

## NOTICE TO A WRITTEN PROCEDURE

*Denna kallelse till obligationsinnehavarna är endast utformad på engelska.*

Stockholm, 15 May 2020

To the bondholders in:

ISIN: SE0010296632 – Sunborn (Gibraltar) Limited up to EUR 60,000,000 Senior Secured Floating Rate Bonds 2017/2022 (the "Bonds")

### NOTICE OF WRITTEN PROCEDURE – REQUEST TO AMEND AND WAIVE CERTAIN PROVISIONS IN THE TERMS AND CONDITIONS OF THE BONDS

This voting request for procedure in writing will be sent by regular mail on 18 May 2020 to Bondholders directly registered in the debt register (Sw. *skuldbok*) kept by Euroclear Sweden AB (the "CSD"). This voting request has also been published on the websites of the Issuer and the Agent (as defined below), in accordance with the terms and conditions of the Bonds (the "Terms and Conditions"). If you are an authorised nominee under the Swedish Financial Instruments Accounts Act or if you otherwise are holding Bonds on behalf of someone else on a Securities Account, please forward this notice to the holder you represent as soon as possible. For further information, please see below under Clause 5.3 (*Voting rights and authorisation*).

#### Key information:

Record Date for being eligible to vote:	22 May 2020
Deadline for voting:	17:00 CET 15 June 2020
Quorum requirement:	At least fifty (50) per cent. of the Adjusted Nominal Amount
Majority requirement:	At least sixty-six and two thirds (66 2/3) per cent. of the Adjusted Nominal Amount

Nordic Trustee & Agency AB (publ) in its capacity as agent (the "**Agent**") for the holders of the bonds (the "**Bondholders**") with ISIN: SE0010296632 issued by Sunborn (Gibraltar) Limited (the "**Issuer**").

In its capacity as Agent, and as requested by the Issuer, the Agent hereby initiates a procedure in writing, whereby Bondholders can vote for or against the Issuer's request to waive and amend the Terms and Conditions of the Bonds.

All capitalised terms used herein and not otherwise defined in this notice (the "**Notice**") shall have the meanings assigned to them in the Terms and Conditions.

Bondholders participate by completing and sending the voting form, attached hereto as Schedule 1 (the "**Voting Form**"), and, if applicable, the power of attorney/authorisation, attached hereto as Schedule 2 (the "**Power of Attorney**"), if the Bonds are held in custody other than by the CSD, to the Agent. Please contact the securities firm you hold your Bonds through if you do not know how your Bonds are registered or if you need authorisation or other assistance to participate.

The Agent must **receive the Voting Form no later than 17:00 (CET) on 15 June 2020** either by mail, courier or email to the Agent using the contact details set out in Clause 5.7 (*Address for sending replies*) below. Votes received thereafter may be disregarded.

To be eligible to participate in the Written Procedure, a person must meet the criteria for being a Bondholder on 22 May 2020 (the "**Record Date**"). This means that the person must be registered on a Securities Account with the CSD, as a direct registered owner (Sw. *direktregistrerad ägare*) or authorised nominee (Sw. *förvaltare*) with respect to one or several Bonds.

**Disclaimer:** *The Requests (as defined below) is presented to the Bondholders, without any evaluation, advice or recommendations from the Agent whatsoever. The Agent has not reviewed or assessed this Notice or the Requests (and its effects, should it be adopted) from a legal or commercial perspective of the Bondholders and the Agent expressly disclaims any liability whatsoever related to the content of this Notice and the Requests (and its effects, should it be adopted). The Bondholders are recommended to seek legal advice in order to independently evaluate whether the Requests (and its effects) is acceptable or not.*

## **1. Background**

As announced in the press release 26 March 2020, the spread of the coronavirus (Covid-19) has led to unprecedented and worsening business situation in the hospitality sector all over the world, including Gibraltar. Since 12 March 2020, the Group has been reacting to the sudden change in market conditions and seen through substantial cost reductions to adapt its operations to the situation. This includes closures of several outlets and business operations along with significant reductions in manning levels.

Effects from Covid-19 on the hotels operations during 2020 will carry over until the end of 2021 due to the Interest Cover Ratio covenant being measured over the rolling last 12 months. The covenant holiday therefore needs to be relatively long as the effect from having closed the hotel and thereafter gradually increasing operations back to normal is brought forward for 12 months.

During the proposed covenant holiday, a new covenant will be introduced aiming to ensure that the hotel operations is commenced in 2020 and the business start to generate sufficient profit once again to service debt. The measurement will be quarterly Operator EBITDA compared to the same period in 2019 (i.e. when the hotel was unaffected by Covid-19). The owners will pursuant to the proposal have the possibility to support the business of the Operator as it recovers from this crisis and cover any shortfall in Operator EBITDA to meet the new covenant threshold through equity cures.

The value of the vessel/property will be tested in accordance with the Terms and Conditions, meaning that the Asset Coverage Ratio covenant will remain in place unadjusted.

Sunborn has reorganized the yacht hotel group to put in place a new holding company (Sunborn International Holding Oy) that owns the two yacht hotels and is therefore better positioned to seek refinancing and capital and the new holding company will also provide an additional guarantee for the Issuer's obligations under the Bonds.

The operating company, the Operator, will pursuant to the proposal be permitted to incur debt under governmental support programs of up to EUR 2,000,000. This could give necessary liquidity to the operations during this crisis.

The strong actions taken by Sunborn management and the proposed amendments and waivers to the Terms and Conditions will give the Issuer and the Operator an opportunity to mitigate the adverse effects of this unprecedented crisis.

## 2. Amendment and waivers of the Terms and Conditions

### 2.1 Amendments

The Issuer proposes that the Terms and Conditions are amended as described in summary in the below table. The proposed amendments are also set out in full in the comparison version in Schedule 3 (*Changes to the Terms and Conditions*), where blue and underlined text indicates additions whereas red and crossedout text indicates removals.

<b>Amendment Fee</b>
The Issuer shall on the Final Maturity Date (and any other Redemption Date) pay an amendment fee in an amount equal to 0.50 per cent. of the Nominal Amount of each Bond (the " <b>Amendment Fee</b> ") to those who are registered as Bondholders on the end of the date falling five (5) Business Days prior to the Final Maturity Date (or such other Redemption Date) (the " <b>Amendment Fee Record Date</b> "). The Amendment Fee shall be calculated based on the aggregate Nominal Amount held by the relevant Bondholder on the relevant Amendment Fee Record Date.
<b>Additional Guarantee</b>
Sunborn International Holding Oy (company identification number 3108676-7) (the " <b>Additional Guarantor</b> "), being the Issuer's indirect parent company, and the Agent shall enter into a guarantee agreement pursuant to which the Additional Guarantor shall, subject to applicable laws, irrevocably and unconditionally, as principal obligor guarantee to the Agent and the Bondholders (represented by the Agent), the punctual performance of the Issuer's obligations under the Finance Documents (the " <b>Additional Guarantee</b> ").
<b>Undertaking to apply proceeds for a potential disposal towards an equity injection in the Issuer</b>
<p>The Parent, the Issuer and the Agent shall enter into an agreement pursuant to which the Parent shall undertake (the "<b>Parent Undertaking</b>") to procure that 50 per cent. of the net proceeds (the "<b>Disposal Net Proceeds</b>") from a third-party disposal of its shares in Gilleleje Resort Development A/S (CVR-no. 31 28 13 26) (being 90 per cent. of the total share capital of Gilleleje Resort Development A/S) or the Parent's part of any assets (including properties) directly or indirectly owned by Gilleleje Resort Development A/S to a person which is not Ritva Niemi, Pekka Niemi or any of their heirs (or a person controlled by any of them) shall be applied towards an equity injection in cash in the Issuer by way of an unconditional shareholder contribution or a subordinated shareholder loan.</p> <p>The Issuer shall have the right to apply the proceeds from an unconditional shareholder contribution or a subordinated shareholder loan referred to above for the purpose of repurchasing of the Bonds in accordance with the Terms and Conditions.</p>
<b>Unsecured Governmental Support to constitute Permitted Debt</b>
The Operator shall be permitted to incur Financial Indebtedness for working capital purposes under any governmental program (where financing is provided by or

guaranteed by a governmental body or by way of deferred tax liabilities) under which it is eligible to receive financial support in a maximum amount of EUR 2,000,000 ("**Governmental Support**") and such Governmental Support shall constitute Permitted Debt.

No Restricted Obligor shall, and shall procure that no other Group Company will, provide, prolong or renew any security over any of its/their assets (present or future) to secure Governmental Support.

#### **New Financial Covenant - Quarterly Operator EBITDA**

A new financial covenant shall be included to measure quarterly EBITDA for the Operator ("Operator EBITDA", as defined below) for each quarter ending on 31 December 2020, 31 March 2021, 30 June 2021 and 30 September 2021 compared to Operator EBITDA for the corresponding quarter in 2019, as set out below:

- (a) Operator EBITDA for Q4 2020 to exceed 50 per cent. of Operator EBITDA for Q4 2019;
- (b) Operator EBITDA for Q1 2021 to exceed 60 per cent. of Operator EBITDA for Q1 2019;
- (c) Operator EBITDA for Q2 2021 to exceed 70 per cent. of Operator EBITDA for Q2 2019; and
- (d) Operator EBITDA for Q3 2021 to exceed 80 per cent. of Operator EBITDA for Q3 2019.

"**Operator EBITDA**" shall have the meaning ascribed to such term in Schedule 3 (*Changes to the Terms and Conditions*).

For as long as Quarterly Operator EBITDA is tested, the Issuer shall procure to make the Operator's quarterly interim unaudited consolidated financial statements for such period (including comparable figures for the corresponding period in 2019) available to the Bondholders by way of press release and by publication on the website of the Group, as soon as the same become available, but in any event within two (2) months after the end of each quarter of the Operator's financial year.

#### **New Equity Cure for Quarterly Operator EBITDA**

If there is a breach of the Quarterly Operator EBITDA, no Event of Default will occur if, within 15 Business Days from the delivery of a Compliance Certificate evidencing a breach of the Quarterly Operator EBITDA, the Operator has received an equity injection in cash in the form of an unconditional shareholder contribution or a subordinated shareholder loan in an amount sufficient to ensure compliance with the test of the Quarterly Operator EBITDA (the "**Operator Cure Amount**").

Calculation of Operator EBITDA for the relevant quarter shall be adjusted so that the Operator EBITDA for that quarter is increased with an amount equal to the Operator Cure Amount. For the avoidance of doubt, an Operator Cure Amount may only be used towards curing Operator EBITDA for the relevant quarter and may not be carried forward.

Permission for temporary amendments and waivers under the Material Documents
<p>The general undertaking in clause 13.10 (<i>Material Documents</i>) of the existing Terms and Conditions shall be amended to allow the parties under the Bareboat Agreement and the Mooring Licence Agreement to agree on temporary amendments and waivers under such agreements with effect to and including 31 December 2020.</p> <p>Please note that the Issuer and the Operator intend to temporary amend the Bareboat Agreement to temporary reduce the lease payments from the Operator to the Issuer with effect to and including 31 December 2020.</p>

## 2.2 Waivers

The Issuer proposes that the Bondholders grant the following waivers to the undertakings (and any Event of Default occurring as a result of a breach of such undertaking) as set out in the below table (the "**Waivers**"). The Waivers are also to be reflected as amendments to the Terms and Conditions as set out in full in the comparison version in Schedule 3 (*Changes to the Terms and Conditions*), where blue and underlined text indicates additions whereas red and crossedout text indicates removals.

Financial Covenants Holiday
<p>The financial undertakings set out in clause 12.1 (<i>Maintenance Test</i>) of the existing Terms and Conditions shall be waived as set out below:</p> <p>(a) The undertaking to procure that the <u>minimum amount of Cash</u> in the Issuer is not less than the interest payable under the Bonds for the next three (3) calendar months (as set out in clause 12.1.1(a)(ii) of the existing Terms and Conditions) shall be waived until but excluding 30 September 2021 and shall therefore not be tested until 30 September 2021 (and then on each subsequent Reference Date).</p> <p>(b) The undertaking to procure that the <u>Interest Coverage Ratio</u> exceeds 1.10 at all times (as set out in clause 12.1.1(a)(iii) of the existing Terms and Conditions) shall be waived until but excluding 31 December 2021 and shall therefore not be tested until 31 December 2021 (and then on each subsequent Reference Date).</p>
Mandatory Prepayment Events
<p>Any Mandatory Prepayment Event pursuant to paragraph (d) of the definition of Mandatory Prepayment Event shall be waived until 31 December 2020 which shall up until 31 December 2020 not trigger a mandatory prepayment in accordance with paragraph (a) of clause 9.4 (<i>Mandatory total redemption</i>).</p>

Continuation of the Business
Any Event of Default occurred or occurring until and including 31 December 2020 pursuant to clause 14.9 ( <i>Continuation of the Business</i> ) of the existing Terms and Conditions shall be waived.

### 3. Requests

The Issuer hereby requests (the "**Requests**") that the Bondholders resolve:

- (a) to approve to amend and restate the Terms and Conditions as set out in the comparison version of the Terms and Conditions attached as Schedule 3 (*Changes to the Terms and Conditions*) to this Notice;
- (b) to grant the Waivers; and
- (c) to authorise and instruct the Agent to consent to the above specified waiver and amendments on behalf of the Bondholders, and to take on behalf of the Bondholders such measures, provide confirmations, give notices and execute on behalf of the Bondholders any agreement, or document, and agree amendments to such agreements or documents, that may be necessary or appropriate for the purpose of carrying out the Requests, including but not limited to the execution of the Additional Guarantee, the Parent Undertaking and an amendment and restatement and waiver agreement relating to the Terms and Conditions.

### 4. Condition

- (a) The consent to the Requests will become effective on the date (the "**Effective Date**") that the Agent is satisfied that it has received the following documents or evidence:
  - (i) an executed copy of the Additional Guarantee entered into between the Additional Guarantor and the Agent;
  - (ii) an executed copy of the Parent Undertaking entered into between the Parent, the Issuer and the Agent,
  - (iii) constitutional documents for the Issuer, the Parent and the Additional Guarantor;
  - (iv) resolutions by the board of directors of the Issuer approving the transactions contemplated by the Requests and the Parent Undertaking;
  - (v) resolutions by the board of directors of the Parent approving the Parent Undertaking;
  - (vi) resolutions by the board of directors of the Additional Guarantor approving the Additional Guarantee; and
  - (vii) legal opinions issued by Finnish and Gibraltar counsel (as applicable) confirming that the amended and restated Terms and Conditions, the Additional Guarantee and the Parent Undertaking are enforceable and

have been duly authorised by the Issuer, the Parent and the Additional Guarantor (as applicable).

- (b) The consent to the Requests will lapse if the Effective Date has not occurred on or before 15 July 2020.

## **5. Written Procedure**

The following instructions need to be adhered to under the Written Procedure.

