



# Prospectus

regarding the admission to trading of  
**EUR 40,000,000 Senior Secured Callable Floating Rate Bonds  
2019/2023 issued by Lifefit Group Midco GmbH**

ISIN: NO0010856966

This Prospectus was approved by the Swedish Financial Supervisory Authority on 10 July 2020.

The validity of this Prospectus will expiry 12 months after the date of its approval. The Issuer's obligation to supplement this Prospectus in the event of significant new factors, material mistakes or material inaccuracies will not apply when this Prospectus is no longer valid.

Amounts payable under the Bonds (as defined herein) are calculated by reference to EURIBOR and EURIBOR constitutes a benchmark according to regulation (EU) 2016/1011 (the "**Benchmark Regulation**"). The European Money Market Institute (EMMI) is the authorised administrator of EURIBOR. EURIBOR is considered compliant with the Benchmark Regulation and was added to the register maintained by the European Securities and Markets Authority (ESMA) in accordance with Article 36 of the Benchmark Regulation, meaning that EURIBOR as an interest basis may be used also after the end of the applicable Benchmark Regulation transitional period (*i.e.* after 1 January 2020).

# Important information

This prospectus (the “**Prospectus**”) has been prepared by LifeFit Group MidCo GmbH (incorporated in Germany and registered with the local court (*Amtsgericht*) of Munich under HRB 248092) (the “**Issuer**” or together with its direct and indirect subsidiaries, unless otherwise indicated by the context, the “**Group**”), in relation to the application for admission for trading of bonds issued under the Issuer’s senior secured callable floating rate bonds 2019/2023 with NO0010856966 (the “**Bonds**”), of which EUR 40,000,000 was issued on 25 July 2019 (the “**First Issue Date**”) in accordance with the terms and conditions for the Bonds (the “**Terms and Conditions**”) (the “**Bond Issue**”), on the Corporate Bond List at Nasdaq Stockholm AB (“**Nasdaq Stockholm**”). The Bonds were listed on the Open Market of the Frankfurt Stock Exchange, under the trading name LIFEFIT GR. FLN 19/23 on 6 August 2019. The Issuer may at one or more occasions after the First Issue Date issue Subsequent Bonds under, and as defined in, the Terms and Conditions. For the avoidance of doubt, this Prospectus has been prepared solely in relation to the application for admission for trading of the Bonds on the corporate bond list at Nasdaq Stockholm Aktiebolag (“**Nasdaq Stockholm**”). Pareto Securities AB (reg. no. 556206-8956) has acted as sole bookrunner (the “**Sole Bookrunner**”) and Pareto Securities AS has acted as paying agent (the “**Paying Agent**”).

This Prospectus has been prepared as well as approved and registered by the Swedish Financial Supervisory Authority (Sw. *Finansinspektionen*) (the “**SFSA**”) pursuant to Chapter II and Article 20 in the Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (the “**Prospectus Regulation**”). Furthermore, Annexes 6, 14 and 21 of the Commission Delegated Regulation (EU) 2019/980 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004, form the basis for the contents of this Prospectus. Approval and registration in accordance with the Prospectus Regulation does not constitute any guarantee from the SFSA that the information in this Prospectus is accurate or complete.

This Prospectus is not an offer for sale or a solicitation of an offer to purchase the Bonds in any jurisdiction. It has been prepared solely for the purpose of admitting the Bonds to trading on Nasdaq Stockholm. This Prospectus may not be distributed in any country where such distribution or disposal requires additional prospectus, registration or additional measures or is contrary to the rules and regulations in such country. Persons into whose possession this Prospectus comes or persons who acquire the Bonds are therefore required to inform themselves about, and to observe, such restrictions. The Bonds have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”), or with any securities regulatory authority of any state or other jurisdiction in the United States. Accordingly, the Bonds may not be offered, sold (directly or indirectly), delivered or otherwise transferred within or into the United States or to, or for the account or benefit of a U.S. Person (as defined in the Securities Act) and the Bonds are offered and sold only (i) outside the United States to persons other than U.S. persons (as defined in the Securities Act) (“**non-U.S. purchasers**”, which term shall include dealers or other professional fiduciaries in the United States acting on a discretionary basis for non-U.S. beneficial owners (other than an estate or trust)) in reliance upon Regulation S under the Securities Act (“**Regulation S**”), and (ii) in the United States to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act. The Issuer has not undertaken to register the Bonds under the Securities Act or any U.S. state securities laws or to affect any exchange offer for the Bonds in the future.

Unless otherwise explicitly stated, no information contained in this Prospectus has been audited or reviewed by the Issuer’s auditors. Certain financial information in this Prospectus may have been rounded off and, as a result, the numerical figures shown as totals in this Prospectus may vary slightly from the exact arithmetic aggregation of the figures that precede them. This Prospectus shall be read together with all documents that are incorporated by reference and possible supplements to this Prospectus. In this Prospectus, references to “**EUR**” means the single currency of the member states of the European Union that has the euro as its lawful currency.

This Prospectus may contain forward-looking statements and assumptions regarding future market conditions, operations and results. Such forward-looking statements and information are based on the beliefs of the Issuer’s management or are assumptions based on information available to the Group. The words “**considers**”, “**intends**”, “**deems**”, “**expects**”, “**anticipates**”, “**plans**” and similar expressions indicate some of these forward-looking statements. Other such statements may be identified from the context. Any forward-looking statements in this Prospectus involve known and unknown risks, uncertainties and other factors which may cause the actual results, performances or achievements of the Group to be materially different from any future results, performances or achievements expressed or implied by such forward-looking statements. Further, such forward-looking statements are based on numerous assumptions regarding the Group’s present and future business strategies and the environment in which the Group will operate in the future. Although the Issuer believes that the forecasts or indications of future results, performances and achievements are based on reasonable assumptions and expectations, they involve uncertainties and are subject to certain risks, the occurrence of which could cause actual results to differ materially from those predicted in the forward-looking statements and from past results, performances or achievements. Further, actual events and financial outcomes may differ significantly from what is described in such statements as a result of the materialisation of risks and other factors affecting the Group’s operations. Such factors of a significant nature are mentioned in Section *Risk factors* below.

Certain amounts payable under the Bonds are calculated by reference to EURIBOR and EURIBOR constitutes a benchmark according to regulation (EU) 2016/1011 (the “**Benchmark Regulation**”). The European Money Market Institute (EMMI) is the authorised administrator of EURIBOR. EURIBOR is considered compliant with the Benchmark Regulation and was added to the register maintained by the European Securities and Markets Authority (ESMA) in accordance with Article 36 of the Benchmark Regulation, meaning that EURIBOR as an interest basis may be used also after the end of the applicable Benchmark Regulation transitional period (i.e. after 1 January 2020).

The Bonds may not be a suitable investment for all investors and each potential investor in the Bonds must determine the suitability of that investment in light of its own circumstances. In particular, each potential investor should (i) have sufficient knowledge and experience to make a meaningful evaluation of the Bonds, the merits and risks of investing in the Bonds and the information contained or incorporated by reference in this Prospectus or any applicable supplement; (ii) have access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation, an investment in the Bonds and the impact other Bonds will have on its overall investment portfolio; (iii) have sufficient financial resources and liquidity to bear all of the risks of an investment in the Bonds; (iv) understand thoroughly the Terms and Conditions; and (v) be able to evaluate (either alone or with the help of a financial advisor) possible scenarios for economic, interest rate and other factors that may affect its investment and its ability to bear the applicable risks.

This Prospectus has been prepared in English only and is governed by Swedish law. Disputes concerning, or related to, the contents of this Prospectus shall be subject to the exclusive jurisdiction of the courts of Sweden. The District Court of Stockholm (Sw. *Stockholms tingsrätt*) shall be the court of first instance. The Prospectus will be available at the SFSA’s website ([www.fi.se](http://www.fi.se)) and the Issuer’s website ([www.lifefit-group.com/investor-relations/investor-information/](http://www.lifefit-group.com/investor-relations/investor-information/)).

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# Summary

## Introduction and warnings

This prospectus (the “**Prospectus**”) has been prepared by LifeFit Group MidCo GmbH (incorporated in Germany and registered with the local court (*De. Amtsgericht*) of Munich under HRB 248092, with LEI-code 254900T3Z0SCF415OF78) (the “**Issuer**” or together with its direct and indirect subsidiaries, unless otherwise indicated by the context, the “**Group**”), in relation to the application for admission for trading of bonds issued under the Issuer’s senior secured callable floating rate bonds 2019/2023 with ISIN NO0010856966 (the “**Bonds**”), of which EUR 40,000,000 was issued on 26 July 2019 (the “**First Issue Date**”) in accordance with the terms and conditions for the Bonds (the “**Terms and Conditions**”) (the “**Bond Issue**”) on the Corporate Bond List at Nasdaq Stockholm AB (“**Nasdaq Stockholm**”). The Bonds were listed on the Open Market of the Frankfurt Stock Exchange, under the trading name LIFEFIT GR. FLN 19/23 on 6 August 2019.

This Prospectus was approved by the Swedish Financial Supervisory Authority on 10 July 2020. The address of the Swedish Financial Supervisory Authority is Brunnsgratan 3, Box 7821, 103 97 Stockholm, Sweden and the telephone number is +46 8 408 980 00.

This summary should be read as an introduction to the Prospectus. Every decision to invest in the Bonds should be based on the investors’ consideration of the Prospectus as a whole. Investors in the Bonds may lose all or part of the invested capital. Where a claim relating to the Prospectus is brought before a court, the plaintiff may have to bear the costs of translating the Prospectus before legal proceedings are initiated.

Civil liability attaches only to those persons who have tabled the summary including any translation thereof, but only if the summary is misleading, inaccurate or inconsistent with the other parts of the Prospectus, or where it does not provide, when read together with the other parts of the Prospectus, key information in order to aid investors when considering whether to invest in the Bonds.

## Key information on the Issuer

### *Who is the issuer of the securities?*

Legal form etc.	The legal name of the Issuer is LifeFit Group MidCo GmbH, a limited liability company incorporated in Germany and registered with the local court ( <i>De. Amtsgericht</i> ) of Munich under HRB 248092. The Issuer is domiciled and incorporated in Germany and operates under the laws of Germany. The Issuer’s LEI-code is 254900T3Z0SCF415OF78.
Principal activities	The Issuer is the holding company in the Group, which is a gym chain operator in Germany, with a broad portfolio of fitness brands within several segments, including, <i>inter alia</i> , Fitness First, elbgym, smile X, The Gym Society and Barry’s Bootcamp.
Major shareholders	The Issuer is a privately owned company. The Issuer was incorporated on 13 March 2019 and is since 31 May 2019 wholly owned by LifeFit Group TopCo GmbH (“ <b>TopCo</b> ”). TopCo is to 95 per cent. owned by funds that are controlled by Oaktree Capital Management L.P. being an investment manager specializing in alternative investments. The remaining 5 per cent. of the shares of TopCo is held by certain sellers of the smile X InterCo GmbH.
Key management	The executive board of directors are: Martin Seibold (Managing Director), Christophe Collinet (Chief Commercial Officer), Steffen Fries (Director Real Estate), Wolfgang Cyriax (Director Finance), Jonathan Kreuter (Director Controlling), Isabelle Kopa (Director Central Operations), and Johannes Maßen (Director Operations (FFG)).

**Auditor** Ernst & Young GmbH, having its business address at Mergenthalerallee 3–5, DE-65760 Eschborn, Germany, and with Gregor Enzenhofer and Nabil Jaber, being German Public Auditors, as auditors in charge, has been the Issuer’s auditor for the entire period covering the financial information incorporated in this Prospectus.

***What is the key financial information regarding the Issuer?***

**Historical key financial information** The condensed historical key information presented below is derived from the Group’s short-audit consolidated financial statements for the short financial year from 13 March to 31 October 2019 and the Group’s quarterly interim unaudited report as of and for the interim period started 1 November 2019 and ended 31 January 2020 and the interim period started 1 November 2019 and ended 30 April 2020.

*Income statement*

	Quarterly Report 1 November 2019– 30 April 2020 (unaudited)	Quarterly Report 1 November 2019– 31 January 2020 (unaudited)	Annual report 13 March– 31 October 2019 (audited)
	EUR 000’	EUR 000’	EUR 000’
Profit or loss for the period	-4,738	-2,206	-2,292

*Balance sheet*

	Quarterly Report 1 November 2019– 30 April 2020 (unaudited)	Quarterly Report 1 November 2019– 31 January 2020 (unaudited)	Annual report 13 March– 31 October 2019 (audited)
	EUR 000’	EUR 000’	EUR 000’
Net financial debt (long term debt plus short term debt minus cash)	212,289	216,346	218,657

*Cash flow statement*

	Quarterly Report 1 November 2019– 30 April 2020 (unaudited)	Quarterly Report 1 November 2019– 31 January 2020 (unaudited)	Annual report 13 March– 31 October 2019 (audited)
	EUR 000’	EUR 000’	EUR 000’
Net Cash flows from operating activities	10,433	4,781	9,032
Net Cash flows from financing activities	-2,651	-6,974	39,627
Net Cash flow from investing activities	2,963	-5,133	-22,493

***What are the key risks that are specific to the Issuer?***

- Risks**
- Due to the outbreak of the coronavirus causing COVID-19, governments in affected areas, including Germany, have imposed a number of measures including business closures, travel restrictions, quarantines and cancellations or restrictions of gatherings and events. The spread of COVID-19 has had severe disruptive effects on the German and global economy. Apart from that the Group’s access to financing may be deteriorated, the restrictive measures taken by the German Government, including restrictions in relation to gatherings of more than two persons, have resulted in closure of the Group’s fitness clubs and may lead to that fewer sign-ups for membership. The COVID-19 pandemic may also result in disruption to the Group’s key suppliers of goods and services and result in increased unavailability of staff, which could have a

material adverse impact on the quality and continuity of service to customers and the reputation of the Group.

- The Group provides fitness services to customers that mainly subscribe for membership at any of the Group's fitness clubs and the Group's revenue is to a significant extent dependent on the membership volume and retention of members, and the Group is consequently dependent on the ability to both retain existing members as well as to continuously attract new members in all segments of the Group. Membership volumes and customer retention may decline due to individual or multiple factors, including, *inter alia*, impaired brand reputation or attractiveness, failure to deliver attractive services at an attractive cost or at all as well as market saturation. There is also a risk of members cancelling their membership due to non-attendance or the Group failing in its endeavours to retain members.
- The success of the Group largely depends upon the ability to maintain and enhance the value and reputation of the Group's brands and as well as the general perception and recognition of the Group's brands among customers and in society at large. The customers' and the general public's perception of the Group's brands could be impaired by, *inter alia*, health and safety incidents, lack of personal guidance on the use of equipment leading to dangerous misuse, safety deficiencies related to the fitness clubs in general, lack of cleanliness and overcrowding.
- Personnel costs constitute one of the Group's most significant cost items and the Group is dependent on an engaged, skilled and motivated workforce. Consequently, the Group's long-term development is dependent on the ability to attract and develop the right personnel and to sustain its workforce. There is a risk that the Group fails in its recruitment of personnel, both in relation to the numbers and the qualifications needed, which could adversely affect the Group's ability to provide its services resulting in business interruption and impaired brand recognition.

## Key information on the Bonds

### *What are the main features of the Bonds?*

The Bonds constitute debt instruments (Sw. *skuldförbindelser*), each of the type set forth in Chapter 1 Section 3 of the Central Securities Depositories and Financial Instruments Accounts Act (Sw. *lag (1998:1479) om värdepapperscentraler och kontoföring av finansiella instrument*).

Subject to an intercreditor agreement, the principles of which are attached to the Terms and Conditions (the "**Intercreditor Agreement**"), the Bonds constitute direct, general, unconditional, unsubordinated and secured obligations of the Issuer and shall at all times rank at least *pari passu* with all direct, unconditional, unsubordinated and unsecured obligations of the Issuer, except those obligations which are mandatorily preferred by law, and without any preference among them.

The Bonds bear interest from (and including) the first issue date (being 26 July 2019), up to (but excluding) the final redemption date (26 July 2023) or any relevant redemption date prior to the final redemption date. Interest on the Bonds is paid at a floating rate of EURIBOR (3 months) + 7.50 per cent. *per annum*, quarterly in arrears on 8 January, 8 April, 8 July and 8 October each year, or to the extent such day is not a CSD Business Day, the CSD Business Day following from an application of the Business Day Convention (all as defined in the Terms and Conditions).

As of the date of this Prospectus, 40,000 Bonds have been issued. The Bonds are denominated in EUR and have a nominal amount of EUR 1,000 and the minimum

permissible investment upon the Initial Bond Issue was EUR 100,000. The ISIN of the Bonds is NO0010856966.

### *Is there a guarantee attached to the Bonds?*

The obligations under the Bonds are guaranteed under a guarantee agreement (“**Guarantee Agreement**”) entered into by, or through accessions by certain subsidiaries of the Issuer (the “**Guarantors**”)

Subject to the Intercreditor Agreement, each Guarantor irrevocably and unconditionally, jointly and severally (De. *gesamtschuldnerisch*) guarantees (De. *garantiert*) by way of an independent payment obligation (De. *selbständiges Zahlungsversprechen*) to the secured parties under the Bonds to pay to that secured party any amount of principal, interest, costs, expenses or other amount under or in connection with the senior finance documents (including the Bonds and the documents entered into as part of transaction security for the Bonds) that has not been fully and irrevocably paid by the Issuer or any other obligor under such documents. Such guarantee commitments have been entered into in accordance with the Guarantee Agreement, which is entered into (or to be entered into) between the Issuer, each Guarantor, Oldenburgische Landesbank Aktiengesellschaft and the security agent (Nordic Trustee & Agency AB (publ), *i.e.* the agent under the Bonds). The obligations and liabilities of the Guarantors under the Guarantee Agreement shall be limited if required (but only if and to the extent required) under the laws of the jurisdiction in which the relevant Guarantor is incorporated.

As of the date of this Prospectus, the Guarantors are Barry’s Bootcamp GmbH, Elbgym GmbH, Fitness First Germany GmbH, smile X InterCo GmbH, MKS Sport GmbH, MKS Sport 3 GmbH, smilefit SLS GmbH & Co. KG and smilefit I-O GmbH & Co. KG. None of the entities are required to have a LEI-code.

Further Guarantors may accede to the Guarantee Agreement by way of signing, *inter alia*, accession letters. Existing Guarantors may, under certain conditions and subject to the Intercreditor Agreement, resign from the Guarantee Agreement.

In the decision FI Dnr 20-9349 of the Swedish Financial Supervisory Authority (the “**SFSA**”) made on 19 May 2020, the SFSA has granted an exemption from certain disclosure requirements regarding financial information. According to the decision, the Issuer is not required to disclose separate financial information regarding the Guarantors as otherwise required pursuant to Section 3 in Appendix 21 and Section 11.1 in Appendix 6, of the Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129. The exemption was granted based on the fact that the Guarantors will be included in the Group financial information that is relevant for the Issuer and that is incorporated into the Prospectus by reference, and stated in brief above.

### *Where will the securities be traded?*

**Admission to trading**            The Bonds will be admitted to trading on the Corporate Bond List of Nasdaq Stockholm or, if such admission to trading is not possible to attain or obtain, at another regulated market (as defined in the Markets in Financial Instruments Directive 2014/65/EU (MiFID II), as amended). The Bonds have also been admitted to trading at the Open Market of Frankfurt Stock Exchange, which is a multilateral trading platform (MTF).

Application for admission to trading of the Bonds on the Corporate Bond List of Nasdaq Stockholm will be filed in immediate connection with the SFSA’s approval of this Prospectus. The earliest date for admitting the Bonds to trading on Nasdaq Stockholm is

at the latest 24 July 2020. The total expenses of the admission to trading of the Bonds are estimated to amount to approximately SEK 100,000.

### *What are the key risks that are specific to the Bonds?*

#### Risks

- The Issuer is a holding company and a significant part of the Issuer's assets and revenues relate to or are derived from the Issuer's subsidiaries. The Issuer is therefore dependent upon receipt of sufficient income related to the operation of and the ownership in such entities in order to make payments under the Bonds.
- Due to the nature of the Bonds, in the event of bankruptcy, re-organisation or winding-up of the Issuer, the Bondholders normally receive payment after any priority creditors have been fully paid to the extent that the Bondholders' claim is not secured by and settled from the enforcement proceeds from the transaction security (consisting of pledges over shares and the guarantee pursuant to the Guarantee Agreement) for the Bonds (the "**Transaction Security**"). To the extent the Transaction Security relates to assets of subsidiaries of the Issuer, each security interest granted will be limited in scope to comply with limitations on financial assistance, capital maintenance rules or similar restrictions under applicable law. As a result, the security interests can only be enforced if and to the extent that such enforcement will not lead to a violation of these restrictions under corporate laws applicable to the relevant subsidiary. In Germany, a GmbH is prohibited from distributing assets to its shareholders to the extent the amount of the GmbH's net assets is already less or would fall below the amount of its stated share capital. Providing security for debt of a direct or indirect shareholder is considered a distribution to such shareholder. The Transaction Security may thus not be enforceable in the event of a default of the Issuer, or only be enforceable in part, which may limit the recovery of the Bondholders. Further, there is a risk that the proceeds from any enforcement of the Transaction Security would not be sufficient to satisfy all amounts then due on or in respect of the Bonds.

### **Key information on the admission to trading on a regulated market**

#### *Why is this prospectus being produced?*

Reasons and use of issue proceeds This Prospectus has been prepared for the purpose of applying for admission of trading of the Bonds at Nasdaq Stockholm (or another regulated market as defined in the Markets in Financial Instruments Directive 2014/65/EU (MiFID II), as amended), which is a requirement from the Bondholders according to the Terms and Conditions.

The Net Proceeds from the Bond Issue are applied towards financing the acquisition of smileX InterCo GmbH, financing Transaction Costs (as defined in the Terms and Conditions), and financing general corporate purposes of the Group.

#### Material conflicts

Pareto Securities AB has acted as sole bookrunner (the "**Sole Bookrunner**"). The Sole Bookrunner and/or its affiliates have engaged in, and may in the future engage in, investment banking and/or other services for the Group in the ordinary course of business. Accordingly, conflicts of interest may exist or may arise as a result of the Sole Bookrunner and/or its affiliates having previously engaged, or will in the future engage, in transactions with other parties, having multiple roles or carrying out other transactions for third parties with conflicting interests.

# Risk factors

## Introduction

*The purpose of this section is to enable a potential investor to assess the relevant risks related to an investment in the Bonds in order to make an informed investment decision. The risk factors set forth below are therefore limited to risks that, in the meaning of Regulation (EU) 2017/1129, are material and specific to the Issuer, the Group or the Bonds.*

*The manner in which the Issuer, the Group or the Bonds are affected by each risk factor is illustrated by way of an evaluation of the materiality of the relevant risk factor based on the relative probability of it occurring and the expected magnitude of its negative impact, for the purpose of which the probability is estimated as “low”, “medium” or “high” and the magnitude of negative impact if it would occur as “low”, “medium” or “high”. Irrespective of the probability or magnitude of negative impact stated in relation to each risk factor, all risk factors included below have been assessed by the Issuer to be material and specific to the Issuer, the Group and the Bonds in the meaning of Regulation (EU) 2017/1129.*

*The risk factors are organised in several categories and the most material risk factor in a category is presented first under that category, whereas subsequent risk factors in the same category are not purported to be ranked in order of materiality.*

## **Risk factors specific and material to the Issuer and the Group**

### **I. Risks related to the Group’s financial situation**

#### *Potential losses due to the outbreak of the coronavirus*

The outbreak of the novel coronavirus disease, COVID-19, is generally deemed a global pandemic. Governments in affected areas, including Germany, have imposed a number of measures designed to contain the outbreak, including business closures, travel restrictions, quarantines and cancellations or restrictions of gatherings and events. The spread of COVID-19 has had severe disruptive effects on the German and global economy and has caused increased volatility and declines in financial markets. Apart from that the Group’s access to financing may be deteriorated, the restrictive measures taken by the German Government, including restrictions in relation to gatherings of more than two persons, have resulted in closure of the Group’s fitness clubs and may lead to that fewer sign-ups for membership. The COVID-19 pandemic may also result in disruption to the Group’s key suppliers of goods and services and result in increased unavailability of staff, which could have a material adverse impact on the quality and continuity of service to customers and the reputation of the Group.

If the pandemic continues over a prolonged period of time and if the restrictive measures are prolonged or even increased, or further diseases emerge that give rise to similar effects, the adverse impact on the global economy could deepen and result in further declines in financial markets and membership rates could drop as existing members terminate their membership agreements. This could in turn have material adverse effects on the Group’s business, earnings and financial position as well as overall future prospects.

The Issuer considers that the probability of the above risks occurring is *high*. If the risks would materialise the Issuer considers the potential negative impact to be *high*.

### *Risks related to availability of capital and need for capital expenditure*

The Group is currently in a capital intensive expansion phase and may from time to time require significant levels of capital in order to finance new clubs, develop and convert into new concepts, acquire new equipment, maintain brand value, secure sufficient maintenance levels and to pursue expansion in general. Consequently, the Group is dependent on cash being generated by current operations or being successfully financed by borrowings or equity. If the Group fails to maintain sufficient liquidity, it may not be able to pursue existing or future business strategies, take advantage of future opportunities or respond to competitive pressures. Any inability to raise additional capital when required could therefore have an adverse effect on the Group's business, financial position and future prospects.

The Issuer considers that the probability of the Group failing to maintain sufficient levels of cash is *medium*. If the risks would materialise the Issuer considers the potential negative impact to be *medium*.

### *Risks related to customers, suppliers and contractual counterparties*

In order to maintain profitability, the Group is dependent on a large and varied customer base. Even at historically low customer churn rates, should a large number of customers or certain categories of customers terminate their respective agreements with the Group, the Group may be required to change its business plan, strategies, products and services offered, leading to increased costs, loss of income and the Group being forced to cease its business operations in one or more segments.

Furthermore, there is a risk of customers generally failing to fulfil their payment obligations vis-à-vis the Group. This in turn could lead to loss of income and reduced profitability and in turn insufficient liquidity for business operations. Should any of the above risks materialise, it could have a material negative impact on the Group's business and financial position.

The Issuer considers that the probability of the above risks occurring is *low*. If the risks would materialise the Issuer considers the potential negative impact to be *medium*.

## **II. Risks relating to the Group's industry and business activities**

### *Risks related to customer retention and price of services*

The Group's business comprises the provision of fitness services to a customer base that mainly subscribe for membership at any of the Group's fitness clubs ("**members**" or "**customers**"). Membership contracts are usually of 12 or 24 months' duration, with a notice period of one month and an automated prolongation. The Group's revenue is to a significant extent dependent on the membership volume and retention and the Group is consequently dependent on the ability to both retain existing members as well as to continuously attract new members in all segments of the Group. Membership volumes and customer retention may decline due to individual or multiple factors, including, *inter alia*, increased competition or changes in the competitive landscape, impaired brand reputation or attractiveness, failure to deliver attractive services at an attractive cost or at all, market saturation, unexpected increases in fees due to increased operational costs in the Group, changes in consumer preference away from the Group's segments or in relation to requested amenities and/or add-on services, equipment dilapidation or deterioration, increased popularity of home fitness equipment or online services as well as a general decline in the health and fitness trend. There is also a risk of members cancelling their membership due to non-attendance or the Group failing in its endeavours to retain members, for example through the use of campaigns or specially directed marketing. A loss of customers could also be due to changes in trends, general purchasing power or general customer

preferences as well as governmental decisions. There is also a risk of customer behaviour changing at a pace where any losses, investments or operational costs cannot be compensated for in due time if membership churn-rates increase.

The Group may not be able to increase its profitability through price increases, due to, for instance, price expectations, and therefore will need to seek alternative ways to grow revenue. The Group may also be unable to cover increased fixed costs associated with its operations where price increases cannot be used to drive additional income.

The Issuer considers that the probability of the Group failing to retain customers is *medium*. If the risks would materialise the Issuer considers the potential negative impact to be *high*.

#### ***Risks related to customer preferences and rapidly changing customer demands***

In order to be successful in its business operations, the Group is dependent upon the Group's products and services being favoured by customers. The Group operates or will operate over several segments including within premium and micro/boutique segments (under the brands Barry's Bootcamp, elbgym, the Gym Society, Pure Barre and Club Pilates), premium and upper-mid (under the brand Fitness First) and mid-range or value segment (under the brand smile X) as well as online under the brand NewMoove App. The vast majority of the Group's customers are within the Fitness First brand. The Group's customers are characterised by a sensitivity to trends and desire for state-of-the-art equipment and a broad variety of classes, or particularly high-quality niche concept classes (such as H.I.I.T training or spinning classes), presence in prime locations and city centres, high maintenance standards and premium service. There is a risk of changes to customer preferences in relation to the Group's main offerings, which could result in the Group's products and services being less favoured by customers. There is also a risk of the Group failing to meet specific customer demands in the segments where it operates and where services are niched. The Group's success in maintaining and increasing membership levels depends on the ability to identify and originate trends as well as to anticipate and react to changing consumer demands in a timely manner. Failure to anticipate and respond in a timely manner to changing consumer preferences could lead to, among other things, lower membership levels, which in turn would lead to decreased income and consequently decreased profitability, which would have a material adverse effect on the Group's earnings.

The Issuer considers that the probability of that a major part of the Group's customers' preferences change occurring is *low*. If the risks would materialise the Issuer considers the potential negative impact to be *high*.

#### ***Risks related to market segments, customer preference and business model***

The Group currently operates 7 fitness club brands (whereof two in a joint venture), as well as a fitness coach digital application, and is present in all major German cities including Berlin, Cologne, Düsseldorf, Frankfurt, Hamburg, Munich and Stuttgart.

Services within health and fitness are often localised as such services depends on the attractiveness for customers in a specific geographical area. The Group is therefore dependent on assessing the local market and other local health and fitness operators, gyms, as well as sports and leisure centres within the market segments in which the Group operates. Furthermore, the Group's market presence is focused towards prime inner-city locations in the major German cities, which locations are usually held through long-term lease agreements. The Group is therefore dependent on the entering into, upholding and renewal of long-term lease agreements in prime inner-city locations.

Consumer preference is increasingly shifting away from traditional budget offerings, driven by a higher demand for high-value, more comprehensive offerings, but at a lower price point. Consumer preference is also shifting towards more premium and/or boutique concept offerings. The Group has historically focused on the premium, upper mid and mid-range segments, as well as, to certain extent, the premium and/or boutique concept segment, but may in the future offer services also within other segments, such as segments focusing on high-value for money services. The Group may therefore face new or increased competition and/or increased costs that cannot be set-off against revenues in relation to its expansion into such segments.

