has applied for listing of the Bonds.

~~“**Exchange Rate**” means the Norwegian Central Bank's official NOK/USD exchange rate on the date the board of directors of the Issuer approve the summons to the extraordinary general meeting for the approval of the Equity Issue.~~ “**Face Value**” means the denomination of each of the Bonds, as set out in Clause 2.2.

“**Finance Documents**” means (i) this Bond Agreement, (ii) the agreement between the Bond Trustee and the Issuer referred to in Clause 14.2, (iii) the Guarantee(s), and (iv) any other document (whether creating a Security or not) which is executed at any time by the Issuer or any other person in relation to any amount payable under this Bond Agreement.

“**Financial Indebtedness**” means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialized equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with NGAAP as of the Issue Date, be treated as finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value shall be taken into account); and
- (h) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (g) above.

“**Financial Statements**” means the audited unconsolidated and consolidated annual financial statements of the Issuer for any financial year, drawn up according to GAAP, such accounts to include a profit and loss account, balance sheet, cash flow statement and report from the Board of Directors.

~~“Fund Investment” means the 33% ownership in a limited liability company which has invested in private equity funds. The Fund Investment is part of the Co-Investment.~~

~~“Fund’s Uncalled Capital” means the further investments of up to USD 10 million which the limited liability company subject to the Fund Investment has committed to invest, of which the Issuer is committed to pay its relative share of USD 3.3 million.~~

“GAAP” means the accounting language of the Issuer from time to time, such accounting language to be either NGAAP, IFRS or US GAAP.

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

“Guarantee” means an unconditional on-demand guarantee on a joint and several basis from each of the Guarantors securing the Issuer’s obligations under this Bond Agreement and any other Finance Document, including interest, costs and expenses.

“Guarantors” means each Material-Chartering Subsidiary which from time to time has provided a Guarantee.

“IFRS” means International Financial Reporting Standards as adopted by the European Union.

“Interest Payment Date” means 19 January, 19 April, 19 July and 19 October each year and the Maturity Date. Any adjustment will be made according to the Business Day Convention.

“Interim Accounts” means the unaudited consolidated quarterly financial statements of the Issuer for the quarters ending on 31 March, 30 June and 30 September each year, drawn up according to GAAP.

“ISIN” means International Securities Identification Number – the identification number of the Bond Issue.

“Issue Date” means 19 April 2013.

“Issuer’s Bonds” means any Bonds owned by the Issuer, any person or persons who has Decisive Influence over the Issuer, or any person or persons over whom the Issuer has Decisive Influence.

“Manager” means the manager for the Bond Issue, being Pareto Securities AS, Dronning Mauds ~~gt:gate~~ 3, NO-0115 Oslo, Norway.

“Margin” means 6.75 per cent ~~(6.75%)~~ per annum.

“Material Adverse Effect” means a material adverse effect on: (a) the business, financial condition or operations of the Group taken as a whole, (b) the Issuer’s or any Guarantor’s ability to perform and comply with its obligations under any of the Finance Documents; or (c) the validity or enforceability of any of the Finance Documents; provided that the Disclosed Litigation (including any outcome thereof) shall not be deemed to constitute a Material Adverse Effect.



“**Material-Chartering Subsidiary**” means

- (a) the Chartering Holdco, and
- (b) any ~~Chartering Subsidiary~~ Group Company (from time to time):
  - (i) whose total consolidated gross assets represent at least 10 % of the total consolidated assets of the ~~Chartering~~-Group based on the latest audited annual accounts of the Issuer, or
  - (ii) whose total consolidated turnover represent at least 10 % of the total consolidated net sales of the ~~Chartering~~-Group based on the latest audited annual accounts of the Issuer, or
  - (iii) any other ~~Chartering Subsidiary~~ Group Company to which is transferred either (a) all or substantially all of the assets of another ~~Chartering Subsidiary~~ Group Company which immediately prior to the transfer was a Material ~~Chartering~~-Subsidiary or (b) sufficient assets of the ~~Chartering~~-Group that such ~~Chartering Subsidiary~~ Group Company would have been a Material ~~Chartering~~-Subsidiary had the transfer occurred on or before the balance sheet date of the latest audited annual accounts of the Issuer,

however provided that the Material-~~Chartering~~ Subsidiaries shall always, in aggregate, exceed 80% of the consolidated turnover or gross assets of the ~~Chartering~~ Group (as the case may be). The Issuer shall provide an overview of the Material-~~Chartering~~ Subsidiaries together with the delivery of the compliance certificate together with the annual report.

“**Maturity Date**” means 19 April ~~2017-2019~~. Any adjustment will be made according to the Business Day Convention.

“**Net Interest Bearing Debt**” means (on a consolidated basis) the aggregate interest bearing debt of the Group less unrestricted cash and cash equivalents and adjusted for the market value of any currency hedging rate relevant to the Bond Issue of the Group in accordance with NGAAP (positive or negative as the case may be).

“**NGAAP**” means the generally accepted accounting principles in Norway.

“**NIBOR**” means the interest rate which (a) is published on Reuters Screen NIBR Page (or through another system or on another website replacing the said system or website respectively) approximately 12.00 noon on the relevant Interest Payment Date (on days on which the Norwegian money market has shorter opening hours (New Year’s Eve and the Wednesday before Maundy Thursday), the data published by the banks at 10 a.m. shall be used), or, if such publication does not exist, (b) at that time corresponds to (i) the average of the quoted lending rates of Norwegian commercial banks on the interbank market in Oslo or, if only one or no such quotes are provided, (ii) the assessment of the Bond Trustee of the interest rate, which in the Bond Trustee’s determination is equal to what is offered by Norwegian commercial banks, for the applicable period in the Oslo interbank market. If any such rate is below zero, NIBOR will be deemed to be zero.

“NOK” means Norwegian kroner, being the lawful currency of Norway.

“Obligor” means the Issuer and any Guarantor.

“Outstanding Bonds” means the Bonds not redeemed or otherwise discharged.

“Party” means a party to this Bond Agreement (including its successors and permitted transferees).

“Paying Agent” means the legal entity appointed by the Issuer to act as its paying agent in the Securities Registry with respect to the Bonds.

“Payment Date” means a date for payment of principal or interest under this Bond Agreement.

“Permitted Intra-Group Loans” means loans and credits to members of the ~~Chartering~~ Group from the Issuer.

“Permitted Security” means Security under the Credit Facilities over ~~the Chartering~~ a Group Company's accounts receivables and/or cash with an aggregate maximum amount of USD 10 million and any guarantees by ~~the Chartering~~ a Group Company in connection with the Credit Facilities.

“Put Option” shall have the meaning given to it in Clause 10.3.1.

“Quarter Date” means each 31 March, 30 June, 30 September and 31 December.

“Reporting Date” means in respect of the Interim Accounts the date falling 60 days after each respective Calculation Date and in respect of the Financial Statements the date falling 90 days after the end of each calendar year.

“Securities Depository” means the securities depository in which the Bond Issue is registered, being Verdipapirsentralen ASA (VPS) in Norway.

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

“Security and Covenant Defeasance” shall have the meaning given to it in Clause 18.2.

~~“Shipholding Group” means Western Bulk Shipholding AS (organisation number 994 051 121), a 100% directly owned subsidiary of the Issuer, with all its current and future Subsidiaries.~~

“Stamdata” means the web site www.stamdata.no, maintained by the Bond Trustee.

~~“Subordinated Capital” means the NOK equivalent to USD 15 million and shall comprise of the sum of shares allocated by the Issuer under the Equity Issue and any Subordinated Loans granted to the Issuer within 31 March 2016. If the sum of shares allocated by the Issuer under the Equity Issue equals or is greater than the NOK~~



~~equivalent to USD 15 million, no Subordinated Loan may be granted. When calculating the NOK amounts the calculation shall be based on the Exchange Rate.~~

“**Subordinated Loans**” means one loan or several loans incurred by the Issuer which is fully subordinated to the Bonds and governed by one or several loan agreements which shall be in form and substance satisfactory to the Bond Trustee. The Issuer shall ensure that any such Subordinated Loan shall in all respects be fully subordinated to the Bonds with no repayments of principal and payment of cash interest before the payment obligations under the Finance Documents are fully discharged. For the avoidance of doubt, any accrued interests shall be accumulated and added to the principal of such Subordinated Loan.

“**Subsidiary**” means a company over which another company has Decisive Influence.

“**Total Assets**” means the aggregate book value (on a consolidated basis) of the Group’s total assets treated as assets in accordance with NGAAP, as set out in the then most recent financial statements (annual or quarterly (as the case may be)) of the Issuer.

“**US GAAP**” means Generally Accepted Accounting Principles in the United States of America.

“**US Securities Act**” means the U.S. Securities Act of 1933, as amended.

“**VaR**” shall have the meaning given to it in Clause 13.5(d).

“**Voting Bonds**” means the Outstanding Bonds less the Issuer’s Bonds.

## 1.2 *Construction*

In this Bond Agreement, unless the context otherwise requires:

- (a) headings are for ease of reference only;
- (b) words denoting the singular number shall include the plural and vice versa;
- (c) references to Clauses are references to the Clauses of this Bond Agreement;
- (d) references to a time is a reference to Oslo time unless otherwise stated herein;
- (e) references to a provision of law is a reference to that provision as it may be amended or re-enacted, and to any regulations made by the appropriate authority pursuant to such law, including any determinations, rulings, judgments and other binding decisions relating to such provision or regulation;
- (f) an Event of Default is “**continuing**” if it has not been remedied or waived; and

- (g) references to a “**person**” shall include any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality).