### **5.1 Final date to participate in the Written Procedure**

The Agent must have received the votes by mail, courier or email to the address indicated below no later than 17:00 (CET), 15 June 2020. Votes received thereafter may be disregarded.

### **5.2 Decision procedure**

The Agent will determine if received replies are eligible to participate under the Written Procedure as valid votes.

When a requisite majority of consents of the total Adjusted Nominal Amount have been received by the Agent, the Requests shall be deemed to be adopted, even if the time period for replies in the Written Procedure has not yet expired. The Issuer and the Agent shall, in order to implement and effectuate the amendments, enter into amended and restated Terms and Conditions.

Information about the decision taken under the Written Procedure will: (i) be sent by notice to the Bondholders and (ii) be published on the websites of (a) the Issuer and (b) the Agent.

A matter decided under the Written Procedure will be binding for all Bondholders, irrespective of them responding in the Written Procedure.

### **5.3 Voting rights and authorisation**

Anyone who wishes to participate in the Written Procedure must on the Record Date (22 May 2020) in the debt register:

- (a) be registered as a direct registered owner of a Securities Account; or
- (b) be registered as authorised nominee in a Securities Account, with respect to one or several Bonds.

### **5.4 Bonds registered with a nominee**

If you are not registered as a direct registered owner, but your Bonds are held through a registered authorised nominee or another intermediary, you may have two different options to influence the voting for the Bonds.

1. You can ask the authorised nominee or other intermediary that holds the Bonds on your behalf to vote in its own name as instructed by you.



2. You can obtain a Power of Attorney (Schedule 2) from the authorised nominee or other intermediary and send in your own Voting Form based on the authorisation. If you hold your Bonds through several intermediaries, you need to obtain authorisation directly from the intermediary that is registered in the debt register as bondholder of the Securities Account, or from each intermediary in the chain of bondholders, starting with the intermediary that is registered in the debt register as a Bondholder of the Securities Account as authorised nominee or direct registered owner.

Whether one or both of these options are available to you depends on the agreement between you and the authorised nominee or other intermediary that holds the Bonds on your behalf (and the agreement between the intermediaries, if there are more than one).

The Agent recommends that you contact the securities firm that holds the Bonds on your behalf for assistance, if you wish to participate in the Written Procedure and do not know how your Bonds are registered or need authorisation or other assistance to participate. Bonds owned by the Issuer, another Group Company or an Affiliate do not entitle to any voting rights.

## **5.5 Quorum**

To approve the Requests, Bondholders representing at least fifty (50) per cent. of the Adjusted Nominal Amount must reply to the request under the Written Procedure in order to form a quorum.

If a quorum does not exist, the Agent shall initiate a second Written Procedure, provided that the relevant proposal has not been withdrawn by the Issuer. No quorum requirement will apply to such second Written Procedure.

## **5.6 Majority**

At least sixty-six and two thirds (66 2/3) per cent. of the Adjusted Nominal Amount for which Bondholders reply under the Written Procedure must consent to the Requests.

## **5.7 Address for sending replies**

Return the Voting Form, Schedule 1, and, if applicable, the Power of Attorney/Authorisation in Schedule 2 or other sufficient evidence, if the Bonds are held in custody other than Euroclear Sweden, by regular mail, scanned copy by email, or by courier to:

### **By regular mail:**

Nordic Trustee & Agency AB (publ)  
Attn: Written Procedure Sunborn (Gibraltar) Limited  
P.O. Box 7329  
S-103 90 Stockholm

### **By courier:**

Nordic Trustee & Agency AB  
Attn: Written Procedure Sunborn (Gibraltar) Limited

Norrlandsgatan 23  
111 43 Stockholm

**By email:**

E-mail: [voting.sweden@nordictrustee.com](mailto:voting.sweden@nordictrustee.com)

**6. FURTHER INFORMATION**

For further questions to the Issuer, regarding the proposals and requests, please contact Hans Niemi (CEO) at [hans.niemi@sunborn.com](mailto:hans.niemi@sunborn.com) or +358 2 4454 513.

The Issuer has retained DNB Bank ASA, Sweden Branch as its consent solicitation agent (the "**Consent Solicitation Agent**"). Accordingly, Bondholders may contact the Consent Solicitation Agent for further information regarding the proposals and requests, at [kristofer.pousette@dnb.se](mailto:kristofer.pousette@dnb.se) or +46 768504114.

For further questions to the Agent, regarding the administration of the Written Procedure, please contact the Agent at [voting.sweden@nordictrustee.com](mailto:voting.sweden@nordictrustee.com) or +46 8 783 79 00.

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**Stockholm, 15 May 2020**

**NORDIC TRUSTEE & AGENCY AB (PUBL)**

as Agent

**Enclosed:**

<b>Schedule 1</b>	Voting Form
<b>Schedule 2</b>	Power of Attorney/Authorisation
<b>Schedule 3</b>	Changes to the Terms and Conditions

# VOTING FORM

## Schedule 1

For the Written Procedure in Sunborn (Gibraltar) Limited of the up to EUR 60,000,000 Senior Secured Floating Rate Bonds 2017/2022 with ISIN: SE0010296632.

The undersigned Bondholder or authorised person/entity (the “**Voting Person**”), votes either **For** or **Against** the Requests by marking the applicable box below.

**NOTE:** *If the Voting Person is not registered as Bondholder (as defined in the Terms and Conditions), the Voting Person must enclose a Power of Attorney/Authorisation, see Schedule 2.*

☐ **For** the Requests

☐ **Against** the Requests

Name of the Voting Person: \_\_\_\_\_

Capacity of the Voting Person:

Bondholder:

☐

<sup>1</sup>

authorised person

☐

<sup>2</sup>

Voting Person's reg.no/id.no  
and country of incorporation/domicile: \_\_\_\_\_

Securities Account number at Euroclear Sweden:  
(if applicable) \_\_\_\_\_

Name and Securities Account number of custodian(s):  
(if applicable) \_\_\_\_\_

Nominal Amount voted for (in EUR): \_\_\_\_\_

Day time telephone number, e-mail address and contact person:  
  
\_\_\_\_\_

\_\_\_\_\_  
Authorised signature and Name <sup>3</sup>

\_\_\_\_\_  
Place, date:

<sup>1</sup> When voting in this capacity, no further evidence is required.

<sup>2</sup> When voting in this capacity, the person/entity voting must also enclose Power of Attorney/Authorisation (Schedule 2) from the Bondholder or other proof of authorisation showing the number of votes held on the Record Date.

<sup>3</sup> If the undersigned is not a Bondholder according the Terms and Condition and has marked the box "authorised person", the undersigned – by signing this document – confirms that the Bondholder has been instructed to refrain from voting for the number of votes cast with this Voting Form.

# POWER OF ATTORNEY/AUTHORISATION

## Schedule 2

For the Written Procedure in Sunborn (Gibraltar) Limited of the up to EUR 60,000,000 Senior Secured Floating Rate Bonds 2017/2022 with ISIN: SE0010296632.

**NOTE:** This Power of Attorney/Authorisation document shall be filled out if the Voting Person is not registered as Bondholder on the Securities Account, held with Euroclear Sweden. It must always be established a coherent chain of power of attorneys derived from the Bondholder. I.e. if the person/entity filling out this Power of Attorney/Authorisation in its capacity as "other intermediary", the person/entity must enclose its Power of Attorney/Authorisation from the Bondholder.

Name of person/entity that is given authorisation (Sw. *Befullmäktigad*) to vote as per the Record Date:

\_\_\_\_\_

Nominal Amount (in EUR) the person/entity is authorised to vote for as per the Record Date:

\_\_\_\_\_

Name of Bondholder or other intermediary giving the authorisation (Sw. *Fullmaktsgivaren*):

\_\_\_\_\_

We hereby confirm that the person/entity specified above (Sw. *Befullmäktigad*) has the right to vote for the Nominal Amount set out above.

We represent an aggregate Nominal Amount of: EUR \_\_\_\_\_

We are:

☐ Registered as Bondholder on the Securities Account

☐ Other intermediary and holds the Bondholder through (specify below):

\_\_\_\_\_

Place, date: \_\_\_\_\_

\_\_\_\_\_

Name:

Authorised signature of Bondholder / other intermediary (Sw. *Fullmaktsgivaren*)

# CHANGES TO THE TERMS AND CONDITIONS

## *Schedule 3*

*Insertions are shown as underlined text in blue and deletions are shown as strikethrough text in red*



## Amended and Restated Terms and Conditions

Sunborn (Gibraltar) Limited

Up to EUR 60,000,000

Senior Secured Floating Rate Bonds

ISIN: SE0010296632

originally dated 31 August 2017, as amended and restated with effect from [•] 2020 by an amendment and restatement agreement dated [•] 2020

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

ROSCHIER

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# 1. Definitions and Construction

## 1.1 Definitions

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

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

**"Acceptable Bank"** means a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of A- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or A3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency.

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

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

**"Additional Amount"** has the meaning set forth in Clause 7(e).

**"Additional Guarantee Agreement"** means the guarantee agreement, dated [•] 2020, entered into by the Additional Guarantor and the Agent, whereby the Additional Guarantor, subject to applicable laws, irrevocably and unconditionally, as principal obligor guarantees to the Bondholders and the Agent, the punctual performance of the Issuer's obligations under the Finance Documents.

**"Additional Guarantor"** means Sunborn International Holding Oy, a limited liability company incorporated under the laws of Finland with Reg. No. 3108676-7.

**"Adjusted Financial Indebtedness"** means the aggregated Financial Indebtedness of the Issuer Group less the amount of any Cash.

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

**"Advance Purchase Agreement"** means:

- (a) an advance or deferred purchase agreement if the agreement is in respect of the supply of assets or services and payment in the normal course of business with credit periods which are normal for the relevant type of project contracts; or
- (b) any other trade credit incurred in the ordinary course of business.



**"Affiliate"** means (i) an entity controlling or under common control with the Issuer, other than a Group Company, and (ii) any other person or entity owning any Bonds (irrespective of whether such person is directly registered as owner of such Bonds) that has undertaken towards a Group Company or an entity referred to in item (i) to vote for such Bonds in accordance with the instructions given by a Group Company or an entity referred to in item (i). For the purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through ownership of voting securities, by agreement or otherwise.

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

**"Agent"** means Nordic Trustee & Agency AB (publ), Swedish reg. no. 556882-1879, or another party replacing it, as Agent, in accordance with these Terms and Conditions, in its capacity as agent for the Bondholders and as security agent holding the Transaction Security on behalf of the Secured Parties.

**"Amendment Fee"** shall have the meaning given to such term in Clause 9.2 (*Amendment Fee at maturity*).

**"Amendment Fee Record Date"** shall have the meaning given to such term in Clause 9.2 (*Amendment Fee at maturity*).

**"Approved Shipbroker"** means ALTUM Ingenieria y Servicios, S.L.

**"Asset Coverage Ratio"** means the ratio of Market Value to Adjusted Financial Indebtedness.

**"Bareboat Agreement"** means the bareboat charter lease agreement originally dated 1 June 2017 (as amended from time to time) and made between the Issuer (as owner) and the Operator (as charterer) for the bare charter of the Barge.

**"Barge"** means the non-propelled barge yacht hotel "Sunborn Gibraltar" with IMO no. 9475272, including all relevant equipment being legally part of the barge under the relevant law.

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

**"Bondholders' Meeting"** means a meeting among the Bondholders held in accordance with Clause 17 (*Bondholders' Meeting*).

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

**"Bonds Buy Back Account"** shall have the meaning given to such term in Clause 13.12.3 (*The Bonds Buy Back Account*).

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

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

**"Capital Expenditure"** means any expenditure or obligation in respect of expenditure (which, in accordance with the Accounting Principles, is treated as capital expenditure including the capital element of any expenditure or obligation incurred in connection with a finance lease).

**"Cash"** means, at any time, cash denominated in EUR in hand or at bank and (in the latter case) credited to an account in the name of a member of the Issuer Group with an Acceptable Bank and to which a member of the Issuer Group is alone (or together with another member of the Issuer Group) entitled and for so long as:

- (a) that cash is repayable within 30 days after the relevant date of calculation;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Issuer Group or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no security over that cash except for any Permitted Security constituted by a netting or set-off arrangement entered into by members of the Issuer Group in the ordinary course of their banking arrangements; and
- (d) the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in redemption of the Bonds.

**"Casino Company"** means Casino Sunborn (Gibraltar) Limited, a limited liability company incorporated under the laws of Gibraltar with Reg. No. 112352.

**"Cashflow"** means, in respect of any Reference Period, EBITDA of the Issuer Group for that Reference Period after:

- (a) adding the amount of any decrease (and deducting the amount of any increase) in Working Capital for that Reference Period;
- (b) adding the amount of any cash receipts (and deducting the amount of any cash payments) during that Reference Period in respect of any exceptional, one off, non-recurring or extraordinary items not already taken account of in calculating EBITDA for any Reference Period;
- (c) adding the amount of any cash receipts during that Reference Period in respect of any tax rebates or credits and deducting the amount actually paid or due and payable in respect of taxes during that Reference Period by the Issuer;
- (d) adding any increase or minus any decrease of provisions (to the extent affecting EBITDA);

- (e) adding/deducting unusual/extraordinary write up/down of fixed assets and/or current assets (to the extent affecting EBITDA); and
- (f) deducting the amount of any Capital Expenditure actually made (or due to be made) in cash during that Reference Period by the Issuer except to the extent funded from a sale of assets,

and so that no amount shall be added (or deducted) more than once.

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

- (a) the Parent ceases to be the direct or indirect owner of all the shares in each Obligor; or
- (b) Ritva Niemi or Pekka Niemi or any of their heirs cease directly or indirectly to:
  - (i) have the power to cast, or control the casting of, at least 50 per cent. of the votes attaching to the shares of the Parent; and
  - (ii) hold at least 50 per cent. of the issued share capital of the Parent.

**"Compliance Certificate"** means a certificate, in form and substance satisfactory to the Agent, signed by the Issuer including:

- (a) calculations and figures in respect of the Maintenance Test, if provided in connection with a Financial Report;~~and~~
- (b) [calculations and figures in respect of the Temporary Maintenance Test, if provided in connection with the Operator's quarterly interim unaudited consolidated financial statements pursuant to Clause 11.2\(c\); and](#)
- (c) ~~(b)~~ calculations and figures in respect of the Incurrence Test, if provided in connection with an Incurrence Test;

in each case certifying that so far as it is aware no Event of Default is continuing or, if it is aware that such event is continuing, specifying the event and steps, if any, being taken to remedy it.

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

**"Cure Account"** shall have the meaning given to such term in Clause 12.1.2(a).

**"Cure Amount"** shall have the meaning given to such term in Clause 12.1.2(a).

**"Debt Instruments"** means bonds, notes or other debt securities (however defined), which are or are intended to be quoted, listed, traded or otherwise admitted to trading on a Regulated Market or an MTF.