The Issuer considers that the probability of the above risks occurring is *medium*. If the risks would materialise the Issuer considers the potential negative impact to be *medium*.

#### ***Risks related to fitness sites***

The profitability of the Group, especially within the premium segments, is dependent on the Group's ability to source relevant and attractive club locations (including relevant staff) as well as to drive sufficiently high membership levels to absorb fixed costs related to the relevant site. There is a risk that attractive sites are not available at a time when the Group would benefit strategically from expansion, at favourable terms, or at all. In addition, the Group may, from time to time, be required to open a certain number of fitness clubs under current franchising arrangements and may lose agreed exclusivity under the relevant franchising contract for not doing so. Hence, if the Group fails to source relevant club locations at favourable terms, or at all, the Group may incur loss, both in monetary terms and in relation to brand recognition, which in turn would decrease revenues.

In order to maintain its profitability, the Group may from time to time have to expand its operations and invest in new sites. There is a risk that the costs incurred during the ramp-up period for the relevant site, which generally lasts between 15–20 months, cannot be covered by sufficient financing or site income, rendering the relevant site unprofitable and consequently decrease the Group's profitability. Should such risks materialise, it would have an adverse effect on the Group's earnings and financial position.

The Issuer considers that the probability of the risk for failures in sourcing attractive locations on favourable terms, or at all, occurring is *low*. If the risks would materialise the Issuer considers the potential negative impact to be *medium*.

#### ***Risks related to leases of premises***

The Group leases all of its premises, the cost of which represents one of the major cost items of the Group, alongside personnel costs. The lease agreements are generally entered into for a 15-year term with one or more 5-year extension options. There is a risk that long-term lease agreements cannot be maintained at attractive terms or that leases cannot be price-adjusted during certain periods of their duration. Where the leases are initially high, or where indexation clauses lead to the rent being too high to be offset by the revenues generated in the location, the Group may incur losses or additional costs. If the Group be unable to obtain or negotiate leases on favourable terms or fails to negotiate renewals, either on commercially acceptable terms or at all, the Group may incur significant loss and business disruption which also could lead to closing of clubs in desirable locations.

The Issuer considers that the probability of the above risks occurring is *low*. If the risks would materialise the Issuer considers the potential negative impact to be *high*.

#### ***Risks related to acquisitions***

The Group is expanding rapidly and there is a risk that certain acquisitions may prove unsuccessful. There is a risk that purchase agreement indemnities are not enforceable, limited or expired and risk of disagreements in relation to sellers regarding enforceability or scope of contractual rights or liabilities. Should any acquired liabilities not be covered by applicable and enforceable indemnities, keep well clauses, guarantees or similar, such liabilities, could materially and adversely affect the Group's business, earnings, financial position and future prospects.

The Issuer considers that the probability of the above risks occurring is *low*. If the risks would materialise the Issuer considers the potential negative impact to be *medium*.

### **III. Legal, regulatory, reputational and internal control risk**

#### *Risks related to brand reputation*

The success of the Group largely depends upon the ability to maintain and enhance the value and reputation of the Group's brands and as well as the general perception and recognition of the Group's brands among customers and in society at large. The customers' and the general public's perception of the Group's brands could be impaired by, *inter alia*, health and safety incidents, lack of personal guidance on the use of equipment leading to dangerous misuse, safety deficiencies related to the fitness clubs in general, lack of cleanliness and overcrowding. This has become particularly important due to the outbreak of COVID-19. Furthermore, any unsatisfactory customer services such as unreliable club access, payment issues, member system failures or downtime, data breaches as well as theft and other incidents at the fitness clubs, all pose potential threats to the reputation of the Group's brands. Furthermore, any threats or harm to the Group's brands may be magnified by rapid spread in social media or other digital communication. This could, in turn, escalate reputational damage where consumers react to such information without further investigation and without regard to its accuracy, and the impairment may be immediate and afford no opportunity for correction by the Group. Should any of the above risks materialise, the Group's ability to attract and retain members could be materially and adversely affected, which in turn would negatively impact the Group's earnings, financial position and future prospects.

The Issuer considers that the probability of the above risks occurring is *low*. If the risks would materialise the Issuer considers the potential negative impact to be *high*.

#### *Risks related to health and security incidents as well as personal injury*

The use of the Group's fitness clubs and facilities, including exercise equipment, brings about health and safety risks in relation to members, guests, employees, consultants or other natural persons visiting or utilising the Group's fitness clubs and facilities. Such risks include, *inter alia*, hygiene issues in washing facilities, saunas and/or solariums, food or beverages contamination, accidents and injuries, including fatalities, and criminal offences such as theft, battery, harassment and disturbance of peace, committed by members, employees, consultants or other natural persons visiting or utilising the Group's fitness clubs. There is a risk of the Group failing to implement adequate and sufficient security measures and self-assessments in order to mitigate such risks and there is an intrinsic risk that such injury and/or harm occur regardless of the Group's mitigation efforts. This may result in the Group being subject to material claims or fines for any injury, harm or even death suffered by natural persons using the Group's facilities or services. There is also a risk of that any fines, damages and costs incurred are in excess of, or outside the scope of, the Group's insurance coverage. Additionally, the Group's reputation may be severely impaired by such incidents occurring. Should any of the above risks materialise, it would have a material adverse effect on the Group's business and financial position.

The Issuer considers that the probability of the above risks occurring is *low*. If the risks would materialise the Issuer considers the potential negative impact to be *medium*.

#### ***Risks related to changes in laws and regulation***

As the Group's business operations are regulated by legislation across various sectors, including consumer legislation, and amendments or restatements of laws, regulations and standards, leading to stricter requirements and changed conditions, including bans, or a stricter implementation and application by the authorities of existing laws and regulations, may force the Group to make further investments, to reorganise its business or to take other measures, with increased costs as a consequence. For instance, there are currently legislative initiatives to limit contract terms to one year, which would impact the duration of the Group's membership agreements. Should the regulatory environment change or restrictions be implemented in relation to the Group's provision of services, it could have a material adverse effect on the Group's business and earnings, as well as, ultimately, the Group's financial position and future prospects.

The Issuer considers that the probability of the above risks occurring is *medium*. If the risks would materialise the Issuer considers the potential negative impact to be *medium*.

#### ***Risks related to processing of personal data***

A major part of the Group's operations are linked to natural persons whereby the Group, in its operations, handles significant amounts of personal data, and the Group has employed an in-house lawyer to assess and handle the Group's processing of personal data. There is a risk that the Group fails to implement efficient and effective standards, procedures and training efforts to ensure compliance with applicable data protection regulations (including the general data protection regulation 2016/679/EU (the "GDPR")). There is a risk of the Group failing to comply with the requirements under the GDPR. There is also a risk, especially considering the large amounts of personal data processed within the Group, of personal data breaches occurring and that the Group fails to notify regulatory authorities and, as applicable, relevant data subjects in due time, rendering regulatory breaches. Non-compliance or other significant breaches could lead to significant administrative fines up to four per cent. of the annual global turnover of the Group as well as private claims, which would lead to additional costs and losses as well as reputational damage, which would materially negatively affect the Group's business and financial position.

The Issuer considers that the probability of the above risks occurring is *low*. If the risks would materialise the Issuer considers the potential negative impact to be *medium*.

### **IV. Social and governance risk**

#### ***Risks relating to hiring and retaining personnel***

Personnel costs constitute one of the Group's most significant cost items and the Group is dependent on an engaged, skilled and motivated workforce. As of 31 October 2019, approximately 1,900 persons were employed within the Group, whereof a total of 1,732 persons were employed in the Group's fitness clubs.<sup>1</sup> In order to maintain cost-efficiency in relation to its workforce, the Group focuses on hiring

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<sup>1</sup> See p. 29 in the Group's quarterly interim unaudited report as of and for the interim period started 1 November 2019 and ended 31 January 2020.

cross-functional staff with an entrepreneurial mind-set. Furthermore, and in order to be able to provide attractive services, the Group needs to hire personnel with a strong customer focus and with the expertise and willingness to represent and further the values of the Group's brands. The Group may also, from time to time, need to employ highly specialised persons, such as personal trainers, group fitness instructors, social media experts and other employees or consultants specialised in health services (such as sports scientists, physiotherapists, nutritionists etc.). Consequently, the Group's long-term development is dependent on the ability to attract and develop the right personnel and to sustain its workforce. There is a risk that the Group fails in its recruitment of personnel, both in relation to the numbers and the qualifications needed, which could adversely affect the Group's ability to provide its services resulting in business interruption and impaired brand recognition. Should any of the aforementioned risks materialise, it could have a material adverse effect on the Group's business and future prospects.

The Issuer considers that the probability of the above risks occurring is *medium*. If the risks would materialise the Issuer considers the potential negative impact to be *medium*.

### ***Employment related issues***

One of the more material assets as well as cost items for the Group is its employees, and the business operations would not be possible to run without the Group's employees. As the Group therefore is dependent on its workforce as such, as well as the ability to maintain cost-efficiency in relation to its workforce, it is dependent on adequate assessments in relation to various labour regulations and requirements regarding employee rights, such as pensions, salaries, work hours, and tax assessments (including in relation to the employees employed through so called "mini jobs"). Due to the large amount of employees employed by the Group, failures in the assessment of such regulations and requirements could result in the Group incurring material loss or additional costs, which in turn would negatively affect the Group's business and earnings.

Due to the Group's dependence on its workforce, the Group is dependent on a well-functioning relationship and cooperation with its works councils (De. *Betriebsräte*) established from time to time. The works councils impact the Group's operations both financially and legally as, for example, the Group is obliged to pay for works council education costs as well as provide IT equipment and office space for the works councils' regular meetings. Any unexpected changes to the operations of the works councils or inability of the Group to comply with requirements of the works councils may result in increased costs or employee dissatisfaction, which in turn would negatively affect the Group's operations and earnings, and, in the long-term, the Group's future prospects.

The Issuer considers that the probability of the above risks occurring is *low*. If the risks would materialise the Issuer considers the potential negative impact to be *medium*.

## **Risk factors specific and material to the Bonds**

### **I. Risks relating to the nature of the Bonds**

#### ***Dependency on subsidiaries***

The Issuer is a holding company and a significant part of the Issuer's assets and revenues relate to or are derived from the Issuer's subsidiaries. The Issuer is therefore dependent upon receipt of sufficient income related to the operation of and the ownership in such entities in order to make payments under the Bonds. As the Issuer's subsidiaries are legally separate from the Issuer and have no obligation to pay amounts due with respect to the Issuer's obligations under the Bonds, or to make funds available

for such payments. If the Issuer's operating income, including income from its subsidiaries, is not sufficient to service its current or future indebtedness, the Issuer may be forced to take actions such as reducing or delaying its business activities, acquisitions, investments or capital expenditures, selling assets, restructuring or refinancing its debt or seeking additional equity capital. This would, in turn, affect the Issuer's ability to service its debt obligations vis-à-vis holders of Bonds.

The Issuer considers that the probability of the above risks occurring and the probability of the risk that the Group will not be able to affect any of these remedies on satisfactory terms, or at all, is *low*. If the risks would occur, the Issuer considers the potential negative impact to be *medium*.

#### ***Refinancing risk***

The Issuer may be required to refinance its outstanding debt, including the Bonds. The Issuer's ability to successfully refinance its debt obligations is dependent upon the conditions of the capital markets, which may be significantly volatile, and the Issuer's financial position at such time. There is a risk that the Issuer's access to financing sources may not be available on acceptable terms, or at all, which, *inter alia*, could hamper the Group's growth agenda. The Issuer's inability to refinance its debt obligations on acceptable terms, or at all, either where needed, or as such obligations fall due, could have a material adverse effect on the Issuer's business and financial position and on the Bondholders' recovery under the Bonds.

The Issuer considers that the probability of the above risks occurring and the probability of the risk that the Group will not be able to obtain financing, is *medium*. If the risks would occur, the Issuer considers the potential negative impact to be *medium*.

#### ***Structural subordination and insolvency of subsidiaries***

In the event of insolvency, liquidation or a similar event relating to one of the Issuer's subsidiaries, all creditors of such subsidiary would be entitled to payment in full out of the assets of such subsidiary before the Issuer, as a shareholder, would be entitled to any payments. Thus, the Bonds are structurally subordinated to the liabilities of such subsidiaries. There is a risk that the Issuer and its assets would not be protected from actions by the creditors of a subsidiary, whether under bankruptcy law, by contract or otherwise. In addition, defaults by, or the insolvency of, certain subsidiaries of the Group may result in the obligation of the Group to make payments under financial or performance guarantees in respect of such subsidiaries' obligations or the occurrence of cross defaults on certain borrowings of the Group, which could have a material adverse effect on the Group's financial position and on the Bondholders' recovery under the Bonds.

The Issuer considers that the probability of the above risks occurring and the probability of the risk that the Group will not be able to obtain financing, is *low*. If the risks would occur, the Issuer considers the potential negative impact to be *medium*.

## **II. Risks related to the Transaction Security and the Guarantee**

### ***Risks related to the security package***

The Bonds constitute direct, general, unconditional, unsubordinated and secured obligations of the Issuer, meaning that in the event of bankruptcy, re-organisation or winding-up of the Issuer, the Bondholders normally receive payment after any priority creditors have been fully paid to the extent that the Bondholders' claim is not secured by and settled from the enforcement proceeds from the transaction security for the Bonds (the "**Transaction Security**").

The Issuer has been granted a super senior revolving credit facility with Oldenburgerische Landesbank Aktiengesellschaft as lender, in an aggregate nominal amount not exceeding EUR 10,000,000 (the “**Super Senior RCF**”). In order to establish the relative rights of the creditors of the Issuer and the Group, an intercreditor agreement (the “**Intercreditor Agreement**”) has been entered into between, amongst others, the Issuer, Oldenburgerische Landesbank Aktiengesellschaft and Nordic Trustee & Agency AB (publ).

To the extent the Transaction Security relates to assets of subsidiaries of the Issuer, each security interest granted will be limited in scope to comply with limitations on financial assistance, capital maintenance rules or similar restrictions under applicable law. As a result, the security interests can only be enforced if and to the extent that such enforcement will not lead to a violation of these restrictions under corporate laws applicable to the relevant subsidiary. In Germany, a GmbH is prohibited from distributing assets to its shareholders to the extent the amount of the GmbH’s net assets is already less or would fall below the amount of its stated share capital. Providing security for debt of a direct or indirect shareholder is considered a distribution to such shareholder. The Transaction Security may thus not be enforceable in the event of a default of the Issuer, or only be enforceable in part, which may limit the recovery of the Bondholders. Moreover, the Transaction Security will be subject to laws protecting debtors and creditors generally, including restrictions on fraudulent conveyance or voidable preference and hardening periods applicable under relevant bankruptcy laws. These restrictions may give an insolvency receiver or other creditors a right to challenge or void the Transaction Security.

Further, there is a risk that the proceeds from any enforcement of the Transaction Security would not be sufficient to satisfy all amounts then due on or in respect of the Bonds. Certain of the assets subject to the Transaction Security may be illiquid and have no readily ascertainable market value. For example, the shares that are secured for the benefit of Bondholders may provide for only limited repayment of the Bonds, in part because these shares may not be liquid and their value to other parties may be less than their value to the Group. It is not certain that the pledged shares will be saleable, or, even if saleable, that there will not be delays in the realisation of the value thereof. As a result, the Bondholders may not recover full or any value in the case of an enforcement sale of such pledged shares. Moreover, if the Issuer issues additional Bonds, the security position of the current Bondholders may be impaired. If the proceeds from an enforcement are not sufficient to repay all amounts due under or in respect of the Bonds, then the Bondholders will only have an unsecured claim against the remaining assets (if any).

The Issuer considers that the probability of the above risks occurring and the probability of the risk that the Group will not be able to obtain financing, is *medium*. If the risks would occur, the Issuer considers the potential negative impact to be *medium*.

### ***Shared security package***

The security package is shared under the Intercreditor Agreement. The Bondholders (and the other secured creditors) are represented by a security agent in all matters relating to the transaction security (the “**Security Agent**”). The Security Agent will take enforcement instructions primarily from the Trustee (representing the Bondholders). However, if the Trustee wishes to enforce the security, the Trustee must first consult with the other secured creditors for a certain time period after which the Trustee must instruct the Security Agent to take such action. Furthermore, the Security Agent may act in a manner that the Bondholders believe is to their detriment.

There is a risk that the Security Agent, or anyone appointed by it, does not properly fulfil its obligations in terms of perfecting, maintaining, enforcing or taking other necessary actions in relation to the transaction security.

Furthermore, although the Intercreditor Agreement contains provisions for the sharing of the Transaction Security between the secured parties, if a secured party receives enforcement proceeds or other payments in excess of what is stipulated by the Intercreditor Agreement, such secured party is obligated to share such proceeds or payments. However, it is not certain that a bankruptcy administrator of such secured party would respect the Intercreditor Agreement which potentially could adversely affect the other Secured Parties.

The Issuer considers that the probability of the above risks occurring and the probability of the risk that the Group will not be able to obtain financing, is *medium*. If the risks would occur, the Issuer considers the potential negative impact to be *medium*.

## Responsible for the information in the Prospectus

The Company has obtained all necessary resolutions, authorisations and approvals required in conjunction with the issuance of the Bonds and the performance of its obligations relating thereto. The issuance of the Bonds on 26 July 2019 was authorised by a shareholders' resolution on 22 July 2019, authorising the Issuer's managing directors (*De. Geschäftsführer*) (the “**board of directors**”) to execute, deliver and perform the documents contemplated by the Bond Issue, including this Prospectus.

The executive board of directors of the Issuer is responsible for the information contained in this Prospectus. The executive board of directors confirms that, to the best of its knowledge and having taken all reasonable care to ensure that such is the case, the information contained in the Prospectus is in accordance with the facts and the Prospectus makes no omission likely to affect its import. The executive board of directors of the Issuer is responsible for the information given in this Prospectus only under the conditions and to the extent set forth in Swedish law.

The information in the Prospectus and in the documents incorporated by reference, which may derive from third parties, has been accurately reproduced and, as far as the Issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading.

This Prospectus has been approved by the SFSA as competent authority under Regulation (EU) 2017/1129 of the European Parliament and of the Council (the “**Regulation**”). The SFSA only approves this Prospectus as meeting the standards of completeness, comprehensibility and consistency imposed by the Regulation. The SFSA's approval should not be considered as an endorsement of the Issuer that is the subject of this Prospectus, nor should it be considered as an endorsement of the quality of the securities that are the subject of this Prospectus. Investors should make their own assessment as to the suitability of investing in the Bonds.

Munich on 10 July 2020

*The executive board of directors of*  
**LifeFit Group MidCo GmbH**

## The Bonds in brief

This section contains a general and broad description of the Bonds. It does not claim to be comprehensive or cover all details of the Bonds. Potential investors should therefore carefully consider this Prospectus as a whole, including the documents incorporated by reference, and the full Terms and Conditions, before a decision is made to invest in the Bonds.

Concepts and terms defined in Section Terms and Conditions for the Bonds are used with the same meaning in this section unless otherwise is explicitly understood from the context or otherwise defined in this Prospectus.

### General

Issuer .....	LifeFit Group MidCo GmbH, a limited liability company incorporated in Germany and registered with the local court ( <i>Amtsgericht</i> ) of Munich under HRB 248092.
Resolutions, authorisations and approvals .....	The shareholders of the Issuer resolved to issue the Bonds (including taking measures in order to ensure admission to trading on Nasdaq Stockholm) on 22 July 2019.
The Bonds offered.....	Up to EUR 120,000,000 in an aggregate principal amount of senior secured callable floating rate bonds due 26 July 2023. As at the date of this Prospectus, Bonds in a total amount of EUR 40,000,000 have been issued.
Nature of the Bonds .....	The Bonds constitute debt instruments (Sw. <i>skuldförbindelser</i> ), each of the type set forth in Chapter 1 Section 3 of the Central Securities Depositories and Financial Instruments Accounts Act (Sw. <i>lag (1998:1479) om värdepapperscentraler och kontoföring av finansiella instrument</i> ).
Number of Bonds.....	As of the date of this Prospectus, 40,000 Bonds have been issued. The minimum permissible investment in connection with the Initial Bonds is EUR 100,000.
ISIN.....	NO0010856966.
First Issue Date .....	26 July 2019.
Price .....	All Bonds issued on the First Issue Date have been issued at an issue price of 100 per cent. of the Nominal Amount.
Interest Rate .....	Interest on the Bonds is paid at a floating rate of EURIBOR (3 months) + 7.50 per cent. <i>per annum</i> , provided that if EURIBOR is below zero, it shall be deemed to be zero.
Interest Payment Dates.....	8 January, 8 April, 8 July and 8 October each year (where the first Interest Payment Date was 8 October 2019 (short first interest period) and the last Interest Payment Date is the Final Redemption Date (long last interest period) (or any final Redemption Date prior thereto)), or to the extent

such day is not a CSD Business Day, the CSD Business Day following from an application of the Business Day Convention.

Final Redemption Date .....	26 July 2023.
Initial Nominal Amount.....	The Bonds have a nominal amount of EUR 1,000 and the minimum permissible investment upon the Initial Bond Issue was EUR 100,000.
Denomination.....	The Bonds are denominated in EUR.
Status of the Bonds .....	Subject to the Intercreditor Agreement, the Bonds constitute direct, general, unconditional, unsubordinated and secured obligations of the Issuer and shall at all times rank at least <i>pari passu</i> with all direct, unconditional, unsubordinated and unsecured obligations of the Issuer, except those obligations which are mandatorily preferred by law, and without any preference among them. As of the date of this Prospectus, an intercreditor agreement has been entered into, which is described under Section “Material Agreements” below.
Use of Proceeds.....	<p>The Net Proceeds from the Bond Issue shall be applied towards: (i) financing the acquisition of smileX InterCo GmbH, (ii) financing Transaction Costs; and (iii) financing general corporate purposes of the Group.</p> <p>The Net Proceeds from any Subsequent Bond shall be applied towards general corporate purposes of the Group, including but not limited to capital expenditure and acquisitions.</p>

## **Transaction Security and guarantees**

Security .....	<p><i>Initial Security</i></p> <p>As continuing Security for the due and punctual fulfilment of the Secured Obligations, the Issuer has granted security in favour of the Secured Parties over:</p> <ul style="list-style-type: none"><li>(i) the shares in Issuer, smileX InterCo GmbH, vivasport GmbH, Verwaltungs-GmbH 2, Barry's Bootcamp GmbH, elbgym GmbH, Fitness First Germany GmbH, MKS Sport GmbH and MKS Sport 3 GmbH;</li><li>(ii) the partnership interests in smilefit I-O GmbH &amp; Co. KG and smilefit SLS GmbH &amp; Co. KG;</li><li>(iii) all present and future shareholder loans from LifeFit Group TopCo GmbH to the Issuer;</li></ul>
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- (iv) all Material Intra-Group Loans made by the Issuer, smileX InterCo GmbH, vivasport GmbH, Verwaltungs-GmbH 2, Barry's Bootcamp GmbH, elbgym GmbH, Fitness First Germany GmbH, MKS Sport GmbH, MKS Sport 3 GmbH, smilefit I-O GmbH & Co. KG and smilefit SLS GmbH & Co. KG; and
- (v) the bank accounts of the Issuer, smileX InterCo GmbH, vivasport GmbH, Verwaltungs-GmbH 2, Barry's Bootcamp GmbH, elbgym GmbH, Fitness First Germany GmbH, MKS Sport GmbH, MKS Sport 3 GmbH, smilefit I-O GmbH & Co. KG and smilefit SLS GmbH & Co. KG.

*Additional Security*

In addition to the security interests listed above, the Issuer shall ensure that security is granted in favour of the Secured Parties over:

- (i) the shares of any Group Company that is or becomes a Guarantor pursuant to Clause 6.2 (*Guarantees*) of the Terms and Conditions at the same time such Group Company becomes a Guarantor;
- (ii) the shares of any Material Group Company acquired on or after the First Issue Date;
- (iii) the bank accounts of any Group Company becoming a Guarantor pursuant to Clause 6.2 (*Guarantees*) at the same time such Group Company becomes a Guarantor;
- (iv) upon its incurrence, any shareholder loan between the Sponsor or another Holding Company of the Issuer as creditor and the Issuer or another Group Company as debt, whereby any present and future shareholder loans between such Holding Company as creditor and Group Company as debtor shall be pledged; and
- (v) within sixty (60) Business Days of its incurrence, any Material Intra-Group Loan.

The security is governed by separate Security Documents governed by, as applicable, the relevant law in respect of the security assets.

Guarantee .....

The obligations under the Bonds are guaranteed under a Guarantee Agreement entered into by, or through accessions by, the Guarantors.

Subject to the Intercreditor Agreement, each Guarantor irrevocably and unconditionally, jointly and severally (De. *gesamtschuldnerisch*) guarantees (De. *garantiert*) by way of an independent payment obligation (De. *selbständiges Zahlungsversprechen*) to each Secured Party (as represented by the Super Senior Agent or the Security Agent to pay to that Secured Party any amount of principal, interest, costs, expenses or other amount under or in connection with the Senior Finance Documents that has not been fully and irrevocably paid by any of the Obligors in accordance with the Guarantee Agreement, which is entered into (or to be entered into) between the Issuer, each Guarantor, Oldenburgische Landesbank Aktiengesellschaft and the Security Agent. The obligations and liabilities of the Guarantors under the Guarantee Agreement shall be limited if required (but only if and to the extent required) under the laws of the jurisdiction in which the relevant Guarantor is incorporated.

As of the date of this Prospectus, the Guarantors are Barry's Bootcamp GmbH, Elbgym GmbH, Fitness First Germany GmbH, smile X InterCo GmbH, MKS Sport GmbH, MKS Sport 3 GmbH, smilefit SLS GmbH & Co. KG and smilefit I-O GmbH & Co. KG.

Further Guarantors may accede to the Guarantee Agreement by way of signing, *inter alia*, accession letters. Existing Guarantors which are subject to a Non-Distressed Disposal may, subject to the Intercreditor Agreement, resign from the Guarantee Agreement.

For further information on the Guarantors, see Section *Guarantors*.

**Voluntary Redemption and Repurchase**

Voluntary prepayment.....

The Issuer may at one occasion per each calendar year (without carry-back or carry-forward), make partial repayments of Bonds in an amount corresponding to a maximum of five (5) per cent of the aggregate Nominal Amount as of the First Issue Date. Any such partial repayment shall reduce the Outstanding Nominal Amount of each Bond *pro rata* in accordance with the procedures of the CSD. The Bonds shall be redeemed at the Call Option Amount for the relevant period, but shall for the period until the First Call Date be the price set out in

paragraph (b) of the definition of “Call Option Amount”, in each case together with accrued but unpaid interest.

See further Clause 12.3 (*Voluntary prepayment*) of the Terms and Conditions.

Call Option.....

The Issuer may choose to redeem all, but not only some, of the Bonds in full on any Business Day falling after the First Issue Date but before the Final Redemption Date, at the applicable Call Option Amount together with accrued but unpaid Interest (being the Make Whole Amount if the option is exercised up to and excluding the First Call date, *i.e.* twenty-four months after the First Issue Date, and otherwise a certain percentage of the Outstanding Nominal Amount as specified under “*Call Option Amount*” in the Terms and Conditions”).

See further Clause 12.4 (*Early voluntary redemption by the Issuer (call option)*) of the Terms and Conditions.

Equity Claw Back .....

The Issuer may at one occasion, if the shares in the Issuer are subject to an initial public offering where such shares shall be quoted, listed, traded or otherwise admitted to trading on a regulated market or unregulated market, repay up to thirty (30) per cent. of the total Outstanding Nominal Amount, in which case all outstanding Bonds shall be partially repaid by way of reducing the Nominal Amount of each Bond *pro rata* in accordance with the procedures of the CSD.

The repayment per Bond shall equal the repaid percentage of the Outstanding Nominal Amount plus (i) a premium on the repaid amount as set forth in the definition Call Option Amount for the relevant period (but up until the First Call Date, the price set out in paragraph (b) of the definition of Call Option Amount) and (ii) accrued but unpaid interest on the repaid amount.

See further Clause 12.5 (*Equity Claw Back*) of the Terms and Conditions.

Early redemption due to illegality .....

The Issuer may redeem all, but not only some, of the outstanding Bonds at an amount per Bond equal to the Nominal Amount together with accrued but unpaid Interest on a Redemption Date determined by the Issuer if it is or becomes unlawful for the Issuer to perform its obligations under the Finance Documents. The applicability of this redemption opportunity shall be supported by a legal opinion issued by a reputable law firm.

See further Clause 12.6 (*Early redemption due to illegality (call option)*) of the Terms and Conditions.

## **Put Option**

Put Option ..... Upon a Change of Control Event or a Delisting Event occurring (all as defined in the Terms and Conditions and below), each Holder shall have the right to request that all, or only some, of its Bonds are repurchased at a price per Bond equal to one hundred one (101) per cent. of the Outstanding Nominal Amount together with accrued but unpaid Interest, during a period of sixty calendar days following a notice from the Issuer of the relevant event as set out in the Terms and Conditions. The sixty calendar days' period may not start earlier than upon the occurrence of the Change of Control Event or the Delisting Event (as applicable).

See further Clause 12.7 (*Mandatory repurchase due to a Change of Control Event or a Delisting Event (put option)*) of the Terms and Conditions.

Change of Control Event..... A Change of Control Event means the occurrence of an event or series of events whereby one or more Persons (other than the Sponsor or its Affiliates), acting in concert, acquire control, directly or indirectly, over more than fifty (50.00) per cent. of the voting shares of the Issuer, or the right to, directly or indirectly, appoint or remove the whole or a majority of the directors of the board of directors of the Issuer.

Delisting Event..... A Delisting Event means, following an Equity Listing Event, the occurrence of an event or series of events whereby (i) the Issuer's share are delisted from a Regulated Market; or (ii) trading in the ordinary shares of the Issuer on the relevant Regulated Market is suspended for a period of fifteen (15) consecutive Business Days (when that Regulated Market is at the same time open for trading).

Failure to complete conditions precedent..... The Terms and Conditions include an obligation for the Issuer to repurchase the Bonds if (i) the Initial Conditions Precedent have not been fulfilled within sixty Business Days of the First Issue Date, and (ii) if the Net Proceeds have not been disbursed from the Escrow Account within ninety Business Days, or within one hundred and eighty Business Days, from the First Issue Date (the latter if a longer period is required solely for the purpose of obtaining relevant competition clearances for the

Acquisition). As at the date of this Prospectus, both such conditions have been fulfilled.

