

## NOTICE OF OUTCOME IN THE WRITTEN PROCEDURE

27.9.2019

To the noteholders of:

M-Brain Oy up to EUR 15,000,000 senior secured fixed rate notes 2017/2020 with ISIN: FI4000266788 (the "**Notes**")

### **Notice regarding decisions taken by way of a procedure in writing concerning certain amendments and waivers of the terms and conditions of the Notes (the "Terms and Conditions")**

This is a notice sent on 27 September 2019 in accordance with Section 15.14 of the Terms and Conditions to the holders of the Notes (the "**Noteholders**").

Following the receipt of the consent of the requisite majority received in the Written Procedure, for which a notice was given on 9 September 2019 and for which the last date to vote was on 1 October 2019 no later than 13:00 (CET) (<https://www.intertrustgroup.com/our-services/capital-markets-services/bonds/bond-news/2019/mbrainoy>) (the "**Request**"), the requisite majority of Noteholders has as at 13:00 (CET) on 25 September 2019 approved the proposals set out in the Request and, accordingly, the proposals were deemed approved by and binding upon all Noteholders in accordance with the voting requirements of the Terms and Conditions.

The Terms and Conditions, as amended in the Written Procedure, are attached hereto as an Appendix and are published on the website of the Agent in accordance with the Terms and Conditions.

The formal notice regarding the decisions taken by way of the written procedure has been sent by registered mail to Noteholders (direct registered owners (Fin: *omistaja*) and registered authorised nominees (Fin: *hallintarekisteröinnin hoitaja*)) and published on the website of the Agent in accordance with the Terms and Conditions.

For questions regarding this notice:

To the Agent: Intertrust (Finland) Oy, Alli Seppänen, phone: +358 45 249 6103,  
e-mail: [finland@intertrustgroup.com](mailto:finland@intertrustgroup.com) with a copy to  
[alli.seppanen@intertrustgroup.com](mailto:alli.seppanen@intertrustgroup.com)

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**Helsinki 27 September 2019**  
**Intertrust (Finland) Oy**  
**As Agent**

**APPENDIX**

**TERMS AND CONDITIONS OF THE NOTES, AS AMENDED ON 25 SEPTEMBER 2019**



**TERMS AND CONDITIONS FOR**

**M-BRAIN OY**

**UP TO EUR 15,000,000**

**SENIOR SECURED FIXED RATE NOTES**

**ISIN: FI4000266788**

The Terms and Conditions were originally adopted on 19 June 2017.

The following waivers and amendments were made on 25 January 2018, 27 December 2018, 4 April 2019 and 25 September 2019:

On 25 January 2018, the following waivers were issued in respect of the Terms and Conditions:

- (i) for the Measurement Period ending 31 December 2017, the Total Net Debt to EBITDA financial covenant set out in clause 11.5 (*Financial undertakings*) of the Terms and Conditions shall not be tested.
- (ii) the sale of the Opoint Technology and related international business shall not be deemed a prohibited disposal under Clause 11.4 (*Disposals*) of the Terms and Conditions, provided that the Issuer has duly taken care of the Escrow Arrangement with the Agent.

On 27 December 2018, the Terms and Conditions were amended as follows:

The definition of “Nordea Credit Facility” of the Terms and Conditions was amended as follows (modified sections underlined here for ease of reference):

*“Nordea Credit Facility” means the overdraft facility provided by Nordea Bank Abp to the Issuer up to the maximum aggregate amount of EUR 2,000,000 and the Issuer and Nordea Bank Abp have agreed to increase the overdraft facility to EUR 2,500,000 by replacing the existing agreement, which may subsequently further be replaced by a credit facility in a corresponding amount in relation to an agreement for multicurrency functionality and credit facility to be entered into by and between the Issuer and Nordea Bank Abp.*

On 4 April 2019, the Terms and Conditions were waived as follows:

- (i) for the Measurement Period ending 31 December 2018, the Total Net Debt to EBITDA financial covenant set out in clause 11.5 (*Financial undertakings*) of the Terms and Conditions shall not be tested;
- (ii) for the Measurement Period ending 30 June 2019, the Total Net Debt to EBITDA financial covenant set out in clause 11.5 (*Financial undertakings*) of the Terms and Conditions shall not be tested; and
- (iii) the compliance certificate to be submitted to the Agent for the relevant Measurement Period referred to in (i) and (ii) above pursuant to clause 10.1.4 of the Terms and Conditions shall otherwise be in the form of Appendix 1 of the Terms and Conditions, but shall reflect that the Total Net Debt to EBITDA financial covenant set out in clause 11.5 (*Financial Undertakings*) of the Terms and Conditions shall not be tested for the relevant Measurement Period referred to in (i) and (ii) above.

In accordance with these waivers, the terms and conditions were amended on 4 April 2019 as follows:

Clause 11.5 was amended to read in its entirety as follows (modified sections underlined here for ease of reference):

*“The Issuer shall ensure that the ratio of Total Net Debt on the last day of any Measurement Period to EBITDA in respect of that Measurement Period shall not exceed 5:1. The ratio of Total Net Debt to EBITDA shall be calculated based on the latest available financial statements delivered in accordance with Clause*

10.1. For the avoidance of doubt, no testing of the Total Net Debt to EBITDA shall be made for the Measurement Periods ending 31 December 2018 and 30 June 2019."

The footnote 1 of the compliance certificate was amended to read as follows (modified sections underlined here for ease of reference):

<sup>1</sup> Not to be included for the Measurement Periods ending 31 December 2018 and 30 June 2019.

On 25 September 2019, the Terms and Conditions were amended as follows.

Clause 11.4. of the Terms and Conditions and Clause 11.4.2(a) were amended to read in its entirety as follows (modified sections underlined here for ease of reference):

"Clause 11.4.1 does not apply to any sale, lease, transfer or other disposal: [--]

(a) relating to (i) the sale of the Issuer's media intelligence business consisting of Opoint Holding AS, based in Norway, together with its subsidiaries or to (ii) any other Group Company except for M-Brain Ltd, M-Brain GmbH or M-Brain AB;

Clause 11.4.2(c) was amended to read in its entirety as follows (modified sections underlined here for ease of reference):

"Clause 11.4.1 does not apply to any sale, lease, transfer or other disposal: [--]

(c) where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal, other than any permitted under paragraphs (a) to (b) above) does not exceed EUR 300,000 (or its equivalent in another currency or currencies) in any financial year. Notwithstanding the preceding sentence, any sale of the Issuer's sales receivables exceeding EUR 300,000 per financial year shall never be deemed a prohibited disposal or other prohibited action under this Clause 11.4."

Clause 11.5 was amended to read in its entirety as follows (modified sections underlined here for ease of reference):

"The Issuer shall ensure that the ratio of Total Net Debt on the last day of any Measurement Period to EBITDA in respect of that Measurement Period shall not exceed 5:1. The ratio of Total Net Debt to EBITDA shall be calculated based on the latest available financial statements delivered in accordance with Clause 10.1. For the avoidance of doubt, no testing of the Total Net Debt to EBITDA shall be made for the Measurement Periods ending 31 December 2018, 30 June 2019 and 31 December 2019."

The footnote 1 of the compliance certificate was amended to read as follows (modified sections underlined here for ease of reference):

<sup>1</sup> Not to be included for the Measurement Periods ending 31 December 2018, 30 June 2019 and 31 December 2019.