**"Debt Service"** means, in respect of any Reference Period, the aggregate of:

- (a) Net Finance Charges for that Reference Period;
- (b) any redemptions under the Finance Documents falling due during that Reference Period;
- (c) any repurchases of Bonds during that Reference Period; and
- (d) the amount of the capital element of any payments in respect of that Reference Period payable under any financial leasing arrangement entered into by any member of the Issuer Group,

and so that no amount shall be included more than once.

**"Disposal Net Proceeds"** shall have the meaning given to such term in the definition of "Parent Undertaking".

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

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

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

"Equity Cure" means an equity cure pursuant to Clause 12.1.2 (Equity Cure).

"EURIBOR" means:

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

if any such rate is below zero, EURIBOR will be deemed to be zero.

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

"Event of Default" means an event or circumstance specified in any of the Clauses 14.1 (Non-Payment) to 14.9~~11~~ (~~Continuation of the Business~~Parent Undertaking).

"Excess Cashflow" means, for any period for which it is being calculated, Cashflow for that period less (except to the extent already deducted in calculating Cashflow) Debt Service for that period.

"Excess Proceeds Account" shall have the meaning given to such term in Clause 13.12.4 (*The Excess Proceeds Account*).

"Final Maturity Date" means 5 September 2022.

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

**"Finance Documents"** means these Terms and Conditions, the Security Documents, the Guarantee and Adherence Agreement, the [Additional Guarantee Agreement](#), the Subordination Agreement, [the Parent Undertaking](#), the Agency Agreement and any other document designated by the Issuer and the Agent as a Finance Document.

**"Financial Indebtedness"** means:

- (a) moneys borrowed or raised (including under any bank financing or Market Loans);
- (b) the amount of any liability under any finance leases (a lease which in accordance with the Accounting Principles applicable on the First Issue Date is treated as an asset and a corresponding liability) and for the avoidance of doubt, any leases treated as operating leases under the Accounting Principles applicable to the Issuer as of the First Issue Date shall not, regardless of any subsequent changes or amendments of the accounting principles, be considered as finance or capital leases;
- (c) receivables sold or discounted (other than on a non-recourse basis, provided that the requirements for de-recognition under the Accounting Principles are met);
- (d) any amount raised pursuant to any note purchase facility or the issue of any bond or note or similar instrument;
- (e) any other transaction (including the obligation to pay deferred purchase price) having the commercial effect of a borrowing or otherwise being classified as borrowing under the Accounting Principles;
- (f) the marked-to-market value of derivative transactions entered into in connection with protection against or benefit from fluctuation in any rate or price (if any actual amount is due as a result of a termination or a close-out, such amount shall be used instead);
- (g) counter-indemnity obligations in respect of guarantees or other instruments issued by a bank or financial institution; and
- (h) liabilities under guarantees or indemnities for any of the obligations referred to in paragraphs (a) to (g) above.

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

**"Financial Report"** means the Issuer's and the Group's annual audited consolidated financial statements or quarterly interim unaudited reports of the Issuer and the Group, which shall be prepared and made available in accordance with Clause 11.1(a)(i) and Clause 11.1(a)(ii).

**"First Call Date"** means 5 September 2021.

**"First Issue Date"** means 5 September 2017.

**"Floating Rate Margin"** means 5.00 per cent.

**"Force Majeure Event"** has the meaning set forth in Clause 25(a).

**"GBP"** means the lawful currency of the United Kingdom.

**"Group"** means Holdings and all wholly-owned Subsidiaries from time to time (excluding for the avoidance of doubt the Casino Company) (each a **"Group Company"**).

**"Guarantee and Adherence Agreement"** means the guarantee and adherence agreement entered into by the Guarantors and the Agent, whereby the Guarantors, subject to applicable laws, irrevocably and unconditionally jointly and severally, as principal obligors guarantee to the Bondholders and the Agent, the punctual performance of all obligors' obligations under the Finance Documents.

**"Guarantors"** means (i) the Unrestricted Guarantor, (ii) Holdings, (iii) the Operator, and (iv) any other present and future wholly-owned Subsidiaries of the Issuer which are established or acquired, provided that granting of a guarantee is permitted under the laws applicable to such subsidiary. [For the avoidance of doubt, the term "Guarantors" shall not include the Additional Guarantor.](#)

**"Holdings"** means Sunborn (Gibraltar) Holdings Limited, a limited liability company incorporated under the laws of Gibraltar with Reg. No. 109486.

**"Incurrence Test"** means the test as set out in Clause 12.23 (*Incurrence Test*).

**"Initial Bonds"** means the Bonds issued on the First Issue Date.

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

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

**"Interest Coverage Ratio"** means the ratio of EBITDA to Net Finance Charges.

**"Interest Payment Date"** means 5 March, 5 June, 5 September and 5 December of each year or, to the extent such day is not a Business Day, the Business Day following from an application of the Business Day Convention. The first Interest Payment Date for the Bonds shall be 5 December 2017 and the last Interest Payment Date shall be the relevant Redemption Date.

**"Interest Period"** means (i) in respect of the first Interest Period, the period from (but excluding) the First Issue Date to (and including) the first Interest Payment Date, and (ii) in respect of subsequent Interest Periods, the period from (but excluding) an Interest Payment Date to (and including) the next succeeding Interest Payment Date (or a shorter period if relevant).

**"Interest Rate"** means EURIBOR plus the Floating Rate Margin.

**"Issuer"** means Sunborn (Gibraltar) Limited, a limited liability company incorporated under the laws of Gibraltar with Reg. No. 109414.

**"Issuer Group"** means the Issuer and all its Subsidiaries from time to time and **"Issuer Group Company"** means any of them.

**"Issuing Agent"** means DNB Bank ASA, Sweden Branch, or another party replacing it, as Issuing Agent, in accordance with these Terms and Conditions.

**"Maintenance Test"** means the test as set out in Clause 12.1 (*Maintenance Test*).

**"Make Whole Amount"** means the sum of:

- (a) the Nominal Amount; and
- (b) the present value on the relevant record date of the remaining coupon payments (assuming that the interest rate for the period from the relevant redemption date to the Final ~~Redemption~~-Maturity Date will be equal to the interpolated EUR mid-swap rate for the remaining term from the redemption date until the Final ~~Redemption~~-Maturity Date plus the applicable Floating Rate Margin), less any accrued but unpaid interest, through and including the Final ~~Redemption~~-Maturity Date,

calculated by using a discount rate of 50 basis points over the comparable German government bond rate (i.e. comparable to the remaining duration of the Bonds until the mentioned date falling on the Final ~~Redemption~~-Maturity Date) and where "relevant record date" shall mean a date agreed upon between the Agent, the CSD and the Issuer in connection with such repayment.

**"Mandatory Prepayment Event"** means:

- (a) the Issuer ceases to be the sole owner of the Barge; and/or
- (b) any Restricted Obligor sells, transfers or otherwise disposes of all or substantially all of its assets (including shares or other securities in any person) or operations; and/or
- (c) any Material Document is terminated, cancelled or otherwise cease to be effective; and/or
- (d) the payments under the Bareboat Agreement are adversely amended or interrupted, except for any adverse amendments or interruptions occurring



during the period from, and including, 1 January 2020 to, and including, 31 December 2020.

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

**"Market Value"** means the value of the Barge as determined by a valuations of the Barge provided annually by an Approved Shipbroker on a sale for prompt delivery for cash at arm's length on normal commercial terms as between a willing seller and a willing buyer, on an "as is, where is" basis, including any existing charter or other contract of employment.

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

- (a) the business, financial condition or operations of the Group taken as a whole;
- (b) the Issuer's ability to perform and comply with any payment obligations under the Finance Documents and/or the undertakings set out in Clause 11 (*Information to Bondholders*) or Clause 13 (*General Undertakings*); or
- (c) the validity or enforceability of the Finance Documents.

**"Material Documents"** means the Bareboat Agreement and the Mooring Licence Agreement.

**"Mooring Licence Agreement"** means the licence agreement originally entered into in January 2014 (as amended from time to time) between Ocean Village Investments Limited as the grantor and the Issuer as the grantee, whereby the grantor licenses a berth to the grantee for the purpose of berthing the Barge.

**"MTF"** means any multilateral trading facility (as defined in Directive 2004/39/EC on markets in financial instruments).

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

**"Net Proceeds"** means the proceeds from the issuance of the Initial Bonds after deduction has been made for the transaction costs payable by the Issuer to the Sole Bookrunner (if the Sole Bookrunner has requested that their respective fees and costs shall be deducted) and the Issuing and Paying Agent for the services provided in relation to the placement and issuance of the Initial Bonds.

**"Nominal Amount"** has the meaning set forth in Clause 2(c).

"**Obligors**" means the Issuer and each Guarantor.

"**Operating Account**" shall have the meaning given to such term in Clause 13.12.1 (*The Operating Account*).

"**Operator**" means Sunborn (Gibraltar) Resort Limited, a limited liability company incorporated under the laws of Gibraltar with Reg. No. 109487.

"**Operator Cure Amount**" shall have the meaning given to such term in Clause 12.2.2 (*Operator Equity Cure*).

"**Operator EBITDA**" means, in respect of the Quarterly Reference Period, the consolidated profit of the Operator Group from ordinary activities according to the latest financial report(s) of the Operator:

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

"Operator Equity Cure" means an operator equity cure pursuant to Clause 12.2.2 (Operator Equity Cure).

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

"Operator Group" means the Operator and its Subsidiaries.

"Operator Net Finance Charges" means, for the Quarterly Reference Period, the Operator Finance Charges according to the latest financial report(s) of the Operator, after deducting any interest payable for that Quarterly Reference Period to any member of the Operator Group and any interest income relating to cash or cash equivalent investment (and excluding any interest capitalised on shareholder loans provided to a member of the Operator Group).

**"Parent"** means Sunborn Oy, a limited liability company incorporated under the laws of Finland with Reg. No. 0140466-4.

"Parent Shareholder Loan" means any shareholder loan from the Parent (financed by Disposal Net Proceeds) to the Issuer if such shareholder loan:

- (a) according to its terms and a subordination agreement is subordinated to the obligations of the Issuer under the Finance Documents;
- (b) according to its terms has a final redemption date or, when applicable, early redemption dates or instalment dates which occur after the Final Maturity Date;
- (c) is not evidenced by a negotiable promissory note and no other bearer form document has been issued in respect of such loan; and
- (d) according to its terms yield only payment-in-kind interest unless cash interest payments are permitted under Clause 13.2 (Distributions).

"Parent Undertaking" means the agreement, dated [•] 2020, entered into by the Parent, the Issuer and the Agent pursuant to which the Parent undertakes to procure that 50 per cent. of the net proceeds (the "Disposal Net Proceeds") from a third-party disposal of:

- (a) the Parent's shares in Gilleleje Resort Development A/S (CVR-no. 31 28 13 26) (initially being 90 per cent. of the total share capital of Gilleleje Resort Development A/S); or

(b) the Parent's indirect share (being 90 per cent.) of any assets (including properties) directly or indirectly owned by Gilleleje Resort Development A/S,

to a person which is not Ritva Niemi, Pekka Niemi or any of their heirs (or a person controlled by any of them) shall, no later than fifteen (15) Business Days from receipt of the Disposal Net Proceeds, be applied towards an equity injection in cash in the Issuer by way of an unconditional shareholder contribution or a Parent Shareholder Loan.

"**Permitted Debt**" means any Financial Indebtedness:

- (a) incurred under the Finance Documents (other than Subsequent Bonds);
- (b) Financial Indebtedness under the Refinancing Debt pending redemption thereof;
- (c) of the Group incurred pursuant to any financial leasing arrangements incurred in the ordinary course of the Group's business in a maximum amount of EUR 250,000;
- (d) related to any Subordinated Intra-Group Loans;
- (e) arising under any interest rate hedging transactions, but not any transaction for investment or speculative purposes;
- (f) related to any Shareholder Loans;
- (g) incurred under Advance Purchase Agreements;
- (h) pension liabilities of the Group, in an outstanding amount not exceeding EUR 500,000; ~~and~~
- (i) incurred by an Obligor if such Financial Indebtedness meets the Incurrence Test tested pro forma including such incurrence, and
  - (i) is incurred as a result of a Subsequent Bond issue by the Issuer under the Terms and Conditions; or
  - (ii) ranks *pari passu* or is subordinated to the obligations of the Issuer under the Finance Documents, and has a final maturity date or a final redemption date or, when applicable, early redemption dates or instalment dates which occur after the Final ~~Redemption~~ Maturity Date; ~~or~~
- (j) incurred by the Operator for working capital purposes under any governmental program (where financing is provided by or guaranteed by a governmental body or by way of deferred tax liabilities) under which it is eligible to receive financial support in a maximum amount of EUR 2,000,000 ("Governmental Support");
- (k) incurred by the Issuer under a Parent Shareholder Loan; or

(l) ~~(i)~~ is not covered under (a)-(i) above and does not at any time exceed an aggregate maximum amount of EUR 250,000.

**"Permitted Security"** means any security:

- (a) provided under the Finance Documents;
- (b) arising by operation of law or in the ordinary course of business (including collateral or retention of title arrangements in connection with Advance Purchase Agreements but, for the avoidance of doubt, not including guarantees or security in respect of any monies borrowed or raised);
- (c) provided over any assets being subject to a financial lease, permitted pursuant to (c) of the definition of Permitted Debt above;
- (d) arising under any netting or set off arrangements under financial derivatives transactions or bank account arrangements, including group cash pool arrangements;
- (e) any guarantee or security provided by or over a Group Company (other than an Obligor) to secure any Permitted Debt;
- (f) provided for any guarantees issued by a Group Company in the ordinary course of business;
- (g) granted over the Barge in the maximum amount of EUR 60,000,000 (within priority EUR 71,250,001 to EUR 131,250,000) as security for the debt owed by the Issuer to the Second Priority Mortgage Holder under the GBP 41,996,910.89 loan agreement dated on or about the date of these Terms and Conditions, which shall be fully subordinated to the security over the Barge provided under the Security Documents in accordance with the Subordination Agreement; or
- (h) any other security not covered under (a)-(g) above securing an aggregate maximum amount of EUR 60,000.

**"Proceeds Account"** means a bank account of the Issuer held with a reputable bank, into which the Net Proceeds will be transferred and which has been pledged in favour of the Agent and the Bondholders (represented by the Agent) under the Proceeds Account Pledge Agreement.

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

**"Quarterly Reference Period"** means each period of 3 consecutive calendar months (together forming a quarter).

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

**"Record Date"** means the fifth (5) Business Day prior to (i) an Interest Payment Date, (ii) a Redemption Date, (iii) a date on which a payment to the Bondholders is to be made under Clause 15 (*Distribution of Proceeds*), (iv) the date of a Bondholders' Meeting, or (v) another relevant date, or in each case such other Business Day falling prior to a relevant date if generally applicable on the Swedish bond market.

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

**"Reference Date"** means 31 March, 30 June, 30 September and 31 December in each year for as long as any Bonds are outstanding.

