



Black Diamond Investment Bank LTD

Terms and Conditions

EUR 1,500,000,000.00

Senior Unsecured Corporate Bonds

Dated 4th April 2022

PRIVACY NOTICE

The Issuer, the Security Trustee or Debt Securities assigned Managers may collect and process personal data relating to the Diamond Partners referred herein as Bondholders, the Bondholders' representatives or agents, and other persons nominated to act on behalf of the Bondholders pursuant to the Finance Documents (name, contact details and, when relevant, holding of Bonds). The personal data relating to the Bondholders is primarily collected from the registry kept by the the issuer. The personal data relating to other persons is primarily collected directly from such persons.

The personal data collected will be processed by the Issuer, the Security Trustee or Debt Securities assigned Managers for the following purposes:

- (a) to exercise their respective rights and fulfil their respective obligations under the Finance Documents;
- (b) to manage the administration of the Bonds and payments under the Bonds;
- (c) to enable the Bondholders' to exercise their rights under the Finance Documents;
and
- (d) to comply with their obligations under applicable laws and regulations.

The processing of personal data by the Issuer, the Security Trustee or Debt Securities assigned Managers in relation to items (a) - (c) is based on their legitimate interest to exercise their respective rights and to fulfil their respective obligations under the Finance Documents. In relation to item (d), the processing is based on the fact that such processing is necessary for compliance with a legal obligation incumbent on the Issuer, the Security Trustee or Debt Securities assigned Managers. Unless otherwise required or permitted by law, the personal data collected will not be kept longer than necessary given the purpose of the processing.

Personal data collected may be shared with third parties, when necessary to fulfill the purpose for which such data is processed.

Subject to any legal preconditions, the applicability of which have to be assessed in each individual case, data subjects have the rights as follows. Data subjects have right to get access to their personal data and may request the same in writing at the address of the Issuer, the Security Trustee or Debt Securities assigned Managers, respectively. In addition, data subjects have the right to (i) request that personal data is rectified or erased, (ii) object to specific processing, (iii) request that the processing be restricted and (iv) receive personal data provided by themselves in machine-readable format. Data subjects are also entitled to lodge complaints with the relevant supervisory authority if dissatisfied with the processing carried out.

The Issuer's and the Agent's addresses, and the contact details for their respective Data Protection Officers (if applicable), are available on request by emailing support@bdibank.co.uk and support@bdibglobal.com.

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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 and through which a Bondholder has on-boarded in respect of its Bonds.

"Accounting Principles" means international financial reporting standards (IFRS) within the meaning of the Companies House Act 2006 (or as otherwise adopted or amended from time to time as applied by the Issuer in preparing its annual consolidated financial statements).

"Additional Bonds" means additional Bonds having the same terms and conditions as the Bonds.

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

"Advance Purchase Agreements" means (a) an advance or deferred purchase agreement if the agreement is in respect of the supply of assets or services and payment 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 any Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purpose of this definition, "**control**" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"Agency Agreement" means the agency agreement entered into on or prior to the First Issue Date, between the Issuer and the Agent in connection with these Terms and Conditions, or any replacement agency agreement entered into after the First Issue Date between the Issuer and an agent.

"Bond" means a unsecured corporate debt instrument for the Nominal Amount which are governed by and issued under these Terms and Conditions, including, for the avoidance of doubt, any Additional Bonds.

"Bondholder" means the Person who is registered as direct registered owner or nominee with respect to a Bond, also referred to as Diamond Partner / Investor.

"Bondholders' Meeting" means a meeting among the Bondholders held in accordance with Clause 16 (*Bondholders' Meeting*).

"Bond Issue" means the issuance of the Bonds.

"Business Day" means a day in United Kingdom (UK) or United States of America (USA) other than a Sunday or other public holiday. Saturdays, Midsummer Eve, Christmas Eve and New Year's Eve shall for the purpose of this definition be deemed to be public holidays.

"Business Day Convention" means that if the last day of any Interest Period originally falls on a day that is not a Business Day, no adjustment will be made to the Interest Period.

"Call Option Amount" mean the amount set out in Clause 9.3 (*Voluntary total redemption (call option)*), as applicable.

"Cash and Cash Equivalents" means cash and cash equivalents of the Issuer (in accordance with the Accounting Principles).

"Change of Control Event" means the occurrence of an event or series of events whereby one or more Persons, acting together, acquire control over the Issuer and where "control" means (a) acquiring or controlling, directly or indirectly, more than 50 per cent. of the voting shares of the Issuer, or (b) the right to, directly or indirectly, appoint or remove all or a majority of the directors of the board of directors of the Issuer.

"Compliance Certificate" means a certificate to the Agent, in the agreed form between the Agent and the Issuer, signed by the CEO or an authorised signatory of the Issuer, certifying (as applicable):

- (a) that so far as it is aware no Event of Default is continuing or, if it is aware that an Event of Default is continuing, specifying the event and steps, if any, being taken to remedy it;
- (b) if the Compliance Certificate is provided in connection with an Incurrence Test, that the Incurrence Test is met (including calculations and figures in respect of the Net Leverage Ratio);
- (c) if the Compliance Certificate is provided in connection with the unaudited annual interim financial statements of the Issuer; and/or
- (d) if the Compliance Certificate is provided in connection with an acquisition in, the amount of Financial Indebtedness that the Issuer intends to incur for the relevant acquisition.

"Business Day" means a day on which the relevant settlement system is open and the relevant Bond currency settlement system is open.

"Dividend Test" means the dividend test set out in Clause 11.2 (*Dividend Test*).

"EBITDA" means, in respect of the Reference Period, the consolidated profit of the Issuer 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;
- (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 and other non-recurring items, provided that such items are not in excess of an amount equal to (i) 12.50 per cent. of EBITDA in the Reference Period less any adjustments already made pursuant to paragraph 11.4(a)(i)(A);
- (d) before taking into account any Transaction Costs;
- (e) before deducting any accrued interest owing to any member of the Issuer and any deemed finance charge in respect of any pension liabilities and other provisions;
- (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 or liabilities;
- (h) after adding back (to the extent not already included) the proceeds of any business interruption insurance (or equivalent insurance) to the extent taken into account in determining the profits of the Issuer;
- (i) after deducting the amount of any profit (or adding back the amount of any loss) of any member of the Issuer which is attributable to minority interests;
- (j) plus or minus the Issuer's share of the profits or losses of entities which are not part of the Issuer;
- (k) after deducting any costs for any finance leases which are not accounted for as Financial Indebtedness pursuant to item (b) of the definition "Financial Indebtedness";

- (l) after adding back any amount attributable to the amortisation, depreciation or depletion of assets of members of the Issuer; and
- (m) before taking into account any non-cash expenses resulting from any employee benefit or management compensation plan or the grant of stock appreciation or similar rights, stock options, restricted stock or other rights or equity incentive programs to employees of any member of the Issuer pursuant to a written plan or agreement or the treatment of such options under variable plan accounting or any non-cash purchase accounting adjustment.

"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 Listing Event" means an initial public offering of shares in the Issuer, after which such shares shall be admitted to trading on a Regulated Market.