**TABLE OF CONTENTS**

|     |   |    |
|-----|---|----|
| 1.  | DEFINITIONS AND CONSTRUCTION .....              | 6  |
| 2.  | ISSUANCE AND STATUS OF THE NOTES.....           | 11 |
| 3.  | USE OF PROCEEDS.....                            | 11 |
| 4.  | CONDITIONS FOR DISBURSEMENT .....               | 12 |
| 5.  | NOTES IN BOOK-ENTRY FORM .....                  | 12 |
| 6.  | PAYMENTS IN RESPECT OF THE NOTES .....          | 12 |
| 7.  | INTEREST.....                                   | 13 |
| 8.  | REDEMPTION AND REPURCHASE OF THE NOTES.....     | 13 |
| 9.  | TRANSACTION SECURITY .....                      | 15 |
| 10. | INFORMATION TO NOTEHOLDERS .....                | 15 |
| 11. | UNDERTAKINGS .....                              | 16 |
| 12. | ACCELERATION OF THE NOTES .....                 | 19 |
| 13. | DISTRIBUTION OF PROCEEDS .....                  | 20 |
| 14. | RIGHT TO ACT ON BEHALF OF A NOTEHOLDER .....    | 21 |
| 15. | DECISIONS BY NOTEHOLDERS .....                  | 22 |
| 16. | NOTEHOLDERS' MEETING .....                      | 24 |
| 17. | WRITTEN PROCEDURE.....                          | 24 |
| 18. | AMENDMENTS AND WAIVERS.....                     | 25 |
| 19. | APPOINTMENT AND REPLACEMENT OF THE AGENT.....   | 25 |
| 20. | NO DIRECT ACTIONS BY NOTEHOLDERS.....           | 28 |
| 21. | PRESCRIPTION.....                               | 29 |
| 22. | NOTICES.....                                    | 29 |
| 23. | FORCE MAJEURE AND LIMITATION OF LIABILITY ..... | 30 |
| 24. | GOVERNING LAW AND JURISDICTION .....            | 30 |

## 1. DEFINITIONS AND CONSTRUCTION

### 1.1 Definitions

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

“**Accounting Principles**” means **(i)** in connection with providing calculations in accordance with Clause 10.1.4 (*Information to Noteholders*) of the ratio of Total Net Debt to EBITDA as set out in Clause 11.5 (*Financial Undertakings*) the generally accepted accounting principles, standards and practices in Finland, in each case as applied by the Issuer in preparing its annual consolidated financial statements, applicable to the Issuer at the Issue Date and **(ii)** in connection with other occasions (a) international financial reporting standards (IFRS) within the meaning of Regulation 1606/2002/EC on the application of international accounting standards (or as otherwise adopted or amended from time to time, except where specifically stated to refer to such standards as in force on the Issue Date) or (b) the generally accepted accounting principles, standards and practices in Finland, in each case as applied by the Issuer in preparing its annual consolidated financial statements.

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

“**Affiliate**” means, in relation to any specified Person, another Person directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purpose of this definition, “control” when used with respect to any Person means the power to direct the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agency Agreement**” means the agency agreement entered into on or before the Issue Date, between the Issuer and Intertrust (Finland) Oy, or any replacement agency agreement entered into after the Issue Date between the Issuer and a replacing Agent.

“**Agent**” means Intertrust (Finland) Oy, incorporated under the laws of Finland with corporate registration number 2343108-1, acting for and on behalf of the Noteholders in accordance with these Terms and Conditions, or another party replacing it, as Agent, in accordance with these Terms and Conditions.

“**Book-Entry Securities System**” means the Infinity-book-entry system being part of the book-entry register maintained by the CSD or any other replacing book-entry securities system.

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

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

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

“**Change of Control Event**” means the occurrence of an event or series of events, other than as a result of an Initial Public Offering, whereby (i) one or more Persons acting in concert (Fin: *yksissä tuumin toimiminen*), acquire control over the Issuer or (ii) the Key Shareholders cease to control the Issuer, and where “control” means (a) acquiring or controlling, directly or indirectly, more than 50 per cent of the total voting rights represented by the shares of the Issuer (being votes which are capable of being cast at general meetings of shareholders), or (b) the right to, directly or indirectly, appoint or remove at least a majority of the members of the board of directors of the Issuer.



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

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

“**EBITDA**” means in respect of any Measurement Period, the consolidated operating profit of the Issuer’s group after adding back any amount attributable to the amortisation or depreciation of assets and excluding adjusting items as reported by the Issuer in its financial statements. With respect to any material companies, businesses or undertakings acquired during the relevant Measurement Period, EBITDA shall be calculated on a pro forma basis as if it had been a Group Company for the whole relevant Measurement Period in order to reflect the EBITDA impact of the acquired entity or business on the above covenant calculation.

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

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

“**Final Maturity Date**” means 19 June 2020.

“**Finance Documents**” means these Terms and Conditions, the Security Document and any other document by which these Terms and Conditions are amended or any part thereof waived in compliance with Clause 18.

“**Financial Indebtedness**” means:

- (a) moneys borrowed (including under any bank financing);
- (b) the amount of any liability under any lease or hire purchase contracts which would, in accordance with the Accounting Principles be treated as a finance lease or a capital lease);
- (c) receivables sold or discounted (other than on a non-recourse basis, provided that the requirements for de-recognition under the Accounting Principles are met);
- (d) any amount raised pursuant to any note purchase facility or the issue of any bond or note or similar instrument;
- (e) any other transaction (including the obligation to pay deferred purchase price) having the commercial effect of a borrowing or otherwise being classified as borrowing under the Accounting Principles;
- (f) the marked-to-market value of derivative transactions entered into in connection with protection against, or in order to benefit from, the fluctuation in any rate or price (if any actual amount is due as a result of a termination or a close-out, such amount shall be used instead);
- (g) counter-indemnity obligations in respect of guarantees or other instruments issued by a bank or financial institution; and
- (h) (without double-counting) liabilities under guarantees or indemnities for any of the obligations referred to in paragraphs (a) to (g) above.

“**Financial Report**” means the Group’s annual financial statements or semi annual interim unaudited reports, which shall be prepared and made available according to (i) and (ii) under Clause 10.1.

“**First Call Date**” means the date falling 12 months after the Issue Date.

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

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

“**Initial Public Offering**” means the listing of the shares in the Issuer either on i) a multilateral trading facility such as First North Finland or ii) a regulated market such as the Helsinki Stock Exchange, as selected by the Issuer.

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

“**Intercreditor Agreement**” means the intercreditor agreement dated on or about the date hereof between the Issuer as issuer, Nordea Bank AB (publ), Finnish Branch as lender and Intertrust (Finland) Oy as agent.

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

“**Interest Payment Date**” means 19 June and 19 December of each year or, to the extent such day is not a CSD Business Day, the CSD Business Day following from the application of the Business Day Convention. The first Interest Payment Date for the Notes shall be 19 December 2017 and the last Interest Payment Date shall be the relevant Redemption Date.

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

“**Interest Rate**” means 7.50 per cent. *per annum*.

“**Issue Date**” means 19 June 2017.

“**Issuer**” means M-Brain Oy, a limited liability company incorporated under the laws of Finland with business identity code 1508015-4.

“**Issuing Agency Agreement**” means the agreement dated 9 June 2017 regarding services related to the Notes entered into by and between the Issuer and the Issuing Agent in connection with the issuance of the Notes (as amended and restated from time to time).

“**Issuing Agent**” means Evli Bank Plc acting as issue agent (Fin: *liikkeeseenlaskijan asiamies*) and paying agent of the Notes for and on behalf of the Issuer, or any other party replacing the same as Issuing Agent in accordance with the regulations of the CSD.

“**Key Shareholders**” means the shareholders of the Issuer at the Issue Date, being the Nyberg Shareholders, Ingman Development Oy Ab, Veritas Pension Insurance Company, Ilmarinen Mutual Pension Insurance Company and Aloitusrahasto Vera Oy and/or entity which is under the control of any of, or under common control of each or any of, the aforesaid persons or entities.

“**Material Group Company**” means, at any time, a Subsidiary of the Issuer which: (a) has earnings before interest, tax, depreciation and amortisation calculated on the same basis as EBITDA representing five (5) per cent. or more of consolidated EBITDA of the Group; or (b) has total assets representing five (5) per cent. or more of consolidated total assets of the Group; or (c) has total net sales representing five (5) per cent. or more of consolidated total net sales of the Group, in each case calculated on a consolidated basis.

“**Measurement Period**” means a twelve month period ending on a Reference Date or such shorter period as the context may require.

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

“**Nordea Credit Facility**” means the overdraft facility provided by Nordea Bank Abp to the Issuer up to the maximum aggregate amount of EUR 2,000,000 and the Issuer and Nordea Bank Abp have agreed to increase the overdraft facility to EUR 2,500,000 by replacing the existing agreement, which may subsequently further be replaced by a credit facility in a corresponding amount in relation to an agreement for multicurrency functionality and credit facility to be entered into by and between the Issuer and Nordea Bank Abp.

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

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

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

“**Nyberg Shareholders**” means Mr. Kim Nyberg, Ms. Marjukka Nyberg, Mr. Joakim Nyberg and/or any entity which is under the control of any of, or under common control of each or any of, the aforesaid persons or entities.