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

**"Refinancing Debt"** means the debt incurred pursuant to the facility agreement originally entered into on 26 March 2013, as amended and restated from time to time, between the Issuer as borrower and Credit Finance Company Ltd as lender.

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

**"Reserve Account"** shall have the meaning given to such term in Clause 13.12.2 (*The Reserve Account*).

**"Restricted Obligors"** means the Issuer and each Guarantor other than the Unrestricted Guarantor.

**"Restricted Payment"** have the meaning given to such term in Clause 13.2(a).

**"Second Priority Mortgage Holder"** shall have the meaning ascribed to the term Unrestricted Guarantor.

**"Secured Obligations"** means all present and future obligations and liabilities of the Issuer to the Secured Parties under the Finance Documents and the Agency Agreement.

**"Secured Parties"** means the Bondholders and the Agent (including in its capacity as Agent under the Agency Agreement).

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

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

**"Security Documents"** means:

- (a) pledge agreements over all the shares issued by each of:

- (i) Holdings;
  - (ii) the Issuer; and
  - (iii) the Operator;
- (b) a first priority mortgage granted by the Issuer over the Barge in an initial amount of GBP 48,500,000 and EUR 71,250,000 (within priority EUR 1 to EUR 71,250,000) to be reduced by GBP 48,500,000 upon cancellation of all issued mortgage certificates denominated in GBP;
  - (c) a floating charge agreement over the assets, rights, intellectual property and revenues of each Restricted Obligor (including any relevant insurances related to the Barge, manuals and other operational documentation being the property of the Issuer); and
  - (d) a pledge agreement over all funds standing to the credit of the Reserve Account, the Bonds Buy Back Account, the Excess Proceeds Account and the Operating Accounts.

**"Shareholder Loans"** means any shareholder loan from the Unrestricted Guarantor, where a Restricted Obligor is a debtor, if such shareholder loan:

- (a) according to its terms and the Subordination Agreement is subordinated to the obligations of the Issuer under the Finance Documents<sup>7.2</sup>;
- (b) according to its terms has a final redemption date or, when applicable, early redemption dates or instalment dates which occur after the Final **Redemption Maturity** Date;
- (c) is not evidenced by a negotiable promissory note and no other bearer form document has been issued in respect of such Shareholder Loan; and
- (d) according to its terms yield only payment-in-kind interest unless cash interest payments are permitted under paragraph (b)(i) of Clause 13.2 (*Distributions*).

**"Sole Bookrunner"** means DNB Bank ASA, Sweden Branch.

**"Subordinated Intra-Group Loans"** means any loan incurred by a member of the Group from another member of the Group if such loan:

- (a) according to its terms and the Subordination Agreement, is subordinated to the obligations of the Issuer under the Finance Documents;
- (b) according to its terms has a final redemption date or, when applicable, early redemption dates or instalment dates which occur after the Final **Redemption Maturity** Date;
- (c) the creditor of such loan is or accedes to the Subordination Agreement as an Intra-Group Lender;

- (d) the debtor of such loan is or accedes to the Subordination Agreement as a Debtor;
- (e) such loan is not evidenced by a negotiable promissory note and no other bearer form document has been issued in respect of such Shareholder Loan; and
- (f) according to its terms yield payment-in-kind interest.

**"Subordination Agreement"** means the subordination agreement entered into on or about the First Issue Date, initially between, among others, the Issuer, the Agent, Holdings and the Unrestricted Guarantor.

**"Subsequent Bonds"** means any Bonds issued after the First Issue Date on one or more occasions.

**"Subsidiary"** means, in relation to any person, any Swedish or foreign legal entity (whether incorporated or not), in respect of which such person, directly or indirectly, (i) owns shares or ownership rights representing more than fifty (50) per cent. of the total number of votes held by the owners, (ii) otherwise controls more than fifty (50) per cent. of the total number of votes held by the owners, (iii) has the power to appoint and remove all, or the majority of, the members of the board of directors or other governing body, or (iv) exercises control as determined in accordance with the international financial reporting standards (IFRS) within the meaning of Regulation 1606/2002/EC (or as otherwise adopted or amended from time to time).

**"Temporary Maintenance Test"** means the test as set out in Clause 12.2 (*Temporary Maintenance Test*).

**"Temporary Reference Date"** means 31 December 2020, 31 March 2021, 30 June 2021 and 30 September 2021.

**"Total Loss Event"** means an actual or constructive total loss of the Barge.

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

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

**"Transaction Security"** means the Security provided for the Secured Obligations pursuant to the Security Documents.

**"Unrestricted Guarantor"** means Sunborn International Oy, a limited liability company incorporated under the laws of Finland with Reg. No. 2726816-2.

**"Working Capital"** means, on any date, the aggregate of the Issuer's non-interest-bearing current assets (excluding cash in hand, immediately available funds, and any other liquid and marketable instruments, securities and investments equivalent to cash) minus the Issuer's non-interest-bearing current liabilities.



**"Written Procedure"** means the written or electronic procedure for decision making among the Bondholders in accordance with Clause 18 (*Written Procedure*).

## **1.2 Construction**

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

## **2. Status of the Bonds**

- (a) The Bonds are denominated in Euro and each Bond is constituted by these Terms and Conditions. The Issuer undertakes to make payments in relation to the Bonds and to comply with these Terms and Conditions.

- (b) By subscribing for Bonds, each initial Bondholder agrees that the Bonds shall benefit from and be subject to the Finance Documents and by acquiring Bonds, each subsequent Bondholder confirms such agreement.
- (c) The nominal amount of each Initial Bond is EUR 100,000 (the "**Nominal Amount**"). The total nominal amount of the Initial Bonds is EUR 58,000,000. All Initial Bonds are issued on a fully paid basis at an issue price of 99 per cent. of the Nominal Amount.
- (d) Provided that (i) no Event of Default is continuing or would result from such issue and (ii) the Incurrence Test is met, the Issuer may, at one or several occasions, issue Subsequent Bonds. Subsequent Bonds shall benefit from and be subject to the Finance Documents, and, for the avoidance of doubt, the ISIN, the interest rate, the nominal amount and the final maturity applicable to the Initial Bonds shall apply to Subsequent Bonds. The price of the Subsequent Bonds may be set at a discount or at a premium compared to the Nominal Amount. The maximum total nominal amount of the Bonds (the Initial Bonds and all Subsequent Bonds) may not exceed EUR 60,000,000 unless a consent from the Bondholders is obtained in accordance with Clause 16(e)(i). Each Subsequent Bond shall entitle its holder to Interest in accordance with Clause 8(a), and otherwise have the same rights as the Initial Bonds.
- (e) The Bonds constitute direct, general, unconditional unsubordinated and secured obligations of the Issuer and shall at all times rank *pari passu* and without any preference among them.
- (f) The Bonds are freely transferable but the Bondholders may be subject to purchase or transfer restrictions with regard to the Bonds, as applicable, under local laws to which a Bondholder may be subject. Each Bondholder must ensure compliance with such restrictions at its own cost and expense.
- (g) No action is being taken in any jurisdiction that would or is intended to permit a public offering of the Bonds or the possession, circulation or distribution of any document or other material relating to the Issuer or the Bonds in any jurisdiction other than Sweden, where action for that purpose is required. Each Bondholder must inform itself about, and observe, any applicable restrictions to the transfer of material relating to the Issuer or the Bonds.

### 3. Use of Proceeds

The Issuer shall use the proceeds from the issue of the Bonds, less the costs and expenses incurred by the Issuer in connection with the issue of the Bonds, for refinancing the Refinancing Debt and for general corporate purposes, including distributions up to a maximum aggregate amount of EUR 1,250,000.

### 4. Conditions Precedent

- (a) The payment of the Net Proceeds to the Proceeds Account is subject to the Agent having received documents and evidence of the Proceeds Account Pledge Agreement being duly executed and perfected.

- (b) The Issuer shall provide, or procure the provision of, to the Agent:
  - (i) constitutional documents and corporate resolutions of the Issuer and each company providing Transaction Security regarding the entering into of the Finance Documents;
  - (ii) the Finance Documents duly executed;
  - (iii) evidence that the security existing in favour of the Refinancing Debt will be released and discharged upon repayment of the Refinancing Debt;
  - (iv) evidence that the Transaction Security has been duly provided and either has been or will be perfected in accordance with the terms of the Finance Documents;
  - (v) evidence of the nomination of the Agent as a loss payee (re: insurance);
  - (vi) an agreed form compliance certificate; and
  - (vii) legal opinions on the capacity, validity and enforceability of the Finance Documents relating to any non-Swedish entity being part to any Finance Document, issued by reputable law firms.
- (c) The Agent is not responsible for reviewing the documents and evidence referred to in Clause 4(b) from a legal or commercial perspective on behalf of the Bondholders. The Agent may assume that the documentation and evidence delivered to it pursuant to Clause 4(b) is accurate, legally valid, enforceable, correct, true and complete and the Agent does not have to verify or assess the contents of any such documentation.
- (d) When the conditions precedent for disbursement set out in Clause 4(b) have been fulfilled to the satisfaction of the Agent (acting reasonably), the Agent shall instruct the bank (with which the Issuer holds the Proceeds Account) to transfer the funds from the Proceeds Account for the purpose of repayment of the Refinancing Debt and in accordance with Clause 3 (*Use of Proceeds*), and the Agent shall thereafter or in connection therewith release the pledge over the Proceeds Account.
- (e) If the conditions precedent for disbursement set out in Clause 4(b) have not been fulfilled to the satisfaction of the Agent (acting reasonably) or waived by the Agent within thirty (30) Business Days from the First Issue Date, the Issuer shall repurchase all Bonds at a price equal to 101 per cent. of the Nominal Amount together with any accrued Interest. Any funds distributed by the Agent to the Bondholders in accordance with the Proceeds Account Pledge Agreement shall be deemed to be paid by the Issuer for the redemption under this Clause 4(e). The repurchase date shall fall no later than thirty (30) Business Days after the ending of the thirty (30) Business Days period referred to above.

## 5. Bonds in Book-Entry Form

- (a) The Bonds will be registered for the Bondholders on their respective Securities Accounts and no physical notes will be issued. Accordingly, the Bonds will be registered in accordance with the Financial Instruments Accounts Act. Registration requests relating to the Bonds shall be directed to an Account Operator.
- (b) Those who according to assignment, Security, the provisions of the Swedish Children and Parents Code (*föräldrabalken (1949:381)*), conditions of will or deed of gift or otherwise have acquired a right to receive payments in respect of a Bond shall register their entitlements to receive payment in accordance with the Financial Instruments Accounts Act.
- (c) The Issuer (and the Agent when permitted under the CSD's applicable regulations) shall be entitled to obtain information from the debt register (*skuldbok*) kept by the CSD in respect of the Bonds. At the request of the Agent, the Issuer shall promptly obtain such information and provide it to the Agent.
- (d) For the purpose of or in connection with any Bondholders' Meeting or any Written Procedure, the Issuing Agent shall be entitled to obtain information from the debt register kept by the CSD in respect of the Bonds.
- (e) The Issuer shall issue any necessary power of attorney to such persons employed by the Agent, as notified by the Agent, in order for such individuals to independently obtain information directly from the debt register kept by the CSD in respect of the Bonds. The Issuer may not revoke any such power of attorney given to the Agent unless directed by the Agent or unless consent thereto is given by the Bondholders.

## 6. Right to Act on Behalf of a Bondholder

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

## 7. Payments in Respect of the Bonds

- (a) Any payment or repayment under the Finance Documents, or any amount due in respect of a repurchase of any Bonds, shall be made to such person who is registered as a Bondholder on the Record Date prior to an Interest Payment Date or other relevant due date, or to such other person who is registered with the CSD on such date as being entitled to receive the relevant payment, repayment or repurchase amount.
- (b) If a Bondholder has registered, through an Account Operator, that principal and interest shall be deposited in a certain bank account, such deposits will be effected by the CSD on the relevant payment date. In other cases, payments will be transferred by the CSD to the Bondholder at the address registered with the CSD on the Record Date. Should the CSD, due to a delay on behalf of the Issuer or some other obstacle, not be able to effect payments as aforesaid, the Issuer shall procure that such amounts are paid to the persons who are registered as Bondholders on the relevant Record Date as soon as possible after such obstacle has been removed.
- (c) If, due to any obstacle for the CSD, the Issuer cannot make a payment or repayment, such payment or repayment may be postponed until the obstacle has been removed. Interest shall accrue in accordance with Clause 8(d) during such postponement.
- (d) If payment or repayment is made in accordance with this Clause 7, the Issuer and the CSD shall be deemed to have fulfilled their obligation to pay, irrespective of whether such payment was made to a person not entitled to receive such amount.
- (e) All amounts payable by the Issuer to the Bondholders shall be made without withholding or deduction for or on account of any present or future taxes or duties of whatever nature imposed or levied by or on behalf of Sweden or any authority thereof or therein unless such withholding or deduction is required by law or regulation or the interpretation or application of such laws or regulations. If such withholding or deduction is required, the Issuer will at the request of the relevant Bondholder pay such additional amounts (the "**Additional Amounts**") as are necessary in order that the net amount received by the relevant Bondholder, after such withholding or deduction, shall be equal to the respective amounts which would otherwise have been receivable in the absence of such withholding or deduction.
- (f) Notwithstanding Clause 7(e), no Additional Amounts shall be payable on account of any taxes or duties which:
  - (i) are payable by reason of any relevant person having, or having had, some connection with Sweden other than the mere holding of the Bond(s);
  - (ii) would not be payable if a relevant person made a declaration of non-residence or similar claim for exemption to the relevant tax authority;

- (iii) would not be payable if a relevant person could claim an exemption under a tax treaty;
- (iv) are withheld or deducted pursuant to any European Union Directive or Regulation concerning the taxation of interest income or any provision of law implementing or complying with such Directive or Regulation; or
- (v) gives rise to a tax credit that may be effectively used by a relevant person.

## 8. Interest

- (a) Each Initial Bond carries Interest at the Interest Rate from (but excluding) the First Issue Date up to (and including) the relevant Redemption Date. Any Subsequent Bond will carry Interest at the Interest Rate from (but excluding) the Interest Payment Date falling immediately prior to its issuance up to (and including) the relevant Redemption Date.
- (b) Interest accrues during an Interest Period. Payment of Interest in respect of the Bonds shall be made to the Bondholders on each Interest Payment Date for the preceding Interest Period.
- (c) Interest shall be calculated on the basis of the actual number of days in the Interest Period in respect of which payment is being made divided by 360 (actual/360-days basis).
- (d) If the Issuer fails to pay any amount payable by it on its due date, default interest shall accrue on the overdue amount from (but excluding) the due date up to (and including) the date of actual payment at a rate which is two (2) per cent. higher than the Interest Rate. Accrued default interest shall not be capitalised. No default interest shall accrue where the failure to pay was solely attributable to the Agent or the CSD, in which case the Interest Rate shall apply instead.