"Event of Default" means an event or circumstance specified in any of the Clauses 13.1 (*Non-Payment*) to and including 13.9 (*Continuation of the Business*).

"Final Maturity Date" means 1 February 2032, as adjusted according to the Business Day Convention.

"Finance Charges" means, for the Reference Period, the aggregate amount of the accrued interest, commission, fees, discounts, payment fees, upfront fees or costs included as part of effective interest rate adjustments, premiums or charges and other finance payments in respect of Financial Indebtedness whether paid, payable or capitalised by any member of the Issuer 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, any Subordinated Loan or any financial indebtedness under these Terms and Conditions and taking no account of any unrealised gains or losses on any derivative instruments.

"Finance Documents" means:

- (a) these Terms and Conditions;
- (b) the Agency Agreement;
- (c) the Intercreditor Agreement; and
- (d) any other document designated by the Issuer and the Agent as a Finance Document.

"Financial Indebtedness" means any indebtedness in respect of:

- (a) monies borrowed or raised, including Market Loans;
- (b) the amount of any liability in respect of any finance leases, to the extent the arrangement is treated as a finance lease in accordance with the Accounting

Principles applicable prior to 4th April 2022 (a lease which in the accounts of the Issuer is treated as an asset and a corresponding liability);

- (c) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (d) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (e) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value shall be taken into account, provided that if any actual amount is due as a result of a termination or a close-out, such amount shall be used instead);
- (f) any counter indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (g) (without double counting) any guarantee or other assurance against financial loss in respect of a type referred to in the above paragraphs (a)-(f).

"Financial Report" means the Issuer's annual audited financial statements or quarterly interim unaudited reports, which shall be prepared and made available according to Clauses 10.1(a)(i) and 10.1(a)(iii).

"First Issue Date" means 4th April 2022.

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

"Issuer" means the Issuer and Black Diamond GMBH (USA), and all their respective Subsidiaries from time to time and **"Issuer Company"** means any of them.

"Incurrence Test" means the incurrence test set out in Clause 11.1 (*Incurrence Test*).

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

"Insolvent" means, in respect of a relevant Person, that it is deemed to be insolvent, admits inability to pay its debts as they fall due, suspends making payments on any of its debts or by reason of actual financial difficulties commences negotiations with its creditors with a view to rescheduling any of its indebtedness equivalent in any other jurisdiction)) or is subject to involuntary winding-up, dissolution or liquidation.

"Intercreditor Agreement" means the intercreditor agreement entered into between, amongst other, the Issuer, the Security Trustee, certain hedging counterparties and Debt Securities assigned Managers (representing the Bondholders) on 25 March 2022 or any intercreditor agreement entered into on substantially the same terms.

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

"Interest Payment Date" means 31st December each year. 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 shall be 31 December 2022 The last Interest Payment Date shall be the Final Maturity Date (or such earlier date on which the Bonds are redeemed in full).

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

"Interest Rate" means 5.5 per cent.

"Issuer" Black Diamond Investment Bank LTD, Company number 06848461.

"Legal Reservations" means matters which are set out as qualifications or reservations as to matters of law of general application in the legal opinions delivered to the Agent pursuant to these Terms and Conditions.

"Market Loan" means any loan or other indebtedness where an entity issues commercial paper, certificates, subordinated debentures, unsecured 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 any other regulated or unregulated recognised market place.

"Material Adverse Effect" means an event or circumstance which, taking into account all the mitigating factors or circumstances including, without limitation, resources (including, without limitation, funds, insurance and other claims and indemnities) available to the Issuer, has a material adverse effect on:

- (a) the business, assets or financial condition of the Issuer (taken as a whole): or
- (b) the ability of the Issuer Companies (taken as a whole) to perform their payment obligations under the Finance Documents.

"Material Issuer Company" means the Issuer, Black Diamond GMBH (USA), any wholly-owned Issuer Company which is nominated as such by the Issuer in accordance the Senior Unsecured Bonds.

"**MTF**" means any multilateral trading facility.

"**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 and any interest income relating to cash or cash equivalent investment (and excluding any interest capitalised on Subordinated Loans).

"**Net Interest Bearing Debt**" means the aggregate interest bearing debt, being Financial Indebtedness under paragraphs (a), (b), (c), (f) and (g) (only in respect of Financial Indebtedness described in clauses (a) through (c) and (f) of the definition thereof) to the extent treated as such in accordance with the applicable accounting principles of the Issuer from time to time (for the avoidance of doubt, excluding guarantees, bank guarantees, Subordinated Loans and any financial indebtedness under these Terms and Conditions, any claims subordinated pursuant to a subordination agreement in form and substance satisfactory to the Agent and interest bearing debt borrowed from any Issuer Company) less Cash and Cash Equivalents of the Issuer.

"**Net Leverage Ratio**" means the ratio of Net Interest Bearing Debt to EBITDA.

"**Net Proceeds**" means the proceeds from the Bond Issue 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 Paying Agent for the services provided in relation to the placement and issuance of the Bonds.

"**Nominal Amount**" means in respect of each Bond the Initial Nominal Amount, or any other amount following a split of Bonds pursuant to Clause 19.2(l) in accordance with the applicable regulations (from time to time).

"**Parent**" means BDIB Global LLP, Company number OC435067.

"**Paying Agent**" means Spencer West LLP, or another party replacing it, as Paying Agent, in accordance with these Terms and Conditions.

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

- (a) incurred under the Finance Documents and the Senior Unsecured Bonds (excluding Subsequent Bonds (as defined in the terms and conditions of the Senior Unsecured Bonds));
- (b) of the Issuer incurred pursuant to any financial leasing arrangements pursuant to item (b) of the definition "Financial Indebtedness" incurred in the ordinary course of the Issuer's business in a maximum amount of EUR 500,000,000;
- (c) incurred by the Issuer pursuant to any leases relating to rentals of office spaces, warehouses and other premises;
- (d) taken up from a Issuer Company;
- (e) of the Issuer under any guarantee issued by a Issuer Company or for the obligations of any Issuer Company, in the ordinary course of business;

- (f) arising under a foreign exchange transaction or commodity derivatives for spot or forward delivery entered into in connection with protection against fluctuation in currency rates or prices where the exposure arises in the ordinary course of business, but not any transaction for investment or speculative purposes;
- (g) arising under any interest rate hedging transactions, but not any transaction for investment or speculative purposes;
- (h) arising under cash pooling, netting or set off arrangements entered into by any Issuer Company in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances between Issuer Companies (including any ancillary bank facility which is an overdraft comprising more than one account);
- (i) related to any Subordinated Loans;
- (j) incurred under Advance Purchase Agreements;
- (k) incurred as a result of any Issuer Company acquiring another entity and which is due to such acquired entity holding indebtedness, provided that the Incurrence Test is met, tested *pro forma* on the acquired entity in question on a stand-alone basis (without the Issuer) and provided that the acquired debt is converted into equity or refinanced by the Issuer, by way of issuance of subsequent bonds by the Issuer under the terms and conditions of the Senior Unsecured Bonds or any other bonds that may be issued in compliance with these Terms and Conditions or otherwise, within six (6) months following the date of the acquisition;
- (l) incurred by the Issuer 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 of the Senior Unsecured Bonds or any other bonds that may be issued in compliance with these 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 installment dates which occur after the Final Maturity Date of the Senior Unsecured Bonds;
- (m) incurred under any pension and tax liabilities in the ordinary course of business by any Issuer Company;
- (n) incurred in connection with the redemption of either of the Senior Unsecured Bonds in order to fully refinance the Senior Unsecured Bonds either on the date of such incurrence or on a later date but, if to be applied in redemption of the Senior Unsecured Bonds on a later date than the date of incurrence, provided that the proceeds of such Financial Indebtedness incurred are subject to an escrow arrangement up until the date of the redemption of the Senior Unsecured Bonds (taking into account the relevant rules and regulations), for the purposes of securing, inter alia, redemption of the Senior Unsecured Bonds;