“**Obligor**” means the Issuer.

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

“**Record Time**” means:

- (a) in relation to a payment of Interest, default interest and/or redemption of the Notes when such payment is made through the Book-Entry Securities System, the end of the first CSD Business Day prior to, as applicable, (i) an Interest Payment Date, (ii) the day on which default interest is paid, (iii) a Redemption Date or (iv) a date on which a payment to the Noteholders is to be made under Clause 13 (*Distribution of proceeds*); and
- (b) in relation to a Noteholders’ Meeting and Written Procedure, the end of the CSD Business Day specified in the communication pursuant to Clause 16.3 or Clause 17.3, as applicable; and
- (c) otherwise, the end of the fifth (5) CSD Business Day prior to another relevant date.

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

“**Reference Date**” means 30 June and 31 December in each year. The first Reference Date shall be 31 December 2017.

“**Secured Obligations**” means all present and future obligations and liabilities of the Obligor to the Secured Parties under the Finance Documents, the Nordea Credit Facility, the Issuing Agency Agreement and the Agency Agreement.

“**Secured Parties**” means the Noteholders, the Agent (including in its capacity as Agent under the Agency Agreement), the Issuing Agent (including in its capacity as Issuing Agent under the Issuing Agency Agreement) and Nordea Bank AB (publ), Finnish Branch.

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

“**Security Document**” means the security agreement purporting to create a first ranking pledge (*Fiensipantti*) over all of the shares currently issued in M-Brain Insight Oy.

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

“**Total Net Debt**” means, at any time, the aggregate amount of interest-bearing liabilities of the Group Companies at that time deducted by the aggregate amount of cash and cash equivalents held by any Group Company at that time.

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

“**Transaction Security**” means the Security provided for the Secured Obligations pursuant to the Security Document.

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

## 1.2 Construction

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

- (a) “**assets**” includes present and future properties, revenues and rights of every description;
- (b) “**guarantee**” means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any Person or to make an investment in or loan to any Person or to purchase assets of any Person where, in each case, such obligation is assumed in order to maintain or assist the ability of such Person to meet its indebtedness.
- (c) any agreement or instrument is a reference to that agreement or instrument as supplemented, amended, novated, extended, restated or replaced from time to time;
- (d) an Event of Default is continuing if it has not been remedied or waived;

- (e) a provision of law is a reference to that provision as amended or re-enacted;
  - (f) words denoting the singular number shall include the plural and vice versa; and
  - (g) a time of day is a reference to Helsinki time.
- 1.2.2 When ascertaining whether a limit or threshold specified in Euro has been attained or broken, an amount in another currency shall be counted on the basis of the rate of exchange for such currency against Euro for the previous Business Day, as published by the European Central Bank on its website ([www.ecb.int](http://www.ecb.int)). If no such rate is available, the most recent rate published by the European Central Bank shall be used instead.
- 1.2.3 No delay or omission of the Agent or of any Noteholder to exercise any right or remedy under the Finance Documents shall impair or operate as a waiver of any such right or remedy.

## 2. ISSUANCE AND STATUS OF THE NOTES

- 2.1 The Notes are denominated in Euro and each Note is constituted by these Terms and Conditions.
- 2.2 The Notes are offered for subscription in a minimum amount of EUR 100,000 by way of a private placement mainly to domestic and international institutional investors outside of the United States of America through a book-building procedure. The subscription period shall commence and end on 9 June 2017. Bids for subscription shall be submitted to Evli Bank Plc, Corporate Finance, Aleksanterinkatu 19, 00100 Helsinki, Finland, telephone +358 (0)9 4766 9271 during the subscription period and within regular business hours. Subscriptions made are irrevocable. All subscriptions remain subject to the final acceptance by the Issuer. The Issuer may, in its sole discretion, reject a subscription in part or in whole. The Issuer shall decide on the procedure in the event of over-subscription. After the final allocation and acceptance of the subscriptions by the Issuer each investor that has submitted a subscription shall be notified by the Issuer whether and, where applicable, to what extent such subscription is accepted. Subscriptions notified by the Issuer as having been accepted shall be paid for as instructed in connection with the subscription. Notes subscribed and paid for shall be entered by the Issuing Agent to the respective book-entry accounts of the subscribers on a date advised in connection with the issuance of the Notes in accordance with the Finnish legislation governing book-entry system and book-entry accounts as well as regulations and decisions of the CSD.
- 2.3 By subscribing for Notes, each initial Noteholder, and, by acquiring Notes, each subsequent Noteholder (i) agrees that the Notes shall benefit from and be subject to the Finance Documents and (ii) agrees to be bound by these Terms and Conditions and the other Finance Documents.
- 2.4 The nominal amount (Fin: *arvo-osuuden yksikkökoko*) of each Note is EUR 1,000 (the “**Nominal Amount**”). The aggregate nominal amount of the Notes is EUR 15,000,000. All Notes are issued on the Issue Date on a fully paid basis at an issue price of 100 per cent. of the Nominal Amount.
- 2.5 The Notes constitute direct, unconditional, unsubordinated and secured obligations of the Issuer and shall at all times rank *pari passu* and without any preference among them.
- 2.6 Each Note is freely transferable after it has been registered into the respective book-entry account of a Noteholder but the Noteholders may be subject to purchase or transfer restrictions with regard to the Notes, as applicable, under local laws to which a Noteholder may be subject. Each Noteholder must ensure compliance with such restrictions at its own cost and expense.

## 3. USE OF PROCEEDS

The Issuer shall use the proceeds from the issue of the Notes, less the costs and expenses incurred by the Issuer in connection with the issue of the Notes for refinancing its EUR 15,000,000 notes issued 17 June 2014 and maturing 17 June 2017.

#### **4. CONDITIONS FOR DISBURSEMENT**

- 4.1 The Issuing Agent shall pay the net proceeds from the issuance of the Notes to the Issuer on the later of (i) the Issue Date and (ii) the day on which the Agent notifies the Issuing Agent that it has received the following, in form and substance satisfactory to it:
- (a) the Finance Documents, the Issuing Agency Agreement and the Agency Agreement duly executed by the parties thereto;
  - (b) a copy of a resolution from the board of directors of the Issuer approving the issue of the Notes and the terms of the Finance Documents, the Issuing Agency Agreement and the Agency Agreement, and resolving to enter into such documents and any other documents necessary in connection therewith, authorising specified Person(s) to approve and execute any documents and take any other action necessary to consummate such issue; and
  - (c) such other documents and information as is agreed between the Agent and the Issuer.
- 4.2 The Agent may assume that the documentation delivered to it pursuant to Clause 4.1 is accurate, correct and complete unless it has actual knowledge that this is not the case, and the Agent does not have to verify the contents of any such documentation.
- 4.3 The Agent shall confirm to the Issuing Agent when it has received the documents and evidence referred to in Clause 4.1.

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

- 5.1 The Notes will be issued in dematerialised form in the Book-Entry Securities System in accordance with the Book-Entry System Act and regulations of the CSD and no physical notes will be issued.
- 5.2 Each Noteholder consents to the Issuer having a right to obtain information on the Noteholders, their contact details and their holdings of the Notes registered in the Book-Entry Securities System, such as information recorded in the lists referred to in paragraphs 2 and 3 of Section 3 of Chapter 6 of the Book-Entry System Act kept by the CSD in respect of the Notes and the CSD shall be entitled to provide such information upon request. At the request of the Agent or the Issuing Agent, the Issuer shall (and shall be entitled to do so) promptly obtain such information and provide it to the Agent or the Issuing Agent, as applicable.
- 5.3 The Agent and the Issuing Agent shall have the right to obtain information referred to in Clause 5.2 from the CSD in respect of the Notes if so permitted under the regulation of the CSD. The Issuer agrees that each of the Agent and the Issuing Agent is at any time on its behalf entitled to obtain information referred to in Clause 5.2 from the CSD in respect of the Notes.
- 5.4 The Issuer shall issue any necessary power of attorney to such persons employed by the Agent as are notified by the Agent, in order for such individuals to independently obtain information referred to in Clause 5.2 directly from the CSD in respect of the Notes. The Issuer may not revoke any such power of attorney unless directed by the Agent or unless consent thereto is given by the Noteholders.
- 5.5 The Issuer, the Agent and the Issuing Agent may use the information referred to in Clause 5.2 only for the purposes of carrying out their duties and exercising their rights in accordance with these Terms and Conditions with respect to the Notes and shall not disclose such information to any Noteholder or third party unless necessary for the before-mentioned purposes.