## 9. Redemption, Amendment Fee and Repurchase of the Bonds

### 9.1 Redemption at maturity

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

### 9.2 Amendment Fee at maturity

The Issuer shall on the Final Maturity Date (and any other Redemption Date) pay an amendment fee in an amount equal to 0.50 per cent. of the Nominal Amount of each Bond (the "Amendment Fee") to those who are registered as Bondholders on the end of the date falling five (5) Business Days prior to the Final Maturity Date (or such other Redemption Date) (the "Amendment Fee Record Date"). The Amendment Fee shall be

calculated based on the aggregate Nominal Amount held by the relevant Bondholder on the relevant Amendment Fee Record Date.

### **9.3    9.2 Issuer's purchase of Bonds**

The Issuer may, subject to applicable law, at any time and at any price purchase Bonds on the market or in any other way. The Bonds held by the Issuer may at the Issuer's discretion be retained or sold by the Issuer.

### **9.4    9.3 Voluntary total redemption (call option)**

- (a) The Issuer may redeem all, but not some only, of the outstanding Bonds in full from the First Call Date to, but not including, the Final ~~Redemption-date~~ Maturity Date at an amount equal to the Make Whole Amount, together with accrued but unpaid interest.
- (b) Redemption in accordance with Clause 9.34(a) shall be made by the Issuer giving not less than fifteen (15) Business Days' notice to the Bondholders and the Agent. Any such notice is irrevocable but may, at the Issuer's discretion, contain one or more conditions precedent. Upon expiry of such notice and the fulfillment of the conditions precedent (if any), the Issuer is bound to redeem the Bonds in full at the applicable amounts.

### **9.5    9.4 Mandatory total redemption**

- (a) Upon the occurrence of a Mandatory Prepayment Event (excluding, for the avoidance of doubt, a Total Loss Event), the Issuer shall no later than thirty (30) days following the relevant Mandatory Prepayment Event (unless there is an Event of Default in which case it shall be promptly), redeem all the outstanding Bonds as follows:
  - (i) at price equal to 102.50 per cent. of the Nominal Amount together with accrued but unpaid interest on the redeemed amount, if the Mandatory Prepayment Event occurs on or after the First Issue Date to, but not including, the date falling 36 months after the First Issue Date;
  - (ii) at a price equal to 101.25 per cent. of the Nominal Amount together with accrued but unpaid interest on the redeemed amount, if the Mandatory Prepayment Event occurs on or after the date falling 36 months after the First Issue Date to, but not including, the date falling 48 months after the First Issue Date; and
  - (iii) at a price equal to 100.625 per cent. of the Nominal Amount together with accrued but unpaid interest on the redeemed amount, if the Mandatory Prepayment Event occurs on or after the date falling 48 months after the First Issue Date to, but not including, the Final ~~Redemption~~ Maturity Date.
- (b) Upon a Total Loss Event, the Issuer shall promptly once insurance proceeds are available, but in any event no later than 180 days following the Total Loss Event,

redeem all outstanding Bonds at 100 per cent. of the Nominal Amount together with accrued but unpaid interest on the redeemed amount.

- (c) Total redemption in accordance with Clause 9.4(a) or 9.4(b) shall be made by the Issuer giving not less than fifteen (15) Business Days' notice to the Bondholders and the Agent. Any such notice is irrevocable and, upon expiry of such notice, the Issuer is bound to redeem the Bonds in whole on the immediately following Interest Payment Date at the applicable amounts. The applicable amount shall be an even amount in Euro and paid to the person who is registered as a Bondholder on the Record Date prior to the relevant Redemption Date.

#### 9.6 **9.5 Early redemption due to tax event (call option)**

- (a) The Issuer may redeem the relevant Bonds on a date determined by the Issuer if the Issuer has or will become required to pay Additional Amounts in relation to any Bonds and this obligation cannot be avoided by reasonable measures available to the Issuer. The Bonds shall up to, but excluding, the Final ~~Redemption~~-Maturity Date be redeemed at an amount per Bond together with a premium on the due and payable amount at the Make Whole Amount (plus accrued and unpaid interest).
- (b) The Issuer shall give notice of any redemption pursuant to Clause 9.56(a) no later than twenty (20) Business Days after having received actual knowledge of any event specified therein (after which time period such right shall lapse).
- (c) A notice of redemption in accordance with Clause 9.56(a) is irrevocable and, on the date specified in such notice, the Issuer is bound to redeem the Bonds in full at the applicable amounts.

#### 9.7 **9.6 Mandatory repurchase due to a Change of Control Event (put option)**

- (a) Upon a Change of Control Event occurring, each Bondholder shall have the right to request that all, or some only, of its Bonds be repurchased at a price per Bond equal to 101.00 per cent. of the Nominal Amount together with accrued but unpaid Interest, during a period of sixty (60) days following a notice from the Issuer of the Change of Control Event pursuant to Clause 11.1(b) (after which time period such right shall lapse). However, such period may not start earlier than upon the occurrence of the Change of Control Event.
- (b) The notice from the Issuer pursuant to Clause 11.1(b) shall specify the repurchase date and include instructions about the actions that a Bondholder needs to take if it wants Bonds held by it to be repurchased. If a Bondholder has so requested, and acted in accordance with the instructions in the notice from the Issuer, the Issuer, or a person designated by the Issuer, shall repurchase the relevant Bonds and the repurchase amount shall fall due on the repurchase date specified in the notice given by the Issuer pursuant to Clause 11.1(b). The repurchase date must fall no later than twenty (20) Business Days after the end of the period referred to in Clause 9.67(a).



## **9.8 9.7 General**

- (a) The Issuer shall comply with the requirements of any applicable securities laws or regulations in connection with the repurchase of Bonds. To the extent that the provisions of such laws and regulations conflict with the provisions in this Clause 9, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Clause 9 by virtue of the conflict.
- (b) Any Bonds repurchased by the Issuer may at the Issuer's discretion be retained or sold, but not cancelled.

## **10. Transaction Security**

- (a) As continuing Security for the due and punctual fulfilment of the Secured Obligations, the Issuer grants on the date of the relevant Security Document the Transaction Security to the Secured Parties as represented by the Agent.
- (b) The Agent shall hold the Transaction Security on behalf of the Secured Parties in accordance with the Security Documents. As a condition precedent to the disbursement from the Proceeds Account, the Issuer shall enter into the Security Documents. The Transaction Security shall be perfected in accordance with the Security Documents.
- (c) Unless and until the Agent has received instructions from the Bondholders in accordance with Clause 16 (*Decisions by Bondholders*), the Agent shall (without first having to obtain the Bondholders' consent) be entitled to enter into agreements with the Issuer or a third party or take any other actions, if it is, in the Agent's opinion, necessary for the purpose of maintaining, altering, releasing or enforcing the Transaction Security, creating further Security for the benefit of the Secured Parties or for the purpose of settling the Bondholders' or the Issuer's rights to the Transaction Security, in each case in accordance with the terms of the Finance Documents.

## **11. Information to Bondholders**

### **11.1 Information from the Issuer**

- (a) The Issuer will make the following information available to the Bondholders by way of press release and by publication on the website of the Group:
  - (i) as soon as the same become available, but in any event within four (4) months after the end of each financial year, the audited consolidated financial statements of the Issuer Group and the annual audited unconsolidated financial statements of the Issuer, for that financial year;
  - (ii) as soon as the same become available, but in any event within two (2) months after the end of each quarter of its financial year, the Issuer Group's quarterly interim unaudited consolidated financial statements

and the quarterly interim unaudited unconsolidated reports of the Issuer, or the year-end report (as applicable) for such period;

- (iii) as soon as practicable following an acquisition or disposal of Bonds by a Group Company, the aggregate Nominal Amount held by Group Companies, or the amount of Bonds cancelled by the Issuer; and
  - (iv) any other information required by the Swedish Securities Markets Act (*lag 2007:582 om värdepappersmarkanden*) and the rules and regulations of the Regulated Market on which the Bonds are listed.
- (b) When the Bonds have been listed, the reports referred to in Clause 11.1(a)(ii) shall be prepared in accordance with IFRS and be made available in accordance with the rules and regulations of Nasdaq Stockholm (as amended from time to time) and the Swedish Securities Market Act (*lag (2007:582) om värdepappersmarknaden*).
- (c) The Issuer shall promptly notify the Bondholders and the Agent upon becoming aware of the occurrence of a Change of Control Event. Such notice may be given in advance of the occurrence of a Change of Control Event, conditioned upon the occurrence of such Change of Control Event, if a definitive agreement is in place providing for a Change of Control Event.
- (d) When the financial statements and other information are made available to the Bondholders pursuant to Clause 11.1(a), the Issuer shall send copies of such financial statements and other information to the Agent.
- (e) The Issuer shall submit a duly executed Compliance Certificate to the Agent:
- (i) in connection with the incurrence of Financial Indebtedness or the making of any Restricted Payment;
  - (ii) together with a Financial Report; and
  - (iii) at the Agent's request, within twenty (20) days from such request.
- (f) The Issuer shall promptly notify the Agent (with full particulars) upon becoming aware of the occurrence of any event or circumstance which constitutes:
- (i) an Event of Default, or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing) constitute an Event of Default;
  - (ii) a Mandatory Prepayment Event; or
  - (iii) a Total Loss Event, or any event that, by the passing of time or otherwise, is likely to result in a Total Loss Event,

and shall provide the Agent with such further information as it may reasonably request in writing following receipt of such notice. Should the Agent not receive

such information, the Agent is entitled to assume that no such event or circumstance exists or can be expected to occur, provided that the Agent does not have actual knowledge of such event or circumstance.

- (g) The Issuer is only obliged to inform the Agent according to this Clause 11.1 if informing the Agent would not conflict with any applicable laws or, when the Bonds are listed, the Issuer's registration contract with the Regulated Market. If such a conflict would exist pursuant to the listing contract with the Regulated Market or otherwise, the Issuer shall however be obliged to either seek approval from the Regulated Market or undertake other reasonable measures, including entering into a non-disclosure agreement with the Agent, in order to be able to timely inform the Agent according to this Clause 11.1.

## 11.2 Information from the Operator

The Operator shall make the following information available to the Bondholders and the Agent by way of by publication on the Issuer's website:

- (a) as soon as the same become available, but in any event within four (4) months after the end of each financial year, the annual audited unconsolidated financial statements of the Operator, including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from its board of directors, for that financial year;~~and~~
- (b) as soon as the same become available, but in any event within two (2) months after the end of each quarter of its financial year, the quarterly interim unaudited unconsolidated reports of the Operator, including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from its board of directors, for such period;~~;~~ and
- (c) also by way of press release, and as soon as the same become available, but in any event within two (2) months after the end of each quarter of its financial year, the quarterly interim unaudited unconsolidated reports of the Operator, including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from its board of directors, for such period (and including comparable figures for the corresponding period in 2019) for as long as the Temporary Maintenance Test is tested.

## 11.3 Information from the Agent

Subject to the restrictions of any applicable law or regulation, the Agent is entitled to disclose to the Bondholders any event or circumstance directly or indirectly relating to the Issuer or the Bonds. Notwithstanding the foregoing, the Agent may if it considers it to be beneficial to the interests of the Bondholders delay disclosure or refrain from disclosing certain information other than in respect of an Event of Default that has occurred and is continuing.

## 11.4 Publication of Finance Documents

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

## 12. Financial Undertakings

### 12.1 Maintenance Test

#### 12.1.1 The Maintenance Test and testing date

- (a) The Maintenance Test is met if:
  - (i) the Asset Cover Ratio is not less than 140 per cent. at any time;
  - (ii) the minimum amount of Cash in the Issuer is not less than the interest payable under the Bonds for the next three (3) calendar months; and
  - (iii) the Interest Coverage Ratio exceeds 1.10 at all times.
- (b) ~~The~~ Except as set out in paragraph (c) below, the Maintenance Test shall be tested on each Reference Date with respect to the Reference Period ending on such Reference Date. The first test date shall be 31 March 2018.
- (c) Notwithstanding the foregoing:
  - (i) the maintenance covenant (minimum Cash) set out in Clause 12.1.1(a)(ii) above shall not be tested on the Reference Dates falling on, and including, 31 March 2020 to, but excluding, 30 September 2021; and
  - (ii) the maintenance covenant (Interest Coverage Ratio) set out in Clause 12.1.1(a)(iii) above shall not be tested on the Reference Dates falling on, and including, 31 March 2020 to, but excluding, 31 December 2021.

#### 12.1.2 Equity Cure

- (a) If there is a breach of the Maintenance Test, no Event of Default will occur if, within ten Business Days of a delivery of a Compliance Certificate evidencing that breach, the Issuer has deposited an amount sufficient to ensure compliance with the Maintenance Test, as at the relevant test date (the "**Cure Amount**") on a bank account (the "**Cure Account**") pledged in favour of the bondholders and the Agent.
- (b) The Agent may at any time, upon the instruction by the bondholders, apply the deposited Cure Amount towards prepayment of the Bonds. Any such repayment shall be made with a premium on the due and payable amount at the Make Whole Amount (plus accrued and unpaid interest).

- (c) Upon a repayment of a Cure Amount or as long as any Cure Amount is deposited on the Cure Account, the calculation of the Adjusted Financial Indebtedness and/or Minimum Cash (as applicable) shall be adjusted so that the Adjusted Financial Indebtedness and/or the Minimum Cash (as applicable) for the Reference Period is reduced or increased (as applicable) with an amount equal to the Cure Amount.
- (d) Upon a repayment of a Cure Amount or as long as any Cure Amount is deposited on the Cure Account, the calculation of the Interest Coverage Ratio shall be adjusted so that the Net Finance Charges for the Reference Period is reduced with an amount equal to the Cure Amount, multiplied with the average interest rate paid by the Issuer under the Bonds after taken into account payments and receipt under the hedging arrangements during the previous twelve (12) month period. Any Equity Cure shall for the calculation of Interest Coverage Ratio be counted in any calendar quarter shall be included in the Maintenance Test calculations until such time as that calendar quarter falls outside the Reference Period.
- (e) Any Equity Cure counted in any calendar quarter shall be included in the Maintenance Test calculations until such time as that calendar quarter falls outside the Reference Period.
- (f) Any Equity Cure must be made in cash and no more than two (2) Equity Cures are to be made over the life of the Bonds. Equity Cures may not be injected in respect of any consecutive 12 month-period.

## **12.2 Temporary Maintenance Test**

### **12.2.1 Temporary Maintenance Test and testing date**

- (a) The Temporary Maintenance Test is met if:
  - (i) Operator EBITDA for the Quarterly Reference Period ending on 31 December 2020 exceeds 50 per cent. of Operator EBITDA for the Quarterly Reference Period ended on 31 December 2019;
  - (ii) Operator EBITDA for the Quarterly Reference Period ending on 31 March 2021 exceeds 60 per cent. of Operator EBITDA for the Quarterly Reference Period ended on 31 March 2019;
  - (iii) Operator EBITDA for the Quarterly Reference Period ending on 30 June 2021 exceeds 70 per cent. of Operator EBITDA for the Quarterly Reference Period ended on 30 June 2019; and
  - (iv) Operator EBITDA for the Quarterly Reference Period ending on 30 September 2021 exceeds 80 per cent. of Operator EBITDA for the Quarterly Reference Period ended on 30 September 2019.
- (b) The Temporary Maintenance Test shall be tested on each Temporary Reference Date with respect to the Quarterly Reference Period ending on such Temporary Reference Date. The first test date shall be 31 December 2020.

### 12.2.2 Operator Equity Cure

- (a) If there is a breach of the Temporary Maintenance Test, no Event of Default will occur if, within fifteen (15) Business Days from the delivery of a Compliance Certificate evidencing a breach of the Temporary Maintenance Test, the Operator has received an equity injection in cash in the form of an unconditional shareholder contribution or a subordinated shareholder loan in an amount sufficient to ensure compliance with the Temporary Maintenance Test (the "Operator Cure Amount").
- (b) Calculation of Operator EBITDA for the relevant Quarterly Reference Period shall be adjusted so that the Operator EBITDA for the Quarterly Reference Period is increased with an amount equal to the Operator Cure Amount. For the avoidance of doubt, an Operator Cure Amount may only be used towards curing Operator EBITDA for the relevant Quarterly Reference Period and may not be carried forward.

### 12.3 **12.2 Incurrence test**

- (a) The Incurrence Test is met if:
  - (i) the Asset Cover Ratio is not less than 150 per cent.;
  - (ii) the Interest Coverage Ratio exceeds 1.25; and
  - (iii) no Event of Default is continuing or would occur upon the incurrence.
- (b) The calculation of the ratio of Asset Cover Ratio shall be made as per a testing date determined by the Issuer, falling no more than one month prior to the incurrence of the new Financial Indebtedness or the distribution of the Restricted Payment. The Adjusted Financial Indebtedness shall be measured on the relevant testing date so determined, but include the new Financial Indebtedness provided it is an interest bearing obligation (however, any cash balance resulting from the incurrence of the new Financial Indebtedness shall not reduce the Adjusted Financial Indebtedness).
- (c) When the Interest Coverage Ratio is measured under the Incurrence Test, as applicable, the calculation of the Interest Coverage Ratio shall be made for the Reference Period ending on the last day of the period covered by the most recent financial statements.

## **13. General Undertakings**

### **13.1 General**

The Issuer undertakes to (and shall, where applicable, procure that each other Group Company will) comply with the undertakings set out in this Clause 13 for as long as any Bonds remain outstanding.

## 13.2 Distributions

- (a) No Restricted Obligor shall, and shall procure that none of its wholly-owned Subsidiaries will,
  - (i) pay any dividend in respect of its shares (other than to the Issuer or any of its wholly-owned Subsidiaries;
  - (ii) repurchase or redeem any of its own shares;
  - (iii) redeem or reduce its share capital or other restricted or unrestricted equity with repayment to shareholders;
  - (iv) repay any Shareholder Loans or pay interest thereon;
  - (v) make any prepayments or repayments under any long-term debt ranking junior or *pari passu* with the Bonds;
  - (vi) grant any loans except to Group Companies; or
  - (vii) make any other similar distribution or transfers of value to any Restricted Obligor's, or the Subsidiaries', direct and indirect shareholders or the Affiliates of such direct and indirect shareholders (other than to the Restricted Obligors),

(items (i)-(vii) above are together and individually referred to as a "**Restricted Payment**").
- (b) Notwithstanding paragraph (a), a Restricted Payment may be made by Holdings and/or the Issuer:
  - (i) to pay management fees and interest on Shareholder Loans up to an aggregate amount not exceeding EUR 750,000 in any financial year provided that the Incurrence Test is met (calculated on a *pro forma* basis including the relevant Restricted Payment); or
  - (ii) if:
    - (A) the Incurrence Test is met (calculated on a *pro forma* basis including the relevant Restricted Payment); and
    - (B) the aggregate amount of all Restricted Payments of the Issuer does not, in any financial year, exceed 30 per cent. of an amount equal to the Excess Cashflow of the Issuer Group (for the previous financial year) less (A) any management fees and interest paid on Shareholder Loans pursuant to paragraph (a) above during the current financial year, and less (B) an amount equivalent to 0.25 x the Net Finance Charges (for the previous year).

### 13.3 Nature of Business

Each Obligor shall procure that no substantial change is made to the general nature of the business carried on by it or any other member of the Group as of the First Issue Date if such substantial change would have a Material Adverse Effect.

### 13.4 Financial Indebtedness

No Restricted Obligor shall, and shall procure that no other Group Company will, incur any Financial Indebtedness, provided however that:

- (a) the Issuer and the Operator and/or any of their respective Subsidiaries have a right to incur Financial Indebtedness that constitute Permitted Debt; and
- (b) Holdings may incur Financial Indebtedness under the Shareholder Loans.

### 13.5 Ownership of Barge

The Issuer shall remain a 100 per cent. direct ownership and control over the Barge, provided that it may carry out a sale subject to Clause 9.45 (*Mandatory total redemption*).

### 13.6 Dealings with Related Parties

Each Restricted Obligor shall, and shall procure that its Subsidiaries will, conduct all dealings with the direct and indirect shareholders of the Group Companies (excluding other Group Companies) and/or any Affiliates of such direct and indirect shareholders at arm's length terms and for fair market value.

### 13.7 Negative Pledge

- (a) No Restricted Obligor shall, and shall procure that no other Group Company will, provide, prolong or renew any security over any of its/their assets (present or future) to secure any loan or other indebtedness, provided however that the Group Companies have a right to (i) provide, prolong and renew any Permitted Security, and (ii) retain, but not prolong or renew, any existing security in relation to indebtedness held by an entity acquired by a Group Company.
- (b) The Unrestricted Guarantor shall not provide, prolong or renew any security over any shares in Holdings other than under the Finance Documents.
- (c) Notwithstanding the foregoing, no Restricted Obligor shall, and shall procure that no other Group Company will, provide, prolong or renew any security over any of its/their assets (present or future) to secure Governmental Support.

### 13.8 Mergers and Demergers

- (a) No Obligor shall, and shall procure that none of its Subsidiaries, enter into a merger or demerger if such merger or demerger is likely to have a Material Adverse Effect, provided that the Unrestricted Guarantor may at all times merge



with Sunborn London Oy if, following such merger, the Unrestricted Guarantor is the surviving entity.

- (b) No Obligor shall enter into a merger where it is not the surviving entity and no Obligor shall enter into a demerger.

### 13.9 Admission to trading

- (a) The Issuer shall ensure that the Initial Bonds are listed at the corporate bond list on Nasdaq Stockholm not later than twelve (12) months after the First Issue Date and shall take all measures required to ensure that the Bonds, once listed on Nasdaq Stockholm, continue being listed on Nasdaq Stockholm for as long as any Bond is outstanding (however, taking into account the rules and regulations of Nasdaq Stockholm and the CSD (as amended from time to time) preventing trading in the Bonds in close connection to the redemption of the Bonds).
- (b) Upon any Subsequent Bond issue later than twelve (12) months from the First Issue Date, the Issuer shall promptly, but not later than ten (10) Business Days after the relevant issue date, procure that the volume of Bonds listed is increased accordingly.

### 13.10 Material Documents

- (a) ~~Each~~ Except as set out in paragraph (c) below, each Restricted Obligor shall and shall procure that each of its Subsidiaries will:
  - (i) perform and observe in all material respects with its undertakings under the Material Documents to which it is a party; and
  - (ii) take any and all action as may be reasonably necessary promptly to enforce its rights and to collect any and all sums due to it under such Material Documents.
- (b) ~~No~~ Except as set out in paragraph (c) below, no Restricted Obligor shall amend or waive any term of any Material Document if such amendment or waiver would have a Material Adverse Effect.
- (c) Each Restricted Obligor may agree on temporary amendments and waivers under the Bareboat Agreement and the Mooring Licence Agreement (as applicable) to allow suspension of performance under such agreements with effect to and including 31 December 2020.
- (d) ~~(c)~~ No Restricted Obligor shall agree to or permit the assignment of any rights or the delegation of any obligations under the Material Documents.

### 13.11 Investments

No Restricted Obligor shall make any investments or capital expenditures other than solely related to the ownership of the Barge, and only where such investments or capital expenditures are in the ordinary course of business or otherwise fully pre-funded by equity or loans subordinated under the Subordination Agreement.

## 13.12 Accounts

### 13.12.1 The Operating Accounts

- (a) Subject to paragraph (b) below, the Issuer shall establish and maintain an operating account and procure that the Operator establishes and maintains an operating account (the "**Operating Accounts**") and shall procure that all their respective net earnings and any payments relating to the Barge shall be paid to its respective Operating Account. The Issuer and the Operator may withdraw funds standing to the credit of its Operating Account until the occurrence of an Event of Default.
- (b) If, and for as long as, the aggregate amount standing to the credit of the Operating Accounts is at least GBP 1,200,000, the Issuer shall procure that all its excess net earnings and any payments relating to the Barge shall be paid to the Bonds Buy Back Account.

### 13.12.2 The Reserve Account

- (a) The Issuer shall establish and maintain a reserve account (the "**Reserve Account**"), into which the Issuer shall ensure that from the First Issue Date, an amount equal to 1/3 of the next Interest Payment shall be paid on a monthly basis. The Reserve Account shall be pledged and blocked in favour of the Agent, save for interest payments to be paid in accordance with the terms of the Bonds.
- (b) Five (5) Business Days prior to each Interest Payment Date, the Issuer shall request the Agent to release an amount equal to the amount payable on that Interest Payment Date by instructing the bank to transfer such amount from the Reserve Account to the Issuer's account affiliated with the CSD. The Agent shall give the bank such instructions no later than two (2) Business Days prior to the relevant Interest Payment Date.

### 13.12.3 The Bonds Buy Back Account

The Issuer shall establish and maintain a bonds buy back account (the "**Bonds Buy Back Account**") pledged in favour of the Agent. With the Agent's written consent, the Issuer may withdraw funds standing to the credit of the Bonds Buy Back Account for the purpose of repurchasing Bonds in accordance with these Terms and Conditions.

### 13.12.4 The Excess Proceeds Account

- (a) The Issuer shall establish and maintain an excess proceeds account (the "**Excess Proceeds Account**") into which all the excess proceeds from the Net Proceeds shall be transferred after refinancing of the Refinancing Debt have been made.
- (b) The Issuer may withdraw funds standing to the credit of the Excess Proceeds Account until the occurrence of an Event of Default.

### **13.13 Flag Name and Registration**

Each Obligor shall ensure that the Barge remains registered in the Finnish ship registry. No Obligor shall cause the flag, name or registry of the Barge to be changed, or register the Barge simultaneously in more than one registry, without the prior written consent of the Agent.

### **13.14 Inspection**

Upon request of the Agent, the Obligors shall arrange for the Agent, and/or any persons appointed by the Agent, to undertake a technical inspection of the Barge without interference of the daily operation of the Barge and at the expense of the Issuer (however limited to one yearly inspection at the expense of the Issuer unless an Event of Default has occurred and is continuing).

### **13.15 Maintenance**

Each Obligor shall procure:

- (a) that the Barge is kept in a good and safe condition and state of repair consistent with first class ownership and industry standards; and
- (b) compliance with all relevant environmental laws and regulations, as well as any other laws or regulations.

### **13.16 Modifications**

No Obligor shall cause any substantial modifications, refurbishment and upgrade to the Barge or its dimensions, functions, machinery and equipment if such modification is likely to have a material adverse impact on the value of the Barge.

### **13.17 Insurance**

- (a) Each Obligor shall procure that the Barge is adequately insured against such risks and in such amounts as per industry standards and otherwise as reasonably required by and placed or entered with a reputable insurer, reputable broker or P&I clubs of financial standing, including without limitation:
  - (i) war risk;
  - (ii) Hull & Machinery and Hull Interest (and (i) and/or (ii) to include coverage for terrorism);
  - (iii) P&I insurance (including pollution) and (to the extent relevant) any other third party liability insurance as per industry standards;
  - (iv) business interruption insurance; and
  - (v) any additional insurance required under any law.

- (b) The amounts in respect of each of (i) and (ii) in paragraph (a) shall be equal to the higher of:
  - (i) the full market value of the Barge; and
  - (ii) at least 120 per cent. of the Nominal Amount,
 and each of the deductible amount in respect of claims and the loss payable amount shall in each event not exceed fair market terms for any one occurrence or such higher amount as the Agent (acting on the instructions of the bondholders) otherwise agrees.
- (c) The Agent shall be named as an additional assured and as exclusive loss payee on the relevant insurances. In addition the Issuer shall reimburse any premium for Mortgagee Interest Insurance (Mil) up to 120 per cent. of the outstanding amount under the Finance Documents. Any Mortgagee Additional Perils Insurance shall be at the discretion of the Issuer.
- (d) The insurances and loss payee clause shall be in accordance with the Nordic Marine Insurance Plan of 2013, London market terms or other insurances regulations with no less favourable terms.
- (e) Not later than seven (7) calendar days prior to the expiry date of the relevant insurances, the Issuer shall deliver to the Agent a certificate from the insurance broker(s) through whom the insurances relevant to the Barge have been placed, evidencing that all insurances referred to above have been renewed and taken out in respect of the Barge with insurance values as set out above, that such insurances are in full force and effect and that the interests of the Agent (on behalf of the Bondholders) therein have been noted by the relevant insurers.
- (f) Each Obligor shall procure that the Barge is always employed in conformity with the terms of the insurance (including any expressed or implied warranties) and shall comply with any requirements as to extra premium or otherwise as the insurers may prescribe.
- (g) If a Total Loss Event occurs, the Issuer shall, to the extent and as soon as possible obtain and present to the Agent a written confirmation from the relevant insurers that the claim relating to the Total Loss Event has been accepted in full, and the insurance proceeds shall be paid to the Agent (on behalf of the Bondholders) and applied in accordance with Clause 9.45 (*Mandatory total redemption*).

## 14. Events of Default and Acceleration of the Bonds

Each of the events or circumstances set out in this Clause 14 (other than Clause 14.102 (*Acceleration of the Bonds*)) is an Event of Default.

#### 14.1 Non-Payment

The Issuer fails to pay an amount on the date it is due in accordance with the Finance Documents unless its failure to pay is caused by administrative or technical error and payment is made within five (5) Business Days of the due date.

#### 14.2 Maintenance Test

The Issuer has failed to comply with the Maintenance Test, provided that an Equity Cure has not remedied such failure.

#### 14.3 Temporary Maintenance Test

The Issuer has failed to procure that the Operator comply with the Temporary Maintenance Test, provided that an Operator Equity Cure has not remedied such failure.

#### 14.4 ~~14.3~~ Other Obligations

The Issuer does not comply with the Finance Documents, in any other way than as set out under Clause 14.1 (*Non-Payment*) ~~and~~, Clause 14.2 (*Maintenance Test*) and Clause 14.3 (*Temporary Maintenance Test*), provided that the Agent has requested the Issuer in writing to remedy such failure and the Issuer has not remedied the failure within twenty (20) Business Days from such request. However, if the failure or violation is not capable of being remedied, the Agent may declare the Bonds payable without such prior written request.

#### 14.5 ~~14.4~~ Cross-Acceleration

Any Financial Indebtedness of a Group Company is not paid when due as extended by any originally applicable grace period, or is declared to be due and payable prior to its specified maturity as a result of an event of default (however described), provided that no Event of Default will occur under this Clause 14.4 (*Cross-Acceleration*) if the aggregate amount of Financial Indebtedness that has fallen due is less than EUR 100,000 and provided that it does not apply to any Financial Indebtedness owed to a Group Company.

#### 14.6 ~~14.5~~ Insolvency

If:

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

#### 14.7 ~~14.6~~ Insolvency Proceedings

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

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

#### 14.8 ~~14.7~~ Creditors' Process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Group Company having an aggregate value of an amount equal to or exceeding EUR 100,000 and is not discharged within sixty (60) days.

#### 14.9 ~~14.8~~ Impossibility or Illegality

It is or becomes impossible or unlawful for the Issuer to fulfil or perform any of the provisions of the Finance Documents or if the obligations under the Finance Documents are not, or cease to be, legal, valid, binding and enforceable.

#### 14.10 ~~14.9~~ Continuation of the Business

- (a) ~~The Subject to paragraph (b) below, the~~ Issuer or any other Group Company ceases to carry on its business if such discontinuation is likely to have a Material Adverse Effect.
- (b) Paragraph (a) shall not apply for the period from, and including, 1 January 2020 to, and including, 31 December 2020.

#### 14.11 Parent Undertaking

The Parent fails to comply with the Parent Undertaking and the Parent has not remedied the failure within twenty (20) Business Days from the date of such failure.

#### 14.12 ~~14.10~~ Acceleration of the Bonds

- (a) Upon the occurrence of an Event of Default which is continuing, the Agent is entitled to, and shall following an instruction given pursuant to Clause 14.10~~2~~(d), on behalf of the Bondholders (i) by notice to the Issuer, declare all, but not some only, of the outstanding Bonds due and payable

together with any other amounts payable under the Finance Documents, immediately or at such later date as the Agent determines, and (ii) exercise any or all of its rights, remedies, powers and discretions under the Finance Documents.

- (b) The Agent may not accelerate the Bonds in accordance with Clause 14.102(a) by reference to a specific Event of Default if it is no longer continuing or if it has been decided, on a Bondholders Meeting or by way of a Written Procedure, to waive such Event of Default (temporarily or permanently).
- (c) The Agent shall notify the Bondholders of an Event of Default within five (5) Business Days of the date on which the Agent received actual knowledge of that an Event of Default has occurred and is continuing. The Agent shall, within twenty (20) Business Days of the date on which the Agent received actual knowledge of that an Event of Default has occurred and is continuing, decide if the Bonds shall be so accelerated. If the Agent decides not to accelerate the Bonds, the Agent shall promptly seek instructions from the Bondholders in accordance with Clause 16 (*Decisions by Bondholders*). The Agent shall always be entitled to take the time necessary to consider whether an occurred event constitutes an Event of Default.
- (d) If the Bondholders instruct the Agent to accelerate the Bonds, the Agent shall promptly declare the Bonds due and payable and take such actions as may, in the opinion of the Agent, be necessary or desirable to enforce the rights of the Bondholders under the Finance Documents, unless the relevant Event of Default is no longer continuing.
- (e) If the right to accelerate the Bonds is based upon a decision of a court of law or a government authority, it is not necessary that the decision has become enforceable under law or that the period of appeal has expired in order for cause of acceleration to be deemed to exist.
- (f) In the event of an acceleration of the Bonds in accordance with this Clause 14.102, the Issuer shall redeem all Bonds at an amount per Bond together with a premium on the due and payable amount at the Make Whole Amount (plus accrued and unpaid interest).

## 15. Distribution of Proceeds

- (a) All payments by the Issuer relating to the Bonds and the Finance Documents following an acceleration of the Bonds in accordance with Clause 14 (*Events of Default and Acceleration of the Bonds*) and any proceeds received from an enforcement of the Transaction Security shall be distributed in the following order of priority, in accordance with the instructions of the Agent:
  - (i) *first*, in or towards payment *pro rata* of (i) all unpaid fees, costs, expenses and indemnities payable by the Issuer to the Agent in accordance with the Agency Agreement (other than any indemnity given for liability against the Bondholders), (ii) other costs, expenses and indemnities relating to the acceleration of the Bonds, the enforcement

of the Transaction Security or the protection of the Bondholders' rights as may have been incurred by the Agent, (iii) any costs incurred by the Agent for external experts that have not been reimbursed by the Issuer in accordance with Clause 20.2(g), and (iv) any costs and expenses incurred by the Agent in relation to a Bondholders' Meeting or a Written Procedure that have not been reimbursed by the Issuer in accordance with Clause 16(c);

- (ii) *secondly*, in or towards payment *pro rata* of accrued but unpaid Interest under the Bonds (Interest due on an earlier Interest Payment Date to be paid before any Interest due on a later Interest Payment Date);
- (iii) *thirdly*, in or towards payment *pro rata* of any unpaid principal under the Bonds;
- (iv) *fourthly*, in or towards payment *pro rata* of any other costs or outstanding amounts unpaid under the Finance Documents; and
- (v) *fifthly*, but only in respect of proceeds received from an enforcement of the mortgage over the Barge, to the Second Priority Mortgage Holder.

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

- (b) If a Bondholder or another party has paid any fees, costs, expenses or indemnities referred to in Clause 15(a)(i), such Bondholder or other party shall be entitled to reimbursement by way of a corresponding distribution in accordance with Clause 15(a)(i).
- (c) Funds that the Agent receives (directly or indirectly) in connection with the acceleration of the Bonds or the enforcement of the Transaction Security constitute escrow funds (*redovisningsmedel*) and must be held on a separate interest-bearing account on behalf of the Bondholders and the other interested parties. The Agent shall arrange for payments of such funds in accordance with this Clause 15 as soon as reasonably practicable.
- (d) If the Issuer or the Agent shall make any payment under this Clause 15, the Issuer or the Agent, as applicable, shall notify the Bondholders of any such payment at least fifteen (15) Business Days before the payment is made. Such notice shall specify the Record Date, the payment date and the amount to be paid. Notwithstanding the foregoing, for any Interest due but unpaid the Record Date specified in Clause 7(a) shall apply.

## **16. Decisions by Bondholders**

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



- (b) Any request from the Issuer or a Bondholder (or Bondholders) representing at least ten (10) per cent. of the Adjusted Nominal Amount (such request may only be validly made by a person who is a Bondholder on the Business Day immediately following the day on which the request is received by the Agent and shall, if made by several Bondholders, be made by them jointly) for a decision by the Bondholders on a matter relating to the Finance Documents shall be directed to the Agent and dealt with at a Bondholders' Meeting or by way a Written Procedure, as determined by the Agent. The person requesting the decision may suggest the form for decision making, but if it is in the Agent's opinion more appropriate that a matter is dealt with at a Bondholders' Meeting than by way of a Written Procedure, it shall be dealt with at a Bondholders' Meeting.
- (c) The Agent may refrain from convening a Bondholders' Meeting or instigating a Written Procedure if (i) the suggested decision must be approved by any person in addition to the Bondholders and such person has informed the Agent that an approval will not be given, or (ii) the suggested decision is not in accordance with applicable laws.
- (d) Only a person who is, or who has been provided with a power of attorney pursuant to Clause 6 (*Right to Act on Behalf of a Bondholder*) from a person who is, registered as a Bondholder:
  - (i) on the Record Date prior to the date of the Bondholders' Meeting, in respect of a Bondholders' Meeting, or
  - (ii) on the Business Day specified in the communication pursuant to Clause 18(c), in respect of a Written Procedure,

may exercise voting rights as a Bondholder at such Bondholders' Meeting or in such Written Procedure, provided that the relevant Bonds are included in the definition of Adjusted Nominal Amount.
- (e) The following matters shall require the consent of Bondholders representing at least sixty-six and two thirds (66 2/3) per cent. of the Adjusted Nominal Amount for which Bondholders are voting at a Bondholders' Meeting or for which Bondholders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 18(c):
  - (i) any amendments to paragraphs (a), (e), (f) or (g) of Clause 2 (Status of the Bonds);
  - (ii) any amendments to Clauses 9.34 (Voluntary total redemption (call option)) to and including 9.56 (Early redemption due to tax event (call option));
  - (iii) waive a breach of or amend an undertaking set out in Clause 13 (*General Undertakings*);
  - (iv) release the security provided under the Security Documents;

- (v) reduce the principal amount, interest rate or interest amount which shall be paid by the Issuer;
  - (vi) amend any payment day for principal or interest amount or waive any breach of a payment undertaking, or
  - (vii) amend the provisions regarding the majority requirements under the Terms and Conditions.
- (f) Any matter not covered by Clause 16(e) shall require the consent of Bondholders representing more than 50 per cent. of the Adjusted Nominal Amount for which Bondholders are voting at a Bondholders' Meeting or for which Bondholders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 18(c). This includes, but is not limited to, any amendment to, or waiver of, the terms of any Finance Document that does not require a higher majority (other than an amendment permitted pursuant to Clause 19(a)(i) or (19(a)(ii))), an acceleration of the Bonds or the enforcement of any Transaction Security.
- (g) Quorum at a Bondholders' Meeting or in respect of a Written Procedure only exists if a Bondholder (or Bondholders) representing at least fifty (50) per cent. of the Adjusted Nominal Amount in case of a matter pursuant to Clause 16(e), and otherwise twenty (20) per cent. of the Adjusted Nominal Amount:
  - (i) if at a Bondholders' Meeting, attend the meeting in person or by telephone conference (or appear through duly authorised representatives); or
  - (ii) if in respect of a Written Procedure, reply to the request.
- (h) If a quorum does not exist at a Bondholders' Meeting or in respect of a Written Procedure, the Agent or the Issuer shall convene a second Bondholders' Meeting (in accordance with Clause 17(a)) or initiate a second Written Procedure (in accordance with Clause 18(a)), as the case may be, provided that the relevant proposal has not been withdrawn by the person(s) who initiated the procedure for Bondholders' consent. The quorum requirement in Clause 16(g) shall not apply to such second Bondholders' Meeting or Written Procedure.
- (i) Any decision which extends or increases the obligations of the Issuer or the Agent, or limits, reduces or extinguishes the rights or benefits of the Issuer or the Agent, under the Finance Documents shall be subject to the Issuer's or the Agent's consent, as appropriate.
- (j) A Bondholder holding more than one Bond need not use all its votes or cast all the votes to which it is entitled in the same way and may in its discretion use or cast some of its votes only.
- (k) The Issuer may not, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Bondholder for or as inducement to any consent under these Terms and Conditions, unless such consideration is

offered to all Bondholders that consent at the relevant Bondholders' Meeting or in a Written Procedure within the time period stipulated for the consideration to be payable or the time period for replies in the Written Procedure, as the case may be.

- (l) A matter decided at a duly convened and held Bondholders' Meeting or by way of Written Procedure is binding on all Bondholders, irrespective of them being present or represented at the Bondholders' Meeting or responding in the Written Procedure. The Bondholders that have not adopted or voted for a decision shall not be liable for any damages that this may cause other Bondholders.
- (m) All costs and expenses incurred by the Issuer or the Agent for the purpose of convening a Bondholders' Meeting or for the purpose of carrying out a Written Procedure, including reasonable fees to the Agent, shall be paid by the Issuer.
- (n) If a decision shall be taken by the Bondholders on a matter relating to the Finance Documents, the Issuer shall promptly at the request of the Agent provide the Agent with a certificate specifying the number of Bonds owned by Group Companies or (to the knowledge of the Issuer) Affiliates, irrespective of whether such person is directly registered as owner of such Bonds. The Agent shall not be responsible for the accuracy of such certificate or otherwise be responsible to determine whether a Bond is owned by a Group Company or an Affiliate.
- (o) Information about decisions taken at a Bondholders' Meeting or by way of a Written Procedure shall promptly be sent by notice to the Bondholders and published on the website of the Issuer and the Agent, provided that a failure to do so shall not invalidate any decision made or voting result achieved. The minutes from the relevant Bondholders' Meeting or Written Procedure shall at the request of a Bondholder be sent to it by the Issuer or the Agent, as applicable.

## **17. Bondholders' Meeting**

- (a) The Agent shall convene a Bondholders' Meeting by sending a notice thereof to each Bondholder no later than five (5) Business Days after receipt of a request from the Issuer or the Bondholder(s) (or such later date as may be necessary for technical or administrative reasons).
- (b) Should the Issuer want to replace the Agent, it may convene a Bondholders' Meeting in accordance with Clause 17(a) with a copy to the Agent. After a request from the Bondholders pursuant to Clause 20.4(c), the Issuer shall no later than five (5) Business Days after receipt of such request (or such later date as may be necessary for technical or administrative reasons) convene a Bondholders' Meeting in accordance with Clause 17(a).
- (c) The notice pursuant to Clause 17(a) shall include (i) time for the meeting, (ii) place for the meeting, (iii) agenda for the meeting (including each request for a decision by the Bondholders) and (iv) a form of power of attorney. Only matters

that have been included in the notice may be resolved upon at the Bondholders' Meeting. Should prior notification by the Bondholders be required in order to attend the Bondholders' Meeting, such requirement shall be included in the notice.

- (d) The Bondholders' Meeting shall be held no earlier than fifteen (15) Business Days and no later than thirty (30) Business Days from the notice.
- (e) Without amending or varying these Terms and Conditions, the Agent may prescribe such further regulations regarding the convening and holding of a Bondholders' Meeting as the Agent may deem appropriate. Such regulations may include a possibility for Bondholders to vote without attending the meeting in person.

## **18. Written Procedure**

- (a) The Agent shall instigate a Written Procedure (which may be conducted electronically in a manner determined by the Agent) no later than five (5) Business Days after receipt of a request from the Issuer or the Bondholder(s) (or such later date as may be necessary for technical or administrative reasons) by sending a communication to each such person who is registered as a Bondholder on the Business Day prior to the date on which the communication is sent.
- (b) Should the Issuer want to replace the Agent, it may send a communication in accordance with Clause 18(a) to each Bondholder with a copy to the Agent.
- (c) A communication pursuant to Clause 18(a) shall include (i) each request for a decision by the Bondholders, (ii) a description of the reasons for each request, (iii) a specification of the Business Day on which a person must be registered as a Bondholder in order to be entitled to exercise voting rights, (iv) instructions and directions on where to receive a form for replying to the request (such form to include an option to vote yes or no for each request) as well as a form of power of attorney, and (v) the stipulated time period within which the Bondholder must reply to the request (such time period to last at least fifteen (15) Business Days from the communication pursuant to Clause 18(a)). If the voting shall be made electronically, instructions for such voting shall be included in the communication.
- (d) When the requisite majority consents of the total Adjusted Nominal Amount pursuant to Clauses 16(e) and 16(f) have been received in a Written Procedure, the relevant decision shall be deemed to be adopted pursuant to Clause 16(e) or 16(f), as the case may be, even if the time period for replies in the Written Procedure has not yet expired.