- (o) incurred by (i) the Issuer or its direct or indirect Subsidiaries under one or several working capital facilities, which, if secured, is subject to the Intercreditor Agreement or (ii) BD GMBH (USA) or its direct or indirect Subsidiaries under one or several working capital facilities, which, if secured, is subject to the BD GMBH (USA) Intercreditor Agreement (the "**Working Capital Facilities**"), provided for the general corporate purposes of the Issuer in a maximum aggregate amount being equal to 20 per cent. of the aggregate of the outstanding Nominal Amount (as defined in the terms and conditions with respect to the Senior Unsecured Bonds) and the aggregate outstanding amount under any Market Loans (excluding the Bonds under these Terms and Conditions and any Subordinated Loans) and the total commitment of any Working Capital Facilities; and

"Permitted Security" means any Security:

- (a) arising by operation of law or in the ordinary course of business (including any customary escrow arrangements in relation to acquisitions and disposals otherwise permitted under the finance documents or any 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);
- (b) provided in relation to any lease agreement entered into by a Issuer Company (including precautionary Uniform Commercial Code filings);
- (c) arising under any netting or set off arrangements under financial derivatives transactions or bank account arrangements, including Issuer cash pool arrangements;
- (d) provided for interest rate hedging transactions set out in paragraph (g) of the definition Permitted Debt;
- (e) arising over any bank accounts or custody accounts or other clearing banking facilities held with any bank or financial institution under the standard terms and conditions of such bank or financial institution;
- (f) arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a Issuer Company in the ordinary course of business;
- (g) provided in relation to any letters of credit;
- (h) provided for any guarantees issued by a Issuer Company or for the obligations of any Issuer Company, in the ordinary course of business;

- (i) provided for the Senior Unsecured Bonds or any other bonds that may be issued in compliance with these Terms and Conditions;
- (j) provided for debt permitted under paragraph (k) of Permitted Debt but only over assets held, directly or indirectly, by such acquired entity;
- (k) any Security created for the benefit of the financing providers in relation to a refinancing of the Senior Unsecured Bonds or any other bonds that may be issued in compliance with these Terms and Conditions, however provided always that any perfection requirements in relation thereto are satisfied after repayment of the Senior Unsecured Bonds or any other bonds that may be issued in compliance with these Terms and Conditions that are intended to be refinanced (other than with respect to an escrow account (if applicable) which may be perfected in connection with the incurrence of such debt);
- (l) provided for the Working Capital Facilities;
- (m) over Cash and Cash Equivalents or other property arising in connection with any defeasance, discharge or redemption of Financial Indebtedness;
- (n) over property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets; and

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

"BDIB Interest" shall have the meaning assigned to such term in Clause 8(c).

"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 date on which a Bondholder's ownership of Bonds shall be recorded in the Solicitors as follows:

- (a) in relation to payments pursuant to these Terms and Conditions, the date designated as the Record Date in accordance with the rules of the Solicitors from time to time;
- (b) for the purpose of casting a vote with regard to Clause 15 (*Decisions by Bondholders*), the date falling on the immediate preceding Solicitors Business Day to the date of that Bondholders' decision being made, or another date as accepted by the Agent; and

- (c) another relevant date, or in each case such other Solicitors Business Day falling prior to a relevant date if generally applicable on the Swedish and Norwegian bond markets.

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

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

"Regulated Market" means any regulated market as defined in the Markets in Financial Instruments Directive 2014/65/EU (MiFID II), as amended.

"Restricted Payment" has the meaning set forth in Clause 12.2(a).

"Securities Account" means the account for dematerialised securities maintained by the Solicitors pursuant to the Financial documents 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.

"Senior Unsecured Bonds" means the up to EUR 1,500,000,000 senior secured bond loan with ISIN (TBC) issued by the Issuer on 4th April 2022 or any other bonds that may be issued in compliance with these Terms and Conditions.

"Sole Bookrunner" means allocated solicitors or securities agent.

"Subordinated Loans" means any loan incurred by the Issuer or BD GMBH (USA), where the Issuer or BD GMBH (USA) is the debtor, if such loan (a) according to its terms and pursuant to a subordination agreement on terms and conditions satisfactory to the Agent, is subordinated to the obligations of the Issuer under the Terms and Conditions, (b) according to its terms has a final redemption date or, when applicable, early redemption dates or installment dates which occur after the Final Maturity Date, and (c) according to its terms yield only payment-in-kind interest.

"Subsidiary" means an entity from time to time of which a person:

- (a) has direct or indirect control; or
- (b) owns directly or indirectly more than 50 per cent. of the share capital or other right of ownership.

"Super Senior Debt" has the meaning given thereto in the Intercreditor Agreement.

"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 Issuer in connection with (i) the issuance and listing of Market Loans and (ii) any acquisition of another entity.

"BD GMBH (USA)" means Black Diamond GMBH (USA)", Wyoming business identity code 050898024.

"BD GMBH (USA) Intercreditor Agreement" means the intercreditor agreement entered into between the revolving loan agent under the Revolving Loan Agreement (representing the super senior creditors under the Revolving Loan Agreement) and the Agent (representing the Bondholders) on 25 November 2019 or any intercreditor agreement entered into on substantially the same terms.

"Working Capital Facilities" means the working capital facilities described in paragraph (p) of the definitions of "Permitted Debt".

"Written Procedure" means the written or electronic procedure for decision making among the Bondholders in accordance with Clause 17 (*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 UK 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 Solicitors Business Day, as published by the European Central Bank on its website 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 Bond is EUR 1.00 (the "**Nominal Amount**"). The maximum total nominal amount of the Bonds is EUR 1,500,000,000 plus the aggregate amount of BDIB Interest that may be issued in the form of Additional Bonds pursuant to Clause 8 (*Interest*). All Bonds are issued on a fully paid basis at an issue price of 98.50 per cent. of the Nominal Amount.
- (d) The minimum permissible investment in the Bond Issue is EUR 10,000.
- (e) The Bonds constitute direct, general, unconditional, subordinated and unsecured obligations of the Issuer and shall at all times rank at least *pari passu* with all direct, unconditional, subordinated and unsecured obligations of the Issuer, except for the Super Senior Debt (as defined in the Intercreditor Agreement), the Senior Unsecured Bonds and obligations which are mandatorily preferred by law, 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 Mauritius, 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 Net Proceeds of the Bond Issue shall be used to finance (i) To fund the private equity businesses / transactions, that will generate a high yielding return, to purchase and sell high value Bank assets such as Secured Bonds, Standby Letters of Credit, LC's, SKR's (Safe Keeping Receipts) and other Banking Instruments at a profit.