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

- 6.1 Any payments under or in respect of the Notes pursuant to these Terms and Conditions shall be made to the Person who is registered as a Noteholder at the Record Time prior to an Interest

Payment Date or other relevant due date in accordance with the Finnish legislation governing the Book-Entry Securities System and book-entry accounts as well as the regulations of the CSD.

- 6.2 If, due to any obstacle affecting the CSD, the Issuer cannot make a payment, such payment may be postponed until the obstacle has been removed. Any such postponement shall not affect the Record Time.
- 6.3 The Issuer is not liable to gross-up any payments under the Finance Documents by virtue of any withholding tax, public levy or the similar.
- 6.4 All payments to be made by the Issuer pursuant to these Terms and Conditions shall be made without (and free and clear of any deduction for) set-off or counterclaim.

## **7. INTEREST**

- 7.1 Each Note carries Interest at the Interest Rate from (and including) the Issue Date up to (but excluding) the relevant Redemption Date.
- 7.2 Interest accrues during an Interest Period. Payment of Interest in respect of the Notes shall be made to the Noteholders on each Interest Payment Date for the preceding Interest Period.
- 7.3 Interest shall be calculated on the basis of a 360-day year comprised of twelve months of 30 days each and, in case of an incomplete month, the actual number of days elapsed (30/360-days basis).
- 7.4 If the Issuer fails to pay any amount payable by it on its due date, default interest shall accrue on the overdue amount from (and including) the due date up to (but excluding) the date of actual payment at a rate which is three (3) percentage points higher than the Interest Rate. Accrued default interest shall not be capitalised. No default interest shall accrue where the failure to pay was solely attributable to the Agent, the Issuing Agent or the CSD, in which case the Interest Rate shall apply instead.

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

### **8.1 Redemption at maturity**

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

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

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

### **8.3 Voluntary total redemption (call option)**

- 8.3.1 The Issuer may redeem all, but not only some, of the outstanding Notes in full any time from and including the First Call Date to, but excluding, the Final Maturity Date at an amount per Note equal to 100 per cent. of the Nominal Amount plus 50 per cent. of the Interest Rate (calculated on the Nominal Amount for one year), together with accrued but unpaid Interest.
- 8.3.2 Redemption in accordance with Clause 8.3.1 shall be made by the Issuer giving not less than fifteen (15) Business Days' notice to the Noteholders and the Agent. Any such notice is irrevocable. Upon expiry of such notice and the fulfilment of the conditions precedent (if any), the Issuer is bound to redeem the Notes in full at the applicable amounts.

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

- 8.4.1 The Issuer may redeem all, but not only some, of the outstanding Notes at an amount per Note equal to the Nominal Amount together with accrued but unpaid Interest on a date determined by the Issuer if it is or becomes unlawful for the Issuer to perform its obligations under the Finance Documents.
- 8.4.2 The Issuer shall give notice of any redemption pursuant to Clause 8.4.1 no later than twenty (20) Business Days after having received actual knowledge of any event specified therein (after which time period such right shall lapse).
- 8.4.3 A notice of redemption in accordance with Clause 8.4.1 is irrevocable and, on the date specified in such notice, the Issuer is bound to redeem the Notes in full at the applicable amounts.

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

- 8.5.1 Upon the occurrence of a Change of Control Event, each Noteholder shall have the right to request that all, or only some, of its Notes be repurchased at a price per Note equal to i) 100 per cent. of the Nominal Amount together with accrued but unpaid Interest if the Change of Control Event occurs on or after 1 January 2019 or ii) 101 per cent. of the Nominal Amount together with accrued but unpaid Interest if the Change of Control Event occurs prior to 1 January 2019, during a period of twenty (20) Business Days following a notice from the Issuer of the Change of Control Event pursuant to Clause 10.1.2 (after which time period such right shall lapse).
- 8.5.2 The notice from the Issuer pursuant to Clause 10.1.2 shall specify the repurchase date that is a CSD Business Day and include instructions about the actions that a Noteholder needs to take if it wants Notes held by it to be repurchased. If a Noteholder has so requested, and acted in accordance with the instructions in the notice from the Issuer, the Issuer shall, or shall procure that a Person designated by the Issuer will, repurchase the relevant Notes and the repurchase amount shall fall due on the repurchase date specified in the notice given by the Issuer pursuant to Clause 10.1.2. The repurchase date must fall no later than forty (40) Business Days after the end of the period referred to in Clause 8.5.1.
- 8.5.3 The Issuer shall comply with the requirements of any applicable securities laws and regulations in connection with the repurchase of Notes. To the extent that the provisions of such laws and regulations conflict with the provisions in this Clause 8.5, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Clause 8.5 by virtue of the conflict.
- 8.5.4 Any Notes repurchased by the Issuer pursuant to this Clause 8.5 may at the Issuer's discretion be retained, sold or cancelled.
- 8.5.5 The Issuer shall not be required to repurchase any Notes pursuant to this Clause 8.5, if a third party in connection with the occurrence of a Change of Control Event offers to purchase the Notes in the manner and on the terms set out in this Clause 8.5 (or on terms more favourable to the Noteholders) and purchases all Notes validly tendered in accordance with such offer. If the Notes tendered are not purchased within the time limits stipulated in this Clause 8.5, the Issuer shall repurchase any such Notes within five (5) Business Days after the expiry of the time limit.
- 8.5.6 If Notes representing more than 75 per cent of the aggregate nominal principal amount of the Notes have been repurchased pursuant to this Clause 8.5, the Issuer is entitled to repurchase all the remaining outstanding Notes at the price stated in Clause 8.5.1 above by notifying the remaining Noteholders of its intention to do so no later than fifteen (15) Business Days after the latest possible repurchase date pursuant to Clause 8.5.2. Such prepayment may occur at the earliest on the tenth CSD Business Day following the date of such notice.



## 9. TRANSACTION SECURITY

- 9.1 As continuing Security for the due and punctual fulfilment of the Secured Obligations, the Issuer shall at the latest on the Issue Date grant the Transaction Security for the benefit of the Secured Parties. The Transaction Security shall be provided and perfected pursuant to, and subject to the terms of, the Security Document entered into or to be entered into by and between the Issuer and the Agent as pledgee acting on behalf of the Secured Parties. The Agent shall hold the Transaction Security on behalf of the Secured Parties in accordance with the Security Document.
- 9.2 The Transaction Security is to be granted only for the benefit of the Secured Parties. The Security Document provides and will provide that only the Agent may exercise the rights under the Security Document and only the Agent has the right to enforce the Security Document. As a consequence, the Secured Parties shall not be entitled, individually or collectively, to take any direct action to enforce any rights in their favor under the Security Document.
- 9.3 Unless and until the Agent has received instructions from the Noteholders in accordance with Clause 15 (*Decisions by Noteholders*), the Agent shall (without first having to obtain the Noteholders' consent) be entitled to enter into agreements with the Issuer or a third party or take any other actions, if it is, in the Agent's opinion, necessary for the purpose of maintaining, altering, releasing or enforcing the Transaction Security, creating further Security for the benefit of the Secured Parties or for the purpose of settling the Noteholders' or the Obligor's rights to the Transaction Security, in each case in accordance with the terms of the Finance Documents.
- 9.4 The Agent shall be entitled to release all Transaction Security upon the discharge in full of the Secured Obligations.