## **19. Amendments and Waivers**

- (a) The Issuer and the Agent (acting on behalf of the Bondholders) may agree to amend the Finance Documents or waive any provision in a Finance Document, provided that:

- (i) such amendment or waiver is not detrimental to the interest of the Bondholders, or is made solely for the purpose of rectifying obvious errors and mistakes;
  - (ii) such amendment or waiver is required by applicable law, a court ruling or a decision by a relevant authority; or
  - (iii) such amendment or waiver has been duly approved by the Bondholders in accordance with Clause 16 (*Decisions by Bondholders*).
- (b) The consent of the Bondholders is not necessary to approve the particular form of any amendment to the Finance Documents. It is sufficient if such consent approves the substance of the amendment.
- (c) The Agent shall promptly notify the Bondholders of any amendments or waivers made in accordance with Clause 19(a), setting out the date from which the amendment or waiver will be effective, and ensure that any amendments to the Finance Documents are published in the manner stipulated in Clause 11.4 (*Publication of Finance Documents*). The Issuer shall ensure that any amendments to the Finance Documents are duly registered with the CSD and each other relevant organisation or authority.
- (d) An amendment to the Finance Documents shall take effect on the date determined by the Bondholders Meeting, in the Written Procedure or by the Agent, as the case may be.

## **20. Appointment and Replacement of the Agent**

### **20.1 Appointment of Agent**

- (a) By subscribing for Bonds, each initial Bondholder appoints the Agent to act as its agent in all matters relating to the Bonds and the Finance Documents, and authorises the Agent to act on its behalf (without first having to obtain its consent, unless such consent is specifically required by these Terms and Conditions) in any legal or arbitration proceedings relating to the Bonds held by such Bondholder including any legal or arbitration proceeding relating to the perfection, preservation, protection or enforcement of the Transaction Security.
- (b) By acquiring Bonds, each subsequent Bondholder confirms the appointment and authorisation for the Agent to act on its behalf, as set forth in Clause 20.1(a).
- (c) Each Bondholder shall immediately upon request provide the Agent with any such documents, including a written power of attorney (in form and substance satisfactory to the Agent), that the Agent deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents. The Agent is under no obligation to represent a Bondholder which does not comply with such request.
- (d) The Issuer shall promptly upon request provide the Agent with any documents and other assistance (in form and substance satisfactory to the Agent), that the

Agent, deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents.

- (e) The Agent is entitled to fees for its work and to be indemnified for costs, losses and liabilities on the terms set out in the Finance Documents and the Agency Agreement and the Agent's obligations as Agent under the Finance Documents are conditioned upon the due payment of such fees and indemnifications.
- (f) The Agent may act as agent or Agent for several issues of securities issued by or relating to the Issuer and other Group Companies notwithstanding potential conflicts of interest.

## **20.2 Duties of the Agent**

- (a) The Agent shall represent the Bondholders in accordance with the Finance Documents, including, inter alia, holding the Transaction Security pursuant to the Security Documents on behalf of the Bondholders and, where relevant, enforcing the Transaction Security on behalf of the Bondholders. The Agent is not responsible for the content, valid execution, legal validity or enforceability of the Finance Documents or the perfection of the Transaction Security.
- (b) When acting in accordance with the Finance Documents, the Agent is always acting with binding effect on behalf of the Bondholders. The Agent shall carry out its duties under the Finance Documents in a reasonable, proficient and professional manner, with reasonable care and skill.
- (c) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature and the Agent only acts in accordance with the Finance Documents and upon instructions from the Bondholders, unless otherwise set out in the Finance Documents. In particular, the Agent is not acting as an advisor (whether legal, financial or otherwise) to the Bondholders or any other Person.
- (d) The Agent is not obligated to assess or monitor the financial condition of the Issuer or compliance by the Issuer of the terms of the Finance Documents unless to the extent expressly set out in the Finance Documents, or to take any steps to ascertain whether any Event of Default (or any event that may lead to an Event of Default) has occurred. Until it has actual knowledge to the contrary, the Agent is entitled to assume that no Event of Default (or any event that may lead to an Event of Default) has occurred.
- (e) The Agent is entitled to delegate its duties to other professional parties, but the Agent shall remain liable for the actions of such parties under the Finance Documents.
- (f) The Agent shall treat all Bondholders equally and, when acting pursuant to the Finance Documents, act with regard only to the interests of the Bondholders and shall not be required to have regard to the interests or to act upon or comply with any direction or request of any other person, other than as explicitly stated in the Finance Documents.

- (g) The Agent is entitled to engage external experts when carrying out its duties under the Finance Documents. The Issuer shall on demand by the Agent pay all costs for external experts engaged after the occurrence of an Event of Default, or for the purpose of investigating or considering (i) an event which the Agent reasonably believes is or may lead to an Event of Default or (ii) a matter relating to the Issuer or the Transaction Security which the Agent reasonably believes may be detrimental to the interests of the Bondholders under the Finance Documents. Any compensation for damages or other recoveries received by the Agent from external experts engaged by it for the purpose of carrying out its duties under the Finance Documents shall be distributed in accordance with Clause 15 (*Distribution of Proceeds*).
- (h) Notwithstanding any other provision of the Finance Documents to the contrary, the Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation.
- (i) If in the Agent's reasonable opinion the cost, loss or liability which it may incur (including reasonable fees to the Agent) in complying with instructions of the Bondholders, or taking any action at its own initiative, will not be covered by the Issuer, the Agent may refrain from acting in accordance with such instructions, or taking such action, until it has received such funding or indemnities (or adequate Security has been provided therefore) as it may reasonably require.
- (j) Unless it has actual knowledge to the contrary, the Agent may assume that all information provided by or on behalf of the Issuer (including, by its advisors) is correct, true and complete in all aspects.
- (k) The Agent shall give a notice to the Bondholders (i) before it ceases to perform its obligations under the Finance Documents by reason of the non-payment by the Issuer of any fee or indemnity due to the Agent under the Finance Documents or the Agency Agreement or (ii) if it refrains from acting for any reason described in Clause 20.2(i).

### **20.3 Limited liability for the Agent**

- (a) The Agent will not be liable to the Bondholders for damage or loss caused by any action taken or omitted by it under or in connection with any Finance Document, unless directly caused by its negligence or wilful misconduct. The Agent shall never be responsible for indirect loss.
- (b) The Agent shall not be considered to have acted negligently if it has acted in accordance with advice from or opinions of reputable external experts engaged by the Agent or if the Agent has acted with reasonable care in a situation when the Agent considers that it is detrimental to the interests of the Bondholders to delay the action in order to first obtain instructions from the Bondholders.
- (c) The Agent shall not be liable for any delay (or any related consequences) in crediting an account with an amount required pursuant to the Finance Documents to be paid by the Agent to the Bondholders, provided that the Agent has taken all necessary steps as soon as reasonably practicable to comply with

the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

- (d) The Agent shall have no liability to the Bondholders for damage caused by the Agent acting in accordance with instructions of the Bondholders given in accordance with Clause 16 (*Decisions by Bondholders*) or a demand by Bondholders given pursuant to Clause 14.1~~0~~<sup>2</sup>.
- (e) Any liability towards the Issuer which is incurred by the Agent in acting under, or in relation to, the Finance Documents shall not be subject to set-off against the obligations of the Issuer to the Bondholders under the Finance Documents.
- (f) The Agent is not liable for information provided to the Bondholders by or on behalf of the Issuer or by any other person.

#### **20.4 Replacement of the Agent**

- (a) Subject to Clause 20.4(f), the Agent may resign by giving notice to the Issuer and the Bondholders, in which case the Bondholders shall appoint a successor Agent at a Bondholders' Meeting convened by the retiring Agent or by way of Written Procedure initiated by the retiring Agent.
- (b) Subject to Clause 20.4(f), if the Agent is Insolvent, the Agent shall be deemed to resign as Agent and the Issuer shall within ten (10) Business Days appoint a successor Agent which shall be an independent financial institution or other reputable company which regularly acts as agent under debt issuances.
- (c) A Bondholder (or Bondholders) representing at least ten (10) per cent. of the Adjusted Nominal Amount may, by notice to the Issuer (such notice may only be validly given by a person who is a Bondholder on the Business Day immediately following the day on which the notice is received by the Issuer and shall, if given by several Bondholders, be given by them jointly), require that a Bondholders' Meeting is held for the purpose of dismissing the Agent and appointing a new Agent. The Issuer may, at a Bondholders' Meeting convened by it or by way of Written Procedure initiated by it, propose to the Bondholders that the Agent be dismissed and a new Agent appointed.
- (d) If the Bondholders have not appointed a successor Agent within ninety (90) days after (i) the earlier of the notice of resignation was given or the resignation otherwise took place or (ii) the Agent was dismissed through a decision by the Bondholders, the Issuer shall appoint a successor Agent which shall be an independent financial institution or other reputable company which regularly acts as agent under debt issuances.
- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation or dismissal shall only take effect upon the appointment of a successor Agent and acceptance by such successor Agent of such



appointment and the execution of all necessary documentation to effectively substitute the retiring Agent.

- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of the Finance Documents and remain liable under the Finance Documents in respect of any action which it took or failed to take whilst acting as Agent. Its successor, the Issuer and each of the Bondholders shall have the same rights and obligations amongst themselves under the Finance Documents as they would have had if such successor had been the original Agent.
- (h) In the event that there is a change of the Agent in accordance with this Clause 20.4, the Issuer shall execute such documents and take such actions as the new Agent may reasonably require for the purpose of vesting in such new Agent the rights, powers and obligation of the Agent and releasing the retiring Agent from its further obligations under the Finance Documents and the Agency Agreement. Unless the Issuer and the new Agent agrees otherwise, the new Agent shall be entitled to the same fees and the same indemnities as the retiring Agent.

## **21. Appointment and Replacement of the Issuing Agent**

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

## **22. No Direct Actions by Bondholders**

- (a) A Bondholder may not take any steps whatsoever against the Issuer or with respect to the Transaction Security or the Guarantors to enforce or recover any amount due or owing to it pursuant to the Finance Documents, or to initiate, support or procure the winding-up, dissolution, liquidation, company reorganisation (*företagsrekonstruktion*) or bankruptcy (*konkurs*) (or its equivalent in any other jurisdiction) of the Issuer in relation to any of the liabilities of the Issuer under the Finance Documents.
- (b) Clause 22(a) shall not apply if the Agent has been instructed by the Bondholders in accordance with the Finance Documents to take certain actions but fails for any reason to take, or is unable to take (for any reason other than a failure by a Bondholder to provide documents in accordance with Clause 20.1(c)), such actions within a reasonable period of time and such failure or inability is

continuing. However, if the failure to take certain actions is caused by the non-payment by the Issuer of any fee or indemnity due to the Agent under the Finance Documents or the Agency Agreement or by any reason described in Clause 20.2(i), such failure must continue for at least forty (40) Business Days after notice pursuant to Clause 20.2(k) before a Bondholder may take any action referred to in Clause 22(a).

- (c) The provisions of Clause 22(a) shall not in any way limit an individual Bondholder's right to claim and enforce payments which are due to it under Clause 9.67 (*Mandatory repurchase due to a Change of Control Event (put option)*) or other payments which are due by the Issuer to some but not all Bondholders.

## 23. Prescription

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

## 24. Notices and Press Releases

### 24.1 Notices

- (a) Any notice or other communication to be made under or in connection with the Finance Documents:
  - (i) if to the Agent, shall be given at the address registered with the Swedish Companies Registration Office (*Bolagsverket*) on the Business Day prior to dispatch or, if sent by email by the Issuer, to such email address notified by the Agent to the Issuer from time to time, initially [sweden@nordicAgent.com](mailto:sweden@nordicAgent.com);
  - (ii) if to the Issuer, shall be given at the address of the Issuer's registered office as registered with Companies House, Gibraltar on the Business Day prior to dispatch; and
  - (iii) if to the Bondholders, shall be given at their addresses as registered with the CSD, on the Business Day prior to dispatch, and by either courier

delivery or letter for all Bondholders. A Notice to the Bondholders shall also be published on the websites of the Group and the Agent. Any notice to the Bondholders shall also be published on the websites of the Issuer and the Agent.

- (b) Any notice or other communication made by one person to another under or in connection with the Finance Documents shall be sent by way of courier, personal delivery or letter and will only be effective, in case of courier or personal delivery, when it has been left at the address specified in Clause 24.1(a) or, in case of letter, three (3) Business Days after being deposited postage prepaid in an envelope addressed to the address specified in Clause 24.1(a).
- (c) Failure to send a notice or other communication to a Bondholder or any defect in it shall not affect its sufficiency with respect to other Bondholders.

## 24.2 Press releases

- (a) Any notice that the Issuer or the Agent shall send to the Bondholders pursuant to Clauses 9.34 (*Voluntary total redemption (call option)*), 9.45 (*Mandatory total redemption*), 9.56 (*Early redemption due to tax event (call option)*), 9.67 (*Mandatory repurchase due to a Change of Control Event (put option)*), 11.1(b), 14.102(c), 16(o), 17(a), 18(a) and 19(c) shall also be published by way of press release by the Issuer or the Agent, as applicable.
- (b) In addition to Clause 24.2(a), if any information relating to the Bonds or the Group contained in a notice the Agent may send to the Bondholders under these Terms and Conditions has not already been made public by way of a press release, the Agent shall before it sends such information to the Bondholders give the Issuer the opportunity to issue a press release containing such information. If the Issuer does not promptly issue a press release and the Agent considers it necessary to issue a press release containing such information before it can lawfully send a notice containing such information to the Bondholders, the Agent shall be entitled to issue such press release.

## 25. Force Majeure and Limitation of Liability

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

- (d) The provisions in this Clause 25 apply unless they are inconsistent with the provisions of the Financial Instruments Accounts Act which provisions shall take precedence.

## 26. Governing Law and Jurisdiction

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

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

~~SUNBORN (GIBRALTAR) LIMITED~~

~~as Issuer~~

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~~Name: Hans Niemi~~

In the presence of:

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~~Name:~~

~~Title:~~

~~Address:~~

~~NORDIC TRUSTEE & AGENCY AB (publ)~~

~~as Agent~~

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Name:

*[Signature block intentionally left out in the amended and restated and consolidated version]*