4. Conditions Precedent

4.1 Conditions Precedent for Bond Issue

- (a) The Issuer shall provide to the Agent, or procure the provision of, to the satisfaction of the Agent, no later than 9:00 on the First Issue Date (or such later time as agreed to by the Agent):
 - (i) certificate of registration (consisting a complete and up-to-date transcript from UK's Companies House) and articles of association for the Issuer;
 - (ii) corporate resolutions for the Issuer in relation to the Terms and Conditions;
 - (iii) an agreed form Compliance Certificate;
 - (iv) evidence that Agency Agreement being duly executed and perfected
 - (v) evidence that the Agent has acceded to the Intercreditor Agreement;
 - (vi) a legal opinion on the capacity and due execution, in respect of any entity becoming party to a Finance Document, unless it is incorporated in United Kingdom, issued by a reputable law firm; and
 - (vii) any legal opinion on the validity and enforceability in respect of any Finance Document unless it is governed by United Kingdom law, issued by a reputable law firm.
- (b) The Agent shall confirm to the Paying Agent when it is satisfied that the conditions precedent set out in 4.1(a) have been fulfilled (or amended or waived). The Bond Issue shall not occur (i) unless the Agent makes such confirmation to the Paying Agent no later than 10 a.m. on the date of the relevant Bond Issue or (or later, if the Paying Agent so agrees), or (ii) if the Paying Agent and the Issuer agree to postpone or cancel the relevant Bond Issue.
- (c) The Agent may assume that the documentation and evidence delivered to it pursuant to Clause 4.1(a) is accurate, legally valid, enforceable, correct, true and complete unless it has actual knowledge to the contrary and the Agent does not have to verify or assess the contents of any such documentation. The Agent does not have any obligation to review the documentation and evidence referred to in Clause 4.1(a) above from a legal or commercial perspective of the Bondholders.
- (d) Following receipt by the Paying Agent of the confirmation in accordance with the above, the Paying Agent shall settle the Bond Issue on the applicable issue date (or later if applicable).

5. Bonds in Book-Entry Form

- (a) The Bonds will be registered for the Bondholders. Accordingly, the Bonds will be registered in dematerialised form according to the relevant securities registration legislation and the requirements of the registrar. Registration requests relating to the Bonds shall be directed to Paying Agent or an Account Operator.
- (b) In order to carry out its functions and obligations under these Terms and Conditions, the Agent will have access to the relevant information regarding ownership of the Bonds, as recorded and regulated with the Solicitors (subject to applicable law).
- (c) For the purpose of or in connection with any Bondholders' Meeting or any Written Procedure, the Agent shall be entitled to obtain information from the debt register kept by the Solicitors in respect of the Bonds (subject to applicable law).

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 or other authorisation 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) The Issuer will unconditionally make available to or to the order of the Agent and/or the Paying Agent all amounts due on each payment date pursuant to the terms of these Terms and Conditions at such times and to such accounts as specified by the Agent and/or the Paying Agent in advance of each payment date or when other payments are due and payable pursuant to these Terms and Conditions.
- (b) All payments to the Bondholders in relation to the Bonds shall be made to each Bondholder registered as such in the Solicitors at the relevant Record Date, by, if no specific order is made by the Agent, crediting the relevant amount to the bank

account nominated by such Bondholder in connection with its client account in the Solicitors.

- (c) Payment constituting good discharge of the Issuer's payment obligations to the Bondholders under these Terms and Conditions will be deemed to have been made to each Bondholder once the amount has been credited to the bank holding the bank account nominated by the Bondholder in connection with its client account in the Solicitors. If the paying bank and the receiving bank are the same, payment shall be deemed to have been made once the amount has been credited to the bank account nominated by the Bondholder in question.
- (d) If a payment date to the Bondholders pursuant to the Finance Documents falls on a day on which either of the relevant Solicitors settlement system or the relevant currency settlement system for the Bonds are not open, the payment shall be made on the first following possible day on which both of the said systems are open, unless any provision to the contrary have been set out for such payment in the relevant Finance Document.
- (e) If, due to any obstacle for the Solicitors, the Issuer cannot make a payment or repayment, such payment or repayment may be postponed until the obstacle has been removed. Interest shall accrue without any default interest in accordance with Clause 8(c) during such postponement.
- (f) If payment or repayment is made in accordance with this Clause 7, the Issuer and the Solicitors 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.
- (g) If the Issuer is required by law to withhold any tax from any payment in respect of the Bonds under the Finance Documents:
 - (i) the amount of the payment due from the Issuer will be increased to such amount which is necessary to ensure that the Bondholders or the Agent, as the case may be, receive a net amount which is (after making the required withholding) equal to the payment which would have been received if no withholding had been required; and
 - (ii) at the request of the Agent, the Issuer will deliver to the Agent evidence that the required tax deduction or withholding has been made.

8. Interest

- (a) Subject to paragraph (c) below, Interest on the Bonds will accrue from (and including) 4th April 2022 up to (but excluding) the relevant redemption date and payment of Interest in respect of the Bonds shall be made to the Bondholders on each Interest Payment Date for the preceding Interest Period.
- (b) Interest shall be calculated on the basis of a 360-day year comprised of twelve months of 30 days each and, in case of an incomplete month, the actual number of days elapsed (30/360-days basis).

- (c) Accrued but unpaid interest shall be paid entirely in kind by issuing Additional Bonds in a principal amount equal to such accrued but unpaid interest (rounded down to the nearest EUR) ("**BDIB Interest**"). Subject to clause (d) below, for the final Interest Payment Date falling on the Maturity Date, interest shall be payable entirely in cash. Any Additional Bonds issued in payment of BDIB Interest shall have the same terms and conditions and the Bonds and will be treated as a single class for all purposes of these Terms and Conditions.
- (d) When the Senior Unsecured Bonds have been repaid in full, interest may, at the option of the Issuer, be paid to the Bondholders or be paid entirely in kind as BDIB Interest by issuing Additional Bonds accordance with the above.

9. Redemption 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 100.00 per cent of 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 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 but not cancelled.

9.3 Voluntary total redemption (call option)

- (a) Subject to the Senior Unsecured Bonds having been redeemed in full or the terms and conditions of the Senior Unsecured Bonds having been amended to allow for the repayment of the Bonds, the Issuer may redeem all, but not only some, of the outstanding Bonds in full at Any time post investment.
- (b) Redemption in accordance with Clause 9.3(a) shall be made by the Issuer giving not less than eight (8) Business Days' notice to the Bondholders and the Agent. Upon receipt of such notice, the Agent shall inform the Paying 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.