See further Clause 12.8 (*Mandatory redemption due to failure to fulfil the Initial Conditions Precedent*) of the Terms and Conditions.

## Covenants

Certain undertakings ..... The Terms and Conditions contain a number of undertakings that restrict the ability of the Issuer and other Group Companies, including, among others:

- restrictions in relation to certain dividends, transfers, redemptions, repurchases and repayments or similar distributions (Restricted Payment) subject to certain exceptions;
- undertaking to procure the listing of the Bonds on the Open Market of the Frankfurt Stock Exchange (which undertaking has been fulfilled as at the date of this Prospectus) and ensure that the Bonds are listed at the corporate bond list of Nasdaq Stockholm or any other Regulated Market within twelve (12) months of the First Issue Date;
- restrictions on the incurrence of certain new Financial Indebtedness (other than Permitted Debt);
- restrictions on the disposal of certain assets;
- undertaking to procure that the outstanding amount under the Super Senior RCF during each calendar year is subject to a certain clean down period;
- a negative pledge restricting the granting of security (other than Permitted Security);
- undertaking to procure that certain Group Companies become Guarantors according to the requirements set out in the Terms and Conditions;
- restrictions in relation to incurring and providing certain loans;
- undertaking to adhere to certain information undertakings such as in relation to the Issuers financial reporting, the issuance, as applicable, by Compliance Certificates and notifications to interested parties;
- undertaking to on quarterly basis provide a presentation by telephone about the ongoing business and financial performance of the Issuer and the Group;

- undertaking not to change a designated bank account for collection of membership dues held by the Issuer or a Guarantor to a bank account held by a Group Company which is not the Issuer or a Guarantor;
- if the Issuer completes an acquisition of Holmes Place (as defined in the Terms and Conditions) within twelve months of the First Issue Date, which is partly financed by proceeds from a Subsequent Bond Issue, undertaking to ensure that no less than EUR 10,000,000 of the total consideration shall comprise of an equity contribution, in the form of share capital, an unconditional shareholder contribution or Shareholder from the Sponsor and/or any of its direct or indirect Subsidiaries; and
- certain obligations in relation to the Trustee Agreement.

Each of these covenants is subject to significant exceptions and qualifications. See the Terms and Conditions of the Bonds.

## Miscellaneous

Transfer restrictions ..... The Bonds are freely transferable. The Bondholders may be subject to purchase or transfer restrictions with regard to the Bonds under local laws to which a Bondholder may be subject. The Bonds have not been, and will not be, registered under the Securities Act or the securities laws of any other jurisdiction.

Admission to trading..... The Bonds were listed on the Open Market of the Frankfurt Stock Exchange, which is a multilateral trading platform (MTF), under the trading name LIFEFIT GR. FLN 19/23 on 6 August 2019. The Issuer shall procure that the Bonds remain listed on such exchange until the Bonds have been redeemed in full.

Furthermore, The Issuer shall use its best efforts to ensure that (i) the Bonds are listed at the corporate bond list of Nasdaq Stockholm or any other Regulated Market within twelve months of the First Issue Date; (ii) any Subsequent Bonds are listed on the relevant Regulated Market within sixty days after the issuance of such Subsequent Bonds (with an intention to complete such listing within thirty days after the issuance of such Subsequent Bonds), and (iii) the Bonds,

if admitted to trading on a Regulated Market continue being listed thereon for as long as any Bond is outstanding.

Application for admission to trading of the Bonds on the corporate bond list of Nasdaq Stockholm will be filed in immediate connection with the SFSA's approval of this Prospectus. The latest date for admitting the Bonds to trading on Nasdaq Stockholm is on 24 July 2020. The total expenses of the admission to trading of the Bonds are estimated to amount to approximately SEK 100,000.

Trustee and Security Agent.....	Nordic Trustee & Agency AB (publ) (reg. no. 556882-1879), P.O. Box 7329, SE-103 90 Stockholm, Sweden (in its capacity as Security Agent, holding the Transaction Security on behalf of the Secured Parties).
Central Securities Depository (CSD).....	Verdipapirsentralen ASA (VPS) in Norway, in relation to which Pareto Securities AS has been appointed by the Issuer to act as its paying agent with respect to the Bonds in the CSD from time to time. No physical Bonds have been issued.
Governing law of the Bonds .....	Swedish law.
Time-bar.....	The right to receive repayment of the principal of the Bonds shall be time-barred and become void ten (10) years from the Redemption Date. The right to receive payment of interest (excluding any capitalised interest) shall be time-barred and become void three (3) years from the relevant due date for payment.
Risk factors .....	Investing in the Bonds involves substantial risks and prospective investors should refer to Section <i>Risk factors</i> for a discussion of certain factors that they should carefully consider before deciding to invest in the Bonds.

# Description of the Group and its operations

## The Issuer and the Group

LifeFit Group MidCo GmbH, *i.e.* the Issuer, was incorporated and registered with the commercial register in the Munch local court in 2019. The Issuer is a limited liability company incorporated in Germany and registered with the local court (*Amtsgericht*) of Munich. The Issuer is governed by German law including, but not limited to, the German Commercial Code (*De. Handelsgesetzbuch*) and the German Limited Liability Companies Act (*De. Gesetzes betreffend die Gesellschaften mit beschränkter Haftung*).

The Group's business is carried out in several segments and regions in Germany, through the operative subsidiaries currently including the brands "Fitness First", elbgym, smile X, The Gym Society, Barry's Bootcamp, Pure Barre (planned to open in Germany in summer 2020), Club Pilates (planned to open in Germany in summer 2020), and the fitness app NewMoove. The Issuer's main object is to be the holding company of the Group and the main business operations carried out by the Group are carried out by the subsidiaries.

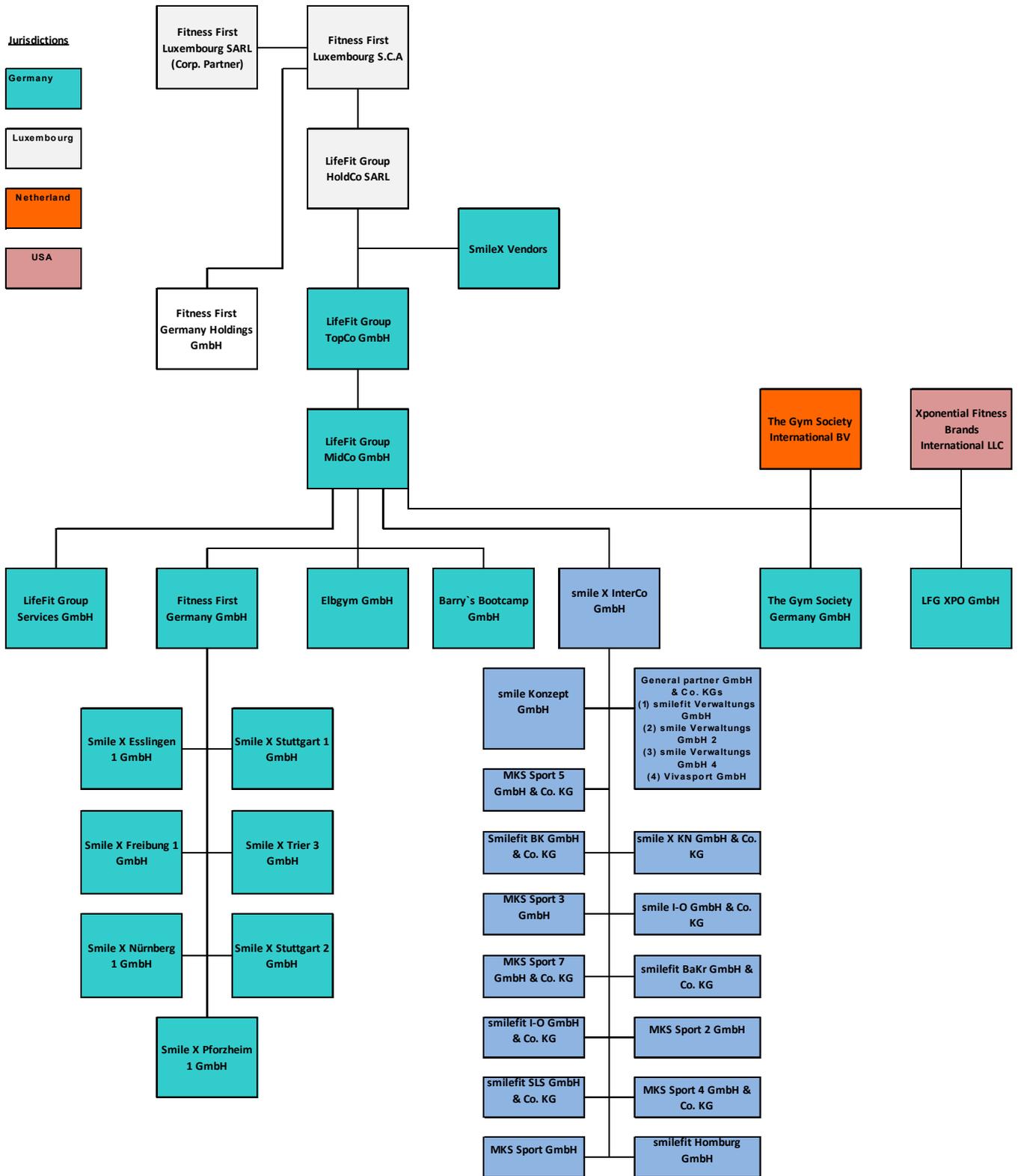
## Overview of the Issuer

<i>Company/trade name</i>	LifeFit Group MidCo GmbH
<i>Legal form</i>	Limited liability company
<i>Corporate registration number</i>	HRB 248092 (registered with the local court ( <i>De. Amtsgericht</i> ) of Munich)
<i>LEI-code</i>	254900T3Z0SCF415OF78
<i>Incorporated</i>	On 13 March 2019
<i>Registered</i>	On 9 April 2019
<i>Head office</i>	Munich
<i>Address</i>	c/o LifeFit Group TopCo GmbH Hanauer Straße 148a DE-60314 Frankfurt am Main, Germany
<i>Phone number</i>	+49 (0) 69 4080 160 00
<i>Website</i>	www.lifefit-group.com (the information provided at the Issuer's website does not constitute part of this Prospectus unless explicitly incorporated by reference)
<i>Operational objective</i>	The objects of the Issuer is the acquisition, holding, administration and utilization of participations in other companies and enterprises.

An overview of each of the Guarantors (as defined in the Terms and Conditions) is included in Section *Guarantors – Overview of the Guarantors*.

### Overview of the Group structure

The Issuer is the parent company of the Group, consisting of several operating companies set out in the group structure chart below.



All Guarantors, as per the date of this Prospectus, are direct or indirect subsidiaries of the Issuer and are part of the Group. All subsidiaries are wholly owned, apart from The Gym Society Germany GmbH and LFG – XPO GmbH which are each owned by 60 per cent. by the Issuer. The Gym Society Germany GmbH is a joint venture between the Issuer and The Gym Society International BV and LFG – XPO GmbH are joint venture between the Issuer and Xponential Fitness International LLC (“**Xponential Fitness**”). The Issuer’s main object is to be the holding company of the Group and the business operations are carried out by the Issuer’s subsidiaries, including the Guarantors as described below.

Since the majority of the revenues of the Group is derived from the Issuer’s operational subsidiaries, the Issuer is dependent upon its subsidiaries in order to generate profit and cash flow and to meet its obligations under the Terms and Conditions.

### **Share capital, shares and ownership structure of the Issuer**

According to its articles of association, the Issuer’s share capital amounts to EUR 25,000 divided into 25,000 shares with a nominal value of EUR 1.00. The share capital of the Issuer is composed of ordinary shares. The holders of ordinary shares are entitled to one (1) vote per share. The shares are denominated in EUR. The Issuer’s shares are not publicly traded on an exchange.

The Issuer is a privately owned company. The Issuer was incorporated on 13 March 2019 and is since 31 May 2019 wholly owned by LifeFit Group TopCo GmbH (“**TopCo**”). TopCo is to 95 per cent. owned by funds that are controlled by Oaktree Capital Management L.P (“**Sponsor**”), being an investment manager specializing in alternative investments, with USD 125 billion in assets under management as of 31 December 2019. The remaining 5 per cent. of the shares of TopCo is held by certain sellers of the smile X InterCo GmbH.

The shareholders’ influence is exercised through active participation in the decisions made at general meetings of the Issuer. To ensure that the control over the Issuer and the Guarantors is not abused, the Issuer and the Guarantors comply with relevant company laws in Germany. The Issuer as well acts in accordance with internal instructions.

As far as the Issuer and the Guarantors are aware, there are no shareholders’ agreements or other agreements which could result in a change of control of the Issuer or the Guarantor.

Information on the share capital, shares and ownership of the Guarantors is included in Section *Guarantors – Information on the share capital, shares and ownership of the Guarantors*.

### **The business and industry of the Group**

#### *History of the Group*

The Group is originally built around Fitness First Germany GmbH (“**FFG**”) and has expanded by way of a group reorganisation that started in late 2018 and finished in October 2019, in which the LifeFit Group acquired several new entities and created new intermediary holding companies (TopCo and the Issuer) to run the operations.

The Issuer’s first financial year started on 13 March 2019 and ended in 31 October 2019. The Issuer’s operative business started on 1 July 2019 as the Issuer acquired three subsidiaries (FFG, Elbgym GmbH and Barry’s Bootcamp GmbH) and thereby became the new holding company of the operative subsidiaries in the LifeFit Group. During 2019, the Issuer also acquired smile X InterCo GmbH (including subsidiaries) as well as entered into joint ventures regarding The Gym Society Germany GmbH and LFG – XPO GmbH.

## *Business operations and industry*

The Group is a gym chain operator with a wide-spread portfolio of fitness brands across several segments across Germany. The Group is present in all major German cities, including Berlin, Munich, Frankfurt, Hamburg and Cologne and pursues long-term leases in prime inner city locations.

The Group's strategy is to have a multi-brand offering that covers all relevant price-segments of the market, from value to premium and boutique, including studio format brands. The Group currently consists of the gym chain brands Fitness First, elbgym and smile X, as well as the studio boutique brands Barry's Bootcamp and The Gym Society. The Group also intends to operate an additional studio concept as the Issuer in November 2019 entered into a joint venture with a significant curator of franchise boutique offerings, U.S. based Xponential Fitness. Under this joint venture, the studio concepts Pure Barre and Club Pilates have been formed.

The Group's revenue model is a subscription-based business model which results in high "stickiness" and revenue visibility. The average gym member stays with the Group for more than 4 years.

### *FFG*

With 66 clubs and more than 215,000 members at the end of October 2019, FFG is a large fitness and health service providers in Germany. FFG's offer targets professionals in major cities and offers a broad range of training opportunities in the club, outdoors and online with the supplementary training features of its own NewMoove App.

### *Elbgym*

Elbgym currently operates four fitness clubs in Hamburg, whereof three are owned by Elbgym, and one is run through a franchise, and is particularly known for CrossFit training, wellness area and intensive personal advice. There are four branches in Hamburg: "Alster Ufer", "Eppendorf", "Innenstadt" and "Stadthöfe". A fifth location, "St. Georg" is scheduled to open, in the middle of 2020.

### *smile X*

smile X Interco GmbH is the holding company of 13 fitness clubs primarily located in South-East of Germany and operating under the brand SMILEFITNESSCLUB. The fitness brand is characterized by a high value for money offering and includes basic fitness training and motivating courses.

### *Barry's Bootcamp*

The concept of Barry's Bootcamp is to offer high-intensity interval training switching between treadmill and weight training in a particular atmosphere. Barry's Bootcamp studios will be rolled out over the coming years under an exclusive franchise agreement

### *The Gym Society*

The Group has acquired the licensing rights for Germany, Austria and Switzerland in relation to The Gym Society. The concept is personalized consultancy for healthy life with luxurious boutique environment with experienced trainers. The opening of the first studio in Germany is scheduled for mid-2020.

### *Club Pilates and Pure Barre*

Club Pilates is a network of performer-based group Pilates studios operating globally, and that offers high-quality training at an affordable prices. Pure Barre is a well-established barre franchise in North America with approximately 550,000 clients. These boutique fitness concepts will be brought to

Germany and Austria by way of that the Group exclusively partners with Xponential Fitness which is a curator of several brands in the boutique fitness space within training forms such as Pilates, indoor cycling, stretch, rowing, dance and yoga.

### **Trend information and adverse changes**

During the first and second quarters of 2020, the economic effects of the spread of the coronavirus, causing the coronavirus disease (COVID-19), have been dominating the macroeconomic environment. As at the date of this Prospectus, the Issuer notes that the effects of the coronavirus have resulted in closing of fitness sites and weakening customer numbers due to fewer new subscriptions and its negative impact on retention rates. The full financial effects of the spread of the virus are not yet seen, but it cannot be excluded that the potential negative impact for the Group could be deemed to be material with reduced business volumes and operating income as a consequence.

Other than as described above, there has been no material adverse change in the prospects of the Issuer or any of the Guarantors or any significant changes in the financial performance of the Group since the date of the last short-audit consolidated financial statements for the short financial year ending 31 October 2019 and the Group quarterly interim unaudited report for the interim period starting 1 November 2019 and ended 31 January 2020 as well as of and for the interim period started 1 2019 November 2019 and ended 30 April 2020.

### **Recent events**

The German government currently intends to amend the law on fair consumer contracts which would have an impact on the Group's membership contracts. According to the current draft legislation, contract terms will be limited to a maximum of one year, a maximum extension period of three months and a general notice period of one month. This could have a negative impact on membership retention rates but could also create opportunities for additional new joiners from competitors. The Company does not expect the effects of such law amendments to be materially adverse.

On 7 February 2020, the Issuer and Oldenburgische Landesbank Aktiengesellschaft entered into a super senior revolving facility agreement to be applied towards general corporate and working capital purposes including capital expenditure. The facility provides for total commitments up to EUR 10 million with an interest rate of EURIBOR + 3 per cent.

Other than as described above, there have been no recent events particular to the Group or the Guarantors, which is to a material extent relevant to the evaluation of the Group's solvency.

### **Investments**

The Group has expanded rapidly over the past years. Since investments are an integral part of the Group's operations, there will always be ongoing discussions about potential investments in the ordinary course of the Group's activities.

# Board of directors and executive management

## Introduction

The executive management of the Group currently consists of 11 members and the Issuer and the group has one managing director (De. *Geschäftsführer*). The Issuer is represented by three legal representatives (Ge. *Prokuristen*). The Issuer's owner LifeFit Group TopCo GmbH has established an advisory board that report to that company's shareholders' meeting on annual basis. According to the by-laws of the advisory board, which may consist of up to 7 members, the advisory board may advise on management matters but have no authority to decide in management matters in the Group. Since the Issuer is a private limited liability company (De. *Gesellschaft mit beschränkter Haftung*), there is no advisory board in the Issuer.

Information about the members of the executive management of the Issuer and the Group, including any assignments outside the Group which are significant for the Issuer, are set out below.

For information about the members of the executive management of the Guarantors, including any assignments outside the Group which are significant for the Issuer, please see Section *Guarantors – The executive management of the Guarantors*.

The executive board of directors and the management of the Issuer (including the Guarantors) may be contacted through the Issuer at its head office: c/o LifeFit Group TopCo GmbH, Hanauer Straße 148a, DE-60314, Frankfurt am Main, Germany, at telephone +49 (0) 69 4080 160 00.

## The executive management of the Group

*Martin Seibold, Managing Director in the Issuer and the Group (Chief Executive Officer) since 01.11.2017.*

<i>Current significant commitments outside the Group:</i>	Advisory board member Profession Fit BGF GmbH.
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*Christophe Collinet, Prokurist in the Issuer, Chief Commercial Officer in the Group since 01.12.2018 and Managing Director in Barry's Bootcamp since 01.03.2019.*

<i>Current significant commitments outside the Group:</i>	None that are significant with respect to the Issuer.
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*Steffen Fries, Prokurist in the Issuer and Director Real Estate since 01.05.2019.*

<i>Current significant commitments outside the Group:</i>	None that are significant with respect to the Issuer.
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*Wolfgang Cyriax, Prokurist in the Issuer and Director Finance since 01.05.2019.*

<i>Current significant commitments outside the Group:</i>	None that are significant with respect to the Issuer.
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*Jonathan Kreuter, Director Controlling since 01.05.2019.*

*Current significant commitments outside the Group:* None that are significant with respect to the Issuer.

*Isabelle Kopa, Director Central Operations since 01.05.2019.*

*Current significant commitments outside the Group:* None that are significant with respect to the Issuer.

*Johannes Maßen, Director Operations (FFG) since 01.05.2019.*

*Current significant commitments outside the Group:* None that are significant with respect to the Issuer.

*Daniel Schalin, Director Operations NBD since 01.05.2019.*

*Current significant commitments outside the Group:* None that are significant with respect to the Issuer.

*Vincent McHardy, Operation Director Barry's Bootcamp since 01.05.2019.*

*Current significant commitments outside the Group:* None that are significant with respect to the Issuer.

*Wilhelm Schröter, Managing Director elbgym since 01.01.2019.*

*Current significant commitments outside the Group:* None that are significant with respect to the Issuer.

*Christian Müller, Managing Director smile X, since 26.11.2015.*

*Current significant commitments outside the Group:* None that are significant with respect to the Issuer.

### **Conflicts of interests within administrative, management and control bodies**

No member of the executive board of directors or management has any private interests that may conflict with the Issuer's or any Guarantor's interest. It cannot be excluded that conflict of interest may come to arise between companies in which members of the executive board of directors and members of the management have duties, as described above, and the Issuer.

# Guarantors

## Background

The obligations under the Bonds are guaranteed by, among others, the Guarantors under a Guarantee Agreement. As of the date of this Prospectus, the Guarantors are:

- Barry's Bootcamp GmbH;
- Elbgym GmbH;
- Fitness First Germany GmbH;
- smile X InterCo GmbH;
- MKS Sport GmbH;
- MKS Sport 3 GmbH;
- smilefit SLS GmbH & Co. KG; and
- smilefit I-O GmbH & Co. KG.

According to the Terms and Conditions, the obligations under the Bonds may be guaranteed by additional Guarantors insofar such entities are Group Companies with earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) representing five (5) per cent. or more of EBITDA, or which has assets representing five (5) per cent. or more of Total Assets. The Issuer has undertaken to procure that each such Group Company that meets such requirements enters into or accedes to a Guarantee Agreement as a Guarantor within certain time frames.

## Overview of the Guarantors

### *Barry's Bootcamp GmbH*

Barry's Bootcamp GmbH is a private limited liability company (De. *Gesellschaft mit beschränkter Haftung*) registered in Germany under the corporate identification number HRB 115552, having its registered address at Hanauer Landstraße 148a, 60314 Frankfurt am Main, Germany. Barry's Bootcamp GmbH was formed on 3 March 2019 and registered in the commercial register (De. *Handelsregister*) of the local court (De. *Amtsgericht*) of Frankfurt am Main on 27 May 2019 and conducts its business in accordance with German law including, but not limited to, the German Commercial Code (De. *Handelsgesetzbuch*) and the German Limited Liability Companies Act (De. *Gesetzes betreffend die Gesellschaften mit beschränkter Haftung*).

### *Elbgym GmbH*

Elbgym GmbH is a private limited liability company (De. *Gesellschaft mit beschränkter Haftung*) registered in Germany under the corporate identification number HRB 154834, having its registered address at Straßenbahnring 8, 20251, Hamburg, Germany. Elbgym GmbH was formed on 12 November 2018 and registered in the commercial register (De. *Handelsregister*) of the local court (De. *Amtsgericht*) of Hamburg on 21 December 2018 and conducts its business in accordance with German law including, but not limited to, the German Commercial Code (De. *Handelsgesetzbuch*) and the German Limited Liability Companies Act (De. *Gesetzes betreffend die Gesellschaften mit beschränkter Haftung*).

### ***Fitness First Germany GmbH (FFG)***

Fitness First Germany GmbH is a private limited liability company (De. *Gesellschaft mit beschränkter Haftung*) registered in Germany under the corporate identification number HRB 30512, having its registered address at Hanauer Landstraße 148a, 60314 Frankfurt am Main, Germany. Fitness First Germany GmbH was formed on 29 March 1989 (under the corporate name Fitness Company Freizeitanlagen GmbH) and registered in the commercial register (De. *Handelsregister*) of the local court (De. *Amtsgericht*) of Frankfurt am Main on 6 June 1989 and conducts its business in accordance with German law including, but not limited to, the German Commercial Code (De. *Handelsgesetzbuch*) and the German Limited Liability Companies Act (De. *Gesetzes betreffend die Gesellschaften mit beschränkter Haftung*).

### ***smile X InterCo GmbH***

Smile X InterCo GmbH is a private limited liability company (De. *Gesellschaft mit beschränkter Haftung*) registered in Germany under the corporate identification number HRB 102812, having its registered address at Am Stadtbad 3, 66424 Homburg. Smile X InterCo GmbH was formed on 13 October 2015 (under the corporate name smile Verwaltungs-GmbH 3) and registered in the commercial register (De. *Handelsregister*) of the local court (De. *Amtsgericht*) of Saarbrücken on 26 November 2015 and conducts its business in accordance with German law including, but not limited to, the German Commercial Code (De. *Handelsgesetzbuch*) and the German Limited Liability Companies Act (De. *Gesetzes betreffend die Gesellschaften mit beschränkter Haftung*).

### ***MKS Sport GmbH***

MKS Sport GmbH is a private limited liability company (De. *Gesellschaft mit beschränkter Haftung*) registered in Germany under the corporate identification number HRB 17279, having its registered address at Saarwiesenring 9, 66663 Merzig, Germany. MKS Sport GmbH was formed on 22 August 2008 and registered in the commercial register (De. *Handelsregister*) of the local court (De. *Amtsgericht*) of Saarbrücken on 18 September 2008 and conducts its business in accordance with German law including, but not limited to, the German Commercial Code (De. *Handelsgesetzbuch*) and the German Limited Liability Companies Act (De. *Gesetzes betreffend die Gesellschaften mit beschränkter Haftung*).

### ***MKS Sport 3 GmbH***

MKS Sport 3 GmbH is a private limited liability company (De. *Gesellschaft mit beschränkter Haftung*) registered in Germany under the corporate identification number HRB 19353, having its registered address at Metternichstraße 42, 54292 Trier, Germany. MKS Sport 3 GmbH was formed on 15 February 2011 and registered in the commercial register (De. *Handelsregister*) of the local court (De. *Amtsgericht*) of Saarbrücken on 31 March 2011 and conducts its business in accordance with German law including, but not limited to, the German Commercial Code (De. *Handelsgesetzbuch*) and the German Limited Liability Companies Act (De. *Gesetzes betreffend die Gesellschaften mit beschränkter Haftung*).

### ***smilefit SLS GmbH & Co. KG***

smilefit SLS GmbH & Co. KG is a limited partnership (De. *Kommanditgesellschaft*) registered in Germany under the corporate identification number HRA 11482, having its registered address at St. Nazairer Allee 16, 66740 Saarlouis, Germany. smilefit SLS GmbH & Co. KG was formed on 5 July 2013 and registered in the commercial register (De. *Handelsregister*) of the local court

(De. *Amtsgericht*) of Saarbrücken on 1 August 2013 and conducts its business in accordance with German law including, but not limited to, the German Commercial Code (De. *Handelsgesetzbuch*).

#### ***smilefit I-O GmbH & Co. KG***

smilefit I-O GmbH & Co. KG is a limited partnership (De. *Kommanditgesellschaft*) registered in Germany under the corporate identification number HRA 20136, having its registered address at Vollmersbachstraße 71, 55743 Idar-Oberstein, Germany. smilefit I-O GmbH & Co. KG was formed on 27 April 2007 and registered in the commercial register (De. *Handelsregister*) of the local court (De. *Amtsgericht*) of Bad Kreuznach on 15 May 2007 and conducts its business in accordance with German law including, but not limited to, the German Commercial Code (De. *Handelsgesetzbuch*).

### **Share capital, shares and ownership structure of the Guarantors**

#### ***Barry's Bootcamp GmbH***

According to its articles of association, Barry's Bootcamp GmbH's share capital amounts to EUR 25,000, divided into 1 share, with a nominal value of EUR 25,000. The share capital is composed of ordinary shares. The holders of shares are entitled to one vote per share. The shares are denominated in EUR. The Guarantor is directly wholly owned by the Issuer.

#### ***Elbgym GmbH***

According to its articles of association, Elbgym GmbH's share capital amounts to EUR 25,000, divided into 25,000 shares, with a nominal value of EUR 1 each. The share capital is composed of ordinary shares. The holders of shares are entitled to one vote per share. The shares are denominated in EUR. The Guarantor is directly wholly owned by the Issuer.

#### ***Fitness First Germany GmbH (FFG)***

According to its articles of association, Fitness First Germany GmbH's share capital amounts to EUR 5,420,000, divided into 1 share, with a nominal value of EUR 5,420,000. The share capital is composed of ordinary shares. The holders of shares are entitled to one vote per share. The shares are denominated in EUR. The Guarantor is directly wholly owned by the Issuer.

#### ***smile X InterCo GmbH,***

According to its articles of association, smile X InterCo GmbH's share capital amounts to EUR 50,400, divided into 50,400 shares, with a nominal value of EUR 1 each. The share capital is composed of ordinary shares. The holders of shares are entitled to one vote per share. The shares are denominated in EUR. The Guarantor is directly wholly owned by the Issuer.

#### ***MKS Sport GmbH***

According to its articles of association, MKS Sport GmbH's share capital amounts to EUR 25,200 divided into 4 shares, with the nominal values 4,200; 4,200; 8,400; and 8,400. The share capital is composed of ordinary shares. The holders of shares are entitled to one vote per share. The shares are denominated in EUR. The Guarantor is indirectly owned by the Issuer and wholly owned by smile X InterCo GmbH.

#### ***MKS Sport 3 GmbH***

According to its articles of association, MKS Sport 3 GmbH's share capital amounts to 25,200, divided into 4 shares, with a nominal value of 4,200; 4,200; 8,400; 8,400. The share capital is composed of

ordinary shares. The holders of shares are entitled to one vote per share. The shares are denominated in EUR. The Guarantor is indirectly owned by the Issuer and wholly owned by smile X InterCo GmbH.