## 10. INFORMATION TO NOTEHOLDERS

### 10.1 Information from the Issuer

- 10.1.1 The Issuer will make the following information available to the Noteholders by publication on the website of the Issuer:
- (a) as soon as the same become available, but in any event within four (4) months after the end of each financial year, its audited consolidated financial statements for that financial year and annual report;
  - (b) as soon as the same become available, but in any event within two (2) months after the end of the half year period ending 30 June, its interim financial statements for such period. For the sake of clarity, interim financial statements will consist of consolidated statement of comprehensive income, statement of financial position, statement of cash flow and a management discussion in respect of such period;
  - (c) as soon as the same become available, but in any event within two (2) months after the end of each of the three month interim periods ending 31 March and 30 September, its revenue and EBITDA for such period;
  - (d) as soon as practicable following an acquisition or disposal of Notes by a Group Company, the aggregate Nominal Amount held by the Group Companies, or the amount of Notes cancelled by the Issuer; and
  - (e) any other information required to be disclosed under the Finnish Securities Markets Act (Fin: *Arvopaperimarkkinalaki* 746/2012, as amended).
- 10.1.2 The Issuer shall immediately notify the Noteholders and the Agent upon becoming aware of the occurrence of a Change of Control Event. Such notice may be given in advance of the occurrence of a Change of Control Event and be conditional upon the occurrence of such Change of Control Event if a definitive agreement is in place providing for a Change of Control Event.

- 10.1.3 When the financial statements and other information are made available to the Noteholders pursuant to Clause 10.1.1, the Issuer shall send copies of such financial statements and other information to the Agent.
- 10.1.4 The Issuer shall together with the financial statements submit to the Agent a compliance certificate in the form of Appendix 1 hereto (i) setting out calculations and figures as to compliance with Clause 11.5 (*Financial undertakings*) and (ii) containing a confirmation that no Event of Default has occurred (or if an Event of Default has occurred, what steps have been taken to remedy it).
- 10.1.5 The Issuer shall immediately notify the Agent (with full particulars) upon becoming aware of the occurrence of any event or circumstance which constitutes an Event of Default, or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing) constitute an Event of Default, and shall provide the Agent with such further information as it may reasonably request in writing following receipt of such notice. Should the Agent not receive such information, the Agent is entitled to assume that no such event or circumstance exists or can be expected to occur, provided that the Agent does not have actual knowledge of such event or circumstance.
- 10.1.6 The Issuer shall, promptly after the occurrence of a material event that the Issuer announces publicly or any acquisition, disposition or restructuring, merger or similar transaction that is material to the Issuer or its subsidiaries, taken as a whole, or a senior executive officer or director changes at the Issuer or a change in auditors of the Issuer, submit to the Noteholders and the Agent a report containing a description of such event. For purposes this paragraph, an acquisition or disposition shall be deemed to be material if the entity or business acquired or disposed of represents ten (10) per cent. of the consolidated assets or net sales of the Issuer and its subsidiaries, taken as a whole.

## **10.2 Information from the Agent**

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

## **10.3 Publication of Finance Documents**

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

## **11. UNDERTAKINGS**

### **11.1 Financial Indebtedness**

- 11.1.1 The Issuer may incur, prolong or refinance Financial Indebtedness.

### **11.2 Dividends and restricted payments**

- 11.2.1 Except as provided under Clause 11.2.2, the Issuer shall not and shall procure that no other Group Company will (each of which is a “**Restricted Payment**” and which are collectively referred to as “**Restricted Payments**”):
- (a) declare or pay any dividend in respect of its shares or declare or make any group contributions (Fin: *konserniavustus*) (other than to the Issuer or to a Subsidiary of the Issuer);
  - (b) repurchase or redeem its own shares;

- (c) redeem or reduce its share capital or other restricted equity;
- (d) make any distribution or transfers of value to the direct or indirect shareholders of the Issuer, or any Affiliates of the Issuer (other than to a Subsidiary of the Issuer); or
- (e) grant any loans (other than to a Group Company).

11.2.2 Notwithstanding Clause 11.2.1, the Issuer may make a Restricted Payment if:

- (a) no Event of Default is continuing or would occur as a result of such Restricted Payment; and
- (b) the Restricted Payments in respect of dividends or any group contributions (Fin: *konserniavustus*) combined shall, in each financial year, not exceed the Issuer's consolidated net profit (as set out in its audited consolidated financial statements for the relevant financial year) for the financial year preceding such Restricted Payment.

### 11.3 Negative pledge

11.3.1 Except as provided under Clause 11.3.2, the Issuer shall not (and shall procure that no other Material Group Company will):

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

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

11.3.2 Clause 11.3.1 does not apply to:

- (a) any Security provided under the Finance Documents (including the Transaction Security);
- (b) any Security provided prior to the Issue Date;
- (c) any Security provided in connection with a Group cash pool arrangement in favour of the cash pool provider;
- (d) any netting or set-off arrangement entered into by a Group Company in the ordinary course of its banking arrangement for the purpose of netting debit and credit balances;
- (e) any payment or close out netting or set-off arrangement arising under non-speculative hedging transactions entered into in the ordinary course of business;
- (f) any lien or other security interest arising by operation of law and in the ordinary course of business and not as a result of any default or omission by any Group Company;
- (g) any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a Group

Company in the ordinary course of business and on the supplier's standard or usual terms and not arising as a result of any default or omission by any Group Company; and

- (h) any Security over or affecting any asset or business of any company which becomes a Group Company, or pertaining to any asset or business acquired by a Group Company, after the Issue Date, where the Security is created prior to the date on which that company becomes a Group Company, or that asset or business is acquired by a Group Company, if: (i) the Security was not created in contemplation of the acquisition of that company, asset or business; (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company, asset or business; and (iii) the Security is removed or discharged not later than simultaneously with that company becoming a Group Company or that asset or business being acquired by a Group Company.

#### **11.4 Disposals**

11.4.1 Except as provided under Clause 11.4.2, the Issuer shall not (and shall procure that no other Material Group Company will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease transfer or otherwise dispose of any asset.

11.4.2 Clause 11.4.1 does not apply to any sale, lease, transfer or other disposal:

- (a) relating to (i) the sale of the Issuer's media intelligence business consisting of Opoint Holding AS, based in Norway, together with its subsidiaries or to (ii) any other Group Company except for M-Brain Ltd, M-Brain GmbH or M-Brain AB;
- (b) of assets in exchange for other assets comparable or superior as to type, value and quality; or
- (c) where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal, other than any permitted under paragraphs (a) to (b) above) does not exceed EUR 300,000 (or its equivalent in another currency or currencies) in any financial year. Notwithstanding the preceding sentence, any sale of the Issuer's sales receivables exceeding EUR 300,000 per financial year shall never be deemed a prohibited disposal or other prohibited action under this Clause 11.4.

#### **11.5 Financial undertakings**

The Issuer shall ensure that the ratio of Total Net Debt on the last day of any Measurement Period to EBITDA in respect of that Measurement Period shall not exceed 5:1. The ratio of Total Net Debt to EBITDA shall be calculated based on the latest available financial statements delivered in accordance with Clause 10.1. For the avoidance of doubt, no testing of the Total Net Debt to EBITDA shall be made for the Measurement Periods ending 31 December 2018, 30 June 2019 and 31 December 2019.

#### **11.6 Pari passu ranking**

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

#### **11.7 Continuation of business**

The Issuer shall procure that no material change is made to the general nature of the business from that carried on by the Group on the Issue Date.

**11.8 Undertakings relating to the Agency Agreement**

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

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

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

**12. ACCELERATION OF THE NOTES**

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

- (a) the Issuer does not pay on the due date any amount payable by it under the Finance Documents, unless the non-payment:
  - (i) is caused by technical or administrative error; and
  - (ii) is remedied within five (5) Business Days from the due date;
- (b) the Issuer does not comply with any terms or conditions of the Finance Documents to which it is a party (other than those terms referred to in paragraph (a) above), unless the non-compliance:
  - (i) is capable of remedy; and
  - (ii) is remedied within twenty (20) Business Days of the earlier of the Agent giving notice and the Issuer becoming aware of the non-compliance;
- (c) any Finance Document becomes invalid, ineffective or varied (other than in accordance with the provisions of the Finance Documents), and such invalidity, ineffectiveness or variation has a detrimental effect on the interests of the Noteholders;
- (d) any Material Group Company is, or is deemed for the purposes of any applicable law to be, Insolvent;
- (e) any attachment, sequestration, distress or execution, or any analogous process in any jurisdiction, affects any material asset of a Material Group Company and is not discharged within twenty (20) Business Days;

- (f) (i) any Financial Indebtedness of a Material Group Company is not paid when due nor within any originally applicable grace period, or is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described), (ii) any commitment for any Financial Indebtedness of a Material Group Company is cancelled or suspended by a creditor as a result of an event of default (however described), or (iii) any creditor of a Material Group Company becomes entitled to declare any Financial Indebtedness of a Material Group Company due and payable prior to its specified maturity as a result of an event of default (however described), provided that no Event of Default will occur under this paragraph (f) if (i) any relevant payment to be made is contested in good faith and as long as it has not resulted in a payment obligation of the relevant member of the Group (confirmed by a court, arbitral tribunal or a government authority, subject to Clause 12.5) or (ii) the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness referred to herein is less than EUR 1,000,000;
- (g) The Issuer ceases to carry on its current business in its entirety; or
- (h) An application is filed, or an order is made by any competent court, or any resolution is passed by the Issuer or any Material Group Company, in each case, for winding-up (Fin: *selvitystila*), company reorganization (Fin: *yrittysaneeraus*) or bankruptcy (Fin: *konkurssi*) any analogous proceedings in any jurisdiction of the Issuer or any Material Group Company, save for proceedings or actions (i) which are frivolous (Fin: *perusteeton*) or vexatious (Fin: *oikeuden väärinkäyttö*), (ii) that are contested in good faith and discharged, stayed or dismissed within forty-five (45) days or (ii) in the case of a Material Group Company other than the Issuer, taken on a voluntary solvent basis.
- 12.2 The Agent may not accelerate the Notes in accordance with Clause 12.1 by reference to a specific Event of Default if it is no longer continuing.
- 12.3 The Agent shall notify the Noteholders of an Event of Default within five (5) Business Days of the date on which the Agent received actual knowledge of that an Event of Default has occurred and is continuing, except if the Event of Default does not relate to a payment failure in respect of the Notes and the Agent considers that withholding the notice is not detrimental to the interests of the Noteholders. The Agent shall, within twenty (20) Business Days of the date on which the Agent received actual knowledge of that an Event of Default has occurred and is continuing (and if the Event of Default does not relate to a payment failure in respect of the Notes, within sixty (60) Business Days, decide if the Notes shall be so accelerated. If the Agent decides not to accelerate the Notes, the Agent shall promptly seek instructions from the Noteholders in accordance with Clause 15 (*Decisions by Noteholders*). The Agent shall always be entitled to take the time necessary to consider carefully whether an occurred event or circumstance constitutes an Event of Default.
- 12.4 If the Noteholders instruct the Agent to accelerate the Notes, the Agent shall promptly declare the Notes due and payable and take such actions as may, in the opinion of the Agent, be necessary or desirable to enforce the rights of the Noteholders under the Finance Documents, unless the relevant Event of Default is no longer continuing.
- 12.5 If the right to accelerate the Notes is based upon a decision of a court of law, an arbitral tribunal or a government authority, it is not necessary that the decision has become enforceable under law or that the period of appeal has expired in order for cause of acceleration to be deemed to exist.
- 12.6 In the event of an acceleration of the Notes in accordance with this Clause 12, the Issuer shall redeem all Notes at the redemption amount specified in Clause 8.3 (*Voluntary total redemption (call option)*).
- 13. DISTRIBUTION OF PROCEEDS**
- 13.1 All payments by the Issuer relating to the Notes and the Finance Documents following an acceleration of the Notes in accordance with Clause 12 (*Acceleration of the Notes*) and any proceeds

received from an enforcement of the Transaction Security (in each case to the extent proceeds from the Transaction Security can be applied towards satisfaction of the Secured Obligations) shall be distributed in the following order of priority, in accordance with the instructions of the Agent and the terms and conditions of the Intercreditor Agreement:

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

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

- 13.2 If a Noteholder or another party has with the consent of the Agent paid any fees, costs, expenses or indemnities referred to in Clause 13.1(a), such Noteholder or other party shall be entitled to reimbursement by way of a corresponding distribution in accordance with Clause 13.1(a).
- 13.3 Funds that the Agent receives (directly or indirectly) in connection with the acceleration of the Notes or the enforcement of the Transaction Security constitute escrow funds and must be held on a separate interest-bearing account on behalf of the Noteholders and the other interested parties. The Agent shall arrange for payments of such funds in accordance with this Clause 13 as soon as reasonably practicable.
- 13.4 If the Issuer or the Agent shall make any payment under this Clause 13, the Issuer or the Agent, as applicable, shall notify the Noteholders of any such payment at least fifteen (15) Business Days before the payment is made. Such notice shall specify the Record Time, the payment date and the amount to be paid. Notwithstanding the foregoing, for any Interest due but unpaid the Record Time specified in Clause 6.1 shall apply and for any redemption in accordance with Clause 8.3 (*Voluntary total redemption (call option)*) due but not made, the Record Time specified in Clause 8.3.2 shall apply.

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

- 14.1 If any Person other than a Noteholder wishes to exercise any rights specifically allocated to Noteholders under the Finance Documents, it must obtain a power of attorney from the Noteholder

or a successive, coherent chain of powers of attorney starting with the Noteholder and authorising such Person or provide other evidence of ownership or authorisation satisfactory to the Agent.

14.2 A Noteholder may issue one or several powers of attorney to third parties to represent it in relation to some or all of the Notes held by it. Any such representative may act independently under the Finance Documents in relation to the Notes for which such representative is entitled to represent the Noteholder and may further delegate its right to represent the Noteholder by way of a further power of attorney.

14.3 The Agent shall only have to examine the face of a power of attorney or other evidence of authorisation that has been provided to it pursuant to Clause 14.1 and may assume that it has been duly authorised, is valid, has not been revoked or superseded and that it is in full force and effect, unless otherwise is apparent from its face or is otherwise notified to the Agent.

## 15. DECISIONS BY NOTEHOLDERS

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

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

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

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

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

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

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

- (a) a change to the terms of any of Clause 2.1, and Clauses 2.5 and 2.6;
- (b) a reduction of the premium payable upon the redemption or repurchase of any Note pursuant to Clause 8 (*Redemption and repurchase of the Notes*);



- (c) a change to the Interest Rate or the Nominal Amount;
  - (d) a change to the terms for the distribution of proceeds set out in Clause 13 (*Distribution of proceeds*);
  - (e) a change to the terms dealing with the requirements for Noteholders' consent set out in this Clause 15;
  - (f) a change of issuer, an extension of the tenor of the Notes or any delay of the due date for payment of any principal or interest on the Notes;
  - (g) a release of the Transaction Security, except in accordance with the terms of the Security Document;
  - (h) a mandatory exchange of the Notes for other securities; and
  - (i) early redemption of the Notes, other than upon an acceleration of the Notes pursuant to Clause 12 (*Acceleration of the Notes*) or as otherwise permitted or required by these Terms and Conditions.
- 15.6 Any matter not covered by Clause 15.5 shall require the consent of Noteholders representing more than 50 per cent. of the Adjusted Nominal Amount for which Noteholders are voting at a Noteholders' Meeting or for which Noteholders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 17.3. This includes, but is not limited to, any amendment to, or waiver of, the terms of any Finance Document that does not require a higher majority (other than an amendment permitted pursuant to Clause 18.1(a) or (b)) or an acceleration of the Notes, or the enforcement of any Transaction Security.
- 15.7 Quorum at a Noteholders' Meeting or in respect of a Written Procedure only exists if a Noteholder (or Noteholders) representing at least fifty (50) per cent. of the Adjusted Nominal Amount in case of a matter pursuant to Clause 15.5, and otherwise twenty (20) per cent. of the Adjusted Nominal Amount:
- (a) if at a Noteholders' Meeting, attend the meeting in person or by telephone conference (or appear through duly authorised representatives); or
  - (b) if in respect of a Written Procedure, reply to the request.
- 15.8 If a quorum does not exist at a Noteholders' Meeting or in respect of a Written Procedure, the Agent or the Issuer shall convene a second Noteholders' Meeting (in accordance with Clause 16.1) or initiate a second Written Procedure (in accordance with Clause 17.1), as the case may be, provided that the relevant proposal has not been withdrawn by the Person(s) who initiated the procedure for Noteholders' consent. The quorum requirement in Clause 15.7 shall not apply to such second Noteholders' Meeting or Written Procedure.
- 15.9 Any decision which extends or increases the obligations of the Issuer or the Agent, or limits, reduces or extinguishes the rights or benefits of the Issuer or the Agent, under the Finance Documents shall be subject to the Issuer's or the Agent's consent, as applicable.
- 15.10 The Issuer may not, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Noteholder for or as inducement to any consent under these Terms and Conditions, unless such consideration is offered to all Noteholders that consent at the relevant Noteholders' Meeting or in a Written Procedure within the time period stipulated for the consideration to be payable or the time period for replies in the Written Procedure, as the case may be.
- 15.11 A matter decided at a duly convened and held Noteholders' Meeting or by way of a Written Procedure is binding on all Noteholders, irrespective of them being present or represented at the Noteholders' Meeting or responding in the Written Procedure.

- 15.12 All costs and expenses incurred by the Issuer or the Agent for the purpose of convening a Noteholders' Meeting or for the purpose of carrying out a Written Procedure, including reasonable fees to the Agent, shall be paid by the Issuer.
- 15.13 If a decision is to be taken by the Noteholders on a matter relating to the Finance Documents, the Issuer shall promptly at the request of the Agent provide the Agent with a certificate specifying the number of Notes owned by Group Companies, irrespective of whether such Person is directly registered as owner of such Notes. The Agent shall not be responsible for the accuracy of such certificate or otherwise be responsible for determining whether a Note is owned by a Group Company.
- 15.14 Information about decisions taken at a Noteholders' Meeting or by way of a Written Procedure shall promptly be sent by notice to the Noteholders and published on the websites of the Issuer and the Agent, provided that a failure to do so shall not invalidate any decision made or voting result achieved. The minutes from the relevant Noteholders' Meeting or Written Procedure shall at the request of a Noteholder be sent to it by the Issuer or the Agent, as applicable.

## **16. NOTEHOLDERS' MEETING**

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

## **17. WRITTEN PROCEDURE**

- 17.1 The Agent shall instigate a Written Procedure no later than five (5) Business Days after receipt of a valid request from the Issuer or the Noteholder(s) (or such later date as may be necessary for technical or administrative reasons) by sending a communication to the CSD and each Person who is registered as a Noteholder at the Record Time prior to the date on which the communication is sent.
- 17.2 Should the Issuer want to replace the Agent, it may send a communication in accordance with Clause 17.1 to each Noteholder with a copy to the Agent.
- 17.3 A communication pursuant to Clause 17.1 shall include (i) each request for a decision by the Noteholders, (ii) a description of the reasons for each request, (iii) a specification of the CSD Business Day at the end of which a Person must be registered as a Noteholder in order to be entitled

to exercise voting rights, (iv) instructions and directions on where to receive a form for replying to the request (such form to include an option to vote yes or no for each request) as well as a form of power of attorney, and (v) the stipulated time period within which the Noteholder must reply to the request (such time period to last at least fifteen (15) Business Days from the communication pursuant to Clause 17.1). If the voting is to be made electronically, instructions for such voting shall be included in the communication.

- 17.4 When a consent from the Noteholders representing the requisite majority of the total Adjusted Nominal Amount pursuant to Clauses 15.5 or 15.6 has been received in a Written Procedure, the relevant decision shall be deemed to be adopted pursuant to Clause 15.5 or 15.6, as the case may be, even if the time period for replies in the Written Procedure has not yet expired.

## **18. AMENDMENTS AND WAIVERS**

- 18.1 The Issuer and the Agent (acting on behalf of the Noteholders) may agree to amend the Finance Documents or waive a past default or anticipated failure to comply with any provision in a Finance Document, provided that:

- (a) such amendment or waiver is not detrimental to the interest of the Noteholders in any material respect, or is made solely for the purpose of rectifying obvious errors and mistakes;
- (b) such amendment or waiver is required by applicable law, a court ruling or a decision by a relevant authority; or
- (c) such amendment or waiver has been duly approved by the Noteholders in accordance with Clause 15 (*Decisions by Noteholders*).

- 18.2 The consent of the Noteholders is not necessary to approve the particular form of any amendment to the Finance Documents. It is sufficient if such consent approves the substance of the amendment.

- 18.3 The Agent shall promptly notify the Noteholders of any amendments or waivers made in accordance with Clause 18.1, setting out the date from which the amendment or waiver will be effective, and ensure that any amendments to the Finance Documents are published in the manner stipulated in Clause 10.3 (*Publication of Finance Documents*). The Issuer shall ensure that any amendments to these Terms and Conditions are duly registered with the CSD and each other relevant organisation or authority.

- 18.4 An amendment to the Finance Documents shall take effect on the date determined by the Noteholders Meeting, in the Written Procedure or by the Agent, as the case may be.

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

### **19.1 Appointment of Agent**

- 19.1.1 By subscribing for Notes, each initial Noteholder, and, by acquiring Notes, each subsequent Noteholder:

- (a) agrees to and accepts the appointment of the Agent to act as its agent and representative in all matters relating to the Notes and the Finance Documents, and authorises the Agent to act on its behalf (without first having to obtain its consent, unless such consent is specifically required by these Terms and Conditions) in any legal or arbitration proceedings relating to the Notes held by such Noteholder including any legal or arbitration proceeding relating to the perfection, preservation, protection or enforcement of the Transaction Security and to exercise such rights, powers, authorities and discretions as are specifically delegated to the Agent by these Terms and Conditions and the Security Document together with all such rights, powers, authorities and discretions as are incidental thereto; and

- (b) agrees to and accepts that, upon the Agent delivering an acceleration notice in accordance with Clause 12.1, it will be considered to have irrevocably transferred to the Agent all its procedural rights and legal authority to claim and collect any and all receivables under the Notes, enforce any Transaction Security and to receive any funds in respect of the Notes or under the Security Document (Fin: *prokurasiirto*) as a result of which transfer, the Agent shall be irrevocably entitled to take all such action in its own name but on behalf of and for the benefit of each Noteholder (at the expense of the Noteholders).
- 19.1.2 Each Noteholder shall immediately upon request provide the Agent with any such documents (in form and substance satisfactory to the Agent) that the Agent deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents. The Agent is under no obligation to represent a Noteholder which does not comply with such request if due to such failure the Agent is unable to represent such Noteholder.
- 19.1.3 The Issuer shall promptly upon request provide the Agent with any documents and other assistance (in form and substance satisfactory to the Agent), that the Agent deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents.
- 19.1.4 The Agent is entitled to fees for its work and to be indemnified for costs, losses and liabilities on the terms set out in the Finance Documents and the Agency Agreement and the Agent's obligations as Agent under the Finance Documents are conditioned upon the due payment of such fees and indemnifications.
- 19.1.5 The Agent may act as agent or other representative for several issues of securities issued by or relating to the Issuer and other Group Companies notwithstanding potential conflicts of interest.
- 19.2 Duties of the Agent**
- 19.2.1 The Agent shall represent the Noteholders in accordance with the Finance Documents, including inter alia, holding the Transaction Security pursuant to the Security Document on behalf of the Noteholders and, where relevant, enforcing the Transaction Security on behalf of the Noteholders. However, the Agent is not responsible for the execution or enforceability of the Finance Documents or the perfection of the Transaction Security.
- 19.2.2 When acting in accordance with the Finance Documents, the Agent is always acting with binding effect on behalf of the Noteholders. The Agent shall carry out its duties under the Finance Documents in a reasonable, proficient and professional manner, with reasonable care and skill.
- 19.2.3 The Agent shall monitor the compliance by the Issuer with its obligations under the Finance Documents on the basis of information made available to it pursuant to the Finance Documents or received from a Noteholder. The Agent is not obligated to assess the Issuer's financial situation other than as expressly set out in these Terms and Conditions.
- 19.2.4 The Agent is entitled to take any step it in its sole discretion considers necessary or advisable to protect the rights of the Noteholders pursuant to these Terms and Conditions.
- 19.2.5 The Agent is entitled to delegate its duties to other professional parties, but the Agent shall remain liable for the actions of such parties under the Finance Documents.
- 19.2.6 The Agent shall treat all Noteholders equally and, when acting pursuant to the Finance Documents, act with regard only to the interests of the Noteholders and shall not be required to have regard to the interests or to act upon or comply with any direction or request of any other Person, other than as explicitly stated in the Finance Documents.
- 19.2.7 The Agent is entitled to engage external experts when carrying out its duties under the Finance Documents. The Issuer shall on demand by the Agent pay all costs reasonably incurred for external experts engaged after the occurrence of an Event of Default, or for the purpose of investigating or considering (i) an event or circumstance which the Agent reasonably believes is or may lead to an

Event of Default or (ii) a matter relating to the Issuer or the Transaction Security which the Agent reasonably believes may be detrimental to the interests of the Noteholders under the Finance Documents. Any compensation for damages or other recoveries received by the Agent from external experts engaged by it for the purpose of carrying out its duties under the Finance Documents shall be distributed in accordance with Clause 13 (*Distribution of proceeds*).

- 19.2.8 Notwithstanding any other provision of the Finance Documents to the contrary, the Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation.
- 19.2.9 If in the Agent's reasonable opinion the cost, loss or liability which it may incur (including reasonable fees to the Agent) in complying with instructions of the Noteholders, or taking any action at its own initiative, will not be covered by the Issuer, the Agent may refrain from acting in accordance with such instructions, or taking such action, until it has received such funding or indemnities (or adequate Security has been provided therefore) as it may reasonably require.
- 19.2.10 The Agent shall give a notice to the Noteholders (i) before it ceases to perform its obligations under the Finance Documents by reason of the non-payment by the Issuer of any fee or indemnity due to the Agent under the Finance Documents or the Agency Agreement or (ii) if it refrains from acting for any reason described in Clause 19.2.9.
- 19.2.11 The Agent shall at all times maintain and keep all certificates and other documents that are bearers of right relating to the Transaction Security in safe custody on behalf of the Secured Parties in accordance with the terms and conditions of the Finance Documents and deposit such certificates and other documents in the custody of a reputable bank. The Agent shall not be responsible for or required to insure against any loss incurred in connection with such safe custody. The Agent shall hold amounts recovered, net of costs (including legal costs) and expenses incurred in connection with the recovery, separated for the account of the Secured Parties and distribute such amounts recovered promptly to the Secured Parties in accordance with these Terms and Conditions.

### **19.3 Limited liability for the Agent**

- 19.3.1 The Agent will not be liable to the Noteholders for damage or loss caused by any action taken or omitted by it under or in connection with any Finance Document, unless directly caused by its negligence or wilful misconduct. The Agent shall never be responsible for indirect loss.
- 19.3.2 The Agent shall not be considered to have acted negligently if it has acted in accordance with advice from or opinions of reputable external experts engaged by the Agent or if the Agent has acted with reasonable care in a situation when the Agent considers that it is detrimental to the interests of the Noteholders to delay the action in order to first obtain instructions from the Noteholders.
- 19.3.3 The Agent shall not be liable for any delay (or any related consequences) in crediting an account with an amount required pursuant to the Finance Documents to be paid by the Agent to the Noteholders, provided that the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- 19.3.4 The Agent shall have no liability to the Noteholders for damage caused by the Agent acting in accordance with instructions of the Noteholders given in accordance with Clause 15 (*Decisions by Noteholders*) or a demand by Noteholders given pursuant to Clause 12.1.
- 19.3.5 Any liability towards the Issuer which is incurred by the Agent in acting under, or in relation to, the Finance Documents shall not be subject to set-off against the obligations of the Issuer to the Noteholders under the Finance Documents.

**19.4 Replacement of the Agent**

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

**20. NO DIRECT ACTIONS BY NOTEHOLDERS**

- 20.1 A Noteholder may not take any steps whatsoever against the Issuer or with respect to the Transaction Security to enforce or recover any amount due or owing to it pursuant to the Finance Documents, or to initiate, support or procure the winding-up, dissolution, liquidation, company reorganisation (Fin: *yritysaneeraus*) or bankruptcy (Fin: *konkurssi*) (or its equivalent in any other jurisdiction) of the Issuer in relation to any of the obligations of the Issuer under the Finance Documents.
- 20.2 Clause 20.1 shall not apply if:

- (a) the Agent has been instructed by the Noteholders in accordance with the Finance Documents to take any of the actions referred to in Clause 20.1 but fails for any reason to take, or is unable to take (for any reason other than a failure by a Noteholder to provide documents in accordance with Clause 19.1.2), such actions within a reasonable period of time and such failure or inability is continuing. However, if the failure to take such actions is caused by the non-payment by the Issuer of any fee or indemnity due to the Agent under the Finance Documents or the Agency Agreement or by any reason described in Clause 19.2.9, such failure must continue for at least forty (40) Business Days after notice pursuant to Clause 19.2.10 before a Noteholder may take any action referred to in Clause 20.1; and
  - (b) the Noteholders have resolved pursuant to these Terms and Conditions that, upon the occurrence of a failure by the Agent referred to in (a) above, a Noteholder shall have the right to take any action referred to in Clause 20.1.
- 20.3 The provisions of Clause 20.1 shall not in any way limit an individual Noteholder's right to claim and enforce payments which are due to it under Clause 8.5 (*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 Noteholders.

## **21. PRESCRIPTION**

- 21.1 The right to receive payment of the principal of or interest on the Notes shall be prescribed and become void three (3) years from the date on which such payment became due.
- 21.2 If a limitation period is duly interrupted in accordance with the Finnish Act on Limitations (Fin: *Laki velan vanhentumisesta* 728/2003, as amended), a new limitation period of at least three (3) years will commence.

## **22. NOTICES**

- 22.1 Any notice or other communication to be made under or in connection with the Finance Documents:
  - (a) if to the Agent, shall be given at the address registered with the Finnish Trade Register on the Business Day prior to dispatch;
  - (b) if to the Issuing Agent, shall be given at the address specified on its website [www.evli.com](http://www.evli.com) on the Business Day prior to dispatch and designated "To the attention of Evli Bank Plc/Operations";
  - (c) if to the Issuer, shall be given at the address specified on its website [www.m-brain.com](http://www.m-brain.com) on the Business Day prior to dispatch and designated "To the attention of Kim Nyberg and Joakim Nyberg"; and
  - (d) if to the Noteholders, shall be given at their addresses as registered with the CSD, at the Record Time prior to dispatch, and by either courier delivery or letter for all Noteholders.

22.2 Any notice or other communication made by one Person to another under or in connection with the Finance Documents shall be in English and sent by way of courier, fax, e-mail, personal delivery or letter and will become effective, in the case of courier or personal delivery, when it has been left at the address specified in Clause 22.1 or, in the case of letter, three (3) Business Days after being deposited postage prepaid in an envelope addressed to the address specified in Clause 22.1 or, in the case of fax or e-mail, when actually received in a readable form.

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

### **23. FORCE MAJEURE AND LIMITATION OF LIABILITY**

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

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

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

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

### **24. GOVERNING LAW AND JURISDICTION**

24.1 These Terms and Conditions, and any non-contractual obligations arising out of or in connection therewith, shall be governed by and construed in accordance with the laws of Finland.

24.2 The Issuer submits to the non-exclusive jurisdiction of the Finnish courts with the District Court of Helsinki (Fin: *Helsingin käräjäoikeus*) as the court of first instance.

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**APPENDIX 1 (Form of Compliance Certificate)**

## COMPLIANCE CERTIFICATE

To: INTERTRUST (FINLAND) OY as Agent

From: M-BRAIN OY as Issuer

Place and date: In [●], on the [●] day of [●] 20[●]

Dear Madams/Sirs,

**We refer to the senior, secured and unsubordinated fixed rate notes issued by us on 19 June 2017 with an aggregate nominal amount of EUR 15,000,000 (the “Notes”).**

1. We refer to the Terms and Conditions of the Notes. This is a compliance certificate. Terms defined in the Terms and Conditions of the Notes have the same meaning when used in this compliance certificate unless given a different meaning in this compliance certificate.
2. We confirm that the following companies are Material Group Companies: [●].
3. [We confirm that in respect of the Measurement Period ending on *[relevant testing date]*, the ratio of Total Net Debt to EBITDA is [●]:1.]<sup>1</sup>
4. [We confirm that no Event of Default is continuing.]\*
5. This compliance certificate is governed by Finnish law.

In [●], on the [●] day of [●] 20[●]

M-BRAIN OY  
as Issuer

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Name:

\* If this statement cannot be made, the certificate shall identify any Event of Default that is continuing and the steps, if any, being taken to remedy it.

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<sup>1</sup> Not to be included for the Measurement Periods ending 31 December 2018, 30 June 2019 and 31 December 2019.