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

- (a) Upon the occurrence of a Change of Control Event, 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 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 10.1(e) (after which time period such rights 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 10.1(e) 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 10.1(e). The repurchase date must fall no later than twenty (20) Business Days after the end of the period referred to in Clause 9.4(a).
- (c) 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 9.4, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Clause 9.4 by virtue of the conflict.
- (d) Any Bonds repurchased by the Issuer pursuant to this Clause 9.4 may at the Issuer's discretion be retained or sold, but not cancelled.

10. Information to Bondholders

10.1 Information from the Issuer

- (a) The Issuer shall make the following information available in the English language by publication on the website of the Issuer:
- (i) 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 consolidated financial statements of the Issuer, including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from the Issuer's board of directors;
 - (ii) 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 consolidated report of Black Diamond Investment Bank LTD, business identity code 06848461, in a format comparable to the report prepared for the financial year ending 30 September 2022;
 - (iii) as soon as the same become available, but in any event within two (2) months after the end of the relevant interim period, the semi-annual unaudited consolidated report or the year-end report (as applicable), of the Issuer, including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from the Issuer's board of directors; and
 - (iv) 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 unaudited consolidated reports or the year-end report (as applicable), of the Parent, including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from the Issuer's board of directors.

- (b) Any other information required by any regulatory body or securities market (if applicable) and the rules and regulations of the Regulated Market and/or MTF on which the Bonds maybe traded.
- (c) If the Bonds have been listed on a Regulated Market and/or a MTF:
 - (i) the information set out in Clause 10.1(a) shall also be made available by way of press release; and
 - (ii) the reports referred to in Clause 10.1(a)(i) and Clause 10.1(a)(ii) shall be prepared.
- (d) When the financial statements and other information are made available to the Bondholders pursuant to Clause 10.1(a), the Issuer shall send copies of such financial statements and other information to the Agent.
- (e) The Issuer shall promptly notify the Agent and the Bondholders upon becoming aware of the occurrence of a Change of Control Event, and shall provide the Agent with such further information as the Agent may request (acting reasonably) following receipt of such notice. A notice regarding a Change of Control Event 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.
- (f) The Issuer shall promptly notify the Agent (with full particulars) upon becoming aware of the occurrence of any event or circumstance which constitutes an Event of Default, or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing) constitute an Event of Default, and shall provide the Agent with such further information as it may reasonably request in writing following receipt of such notice. Should the Agent not receive such information, the Agent is entitled to assume that no such event or circumstance exists or can be expected to occur, provided that the Agent does not have actual knowledge of such event or circumstance.
- (g) 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 a Restricted Payment;
 - (ii) in connection with publication of the annual audited consolidated financial statements and with respect to the clean down of the Working Capital Facilities; and

- (iii) in connection with publication of the interim unaudited consolidated reports of the Issuer with respect to nomination of Material Issuer Companies.
- (h) The Agent may assume that any information provided by the Issuer in the Compliance Certificate delivered pursuant to paragraph (f) above is correct, and the Agent shall not be responsible or liable for the adequacy, accuracy or completeness of such information.
- (i) The Issuer is only obliged to inform the Agent according to this Clause 10.1 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 10.1.

10.2 Information from the Agent

- (a) Subject to the restrictions of a non-disclosure agreement entered into by the Agent in accordance with Clause 10.2(b), 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.
- (b) If a committee representing the Bondholders' interests under the Finance Documents has been appointed by the Bondholders in accordance with Clause 15 (*Decisions by Bondholders*), the members of such committee may agree with the Issuer not to disclose information received from the Issuer, provided that it, in the reasonable opinion of such members, is beneficial to the interests of the Bondholders. The Agent shall be a party to such agreement and receive the same information from the Issuer as the members of the committee.

10.3 Publication of Finance Documents

- (a) The latest version of these Terms and Conditions (including any documents amending these Terms and Conditions) shall be available on request to the Issuer and the Agents.
- (b) The latest version of the Finance Documents shall be available to the Bondholders at the the request to the Agent via email during the Agent's normal business hours.

10.4 Intention to list the Bonds

The Issuer intends, but shall be under no obligation, to list the Bonds on the Afrinex Exchange. A failure to list the Bonds on the Securities Official List Afrinex Exchange shall not constitute an Event of Default under these Terms and Conditions.

11. Financial Undertakings

11.1 Incurrence Test

The Incurrence Test is met if:

- (a) The Net Leverage Ratio is not greater than:
 - (i) 5.00x until 31 March 2023;
 - (ii) 4.75x until 31 March 2024;
 - (iii) 4.50x until 31 March 2025;
 - (iv) 4.25x until the Final Maturity Date; and
- (b) no Event of Default is continuing or would occur upon the incurrence of Financial Indebtedness.

11.2 Dividend Test

The Dividend Test is met if the Net Leverage Ratio is not greater than 3.50x and no Event of Default is continuing or would occur upon the making of the Restricted Payment.

11.3 Testing of the Incurrence Test and Dividend Test

- (a) The calculation of the Net Leverage Ratio shall be made as per a testing date determined by the Issuer, falling (i) no more than two months prior to the incurrence of the new Financial Indebtedness pursuant to paragraphs (k) and (l) of the definition of "Permitted Debt" or the making of a Restricted Payment pursuant to clause 13.2(b)(iii) (*Restricted Payments*) (as applicable) or (ii) no more than two months prior to the delivery of any Compliance Certificate delivered pursuant to paragraph (c) below. The Net Interest Bearing Debt 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 Net Interest Bearing Debt) and any Financial Indebtedness that the Issuer intends to incur as notified in any Compliance Certificate delivered pursuant to paragraph (c) below but which has not yet been incurred (provided that the Issuer has not withdrawn such Compliance Certificate in accordance with paragraph (d) below). EBITDA shall be calculated as set out under Clause 11.4 (*Calculation Adjustments*) below.
- (b) Notwithstanding the above, if the Incurrence Test is tested in connection with incurrence of Financial Indebtedness to be used for an acquisition, the calculation of the Net Leverage Ratio may be made based on the Net Leverage Ratio for the to be acquired entity only on a stand-alone basis (without the

Issuer). The Net Interest Bearing Debt shall be measured for the relevant to be acquired entity on the relevant testing date so determined, but include the new Financial Indebtedness incurred by the Issuer for the acquisition and shall include cash in the amount of any Subordinated Loan or unconditional shareholder's contribution made for the purpose of the Incurrence Test in connection with such acquisition.

- (c) If the Issuer wishes to finance an acquisition with Financial Indebtedness to be incurred pursuant to paragraph (b) above after the relevant acquisition has been completed, the Issuer shall, on or before the date of completion of the relevant acquisition, provide to the Agent a Compliance Certificate setting out (i) the Net Leverage Ratio for the entity to be acquired only on a stand-alone basis (without the Issuer) (including any new Financial Indebtedness incurred by the Issuer for the acquisition (which shall include any Financial Indebtedness intended to be incurred as notified in the relevant Compliance Certificate)) and (ii) the amount of Financial Indebtedness that the Issuer intends to incur for the relevant acquisition.
- (d) A Compliance Certificate delivered pursuant to paragraph (c) above may only be withdrawn in writing by the Issuer and any Financial Indebtedness permitted pursuant to such Compliance Certificate may following such withdrawal not be incurred.
- (e) Any Financial Indebtedness to be incurred pursuant to a Compliance Certificate delivered in accordance with paragraph (c) above may not be incurred more than nine (9) months after the completion date for the relevant acquisition and, if such Financial Indebtedness is not incurred, the relevant Compliance Certificate shall be deemed to have been withdrawn on the date falling nine (9) months after the date of such acquisition.