#### ***smilefit SLS GmbH & Co. KG***

According to its articles of association, smilefit SLS GmbH & Co. KG's, being a limited partnership, has a limited partnership capital (*Ge. Kommanditkapital*) that amounts to EUR 7,500. The limited partner (*Ge. Kommanditist*) is smile X InterCo GmbH and the general partner (*Ge. Komplementär*) is smile Verwaltungs-GmbH 2. The ownership of the Guarantor is governed by a limited partnership agreement and the Guarantor is indirectly owned by the Issuer.

#### ***smilefit I-O GmbH & Co. KG***

According to its articles of association, smilefit I-O GmbH & Co. KG's, being a limited partnership, has a limited partnership capital (*Ge. Kommanditkapital*) that amounts to EUR 25,000. The limited partner (*Ge. Kommanditist*) is smile X InterCo GmbH and the general partner (*Ge. Komplementär*) is vivasport GmbH. The ownership of the Guarantor is governed by a limited partnership agreement and the Guarantor is indirectly owned by the Issuer.

### **The executive management of the Guarantors**

#### ***Barry's Bootcamp GmbH***

The executive management of Barry's Bootcamp GmbH consists of:

Martin Seibold, Managing Director and Christophe Collinet, Managing Director.

For further information, please see Section "*Board of directors and executive management - The executive management of the Group*".

#### ***Elbgym GmbH***

The executive management of Elbgym GmbH consists of:

Wilhelm Schröter, Managing Director and Martin Seibold, Managing Director.

For further information, please see Section "*Board of directors and executive management - The executive management of the Group*".

#### ***Fitness First Germany GmbH***

The executive management of Fitness First Germany GmbH consists of:

Martin Seibold, Managing Director, Christophe Collinet, Chief Commercial Officer, Steffen Fries, Director Real Estate, Wolfgang Cyriax, Director Finance, Jonathan Kreuter, Director Controlling, Daniel Schalin, Director Operations, Isabelle Kopa, Director Central Operations and Johannes Maßen, Director Operations.

For further information, please see Section "*Board of directors and executive management - The executive management of the Group*".

#### ***smile X InterCo GmbH***

The executive management of smile X InterCo GmbH consists of:

Christian Müller, Managing Director.

For further information, please see Section *“Board of directors and executive management - The executive management of the Group”*.

**MKS Sport GmbH**

The executive management of MKS Sport GmbH consists of:

Christian Müller, Managing Director

For further information, please see Section *“Board of directors and executive management - The executive management of the Group”*.

**MKS Sport 3 GmbH**

The executive management of MKS Sport 3 GmbH consists of:

Christian Müller, Managing Director

For further information, please see Section *“Board of directors and executive management - The executive management of the Group”*.

**smilefit SLS GmbH & Co. KG**

The executive management of smilefit SLS GmbH & Co. KG consists of:

Christian Müller, Managing Director

For further information, please see Section *“Board of directors and executive management - The executive management of the Group”*.

**smilefit I-O GmbH & Co. KG**

The executive management of smilefit I-O GmbH & Co. KG consists of:

Christian Müller, Managing Director

For further information, please see Section *“Board of directors and executive management - The executive management of the Group”*.

# Financial information

## Exemptions from disclosure requirements

In the decision FI Dnr 20-9349 of the SFSA made on 19 May 2020, the SFSA has granted an exemption from certain disclosure requirements in accordance with article 18.1 of the Prospectus Regulation. According to the decision, the Issuer is not required to disclose separate financial information regarding the Guarantors as otherwise required pursuant to Section 3 in Appendix 21 and Section 11.1 in Appendix 7, of the Commission Delegated Regulation (EU) 2019/2980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004.

With regards hereto, this Prospectus does not incorporate audited financial information for the past two financial years for each of the Guarantors. The exemption has been granted based on the consolidated financial statements relating to the Issuer being sufficient in order for a potential investor to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the Issuer and the Guarantors. This is, among other things, due to that the Issuer is the holding company and the Guarantors' operations are similar in nature in comparison with one another, whereby separate financial statements for each Guarantor are not necessary in order to determine the financial position and future prospects for the Guarantors. Hence, the consolidated financial statements, as incorporated by reference in this Prospectus, are sufficient for such assessments by potential investors.

## Historical financial information of the Group

The consolidated financial information of the Group for the fiscal year from 13 March to 31 October 2019 has been prepared in accordance with the International Financial Reporting Standards (“IFRS”) and the interpretations provided by the IFRS Interpretations Committee, as adopted by the European Union. Furthermore, the Group also complies with the additional requirements set out in Section 315e (1) of the German Commercial Code (*De. Handelsgesetzbuch*). The Group's quarterly interim report as of and for the interim period started 1 November 2019 and ended 31 January 2020 as well as the Group's quarterly interim report as of and for the interim period started 1 November 2019 and ended 30 April 2020 have been prepared in accordance with the currently applicable IFRS of the International Accounting Standards Board (IASB) and the interpretations of the International Financial Reporting Interpretations Committee (IFRIC); especially in accordance with IAS 34 (Interim Financial Reporting). Due to the fact that the Issuer's first fiscal year started on 13 March 2019 and ended on 31 October 2019, no former consolidated financial statements prepared in accordance with IFRS are existing.

<b>Document</b>	<b>Page</b>
The Group's short-audit consolidated financial statements for the short financial year ending 31 October 2019.	- 2 (Group consolidated statement of comprehensive income)
	- 3 (Group consolidated statement of financial position)
	- 4 (Group consolidated statement of changes in equity )
	- 5 (Group consolidated cash flow statement)
	- 6–57 (Notes to Group consolidated financial information)
	- Cover page (Auditor's report)
	- Section 3 in Group management report (description of key-figures)

<b>Document</b>	<b>Page</b>
The Group's quarterly interim report as of and for the interim period started 1 November 2019 and ended 31 January 2020.	- 11 (Condensed consolidated statement of comprehensive income) - 12 (Condensed consolidated balance sheet) - 13 (Condensed consolidated cash flow statement) - 14–24 (Explanatory notes to condensed consolidated interim financial statements) - 4–5 (Key Figures / Financial Summary)
The Group's quarterly interim report as of and for the interim period started 1 November 2019 and ended 30 March 2020.	- 12 (Condensed consolidated statement of comprehensive income) - 13 (Condensed consolidated balance sheet) - 14 (Condensed consolidated cash flow statement) - 15–26 (Explanatory notes to condensed consolidated interim financial statements) - 4–5 (Key Figures / Financial Summary)

The Group's consolidated financial information for the fiscal year from 13 March to 31 October 2019, and the quarterly interim reports as of and for the interim period started 1 November 2019 and ended 31 January 2020 as well as of and for the interim period started 1 November 2019 and ended 30 April 2020 are incorporated into this Prospectus by reference. The documents incorporated by reference are to be read as part of this Prospectus and are available in electronic form on the Issuer's website, in accordance with Section *Documents incorporated by reference* below.

Investors should read all information which is incorporated in the Prospectus by reference. Information in the above documents which is not incorporated by reference is either deemed by the Issuer not to be relevant for investors in the Bonds or is covered elsewhere in the Prospectus.

### **Auditing of the annual historical financial information**

The consolidated financial information of the Group for the fiscal year from 13 March to 31 October 2019 has been audited. The Group's quarterly interim report as of and for the interim period started 1 November 2019 and ended 31 January 2020 as well as of and for the interim period started 1 November 2019 and ended 30 April 2020 have not been audited. Other than the auditing of the consolidated financial information of the Group for the fiscal year from 13 March to 31 October 2019, the Group's auditor has not audited or reviewed any part of this Prospectus.

The consolidated financial information of the Group for the fiscal year from 13 March to 31 October 2019 that has been incorporated in this Prospectus by reference has been audited by Ernst & Young GmbH, having its business address at Mergenthalerallee 3-5, DE-65760 Eschborn, Germany, with Gregor Enzenhofer and Nabil Jaber, being German Public Auditors, as auditors in charge.

### **Age of the most recent audited financial information**

The most recent audited financial information derives from the Issuer's consolidated report for the first financial year ended on 2019, which was published on the Issuer's website on 28 February 2020. This means that the balance sheet date of the Issuer's most recent audited financial information falls less than 18 months prior to the date of this Prospectus.

### **Legal proceedings and arbitration proceedings**

Neither the Issuer nor the Guarantors have, during the previous twelve (12) months, been involved in any governmental, legal or arbitration proceedings (including any such proceedings which are pending

or threatened as far as the Group is aware) which may have, or have had in the recent past, significant effects on the Guarantor's, the Issuer's and/or the Group's financial position or profitability. However, the Group is from time to time involved in legal proceedings in the ordinary course of business.

# Material agreements

## Background

Other than the Terms and Conditions and apart from what is stated under Section *Description of material agreements* below, neither the Issuer nor any of the Guarantors are parties to any material agreement outside the ordinary course of business, which could result in such company having a right or an obligation that could materially affect the Issuer's ability to fulfil its obligations under the Bonds or the Guarantor's ability to fulfil its obligations under the Guarantee. The following is a summary of the material agreements to which the Issuer or the Guarantors are a party and considered as outside the ordinary course of business. The following summary does not purport to describe all of the applicable terms and conditions of such arrangements.

## Description of material agreements

### *Super Senior RCF*

In connection with the Bond Issue, the Issuer entered into a revolving credit facility agreement under which Oldenburgische Landesbank Aktiengesellschaft as arranger, lender and agent has provided a super senior credit revolving facility ("**Super Senior RCF**") to the Issuer as original borrower (referred to as the Super Senior RCF). The total commitments under the Super Senior RCF amount to EUR 10,000,000. Subject to the terms of the Super Senior RCF, wholly owned subsidiaries of the Issuer might accede as additional borrowers. The obligations under the Super Senior RCF are secured and guaranteed under the Transaction Security and the Guarantee Agreement on a super senior basis, as further described below.

### *Intercreditor Agreement*

The Issuer, LifeFit Group TopCo GmbH, the Guarantors, Oldenburgische Landesbank Aktiengesellschaft and Nordic Trustee & Agency AB (publ) are parties to a German law intercreditor agreement dated 7 February 2020 (the "**Intercreditor Agreement**").

According to the terms of the Intercreditor Agreement, the obligations and liabilities in respect of *e.g.* Bonds and the Super Senior RCF shall rank in right and priority of payment in the following order:

- (i) *firstly*, the Super Senior Debt (which includes the Super Senior RCF and certain Hedging Obligations) (*pari passu* between all indebtedness under the Super Senior Documents and the Hedging Obligations);
- (ii) *secondly*, the Senior Debt (which includes the Bonds) (*pari passu* between all indebtedness under the Bonds);
- (iii) *thirdly*, any liabilities raised in the form of Intercompany Debt; and
- (iv) *fourthly*, any liabilities raised in the form of Shareholder Debt.

Furthermore, according to the terms of the Intercreditor Agreement, the proceeds of any enforcement action shall, subject to the rights of creditors mandatorily preferred by law applying to companies generally, be paid to the Security Agent for application in the following order of priority:

- (i) *firstly*, in or towards payment pro rata of unpaid fees, costs, expenses and indemnities payable by any Group Company to the Security Agent;
- (ii) *secondly*, in or towards payment pro rata of unpaid fees, costs, expenses and indemnities payable by any Group Company to the Paying Agent, the Super Senior Agent and the Bond Trustee;

- (iii) *thirdly*, towards payment pro rata of accrued interest unpaid, principal under the Super Senior Documents and any other costs or outstanding amounts under the Super Senior Documents, including any close out amount and any other outstanding amounts under the Hedging Obligations (if any);
- (iv) *fourthly*, towards payment pro rata of accrued interest unpaid under the Senior Debt (interest due on an earlier Interest Payment Date to be paid before any interest due on a later Interest Payment Date);
- (v) *fifthly*, towards payment pro rata of principal under the Senior Debt;
- (vi) *sixthly*, in or towards payment pro rata of any other costs or outstanding amounts unpaid under the Terms and Conditions and any other Senior Debt documents;
- (vii) *seventhly*, after the Final Discharge Date, towards payment pro rata of accrued interest unpaid and principal under the Intercompany Debt;
- (viii) *eighthly*, after the Final Discharge Date, towards payment pro rata of accrued interest unpaid and principal under the Shareholder Debt; and
- (ix) *ninthly*, after the Final Discharge Date, in payment of the surplus (if any) to the relevant ICA Group Company or other person entitled to it.

(Each capitalised term as defined in the Intercreditor Agreement).

The Intercreditor Agreement further contains customary provisions regarding, *inter alia*, the role of the security agent, hedging, shareholder debt and intercompany debt, payment restrictions and permitted payments, enforcement, payment block, application of recoveries and sharing among the finance parties.

### ***Transaction Security***

As continuing Security for the due and punctual fulfilment of the Secured Obligations, the Issuer has granted security in favour of the Secured Parties over:

- (i) the shares in Issuer, smileX InterCo GmbH, vivasport GmbH, Verwaltungs-GmbH 2, Barry's Bootcamp GmbH, elbgym GmbH, Fitness First Germany GmbH, MKS Sport GmbH and MKS Sport 3 GmbH;
- (ii) the partnership interests in smilefit I-O GmbH & Co. KG and smilefit SLS GmbH & Co. KG;
- (iii) all present and future shareholder loans from LifeFit Group TopCo GmbH to the Issuer;
- (iv) all Material Intra-Group Loans made by the Issuer, smileX InterCo GmbH, vivasport GmbH, Verwaltungs-GmbH 2, Barry's Bootcamp GmbH, elbgym GmbH, Fitness First Germany GmbH, MKS Sport GmbH, MKS Sport 3 GmbH, smilefit I-O GmbH & Co. KG and smilefit SLS GmbH & Co. KG; and
- (v) the bank accounts of the Issuer, smileX InterCo GmbH, vivasport GmbH, Verwaltungs-GmbH 2, Barry's Bootcamp GmbH, elbgym GmbH, Fitness First Germany GmbH, MKS Sport GmbH, MKS Sport 3 GmbH, smilefit I-O GmbH & Co. KG and smilefit SLS GmbH & Co. KG.

In addition to the security interests listed above, the Issuer shall ensure that security is granted in favour of the Secured Parties over:

- (i) the shares of any Group Company that is or becomes a Guarantor pursuant to Clause 6.2 (*Guarantees*) of the Terms and Conditions at the same time such Group Company becomes a Guarantor;
- (ii) the shares of any Material Group Company acquired on or after the First Issue Date;

- (iii) the bank accounts of any Group Company becoming a Guarantor pursuant to Clause 6.2 (*Guarantees*) at the same time such Group Company becomes a Guarantor;
- (iv) upon its incurrence, any shareholder loan between the Sponsor or another Holding Company of the Issuer as creditor and the Issuer or another Group Company as debt, whereby any present and future shareholder loans between such Holding Company as creditor and Group Company as debtor shall be pledged; and
- (v) within sixty (60) Business Days of its incurrence, any Material Intra-Group Loan.

The security is governed by separate Security Documents governed by, as applicable, the relevant law in respect of the security assets.

### *Guarantee Agreement*

The obligations under the Bonds are guaranteed under a Guarantee Agreement entered into by, or through accessions by, the Guarantors.

Subject to the Intercreditor Agreement, each Guarantor irrevocably and unconditionally, jointly and severally (De. *gesamtschuldnerisch*) guarantees (De. *garantiert*) by way of an independent payment obligation (De. *selbständiges Zahlungsversprechen*) to each Secured Party (as represented by the Super Senior Agent or the Security Agent to pay to that Secured Party any amount of principal, interest, costs, expenses or other amount under or in connection with the Senior Finance Documents that has not been fully and irrevocably paid by any of the Obligors in accordance with the Guarantee Agreement, which is entered into (or to be entered into) between the Issuer, each Guarantor, Oldenburgische Landesbank Aktiengesellschaft and the Security Agent. The obligations and liabilities of the Guarantors under the Guarantee Agreement shall be limited if required (but only if and to the extent required) under the laws of the jurisdiction in which the relevant Guarantor is incorporated.

As of the date of this Prospectus, the Guarantors are Barry's Bootcamp GmbH, Elbgym GmbH, Fitness First Germany GmbH, smile X InterCo GmbH, MKS Sport GmbH, MKS Sport 3 GmbH, smilefit SLS GmbH & Co. KG and smilefit I-O GmbH & Co. KG.

Further Guarantors may accede to the Guarantee Agreement by way of signing, *inter alia*, accession letters. Existing Guarantors which are subject to a Non-Distressed Disposal may, subject to the Intercreditor Agreement, resign from the Guarantee Agreement.

## Other information

### Clearing and settlement

The Bonds are connected to the account-based system of Verdipapirsentralen ASA (VPS) in Norway, registration number 985 140 421, Fred. Olsens gate 1, P.O. Box 1174 Sentrum, NO-0107 Oslo, Norway. This means that the Bonds are registered on behalf of the Bondholders on a securities account. No physical Bonds have been or will be issued. Payment of principal, interest and, if applicable, withholding tax will be made through VPS's book-entry system.

### Credit ratings

Neither the Issuer, the Guarantors nor the Bonds have been assigned a credit rating.

### Information on taxation

Tax legislation in the investor's home member state and in Germany, where the Issuer is incorporated, may affect any income from the Bonds.

### Representation of the holders

Nordic Trustee & Agency AB (publ) (reg. no. 556882-1879) is acting as agent for the holders in relation to the Bonds and the Transaction Security, and if relevant, any other matter within its authority or duty in accordance with the Terms and Conditions for the Bonds.

By acquiring Bonds, each subsequent bondholder confirms such appointment and authorisation for the Agent to act on its behalf, on the terms, including rights and obligations of the agent, set out in the Terms and Conditions. The Terms and Conditions are available at the agent's office address (Norrandsgatan 23, SE-111 43 Stockholm, Sweden) during normal business hours as well as at the Agent's website, [www.nordictrustee.com](http://www.nordictrustee.com) and the Issuer's website as set out under Section *Documents available for inspection* below.

### Interest of natural and legal persons involved in the Bond Issue

The Sole Bookrunner and/or its affiliates have engaged in, and may in the future engage in, investment banking and/or other services for the Group in the ordinary course of business. Accordingly, conflicts of interest may exist or may arise as a result of the Sole Bookrunner and/or its affiliates having previously engaged, or will in the future engage, in transactions with other parties, having multiple roles or carrying out other transactions for third parties with conflicting interests.

### Documents available for inspection

Copies of the following documents are available in electronic format on the Issuer's website (<https://www.lifefit-group.com>):

- the Issuer's and each Guarantor's articles of association
- this Prospectus; and
- the Terms and Conditions for the Bonds, including the Guarantee Agreement and the Intercreditor Agreement.

### Documents incorporated by reference

This Prospectus is, in addition to this document, is comprised of information from the Group's short-audit consolidated financial statements for the short financial year ending 31 October 2019, the Group's

quarterly interim report as of and for the interim period started 1 November 2019 and ended 31 January 2020, and the Group's quarterly interim report as of and for the interim period started 1 November 2019 and ended 30 April 2020, as described under Section *Historical financial information* above, and which are incorporated by reference and available in electronic format on the Issuer's website (<https://www.lifefit-group.com/investor-relations/reports-presentations/>), see:

[https://www.lifefit-group.com/wp-content/uploads/2020/02/LifeFit\\_Group\\_FY19\\_AnnualReport\\_EN.pdf](https://www.lifefit-group.com/wp-content/uploads/2020/02/LifeFit_Group_FY19_AnnualReport_EN.pdf);

<https://www.lifefit-group.com/wp-content/uploads/2020/03/LifeFit-Group-Q120-InterimReport.pdf>;

and

[https://www.lifefit-group.com/wp-content/uploads/2020/06/LifeFit\\_Group\\_Q2-20\\_InterimReport.pdf](https://www.lifefit-group.com/wp-content/uploads/2020/06/LifeFit_Group_Q2-20_InterimReport.pdf)).

# Terms and Conditions

**TERMS AND CONDITIONS FOR  
LIFEFIT GROUP MIDCO GMBH  
MAXIMUM EUR 120,000,000  
SENIOR SECURED CALLABLE FLOATING RATE  
BONDS 2019/2023**

ISIN: NO0010856966

First Issue Date: 26 July 2019

*The distribution of this document and the private placement of the Bonds in certain jurisdictions may be restricted by law. Persons into whose possession this document comes are required to inform themselves about, and to observe, such restrictions.*

*The Bonds have not been and will not be registered under the U.S. Securities Act of 1933, as amended, and are subject to U.S. tax law requirements. The Bonds may not be offered, sold or delivered within the United States of America or to, or for the account or benefit of, U.S. persons.*

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**TERMS AND CONDITIONS FOR  
LIFEFIT GROUP MIDCO GMBH  
MAXIMUM EUR 120,000,000  
SENIOR SECURED CALLABLE FLOATING RATE  
BONDS 2019/2023  
ISIN: NO0010856966**

**1. DEFINITIONS AND CONSTRUCTION**

**1.1 Definitions**

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

“**Account Operator**” means a bank or other party duly authorised to operate as an account operator and through which a Holder has opened a Securities Account in respect of its Bonds.

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

“**Acquisition**” means the Issuer’s acquisition of the Target.

“**Adjusted Nominal Amount**” means the total aggregate Nominal Amount of the Bonds outstanding at the relevant time less the total aggregate Nominal Amount of all Bonds owned by the Issuer, a Group Company or an Affiliate of the Issuer or a Group Company, irrespective of whether such Person is directly registered as owner of such Bonds.

“**Advance Purchase Agreement**” means:

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

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

“**Bond**” means debt instruments (Sw. *skuldförbindelser*), each for the Nominal Amount issued by the Issuer under these Terms and Conditions, including the Initial Bonds and any Subsequent Bonds.

“**Business Day**” means a day in Norway and Sweden other than a Saturday, Sunday or other public holiday in Norway or Sweden.

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

“**Call Option Amount**” means:

- (a) the Make Whole Amount if the call option is exercised after the First Issue Date up to (but not including) the First Call Date;
- (b) 103.750 per cent. of the Outstanding Nominal Amount if the call option is exercised on or after the First Call Date up to (but not including) the date falling thirty (30) months after the First Issue Date;
- (c) 102.625 per cent. of the Outstanding Nominal Amount if the call option is exercised on or after the date falling thirty (30) months after the First Issue Date up to (but not including) the date falling thirty-six (36) months after the First Issue Date;
- (d) 101.50 per cent. of the Outstanding Nominal Amount if the call option is exercised on or after the date falling thirty-six (36) months after the First Issue Date up to (but not including) the date falling forty-two (42) months after the First Issue Date;
- (e) 100.375 per cent. of the Outstanding Nominal Amount if the call option is exercised on the date falling forty-two (42) months after the First Issue Date up to (but not including) the date falling forty-five (45) months after the First Issue Date; and
- (f) 100.00 per cent. of the Outstanding Nominal Amount if the call option is exercised on the date falling forty-five (45) months after the First Issue Date up to (but not including) the Final Redemption Date.

**“Cash and Cash Equivalents”** means cash and cash equivalents of the Group from time to time in accordance with the applicable Accounting Principles.

**“Change of Control Event”** means the occurrence of an event or series of events whereby one or more Persons (other than the Sponsor or its Affiliates), acting in concert, acquire control, directly or indirectly, over more than fifty (50.00) per cent. of the voting shares of the Issuer, or the right to, directly or indirectly, appoint or remove the whole or a majority of the directors of the board of directors of the Issuer.

**“Completion”** means the completion of the Acquisition.

**“Compliance Certificate”** means a certificate, in the form agreed between the Trustee and the Issuer, signed by the Issuer certifying:

- (a) that so far as it is aware no Event of Default is continuing or, if it is aware that such event is continuing, specifying the event and steps, if any, being taken to remedy it;
- (b) if provided in connection with the testing of the Incurrence Test, that the Incurrence Test is met and including calculations and figures in respect of the Incurrence Test; and
- (c) if provided in connection with the Group’s annual audited consolidated financial statements:
  - (i) including a list of Material Group Companies and confirmation of additional entities required to accede as Guarantors (if any) for the purpose of Clause 14.9 (*Guarantors*); and
  - (ii) confirmation on compliance with Clause 14.6 (*Clean down period*).

“**Conditions Precedent**” means all documents and evidence required to be delivered by the Issuer pursuant to Clause 5.1 (*Initial Conditions Precedent*).

“**Conditions Subsequent**” means all documents and evidence required to be delivered by the Issuer pursuant to Clause 5.2 (*Conditions Subsequent*).

“**CSD**” means the central securities depository and registrar in respect of the Bonds from time to time, initially Verdipapirsentralen ASA (VPS) in Norway.

“**CSD Business Day**” means a day on which the book-entry securities system is open in accordance with the regulations of the CSD.

“**Delisting Event**” means, following an Equity Listing Event, the occurrence of an event or series of events whereby:

- (a) the Issuer's share are delisted from a Regulated Market; or
- (b) trading in the ordinary shares of the Issuer on the relevant Regulated Market is suspended for a period of fifteen (15) consecutive Business Days (when that Regulated Market is at the same time open for trading).

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

- (a) *before deducting* any amount of tax on profits, gains or income paid or payable by any Group Company;
- (b) *before deducting* any Net Finance Charges (for the avoidance of doubt, rental payments in respect of any lease or hire purchase contract which is not a Finance Lease shall not be considered a Finance Charge);
- (c) *before taking into account* any extraordinary items and any non-recurring items which are not in line with the ordinary course of business of the Group, in an aggregate amount not exceeding ten (10.00) per cent. of EBITDA of the relevant Reference Period when aggregated with any adjustment under paragraph (d) below;
- (d) *after taking into account* all cost savings and cost synergies reasonably projected by the Issuer to be obtained during the 12-month period following the closing date of any acquisition, in an aggregate amount not exceeding ten (10.00) per cent. of EBITDA of the relevant Reference Period when aggregated with any adjustment under paragraph (c) above and provided that any cost savings and cost synergies in aggregate exceeding 2.5 per cent of EBITDA of the relevant Reference Period shall be verified by an external auditor;
- (e) *before taking into account* any Transaction Costs and any transaction costs relating to any acquisition of any additional target company;
- (f) *not including* any accrued interest owing to any Group Company;
- (g) *before taking into account* any unrealised gains or losses on any derivative instrument (other than any derivative instruments which are accounted for on a hedge account basis);
- (h) *after adding back or deducting*, as the case may be, the amount of any loss or gain against book value arising on a disposal of any asset (other than in the ordinary course

of trading) and any loss or gain arising from an upward or downward revaluation of any asset;

- (i) *after deducting* the amount of any profit (or adding back the amount of any loss) of any Group Company which is attributable to minority interests;
- (j) *plus or minus*, as the case may be, the Group's share of the profits or losses of entities which are not part of the Group; and
- (k) *after adding back* any amount attributable to the amortisation, depreciation or depletion of assets of the Group.

**“Escrow Account”** means a bank account held by the Issuer into which the Net Proceeds from the Initial Bond Issue will be transferred, and which has been pledged in favour of the Trustee and the Holders (represented by the Trustee) under the Escrow Account Pledge Agreement.

**“Escrow Account Pledge Agreement”** means the German law pledge agreement entered into between the Issuer and the Trustee on or prior to the First Issue Date in respect of a first priority pledge over the Escrow Account and all funds held on the Escrow Account from time to time, granted in favour of the Trustee and the Holders (represented by the Trustee).

**“Equity Listing Event”** means an initial public offering of shares in the Issuer, after which such shares shall be quoted, listed, traded or otherwise admitted to trading on a regulated market or unregulated market.

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

**“EURIBOR”** means:

- (a) the applicable percentage rate per annum displayed on Thomson Reuters screen EURIBOR01 (or through another system or website replacing it) as of or around 11.00 a.m. (Brussels time) on the Quotation Day for the offering of deposits in EUR and for a period comparable to the relevant Interest Period; or
- (b) if no such rate as set out in paragraph (a) above is available for the relevant Interest Period, the rate calculated by the Paying Agent (rounded upwards to four decimal places) which results from interpolating on a linear basis between:
  - (i) the applicable screen rate for the longest period (for which that screen rate is available) which is less than the Interest Period; and
  - (ii) the applicable screen rate for the shortest period (for which that screen rate is available) which exceeds that Interest Period,

in each case as of or around 11 a.m. on the Quotation Day; or

- (c) if no rate is available for the relevant Interest Period pursuant to paragraph (a) and/or (b) above, the arithmetic mean of the rates (rounded upwards to four decimal places), as supplied to the Paying Agent at its request quoted by leading banks in the Stockholm interbank market reasonably selected by the Paying Agent, for deposits of EUR 10,000,000 for the relevant period; or

- (d) if no rate is available for the relevant Interest Period pursuant to paragraph (a) and/or (b) above and no quotation is available pursuant to paragraph (c) above, the Interest Rate which according to the reasonable assessment of the Paying Agent best reflects the Interest Rate for deposits in EUR offered for the relevant period,

and if any such rate is below zero (0), EURIBOR will be deemed to be zero (0).

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

“**Final Redemption Date**” means 26 July 2023.

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

“**Finance Documents**” means the Terms and Conditions, the Trustee Agreement, the Intercreditor Agreement (if any), the Escrow Account Pledge Agreement, the Security Documents, the Guarantee Agreement and any other document designated to be a Finance Document by the Issuer and the Trustee.

“**Finance Lease**” means any lease or hire purchase contract, a liability under which would, in accordance with the accounting principles, be treated as a balance sheet liability (other than a lease or hire purchase contract which would, in accordance with the accounting principles in force prior to 1 January 2019, have been treated as an operating lease).

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

- (a) monies borrowed or raised, including Market Loans;
- (b) the amount of any liability in respect of any Finance Lease;
- (c) receivables sold or discounted (other than receivables to the extent they are sold on a non-recourse basis);
- (d) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (e) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value shall be taken into account, provided that if any actual amount is due as a result of a termination or a close-out, such amount shall be used instead);
- (f) any counter indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and

(g) (without double counting) the amount of any liability in respect of any guarantee or other assurance against financial loss in respect of a type referred to in paragraphs (a) to (f) above.

“**Financial Report**” means the Group’s annual audited consolidated financial statements or the Group’s quarterly interim unaudited reports, which shall be prepared and made available according to paragraphs (a)(i) and (a)(ii) of Clause 14.13 (*Information undertakings*).

“**First Call Date**” means the date falling twenty-four (24) months after the First Issue Date.

“**First Issue Date**” means 26 July 2019.

“**Floating Rate Margin**” means 7.50 per cent. *per annum*.

“**Force Majeure Event**” has the meaning set forth in Clause 27.1.