## 2 **The Bonds**

### 2.1 *Binding nature of this Bond Agreement*

- 2.1.1 By virtue of being registered as a Bondholder (directly or indirectly) with the Securities Depository, the Bondholders are bound by the terms of this Bond Agreement and any other Finance Document, without any further action required to be taken or formalities to be complied with, see also Clause 18.1.
- 2.1.2 This Bond Agreement is available to anyone and may be obtained from the Bond Trustee or the Issuer. The Issuer shall ensure that this Bond Agreement is available to the general public throughout the entire term of the Bonds. This Bond Agreement may be published on Stamdata or such other venues as decided by the Bond Trustee.

### 2.2 *The Bonds*

The Issuer has resolved to issue a series of Bonds in the maximum amount of NOK 300,000,000 (Norwegian kroner three hundred million).

The Face Value is NOK 1,000,000. The Bonds shall rank *pari passu* between themselves.

The Bond Issue will be described as “FRN Western Bulk AS Senior Unsecured Bond Issue 2013/2017”.

The ISIN of the Bond Issue will be NO 001 067 557.2.

The tenor of the Bonds is from and including the Issue Date to the Maturity Date.

### 2.3 *Purpose and utilization*

The net proceeds of the Bonds shall be applied towards the general corporate purposes.

### 3 Listing

3.1 The ~~Issuer shall apply for listing of the Bonds on Oslo Børs ASA's Alternative Bond Market ("ABM").~~

~~3.2~~ ~~If the Bonds are listed, the~~ Issuer shall ensure that the Bonds remain listed until they have been discharged in full.

### 4 Registration in the Securities Depository

4.1 The Bond Issue and the Bonds shall prior to disbursement be registered in the Securities Depository according to the Norwegian Securities Depository Act (Act 2002/64) and the terms and conditions of the Securities Depository.

4.2 The Issuer shall ensure that correct registration in the Securities Depository is made and shall notify the Securities Depository of any changes in the terms and conditions of this Bond Agreement. The Bond Trustee shall receive a copy of the notification. The registration may be executed by the Paying Agent.

4.3 The Bonds have not been registered under the US Securities Act, and the Issuer is under no obligation to arrange for registration of the Bonds under the US Securities Act.

### 5 Purchase and transfer of Bonds

5.1 Bondholders may be subject to purchase or transfer restrictions with regard to the Bonds, as applicable from time to time under local laws to which a Bondholder may be subject (due e.g. to its nationality, its residency, its registered address, its place(s) for doing business). Each Bondholder must ensure compliance with applicable local laws and regulations at its own cost and expense.

5.2 Notwithstanding the above, a Bondholder which has purchased the Bonds in breach of applicable mandatory restrictions may nevertheless utilize its rights (including, but not limited to, voting rights) under this Bond Agreement.

### 6 Conditions Precedent

#### 6.1 *Pre-settlement*

Disbursement of the net proceeds of the Bonds to the Escrow Account will be subject to the Bond Trustee having received the documents listed below, in form and substance satisfactory to it, at least two Business Days prior to the Issue Date:

- (a) this Bond Agreement, duly executed by all parties thereto;
- (b) certified copies of all necessary corporate resolutions of the Issuer to issue the Bonds and execute the Finance Documents;

- (c) a power of attorney from the Issuer to relevant individuals for their execution of the relevant Finance Documents, or extracts from the relevant register or similar documentation evidencing such individuals' authorisation to execute the Finance Documents on behalf of the Issuer;
- (d) certified copies of (i) the Certificate of Incorporation or other similar official document for the Issuer, evidencing that it is validly registered and existing and (ii) the Articles of Association of the Issuer;
- (e) the Issuer's latest Financial Statements;
- (f) confirmation from the Manager that the requirements set out in Chapter 7 of the Norwegian Securities Trading Act (implementing the EU prospectus directive (2003/71 EC) concerning prospectuses have been fulfilled;
- (g) to the extent necessary, any public authorisations required for the Bond Issue;
- (h) confirmation from the Paying Agent that the Bonds have been registered in the Securities Depository;
- (i) the Bond Trustee fee agreement set out in Clause 14.2, duly executed;
- (j) copies of any written documentation used in the marketing of the Bonds or made public by the Issuer or the Manager in connection with the Bond Issue;
- (k) any statements or legal opinions reasonably required by the Bond Trustee (including any capacity corporate opinions for the Issuer and opinions related to the validity, perfection and enforceability of the Finance Documents); and
- (l) the Escrow Account Pledge, duly executed by all parties (including relevant acknowledgement from the bank).

## 6.2 *Pre-Disbursement*

The release of the net proceeds of the Bonds from the Escrow Account to the Issuer will be subject to the Bond Trustee having received the documents listed below, in form and substance satisfactory to it:

- (a) The Guarantees duly issued by each of the Material ~~Chartering~~ Subsidiaries to the extent permissible under applicable law;
- (b) certified copies of all necessary corporate resolutions of each of the Guarantors to execute the Guarantees;
- (c) a power of attorney from each of the Guarantors to relevant individuals for their execution of the Guarantees, or extracts from the relevant register or similar documentation evidencing such individuals' authorisation to execute the Guarantees on behalf of each such Guarantor;



- (d) certified copies of (i) the Certificate of Incorporation or other similar official document for each of the Guarantors, evidencing that it is validly registered and existing and (ii) the articles of association, memorandum of association, bye-laws or similar constituent documents of each such Guarantor;
  - (e) a duly executed release notice from the Issuer;
  - (f) all legal opinions reasonably requested by the Bond Trustee in form and substance satisfactory to the Bond Trustee;
  - (g) confirmation from the Issuer that no Event of Default has occurred and is continuing and that no other event or circumstance is outstanding which, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute an Event of Default; and
  - (h) confirmation from the Issuer that the **Chartering** Group has no other Financial Indebtedness than such Financial Indebtedness incurred pursuant to the Finance Documents other than Financial Indebtedness permitted under Clause 13.5 (c).
- 6.3 The Bond Trustee will release the Escrow Account Pledge upon release of all the net proceeds from the Escrow Account.
- 6.4 The Bond Trustee may, in its reasonable opinion, waive the deadline or requirements for documentation as set out in Clauses 6.1 and 6.2.
- 6.5 Disbursement of the net proceeds from the Bonds is subject to the Bond Trustee's written notice to the Issuer, the Manager and the Paying Agent that the documents have been controlled and that the required conditions precedent are fulfilled.
- 6.6 On the Issue Date, subject to receipt of confirmation from the Bond Trustee pursuant to Clause 6.5, the Manager shall transfer the net proceeds from the Bond Issue to the Escrow Account.

## 7 Representations and Warranties

- 7.1 The Issuer represents and warrants to the Bond Trustee with respect to itself and each of the Guarantors that:

(a) *Status*

It is a limited liability company, duly incorporated and validly existing and registered under the laws of its jurisdiction of incorporation, and has the power to own its assets and carry on its business as it is being conducted.

(b) *Power and authority*

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Bond Agreement and any other Finance Document to which it is a party and the transactions contemplated by those Finance Documents.

*(c) Valid, binding and enforceable obligations*

This Bond Agreement and each other Finance Document to which it is a party constitutes (or will constitute, when executed by the respective parties thereto) its legal, valid and binding obligations, enforceable in accordance with their respective terms, and (save as provided for therein) no further registration, filing, payment of tax or fees or other formalities are necessary or desirable to render the said documents enforceable against it.

*(d) Non-conflict with other obligations*

The entry into and performance by it of this Bond Agreement and any other Finance Document to which it is a party and the transactions contemplated thereby do not and will not conflict with (i) any law or regulation or judicial or official order; (ii) its constitutional documents; or (iii) any agreement or instrument which is binding upon it or any of its assets.

*(e) No Event of Default*

- (i) No Event of Default exists or is likely to result from the making of any drawdown under this Bond Agreement or the entry into, the performance of, or any transaction contemplated by, any Finance Document.
- (ii) No other event or circumstance is outstanding which constitutes (or with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (howsoever described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is likely to have a Material Adverse Effect.

*(f) Authorizations and consents*

All authorisations, consents, approvals, resolutions, licenses, exemptions, filings, notarizations or registrations required:

- (i) to enable it to enter into, exercise its rights and comply with its obligations under this Bond Agreement or any other Finance Document to which it is a party; and
- (ii) to carry on its business as presently conducted and as contemplated by this Bond Agreement,

have been obtained or effected and are in full force and effect.

*(g) Litigation*

No litigation, arbitration or administrative proceedings or investigations of or before any court, arbitral body or agency which, if adversely determined, is likely to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries (save for the Disclosed Litigation).

*(h) Financial Statements*

Its most recent Financial Statements and Interim Accounts fairly and accurately represent the assets and liabilities and financial condition as at their respective dates, and have been prepared in accordance with GAAP, consistently applied.

*(i) No Material Adverse Effect*

Since the date of the Financial Statements, there has been no change in its business, assets or financial condition that is likely to have a Material Adverse Effect.

*(j) No misleading information*

Any factual information provided by it to the subscribers or the Bond Trustee for the purposes of this Bond Issue was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.

*(k) No withholdings*

The Issuer is not required to make any deduction or withholding from any payment which it may become obliged to make to the Bond Trustee or the Bondholders under this Bond Agreement.

*(l) Pari passu ranking*

Its payment obligations under this Bond Agreement or any other Finance Document to which it is a party rank at least *pari passu* as set out in Clause 8.1.