11.4 Calculation Adjustments

- (a) *EBITDA, Finance Charges and Net Finance Charges*
 - (i) The figures for EBITDA, Finance Charges and Net Finance Charges for the Reference Period ending on the last day of the period covered by the most recent Financial Report shall be used for the Incurrence Test, but adjusted so that:
 - (A) entities acquired or disposed of by the Issuer during the Reference Period, or after the end of the Reference Period but before the relevant testing date, shall be included or excluded (as applicable), pro forma, for the entire Reference Period;
 - (B) any entity to be acquired with the proceeds from new Financial Indebtedness shall be included, pro forma, for the entire Reference Period; and
 - (C) the pro forma calculation of EBITDA shall be adjusted to take into account the net cost savings and other reasonable cost

synergies (“**Cost Adjustments**”), as the case may be, realisable by the Issuer during the Reference Period as a result of acquisitions and/or disposals of entities referred to in (i) or (ii) above, provided that such Cost Adjustments (i) have been confirmed by a reputable accounting firm and the Issuer has provided evidence thereof to the Agent, (ii) do not exceed 5.50 per cent of EBITDA prior to the inclusion of the Cost Adjustments, and (iii) are specified in the quarterly reports of the Issuer and in each Compliance Certificate.

(b) *Net Interest Bearing Debt*

- (i) The figures for Net Interest Bearing Debt set out in the financial statements as of the most recent quarter date (including when necessary, financial statements published before the First Issue Date), shall be used, but adjusted so that Net Interest Bearing Debt for such period shall be:
- (A) reduced to reflect any Net Interest Bearing Debt attributable to a disposed entity or which has been repaid, repurchased or otherwise discharged as a result of or in connection with a disposal of an entity (to the extent such Net Interest Bearing Debt is included in the relevant financial statements);
 - (B) increased on a *pro forma* basis by an amount equal to the Net Interest Bearing Debt directly attributable to (i) any Financial Indebtedness owed by acquired entities, and (ii) any Financial Indebtedness incurred to finance the acquisition of entities, in each case calculated as if all such debt had been incurred at the beginning of the relevant test period; and
 - (C) increased on a *pro forma* basis by an amount equal to the Net Interest Bearing Debt directly attributable to any Financial Indebtedness incurred under any Subsequent Bonds (as defined in the terms and conditions for the Senior Unsecured Bonds), calculated as if such debt had been incurred at the beginning of the relevant Reference Period.

12. General Undertakings

12.1 General

The Issuer undertakes to (and shall, where applicable, procure that each other Issuer Company will) comply with the undertakings set out in this Clause 12 for as long as any Bonds remain outstanding.

12.2 Restricted Payments

- (a) The Issuer and BD GMBH (USA) shall not, and shall procure that none of their Subsidiaries will:

- (i) pay any dividend in respect of its shares (other than to another Subsidiary, BD GMBH (USA) or the Issuer);
- (ii) repurchase or redeem any of its own shares subject to approval;
- (iii) redeem or reduce its share capital or other restricted debt with repayment to its shareholders;
- (iv) repay any Subordinated Loan or pay any interest thereon;
- (v) grant any loans except to Issuer Companies; or
- (vi) make any other similar distribution or transfers of value to the Issuer's, BD GMBH (USA)'s or the Subsidiaries', direct and indirect shareholders (other than the Issuer, BD GMBH (USA) or a Subsidiary of the Issuer or Black Diamond GMBH (USA)) or the Affiliates of such direct and indirect shareholders,

(paragraphs (i)-(vi) above are together and individually referred to as a "**Restricted Payment**").

- (b) Notwithstanding 12.2(a) above, a Restricted Payment may be made:
 - (i) If mandatory by law;
 - (ii) if made to the Issuer or a direct or indirect Subsidiary of the Issuer or the BD GMBH (USA) or a direct or indirect Subsidiary of the BD GMBH (USA) but, if made by a Subsidiary which is not directly or indirectly wholly-owned by the Issuer or Black Diamond GMBH (USA), is made on a pro rata basis; and/or
- (c) Notwithstanding the above, the Issuer may make payments to the Investors covering, *inter alia*, annual monitoring fees and administrative expenses, in a maximum aggregate amount not exceeding the lower of (i) 5 per cent. of EBITDA of the Issuer for the Relevant Period covered by the most recent Financial Report, for each calendar year provided that no Event of Default is continuing or would occur due to such Restricted Payment.

12.3 Nature of Business

The Issuer and BD GMBH (USA) shall procure that no substantial change is made to the general nature of the business carried on by the Issuer as of the First Issue Date if such substantial change would have a Material Adverse Effect.

12.4 Financial Indebtedness

The Issuer and BD GMBH (USA) shall not, and shall procure that none of their Subsidiaries will, incur any Financial Indebtedness, other than Permitted Debt.

12.5 Disposal of Assets

Subject to the terms of the Intercreditor Agreement, the Issuer and BD GMBH (USA) shall not, and shall procure that none of its Subsidiaries will, sell or otherwise dispose of any shares in any Subsidiary or of all or substantially all of its or that Subsidiary's assets or operations to any person not being the Issuer or BD GMBH (USA) or any of their respective Subsidiaries, unless the transaction (i) is carried out at fair market value and on arm's length terms and (ii) does not have a Material Adverse Effect.

12.6 Negative Pledge

The Issuer and BD GMBH (USA) shall not, and shall procure that none of their Subsidiaries will, provide, prolong or renew any security over any of its/their assets (present or future); *provided, however*, that the Issuer Companies shall have the 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 Issuer Company.

12.7 Loans Out

The Issuer and BD GMBH (USA) shall not, and shall procure that none of their Subsidiaries will, extend any loans in any form to any party other than (i) in the ordinary course of business, (ii) to a Issuer Company, and (iii) any other loan in an aggregate amount outstanding not exceeding EUR 100,000,000.

12.8 Dealings at arm's length terms

The Issuer and BD GMBH (USA) shall, and shall procure that their Subsidiaries will, conduct all dealings with the direct and indirect shareholders of the Issuer Companies (excluding other Issuer Companies) and/or any Affiliates of such direct and indirect shareholders (excluding other Issuer Companies) on arm's length terms.

12.9 Compliance with laws and authorisations

The Issuer and BD GMBH (USA) shall, and shall make sure that their Subsidiaries will, (i) comply with all laws and regulations applicable from time to time and (ii), obtain, maintain, and comply with, the terms and conditions of any authorisation, approval, licence or other permit required for the business carried out by a Issuer Company, in each case, if failure to do so has or is reasonably likely to have a Material Adverse Effect.

12.10 Insurance

The Issuer and BD GMBH (USA) shall, and shall procure that their Subsidiaries will maintain insurances on and in relation to their business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business, where failure to do so would have a Material Adverse Effect.