“**Group**” means the Issuer and each of its Subsidiaries from time to time.

“**Group Company**” means the Issuer or any of its Subsidiaries.

“**Guarantee**” means the guarantees provided by the Guarantors pursuant to the Guarantee Agreement.

“**Guarantee Agreement**” means the guarantee agreement entered into or to be entered into between the Issuer, each Guarantor and the Security Agent pursuant to which the Secured Obligations will be guaranteed by the Guarantors (which shall contain customary guarantee limitation and parallel debt language).

“**Guarantor**” means Barry’s Bootcamp GmbH, Elbgym GmbH and each other Group Company which becomes a Guarantor in accordance with Clause 6.2 (*Guarantees*).

“**Hedge Counterparty**” has the meaning ascribed to that term in the Intercreditor Agreement.

“**Holder**” means the Person who is registered on a Securities Account as direct registered owner (Sw. *ägare*) or nominee (Sw. *förvaltare*) with respect to a Bond.

“**Holders’ Meeting**” means a meeting among the Holders held in accordance with Clause 18 (*Holders’ Meeting*).

“**Holding Company**” means, in relation to a Person, any other Person in respect of which it is a Subsidiary.

“**IFRS**” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

“**Incurrence Test**” shall have the meaning set forth in Clause 13.2 (*Incurrence Test*).

“**Initial Bond**” means the Bonds issued on the First Issue Date.

“**Initial Bond Issue**” has the meaning set forth in Clause 2.1.

“**Initial Conditions Precedents**” means the documentation and evidence set out in paragraphs (a) to (d) of Clause 5.1 (*Conditions Precedent*).

“**Intercreditor Agreement**” means the intercreditor agreement which may be entered into if required by the Issuer, substantially based on the terms set out in the intercreditor principles set out in Schedule 1 (*Intercreditor Principles*) hereto, on or after the First Issue Date, between, amongst others the Issuer, the Super Senior RCF Creditor (or its representative), any

Hedge Counterparty, any creditor of Shareholder Debt and the Trustee as Security Agent and the Trustee.

“**Interest**” means the interest on the Bonds calculated in accordance with Clauses 11.1 to 11.3.

“**Interest Payment Date**” means 8 January, 8 April, 8 July and 8 October each year (with the first Interest Payment Date being 8 October 2019 (short first interest period) and the last Interest Payment Date being the Final Redemption Date (long last interest period) (or any final Redemption Date prior thereto), or to the extent such day is not a CSD Business Day, the CSD Business Day following from an application of the Business Day Convention.

“**Interest Period**” means each period beginning on (and including) the First Issue Date or any Interest Payment Date to (but excluding) the next succeeding Interest Payment Date (or a shorter period if relevant) and, in respect of Subsequent Bonds, each period beginning on (and including) the Interest Payment Date falling immediately prior to their issuance and ending on (but excluding) the next succeeding Interest Payment Date (or a shorter period if relevant).

“**Interest Rate**” means EURIBOR (3 months) plus the Floating Rate Margin.

“**Issue Date**” means the First Issue Date and any subsequent date when issuance of Subsequent Bonds take place.

“**Issuer**” means LifeFit Group MidCo GmbH, a limited liability company incorporated in Germany and registered with the local court (*Amtsgericht*) of Munich under HRB 248092.

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

“**Make Whole Amount**” means the sum of:

- (a) 103.750 per cent. of the Outstanding Nominal Amount; and
- (b) the remaining interest payments up to, but not including, the First Call Date (assuming that the Interest Rate for the period from the relevant record date to the First Call Date will be equal to the Interest Rate in effect on the date on which notice of redemption is given to the Holders),

together with accrued but unpaid interest on the redeemed amount up to the relevant Redemption Date and where “relevant record date” shall mean a date agreed upon between the Trustee, the CSD and the Issuer in connection with such repayment.

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

“**Material Adverse Effect**” means a material adverse effect on:

- (a) the business, financial condition or operations of the Group taken as a whole;
- (b) the Group’s ability to perform and comply with the Finance Documents; or
- (c) the validity or enforceability of the Finance Documents.

**“Material Group Company”** means:

- (a) the Issuer;
- (b) following Completion, the Target, Elbgym GmbH and Barry’s Bootcamp GmbH; and
- (c) any other Group Company with earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) representing five (5.00) per cent. or more of EBITDA, or which has assets representing five (5.00) per cent. or more of Total Assets, in each case calculated on a consolidated basis according to the latest Financial Report.

**“Material Intra-Group Loan”** means any intra-Group loan provided by the Issuer or a Guarantor to any of its Subsidiaries where:

- (a) the term is at least twelve (12) months; and
- (b) the principal amount exceeds EUR 2,000,000 (or its equivalent in any other currency or currencies) (when aggregate with all other intra-Group loans between the same intra-Group creditor and debtor).

**“Net Finance Charges”** means, for the Reference Period, the Finance Charges according to the latest Financial Report(s), after deducting any interest payable for that Reference Period to any Group Company and any interest income relating to Cash and Cash Equivalents.

**“Net Interest Bearing Debt”** means the consolidated interest bearing Financial Indebtedness of the Group:

- (a) *excluding* guarantees, bank guarantees, Shareholder Debt, any claims subordinated pursuant to a subordination agreement, operating leases and interest bearing Financial Indebtedness borrowed from any Group Company; and
- (b) *less* Cash and Cash Equivalents.

**“Net Proceeds”** means the proceeds from the Initial Bond Issue or any Subsequent Bond Issue after deduction has been made for the Transaction Costs payable by the Issuer to the Sole Bookrunner and the Paying Agent (if the Sole Bookrunner and/or the Paying Agent has requested that their respective fees and costs shall be deducted) for the services provided in relation to the placement and issuance of the Bonds.

**“Nominal Amount”** has the meaning set forth in Clause 2.1.

**“Outstanding Nominal Amount”** means the Nominal Amount less the amount of any repayments and amortisations made.

**“Parent”** means LifeFit Group TopCo GmbH, a limited liability company incorporated in Germany and registered with the local court (*Amtsgericht*) of Munich under HRB 248091.

**“Paying Agent”** means the legal entity appointed by the Issuer to act as its paying agent with respect to the Bonds in the CSD from time to time, being Pareto Securities AS on the First Issue Date.

**“Permitted Debt”** means any Financial Indebtedness:

- (a) incurred under the Bonds (except for any Subsequent Bonds);
- (b) incurred by the Issuer under any Super Senior RCF;

- (c) incurred pursuant to any Finance Leases entered into in the ordinary course of the Group's business and relating to equipment, in a maximum aggregate amount not at any time exceeding EUR 15,000,000;
- (d) under any guarantee issued by a Group Company or pursuant to a counter-indemnity provided to a bank or other third-party provider of a guarantee;
- (e) arising under a foreign exchange transaction or a commodity transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates or prices where the exposure arises in the ordinary course of business or in respect of payments to be made under the Terms and Conditions and/or the Super Senior RCF, but not any transaction for investment or speculative purposes;
- (f) arising under any interest rate hedging transactions in respect of payments to be made under the Terms and Conditions and/or the Super Senior RCF, but not any transaction for investment or speculative purposes;
- (g) incurred under Advance Purchase Agreements;
- (h) incurred under any Shareholder Debt, provided that Transaction Security has been granted in respect of such Shareholder Debt in accordance with paragraph (c)(iv) of Clause 6.1 (*Transaction Security*);
- (i) incurred by the Issuer if such Financial Indebtedness:
  - (i) is incurred as a result of a Subsequent Bond Issue and meets the Incurrence Test on a *pro forma* basis; or
  - (ii)
    - (A) ranks *pari passu* or is subordinated to the obligations of the Issuer under the Finance Documents; and
    - (B) meets the Incurrence Test on a *pro forma* basis; and
    - (C) has a final maturity date or a final redemption date and, if applicable, early redemption dates or instalment dates, which in each case occur after the Final Redemption Date;
- (j) taken up from a Group Company;
- (k) incurred in connection with the redemption of the Bonds in order to fully refinance the Bonds and provided further that such Financial Indebtedness is subject to an escrow arrangement up until the redemption of the Bonds (taking into account the rules and regulations of the CSD), for the purpose of securing, *inter alia*, the redemption of the Bonds;
- (l) incurred under or pursuant to any earn-out obligation relating to any acquisition (including the Elbgym acquisition) in an aggregate amount not exceeding EUR 4,000,000 (or its equivalent in any other currency or currencies) at any time; and
- (m) any other Financial Indebtedness incurred by Group Companies not in aggregate exceeding EUR 2,000,000 (or its equivalent in any other currency or currencies).

**“Permitted Security”** means any security:

- (a) provided pursuant to the Finance Documents (including in respect of any Subsequent Bonds);
- (b) provided for the Super Senior RCF;
- (c) arising by operation of law or in the ordinary course of business (including collateral or retention of title arrangements in connection with Advance Purchase Agreements but, for the avoidance of doubt, not including guarantees or security in respect of any monies borrowed or raised);
- (d) provided in relation to any lease agreement entered into by a Group Company;
- (e) arising under any netting or set off arrangements under financial derivatives transactions or bank account arrangements, including group cash pool arrangements;
- (f) provided over bank accounts and/or proceeds pertaining to sold receivables with respect to factoring on a non-recourse basis; or
- (g) provided pursuant to paragraph (e), (f), (k) or (m) of the definition of Permitted Debt.

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

**“Quotation Day”** means, in relation to (i) an Interest Period for which an Interest Rate is to be determined, two (2) Business Days before the immediately preceding Interest Payment Date (or in respect of the first Interest Period, two (2) Business Days before the First Issue Date), or (ii) any other period for which an interest rate is to be determined, two (2) Business Days before the first day of that period.

**“Record Date”** means the date on which a Holder’s ownership of Bonds shall be recorded in the CSD as follows:

- (a) in relation to payments pursuant to these Terms and Conditions, the date designated as the relevant Record Date in accordance with the rules of the CSD from time to time; or
- (b) for the purpose of casting a vote with regard to Clause 17 (*Decision by Holders*), the date falling on the immediate preceding Business Day to the date of that Holders’ decision being made, or another relevant date as accepted by the Agent in accordance with these Terms and Conditions.

**“Redemption Date”** means the date on which the relevant Bonds are to be redeemed or repurchased in accordance with Clause 12 (*Redemption and repurchase of the Bonds*).

**“Reference Period”** means each period of twelve (12) consecutive calendar months ending on a Testing Date.

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

**“Secured Obligations”** means all present and future obligations and liabilities of the Issuer and/or the Group to the Secured Parties under the Finance Documents, (if the Super Senior RCF Creditor or its representative has entered into the Intercreditor Agreement) to the Super Senior RCF Creditor under the Super Senior RCF and the Trustee, together with all costs, charges and expenses incurred by any Secured Parties in connection with the protection, preservation or enforcement of its respective rights under the Finance Documents, or any other document evidencing such liabilities.

**“Secured Parties”** has the meaning ascribed to that term in the Intercreditor Agreement.

**“Securities Account”** means the account for dematerialised securities maintained by the CSD in which (i) an owner of such security is directly registered or (ii) an owner’s holding of securities is registered in the name of a nominee.

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

**“Security Agent”** means Nordic Trustee & Agency AB (publ), holding the Transaction Security on behalf of the Secured Parties.

**“Security Documents”** means any document required to be delivered to the Agent under Clause 5.2 (*Conditions Subsequent*) or Clause 6.1 (*Transaction Security*) together with any other document entered into by any Group Company creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Group Companies under any of the Finance Documents. any other security agreement entered into by a Group Company pursuant to these Terms and Conditions or the Intercreditor Agreement.

**“Shareholder Debt”** means all present and future moneys, debts and liabilities due, owing or incurred from time to time by the Issuer or another Group Company as debtor from the Sponsor or any other Holding Company of the Issuer, if such debt:

- (a) according to its terms and pursuant to the Intercreditor Agreement or another subordination agreement are subordinated to the obligations of the Issuer under the Finance Documents;
- (b) according to its terms has a final redemption date or, when applicable, early redemption dates or instalment dates which occur after the Final Redemption Date; and
- (c) according to its terms yields only payment-in-kind interest or cash interest that is payable after the Final Redemption Date (unless a Restricted Payment is permitted under the Finance Documents).

**“Sole Bookrunner”** means Pareto Securities AB (reg. no. 556206-8956, P.O. Box 7415, SE-103 91 Stockholm, Sweden).

**“Sponsor”** means OCM Luxembourg EPF III SARL.

**“Subsequent Bond Issue”** has the meaning set forth in Clause 2.4

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

“**Subsidiary**” means, in relation to any Person, another Person in respect of which such Person, directly or indirectly:

- (a) owns shares or ownership rights representing more than fifty (50) per cent of the total number of votes held by the owners;
- (b) otherwise controls more than fifty (50) per cent of the total number of votes held by the owners; or
- (c) has the power to appoint and remove all, or the majority of, the members of the board of directors or other governing body.

“**Super Senior RCF**” means any facility or facilities provided to the Issuer for general corporate purposes of the Group (and any refinancing, amendment or replacements thereof), amended from time to time (as the case may be), in an aggregate amount not exceeding EUR 10,000,000 (or its equivalent in any other currency or currencies).

“**Super Senior RCF Creditor**” means any creditor under a Super Senior RCF.

“**Target**” means smileX InterCo GmbH, a limited liability company incorporated in Germany and registered with the local court (*Amtsgericht*) of Saarbrücken under HRB 102812.

“**Target Group**” means the Target and its Subsidiaries from time to time.

“**Testing Date**” has the meaning ascribed to that term in Clause 13.3 (*Calculation of the Incurrence Test*).

“**Total Assets**” means the consolidated book value of the Group’s assets according to the latest Financial Report.

“**Transaction Costs**” means all fees, costs and expenses, stamp, registration and other taxes incurred by the Issuer or any other Group Company in connection with (i) the Bond Issue, (ii) the Acquisition and (iii) the listing of the Bonds.

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

“**Trustee**” means the Holders’ agent under these Terms and Conditions, from time to time; initially Nordic Trustee & Agency AB (publ) (reg.no. 556882-1879, P.O. Box 7329 SE-103 90 Stockholm, Sweden).

“**Trustee Agreement**” means the agreement entered into between the Trustee and the Issuer on or prior to the First Issue Date regarding, *inter alia*, the remuneration payable to the Trustee.

“**Written Procedure**” means the written or electronic procedure for decision making among the Holders in accordance with Clause 19 (*Written Procedure*).

## 1.2 **Construction**

- (a) Unless a contrary indication appears, any reference in these Terms and Conditions to:
  - (i) “**assets**” includes present and future properties, revenues and rights of every description;

- (ii) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (iii) any agreement or instrument is a reference to that agreement or instrument as supplemented, amended, novated, extended, restated or replaced from time to time;
  - (iv) a “**regulation**” includes any regulation, rule or official directive (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency or department;
  - (v) an “**enforcement**” of a Guarantee means making a demand for payment under a Guarantee;
  - (vi) a provision of law is a reference to that provision as amended or re-enacted; and
  - (vii) a time of day is a reference to Stockholm time.
- (b) An Event of Default is continuing if it has not been remedied or waived.
  - (c) When ascertaining whether a limit or threshold specified in EUR has been attained or broken, an amount in another currency shall be counted on the basis of the rate of exchange for such currency against EUR for the previous Business Day, as published by the European Central Bank on its website ([www.ecb.europa.eu](http://www.ecb.europa.eu)). If no such rate is available, the most recently published rate shall be used instead.
  - (d) A notice shall be deemed to be sent by way of press release if it is made available to the public within the European Economic Area promptly and in a non-discriminatory manner.
  - (e) No delay or omission of the Trustee or of any Holder to exercise any right or remedy under the Finance Documents shall impair or operate as a waiver of any such right or remedy.

### 1.3 **Conflict of Terms**

In case of any conflict of terms between the terms of the Intercreditor Agreement (if any) and any other Finance Document, the Intercreditor Agreement shall take precedent.

## 2. **THE AMOUNT OF THE BONDS AND UNDERTAKING TO MAKE PAYMENTS**

2.1 The aggregate amount of the bond loan will be an amount of up to EUR 120,000,000 which will be represented by Bonds, each of a nominal amount of EUR 1,000 or full multiples thereof (the “**Nominal Amount**”). The total nominal amount of the Initial Bond Issue is EUR 40,000,000 (the “**Initial Bond Issue**”). All Initial Bonds are issued on a fully paid basis at an issue price of one hundred (100.00) per cent. of the Nominal Amount.

2.2 The ISIN for the Bonds is NO0010856966.

2.3 The minimum permissible investment in connection with the Initial Bond Issue is EUR 100,000.

- 2.4 The Issuer may at one or more occasions after the First Issue Date issue Subsequent Bonds under these Terms and Conditions (each such issue, a “**Subsequent Bond Issue**”), until the total amount under such Subsequent Bond Issue(s) and the Initial Bond Issue equals EUR 120,000,000, always provided that the Incurrence Test (calculated *pro forma* including such Subsequent Bond Issue) is met.
- 2.5 Any Subsequent Bonds shall benefit from and be subject to the Finance Documents and, for the avoidance of doubt, the ISIN, the Interest Rate, the Nominal Amount and the Final Redemption Date applicable to the Initial Bonds shall also apply to Subsequent Bonds. The price of Subsequent Bonds may be set at the Nominal Amount, at a discount or at a higher price than the Nominal Amount.
- 2.6 The Issuer undertakes to repay the Bonds, to pay Interest and to otherwise act in accordance and comply with these Terms and Conditions.
- 2.7 The Bonds are denominated in EUR and each Bond is constituted by these Terms and Conditions.
- 2.8 By subscribing for Bonds, each initial Holder agrees that the Bonds shall benefit from and be subject to the Finance Documents and by acquiring Bonds each subsequent Holder confirms such agreements.

### **3. STATUS OF THE BONDS**

Subject to the Intercreditor Agreement, the Bonds constitute direct, general, unconditional, unsubordinated and secured obligations of the Issuer and shall at all times rank at least *pari passu* with all direct, unconditional, unsubordinated and unsecured obligations of the Issuer, except those obligations which are mandatorily preferred by law, and without any preference among them.

### **4. USE OF PROCEEDS**

- (a) The Net Proceeds of the Initial Bonds Issue shall initially be deposited on the Escrow Account.
- (b) Upon release of Net Proceeds from the Escrow Account, the Net Proceeds from the Initial Bond Issue shall be applied towards:
- (i) financing the Acquisition;
  - (ii) financing Transaction Costs; and
  - (iii) financing general corporate purposes of the Group.
- (c) The Net Proceeds from any Subsequent Bond shall be applied towards general corporate purposes of the Group, including but not limited to capital expenditure and acquisitions.

## 5. CONDITIONS PRECEDENT FOR DISBURSEMENT AND CONDITIONS SUBSEQUENT

### 5.1 Conditions Precedent

The Trustee's approval of the disbursement of the Net Proceeds from the Initial Bond Issue (such date being a "**Disbursement Date**") from the Escrow Account is subject to the Trustee being satisfied it has received the following documents:

- (a) constitutional documents and corporate resolutions (approving the relevant Finance Documents and authorising a signatory/-ies to execute the Finance Documents) for the Issuer and the Parent, together constituting evidence that the Finance Documents have been duly executed;
- (b) copies of the Terms and Conditions, the Escrow Account Pledge Agreement and the Trustee Agreement, duly executed;
- (c) an agreed form Compliance Certificate;
- (d) legal opinion(s) on the capacity and due execution of each party to a Finance Document not incorporated in Sweden and the validity and enforceability of the Finance Documents not governed by Swedish law (save for the Finance Documents delivered as Conditions Subsequent), in each case issued by a reputable law firm (if applicable);
- (e) final, unqualified, audited Financial Report for Fitness First Germany GmbH for the financial year ended 31 October 2018;
- (f) evidence of an equity contribution, in the form of share capital, an unconditional shareholder contribution or Shareholder Debt, by the Sponsor to the Issuer for the purposes of the Acquisition in an amount of no less than EUR 10,000,000; and
- (g) a closing certificate issued by the Issuer confirming that:
  - (i) all closing conditions for the Acquisition (except for the payment of the purchase price) have been satisfied or waived and that the Acquisition will be consummated immediately upon disbursement of the Net Proceeds from the Escrow Account; and
  - (ii) any existing Financial Indebtedness and/or existing Security not constituting Permitted Debt or Permitted Security, as applicable, incurred or granted by or over the Group and/or the Target Group will be repaid or released, as applicable, on the Disbursement Date.

### 5.2 Conditions Subsequent

- (a) The Issuer shall, within five (5) Business Days of the First Issue Date, provide the following documentation and evidence to the Trustee:
  - (i) constitutional documents and corporate resolutions (approving the relevant Finance Documents and authorising a signatory/-ies to execute the Finance Documents) for the Parent and each relevant Group Company, together constituting evidence that the Finance Documents then due to be executed have been duly executed;

- (ii) a share pledge agreement in customary form in respect of the shares in Issuer duly executed by the grantor of such pledge;
  - (iii) a share pledge agreement in customary form in respect of the shares in the Target duly executed by the grantor of such pledge;
  - (iv) an assignment agreement in customary form in respect of all present and future shareholder loans from the Parent to the Issuer and any further pledge agreement required pursuant to paragraph (c)(iv) of Clause 6.1 (Transaction Security) (if any);
  - (v) an assignment agreement in customary form in respect of Material Intra-Group Loans made by the Issuer duly executed by the Issuer;
  - (vi) evidence that the security interests set out in paragraphs (ii) to (v) above have been duly perfected (if applicable); and
  - (vii) a legal opinion in customary form and content on capacity, due execution, validity and enforceability in respect of the pledge agreements set out in paragraphs (ii) to (v) above.
- (b) The Issuer shall, no later than sixty (60) Business Days following the Disbursement Date, provide the Trustee with the following documents and evidence:
- (i) constitutional documents and corporate resolutions (approving the relevant Finance Documents and authorising a signatory/-ies to execute the Finance Documents) for each Guarantor and each other party to a Finance Document, together constituting evidence that the Finance Documents have been duly executed (including shareholder resolutions (if applicable));
  - (ii) a duly executed copy of the Guarantee Agreement;
  - (iii) copies of the Security Documents in relation to the Target Group, duly executed and evidence that the documents and other evidences to be delivered pursuant to such Security Documents have been delivered and satisfied;
  - (iv) evidence in the form or copies of signed guarantee documentation that Barry's Bootcamp GmbH, Elbgym GmbH and each other Guarantor has acceded to the Guarantee Agreement as a Guarantor;
  - (v) evidence in the form of a certificate signed by the Issuer that Clause 14.9 (Guarantors) is complied with; and
  - (vi) legal opinion(s) on the capacity and due execution of each Group Company which is a party to a Finance Document and the validity and enforceability of the Finance Documents, in each case in customary form and content issued by a reputable law firm.
- (c) *The Issuer shall procure the delivery of a legal opinion on the capacity and due execution of each Group Company which enters into or accedes to the Intercreditor Agreement and the validity and enforceability of the Intercreditor Agreement, issued by a reputable law firm.*

- (d) *If additional time is required for any registration measures or similar required under local law in order to grant the Conditions Subsequent Security and Guarantees the Issuer shall provide to the Trustee confirmation from a reputable local legal counsel that such registrations are required, and the Trustee shall in such case grant the Issuer sufficient time to carry out the necessary registrations. The Conditions Subsequent in relation to such jurisdiction shall then be granted no later than sixty (60) Business Days following the completion of such registration.*

### **5.3 Conditions Precedent for Subsequent Bonds**

The Paying Agent shall pay the Net Proceeds from the issuance of any Subsequent Bonds to the Issuer on the later of (i) the date of the issue of such Subsequent Bonds and (ii) the date on which the Trustee notifies the Paying Agent that it has received the following:

- (a) a copy of a resolution from the board of directors of the Issuer approving the issue of the Subsequent Bonds and resolving to enter into documents necessary in connection therewith;
- (b) a Compliance Certificate from the Issuer confirming that the relevant Incurrence Test is met and that no Event of Default is continuing or would result from the issue of the Subsequent Bonds; and
- (c) any other documents and information as agreed between the Trustee and the Issuer.

### **5.4 No responsibility for documentation**

The Trustee may assume that the documentation and evidence delivered to it pursuant to Clauses 5.1, 5.2 or 5.3 is accurate, legally valid, enforceable, correct, true and complete unless it has actual knowledge to the contrary, and the Trustee does not have to verify or assess the contents of any such documentation or evidence. None of the documentation and evidence delivered to it pursuant to Clauses 5.1, 5.2 or 5.3 are reviewed by the Trustee from a legal or commercial perspective of the Holders.

## **6. TRANSACTION SECURITY AND GUARANTEES**

### **6.1 Transaction Security**

- (a) As continuing security for the due and punctual fulfilment of the Secured Obligations, the Issuer grants (and shall procure that any other Group Company (as applicable) grants) as first ranking security to the Secured Parties (as represented by the Trustee) the Transaction Security on the terms set out in the Security Documents and the Intercreditor Agreement (if any).
- (b) The Security Agent shall hold the Transaction Security on behalf of the Secured Parties in accordance with the Security Documents and the Intercreditor Agreement (if any).
- (c) The Issuer shall ensure that:
  - (i) Security is granted in favour of the Secured Parties over the shares of any Group Company becoming a Guarantor pursuant to Clause 6.2 (Guarantees) at the same time such Group Company becomes a Guarantor;

- (ii) Security is granted in favour of the Secured Parties over the shares of any Material Group Company acquired on or after the First Issue Date;
  - (iii) Security is granted in favour of the Secured Parties over the bank accounts of any Group Company becoming a Guarantor pursuant to Clause 6.2 (Guarantees) at the same time such Group Company becomes a Guarantor;
  - (iv) upon its incurrence, Security is granted in favour of the Secured Parties over any shareholder loan between the Sponsor or another Holding Company of the Issuer as creditor and the Issuer or another Group Company as debt, whereby any present and future shareholder loans between such Holding Company as creditor and Group Company as debtor shall be pledged; and
  - (v) within sixty (60) Business Days of its incurrence, Security is granted in favour of the Secured Parties over any Material Intra-Group Loan.
- (d) The Issuer shall:
- (i) ensure that the Security Documents and all documents relating thereto are duly executed in favour of the Trustee and the Holders (as represented by the Trustee) and that such documents are legally valid, perfected, enforceable and in full force and effect according to their terms;
  - (ii) execute and/or procure the execution of such further documentation as the Trustee may reasonably require in order for the Holders and the Trustee to at all times maintain the security position and guarantee position envisaged under the Finance Documents; and
  - (iii) ensure that the relevant pledgors carries out any action to protect, perfect or give priority to the Transaction Security purported to be created by paragraph (c) above.
- (e) Notwithstanding paragraphs (c) and (d) above:
- (i) all Transaction Security shall be subject to, and limited as required by, financial assistance regulations and other applicable corporate law limitations;
  - (ii) a Group Company which is not a directly or indirectly wholly owned Subsidiary of the Issuer and any shareholder of such Group Company which itself is not a Subsidiary of the Issuer shall be excluded from any requirement under this Clause 6.1 to charge its assets under any Security Document provided that commercially reasonable endeavours have been used by the Issuer to obtain the consent of the relevant minority shareholders for the applicable Group Company to provide such Transaction Security (but, in the case of a charge over its assets only, only if such assets are material) and provided further that there shall be no obligation on any Group Company to seek such consent from a minority shareholder if this would be materially adverse to the commercial relationship with that minority shareholder, as determined by the Issuer; and

- (iii) if a Group Company grants Transaction Security over a bank account, it shall be free to deal with that bank account (save for the Escrow Account) until an Event of Default which is continuing.
- (f) Subject to the terms of the Intercreditor Agreement, except if otherwise decided by the Holders according to the procedures set out in Clauses 17 (*Decisions by Holders*), 18 (*Holders' Meeting*) and 19 (*Written Procedure*), the Trustee is, without first having to obtain the Holders' consent, entitled to enter into binding agreements with the Group Companies or third parties if it is, in the Trustee's sole discretion, necessary for the purpose of establishing, maintaining, altering, releasing or enforcing the Transaction Security or the Guarantees or for the purpose of settling the various Holders' relative rights to the Transaction Security or the Guarantees. The Trustee is entitled to take all measures available to it according to the Security Documents and the Guarantees.

## 6.2 Guarantees

- (a) Subject to the Intercreditor Agreement (if any), each Guarantor shall unconditionally and irrevocably guarantee (Sw. *proprieborgen*) to the Secured Parties (as represented by the Security Agent) as for its own debts (Sw. *såsom för egen skuld*) the full and punctual payment by the Issuer of the Secured Obligations in accordance with the Guarantee Agreement. The obligations and liabilities of the Guarantors under the Guarantee Agreement shall be limited if required (but only if and to the extent required) under the laws of the jurisdiction in which the relevant Guarantor is incorporated.
- (b) The Security Agent shall hold the Guarantees on behalf of the Secured Parties in accordance with the Guarantee Agreement and the Intercreditor Agreement (if any).
- (c) Subject to paragraph (e) below, the Issuer shall ensure that, within sixty (60) Business Days of the Disbursement Date:
  - (i) Barry's Bootcamp GmbH and Elbgym GmbH enters into or accedes to the Guarantee Agreement;
  - (ii) each Material Group Company enters into or accedes to the Guarantee Agreement; and
  - (iii) if necessary to ensure that:
    - (A) the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) of the Guarantors represents not less than ninety (90) per cent. of EBITDA; and
    - (B) the aggregate assets of the Guarantors represents not less than ninety (90) per cent. of Total Assets,

procure that further Group Companies become Guarantors.

(d) Subject to paragraph (e) below, the Issuer shall ensure that, within sixty (60) Business Days after delivery of each of its annual audited consolidated Financial Reports:

(i) any Material Group Company which is not a Guarantor becomes a Guarantor; and

(ii) if necessary to ensure that:

(A) the aggregate of earnings before interest, tax, depreciation and amortisation (calculated on the same basis as EBITDA) of the Guarantors represents not less than ninety (90) per cent. of EBITDA; and

(B) the aggregate assets of the Guarantors represents not less than ninety (90) per cent. of Total Assets,

procure that further Group Companies become Guarantors,

in each case as evidenced by such Financial Report and Compliance Certificate.