*(m) Security*

No Security exists over any of the present assets of any Group Company in conflict with this Bond Agreement.

- 7.2 The representations and warranties set out in Clause 7.1 are made on the execution date of this Bond Agreement, and shall be deemed to be repeated on the Issue Date and on each drawdown date from the Escrow Account.

## 8 Status of the Bonds and security

- 8.1 The Bonds shall constitute senior debt obligations of the Issuer. The Bonds shall rank at least *pari passu* with all other obligations of the Issuer (save for such claims which are preferred by bankruptcy, insolvency, liquidation or other similar laws of general application) and shall rank ahead of subordinated debt.

- 8.2 The Bonds are unsecured.

## 9 Interest

- 9.1 The Issuer shall pay interest on the par value of the Bonds from, and including, the Issue Date at the Bond Reference Rate plus the Margin (together the “**Floating Rate**”).

- 9.2 Interest payments shall be made in arrears on the Interest Payment Dates each year, the first Interest Payment Date falling in July 2013.
- 9.3 The relevant interest payable amount shall be calculated based on a period from, and including, the Issue Date or one Interest Payment Date (as the case may be) to, but excluding, the next following applicable Interest Payment Date.
- 9.4 The day count fraction (“**Floating Rate Day Count Fraction**”) in respect of the calculation of the payable interest amount shall be “Actual/360”, which means that the number of days in the calculation period in which payment is being made divided by 360.
- 9.5 The applicable Floating Rate on the Bonds is set/reset on each Interest Payment Date by the Bond Trustee commencing on the Interest Payment Date at the beginning of the relevant calculation period, based on the Bond Reference Rate two Business Days preceding that Interest Payment Date.

When the interest rate is set for the first time and on subsequent interest rate resets, the next Interest Payment Date, the interest rate applicable up to the next Interest Payment Date and the actual number of calendar days up to that date shall immediately be notified to the Bondholders, the Issuer, the Paying Agent, and if the Bonds are listed, the Exchange.

- 9.6 The payable interest amount per Bond for a relevant calculation period shall be calculated as follows:

$$\text{Interest Amount Fraction} = \text{Face Value} \times \text{Floating Rate} \times \text{Floating Rate Day Count}$$

## 10 Maturity of the Bonds and Redemption

### 10.1 Maturity

The Bonds shall mature in full on the Maturity Date, and shall be repaid at par ~~(100)~~plus two per cent. (102%) by the Issuer.

### 10.2 Call Option

~~10.2.1~~ The Issuer may redeem the Bond Issue (all or nothing) from and including the Interest Payment Date in April 2016 to, but not included, the Maturity Date, at a price equal to 102.25 % of par value plus accrued interest on the redeemed amount.

~~10.2.2~~ Exercise of the Call Option shall be notified by the Issuer in writing to the Bond Trustee and the Bondholders at least thirty Business Days prior to the settlement date of the Call Option.

~~10.2.3~~ On the settlement date of the Call Option, the Issuer shall pay to each of the Bondholders holding Bonds to be redeemed, in respect of each such Bond, the principal amount of such Bond (including any premium as stated above) and any unpaid interest accrued up to the settlement date.



~~10.2.4~~ Bonds redeemed by the Issuer in accordance with this Clause 10.2 shall be discharged against the Outstanding Bonds.

### 10.3 *Change of control*

- 10.3.1 Upon the occurrence of a Change of Control Event, each Bondholder shall have the right to require that the Issuer redeems its Bonds (a “**Put Option**”) at a price of 101% of par plus accrued interest.
- 10.3.2 The Put Option must be exercised within 60 calendar days after the Issuer has given notification to the Bond Trustee of a Change of Control Event. Such notification shall be given as soon as possible after a Change of Control Event has taken place.
- 10.3.3 The Put Option may be exercised by each Bondholder by giving written notice of the request to its Account Manager. The Account Manager shall notify the Paying Agent of the redemption request. The settlement date of the Put Option shall be the third Business Day after the end of the 60 calendar days exercise period of the Put Option.
- 10.3.4 On the settlement date of the Put Option, the Issuer shall pay to each of the Bondholders holding Bonds to be redeemed, the principal amount of each such Bond (including any premium pursuant to Clause 10.3.1) and any unpaid interest accrued up to (but not including) the settlement date of the Put Option.

## 11 **Payments**

### 11.1 *Covenant to pay*

- 11.1.1 The Issuer will on any Payment Date (or any other due date pursuant to any Finance Document) unconditionally pay to or to the order of the Bond Trustee all amounts due under this Bond Agreement or any other Finance Document.
- 11.1.2 The covenant contained in Clause 11.1.1 shall be for the benefit of the Bond Trustee and the Bondholders.

### 11.2 *Payment mechanics*

- 11.2.1 If no specific order is made by the Bond Trustee under Clause 11.1.1, the Issuer shall pay all amounts due to the Bondholders under this Bond Agreement or any other Finance Document by crediting the bank account nominated by each Bondholder in connection with its securities account in the Securities Depository.
- 11.2.2 Payment shall be deemed to have been made once the amount has been credited to the bank which holds the bank account nominated by the Bondholder in question, but if the paying bank and the receiving bank are the same, payment shall be deemed to have been made once the amount has been credited to the bank account nominated by the Bondholder in question, see however Clause 11.3.
- 11.2.3 In case of irregular payments, the Bond Trustee may instruct any Obligor or Bondholders of other payment mechanisms than described in Clause 11.2.1 or 11.2.2 above. The Bond Trustee may also obtain payment information regarding Bondholders’ accounts from the Securities Depository or Account Managers.

11.2.4 Subject to Clause 11.3, payment by the Issuer in accordance with this Clause 11.2 shall constitute good discharge of its obligations under Clause 11.1.1.

### *11.3 Currency*

11.3.1 If the Bonds are denominated in other currencies than NOK, each Bondholder has to provide the Paying Agent (either directly or through its Account Manager) with specific payment instructions, including foreign exchange bank account details. Depending on any currency exchange settlement agreements between each Bondholder's bank and the Paying Agent, cash settlement may be delayed, and payment shall be deemed to have been made at the date of the cash settlement, provided however, that no default interest or other penalty shall accrue for the account of the Issuer.

11.3.2 Except as otherwise expressly provided, all amounts payable under this Bond Agreement and any other Finance Document shall be payable in the same currency as the Bonds are denominated in. If, however, the Bondholder has not given instruction as set out in Clause 11.3 within five Business Days prior to a Payment Date, the cash settlement will be exchanged into NOK and credited to the NOK bank account registered with the Bondholder's account in the Securities Depository.

11.3.3 Amounts payable in respect of costs, expenses, taxes and other liabilities of a similar nature shall be payable in the currency in which they are incurred.

### *11.4 Set-off and counterclaims*

No Obligor may apply or perform any counterclaims or set-off against any payment obligations pursuant to this Bond Agreement or any other Finance Document.

### *11.5 Interest in the event of late payment*

11.5.1 In the event that any amount due under this Bond Agreement or any Finance Document is not made on the relevant due date, the unpaid amount shall bear interest from the due date at an interest rate equivalent to the interest rate according to Clause 9 plus five per cent (5.00%) per annum.

11.5.2 The interest charged under this Clause 11.5 shall be added to the defaulted amount on each respective Interest Payment Date relating thereto until the defaulted amount has been repaid in full.

11.5.3 The unpaid amounts shall bear interest as stated above until payment is made, whether or not the Bonds are declared to be in default pursuant to Clause 15.1(a), cf. Clauses 15.2 - 15.4.

### *11.6 Partial payments*

If the Bond Trustee or the Paying Agent receives a payment that is insufficient to discharge all the amounts then due and payable under the Finance Documents, that payment shall be applied in the following order:

- (a) first, in or towards payment of any unpaid fees, costs and expenses of the Bond Trustee under the Finance Documents;

- (b) secondly, in or towards payment of any accrued interest due but unpaid under the Bond Agreement, *pro rata* and without any preference or priority of any kind; and
- (c) thirdly, in or towards payment of any principal due but unpaid under the Bond Agreement, *pro rata* and without any preference or priority of any kind.

## 12 Issuer's acquisition of Bonds

The Issuer has the right to acquire and own Bonds (Issuer's Bonds). The Issuer's holding of Bonds from time to time shall be retained by the Issuer and shall not be sold, cancelled or discharged.

## 13 Covenants

### 13.1 General

- 13.1.1 The Issuer undertakes from the date of this Bond Agreement and until such time that no amounts are outstanding under this Bond Agreement or any other Finance Document, to the Bond Trustee, as further set out in this Clause 13.

### 13.2 Information Covenants

- 13.2.1 The Issuer shall:

- (a) without being requested to do so, promptly inform the Bond Trustee in writing of any Event of Default, any event or circumstance which the Issuer understands or ought to understand may lead to an Event of Default and any other event which may have a Material Adverse Effect;
- (b) without being requested to do so, inform the Bond Trustee in writing if the Issuer agrees to sell or dispose of all or a substantial part of its assets or operations, or change the nature of its business;
- (c) without being requested to do so, prepare Financial Statements and make them available on its website in the English language (alternatively by arranging for publication at Stamdata) as soon as they become available, and not later than 90 days after the end of the financial year;
- (d) without being requested to do so, prepare Interim Accounts and make them available on its website in the English language (alternatively by arranging for publication on Stamdata) as soon as they become available, and not later than 60 days after the end of the relevant interim period;
- (e) at the request of the Bond Trustee, report the balance of the Issuer's Bonds;
- (f) without being requested to do so, send the Bond Trustee copies of any statutory notifications of the Issuer, including but not limited to in

connection with mergers, de-mergers and reduction of the Issuer's share capital or equity;

- (g) if the Bonds are listed on an Exchange, without being requested to do so, send a copy to the Bond Trustee of its notices to the Exchange;
  - (h) if the Issuer and/or the Bonds are rated, without being requested to do so, inform the Bond Trustee of its and/or the rating of the Bond Issue, and any changes to such rating;
  - (i) without being requested to do so, inform the Bond Trustee of changes in the registration of the Bonds in the Securities Depository; and
  - (j) within a reasonable time, provide such information about the Issuer's business, assets and financial condition as the Bond Trustee may reasonably request.
- 13.2.2 The Issuer shall in connection with the publication of its financial reports for periods ending at any Calculation Date under Clause 13.2.1(c) and (d), confirm to the Bond Trustee in writing the Issuer's compliance with the covenants in this Clause 13, unless the Bond Trustee explicitly waives such requirement. Such confirmation shall be undertaken in a certificate, substantially in the form set out in Attachment 1 hereto, signed by the Chief Executive Officer or Chief Financial Officer of the Issuer (a "**Compliance Certificate**"). In the event of non-compliance, the Compliance Certificate shall describe the non-compliance, the reasons therefore as well as the steps which the Issuer has taken and will take in order to rectify the non-compliance.

### 13.3 *General Covenants*

#### (a) *Pari passu ranking*

The Issuer shall ensure that its obligations under this Bond Agreement and any other Finance Document shall at all time rank at least *pari passu* as set out in Clause 8.1.

#### (b) *Mergers*

The Issuer shall not, and shall ensure that no other Group Company shall, carry out any merger or other business combination or corporate reorganization involving a consolidation of the assets and obligations of such Group Company with (i) any other company or entity not being member of the Group if such transaction would have a Material Adverse Effect or (ii) any company or entity, not being member of the Group, being controlled by Kistefos AS.

#### (c) *De-mergers*

The Issuer shall not, and shall ensure that no other Group Company shall, carry out any de-merger or other corporate reorganization involving splitting a Group Company into two or more separate companies or entities, if such transaction would have a Material Adverse Effect.

#### (d) *Continuation of business*

The Issuer shall make sure that no Group Company (including the Issuer) shall cease to carry on its business, if such transaction would have a Material Adverse Effect.



The Issuer shall procure that no material change is made to the general nature of the business of the Group from that carried on at ~~the date of the Bond Agreement~~, Effective Date 2, or as contemplated by the Bond Agreement.

(e) *Disposal of business*

The Issuer shall make sure that no Group Company sells or otherwise disposes of all or a substantial part of its assets or operations, unless:

- (i) the transaction is carried out at fair market value; and
- (ii) such transaction would not have a Material Adverse Effect.

(f) *Arm's length transactions*

The Issuer shall not engage in, or permit any Group Company to engage in, directly or indirectly, any transaction with any related party (including, without limitation, a merger, the purchase, sale or exchange of assets or the rendering of any service), except:

- (i) in the ordinary course of business and pursuant to the reasonable requirement of the Issuer's or such member of the Group's business and upon fair and reasonable terms that are no less favourable to the Issuer or such member of the Group, as the case may be, than those which might be obtained in an arm's length transaction at the time; and
- (ii) to the extent such transaction set out in (i) is directly or indirectly with an Affiliate, only to the extent that such transaction:
  - (ii.i) is within the ordinary course of the operator / trading business of the ~~Chartering~~ Group conducted substantially as of the Issue Date; or
  - (ii.ii) relates to an equity increase in the Issuer by way of cash injection or by way of converting debt to equity; ~~or~~
  - (ii.iii) is explicitly approved by a bondholder resolution; or
  - (ii.iv) is ~~carried out in relation to the Co-Investment to the extent permitted by clause 13.4 (c) or~~ otherwise allowed according to this Bond Agreement.
- (iii) incur any Subordinated Loans ~~in the amount of the Subordinated Capital less the amount allocated under the Equity Issue.~~

(g) *Corporate status*

The Issuer shall not change its type of organization (save that a conversion into a public limited liability company (Norwegian "allmennaksjeselskap") shall be permitted) or jurisdiction of incorporation.

*(h) Compliance with laws*

The Issuer shall, and shall ensure that all other Group Companies shall, carry on its business in accordance with acknowledged, careful and sound practices in all material aspects and comply in all material respects with all laws and regulations it or they may be subject to from time to time.

*13.4 Special covenants on the Group**(a) Dividends and other distributions*

The Issuer shall not declare or make any dividend payment, repurchase of shares or make other distributions to its shareholders (included but not limited to total return swaps) during the term of the Bonds.

*(b) Financial Assistance*

The Issuer shall ensure that no Group Company shall grant or permit to subsist any loans, guarantees for borrowed money or having equivalent effect (but for the avoidance of doubt excluding guarantees for supplier credits) or other financial assistance (excluding granting security, which is governed by Clause 13.5 (b)), other than:

- (i) ~~granting (a) of loans and guarantees by the Issuer to or on behalf of any Group Company, (b) of loans between members of the Chartering Group, (c) of loans from any member of the Chartering Group to the Issuer, (d) of loans by any Group Company, other than a member of the Chartering Group, to or on behalf of any Group Company not being a member of the Chartering Group, and (e) guarantees from a Group Company on behalf of a member of the Chartering Group~~ any Group Company to, or on behalf of, any Group Company;
- (ii) granting of (a) guarantees and indemnities (including counter-guarantees and letters of indemnities) in the ordinary course of business; and (b) loans to employees and security deposits for housing in connection with expatriate employees in aggregate limited to USD 500,000;
- (iii) ~~provided that the Subordinated Capital has been allocated to the Issuer within 31 March 2016:~~ granting of security as described in the definition of Credit Facilities;



- (iv) granting of loans to the Issuer's shareholders by the Issuer pursuant to permitted dividends as set out in Clause 13.4 (a); and
- ~~(v) the Co-Investment;~~
- ~~(vi) current lease arrangements relating to Western Alterna; and~~
- ~~(vii) the seller credit currently provided by Western Bulk Shipowning I AS (organisation number 994 619 268) in the amount of USD 3.65 million in connection with the sale of M/V "Western Oslo".~~

(e) *Co-Investments*

~~The Issuer shall not engage in, or permit any member of the Group to engage in, any co-investments or joint investments with an Affiliate, other than the "Co-Investment". The Issuer will not permit, or permit any member of the Group to:~~

- ~~(i) in any way increase the Group's participation in the Co-Investment by more than its relative share of the Fund's Uncalled Capital of USD 3.3 million; or~~
- ~~(ii) commit to any increase in the Fund's Uncalled Capital or assume any further liability in respect of such investment exceeding any accumulated distributions paid out to the Group from the Co-Investment following the Issue Date; or~~
- ~~(iii) replace, increase or enter into any further co-investments other than such existing as of Issue Date.~~
- (v) For the avoidance of doubt, (i) no member of the Group shall have any obligations to fund Kistefos AS' relative share of the remaining commitments for the Fund's Uncalled Capital related to the current Fund Investment; and (ii) the Issuer shall be allowed to dispose (including dilution) its part of the Co-Investment to Kistefos AS or any company controlled by Kistefos AS, not being a member of the Group. any loan, credit and/or guarantee granted by a Group Company to Western Bulk ASA (or any of its subsidiaries) on or before Effective Date 2, including (for the avoidance of doubt) any interest, default interest, fee, costs and/or commission accrued in respect thereof after Effective Date 2.

### 13.5 *Special covenants on the ~~Chartering~~ Group*

(a) *Ownership to Chartering Holdco*

The Issuer shall make sure that the Chartering Holdco shall always be a 100% directly owned Subsidiary of the Issuer, and that it is the ultimate parent company of all the operator/trading business of the Group.

(b) *Negative pledge*

The Issuer shall ensure that neither the Issuer nor any ~~member of the Chartering Group~~ Company creates or permits to subsist any Security over (i) any of ~~the Chartering Group's~~ sits existing or future assets or revenues, (ii) any of the Issuer's shares in the Chartering Holdco or (iii) any Permitted Intra-Group Loan.

Notwithstanding the above limitation, the Issuer and ~~the Chartering~~ each Group Company has the right to:

- (i) in respect of the Issuer, grant and permit to subsist Security over the Issuer's shares in Chartering Holdco in favour of Western Bulk ASA, as security for any amount due (now or in the future) by the Issuer to Western Bulk ASA in connection with the Issuer's acquisition of the shares in the Chartering Holdco, provided that such security is released as soon as reasonably practicable upon full payment of the purchase price under the share purchase agreement;
- (ii) ~~(i)~~ establish set off arrangements, security over accounts receivables, bank accounts and/or cash securing (a) the Credit Facilities, and/or (b) bid bonds, performance bonds and bonds in connection with disputed claims, always provided that the amount of such security shall not exceed the Permitted Security. ~~However, if the Issuer fails to allocate Subordinated Capital within 31 March 2016, all such Security created in respect of the Credit Facilities shall immediately be cancelled and no set off arrangements, security over accounts receivables, bank accounts and/or cash securing the Credit Facilities shall be allowed. Provided always that the Issuer and the Chartering Group may continue to provide set off arrangements, security over accounts receivables, bank accounts and/or cash securing bid bonds, performance bonds and bonds in connection with disputed claims up to a maximum amount of USD 10 million;~~
- (iii) ~~(ii)~~ enter into master agreements and similar arrangements in connection with derivative transactions in respect of currency, bunker, freight and interest hedging transactions in connection with the risk management policy of the Group and provide in respect of such transactions Security over (a) derivative transactions subject to such arrangements, (b) margins and (ii) cash collateral and securities (for the avoidance of doubt not including any shares in Group Companies);
- (iv) ~~(iii)~~ permit to subsist security pledges on assets of companies purchased by a ~~Chartering Subsidiary~~ Group Company, or merged with a ~~Chartering Subsidiary~~ Group Company (where a ~~Chartering Subsidiary~~ Group Company is the acquiring party) given that collateral is not established in contemplation of the merger, and that the obligation secured by the collateral is not extended in any way either as part of the merger proceedings or later;
- (v) ~~(iv)~~ in the ordinary course of trading (a) acquire goods on a retention of title basis which is required by any supplier of any goods in the normal course of such supplier's business and (b) enter into escrow arrangements in connection with resolving disputed claims which do not consist of Financial Indebtedness;
- (vi) ~~(v)~~ security provided by ~~the Chartering~~ a Group Company to (a) secure lease of office premises, and (b) secure any pension obligations of ~~the Chartering~~ Group;



(vi) ~~security provided by Western Bulk Carriers AS over the earning account and assignment of earnings related to MV Western Stavanger~~ a Group Company (or the Group taken as a whole); and

(vii) cash collateral (directly or as security for bank guarantees) in respect of any litigation to the extent such litigation (a) does not have any Material Adverse Effect or (b) is Disclosed Litigation.

~~For the avoidance of doubt, this clause 13.5 b) shall not put any limitations on the Shipholding Group.~~

(c) *Financial Indebtedness restrictions*

The Issuer shall make sure that no ~~member of the Chartering~~ Group Company shall be permitted to incur or to maintain outstanding any Financial Indebtedness (whether secured or unsecured) other than:

- (i) any Financial Indebtedness arising under the Bond Issue;
- (ii) ~~provided that the Subordinated Capital has been allocated to the Issuer within 31 March 2016:~~ the Credit Facilities;
- (iii) any Financial Indebtedness ~~incurred by a member of the Chartering Group provided by a member of the Chartering Group~~ between Group Companies;
- (iv) any derivative transactions in respect of currency, bunker, freight and interest hedging transactions in connection with the risk management policy of the Group;
- (v) ~~provided that the Subordinated Capital has been allocated to the Issuer within 31 March 2016:~~ granting of guarantees and indemnities (including counter-guarantees and letters of indemnities) relating to the Credit Facilities;
- (vi) granting of guarantees and indemnities (including counter-guarantees and letters of indemnities) in the ordinary course of business; ~~and~~
- (vii) Financial Indebtedness incurred by the Issuer in respect of any Subordinated Loan; and
- (viii) ~~(vii)~~ Permitted Intra-Group Loans.
- (ix)

(d) *Risk profile*

The Group is measuring its market exposure in the ~~Chartering~~ Group through a value at risk model (“VaR”). The board of directors of the Issuer decides which VaR limits the ~~Chartering~~ Group shall operate within at any given time. If the ~~Chartering~~ Group is in breach with the applicable limit determined by the board of directors, then the Issuer shall make sure that the ~~Chartering~~ Group restores the VaR level to be within such applicable VaR limit decided by the board of directors within 20 Business Days following the breach of the VaR limit. Furthermore, the Issuer undertakes to ~~not procure that~~ the board of directors of the Issuer does not decide to materially

change the risk profile of the ~~Chartering~~ Group, from the risk profile in effect for the Group on the Issue Date ~~during the term of the Bond Issue~~.

### 13.6 Covenants regarding the Guarantors

#### (a) *Pari passu ranking*

The Issuer shall ensure that the obligations of each Guarantor under the Guarantees shall at all time rank at least *pari passu* with all other obligations of the Guarantor (save for such claims which are preferred by bankruptcy, insolvency, liquidation or other similar laws of general application) and shall rank ahead of subordinated debt.

#### (b) *Additional Guarantors*

The Issuer shall ensure that the Bond Trustee is provided a Guarantee for each new Material ~~Chartering~~ Subsidiary from time to time, to the extent not prohibited by law and within 30 days after such Group Company becoming a Material ~~Chartering~~ Subsidiary.

### 13.7 Financial Covenants

#### 13.7.1 Financial ratios

- ~~(i) **Book Equity Ratio:** The Issuer shall ensure that the Group maintains a Book Equity Ratio of minimum 20.00% at all times. However always provided that the Issuer will only be in breach of this Clause 13.7.1 (i) if the Book Equity Ratio is measured to be below 20.00% on two consecutive Calculation Dates;~~
- (i) ~~(ii)~~ **Book Equity Amount:** The Issuer shall ensure that the Group maintains a Book Equity in the minimum amount of USD ~~30~~15 million at any time after 1 January 2017; and
- (ii) ~~(iii)~~ **Liquidity:** The Issuer shall ensure that the Group maintains free and unrestricted cash and cash equivalents (for the avoidance of doubt excluding undrawn credits) in a minimum of USD ~~20~~15 million at any time after 1 January 2017. The minimum liquidity shall be reduced with the corresponding par value amount of the Issuer's Bonds being owned on and/or bought back after ~~the~~ Effective Date 2 and based on a NOK to USD exchange rate of 6.06. Provided that the free and unrestricted cash and cash equivalents shall never be less than USD 10 million.

#### 13.7.2 Testing, reporting and remedy

The financial covenants will apply for the Issuer on a consolidated basis for the Group. All the financial covenants will apply at all times and will be tested on every Calculation Date and reported within every Reporting Date.

#### 13.7.3 Accounting language

In the event that NGAAP shall be amended in any material respect at any time or the Issuer shall adopt IFRS or US GAAP as its accounting language, the Issuer will,

when the Financial Statements of the Group have been prepared for the first time in accordance with such new principles, conduct a review of the impact of the amendments on the Financial Statements of the Group in general, and on the calculation of the financial covenants and propose amendments in order to arrive at and apply under the amended principles the same financial tests of the Group as set forth in the original financial covenants, which amendments may include basing the compliance testing on NGAAP as it applies as of the Issue Date rather than the amended NGAAP, IFRS or US GAAP (as the case may be). The Bond Trustee may approve such amendments provided the amendments have been supported by an independent auditor approved by the Bond Trustee. The Bond Trustee shall not unreasonably withhold or delay its agreement to such amendments.

## 14 Fees and expenses

- 14.1* The Issuer shall cover all costs and expenses incurred by it or the Bond Trustee (and/or the Security Agent) in connection with this Bond Agreement and the fulfilment of its obligations under this Bond Agreement or any other Finance Document, including in connection with the negotiation, preparation, execution and enforcement of this Bond Agreement and the other Finance Documents and any registration or notifications relating thereto (including any stamp duty), the listing of the Bonds on an Exchange (if applicable), and the registration and administration of the Bonds in the Securities Depository. The Bond Trustee may withhold funds from any escrow account (or similar arrangement) or from other funds received from any Obligor or any other person, irrespective of such funds being subject to Security under a Finance Document, to set-off and cover any such costs and expenses.
- 14.2* The fees, costs and expenses payable to the Bond Trustee (and/or the Security Agent) shall be paid by the Issuer and are set out in a separate agreement between the Issuer and the Bond Trustee (and/or the Security Agent).
- 14.3* Fees, costs and expenses payable to the Bond Trustee (or the Security Agent) which, due to the Issuer's insolvency or similar circumstances, are not reimbursed in any other way may be covered by making an equivalent reduction in the proceeds to the Bondholders hereunder of any costs and expenses incurred by the Bond Trustee (or the Security Agent) in connection with the restructuring or default of the Bond Issue and the enforcement of any Security.
- 14.4* Any public fees levied on the trade of Bonds in the secondary market shall be paid by the Bondholders, unless otherwise provided by law or regulation, and the Issuer is not responsible for reimbursing any such fees.
- 14.5* The Issuer is responsible for withholding any withholding tax imposed by applicable law on any payments to the Bondholders.
- 14.6* If the Issuer is required by law to withhold any withholding tax from any payment under any Finance Document:
- (a) the amount of the payment due from the Issuer shall be increased to such amount which is necessary to ensure that the Bondholders receive a net amount

which is (after making the required withholding) equal to the payment which would have been due if no withholding had been required; and

- (b) the Issuer shall at the request of the Bond Trustee deliver to the Bond Trustee evidence that the required tax reduction or withholding has been made.

14.7 If any withholding tax is imposed due to subsequent changes in applicable law after the date of this Bond Agreement, the Issuer shall have the right to call all but not some of the Bonds at par value plus accrued interest. Such call shall be notified by the Issuer in writing to the Bond Trustee and the Bondholders at least thirty - 30 - Business Days prior to the settlement date of the call.

## 15 Events of Default

15.1 The Bond Trustee may declare the Bonds to be in default upon occurrence of any of the following events:

(a) *Non-payment*

The Issuer fails to fulfil any payment obligation due under this Bond Agreement or any Finance Document when due, unless, in the opinion of the Bond Trustee, it is likely that such payment will be made in full within five Business Days following the original due date.

(b) *Breach of other obligations*

Any Obligor does not comply with any provision pursuant to this Bond Agreement or any other Finance Document, unless, in the opinion of the Bond Trustee, such failure is capable of being remedied and is remedied within ten Business Days after notice thereof is given to the Issuer by the Bond Trustee.

(c) *Cross default*

If for any Group Company:

- (i) any Financial Indebtedness is not paid when due nor within any originally applicable grace period;
- (ii) any Financial Indebtedness is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described);
- (iii) any commitment for any Financial Indebtedness is cancelled or suspended by a creditor as a result of an event of default (however described); or
- (iv) any creditor becomes entitled to declare any Financial Indebtedness due and payable prior to its specified maturity as a result of an event of default (however described),

always provided that a threshold in the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (i) to (iv) above



of a total of USD 4 million, or the equivalent thereof in other currencies, shall apply for any Group Company.

*(d) Misrepresentations*

Any representation, warranty or statement (including statements in compliance certificates) made under this Bond Agreement or any other Finance Document or in connection therewith is or proves to have been incorrect, inaccurate or misleading in any material respect when made or deemed to have been made.

*(e) Insolvency*

- (i) A Group Company is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (ii) The value of the assets of any Obligor is less than its liabilities (taking into account contingent and prospective liabilities).
- (iii) A moratorium is declared in respect of any indebtedness of any member of the Group

*(f) Insolvency proceedings and dissolution*

If for any Group Company, any corporate action, legal proceedings or other procedure step is taken in relation to:

- (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than solvent liquidation or reorganization;
- (ii) a composition, compromise, assignment or arrangement with any creditor, having an adverse effect on the Issuer's ability to perform its payment obligations hereunder;
- (iii) the appointment of a liquidator (other than in respect of a solvent liquidation), receiver, administrative receiver, administrator, compulsory manager or other similar officer of any of its assets; or
- (iv) its dissolution,

or any analogous procedure or step is taken in any jurisdiction.

*(g) Creditors' process*

Any Group Company has a substantial proportion of the assets impounded, confiscated, attached or subject to distraint, or is subject to enforcement of any Security over any of its assets.

*(h) Impossibility or illegality*

It is or becomes impossible or unlawful for any Group Company to fulfil or perform any of the terms of any Finance Document to which it is a party.

*(i) Material Adverse Change*

Any other event or circumstance occurs which, in the reasonable opinion of the Bond Trustee, after consultations with the Issuer, would have a Material Adverse Effect.

~~*(j) Failure to approve the Equity Issue*~~

~~The extraordinary general meeting of the Issuer fails to approve the Equity Issue within 31 March 2016.~~

~~*(k) Failure to allocate shares for an amount of minimum USD 10 million*~~

~~The Company fails to allocate shares for an actual amount equaling the NOK equivalent to minimum USD 10 million (such amount to be based on the Exchange Rate) in the Equity Issue within 31 March 2016. Payment shall take place as soon as practically possible thereafter.~~

- 15.2 In the event that one or more of the circumstances mentioned in Clause 15.1 occurs and is continuing, the Bond Trustee can, in order to protect the interests of the Bondholders, declare the Outstanding Bonds including accrued interest, costs and expenses to be in default and due for immediate payment.

The Bond Trustee may at its discretion, take every measure necessary to recover the amounts due under the Outstanding Bonds, and all other amounts outstanding under this Bond Agreement and any other Finance Document.

- 15.3 In the event that one or more of the circumstances mentioned in Clause 15.1 occurs and is continuing, the Bond Trustee shall declare the Outstanding Bonds including accrued interest, costs and expenses to be in default and due for immediate payment if:

- (a) the Bond Trustee receives a demand in writing that a default shall be declared from Bondholders representing at least 1/5 of the Voting Bonds, and the Bondholders' Meeting has not decided on other solutions, or
- (b) the Bondholders' Meeting has with simple majority decided to declare the Outstanding Bonds in default and due for payment.

In either case the Bond Trustee shall take every measure necessary to recover the amounts due under the Outstanding Bonds.

- 15.4 In the event that the Bond Trustee pursuant to the terms of Clauses 15.2 or 15.3 declares the Outstanding Bonds to be in default and due for payment, the Bond Trustee shall immediately deliver to the Issuer a notice demanding payment of interest and principal due to the Bondholders under the Outstanding Bonds including accrued interest and interest on overdue amounts and expenses. The claim derived from the Outstanding Bonds due for payment as a result of an Event of Default shall be calculated at the prices applicable as if the Outstanding Bonds would have been voluntarily redeemed with the addition of interest, costs and expenses.

## 16 **Bondholders' Meeting**

### 16.1 *Authority of the Bondholders' Meeting*

- 16.1.1 The Bondholders' Meeting represents the supreme authority of the Bondholders community in all matters relating to the Bonds, and has the power to make all decisions altering the terms and conditions of the Bonds, including, but not limited to, any reduction of principal or interest and any conversion of the Bonds into other capital classes.
- 16.1.2 The Bondholders' Meeting cannot resolve that any overdue payment of any instalment shall be reduced unless there is a pro rata reduction of the principal that has not fallen due, but may resolve that accrued interest (whether overdue or not) shall be reduced without a corresponding reduction of principal.
- 16.1.3 If a resolution by or an approval of the Bondholders is required, such resolution shall be passed at a Bondholders' Meeting, see however Clause 17.1. Resolutions passed at Bondholders' Meetings shall be binding upon all Bondholders and prevail for all the Bonds.

### 16.2 *Procedural rules for Bondholders' meetings*

- 16.2.1 A Bondholders' Meeting shall be held at the written request of:
- (a) the Issuer;
  - (b) Bondholders representing at least 1/10 of the Voting Bonds;
  - (c) the Exchange, if the Bonds are listed; or
  - (d) the Bond Trustee.
- 16.2.2 The Bondholders' Meeting shall be summoned by the Bond Trustee. A request for a Bondholders' Meeting shall be made in writing to the Bond Trustee, and shall clearly state the matters to be discussed.
- 16.2.3 If the Bond Trustee has not summoned a Bondholders' Meeting within ten Business Days after having received a valid request, then the requesting party may summon the Bondholders' Meeting itself.
- 16.2.4 The notice of a Bondholders' Meeting shall be dispatched no later than ten Business Days prior to the date of the Bondholders' Meeting. The notice and a confirmation of each Bondholder's holdings of Bonds shall be sent to all Bondholders registered in the Securities Depository at the time of distribution. The notice shall also be sent to the Exchange for publication if the Bonds are listed.
- 16.2.5 The summons shall specify the agenda of the Bondholders' Meeting. The Bond Trustee may in the summons also set out other matters on the agenda than those requested. If amendments to this Bond Agreement have been proposed, the main content of the proposal shall be stated in the summons.

- 16.2.6 The Bond Trustee may restrict the Issuer from making any changes in the number of Voting Bonds in the period from distribution of the summons until the Bondholders' Meeting, by serving notice to it to such effect.
- 16.2.7 Matters that have not been reported to the Bondholders in accordance with the procedural rules for summoning of a Bondholders' Meeting may only be adopted with the approval of all Voting Bonds.
- 16.2.8 The Bondholders' Meeting shall be held on premises designated by the Bond Trustee. The Bondholders' Meeting shall be opened and shall, unless otherwise decided by the Bondholders' Meeting, be chaired by the Bond Trustee. If the Bond Trustee is not present, the Bondholders' Meeting shall be opened by a Bondholder, and be chaired by a representative elected by the Bondholders' Meeting.
- 16.2.9 Minutes of the Bondholders' Meeting shall be kept. The minutes shall state the numbers of Bondholders and Bonds represented at the Bondholders' Meeting, the resolutions passed at the meeting, and the result of the voting. The minutes shall be signed by the chairman and at least one other person elected by the Bondholders' Meeting. The minutes shall be deposited with the Bond Trustee and shall be available to the Bondholders.
- 16.2.10 The Bondholders, the Bond Trustee and – provided the Bonds are listed – representatives of the Exchange, have the right to attend the Bondholders' Meeting. The chairman may grant access to the meeting to other parties, unless the Bondholders' Meeting decides otherwise. Bondholders may attend by a representative holding proxy. Bondholders have the right to be assisted by an advisor. In case of dispute the chairman shall decide who may attend the Bondholders' Meeting and vote for the Bonds.
- 16.2.11 Representatives of the Issuer have the right to attend the Bondholders' Meeting. The Bondholders' Meeting may resolve that the Issuer's representatives may not participate in particular matters. The Issuer has the right to be present under the voting.

### 16.3 *Resolutions passed at Bondholders' Meetings*

- 16.3.1 At the Bondholders' Meeting each Bondholder may cast one vote for each Voting Bond owned at close of business on the day prior to the date of the Bondholders' Meeting in accordance with the records registered in the Securities Depository. The Bond Trustee may, at its sole discretion, accept other evidence of ownership. Whoever opens the Bondholders' Meeting shall adjudicate any question concerning which Bonds shall count as the Issuer's Bonds. The Issuer's Bonds shall not have any voting rights.

For this purpose, a Bondholder that has a Bond that is nominee registered shall be deemed as the Bondholder of such Bond (instead of the nominee) provided that the Bondholder presents relevant evidence stating that the relevant Bondholder is the Bondholder of the Bond and the amount of Bonds held by such Bondholder.

- 16.3.2 In all matters, the Issuer, the Bond Trustee and any Bondholder have the right to demand vote by ballot. In case of parity of votes, the chairman shall have the deciding vote, regardless of the chairman being a Bondholder or not.
- 16.3.3 In order to form a quorum, at least half (1/2) of the Voting Bonds must be represented at the meeting, see however Clause 16.4. Even if less than half (1/2) of the Voting Bonds are represented, the Bondholders' Meeting shall be held and voting completed.
- 16.3.4 Resolutions shall be passed by simple majority of the Voting Bonds represented at the Bondholders' Meeting, unless otherwise set out in Clause 16.3.5.
- 16.3.5 A majority of at least 2/3 of the Voting Bonds represented at the Bondholders' Meeting is required for any waiver or amendment of any terms of this Bond Agreement.
- 16.3.6 The Bondholders' Meeting may not adopt resolutions which may give certain Bondholders or others an unreasonable advantage at the expense of other Bondholders.
- 16.3.7 The Bond Trustee shall ensure that resolutions passed at the Bondholders' Meeting are properly implemented, however, the Bond Trustee may refuse to carry out resolutions being in conflict with this Bond Agreement (or any other Finance Document) or any applicable law.
- 16.3.8 The Issuer, the Bondholders and the Exchange shall be notified of resolutions passed at the Bondholders' Meeting.

#### *16.4 Repeated Bondholders' meeting*

- 16.4.1 If the Bondholders' Meeting does not form a quorum pursuant to Clause 16.3.3, a repeated Bondholders' Meeting may be summoned to vote on the same matters. The attendance and the voting result of the first Bondholders' Meeting shall be specified in the summons for the repeated Bondholders' Meeting.
- 16.4.2 A valid resolution may be passed at a repeated Bondholders' meeting even though less than half (1/2) of the Voting Bonds are represented.

### **17 The Bond Trustee**

#### *17.1 The role and authority of the Bond Trustee*

- 17.1.1 The Bond Trustee shall monitor the compliance by the Issuer of its obligations under this Bond Agreement and applicable laws and regulations which are relevant to the terms of this Bond Agreement, including supervision of timely and correct payment of principal or interest, (however, this shall not restrict the Bond Trustee from discussing matters of confidentiality with the Issuer), arrange Bondholders' Meetings, and make the decisions and implement the measures resolved pursuant to this Bond Agreement. The Bond Trustee is not obligated to assess the Issuer's financial situation beyond what is directly set out in this Bond Agreement.

- 17.1.2 The Bond Trustee may take any step it in its sole discretion considers necessary or advisable to ensure the rights of the Bondholders in all matters pursuant to the terms of this Bond Agreement and is entitled to rely on advice from professional advisors. The Bond Trustee may in its sole discretion postpone taking action until such matter has been put forward to the Bondholders' Meeting. The Bond Trustee is not obliged to take any steps to ascertain whether any Event of Default has occurred and until it has actual knowledge or express notice to the contrary the Bond Trustee is entitled to assume that no Event of Default has occurred.
- 17.1.3 The Bond Trustee may make decisions binding for all Bondholders concerning this Bond Agreement, including amendments to this Bond Agreement and waivers or modifications of certain provisions, which in the opinion of the Bond Trustee, do not materially and adversely affect the rights or interests of the Bondholders pursuant to this Bond Agreement.
- 17.1.4 The Bond Trustee may reach decisions binding for all Bondholders in circumstances other than those mentioned in Clause 17.1.3 provided that prior notification has been made to the Bondholders. Such notice shall contain a proposal of the amendment and the Bond Trustee's evaluation. Further, such notification shall state that the Bond Trustee may not reach a decision binding for all Bondholders in the event that any Bondholder submits a written protest against the proposal within a deadline set by the Bond Trustee. Such deadline may not be less than five Business Days following the dispatch of such notification.
- 17.1.5 The Bond Trustee may reach other decisions than set out in Clauses 17.1.3 or 17.1.4 to amend or rectify decisions which due to spelling errors, calculation mistakes, misunderstandings or other obvious errors do not have the intended meaning.
- 17.1.6 The Bond Trustee may not adopt resolutions which may give certain Bondholders or others an unreasonable advantage at the expense of other Bondholders.
- 17.1.7 The Issuer, the Bondholders and the Exchange shall be notified of decisions made by the Bond Trustee pursuant to Clause 17.1 unless such notice obviously is unnecessary.
- 17.1.8 The Bondholders' Meeting can decide to replace the Bond Trustee without the Issuer's approval, as provided for in Clause 16.3.5.
- 17.1.9 The Bond Trustee may act as bond trustee and/or security agent for several bond issues relating to the Issuer notwithstanding potential conflicts of interest. The Bond Trustee may delegate exercise of its powers to other professional parties.
- 17.1.10 The Bond Trustee may instruct the Paying Agent to split the Bonds to a lower denomination in order to facilitate partial redemptions or restructuring of the Bonds or other situations.

## 17.2 *Liability and indemnity*

- 17.2.1 The Bond Trustee is liable only for direct losses incurred by Bondholders or the Issuer as a result of gross negligence or wilful misconduct by the Bond Trustee in performing its functions and duties as set out in this Bond Agreement. Such liability is limited to the maximum amount set out in Clause 2.2. The Bond Trustee is not



liable for the content of information provided to the Bondholders on behalf of the Issuer.

- 17.2.2 The Issuer is liable for, and shall indemnify the Bond Trustee fully in respect of, all losses, expenses and liabilities incurred by the Bond Trustee as a result of negligence by the Issuer (including its directors, management, officers, employees, agents and representatives) to fulfil its obligations under the terms of this Bond Agreement and any other Finance Document, including losses incurred by the Bond Trustee as a result of the Bond Trustee's actions based on misrepresentations made by the Issuer in connection with the establishment and performance of this Bond Agreement and any other Finance Document.
- 17.2.3 The Bond Trustee can as a condition for carrying out an instruction from the Bondholders (including, but not limited to, instructions set out in Clause 15.3(a) or 16.2.1 (b)), require satisfactory security and indemnities for any possible liability and anticipated costs and expenses, from those Bondholders who requested that instruction and/or those who voted in favour of the decision to instruct the Bond Trustee. Any instructions from the Bondholders may be put forward to the Bondholders' Meeting by the Bond Trustee before the Bond Trustee takes any action.

### *17.3 Change of Bond Trustee*

- 17.3.1 Change of Bond Trustee shall be carried out pursuant to the procedures set out in Clause 16. The Bond Trustee shall continue to carry out its duties as bond trustee until such time that a new Bond Trustee is elected.
- 17.3.2 The fees and expenses of a new bond trustee shall be covered by the Issuer pursuant to the terms set out in Clause 14, but may be recovered wholly or partially from the Bond Trustee if the change is due to a breach by the Bond Trustee of its duties pursuant to the terms of this Bond Agreement or other circumstances for which the Bond Trustee is liable.
- 17.3.3 The Bond Trustee undertakes to co-operate so that the new bond trustee receives without undue delay following the Bondholders' Meeting the documentation and information necessary to perform the functions as set out under the terms of this Bond Agreement.

## **18 Miscellaneous**

### *18.1 The community of Bondholders*

By virtue of holding Bonds, which are governed by this Bond Agreement (which pursuant to Clause 2.1.1 is binding upon all Bondholders), a community exists between the Bondholders, implying, inter alia, that:

- (a) the Bondholders are bound by the terms of this Bond Agreement;
- (b) the Bond Trustee has power and authority to act on behalf of, and/or represent; the Bondholders, in all matters, included but not limited to taking

- any legal or other action, including enforcement of the Bond Issue and/or any Security, opening of bankruptcy or other insolvency proceedings;
- (c) the Bond Trustee has, in order to manage the terms of this Bond Agreement, access to the Securities Depository to review ownership of Bonds registered in the Securities Depository; and
  - (d) this Bond Agreement establishes a community between Bondholders meaning that:
    - (i) the Bonds rank *pari passu* between each other;
    - (ii) the Bondholders may not, based on this Bond Agreement, act directly towards the Issuer and may not themselves institute legal proceedings against the Issuer, however not restricting the Bondholders to exercise their individual rights derived from this Bond Agreement;
    - (iii) the Issuer may not, based on this Bond Agreement, act directly towards the Bondholders;
    - (iv) the Bondholders may not cancel the Bondholders' community; and
    - (v) the individual Bondholder may not resign from the Bondholders' community.

## 18.2 *Defeasance*

- 18.2.1 The Issuer may, at its option and at any time, elect to have certain obligations discharged (see Clause 18.2.2) upon complying with the following conditions ("**Security and Covenant Defeasance**"):
- (a) the Issuer shall have irrevocably pledged to the Bond Trustee for the benefit of the Bondholders cash or government bonds accepted by the Bond Trustee (the "**Defeasance Pledge**") in such amounts as will be sufficient for the payment of principal (including if applicable premium payable upon exercise of a Call Option) and interest on the Outstanding Bonds to Maturity Date (or redemption upon an exercise of a notified Call Option) or any other amount agreed between the Parties;
  - (b) no Event of Default shall have occurred and be continuing on the date of establishment of the Defeasance Pledge, or insofar as Events of Default from bankruptcy or insolvency events are concerned, at any time during any hardening period applicable to the Defeasance Pledge (or the relevant period for non-Norwegian companies) or any other date agreed between the Parties;
  - (c) if the Bonds are secured, the Defeasance Pledge shall be considered as a replacement of the Security established prior to the Defeasance Pledge;
  - (d) the Issuer shall have delivered to the Bond Trustee a certificate signed by its Chief Executive Officer that the Defeasance Pledge was not made by the Issuer with the intent of preferring the Bondholders over any other creditors of the Issuer or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Issuer or others; and

- (e) the Issuer shall have delivered to the Bond Trustee any certificate or legal opinion reasonably required by the Bond Trustee regarding the Security and Covenant Defeasance or Defeasance Pledge, including any certificate or legal opinion on (i) the compliance of the conditions of the Security and Covenant Defeasance, (ii) that the Defeasance Pledge constitutes a valid, perfected and enforceable Security in favour of the Bond Trustee for the benefit of the Bondholders which will not be subject to any rights of creditors of each Obligor or any bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally under the laws of the jurisdiction where the Defeasance Pledge was established and the corporate domicile of the Issuer, (iii) any relevant tax issues concerning the Bondholders, (iv) any valuation of any assets or (vii) any other certificate or opinion regarding the Security and Covenant Defeasance or the Defeasance Pledge.