12.11 Environmental compliance

The Issuer and BD GMBH (USA) shall, and shall ensure that their Subsidiaries will, comply with all environmental laws and obtain, maintain and ensure compliance with all requisite environmental permits, if failure to do so has or is reasonably likely to have a Material Adverse Effect.

12.12 Holding Company

The Issuer and BD GMBH (USA) shall not trade, carry on any business, own any material assets or incur any liabilities, except for (i) the provision of administrative, managerial, legal, treasury, information, technology and accounting services to other Issuer Companies of a type customarily provided by a holding company (including retaining and the secondment of employees for such purpose), (ii) acquisition and ownership of shares in any company, (iii) intra-Issuer debit and credit balances and debit and credit balances held in bank accounts, (iv) the payment of professional fees and administrative costs, (v) liabilities incurred in connection with Subordinated Loans, the Senior Unsecured Bonds or any other bonds that may be issued, or incurrence of any other indebtedness in each case in compliance with these Terms and Conditions (vi) trade, any business, any material assets or any liabilities as permitted by the Finance Documents and under the Working Capital Facilities and (vii) liability to pay tax.

13. Events of Default and Acceleration of the Bonds

Each of the events or circumstances set out in this Clause 13 (other than Clause 13.10 (*Acceleration of the Bonds*)) is an Event of Default.

13.1 Non-Payment

The Issuer fails to pay an amount on the date it is due in accordance with the Finance Documents unless:

- (a) its failure to pay is caused by administrative or technical error; and
- (b) payment is made within five (5) Business Days of the due date; or
- (c) such failure to pay is caused by an error in the calculation of BDIB Interest and such error is remedied and did not result in any default in the payment of any other amount under the Bonds due and payable, or paid, in cash.

13.2 Other Obligations

A party (other than the Agent) fails to comply with the Finance Documents, in any other way than as set out in Clauses 13.1 (*Non-Payment*), provided that no Event of Default will occur if the failure to comply is capable of being remedied and the Issuer or that party has remedied the failure within twenty (20) Business Days of the earlier (i) the Issuer or that party becoming aware of the failure to comply and (ii) the Agent requesting the Issuer in writing to remedy such failure.

13.3 Cross payment default and Cross-acceleration

Any Financial Indebtedness of a Material Issuer 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 13.3 if the aggregate amount of Financial Indebtedness that has fallen due is less than EUR 5,000,000 and provided that it does not apply to any Financial Indebtedness owed to a Group Company.

13.4 Insolvency

- (a) Any Material Issuer 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 (except for Bondholders) with a view to rescheduling its Financial Indebtedness.
- (b) A moratorium is declared in respect of the Financial Indebtedness of any Material Issuer Company.

13.5 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 60 days of commencement or, if earlier, the date on which it is advertised and (ii), in relation to Subsidiaries of the Issuer or Black Diamond GMBH (USA), solvent liquidations) in relation to:

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

13.6 Creditors' Process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Material Issuer Company

having an aggregate value of an amount equal to or exceeding EUR 5,000,000 and is not discharged within 60 days.

13.7 Mergers and demergers

A decision is made that any Material Issuer Company shall be demerged or merged if such merger or demerger is likely to have a Material Adverse Effect, provided that a merger involving the Issuer or the Black Diamond GMBH (USA), where the Issuer is not the surviving entity and, in relation to BD GMBH (USA) only, where BD GMBH (USA) is not the surviving entity and the surviving entity does not assume the obligations of the BD GMBH (USA), shall always be considered an Event of Default and provided that the Issuer or BD GMBH (USA) may not be demerged.

13.8 Impossibility or Illegality

It is or becomes impossible or unlawful for any party (other than the Agent) 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 (subject to the Legal Reservations).

13.9 Continuation of the Business

The Issuer, BD GMBH (USA) or any other Material Issuer Company ceases to carry on its business (other than (i) a solvent liquidation permitted pursuant to Clause 13.5 (*Insolvency Proceedings*) above or (ii) a disposal permitted under the Finance Documents), if such discontinuation is likely to have a Material Adverse Effect.

13.10 Acceleration of the Bonds

- (a) Upon the occurrence of an Event of Default which is continuing but subject to the terms of the Intercreditor Agreement, the Agent is entitled to, and shall following a demand in writing from a Bondholder (or Bondholders) representing at least twenty-five (25) per cent. of the Adjusted Nominal Amount (such demand may only be validly made by a Person who is a Bondholder on the Business Day immediately following the day on which the demand is received by the Agent and shall, if made by several Bondholders, be made by them jointly) or following an instruction given pursuant to Clause 13.10(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 13.10(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 receives actual knowledge 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 15 (*Decisions by Bondholders*). The Agent shall always be entitled to take the time necessary to consider whether an event that has occurred constitutes an Event of Default.

- (d) If the Bondholders (in accordance with these Terms and Conditions) 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) Subject to the Intercreditor Agreement, in the event of an acceleration of the Bonds in accordance with this Clause 13.10, the Issuer shall up to, but excluding, the date falling 30 months after 4th April 2022 redeem all Bonds at an amount per Bond equal to the Call Option Amount set out in Clause 9.3(a)(ii) and thereafter, as applicable considering when the acceleration occurs, redeem all Bonds at an amount per Bond equal to the Call Option Amount for the relevant period.

14. Distribution of Proceeds

14.1 Distribution of Proceeds from an acceleration of the Bonds

- (a) All payments by the Issuer relating to the Bonds and the Finance Documents following an acceleration of the Bonds in accordance with Clause 13 (*Events of Default and Acceleration of the Bonds*) shall be distributed in accordance with the Intercreditor Agreement.
- (b) Funds that the Agent receives (directly or indirectly) in connection with the acceleration of the Bonds constitute escrow funds and must be promptly turned over to the Security Agent (as defined in the Intercreditor Agreement) to be applied in accordance with the Intercreditor Agreement.

14.2 Payments

If the Issuer or the Agent shall make any payment under this Clause 14, 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.

15. 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 of a Written Procedure, as determined by the Agent. The Person requesting the decision may suggest the form for decision making, but if it is in the Agent's opinion more appropriate that a matter is dealt with at a 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 or other authorisation 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 17(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 ($66 \frac{2}{3}$) 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 17(c):
 - (i) a change to the terms of any of Clause 2(a), and Clauses 2(e) to 2(g);
 - (ii) a reduction of the premium payable upon the redemption or repurchase of any Bond pursuant to Clause 9 (*Redemption and Repurchase of the Bonds*);

- (iii) a change to the Interest Rate or the Nominal Amount;
 - (iv) waive a breach of or amend an undertaking set out in Clause 12 (*General Undertakings*);
 - (v) a change to the terms for the distribution of proceeds set out in Clause 14 (*Distribution of Proceeds*);
 - (vi) a change to the terms dealing with the requirements for Bondholders' consent set out in this Clause 15;
 - (vii) a change of issuer, an extension of the tenor of the Bonds or any delay of the due date for payment of any principal or interest on the Bonds;
 - (viii) a mandatory exchange of the Bonds for other securities; and
 - (ix) early redemption of the Bonds, other than upon an acceleration of the Bonds pursuant to Clause 13 (*Events of Default and Acceleration of the Bonds*) or as otherwise permitted or required by these Terms and Conditions.
- (f) Any matter not covered by Clause 15(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 17(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 18(a)(i) or 18(a)(ii)), an acceleration of the Bonds.
- (g) Quorum at a Bondholders' Meeting or in respect of a Written Procedure only exists if a Bondholder (or Bondholders) representing at least 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 16(a)) or initiate a second Written Procedure (in accordance with Clause 17(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 15(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 Issuer 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 Issuer 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 websites 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.