(e) Notwithstanding paragraphs (c) and (d) above:

(i) all Guarantees shall be subject to, and limited as required by, financial assistance regulations and other applicable corporate law limitations;

(ii) a Group Company which is not a directly or indirectly wholly owned Subsidiary of the Issuer shall be excluded from the requirement to become a Guarantor provided that commercially reasonable endeavours have been used by the Issuer to obtain the consent of the relevant minority shareholders for the applicable Group Company to provide such Guarantee and provided further that there shall be no obligation on any Group Company to seek such consent from a minority shareholder if this would be materially adverse to the commercial relationship with that minority shareholder, as determined by the Issuer; and

(iii) the Issuer need only perform its obligations under this Clause 6.2 above if it is not unlawful for the relevant person to become a Guarantor and that person becoming a Guarantor would not result in personal liability for that person's directors or other management, provided that each Group Company must use, and must procure that the relevant person uses, all reasonable endeavours lawfully available to avoid any such illegality or personal liability, including agreeing to a limit on the amount guaranteed.

### 6.3 Enforcement of Transaction Security and Guarantees

(a) If the Bonds are declared due and payable according to Clause 15 (*Termination of the Bonds*), or following the Final Redemption Date, the Trustee is, without first having to obtain the Holders' consent, entitled to enforce the Transaction Security and the Guarantees in such manner and under such conditions that the Trustee finds acceptable (if in accordance with the Security Documents, the Guarantee Agreement and the Intercreditor Agreement (if any)).

- (b) Subject to the terms of the Intercreditor Agreement (if any), if a Holders' Meeting has been convened, or a Written Procedure has been instigated, to decide on the termination of the Bonds and/or the enforcement of all or any of the Transaction Security or the Guarantees, the Trustee is obligated to take actions in accordance with the Holders' decision regarding the Transaction Security or Guarantees. However, if the Bonds are not terminated due to that the cause for termination has ceased or due to any other circumstance mentioned in the Finance Documents, the Trustee shall not enforce the Transaction Security or the Guarantees. Subject to the terms of the Intercreditor Agreement (if any), if the Holders, without any prior initiative from the Trustee or the Issuer, have made a decision regarding termination of the Bonds and enforcement of the Transaction Security or the Guarantees in accordance with the procedures set out in Clauses 17 (*Decisions by Holders*), 18 (*Holdings' Meeting*) and 19 (*Written Procedure*), the Trustee shall promptly declare the Bonds terminated and enforce the Transaction Security or the Guarantees (as applicable). The Trustee is however not liable to take action if the Trustee considers cause for termination and/or acceleration not to be at hand, unless the instructing Holders in writing commit to holding the Trustee indemnified and, at the Trustee's own discretion, grant sufficient security for the obligation.
- (c) Funds that the Trustee receives (directly or indirectly) on behalf of Secured Parties in connection with the termination of the Bonds or the enforcement of any or all of the Transaction Security or the Guarantees constitute escrow funds (Sw. *redovisningsmedel*) according to the Escrow Funds Act (Sw. *lag (1944:181) om redovisningsmedel*) and must be held on a separate interest bearing account on behalf of the Secured Parties. The Trustee shall promptly arrange for payments to be made to the Holders in such case. The Trustee shall arrange for payments of such funds in accordance with Clause 18 (*Distribution of proceeds*) as soon as reasonably practicable. If the Trustee deems it appropriate, it may, in accordance with this paragraph (c), instruct the CSD to arrange for payment to the Holders.
- (d) For the purpose of exercising the rights of the Holders and the Trustee under the Finance Documents and for the purpose of distributing any funds originating from the enforcement of any Transaction Security or a Guarantee, the Issuer irrevocably authorises and empowers the Trustee to act in the name of the Issuer, and on behalf of the Issuer, to instruct the CSD to arrange for payment to the Holders in accordance with paragraph (c) above. To the extent permissible by law, the powers set out in this paragraph (d) are irrevocable and shall be valid for as long as any Bonds remain outstanding. The Issuer shall immediately upon request by the Trustee provide the Trustee with any such documents, including a written power of attorney, which the Trustee deems necessary for the purpose of carrying out its duties under paragraph (c) above (including as required by the CSD in order for the CSD to accept such payment instructions). Especially, the Issuer shall, upon the Trustee's request, provide the Trustee with a written power of attorney empowering the Trustee to change the bank account registered with the CSD to a bank account in the name of the Trustee and to instruct the CSD to pay out funds originating from an enforcement in accordance with paragraph (c) above to the Holders through the CSD.

#### 6.4 **Release of Transaction Security and Guarantees**

The Security Agent may, subject to the terms of the Intercreditor Agreement release Guarantees and Transaction Security in accordance with the terms of the Security Documents, the Guarantee Agreement and the Intercreditor Agreement (as applicable).

### 7. **THE BONDS AND TRANSFERABILITY**

- 7.1 Each Holder is bound by these Terms and Conditions without there being any further actions required to be taken or formalities to be complied with.
- 7.2 The Bonds are freely transferable. All Bond transfers are subject to these Terms and Conditions and these Terms and Conditions are automatically applicable in relation to all Bond transferees upon completed transfer.
- 7.3 Upon a transfer of Bonds, any rights and obligations under the Finance Documents relating to such Bonds are automatically transferred to the transferee.
- 7.4 No action is being taken in any jurisdiction that would or is intended to permit a public offering of the Bonds or the possession, circulation or distribution of any document or other material relating to the Issuer or the Bonds in any jurisdiction other than Sweden, where action for that purpose is required. Each Holder must inform itself about, and observe, any applicable restrictions to the transfer of material relating to the Issuer or the Bonds, (due to, e.g., its nationality, its residency, its registered address or its place(s) of business). Each Holder must ensure compliance with such restrictions at its own cost and expense.
- 7.5 The Bonds have not been registered under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”) and the Issuer is under no obligation to arrange for registration of the Bonds under the Securities Act or under any other law or regulation.
- 7.6 The Bonds are not offered to and may not be subscribed by investors located in the United States except for “Qualified Institutional Buyers” (“**QIB**”) within the meaning of Rule 144A under the Securities Act. In the application form relating to the Bonds, each person applying for the Bonds must confirm whether it is a U.S. person as defined in Rule 902 of Regulation S under the Securities Act, and if it is a U.S. person it must confirm, *inter alia*, that it is a QIB.
- 7.7 Holders located in the United States are not permitted to transfer Bonds except (a) subject to an effective registration statement under the Securities Act, (b) to a person that the Holder reasonably believes is a QIB within the meaning of Rule 144A that is purchasing for its own account, or the account of another QIB, to whom notice is given that the resale, pledge or other transfer may be made in reliance on Rule 144A, (c) outside the United States in accordance with Regulation S under the Securities Act, (d) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available) and (e) pursuant to any other available exemption from registration under the Securities Act, subject to the receipt by the Issuer of an opinion of counsel or such other evidence that the Issuer may reasonably require confirming that such sale or transfer is in compliance with the Securities Act.

7.8 For the avoidance of doubt and notwithstanding the above, a Holder which allegedly has purchased Bonds in contradiction to mandatory restrictions applicable may nevertheless utilise its voting rights under these Terms and Conditions and shall be entitled to exercise its full rights as a Holder hereunder in each case until such allegations have been resolved.

## **8. REGISTRATION OF THE BONDS**

8.1 The Bonds will be registered for the Holders on their respective Securities Accounts and no physical Bonds will be issued. Accordingly, the Bonds will be registered in accordance with the applicable laws for the CSD. Registration requests relating to the Bonds shall be directed to an Account Operator. The Issuer will at all times ensure that the registration of the Bonds in the CSD is correct and shall immediately upon any amendment or variation of these Terms and Conditions give notice to the CSD of any such amendment or variation.

8.2 The Bonds have not been registered under any other country's legislation than that of the country in which the Bonds are registered, being Norway. Save for the registration of the Bonds in the CSD, the Issuer is under no obligation to register, or cause the registration of, the Bonds in any other registry or under any other legislation than that of Norway.

8.3 The Agent shall be entitled to obtain information from the debt register (Sw. *skuldbok*) kept by the CSD in respect of the Bonds. For the purpose of carrying out any administrative procedure that arises out of these Terms and Conditions, the Paying Agent shall in accordance with applicable law be entitled to obtain information from the debt register kept by the CSD in respect of the Bonds.

8.4 The Agent and the Paying Agent may use the information referred to in Clause 8.3 only for the purposes of carrying out their duties and exercising their rights in accordance with these Terms and Conditions and shall not disclose such information to any Holder or third party unless necessary for such purposes.

## **9. RIGHT TO ACT ON BEHALF OF A HOLDER**

9.1 If any Person other than a Holder wishes to exercise any rights under the Finance Documents, it must obtain a power of attorney (or, if applicable, a coherent chain of powers of attorney), a certificate from the authorised nominee or other sufficient proof of authorisation for such Person.

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

9.3 The Trustee shall only have to examine the face of a power of attorney or other proof of authorisation that has been provided to it pursuant to Clause 9.1 and 9.2 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.

## **10. PAYMENTS IN RESPECT OF THE BONDS**

- 10.1 The Issuer will unconditionally make available to or to the order of the Agent and/or the Paying Agent all amounts due on each Payment Date pursuant to the terms of these Terms and Conditions at such times and to such accounts as specified by the Agent and/or the Paying Agent in advance of each Payment Date or when other payments are due and payable pursuant to these Terms and Conditions.
- 10.2 Payment constituting good discharge of the Issuer's payment obligations to the Holders under these Terms and Conditions will be deemed to have been made to each Holder once the amount has been credited to the bank holding the bank account nominated by the Holder in connection with its Securities Account in the CSD. If the paying bank and the receiving bank are the same, payment shall be deemed to have been made once the amount has been credited to the bank account nominated by the Holder in question.
- 10.3 If a Payment Date or a date for other payments to the Holders pursuant to these Terms and Conditions falls on a day on which either of the relevant CSD settlement system or the relevant currency settlement system for the Bonds are not open, the payment shall be made on the first following possible day on which both of the said systems are open, unless any provision to the contrary have been set out for such payment in the relevant these Terms and Conditions.
- 10.4 If, due to any obstacle for the CSD, the Issuer cannot make a payment or repayment, such payment or repayment may be postponed until the obstacle has been removed. Interest shall accrue in accordance with Clause 11.4 during such postponement.
- 10.5 If payment or repayment is made in accordance with this Clause 10, the Issuer and the CSD shall be deemed to have fulfilled their obligation to pay, irrespective of whether such payment was made to a Person not entitled to receive such amount, unless the Issuer or the CSD (as applicable) was aware that the payment was being made to a Person not entitled to receive such amount.
- 10.6 The Issuer shall pay any stamp duty and other public fees accruing in connection with the Initial Bond Issue or a Subsequent Bond Issue, but not in respect of trading in the secondary market (except to the extent required by applicable law), and shall deduct at source any applicable withholding tax payable pursuant to law. The Issuer shall not be liable to reimburse any stamp duty or public fee or to gross-up any payments under these Terms and Conditions by virtue of any withholding tax, public levy or similar.
- 10.7 Notwithstanding anything to the contrary in these Terms and Conditions, the Bonds shall be subject to, and any payment made in relation thereto shall be made in accordance with, the rules and procedures of the CSD.
- 10.8 All amounts payable under these Terms and Conditions shall be payable in the denomination of the Bonds set out in Clause 2.1. If, however, the denomination differs from the currency of the bank account connected to the Holder's account in the CSD, any cash settlement may be exchanged and credited to this bank account.
- 10.9 Any specific payment instructions, including foreign exchange bank account details, to be connected to the Holder's account in the CSD must be provided by the relevant Holder to the

Paying Agent (either directly or through its Account Operator in the CSD) within five (5) Business Days prior to a Payment Date. Depending on any currency exchange settlement agreements between each Holder's bank and the Paying Agent, and opening hours of the receiving bank, cash settlement may be delayed, and payment shall be deemed to have been made once the cash settlement has taken place, provided, however, that no default interest or other penalty shall accrue for the account of the Issuer for such delay.

## **11. INTEREST**

- 11.1 The Bonds will bear Interest at the Interest Rate applied to the Outstanding Nominal Amount from (and including) the First Issue Date up to (but excluding) the relevant Redemption Date. Any Subsequent Bond will, however, carry Interest at the Interest Rate from (and including) the Interest Payment Date falling immediately prior to their issuance up to (but excluding) the relevant Redemption Date.
- 11.2 Interest accrues during an Interest Period. Payment of Interest in respect of the Bonds shall be made quarterly in arrears to the Holders on each Interest Payment Date for the preceding Interest Period.
- 11.3 Interest shall be calculated on the basis of the actual number of days in the Interest Period in respect of which payment is being made divided by 360 (actual/360-days basis).
- 11.4 If the Issuer fails to pay any amount payable by it under these Terms and Conditions 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 two hundred (200) basis 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 Trustee or the CSD, in which case the Interest Rate shall apply instead.

## **12. REDEMPTION AND REPURCHASE OF THE BONDS**

### **12.1 Redemption at maturity**

The Issuer shall redeem all, but not only some, of the Bonds in full on the Final Redemption Date (or, to the extent such day is not a CSD Business Day and if permitted under the CSD's applicable regulations, on the Business Day following from an application of the Business Day Convention, and otherwise on the first following CSD Business Day) with an amount per Bond equal to the Outstanding Nominal Amount together with accrued but unpaid Interest.

### **12.2 The Group's purchase of Bonds**

The Issuer and any other Group Company may, subject to applicable law, at any time and at any price purchase Bonds. Bonds held by the Issuer or any Group Company may at the Issuer's or such Group Company's discretion be retained or sold but not cancelled, except in connection with a redemption of the Bonds in full.

### **12.3 Voluntary prepayment**

- (a) The Issuer may at one occasion per each calendar year (without carry-back or carry-forward), make partial repayments of Bonds in an amount corresponding to a

maximum of five (5) per cent of the aggregate Nominal Amount as of the First Issue Date. Any such partial repayment shall reduce the Outstanding Nominal Amount of each Bond *pro rata* in accordance with the procedures of the CSD. The Bonds shall be redeemed at the Call Option Amount for the relevant period, but shall for the period until the First Call Date be the price set out in paragraph (b) of the definition of “Call Option Amount”, in each case together with accrued but unpaid interest. A partial repayment shall be made by the Issuer giving not less than ten (10) Business Days’ notice and the repayment shall be made on the next Interest Payment Date following such notice.

- (b) Partial repayment shall be made by the Issuer giving not less than ten (10) Business Days’ notice to the Holders and the repayment shall be made on the immediately following Interest Payment Date.

#### 12.4 **Early voluntary redemption by the Issuer (call option)**

- (a) The Issuer may redeem all, but not only some, of the Bonds in full on any Business Day falling after the First Issue Date but before the Final Redemption Date, at the Call Option Amount (as applicable) together with accrued but unpaid Interest.
- (b) Redemption in accordance with paragraph (a) above shall be made by the Issuer giving not less than fifteen (15) Business Days’ notice to the Holders and the Trustee. Any such notice shall state the Redemption Date and the relevant Record Date and is irrevocable but may, at the Issuer’s discretion, contain one or more conditions precedent. Upon expiry of such notice and the fulfilment of the conditions precedent (if any), the Issuer is bound to redeem the Bonds in full at the applicable amounts.

#### 12.5 **Equity Claw Back**

- (a) The Issuer may at one occasion, in connection with an Equity Listing Event, repay up to thirty (30) per cent. of the total Outstanding Nominal Amount, in which case all outstanding Bonds shall be partially repaid by way of reducing the Nominal Amount of each Bond *pro rata* in accordance with the procedures of the CSD. The repayment must occur on an Interest Payment Date within 180 days after such Equity Listing Event and be made with funds in an aggregate amount not exceeding the cash proceeds received by the Issuer as a result of such Equity Listing Event (net of fees, charges and commissions actually incurred in connection with such offering and net of taxes paid or payable as a result of such offering). The repayment per Bond shall equal the repaid percentage of the Outstanding Nominal Amount plus (i) a premium on the repaid amount as set forth in the Call Option Amount for the relevant period and, shall up until the First Call Date be the price set out in paragraph (b) of the definition of Call Option Amount and (ii) accrued but unpaid interest on the repaid amount.
- (b) Partial repayment in accordance with paragraph (a) above shall be made by the Issuer giving not less than twenty (20) Business Days’ notice and the repayment shall be made on the immediately following Interest Payment Date.

## 12.6 **Early redemption due to illegality (call option)**

- (a) The Issuer may redeem all, but not some only, of the outstanding Bonds at an amount per Bond equal to the Nominal Amount together with accrued but unpaid Interest on a Redemption Date determined by the Issuer if it is or becomes unlawful for the Issuer to perform its obligations under the Finance Documents.
- (b) The applicability of paragraph (a) above shall be supported by a legal opinion issued by a reputable law firm.
- (c) The Issuer may give notice of redemption pursuant to paragraph (a) above 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). The notice from the Issuer is irrevocable, shall specify the Redemption Date and also the Record Date on which a person shall be registered as a Holder to receive the amounts due on such Redemption Date. The Issuer is bound to redeem the Bonds in full at the applicable amount on the specified Redemption Date.

## 12.7 **Mandatory repurchase due to a Change of Control Event or a Delisting Event (put option)**

- (a) Upon a Change of Control Event or a Delisting Event occurring, each Holder shall have the right to request that all, or only some, of its Bonds are repurchased (whereby the Issuer shall have the obligation to repurchase such Bonds) at a price per Bond equal to one hundred one (101.00) per cent. of the Outstanding Nominal Amount together with accrued but unpaid Interest, during a period of sixty (60) calendar days following a notice from the Issuer of the relevant event pursuant to paragraph (a)(v) of Clause 14.13 (*Information undertakings*). The sixty (60) calendar days' period may not start earlier than upon the occurrence of the Change of Control Event or the Delisting Event (as applicable).
- (b) The notice from the Issuer pursuant to paragraph (a)(v) of Clause 14.13 (*Information undertakings*) shall specify the repurchase date and include instructions about the actions that a Holder needs to take if it wants Bonds held by it to be repurchased. If a Holder has so requested, and acted in accordance with the instructions in the notice from the Issuer, the Issuer, or a Person designated by the Issuer, shall repurchase the relevant Bonds and the repurchase amount shall fall due on the repurchase date specified in the notice given by the Issuer pursuant to paragraph (a)(v) of Clause 14.13 (*Information undertakings*). The repurchase date must fall no later than twenty (20) Business Days after the end of the period referred to in paragraph (a) above.
- (c) The Issuer shall comply with the requirements of any applicable securities laws or regulations in connection with the repurchase of Bonds. To the extent that the provisions of such laws and regulations conflict with the provisions in this Clause 12.7, the Issuer shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Clause 12.7 by virtue of the conflict.
- (d) Any Bonds repurchased by the Issuer pursuant to this Clause 12.7 may at the Issuer's discretion be retained, sold or cancelled in accordance with Clause 12.2.

## 12.8 **Mandatory redemption due to failure to fulfil the Initial Conditions Precedent**

- (a) If the Initial Conditions Precedent have not been fulfilled within sixty (60) Business Days of the First Issue Date, the Issuer shall redeem all Bonds at a price equal to one hundred (100.00) per cent, of the Nominal Amount together with any accrued but unpaid interest.
- (b) The redemption of the Bonds shall:
  - (i) be executed on the first following Interest Payment Date (taking into account the rules and regulations of the CSD); and
  - (ii) be made by the Issuer giving not less than ten (10) Business Days' notice to the Holders and the Trustee, where such notice shall state the relevant Interest Payment Date on which the redemption shall be made, the redemption amount and the relevant Record Date.
- (c) The Trustee shall be authorised to apply the funds standing to the credit of the Escrow Account to redeem the Bonds on behalf of the Issuer. If such amount is insufficient to redeem the Bonds in full, the deficit shall be paid by the Issuer.

## 12.9 **Mandatory redemption due to failure to fulfil the additional Conditions Precedent**

- (a) If the Net Proceeds have not been disbursed from the Escrow Account within ninety (90) Business Days from the First Issue Date or, if a longer period is required solely for the purpose of obtaining relevant competition clearances for the Acquisition, within one hundred and eighty (180) Business Days from the First Issue Date, the Issuer shall redeem all Bonds at a price equal to one hundred (100.00) per cent, of the Nominal Amount together with any accrued but unpaid interest.
- (b) The redemption of the Bonds shall:
  - (i) be executed on the first following Interest Payment Date (taking into account the rules and regulations of the CSD); and
  - (ii) be made by the Issuer giving not less than ten (10) Business Days' notice to the Holders and the Trustee, where such notice shall state the relevant Interest Payment Date on which the redemption shall be made, the redemption amount and the relevant Record Date.
- (c) The Trustee shall be authorised to apply the funds standing to the credit of the Escrow Account to redeem the Bonds on behalf of the Issuer. If such amount is insufficient to redeem the Bonds in full, the deficit shall be paid by the Issuer.

## 13. **INCURRENCE TEST**

### 13.1 **Application of the Incurrence Test**

The Incurrence Test shall be made in connection with the incurrence of Permitted Debt or the making of a Restricted Payment which requires that the Incurrence Test is met and shall be reported in a Compliance Certificate.

## 13.2 Incurrence Test

The Incurrence Test is met if:

- (a) the Leverage Ratio (in each case calculated in accordance with Clause 13.3 (*Calculation of the Incurrence Test*)) is less than:
  - (i) 3.25:1.00 from and including the First Issue Date until (and including) the First Call Date; or
  - (ii) 2.75:1.00 from (but excluding) the First Call Date until (and including) the Final Redemption Date; and
- (b) no Event of Default is continuing or would result from:
  - (i) the expiry of a grace period, giving of notice, making of any determination or any combination of any of the foregoing; or
  - (ii) the incurrence of Financial Indebtedness or making of Restricted Payment (as applicable).

## 13.3 Calculation of the Incurrence Test

- (a) The calculation the Leverage Ratio shall be made as per a testing date (the “**Testing Date**”), determined by the Issuer, falling no more than three (3) months prior to the incurrence of Permitted Debt or the making of a Restricted Payment that requires the Incurrence Test to be met.
- (b) Net Interest Bearing Debt shall be measured on the Testing Date so determined, calculated *pro forma* including the new Financial Indebtedness provided that such Financial Indebtedness is an interest bearing obligation (however, any cash balance resulting from the incurrence of such new Financial Indebtedness shall not reduce Net Interest Bearing Debt).
- (c) The figures for EBITDA for the Reference Period ending on the last day of the period covered by the most recent Financial Report (including when necessary, financial statements published before the First Issue Date) shall be used for the Incurrence Test, but adjusted so that (without double counting):
  - (i) the earnings before interest, tax, depreciation, amortisation and impairment charges (calculated on the same basis as EBITDA) of entities acquired by the Group during the Reference Period, or after the end of the Reference Period but before the relevant Testing Date, shall be included (as applicable), *pro forma*, for the entire Reference Period, taking into account any cost savings, synergies, integration and transaction costs reasonably projected by the Issuer, provided that:
    - (A) such projected cost savings and synergies shall be included without double counting cost savings and synergies already realised during such Reference Period; and
    - (B) such projected cost savings are subject to the restrictions referred to in paragraph (d) of the definition of “EBITDA”,

where, so long as such projected cost savings and synergies are projected by the Issuer to be realisable within twelve (12) months from the date of acquisition, such cost savings and synergies shall be assumed to be realisable at any time during such twelve (12) months period;

- (ii) the earnings before interest, tax, depreciation, amortisation and impairment charges (calculated on the same basis as EBITDA) of any entity disposed of during the Reference Period, or after the end of the Reference Period but before the relevant Testing Date, shall be excluded, pro forma, for the entire Reference Period; and
- (iii) the earnings before interest, tax, depreciation, amortisation and impairment charges (calculated on the same basis as EBITDA) of any entity to be acquired with the proceeds from new Financial Indebtedness shall be included, pro forma, for the entire Reference Period, taking into account any cost savings, synergies, integration and transaction costs reasonably projected by the Issuer, subject to the limitations in paragraphs (c)(i)-(ii) above.

## 14. SPECIAL UNDERTAKINGS

So long as any Bond remains outstanding, the Issuer undertakes to comply with the special undertakings set forth in this Clause 14.

### 14.1 Distributions

- (a) The Issuer shall not, and shall procure that none of its Subsidiaries will:
  - (i) pay any dividend on its shares (other than to the Issuer or a wholly-owned direct or indirect Subsidiary of the Issuer and, if made by a Subsidiary which is not directly or indirectly wholly-owned by the Issuer, is made on a pro rata basis);
  - (ii) repurchase or redeem any of its own shares;
  - (iii) redeem or reduce its share capital or other restricted or unrestricted equity with repayment to shareholders;
  - (iv) repay any Shareholder Debt or pay capitalised or accrued interest thereunder; or
  - (v) make any other similar distribution or transfers of value to the direct or indirect shareholders of the Issuer, or any Affiliates of the Issuer (other than to the Issuer or a wholly-owned, direct or indirect, Subsidiary of the Issuer and, if made by a Subsidiary which is not directly or indirectly wholly-owned by the Issuer, is made on a pro rata basis),

the transactions referred to under paragraphs (i) to (v) being collectively and individually referred to as a “**Restricted Payment**”.

- (b) Notwithstanding paragraph (a) above, a Restricted Payment may be made by the Issuer if an Equity Listing Event has occurred and the Equity Claw Back has been utilised in full, provided that at the time of the Restricted Payment:

- (i) no Event of Default is outstanding or would occur as a result of such Restricted Payment;
- (ii) the Incurrence Test is met (calculated on a pro forma basis including the relevant Restricted Payment); and
- (iii) the aggregate amount of all Restricted Payments of the Group in any financial year (including the relevant Restricted Payment in question) does not exceed fifty (50) per cent of the Group's consolidated net income for the previous financial year.

#### 14.2 **Listing of Bonds**

- (a) The Issuer shall use its reasonable endeavours to procure that the Bonds are listed on the Open Market of the Frankfurt Stock Exchange as soon as reasonably possibly after the First Issue Date and in any case within thirty (30) days of the First Issue Date and shall procure that the Bonds remain listed on such exchange until the Bonds have been redeemed in full.
- (b) The Issuer shall use its best efforts to ensure that:
  - (i) the Initial Bonds are listed at the corporate bond list of Nasdaq Stockholm or any other Regulated Market within twelve (12) months of the First Issue Date;
  - (ii) any Subsequent Bonds are listed on the relevant Regulated Market within sixty (60) days after the issuance of such Subsequent Bonds and with an intention to complete such listing within thirty (30) days after the issuance of such Subsequent Bonds (unless Subsequent Bonds are issued before the date falling twelve (12) months before the First Issue Date, in which case such Subsequent Bonds shall be listed within twelve (12) months after the First Issue Date); and
  - (iii) the Bonds, if admitted to trading on a Regulated Market continue being listed thereon for as long as any Bond is outstanding (however, taking into account the rules and regulations of the relevant Regulated Market and the CSD (as amended from time to time) preventing trading in the Bonds in close connection to the redemption of the Bonds).

#### 14.3 **Nature of business**

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

#### 14.4 **Financial Indebtedness**

The Issuer shall not (and shall procure that no other Group Company will) incur, prolong, renew or extend any Financial Indebtedness, provided however that the Issuer and its Subsidiaries have a right to incur, prolong, renew or extend any Financial Indebtedness that constitutes Permitted Debt.

#### 14.5 **Disposal of assets**

The Issuer shall not (and shall procure that no other Group Company will) sell or otherwise dispose of shares in any Group Company or of all or substantially all of its or any Subsidiary's assets (including but not limited to material intellectual property rights and pledged Group Companies) or operations to any person not being the Issuer or any of its wholly-owned Subsidiaries, unless the transaction is carried out at fair market value and on terms and conditions customary for such transaction and provided that (i) it in each case is permitted by the terms of any Security Document in respect of such assets and (ii) it does not have a Material Adverse Effect.

#### 14.6 **Clean down period**

The Issuer shall procure that during each calendar year there shall be a period of five (5) consecutive days during which the amount outstanding under the Super Senior RCF, *less* Cash and Cash Equivalents of the Group, amounts to zero (0) or less. Not less than three (3) months shall elapse between two such periods. Compliance shall be confirmed in the Compliance Certificate issued together with each of the Group's annual audited consolidated financial statements.

#### 14.7 **Negative Pledge**

The Issuer shall not (and shall procure that no other Group Company will) provide, prolong or renew any security over any of its/their assets (present or future), provided however that the Group Companies have a right to provide, prolong or renew any Permitted Security.

#### 14.8 **Conditions Subsequent**

The Issuer shall procure that the Conditions Subsequent are complied with.

#### 14.9 **Guarantors**

The Issuer shall procure that each Group Company that is required to become a Guarantor to comply with Clause 6.2 (*Guarantors*), enters into or accedes to a Guarantee Agreement as a Guarantor, that Transaction Security is granted over the shares in such Group Company and its assets in accordance with Clause 6.1 (*Transaction Security*) and that customary conditions precedent and legal opinions are delivered to the Trustee's satisfaction (acting reasonable) as soon as practically possible, but in any event no later than sixty (60) Business Days from the date such Compliance Certificate was (or were supposed to be) delivered.

#### 14.10 **Dealings with related parties**

The Issuer shall (and shall procure that each other Group Company will) conduct all dealings with their direct and indirect shareholders (excluding the Issuer and any other Group Company) and/or any Affiliates of such direct and indirect shareholders on arm's length terms.

#### 14.11 **Loans out**

The Issuer shall not (and shall procure that no other Group Company will) extend any loans in any form to any other party than (i) to other Group Companies or (ii) in the ordinary course of business.

#### 14.12 **Compliance with laws and authorisations**

The Issuer shall procure that it and each of its Subsidiaries:

- (a) comply in all laws and regulations applicable from time to time; and
- (b) obtain, maintain and comply with, the terms and conditions of any authorisation, approval, license or other permit required for the business carried out by a Group Company,

in each case, if failure to do so has or is reasonably likely to have a Material Adverse Effect.

#### 14.13 **Information undertakings**

- (a) The Issuer shall:
  - (i) prepare and make available the annual audited consolidated financial statements of the Group (in English), including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from the Issuer's board of directors, on its website not later than four (4) months after the expiry of each financial year;
  - (ii) prepare and make available the quarterly interim unaudited consolidated reports of the Group (in English), including a profit and loss account, a balance sheet, a cash flow statement and management commentary or report from the Issuer's board of directors, on its website not later than two (2) months after the expiry of each relevant interim period;
  - (iii) issue a Compliance Certificate to the Trustee in connection with:
    - (A) the delivery of a Financial Report,
    - (B) the incurrence of Financial Indebtedness as set out in paragraph (i) of the definition of Permitted Debt; and
    - (C) the making of a Restricted Payment;
  - (iv) keep the latest version of the Terms and Conditions available on the website of the Group; and
  - (v) promptly notify the Trustee (and, as regards a Change of Control Event or a Delisting Event, the Holders) when the Issuer is or becomes aware of (A) the occurrence of a Change of Control Event or a Delisting Event, or (B) that 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 the foregoing) constitute an Event of Default has occurred, and shall provide the Trustee with such further information as the Trustee may request (acting reasonably) following receipt of such notice.
- (b) From and including the listing of the Bonds on a Regulated Market, the Financial Reports shall be prepared in accordance with IFRS and made available in accordance with the rules and regulations of the relevant Regulated Market (as amended from time to time) and the Swedish Securities Market Act (Sw. *lag (2007:528) om värdepappersmarknaden*) (if applicable).

- (c) Subject to and in accordance with applicable accounting regulations and practices, each consolidated Financial Report shall include a *pro forma* overview of the Group's leases and EBITDA calculated in accordance with the Accounting Principles in force prior to IFRS 16 (Leases).
- (d) The Issuer shall notify the Trustee of any transaction referred to in Clause 14.5 (*Disposal of assets*) and shall, upon request by the Trustee, provide the Trustee with (i) any information relating to the transaction which the Trustee deems necessary (acting reasonably) and (ii) a determination from the Issuer which states whether the transaction is carried out at fair market value and on terms and conditions customary for such transaction or not and whether it has a Material Adverse Effect or not.

#### 14.14 **Presentations**

Once every financial quarter and at reasonable notice, at least two senior officers of the Issuer must give a presentation by telephone about the ongoing business and financial performance of the Issuer and the Group.

#### 14.15 **Bank Accounts**

The Issuer shall not (and shall procure that no other Group Company will) change a designated bank account for collection of membership dues held by the Issuer or a Guarantor to a bank account held by a Group Company which is not the Issuer or a Guarantor.

#### 14.16 **Holmes Place Equity Injection**

In the event that the Issuer completes an acquisition of Holmes Place within twelve (12) months of the First Issue Date, and such acquisition is financed in part by proceeds from a Subsequent Bond Issue, no less than EUR 10,000,000 of the total consideration payable for Holmes Place shall comprise of an equity contribution, in the form of share capital, an unconditional shareholder contribution or Shareholder Debt, from the Sponsor and/or any of its direct or indirect Subsidiaries.

#### 14.17 **Trustee Agreement**

14.18 The Issuer shall, in accordance with the Trustee Agreement:

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

14.19 The Issuer and the Trustee shall not agree to amend any provisions of the Trustee Agreement without the prior consent of the Holders if the amendment would be detrimental to the interests of the Holders.

#### 14.20 **CSD related undertakings**

The Issuer shall keep the Bonds affiliated with a CSD and comply with all CSD regulations applicable to the Issuer from time to time.

### 15. **TERMINATION OF THE BONDS**

15.1 Subject to the terms of the Intercreditor Agreement (if any), the Trustee is entitled to, and shall following a demand in writing from a Holder (or Holders) 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 Holder on the second Business Day following the day on which the demand is received by the Trustee and shall, if made by several Holders, be made by them jointly) or following an instruction or decision pursuant to Clause 15.6 or 15.7, on behalf of the Holders, terminate the Bonds and to declare all, but not only some, of the Bonds due for payment immediately or at such later date as the Trustee determines (such later date not falling later than twenty (20) Business Days from the date on which the Trustee made such declaration), if:

- (a) **Non-payment:** The Issuer or a Guarantor fails to pay an amount on the date it is due in accordance with the Finance Documents unless its failure to pay is caused by administrative or technical error and payment is made within five (5) Business Days of the due date;
- (b) **Other obligations:** A party (other than the Trustee) does not comply with its obligations under the Finance Documents, in any other way than as set out under paragraph (a) above, provided that the Issuer has not remedied the failure within twenty (20) Business Days from the earlier of (i) a request in writing by the Trustee to remedy such failure or (ii) from such party becoming aware of the non-compliance (if the failure or violation is not capable of being remedied, the Trustee may declare the Bonds due and payable without such prior written request);
- (c) **Cross-acceleration:** Any Financial Indebtedness of a Group Company is not paid when due, as extended by any originally applicable grace period, or is declared to be due and payable prior to its specified maturity as a result of an event of default (however described), provided that:
  - (i) no Event of Default will occur under this paragraph (c) if the aggregate amount of Financial Indebtedness that has fallen due is less than EUR 1,000,000; and
  - (ii) this paragraph (c) does not apply to any Financial Indebtedness owed to a Group Company;
- (d) **Insolvency:**
  - (i) Any Group Company is unable or admits inability to pay its debts as they fall due or is declared to be unable to pay its debts under applicable law, suspends making payments on its debts generally or, by reason of actual or anticipated financial difficulties or illiquidity, commences negotiations with its creditors generally (except for the Holders) with a view to rescheduling its Financial Indebtedness; or

- (ii) a moratorium is declared in respect of the Financial Indebtedness of any Group Company;
- (e) **Insolvency proceedings:** Any corporate action, legal proceedings or other procedures are taken (other than (i) proceedings or petitions which are being disputed in good faith and are discharged, stayed or dismissed within sixty (60) days of commencement or, if earlier, the date on which it is advertised, (ii) proceedings or petitions concerning a claim which is less than EUR 1,000,000, and (ii), in relation to Subsidiaries of the Issuer, solvent liquidations) in relation to:
  - (i) the suspension of payments, winding-up, dissolution, administration or reorganisation (Sw. företagsrekonstruktion) (by way of voluntary agreement, scheme of arrangement or otherwise) of any Group Company; and
  - (ii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Group Company or any of its assets or any analogous procedure or step is taken in any jurisdiction in respect of any Group Company;
- (f) **Mergers and demergers:** A decision is made that any Group Company shall be demerged or merged if such merger or demerger is likely to have a Material Adverse Effect, provided that:
  - (i) a merger subject to existing security between Subsidiaries only, provided that the merger does not materially adversely affect the effectiveness or enforceability of such existing security, shall not be an Event of Default;
  - (ii) a merger between the Issuer and a Subsidiary, where the Issuer is the surviving entity, shall not constitute an Event of Default;
  - (iii) a merger involving the Issuer, where the Issuer is not the surviving entity, shall always constitute an Event of Default; and
  - (iv) the Issuer may not be demerged;
- (g) **Creditors' process:** Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of any Material Group Company having an aggregate value of an amount equal to or exceeding EUR 1,000,000 and is not discharged within sixty (60) calendar days;
- (h) **Continuation of the business:** The Issuer or any other Group Company ceases to carry on its business if such discontinuation is likely to have a Material Adverse Effect.

15.2 The Trustee may not terminate the Bonds in accordance with Clause 15.1 by reference to a specific Event of Default if it is no longer continuing or if it has been decided, in accordance with these Terms and Conditions, to waive such Event of Default (temporarily or permanently). However, if a moratorium occurs, the ending of that moratorium will not prevent termination for payment prematurely on the ground mentioned under Clause 15.1.

15.3 If the right to terminate the Bonds is based upon a decision of a court of law or a government authority, it is not necessary that the decision has become enforceable under law or that the period of appeal has expired in order for cause of termination to be deemed to exist.

- 15.4 The Issuer is obliged to inform the Trustee immediately if any circumstance of the type specified in Clause 15.1 should occur. Should the Trustee not receive such information, the Trustee is entitled to assume that no such circumstance exists or can be expected to occur, provided that the Trustee does not have knowledge of such circumstance. The Trustee is under no obligations to make any investigations relating to the circumstances specified in Clause 15.1. The Issuer shall further, at the request of the Trustee, provide the Trustee with details of any circumstances referred to in Clause 15.1 and provide the Trustee with all documents that may be of significance for the application of this Clause 15.
- 15.5 The Issuer is only obliged to inform the Trustee according to Clause 15.4 if informing the Trustee would not conflict with any statute or the Issuer's registration contract with the relevant Regulated Market. If such a conflict would exist pursuant to the listing contract with the relevant Regulated Market or otherwise, the Issuer shall however be obliged to either seek the approval from the relevant Regulated Market or undertake other reasonable measures, including entering into a non-disclosure agreement with the Trustee, in order to be able to timely inform the Trustee according to Clause 15.4.
- 15.6 If the Trustee has been notified by the Issuer or has otherwise received actual knowledge that there is a default under the Finance Documents according to Clause 15.1, the Trustee shall (i) notify, within five (5) Business Days of the day of notification or actual knowledge, the Holders of the default and (ii) decide, within twenty (20) Business Days of the day of notification or actual knowledge, if the Bonds shall be declared terminated. If the Trustee has decided not to terminate the Bonds, the Trustee shall, at the earliest possible date, notify the Holders that there exists a right of termination and obtain instructions from the Holders according to the provisions in Clause 17 (*Decisions by Holders*). If the Holders vote in favour of termination and instruct the Trustee to terminate the Bonds, the Trustee shall promptly declare the Bonds terminated. However, if the cause for termination according to the Trustee's appraisal has ceased before the termination, the Trustee shall not terminate the Bonds. The Trustee shall in such case, at the earliest possible date, notify the Holders that the cause for termination has ceased. The Trustee shall always be entitled to take the time necessary to consider whether an occurred event constitutes an Event of Default.
- 15.7 If the Holders, without any prior initiative to decision from the Trustee or the Issuer, have made a decision regarding termination in accordance with Clause 17 (*Decisions by Holders*), the Trustee shall promptly declare the Bonds terminated. The Trustee is however not liable to take action if the Trustee considers cause for termination not to be at hand, unless the instructing Holders agree in writing to indemnify and hold the Trustee harmless from any loss or liability and, if requested by the Trustee in its discretion, grant sufficient security for such indemnity.
- 15.8 If the Bonds are declared due and payable in accordance with the provisions in this Clause 15, the Trustee shall take every reasonable measure necessary to recover the amounts outstanding under the Bonds.
- 15.9 For the avoidance of doubt, the Bonds cannot be terminated and become due for payment prematurely according to this Clause 15 without relevant decision by the Trustee or following instructions from the Holders' pursuant to Clause 17 (*Decisions by Holders*).

- 15.10 If the Bonds are declared due and payable in accordance with this Clause 15, the Issuer shall redeem all Bonds with an amount per Bond equal to the applicable Call Option Amount for the relevant period (plus accrued but unpaid interest), and shall before the First Call Date be the price set out in paragraph (a) of the Call Option Amount definition (plus accrued but unpaid interest).

## **16. DISTRIBUTION OF PROCEEDS**

- 16.1 If the Bonds have been declared due and payable in accordance with Clause 15 (*Termination of the Bonds*):

- (a) if the Intercreditor Agreement has been entered into, all payments by the Issuer or the Guarantors (as applicable) relating to the Bonds and any proceeds received from an enforcement of the Transaction Security shall be distributed in accordance with the Intercreditor Agreement; and
- (b) if the Intercreditor Agreement has not been entered into, all payments by the Issuer relating to the Bonds and any proceeds received from an enforcement of the Transaction Security shall be distributed in the following order of priority, in accordance with the instructions of the Trustee:
  - (i) first, in or towards payment pro rata of amounts owing to the Trustee under the Finance Documents, including all costs and indemnities relating to the acceleration of the Bonds, the enforcement of the Transaction Security or the Guarantees or the protection of the Holders' rights under the Finance Documents;
  - (ii) secondly, in or towards payment pro rata of accrued but unpaid Interest under the Bonds (Interest due on an earlier Interest Payment Date to be paid before any Interest due on a later Interest Payment Date);
  - (iii) thirdly, in or towards payment pro rata of any unpaid principal under the Bonds; and
  - (iv) fourthly, in or towards payment pro rata of any other costs or outstanding amounts unpaid under the Finance Documents.

Any excess funds after the application of proceeds in accordance with paragraphs (i) to (iv) above shall be paid to the Issuer or the Guarantors (as applicable). The application of proceeds in accordance with paragraphs (i) to (iv) above shall, however, not restrict a Holders' Meeting or a Written Procedure from resolving that accrued Interest (whether overdue or not) shall be reduced without a corresponding reduction of principal.

- 16.2 If a Holder or another party has paid any fees, costs, expenses or indemnities referred to in Clause 16.1, such Holder or other party shall be entitled to reimbursement by way of a corresponding distribution in accordance with Clause 16.1.
- 16.3 If the Issuer or the Trustee shall make any payment under this Clause 16, the Issuer or the Trustee, as applicable, shall notify the Holders of any such payment at least fifteen (15) Business Days before the payment is made. Such notice shall specify the Record Date, the

payment date and the amount to be paid. Notwithstanding the foregoing, for any Interest due but unpaid the Record Date specified in Clause 10.1 shall apply.

## **17. DECISIONS BY HOLDERS**

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

17.2 Any request from the Issuer or a Holder (or Holders) representing at least ten (10.00) per cent. of the Adjusted Nominal Amount (such request may only be validly made by a Person who is a Holder on the Business Day immediately following the day on which the request is received by the Trustee and shall, if made by several Holders, be made by them jointly) for a decision by the Holders on a matter relating to the Finance Documents shall be directed to the Trustee and dealt with at a Holders' Meeting or by way of a Written Procedure, as determined by the Trustee. The Person requesting the decision may suggest the form for decision making, but if it is in the Trustee's opinion more appropriate that a matter is dealt with at a Holders' Meeting than by way of a Written Procedure, it shall be dealt with at a Holders' Meeting.

17.3 The Trustee may refrain from convening a Holders' Meeting or instigating a Written Procedure if:

- (a) the suggested decision must be approved by any Person in addition to the Holders and such Person has informed the Trustee that an approval will not be given; or
- (b) the suggested decision is not in accordance with applicable laws.

17.4 Only a Person who is, or who has been provided with a power of attorney or other proof of authorisation pursuant to Clause 9 (*Right to act on behalf of a Holder*) from a Person who is, registered as a Holder:

- (a) on the Record Date prior to the date of the Holders' Meeting, in respect of a Holders' Meeting, or
- (b) on the Business Day specified in the communication pursuant to Clause 19.3, in respect of a Written Procedure,

may exercise voting rights as a Holder at such Holders' Meeting or in such Written Procedure, provided that the relevant Bonds are included in the definition of Adjusted Nominal Amount.

17.5 The following matters shall require consent of Holders representing at least two thirds (2/3) of the Adjusted Nominal Amount for which Holders are voting at a Holders' Meeting or for which Holders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 19.3:

- (a) waive a breach of or amend an undertaking set out in Clause 12.8 (*Special undertakings*);
- (b) a release of the Transaction Security or the Guarantees in whole or in part, except in accordance with the terms of the Security Documents, Guarantees and the Intercreditor Agreement (if any);

- (c) a mandatory exchange of Bonds for other securities;
  - (d) reduce the principal amount, Interest Rate or Interest which shall be paid by the Issuer;
  - (e) amend any payment day for principal or Interest or waive any breach of a payment undertaking; or
  - (f) amend the provisions in this Clause 17.5 or in Clause 17.6.
- 17.6 Any matter not covered by Clause 17.5 shall require the consent of Holders representing more than fifty (50.00) per cent. of the Adjusted Nominal Amount for which Holders are voting at a Holders' Meeting or for which Holders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 19.3. This includes, but is not limited to, any amendment to or waiver of the terms of any Finance Documents that does not require a higher majority (other than an amendment permitted pursuant to paragraph (a), (b) or (c) of Clause 20.1), or a termination of the Bonds or the enforcement of the Transaction Security or the Guarantees in whole or in part.
- 17.7 If the number of votes or replies are equal, the opinion which is most beneficial for the Issuer, according to the chairman at a Holders' Meeting or the Trustee in a Written Procedure, will prevail.
- 17.8 Quorum at a Holders' Meeting or in respect of a Written Procedure only exists if a Holder (or Holders) representing at least twenty (20.00) per cent. of the Adjusted Nominal Amount:
- (a) if at a Holders' 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.
- 17.9 If a quorum does not exist at a Holders' Meeting or in respect of a Written Procedure, the Trustee or the Issuer shall convene a second Holders' Meeting (in accordance with Clause 18.1) or initiate a second Written Procedure (in accordance with Clause 19.1), as the case may be, provided that the relevant proposal has not been withdrawn by the Person(s) who initiated the procedure for Holders' consent. The quorum requirement in Clause 17.8 shall not apply to such second Holders' Meeting or Written Procedure.
- 17.10 Any decision which extends or increases the obligations of the Issuer or the Trustee, or limits, reduces or extinguishes the rights or benefits of the Issuer or the Trustee, under the Finance Documents shall be subject to the Issuer's or the Trustee's consent, as appropriate.
- 17.11 A Holder holding more than one Bond need not use all its votes or cast all the votes to which it is entitled in the same way and may in its discretion use or cast some of its votes only.
- 17.12 The Issuer may not, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder for or as inducement to any consent under the Finance Documents, unless such consideration is offered to all Holders that consent at the relevant Holders' 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.
- 17.13 A matter decided at a duly convened and held Holders' Meeting or by way of Written Procedure is binding on all Holders, irrespective of them being present or represented at the

Holders' Meeting or responding in the Written Procedure. The Holders that have not adopted or voted for a decision shall not be liable for any damages that this may cause other Holders.

- 17.14 All costs and expenses incurred by the Issuer or the Trustee for the purpose of convening a Holders' Meeting or for the purpose of carrying out a Written Procedure, including reasonable fees to the Trustee, shall be paid by the Issuer.
- 17.15 If a decision shall be taken by the Holders on a matter relating to the Finance Documents, the Issuer shall promptly at the request of the Trustee provide the Trustee with a certificate specifying the number of Bonds owned by Group Companies or (to the knowledge of the Issuer) their Affiliates, irrespective of whether such Person is directly registered as owner of such Bonds. The Trustee shall not be responsible for the accuracy of such certificate or otherwise be responsible to determine whether a Bond is owned by a Group Company or an Affiliate of a Group Company.
- 17.16 Information about decisions taken at a Holders' Meeting or by way of a Written Procedure shall promptly be sent by notice to the Holders and published on the websites of the Issuer and the Trustee, provided that a failure to do so shall not invalidate any decision made or voting result achieved. The minutes from the relevant Holders' Meeting or Written Procedure shall at the request of a Holder be sent to it by the Issuer or the Trustee, as applicable.

## **18. HOLDERS' MEETING**

- 18.1 The Trustee shall convene a Holders' Meeting by sending a notice thereof to each Holder no later than five (5) Business Days after receipt of a request from the Issuer or the Holder(s) (or such later date as may be necessary for technical or administrative reasons). If the Holder's Meeting has been requested by the Holder(s), the Trustee shall send a copy of the notice to the Issuer.
- 18.2 Should the Issuer want to replace the Trustee, it may convene a Holders' Meeting in accordance with Clause 18.1 with a copy to the Trustee. After a request from the Holders pursuant to paragraph (c) of Clause 21.4 (*Replacement of the Trustee*), 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 Holders' Meeting in accordance with Clause 18.1.
- 18.3 The notice pursuant to Clause 18.1 shall include:
- (a) time for the meeting;
  - (b) place for the meeting;
  - (c) agenda for the meeting (including each request for a decision by the Holders); and
  - (d) a form of power of attorney.

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

- 18.4 The Holders' Meeting shall be held no earlier than ten (10) Business Days and no later than twenty (20) Business Days from the notice.
- 18.5 If the Trustee, in breach of these Terms and Conditions, has not convened a Holders' Meeting within five (5) Business Days after having received such notice, the requesting Person may convene the Holders' Meeting itself. If the requesting Person is a Holder, the Issuer shall upon request from such Holder provide the Holder with necessary information from the register kept by the CSD and, if no Person to open the Holders' Meeting has been appointed by the Trustee, the meeting shall be opened by a Person appointed by the requesting Person.
- 18.6 At a Holders' Meeting, the Issuer, the Holders (or the Holders' representatives/proxies) and the Trustee may attend along with each of their representatives, counsels and assistants. Further, the directors of the board, the managing director and other officials of the Issuer and the Issuer's auditors may attend the Holders' Meeting. The Holders' Meeting may decide that further individuals may attend. If a representative/proxy shall attend the Holders' Meeting instead of the Holder, the representative/proxy shall present a duly executed proxy or other document establishing its authority to represent the Holder.
- 18.7 Without amending or varying these Terms and Conditions, the Trustee may prescribe such further regulations regarding the convening and holding of a Holders' Meeting as the Trustee may deem appropriate. Such regulations may include a possibility for Holders to vote without attending the meeting in person.

## **19. WRITTEN PROCEDURE**

- 19.1 The Trustee shall instigate a Written Procedure no later than five (5) Business Days after receipt of a request from the Issuer or the Holder(s) (or such later date as may be necessary for technical or administrative reasons) by sending a communication to each such Person who is registered as a Holder on the Business Day prior to the date on which the communication is sent. If the Written Procedure has been requested by the Holder(s), the Trustee shall send a copy of the communication to the Issuer.
- 19.2 Should the Issuer want to replace the Trustee, it may send a communication in accordance with Clause 19.1 to each Holder with a copy to the Trustee.
- 19.3 A communication pursuant to Clause 19.1 shall include (a) each request for a decision by the Holders, (b) a description of the reasons for each request, (c) a specification of the Business Day on which a Person must be registered as a Holder in order to be entitled to exercise voting rights (such Business Day not to fall earlier than the effective date of the communication pursuant to Clause 19.1), (d) 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 (e) the stipulated time period within which the Holder must reply to the request (such time period to last at least ten (10) Business Days but not more than twenty (20) Business Days from the communication pursuant to Clause 19.1). If the voting shall be made electronically, instructions for such voting shall be included in the communication.

- 19.4 If the Trustee, in breach of these Terms and Conditions, has not instigated a Written Procedure within five (5) Business Days after having received such notice, the requesting Person may instigate a Written Procedure itself. If the requesting Person is a Holder, the Issuer shall upon request from such Holder provide the Holder with necessary information from the register kept by the CSD.
- 19.5 When the requisite majority consents of the Adjusted Nominal Amount pursuant to Clauses 17.5 and 17.6 have been received in a Written Procedure, the relevant decision shall be deemed to be adopted pursuant to Clause 17.5 or 17.6, as the case may be, even if the time period for replies in the Written Procedure has not yet expired.

## **20. AMENDMENTS AND WAIVERS**

- 20.1 Subject to the terms of the Intercreditor Agreement, the Issuer and the Trustee (acting on behalf of the Holders) may agree to amend the Finance Documents or waive any provision in the Finance Documents, provided that:
- (a) such amendment or waiver is not detrimental to the interest of the Holders, 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;
  - (c) such amendment or waiver is necessary for the purpose of listing the Bonds on a Regulated Market provided such amendment or waiver does not materially adversely affect the rights of the Holders; or
  - (d) such amendment or waiver has been duly approved by the Holders in accordance with Clause 17 (*Decisions by Holders*).
- 20.2 The consent of the Holders is not necessary to approve the particular form of any amendment or waiver to the Finance Documents. It is sufficient if such consent approves the substance of the amendment or waiver.
- 20.3 The Trustee shall promptly notify the Holders of any amendments or waivers made in accordance with Clause 20.1, setting out the date from which the amendment or waiver will be effective, and ensure that any amendments to the Finance Documents are available on the websites of the Issuer and the Trustee. The Issuer shall ensure that any amendments to the Finance Documents are duly registered with the CSD and each other relevant organisation or authority.
- 20.4 An amendment or waiver to the Finance Documents shall take effect on the date determined by the Holders Meeting, in the Written Procedure or by the Trustee, as the case may be.

## **21. APPOINTMENT AND REPLACEMENT OF THE TRUSTEE**

### **21.1 Appointment of Trustee**

- (a) By subscribing for Bonds, each initial Holder:

- (i) appoints the Trustee to act as its agent and security agent in all matters relating to the Bonds and the Finance Documents, and authorises the Trustee to act on its behalf (without first having to obtain its consent, unless such consent is specifically required by these Terms and Conditions) in any legal or arbitration proceedings relating to the Bonds held by such Holder, including the winding-up, dissolution, liquidation, company reorganisation (Sw. företagsrekonstruktion), or bankruptcy (Sw. konkurs) (or its equivalent in any other jurisdiction) of the Issuer including, for the avoidance of doubt, any legal or arbitration proceeding relating to the perfection, preservation, protection or enforcement of the Transaction Security or a Guarantee; and
  - (ii) confirms the appointment under the Intercreditor Agreement (if any) of the Security Agent to act as its agent in all matters relating to the Transaction Security, the Security Documents, the Guarantees and the Guarantee Agreement, including any legal or arbitration proceeding relating to the perfection, preservation, protection or enforcement of the Transaction Security or a Guarantee and acknowledges and agrees that the rights, obligations, role of and limitations of liability for the Security Agent is further regulated in the Intercreditor Agreement (if any).
- (b) By acquiring Bonds, each subsequent Holder confirms the appointment and authorisation for the Trustee and the Security Agent to act on its behalf, as set forth in paragraph (a) above.
  - (c) Each Holder shall immediately upon request by the Trustee provide the Trustee with any such documents, including a written power of attorney (in form and substance satisfactory to the Trustee), as the Trustee deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents. The Trustee is under no obligation to represent a Holder which does not comply with such request.
  - (d) The Issuer shall promptly upon request provide the Trustee with any documents and other assistance (in form and substance satisfactory to the Trustee), that the Trustee deems necessary for the purpose of exercising its rights and/or carrying out its duties under the Finance Documents.
  - (e) The Trustee 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 Trustee's obligations as agent and security agent under the Finance Documents are conditioned upon the due payment of such fees and indemnifications.
  - (f) The Trustee may act as agent and/or security agent for several issues of securities issued by or relating to the Issuer and other Group Companies notwithstanding potential conflicts of interest.

## 21.2 Duties of the Trustee

- (a) The Trustee shall represent the Holders in accordance with the Finance Documents, including, *inter alia*, holding the Transaction Security and the Guarantees pursuant to the Security Documents and the Guarantee Agreement on behalf of the Secured Parties

and, where relevant, enforcing the Transaction Security or a Guarantee on behalf of the Holders. However, the Trustee is not responsible for the contents, execution, legal validity or enforceability of the Finance Documents. The Trustee shall keep the latest version of these Terms and Conditions (including any document amending these Terms and Conditions) available on the website of the Trustee.

- (b) The Trustee is not obliged to actively assess or monitor (i) the financial condition of the Issuer or any Group Company, (ii) the compliance by the Issuer of the Finance Documents (unless expressly set out in the Finance Documents) or (iii) whether an Event of Default (or any event that may lead to an Event of Default) has occurred or not. Until it has actual knowledge to the contrary, the Trustee is entitled to assume that no Event of Default has occurred.
- (c) The Trustee may assume that any information, documentation and evidence delivered to it is accurate, legally valid, enforceable, correct, true and complete unless it has actual knowledge to the contrary, and the Trustee does not have to verify or assess the contents of any such information, documentation or evidence. The Trustee does not review any information, documents and evidence from a legal or commercial perspective of the Holders.
- (d) The Trustee shall upon request by a Holder disclose the identity of any other Holder who has consented to the Trustee in doing so.
- (e) When acting in accordance with the Finance Documents, the Trustee is always acting with binding effect on behalf of the Holders. The Trustee shall carry out its duties under the Finance Documents in a reasonable, proficient and professional manner, with reasonable care and skill.
- (f) The Trustee is entitled to delegate its duties to other professional parties, but the Trustee shall remain liable for the actions of such parties under the Finance Documents.
- (g) The Trustee shall treat all Holders equally and, when acting pursuant to the Finance Documents, act with regard only to the interests of the Holders 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.
- (h) The Trustee shall be entitled to disclose to the Holders any event or circumstance directly or indirectly relating to the Issuer or the Bonds. Notwithstanding the foregoing, the Trustee may if it considers it to be beneficial to the interests of the Holders delay disclosure or refrain from disclosing certain information other than in respect of an Event of Default that has occurred and is continuing.
- (i) The Trustee is entitled to engage external experts when carrying out its duties under the Finance Documents. The Issuer shall on demand by the Trustee pay all costs for external experts engaged (i) after the occurrence of an Event of Default, (ii) for the purpose of investigating or considering an event which the Trustee reasonably believes is or may lead to an Event of Default or a matter relating to the Issuer which the Trustee reasonably believes may be detrimental to the interests of the Holders under the Finance Documents or (iii) when the Trustee is to make a determination

under the Finance Documents. Any compensation for damages or other recoveries received by the Trustee 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 16 (*Distribution of proceeds*).

- (j) The Trustee shall enter into agreements with the CSD, and comply with such agreement and the CSD regulations applicable to the Trustee, as may be necessary in order for the Trustee to carry out its duties under the Finance Documents.
- (k) The Agent may instruct the CSD to split the Bonds to a lower nominal amount in order to facilitate partial redemptions, restructuring of the Bonds or other situations.
- (l) Notwithstanding any other provision of the Finance Documents to the contrary, the Trustee 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.
- (m) If in the Trustee's reasonable opinion the cost, loss or liability which it may incur (including reasonable fees to the Trustee) in complying with instructions of the Holders, or taking any action at its own initiative, will not be covered by the Issuer, the Trustee 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.
- (n) The Trustee shall give a notice to the Holders (a) 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 Trustee under the Finance Documents, or (b) if it refrains from acting for any reason described in paragraph (m) above.
- (o) The Trustee's duties under the Terms and Conditions are solely mechanical and administrative in nature and the Trustee only acts in accordance with the Terms and Conditions and upon instructions from the Holders, unless otherwise set out in the Terms and Conditions. In particular, the Trustee is not acting as an advisor (whether legal, financial or otherwise) to the Holders or any other person.

### 21.3 **Limited liability for the Trustee**

- (a) The Trustee will not be liable to the Holders 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 Trustee shall never be responsible for indirect loss.
- (b) The Trustee 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 Trustee or if the Trustee has acted with reasonable care in a situation when the Trustee considers that it is detrimental to the interests of the Holders to delay the action in order to first obtain instructions from the Holders.
- (c) The Trustee 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 Trustee to the Holders, provided that the Trustee 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 Trustee for that purpose.

- (d) The Trustee shall have no liability to the Holders for damage caused by the Trustee acting in accordance with instructions of the Holders given in accordance with Clause 17 (*Decisions by Holders*).
- (e) Any liability towards the Issuer which is incurred by the Trustee 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 Holders under the Finance Documents.
- (f) The Trustee is not liable for information provided to the Holders by or on behalf of the Issuer or by any other person.

#### 21.4 **Replacement of the Trustee**

- (a) Subject to paragraph (f) below, the Trustee may resign by giving notice to the Issuer and the Holders, in which case the Holders shall appoint a successor Trustee at a Holders' Meeting convened by the retiring Trustee or by way of Written Procedure initiated by the retiring Trustee.
- (b) Subject to paragraph (f) below, if the Trustee is insolvent or becomes subject to bankruptcy proceedings, the Trustee shall be deemed to resign as Trustee and the Issuer shall within ten (10) Business Days appoint a successor Trustee which shall be an independent financial institution or other reputable company which regularly acts as agent under debt issuances.
- (c) A Holder (or Holders) representing at least ten (10.00) 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 Holder on the Business Day immediately following the day on which the notice is received by the Issuer and shall, if given by several Holders, be given by them jointly), require that a Holders' Meeting is held for the purpose of dismissing the Trustee and appointing a new Trustee. The Issuer may, at a Holders' Meeting convened by it or by way of Written Procedure initiated by it, propose to the Holders that the Trustee be dismissed and a new Trustee appointed.
- (d) If the Holders have not appointed a successor Trustee within ninety (90) calendar days after (i) the earlier of the notice of resignation was given or the resignation otherwise took place or (ii) the Trustee was dismissed through a decision by the Holders, the Issuer shall appoint a successor Trustee which shall be an independent financial institution or other reputable company which regularly acts as agent under debt issuances.
- (e) The retiring Trustee shall, at its own cost, make available to the successor Trustee such documents and records and provide such assistance as the successor Trustee may reasonably request for the purposes of performing its functions as Trustee under the Finance Documents.
- (f) The Trustee's resignation or dismissal shall only take effect upon the appointment of a successor Trustee and acceptance by such successor Trustee of such appointment

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

- (g) Upon the appointment of a successor, the retiring Trustee shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of the Finance Documents and remain liable under the Finance Documents in respect of any action which it took or failed to take whilst acting as Trustee. Its successor, the Issuer and each of the Holders 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 Trustee.
- (h) In the event that there is a change of the Trustee in accordance with this Clause 21.4, the Issuer shall execute such documents and take such actions as the new Trustee may reasonably require for the purpose of vesting in such new Trustee the rights, powers and obligation of the Trustee and releasing the retiring Trustee from its further obligations under the Finance Documents. Unless the Issuer and the new Trustee agrees otherwise, the new Trustee shall be entitled to the same fees and the same indemnities as the retiring Trustee.

## **22. APPOINTMENT AND REPLACEMENT OF THE PAYING AGENT**

- 22.1 The Issuer appoints the Paying Agent to manage certain specified tasks under these Terms and Conditions and in accordance with the legislation, rules and regulations applicable to and/or issued by the CSD and relating to the Bonds.
- 22.2 The Paying Agent may retire from its assignment or be dismissed by the Issuer, provided that the Issuer has approved that a commercial bank or securities institution approved by the CSD accedes as new Paying Agent at the same time as the old Paying Agent retires or is dismissed. If the Paying Agent is insolvent or becomes subject to bankruptcy proceedings, the Issuer shall immediately appoint a new Paying Agent, which shall replace the old Paying Agent as paying agent in accordance with these Terms and Conditions.
- 22.3 The Paying Agent will not be liable to the Holders for damage or loss caused by any action taken or omitted by it under or in connection with these Terms and Conditions, unless directly caused by its gross negligence or wilful misconduct. The Paying Agent shall never be responsible for indirect or consequential loss.

## **23. APPOINTMENT AND REPLACEMENT OF THE CSD**

- 23.1 The Issuer has appointed the CSD to manage certain tasks under these Terms and Conditions and in accordance with the legislation, rules and regulations applicable to the CSD.
- 23.2 The CSD may retire from its assignment or be dismissed by the Issuer, provided that the Issuer has effectively appointed a replacement CSD that accedes as CSD at the same time as the old CSD retires or is dismissed and provided also that the replacement does not have a negative effect on any Holder or the listing of the Bonds listed on a Regulated Market.

## **24. NO DIRECT ACTIONS BY HOLDERS**

24.1 A Holder may not take any steps whatsoever against the Issuer or a Subsidiary (including a Guarantor) 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 (Sw. *företagsrekonstruktion*) or bankruptcy (Sw. *konkurs*) (or its equivalent in any other jurisdiction) of the Issuer or another Group Company in relation to any of the liabilities of the Issuer or a Subsidiary (including a Guarantor) under the Finance Documents. Such steps may only be taken by the Trustee.

24.2 Clause 24.1 shall not apply if:

- (a) the Trustee has been instructed by the Holders in accordance with the Finance Documents to take certain actions but fails for any reason to take, or is unable to take (for any reason other than a failure by a Holder to provide documents in accordance with paragraph (b) of Clause 21.1 (*Appointment of Trustee*)), such actions within a reasonable period of time and such failure or inability is continuing; or
- (b) the Security Agent has been instructed by the Instructing Group (as defined in the Intercreditor Agreement (if any)) in accordance with the Intercreditor Agreement (if any) to enforce the Transaction Security but is legally unable to take such enforcement actions,

however, if the failure to take certain actions is caused by the non-payment by the Issuer of any fee or indemnity due to the Trustee under the Finance Documents or by any reason described in paragraph (m) of Clause 21.2 (*Duties of the Trustee*), such failure must continue for at least forty (40) Business Days after notice pursuant to paragraph (n) of Clause 21.2 (*Duties of the Trustee*) before a Holder may take any action referred to in Clause 24.1.

24.3 The provisions of Clause 24.1 shall not in any way limit an individual Holder's right to claim and enforce payments which are due to it under Clause 12.5 (*Mandatory repurchase due to a Change of Control Event or a Delisting Event (put option)*) or other payments which are due by the Issuer to some but not all Holders.

## **25. TIME-BAR**

25.1 The right to receive repayment of the principal of the Bonds shall be time-barred and become void ten (10) years from the relevant Redemption Date. The right to receive payment of Interest (excluding any capitalised Interest) shall be time-barred and become void three (3) years from the relevant due date for payment. The Issuer is entitled to any funds set aside for payments in respect of which the Holders' right to receive payment has been time-barred and has become void.

25.2 If a limitation period is duly interrupted in accordance with the Swedish Act on Limitations (Sw. *preskriptionslag (1981:130)*), a new time-bar period of ten (10) years with respect to the right to receive repayment of the principal of the Bonds, and of three (3) years with respect to the right to receive payment of Interest (excluding capitalised Interest) will commence, in both cases calculated from the date of interruption of the time-bar period, as such date is determined pursuant to the provisions of the Swedish Act on Limitations.

## **26. NOTICES AND PRESS RELEASES**

### **26.1 Notices**

26.2 Any notice or other communication to be made under or in connection with these Terms and Conditions:

- (a) if to the Trustee, shall be given at the address registered with the Swedish Companies Registration Office (Sw. *Bolagsverket*) on the Business Day prior to dispatch or, if sent by email by the Issuer, to such email address as notified by the Trustee to the Issuer from time to time;
- (b) if to the Issuer, shall be given at the address LifeFit Group MidCo GmbH, Hanauer Str. 148 a, c/o LifeFit Group TopCo GmbH, D-60314 Frankfurt a. Main or, if sent by email by the Trustee, to such email address as notified by the Issuer to the Trustee from time to time;
- (c) if to a Guarantor, shall be given to the address stated in the relevant Guarantee or such other address notified by such Guarantor to the Trustee from time to time or, if sent by email by the Trustee, to such email address as notified by that Guarantor to the Trustee from time to time; and
- (d) if to the Holders, shall be given at their addresses as registered with the CSD (or in relation to courier or personal delivery, if such address is a box address, the addressee reasonably assumed to be associated with such box address), on the Business Day prior to dispatch, and by either courier delivery or letter for all Holders. A notice to the Holders shall also be published on the websites of the Issuer and the Trustee.

26.3 Any notice or other communication made by one Person to another under or in connection with these Terms and Conditions shall be sent by way of courier, personal delivery or letter (and, if between the Trustee and the Issuer, by email) and will only be effective, in case of courier or personal delivery, when it has been left at the address specified in Clause 26.2 or, in case of letter, three (3) Business Days after being deposited postage prepaid in an envelope addressed to the address specified in Clause 26.2 or, in case of email to the Trustee or the Issuer, when received in legible form by the email address specified in Clause 26.2.

26.4 Failure to send a notice or other communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

### **26.5 Press releases**

26.6 Any notice that the Issuer or the Trustee shall send to the Holders pursuant to Clauses 12.3, 12.5, 14.13, 15.6, 16.3, 17.16, 18.1, 19.1, 20.3, paragraph (n) of Clause 21.2 (*Duties of the Trustee*) and paragraph (a) of Clause 21.4 (*Replacement of the Trustee*) shall also be published by way of press release by the Issuer or the Trustee, as applicable.

26.7 In addition to Clause 26.6, if any information relating to the Bonds, the Issuer or the Group contained in a notice that the Trustee may send to the Holders under these Terms and Conditions has not already been made public by way of a press release, the Trustee shall before it sends such information to the Holders give the Issuer the opportunity to issue a press release containing such information. If the Issuer does not promptly issue a press release and

the Trustee considers it necessary to issue a press release containing such information before it can lawfully send a notice containing such information to the Holders, the Trustee shall be entitled to issue such press release.

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

- 27.1 Neither the Trustee nor the Paying Agent shall be held responsible for any damage arising out of any legal enactment, or any measure taken by a public authority, or war, strike, lockout, boycott, blockade or any other similar circumstance (a “**Force Majeure Event**”). The reservation in respect of strikes, lockouts, boycotts and blockades applies even if the Trustee or the Paying Agent itself takes such measures, or is subject to such measures.
- 27.2 The Paying Agent shall have no liability to the Holders if it has observed reasonable care. The Paying Agent shall never be responsible for indirect damage with exception of gross negligence and wilful misconduct.
- 27.3 Should a Force Majeure Event arise which prevents the Trustee or the Paying Agent from taking any action required to comply with the Finance Documents, such action may be postponed until the obstacle has been removed.
- 27.4 The provisions in this Clause 27 apply unless they are inconsistent with the provisions of the applicable securities registration legislation which provisions shall take precedence.

## **28. GOVERNING LAW AND JURISDICTION**

- 28.1 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 Sweden.
- 28.2 Any dispute or claim arising in relation to these Terms and Conditions shall, subject to Clause 28.3, be determined by Swedish courts and the District Court of Stockholm shall be the court of first instance.
- 28.3 The submission to the jurisdiction of the Swedish courts shall not limit the right of the Trustee (or the Holders, as applicable) to take proceedings against the Issuer in any court which may otherwise exercise jurisdiction over the Issuer or any of its assets.

We hereby certify that the above Terms and Conditions are binding upon ourselves.

Place:

**The Issuer**

LifeFit Group MidCo GmbH

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

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

Place:

**The Trustee**

Nordic Trustee & Agency AB (publ)

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

## SCHEDULE 1 INTERCREDITOR TERM SHEET

Up to EUR 120,000,000 Senior Secured Callable Bonds 2019/2023 (the “**Bonds**”) and EUR [♦] super senior revolving credit facility agreement

These intercreditor principles should be read together with the term sheet for the Bonds (the “**Terms Sheet**”). Unless otherwise defined in this Schedule 1 (*Intercreditor principles*) (the “**ICA Term Sheet**”), term defined in the Term Sheet shall have the same meanings when used in this ICA Term Sheet.

**General:** To establish the relative rights of creditors under various financing arrangements, the Intercreditor Agreement will be entered into by:

1. the Issuer, [♦] and [♦] (the “**Original ICA Group Companies**”);
2. [[♦] (the “**Original Shareholder Creditor[s]**”);
3. [Nordic Trustee & Agency AB (publ)], acting as security agent (on behalf of the Secured Parties) (the “**Security Agent**”) and as Bonds agent (on behalf of the Bondholders) (the “**Bond Trustee**”);
4. [♦] as hedge counterparty (the “[**Original**] **Hedge Counterparty**”); and
5. [♦], as lender[s] under the Super Senior RCF (the “**Super Senior RCF Creditor[s]**”).

**Background:** The security securing the Secured Parties will (to the extent permitted by applicable law and practically possible) be a single security package which will be held pursuant to relevant law and intercreditor arrangements, and the Security Agent will be appointed as initial security agent to hold the security on behalf of the Secured Parties.

**Definitions:** “**Bonds Finance Documents**” means the Terms and Conditions, the Trustee Agreement, the Security Documents, the Intercreditor Agreement and any other document designated to be a Bonds Finance Document by the Issuer and the Trustee.

“**Debt**” means any indebtedness under or in connection with the Bonds, the Super Senior Debt (including any replacement debt referred to in “Replacement of debt” below) any Shareholder Debt and the Intercompany Debt.

“**Enforcement Action**” means any action of any kind to:

- (a) demand payment which has fallen due, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand all or any part of any Debt or Guarantee (other than as a result of it becoming unlawful for a Secured Party to perform its obligations under, or of any voluntary or mandatory prepayment under, the Senior Finance Documents);
- (b) recover all or any part of any Debt (including by exercising any set-off, save as required by law and normal netting and set-off transactions in the ordinary course of business);
- (c) exercise or enforce any enforcement right under the Transaction Security, in each case granted in relation to (or given in support of) all or any part of any Debt;

- (d) petition for (or take or support any other step which may lead to) an Insolvency Event;
- (e) sue, claim or bring proceedings against the Issuer, any Guarantor or any ICA Group Company in respect of recovering any Debt; or
- (f) in relation to any Hedging Obligation only, designate an Early Termination Date (as defined in the relevant Hedging Agreement) under any Hedging Agreement, or terminate, or close out any transaction under, any Hedging Agreements, prior to its stated maturity, or demand payment of any amount which would become payable on or following an Early Termination Date (as defined in the relevant Hedging Agreement) or any such termination or close-out, unless voluntary or in accordance with a partial termination in accordance with the terms of the Senior Finance Documents and not related to any default.

**“Final Discharge Date”** means the date when all principal, interest and any other costs or outstanding amounts under the Senior Finance Documents have been irrevocably discharged in full and that all commitments under the Senior Finance Documents have been cancelled or terminated.

**“Hedge Counterparty”** means [(i) the Original Hedge Counterparty and (ii)] any person who is or becomes a hedge counterparty pursuant to any Hedging Agreement and has acceded to the Intercreditor Agreement.

**“Hedging Agreement”** means any master agreement, confirmation, schedule or other agreement entered into or to be entered into by an ICA Group Company and a Hedge Counterparty in connection with protection against or benefit from fluctuation in any rate (including currency) or price, in respect of payments to be made under the Terms and Conditions or the Super Senior Documents (but not a derivative transaction for investment or speculative purposes).

**“Hedging Obligations”** means all present and future moneys, debts and liabilities due, owing or incurred from time to time by any Obligor to any Hedge Counterparty under or in connection with any Hedging Agreement.

**“ICA Group Companies”** means the Original ICA Group Companies and any other Group Company and/or entity which has acceded to the Intercreditor Agreement pursuant to the Senior Finance Documents.

**“Insolvency Event”** means that:

- (a) any Group Company is unable or admits inability to pay its debts as they fall due or is declared to be unable to pay its debts under applicable law, suspends making payments on its debts generally or, by reason of actual or anticipated financial difficulties, commences negotiations with its creditors generally (except for the Super Senior RCF Creditors or Senior Creditors) with a view to rescheduling its Financial Indebtedness;
- (b) a moratorium is declared in respect of the Financial Indebtedness of any Group Company;
- (c) any corporate action, legal proceedings or other procedures are taken (other than (i) proceedings or petitions which are being disputed in good faith and are discharged, stayed or dismissed within 60 days of

commencement or, if earlier, the date on which it is advertised, (ii) proceedings or petitions concerning a claim which is less than EUR 500,000, and (iii), in relation to Subsidiaries, solvent liquidations) in relation to:

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

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

**“Intercompany Debt”** means any intercompany loan between members of the Group.

**“Secured Obligations”** means all obligations of the Group outstanding from time to time under the Senior Finance Documents, both actual and contingent.

**“Senior Creditor”** means the Bondholders.

**“Senior Debt”** means all indebtedness outstanding to the Senior Creditors under the Bonds Finance Documents.

**“Senior Finance Documents”** means the Bonds Finance Documents and the Super Senior Documents.

**“Shareholder Creditor”** means [the Original Shareholder Creditor[s] and] any creditor being a direct or indirect shareholder of the Issuer which shall be subordinated pursuant to the Intercreditor Agreement.

**“Shareholder Debt”** means all present and future moneys, debts and liabilities due, owing or incurred from time to time by any member of the Group to any Shareholder Creditor, including any dividends and any advisory, monitoring or management fee.

**“Super Senior Creditor”** means each Super Senior RCF Creditor and each Hedge Counterparty.

**“Super Senior Debt”** means (i) all indebtedness outstanding to the Super Senior RCF Creditors under the Super Senior Documents and (ii) all indebtedness outstanding to a Hedge Counterparty (if any) under a Hedging Agreement.

**“Super Senior Documents”** means the Super Senior RCF, the Intercreditor Agreement, the Hedging Agreements (if any) and the Security Documents.

**“Super Senior RCF”** means any facility provided by a Super Senior RCF Creditor for the general corporate purposes of the Group in the maximum aggregate nominal amount of EUR 10,000,000 (or its equivalent in any other currency or currencies).

**“Transaction Security”** means the Security provided to the Secured Parties under the Security Documents.

“**Triggering Event**” means:

- (a) the occurrence of an event of default (however described) under any Senior Finance Document; or
- (b) a breach of any financial covenant under the Super Senior Documents.

**Ranking and priority:** Each of the parties to the Intercreditor Agreement will agree that the Secured Obligations owed by the ICA Group Companies to the Secured Parties and the other relevant parties shall rank in all respects in right and priority of payment in the following order:

- (a) *first*, the Super Senior Debt (*pari passu* between all indebtedness under the Super Senior Debt);
- (b) *secondly*, the Senior Debt (*pari passu* between all indebtedness under the Senior Debt);
- (c) *thirdly*, any liabilities raised in the form of Intercompany Debt; and
- (d) *fourthly*, any liabilities raised in the form of Shareholder Debt.

**Payment Block:** Following a Triggering Event and for as long as it is continuing or up until a written notice from the Super Senior RCF Creditor to the contrary, no payments may be made to or for the account of the Senior Creditors.

**Turnover:** The Intercreditor Agreement shall include provisions for turnover of payments received in conflict with this ICA Term Sheet.

**Hedging arrangements:** The Intercreditor Agreement will contain customary provisions regarding the hedging arrangements and the rights and obligations of the Hedge Counterparties, including without limitation (i) certain qualification requirements for Hedge Counterparties, (ii) any hedging agreement to be based on the 1992 or 2002 ISDA Master Agreement or any other framework which is similar in terms and effect and contain provisions regarding *inter alia* application of "Second Method" in case of termination event or event of default and provisions regarding "Automatic Early Termination" (or provisions similar in terms and effect), (iii) no voting rights and no enforcement rights for Hedge Counterparties, and (iv) restrictions on over-hedging.

**Subordination of Intercompany Debt:** Any Intercompany Debt shall be subordinated to the Secured Obligations (including with respect to maturity). Repayment of principal and payment of interest on Intercompany Debt not being subject to Transaction Security shall be allowed up until a Triggering Event. Payment of interest, but not repayment of principal, on Intercompany Debt subject to Transaction Security shall be allowed up until a Triggering Event. However, provided that payment of principal and interest on Intercompany Debt shall always be permitted if made for the purpose of serving Debt to the Secured Parties and such payment is made directly to the Secured Parties (represented by the Security Agent) for repayment of principal or payment of interest on such Debt owed to the Secured Parties.

**Subordination of Shareholder Debt:** Any Shareholder Debt shall be subordinated to the Secured Obligations and any repayment of, or payment of interest under, any Shareholder Debt shall be

subject to all Secured Obligations having been discharged in full (other than as permitted by the Senior Finance Documents).

**Replacement of Super Senior RCF:** The Issuer shall (after prior approval from the Super Senior RCF Creditor) from time to time be entitled to replace the Super Senior RCF in full or in part with another Super Senior RCF.

**Cancellation of Super Senior RCF:** To the extent the Issuer repurchases, amortises or otherwise repays the Bonds whereby the aggregate Nominal Amount of Bonds outstanding falls below sixty (60) per cent. of the aggregate Initial Nominal Amount, the Super Senior RCF Creditor may demand repayment and cancellation of the Super Senior RCF *pro rata* with such repurchase, amortisation or other repayment.

**Limitation on Secured Obligations and subordination:** All Transaction Security, Guarantees and subordination provisions in the Intercreditor Agreement shall be subject to applicable customary limitation language and parallel debt language (as applicable), including as required by the capital maintenance requirements under German corporate law and similar restrictions under German law.

**Appointment of security agent:** The Secured Parties will appoint and authorise the Security Agent to hold and to act as its agent with respect to the Security Documents, to the extent permitted by applicable law. The Security Agent's appointment and duties shall be subject to customary indemnities and limited to a customary scope of engagement.

**New security:** Any new security created (and guarantees and indemnities granted) in respect of any Secured Obligation shall be extended to and shared between the Secured Parties on a *pro rata* basis and in accordance with the ranking and priority set forth above.

**Enforcement:** The Intercreditor Agreement will contain provisions regulating the Secured Parties' respective rights to vote and instruct the Security Agent to enforce the Transaction Security, according to the following principles:

(a) **Enforcement Actions and Enforcement Instructions**

- (i) Other than as expressly permitted by the terms of the Intercreditor Agreement, no Secured Party may independently accelerate, seek payment and exercise other rights and powers to take Enforcement Actions under the Senior Finance Documents.
- (ii) The Security Agent may refrain from enforcing the Transaction Security or take other Enforcement Actions unless instructed otherwise by the Instructing Party in accordance with paragraph (b) below but always subject to paragraph (a)(iv) below.
- (iii) Subject to the Transaction Security or the Guarantees having become enforceable in accordance with its terms and subject to paragraph (b) below, the Instructing Party may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit, provided that the instructions are consistent with the Security Enforcement Objective.

- (iv) Notwithstanding anything to the contrary in paragraphs (a)-(b), the Senior Representative may only give any Enforcement Instructions if the proceeds to be received from the proposed Enforcement Action is expected to amount to or exceed the amount of the Super Senior Debt.
- (v) The Security Agent is entitled to rely on and comply with instructions given in accordance with this paragraph (a).

(b) **Consultation**

- (i) If either the Super Senior Representative or the Senior Representative wishes to issue Enforcement Instructions, such Representative shall deliver a copy of those proposed Enforcement Instructions (an "**Enforcement Proposal**") to the Security Agent and the Security Agent shall promptly forward such Enforcement Proposal to the other Representative.
- (ii) Subject to paragraph (b)(iii) below, if the Security Agent has received Conflicting Enforcement Instructions, the Security Agent shall promptly notify the Representatives and the Representatives will consult with each other and the Security Agent (as the case may be) in good faith for a period of not less than 30 days (or such shorter period as the Representatives may agree) (the "**Consultation Period**") from the earlier of (A) the date of the latest such Conflicting Enforcement Instruction and (B) the date falling ten (10) Business Days after the date on which the original Enforcement Proposal is delivered in accordance with paragraph (b)(i) above, with a view to agreeing instructions as to enforcement.
- (iii) The Representatives shall not be obliged to consult (or, in the case of (B) below, shall be obliged to consult for such shorter period as the Instructing Party may determine) in accordance with paragraph (b)(ii) above if:
  - (A) the Transaction Security or the Guarantees have become enforceable as a result of an Insolvency Event; or
  - (B) each of the Super Senior Creditors and the Bondholders (represented by the Bonds Agent), agree that no Consultation Period is required.
- (iv) If consultation has taken place during the Consultation Period there shall be no further obligation to consult and the Security Agent may act in accordance with the instructions as to enforcement then or previously received from the Instructing Party and the Instructing Party may issue instructions as to enforcement to the Security Agent at any time thereafter.
- (v) If (A) no enforcement instructions have been issued to the Security Agent from the Instructing Party within three (3) months from the end of the Consultation Period, or (B) no proceeds from an enforcement of the Transaction Security or the Guarantees

have been received by the Security Agent within six (6) months from the end of the Consultation Period, then the Super Senior Representative shall become the Instructing Party and be entitled to give Enforcement Instructions.

- (vi) If a Secured Party (acting reasonably) considers that the Security Agent is enforcing the Security in a manner which is not consistent with the Security Enforcement Objective, such Secured Party shall give notice to the other Secured Parties after which the Representatives and the Security Agent shall consult for a period of twenty (20) days (or such lesser period that the Secured Parties may agree) with a view to agreeing on the manner of enforcement.

(c) **Miscellaneous**

- (i) Upon an enforcement of the Transaction Security, the proceeds shall be distributed in accordance with the Application of Enforcement Proceeds set out below.
- (ii) Any Enforcement Action required to be taken by the Representative in accordance with agreed Enforcement Instructions pursuant to paragraph (b) above, shall be taken by such Representative at the request of the Security Agent.
- (iii) All security and/or guarantees or arrangement having similar effects may be released by the Security Agent, without the need for any further referral to or authority from anyone, upon any enforcement provided that the proceeds are distributed in accordance with the provisions set out in the Intercreditor Agreement.
- (iv) Nothing herein shall preclude the rights of the Super Senior Creditors or the Bond Trustee to join or intervene in or otherwise support any proceedings arising from insolvency proceedings or do such other things as may be necessary to maintain a claim or security, always as long as such action does not adversely affect the rights of the other Secured Creditors or the Security Agent and is not inconsistent with its obligations contained in the Intercreditor Agreement and each of the Super Senior Creditors and the Bond Trustee shall give prompt notice to the other of any action taken by it to join, intervene or otherwise support any such proceedings.
- (v) For avoidance of doubt, customary provisions regarding permitted (or required) actions once an Insolvency Event has occurred to be included in the Intercreditor Agreement.

**“Conflicting Enforcement Instructions”** means instructions (or proposed instructions) as to enforcement of the Transaction Security or the taking of any Enforcement Action delivered to the Security Agent by a Representative that are inconsistent with any other instruction (or proposed instruction) given as to the manner of enforcement (including any inconsistency as to the timeframe for realising value from an enforcement of the Transaction Security or the

Guarantees or a distressed disposal), it being understood that, for the purpose of triggering the consultation requirements under paragraph (b)(ii) above only and not for any other purpose (including, without limitation, determining the Instructing Party), the failure to give instructions by either the Super Senior Representative or Senior Representative will be deemed to be an instruction inconsistent with any other instructions given.

“**Enforcement Instructions**” means instructions as to enforcement (including the manner and timing of enforcement) given by a Representative to the Security Agent provided that instructions not to undertake enforcement or an absence of instructions as to enforcement shall not constitute "Enforcement Instructions".

“**Representative**” means the Senior Representative or the Super Senior Representative.

“**Senior Representative**” means, at any time, those Senior Creditors whose Senior Debt at that time aggregate more than 50 per cent. of the total Senior Debt at that time. The Bond Trustee shall represent all Bondholders and act on the instructions of and on behalf of the Bondholders.

“**Super Senior Representative**” means, at any time, holders of 66⅔% of the aggregate of:

- (a) the Super Senior RCF;
- (b) following a permitted termination or close out of any Hedging Obligation, the settlement amount of that Hedging Obligation to the extent that that settlement amount is due to the Hedge Counterparty and has not been paid by the relevant ICA Group Company; and
- (c) (following discharge in full of the Super Senior RCF only), the deemed settlement amount of the Hedging Obligations (that have not been closed out or terminated) at any time.

“**Instructing Party**” means the Senior Representative or, following replacement in accordance with paragraph (b)(v) above, the Super Senior Representative.

**Application of  
Enforcement  
Proceeds:**

The proceeds of any Enforcement Action (including but not limited to any proceeds received from any direct or indirect realisation or sale by the Security Agent of any assets being subject to Transaction Security, payments under any Guarantee or proceeds received in connection with bankruptcy or other insolvency proceedings) shall be paid to the Security Agent for application in the following order:

- (a) *firstly*, in or towards payment *pro rata* of unpaid fees, costs, expenses and indemnities payable by any Group Company to the Security Agent;
- (b) *secondly*, in or towards payment *pro rata* of unpaid fees, costs, expenses and indemnities payable by any Group Company to the Paying Agent, the Bond Trustee and any agent representing creditors under the Super Senior RCF;

- (c) *thirdly*, towards payment *pro rata* of accrued interest unpaid under the Super Senior Documents;
- (d) *fourthly*, towards payment *pro rata* of principal under the Super Senior Documents and any other costs or outstanding amounts under the Super Senior Documents, and any close out amount and any other outstanding amounts under the Hedging Obligations (if any);
- (e) *fifthly*, towards payment *pro rata* of accrued interest unpaid under the Senior Debt (interest due on an earlier Interest Payment Date to be paid before any interest due on a later Interest Payment Date);
- (f) *sixthly*, towards payment *pro rata* of principal under the Senior Debt;
- (g) *seventhly*, in or towards payment *pro rata* of any other costs or outstanding amounts unpaid under the Terms and Conditions and any Senior Debt documents;
- (h) *eighthly*, after the Final Discharge Date, towards payment *pro rata* of accrued interest unpaid and principal under the Intercompany Debt;
- (i) *ninthly*, after the Final Discharge Date, towards payment *pro rata* of accrued interest unpaid and principal under the Shareholder Debt; and
- (j) *tenthly*, after the Final Discharge Date, in payment of the surplus (if any) to the relevant ICA Group Company or other person entitled to it.

**Governing law:**

The Intercreditor Agreement shall be governed by German law or, if so elected by the Super Senior RCF Creditor, Swedish law.

The Issuer shall procure the delivery of a local law legal opinion on the capacity and due execution of each ICA Group Company which enters into or accedes to the Intercreditor Agreement and the validity and enforceability of the Intercreditor Agreement, issued by a reputable law firm.

**Miscellaneous:**

The Bond Trustee and the Super Senior RCF Creditor shall have a duty to inform the other creditor classes of any default or event of default which is continuing or any acceleration. The ICA Group Companies shall use all reasonable endeavours to facilitate any necessary establishment of new security or change of the Transaction Security pursuant to the Intercreditor Agreement. At any time following the occurrence of an Enforcement Action, an ICA Group Company shall, if requested by the Security Agent (acting on instruction by the Instructing Party), release and discharge any liabilities owed by another ICA Group Company to such ICA Group Company as specified by the Security Agent, by way of shareholders' contribution, forgiveness of liabilities, or in any other way deemed appropriate by the Security Agent.

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# Addresses

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