18.2.2 Upon the exercise by the Issuer of its option under Clause 18.2.1:

- (a) all Obligors shall be released from their obligations under all provisions in Clause 13, except Clauses 13.2.1(a), (e), (h), (i) and (j), or as otherwise agreed;
- (b) the Issuer shall not (and shall ensure that all Group Companies shall not) take any actions that may cause the value of the Security created by this Security and Covenant Defeasance to be reduced, and shall at the request of the Bond Trustee execute, or cause to be executed, such further documentation and perform such other acts as the Bond Trustee may reasonably require in order for the Security to remain valid, enforceable and perfected by the Bond Trustee for the account of the Bondholders;
- (c) any Guarantor(s) shall be discharged from their obligations under the Guarantee(s), and the Guarantee(s) shall cease to have any legal effect, or as otherwise agreed;
- (d) any Security other than the Defeasance Pledge shall be discharged, and the Bond Trustee shall take all steps reasonably possible for it to cause such discharge to be effected, by way of deletion of the relevant security document from the relevant register, notice to third parties or as otherwise required, or as otherwise agreed; and
- (e) all other provisions of this Bond Agreement (except (a) – (c) above) shall remain fully in force without any modifications, or as otherwise agreed.

18.2.3 All amounts owed by the Issuer hereunder covered by the Defeasance Pledge shall be applied by the Bond Trustee, in accordance with the provisions of this Bond Agreement, against payment to the Bondholders of all sums due to them under this Bond Agreement on the due date thereof.

Any excess funds not required for the payment of principal, premium and interest to the Bondholders (including any expenses, fees etc. due to the Bond Trustee hereunder) shall be returned to the Issuer.

18.3 *Limitation of claims*

All claims under the Bonds and this Bond Agreement for payment, including interest and principal, shall be subject to the time-bar provisions of the Norwegian Limitation Act of May 18, 1979 No. 18.

18.4 *Access to information*

18.4.1 This Bond Agreement is available to anyone and copies may be obtained from the Bond Trustee or the Issuer. The Bond Trustee shall not have any obligation to distribute any other information to the Bondholders or others than explicitly stated in this Bond Agreement. The Issuer shall ensure that a copy of this Bond Agreement is available to the general public until all the Bonds have been fully discharged.

18.4.2 The Bond Trustee shall, in order to carry out its functions and obligations under this Bond Agreement, have access to the Securities Depository for the purposes of reviewing ownership of the Bonds registered in the Securities Depository.

18.5 *Amendments*

All amendments of this Bond Agreement shall be made in writing, and shall unless otherwise provided for by this Bond Agreement, only be made with the approval of all parties hereto.

18.6 *Notices, contact information*

18.6.1 Written notices, warnings, summons etc to the Bondholders made by the Bond Trustee shall be sent via the Securities Depository with a copy to the Issuer and the Exchange. Information to the Bondholders may also be published at Stamdata only. Any such notice or communication shall be deemed to be given or made as follows:

- (a) if by letter via the Securities Depository, when sent from the Securities Depository; and
- (b) if by publication on Stamdata, when publicly available.

18.6.2 The Issuer's written notifications to the Bondholders shall be sent via the Bond Trustee, alternatively through the Securities Depository with a copy to the Bond Trustee and the Exchange.

18.6.3 Unless otherwise specifically provided, all notices or other communications under or in connection with this Bond Agreement between the Bond Trustee and any Obligor shall be given or made in writing, by letter, e-mail or fax. Any such notice or communication shall be deemed to be given or made as follows:

- (a) if by letter, when delivered at the address of the relevant Party;
- (b) if by e-mail, when received; and
- (c) if by fax, when received.



- 18.6.4 The Issuer and the Bond Trustee shall ensure that the other party is kept informed of changes in postal address, e-mail address, telephone and fax numbers and contact persons.
- 18.6.5 When determining deadlines set out in this Bond Agreement, the following shall apply (unless otherwise stated):
- (a) If the deadline is set out in days, the first day when the deadline is in force shall not be inclusive, however, the meeting day or the occurrence the deadline relates to, shall be included.
  - (b) If the deadline is set out in weeks, months or years, the deadline shall end on the day in the last week or the last month which, according to its name or number, corresponds to the first day the deadline is in force. If such day is not a part of an actual month, the deadline shall be the last day of such month.
  - (c) If a deadline ends on a day which is not a Business Day, the deadline is postponed to the next Business Date.

*18.7 Dispute resolution and legal venue*

- 18.7.1 This Bond Agreement and all disputes arising out of, or in connection with this Bond Agreement between the Bond Trustee, the Bondholders and any Obligor, shall be governed by Norwegian law.
- 18.7.2 All disputes arising out of, or in connection with this Bond Agreement between the Bond Trustee, the Bondholders and any Obligor, shall, subject to paragraph c) below, be exclusively resolved by the courts of Norway, with the District Court of Oslo as sole legal venue.
- 18.7.3 Clause 18.7.2 is for the benefit of the Bond Trustee only. As a result, the Bond Trustee shall not be prevented from taking proceedings relating to a dispute in any other courts with jurisdiction. To the extent allowed by law, the Bond Trustee may take concurrent proceedings in any number of jurisdictions.

\*\*\*\*\*

This Bond Agreement has been executed in two originals, of which the Issuer and the Bond Trustee retain one each.

**Issuer**

**Bond Trustee**

.....  
By:  
Position:

.....  
By:  
Position:

**Attachment 1**

**COMPLIANCE CERTIFICATE**

~~Norsk Tillitsmann ASA~~ Nordic Trustee ASA

P.O. Box 1470 Vika  
N-0116 Oslo  
Norway

Fax: + 47 22 87 94 10  
E-mail: mail@trustee.no

[date]

Dear Sirs,

**WESTERN BULK ~~AS~~ BOND AGREEMENT 2013/~~2017~~2019 - ISIN 001 067 557.2**

We refer to the Bond Agreement for the abovementioned Bond Issue made between ~~Norsk Tillitsmann~~ Nordic Trustee ASA as Bond Trustee on behalf of the Bondholders, and the undersigned as Issuer under which a Compliance Certificate shall be issued. This letter constitutes the Compliance Certificate for the period [PERIOD].

Capitalised terms used herein shall have the same meaning as in this Bond Agreement.

With reference to Clause 13.2.2 we hereby certify that:

1. all information contained herein is true and accurate and there has been no change which would have a Material Adverse Effect on the financial condition of the Issuer since the date of the last accounts or the last Compliance Certificate submitted to you.
2. the covenants set out in Clause 13 are satisfied;
3. in accordance with Clause 13.7.2, the Book Equity Ratio as of [date] is [o]%
4. in accordance with Clause 13.7.2, the Book Equity Amount as of [date] is [o]
5. in accordance with Clause 13.7.2, the Liquidity as of [date] is [o]

Copies of our latest consolidated [Financial Statements] / [Interim Accounts] are enclosed.

Yours faithfully,

~~Western Bulk AS~~ Kistefos Equity Operations AS

*Name of authorized person*

Enclosure: [copy of any written documentation]

**Attachment 2**

**RELEASE NOTICE - ESCROW ACCOUNT**

~~Norsk Tiliitsmann ASA~~ [Nordic Trustee ASA](#)

P.O. Box 1470 Vika  
N-0116 Oslo  
Norway

Fax: + 47 22 87 94 10

E-mail: [mail@trustee.no](mailto:mail@trustee.no)

[date]

Dear Sirs,

**WESTERN BULK-~~AS~~ BOND AGREEMENT 2013/~~2017~~[2019](#) - ISIN 001 067 557.2**

We refer to the Bond Agreement for the abovementioned Bond Issue made between ~~Norsk Tiliitsmann~~ [Nordic Trustee](#) ASA as Bond Trustee on behalf of the Bondholders, and the undersigned as Issuer.

Capitalised terms used herein as defined in this Bond Agreement.

We hereby give you notice that we on [date] wish to draw an amount of [*currency and amount*] from the Escrow Account applied pursuant to the purpose set out in the Bond Agreement, and request you to instruct the bank to release the above mentioned amount.

We hereby represent and warrant that (i) no event which constitutes an Event of Default has occurred or is likely to occur, and (ii) we repeat the representations and warranties set out in the Bond Agreement as being still true and accurate at the time hereof.

We hereby confirm that the ~~Chartering~~ Group has no other Financial Indebtedness than such Financial Indebtedness incurred pursuant to the Finance Documents other than Financial Indebtedness permitted under Clause 13.5 (c) of the Bond Agreement.

Yours faithfully,

~~Western Bulk AS~~ [Kistefos Equity Operations AS](#)

\_\_\_\_\_  
*Name of authorized person*

Enclosure: [*copy of any written documentation evidencing the use of funds*]