16. 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 16(a) with a copy to the Agent. After a request from the Bondholders pursuant to Clause 19.4(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 16(a).
- (c) The notice pursuant to Clause 16(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.

17. Written Procedure

- (a) The Agent shall instigate a Written Procedure (which may be conducted electronically) 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 17(a) to each Bondholder with a copy to the Agent.
- (c) A communication pursuant to Clause 17(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 ten (10) Business Days from the communication pursuant to Clause 17(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 15(e) and 15(f) have been received in a Written Procedure,

the relevant decision shall be deemed to be adopted pursuant to Clause 15(e) or 15(f), as the case may be, even if the time period for replies in the Written Procedure has not yet expired.

18. 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 15 (*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 or waiver.
- (c) The Agent shall promptly notify the Bondholders of any amendments or waivers made in accordance with Clause 18(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 10.3 (*Publication of Finance Documents*). The Issuer shall ensure that any amendments to the Finance Documents are duly registered with the and each other relevant organisation or authority, to the extent such registration is possible with the rules of the relevant.
- (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.

19. Appointment and Replacement of the Security Trustee

19.1 Appointment of Security Trustee

- (a) By subscribing for Bonds, each initial Bondholder appoints the Security Trustee 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.
- (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 19.1(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 not under any 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 respective work and to be indemnified for costs, losses and liabilities on the terms set out in the Finance Documents and the Agent's obligations as Agent under the Finance Documents are conditioned upon the due payment of such fees and indemnifications.
- (f) The Agent may act as agent or trustee for several issues of securities issued by or relating to the Issuer and other Issuer Companies notwithstanding potential conflicts of interest.

19.2 Duties of the Agent

- (a) The Agent shall represent the Bondholders subject to and in accordance with the Finance Documents. The Agent is not responsible for the content, valid execution, legal validity or enforceability of the Finance Documents.
- (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 each of them 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, including for the avoidance of doubt, in relation to any Bondholders meeting, Written Procedure or any other amendment of any Finance Document. 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, (ii) a matter relating to the Issuer or the Finance Documents which the Agent reasonably believes may be detrimental to the interests of the Bondholders under the Finance Documents, (iii) in connection with any Bondholders' Meeting or Written Procedure, (iv) in connection with any amendment or (v) as otherwise agreed between the Agent and the Issuer. 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 14 (*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 its respective reasonable fees) in complying with instructions of the Bondholders, or taking any action at its own initiative, will not be covered by the Issuer, or the Bondholders (as applicable), 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 (ii) if it refrains from acting for any reason described in Clause 19.2(i).
- (l) The Agent may instruct the to split the Bonds to a lower nominal value in order to facilitate partial redemptions, write-downs or restructurings of the Bonds or in other situations where such split is deemed necessary.

19.3 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 not be responsible for indirect loss.
- (b) The Agent shall not be considered to have acted negligently if it has acted in accordance with advice addressed to it from or opinions of reputable external experts or if it has acted with reasonable care in a situation when it 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 it to the Bondholders, provided that it 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 it for that purpose.
- (d) The Agent shall not have any liability to the Bondholders for damage caused by it acting in accordance with instructions of the Bondholders given in accordance with the Finance Documents.
- (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 any other Person.

19.4 Replacement of the Agent

- (a) Subject to Clause 19.4(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 19.4(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 be 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 19.4, the Issuer shall execute such documents and take such actions as the new Agent may reasonably require for the purpose of vesting in such new Agent the rights, powers and obligation of the Agent and releasing the retiring Agent from its respective further obligations under the Finance Documents. 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.

20. Appointment and Replacement of the Solicitors

- (a) The Issuer has appointed Solicitors to manage certain tasks under these Terms and Conditions and in accordance with the relevant regulations and the other regulations applicable to the Bonds.
- (b) The Solicitors may retire from its assignment or be dismissed by the Issuer provided that the Issuer has effectively appointed a replacement Solicitors that accedes as Solicitors at the same time as the old Solicitors retires or is dismissed and provided also that the replacement does not have a negative effect on any Bondholder.

21. Appointment and Replacement of the Paying Agent

- (a) The Issuer appoints the Paying 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 Solicitors and relating to the Bonds.
- (b) The Paying 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 Solicitors accedes as new Paying Agent at the same time as the old Paying Agent retires or is dismissed. If the Paying Agent is Insolvent, the Issuer shall immediately appoint a new Paying Agent, which shall replace the old Paying Agent as paying 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 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 re-organisation or bankruptcy (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 19.1(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 by any reason described in Clause 19.2(i), such failure must continue for at least forty (40) Business Days after notice pursuant to Clause 19.2(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 9.4 (*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 relevant jurisdiction Act as Limitations, 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 email address by sending an email to support@bdibglobal.com on the Business Day prior to dispatch or, if sent by email by the Issuer, to the email address notified by the Agent from time to time;
 - (ii) if to the Issuer, shall be given at the email address by sending a email to support@bdibank.co.uk on the Business Day prior to dispatch or if sent by email by the Agent, to the email address notified by the Issuer to the Agent from time to time; and
 - (iii) if to the Bondholders, by the Agent, shall be sent to the Bondholders via the Solicitors with a copy to the Issuer. Any such notice or communication will be deemed to be given or made via the Solicitors when sent from the Solicitors. If by the Issuer, shall be sent to the Bondholders via the Agent or through the Solicitors with a copy to the Agent . A 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, or if between the Issuer and the Agent, by email, and will only be effective:
- (i) in case of courier or personal delivery, when it has been left at the address specified in Clause 24.1(a);
 - (ii) 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); or
 - (iii) in case of email, on the day of dispatch (unless a delivery failure message was received by the sender), save that any notice or other communication sent by email that is sent after 5.00 pm in the place of receipt shall be deemed only to become effective on the following day.

- (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 9.3 (*Voluntary total redemption (call option)*), 10.1(e), 13.10(c), 15(o), 16(a), 17(a) and 18(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 Issuer 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) None of the Agent or the Paying 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 Paying Agent itself takes such measures, or is subject to such measures.
- (b) The Paying Agent shall have no liability to the Bondholders if it has observed reasonable care. The Paying 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 Paying 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 United Kingdom.
- (b) The Issuer submits to the non-exclusive jurisdiction of the City Court of London, England.

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

Black Diamond Investment Bank LTD

as Issuer

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

Name:

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

BDIB Global LLP

as Agent

A handwritten signature in black ink, appearing to be the name 'Hurl', positioned above a solid horizontal line.

Name: