

**Terms and Conditions
of the Perpetual Subordinated Convertible Bonds
of Aktiengesellschaft**

Section 1 Description; Definitions

- (a) The Bonds are perpetual bonds with voluntary and mandatory conversion and shall not be called (*gekündigt*), redeemed (*zurückgezahlt*) or repurchased (*zurückgekauft*).
- (b) In these Terms and Conditions, the following terms have the meaning attributed to them below:

"**Additional Payment**" has the meaning set out in Section 7.

"**Affiliate**" means any Person affiliated within the meaning of Section 15 German Stock Corporation Act.

"**Aggregate Net Profits**" has the meaning set out in Section 7(a).

"**AktG**" means the German Stock Corporation Act (*Aktiengesetz*) as amended from time to time.

"**BaFin**" means the German Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) or any competent successor authority.

"**Bonds**" has the meaning set out in Section 2(a).

"**Business Day**" means any day (except Saturday or Sunday) on which (i) commercial banks and foreign exchange markets in Frankfurt am Main settle payments in Euro and, to the extent that the Bonds are kept in custody by Clearstream, on which (ii) Clearstream is open for business and operational and (iii) the Trans-European Automated Real-time Gross Settlement Express Transfer System 2 or a successor system replacing TARGET 2 (TARGET 2) is opened and operational.

"**Clearstream**" means Clearstream Banking AG, Frankfurt, Germany.

"**Closing**" means the acquisition of all Shares by the Investors.

"**Conditional Capital**" has the meaning set out in Section 9(a).

"**Conditional Capital Increase**" has the meaning set out in Section 9(b).

"**Consummated Shares**" are the Shares which were Determination Shares in a prior Determination Event.

"**Conversion Agent**" has the meaning set out in Section 12(a).

"**Conversion Notice**" has the meaning set out in Section 8(vii)(A).

"**Conversion Ratio**" resulting from a Determination Event means (less the number of Bonds converted or to be converted due to a prior Determination Event) divided by the aggregate number of Entitled Shares then multiplied by the number of Determination Shares of the relevant Determination Event and then divided by the Number of Settlement Shares resulting from such Determination Event. The

Conversion Ratio determines how many Partial Bonds convert into one Settlement Share.

"**Conversion Right**" means either a Conversion Right (Disposal) or a Conversion Right (Maximum Threshold).

"**Conversion Right (Disposal)**" has the meaning set out in Section 7(c)(ii).

"**Conversion Right (Maximum Threshold)**" has the meaning set out in Section 7(c)(i).

"**CRR**" means Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.

"**Determined Settlement Shares**" has the meaning set out in Section 7(c).

"**Determination Event (Disposal)**" has the meaning set out in Section 7(a)(i).

"**Determination Event**" means any of a Determination Event (Disposal), a Determination Event (Majority), a Determination Event (IPO), a Determination Event (Liquidation) and a Determination Event (Anniversary).

"**Determination Event (Anniversary)**" has the meaning set out in Section 7(a).

"**Determination Event (Majority)**" has the meaning set out in Section 7(a).

"**Determination Event (Disposal)**" has the meaning set out in Section 7(a).

"**Determination Event (IPO)**" has the meaning set out in Section 7(a).

"**Determination Event (Liquidation)**" has the meaning set out in Section 7(a).

"**Determination Shares**" has the meaning set out in Section 7(a).

"**Entitled Shares**" are the Shares which are not Consummated Shares, *i.e.* Shares which were not Determination Shares in a prior Determination Event (but excluding in any event any Shares issued upon conversion of a Bond).

"**Exit Proceeds per Share**" has the meaning set out in Section 7(a).

"**Fair Market Value**" of any securities that are listed or regularly traded on a recognized stock exchange means the volume weighted average price of such securities traded on such exchange over the 20 trading days ending two trading days prior to any date of determination.

"**Financial Year**" means the financial year as set out in the Issuer's articles of association.

"**Global Bond Certificate(s)**" has the meaning set out in Section 2(b).

"**Holder**" means the holder of a Partial Bond Certificate.

"**Holder Amount**" has the meaning set out in Section 7(a).

"**Holder Group**" means the Holder and its Affiliates.

"**Initial Conversion Agent**" has the meaning set out in Section 12(a).

"Initial Investors" means

and

"Initial Shares" means the Shares held by the Initial Investors immediately following Closing.

"InsO" means the German Insolvency Act (*Insolvenzordnung*) as amended from time to time.

"Interim Investors Agreement" means the interim investors agreement dated 22 September 2013, as amended by an assignment agreement in respect of the interim investors agreement and the funding commitment agreement, dated 22 November 2013, among the Initial Investors.

"Investors" means the Initial Investors and any future shareholder of the Issuer (excluding any person which exclusively holds Shares resulting from a conversion of Bonds), in each case including any of their Affiliates.

"IRR" has the meaning set out in Section 7(a).

"Issuer" is Aktiengesellschaft.

"Mandatory Conversion Date" has the meaning set out in Section 7(b).

"Mandatory Conversion Event" has the meaning set out in Section 7(b).

"Maximum Threshold" has the meaning set out Section 7(c).

"Net Present Value" has the meaning set out in Section 7(a).

"Number of Settlement Shares" has the meaning set out in Section 7(a).

"Number of Triggered Shares" has the meaning set out in Section 7(a).

"Occurrence Date" has the meaning set out in Section 7(a).

"Paying Agent" has the meaning set out in Section 12(a);

"Person" means any natural person, any partnership (including general partnership, limited partnership and limited liability partnership), any limited liability company, any corporation, any company, any association, any joint stock corporation, any trust, any unincorporated organization and any governmental authority.

"Present Value" has the meaning set out in Section 7(a).

"Principal Amount" means the nominal amount of a Bond resulting from the multiplication of the nominal amount of the Partial Bonds in the amount of with the number of Partial Bonds represented by the respective Bond.

"Qualified Shares" has the meaning set out in Section 7(a).

"Reduction Amount" has the meaning set out in Section 7(a).

"Regulatory Conversion" has the meaning set out in Section 6(a).

"Regulatory Conversion Date" has the meaning set out in Section 6(b).

"Regulatory Conversion Event" has the meaning set out in Section 6(a).

"**Related Party Transaction**" has the meaning set out in Section 11.

"**Remaining Shares**" has the meaning set out in Section 7(a).

"**Settlement Date**" means the date for delivery of any Settlement Shares pursuant to these Terms and Conditions, other than in the event of a mandatory conversion for regulatory reasons pursuant to Section 6, which will be the Mandatory Conversion Date or Voluntary Conversion Date, as the case may be, provided that if a Settlement Disruption Event occurs on the Settlement Date and delivery of any Settlement Shares cannot be effected, then the Settlement Date with respect to such Settlement Shares will be postponed until the first succeeding Business Day on which delivery can take place through the Principal Conversation Agent or in any other commercially reasonable manner.

"**Settlement Disruption Event**" means an event beyond the control of the Issuer as a result of which the Conversion Agent cannot effect the transfer of Settlement Shares.

"**Settlement Shares**" means the ordinary bearer shares of the Issuer each currently representing a portion of around EUR (DM) of the share capital of the Issuer.

"**Shares**" means the registered shares of the Issuer existing from time to time.

"**Shareholders' Agreement**" means the shareholders' agreement entered into among the Initial Investors on 30 September, 2013.

"**Share Threshold**" has the meaning set out in Section 7(a).

"**Terms and Conditions**" means these terms and conditions of the Bonds.

"**Voluntary Conversion Event**" has the meaning set out in Section 7(c).

"**Voluntary Conversion (Disposal)**" has the meaning set out in Section 7(c)(ii).

"**Voluntary Conversion (Maximum Threshold)**" has the meaning set out in Section 7(c)(i).

"**Voluntary Conversion Date**" has the meaning set out in Section 8(b)(v).

"**X**" has the meaning set out in Section 7(a).

Section 2 **General Provisions**

- (a) The Issuer issues bonds with mandatory conversion in the aggregate principal amount of

EUR

(in words: Euro

),

divided into bonds with a nominal amount of EUR each, which rank *pari passu* among themselves (the "**Bonds**", each a "**Partial Bond**").

- (b) The Bonds will be certificated during their entire term by a global bond certificate (the "**Global Bond Certificate**") without interest coupons. The Global Bond

Certificate is only valid if it bears the handwritten or facsimile signatures of two duly authorized representatives of the Issuer and is authenticated by the Paying Agent. Definitive Notes will not be issued.

- (c) The Global Bond Certificate will be kept in custody by or on behalf of Clearstream as a clearing system.
- (d) Any Holder, upon acquisition of any Bonds hereby declares its accession to the Shareholders' Agreement attached to these Terms and Conditions as **Annex 1** as a prospective shareholder with effect upon the acquisition of Settlement Shares, unless the Shareholders' Agreement is terminated prior to or in connection with such acquisition.

Section 3 Status

- (a) The Bonds are to serve for an indefinite term (subject to mandatory or voluntary conversion) as liable capital of the Issuer in the form of Additional Tier 1 instruments as defined in Articles 51 *et seqq.* of the CRR.
- (b) The Bonds constitute unsecured and subordinated obligations of the Issuer:
 - (i) In the event of the dissolution, the liquidation or the insolvency of the Issuer or composition proceedings or any other proceedings against the Issuer serving to avert insolvency, the obligations under the Bonds are subordinated to (A) any claims of any other current or future unsubordinated creditor of the Issuer, (B) any claims under instruments classified as Tier 2 instruments under the CRR, and (C) the claims set out in Section 39 paragraph 1 no 1 through 5 InsO, so that payments resulting from obligations under the Bonds shall only be made after (A) any claims of any other current or future unsubordinated creditor of the Issuer, (B) any claims under instruments classified as Tier 2 instruments under the CRR, and (C) the claims set out in Section 39 paragraph 1 no 1 through 5 InsO have been satisfied in full.
 - (ii) Prior to insolvency proceedings over the assets of the Issuer, payments resulting from obligations under the Bonds, if any, may only be requested if and to the extent that such payment can be made from future net profits, a liquidation surplus or other free assets of the Issuer.
 - (iii) No Holder is entitled to set off claims under Bonds against claims of the Issuer.
 - (iv) No security or guarantee is provided to the Holders for their rights under the Bonds either by the Issuer, its subsidiaries, by any other person listed in Article 53(e) CRR or by any other third parties; no such security or guarantee will be provided or may be requested at a later date.
- (c) The Bonds may not be called (*gekündigt*), redeemed (*zurückgezahlt*) or repurchased (*zurückgekauft*), unless where the conditions laid down in Article 77 CRR are met (and in no case before five years after the date of issuance of the Bonds except where the conditions laid down in Article 78(4) CRR are met). If the Bonds are redeemed prior to maturity or repurchased by the Issuer in violation of

this Section 3(c), the paid amount must be refunded to the Issuer by the respective Holder irrespective of any agreement to the contrary.

- (d) The Bonds are subject to a mandatory conversion in case a Regulatory Conversion Event occurs.
- (e) The subordination of the obligations of the Issuer under each Bond as specified in Section 3(b) shall be subject to the condition subsequent of the conversion of the Bonds and terminates with respect to the converted Bonds with retroactive effect as of the date of issue of the Bonds at the end of the day immediately preceding the relevant date of conversion.
- (f) The subordination of the obligations of the Issuer under each Bond may not be limited subsequently and the term of the Bonds may not be reduced subsequently.

Section 4 Payments

- (a) All payments under the Bonds shall be made in Euro.
- (b) If the due date for payment of any amount with respect to the Bonds is not a Business Day, then the Holders shall not be entitled to payment until the next Business Day. In such case, the Holders shall not be entitled to interest or any other compensation on account of such later due date.

Section 5 Taxation

All payments under the Bonds to Holders that are non-residents for tax purposes and do not have a permanent establishment in Germany leading to a limited income tax or corporate income tax liability, shall be made without withholding or deduction for, or on account of, any present or future taxes, duties or charges of any nature whatsoever.

Section 6 Mandatory Conversion for Regulatory Reasons

- (a) Regulatory Conversion Event, Mandatory Conversion

A "**Regulatory Conversion Event**" shall occur upon the Common Equity Tier 1 capital ratio in accordance with Article 92(2)(a) CRR (or any successor provision thereunder) of the Issuer falling below %.

Upon a Regulatory Conversion Event all Bonds shall be mandatorily converted into one (1) Settlement Share per Holder in accordance with this Section 6 (the "**Regulatory Conversion**").

- (b) Notices

Upon the occurrence of a Regulatory Conversion Event the Issuer shall, without undue delay (*unverzüglich*), notify

- (i) the competent authorities;
- (ii) the Holders pursuant to Section 13 (including the underlying calculation and financial information); and
- (iii) the Conversion Agent

of the fact that a Regulatory Conversion Event has occurred and the Regulatory Conversion Date (as defined below).

"Regulatory Conversion Date" means the Business day so designated by the Issuer and notified to the Holders in the notice pursuant to Section 6(b)(ii). The Regulatory Conversion Date may be determined by the Issuer in its sole discretion, but may in no event fall on a date later than the date one month following the day on which the Issuer has determined the occurrence of the Regulatory Conversion Event.

(c) Conversion Procedures

- (i) The delivery of Settlement Shares by the Issuer upon the mandatory regulatory conversion is made in lieu of any payment of principal of the Bonds and shall constitute a discharge of the Issuer from its corresponding obligation to repay the Principal Amount of the Bonds in cash. Accordingly, as of the day of the occurrence of the Regulatory Conversion Event, a Holder shall not have any right to require the repayment of the Principal Amount of the Bonds, but only the right to require the delivery of the Settlement Share pursuant to Section 9.
- (ii) For purposes of the mandatory regulatory conversion, all Bonds must be either (i) transferred to the Clearstream securities account of the Conversion Agent or (ii) transferred from the respective Holder's securities account with the Conversion Agent. With the acquisition and booking of any Bonds to the securities account of a Holder, the respective Holder (to the extent that there is no prior general authorization) instructs and authorizes its custodian bank to execute such transfer, to ensure that the custodian bank shall be obligated to transfer such Bonds to the securities account of the Conversion Agent as set out in the previous sentence, in any event without prior notice to the respective Holder. The Bonds shall be transferred to the Conversion Agent to be held for the account of the Holder for transfer to the Issuer. With such transfer, each Holder instructs and authorizes the Conversion Agent to (A) mandatorily convert the transferred Bonds into Settlement Shares and (B) issue the exercise notice pursuant to Section 198 paragraph 1 AktG and/or the subscription certificate pursuant to Sections 203 paragraph 1, 185 paragraph 1 AktG on behalf of the Holder.
- (iii) The authorization of the respective Holder's custodian bank and the Conversion Agent pursuant to Section 6(c)(ii) shall be unconditional and irrevocable and is binding on each Holder.
- (iv) The Conversion Agent shall exercise the mandatory regulatory conversion with effect on the Regulatory Conversion Date.
- (v) Subject to Section 6(c)(i), the delivery of the Settlement Shares will be made to the Conversion Agent for onward-delivery and transfer to a securities account of the respective Holder or a person designated earlier in writing by the Holder. Prior to transfer the Holder is not entitled to claims attached to the Settlement Shares.
- (vi) The delivery of the Settlement Shares is subject to the respective Holders paying all transfer taxes and similar duties, if any, which may be imposed in

connection with the mandatory regulatory conversion and the delivery of the Settlement Share by the Conversion Agent.

- (vii) After delivery of the respective Settlement Share, the Issuer shall register the Holder or the third person designated by the Holder as the holder of the Settlement Share with the share register.

The Issuer will cancel each Bond duly converted in accordance with this Section 6(c).

Section 7 Mandatory Conversion for other Reasons, Voluntary Conversion

Subject to any Regulatory Conversion in accordance with Section 6, the Bonds may be converted into Shares, in accordance with this Section 7. Depending on the applicable Conversion Ratio, the aggregate Number of Settlement Shares which the Bonds will be converted into in accordance with this Section 7 will range between one (1) Settlement Share and Settlement Shares (as increased on a *pro rata* basis in case of the issuance of any Shares by the Issuer (other than as part of a conversion of the Bonds), *i.e.* divided by the number of Shares prior to such issuance and multiplied by the number of Shares then existing).

If upon any conversion of Bonds, a number of Bonds shall convert into a number of Shares which exceeds the number of Bonds, the respective Holder shall be obliged to pay to the Issuer (and the conversion shall be subject to such payment having been made before) EUR per each Share (such payment, the “**Additional Payment**”) by which the number of Bonds to convert is exceeded.

(a) Determination of Number of Settlement Shares

The Number of Settlement Shares resulting from a Determination Event shall be determined following the occurrence of any Determination Event.

A “**Determination Event**” shall occur either:

- (i) upon the disposal of Entitled Shares by an Investor (whether in a single transaction, a series of transactions or a number of separate transactions effected from and after the Closing) in an aggregate amount exceeding the Share Threshold, if
 - (A) the IRR of the respective Investor is at least %; or
 - (B) the disposal results in the participation of the relevant Investor not holding any Entitled Shares

(the “**Determination Event (Disposal)**”)

provided that

- (C) such disposal shall only be deemed a Determination Event (Disposal) if it is not made in connection with a Determination Event other than a Determination Event (Disposal); and
- (D) a disposal of Entitled Shares by such Investor subsequent to a disposal in excess of the Share Threshold in which the relevant IRR

was below % shall qualify as a Determination Event (Disposal) if such subsequent disposal results in the IRR being at least %.

- (ii) upon any disposal of Entitled Shares or other transaction resulting in any one or more Person(s) (other than a Person jointly owned by all Investors) owning (directly or indirectly through an Affiliate) (collectively) more than % of all Shares (the "**Determination Event (Majority)**");
- (iii) upon public offering and listing of Shares (whether fully or partially) on any securities exchange if the IRR with respect to each Investor is at least % (the "**Determination Event (IPO)**");
- (iv) upon the dissolution of the Issuer pursuant to Section 262 of the German Stock Corporation Act (*AktG*) (the "**Determination Event (Liquidation)**"); and
- (v) upon the 8th anniversary of the Closing (the "**Determination Event (Anniversary)**"), i.e. on September 30, 2022.

provided that

- (vi) upon the occurrence of a Determination Event (Disposal), such Determination Event shall be deemed to have occurred with respect to the entire portion of the Entitled Shares of the respective disposing Investor (even if such Investor has disposed of any Shares prior to the Determination Event (Disposal)); and
- (vii) upon the occurrence of a Determination Event other than a Determination Event (Disposal), such Determination Event shall be deemed to have occurred with respect to the entire portion of the Entitled Shares of any Investor (other than an Investor with respect to which a Determination Event (Disposal) had occurred prior to such Determination Event).

(the Entitled Shares with respect to which a Determination Event has occurred or deemed to have occurred, the "**Determination Shares**")

"**Share Threshold**" means an amount of % of the maximum number of Shares of the respective Investor held at any time prior to the disposal;

"**IRR**" means with respect to an Investor the rate of return that makes the Net Present Value of all cash flows (both positive and negative) in connection with its investment in the Shares (including transaction fees (but excluding any payment made pursuant to section 8(b) of the Interim Investors Agreement among the Investors) and expenses incurred and any collateral funding required for potential payment obligation in connections with such investment) equal to zero provided that:

- (i) "**Net Present Value**" means the sum of the Present Values of all the individual cash flows of the series;
- (ii) "**Present Value**" means the nominal value of the cash flow at the Occurrence Date divided by $(1+IRR)^x$;
- (iii) "**Occurrence Date**" is the date on which a cash flow occurs;

- (iv) "X" means the time in years, expressed as a decimal, between the date on which the Investor became a shareholder of the Issuer and the Occurrence Date;
- (v) with respect to any Entitled Shares held by an Investor immediately prior to the occurrence of a Determination Event but not disposed of as part of the Determination Event (the "**Remaining Shares**") the following shall apply:
 - (A) in case of a Determination Event (Disposal) or Determination Event (Majority), the respective Investor shall be deemed to have received with respect to each Remaining Share the cash purchase price (or the Fair Market Value of any marketable securities) per Share received by Investors in the transaction triggering the Determination Event (Disposal) or Determination Event (Majority), as the case may be;
 - (B) in case of a Determination Event (IPO), the Investor shall be deemed to have disposed of all its Remaining Shares upon the completion of the Determination Event (IPO) at the issuance price per Share;
 - (C) in case of a Determination Event (Anniversary), the respective Investor shall be deemed to have disposed of each Remaining Share either (i) if the Shares are then admitted to trading on a recognized stock exchange, for its Fair Market Value, or (ii) if the Shares are not admitted for trading at any stock exchange, for the net asset value of the Issuer to be derived from its latest audited financial statements divided by the number of Shares;
 - (D) in case of a Determination Event (Liquidation), the respective Investor shall be deemed to have disposed of each Remaining Share at the Exit Proceeds per Share applicable in case of a Determination Event (Liquidation)

in each case (A) through (D) taking into consideration the dilution which will occur upon the conversion of the Partial Bonds (or a portion thereof) into Settlement Shares (it being understood that in cases (A), (B) and alternative (i) of (C) such dilution is already reflected in the respective value without requiring further adjustment).

- (vi) if Shares are disposed of for marketable securities, such marketable securities will be deemed to constitute cash flow equal to such securities' Fair Market Value.

In order to determine the Conversion Ratio for the Bonds or any portion thereof which will be applied upon a Mandatory Conversion Event or a Voluntary Conversion Event, the Number of Settlement Shares is determined in relation to a Determination Event as follows:

"**Number of Settlement Shares**" means the lower of

- (i) the maximum number of Shares which could be issued without representing % or more of the aggregate number of Shares following such issuance; and
- (ii) the higher of (i) the Number of Triggered Shares and (ii) one Share.

"Number of Triggered Shares" means a number of Shares (rounded to a full number) corresponding to the Holder Amount divided by the Exit Proceeds per Share.

"Holder Amount" means % of the Aggregate Net Profits minus the Reduction Amount.

"Reduction Amount" means divided by the aggregate number of Initial Shares and then multiplied by the number of Initial Shares which are Qualified Shares.

"Exit Proceeds per Share" means

- (i) in case of a Determination Event (Disposal) or Determination Event (Majority), the cash purchase price (or the Fair Market Value of any marketable securities) per Share received by the Investor(s) in the transaction triggering the Determination Event (Disposal) or Determination Event (Majority), as the case may be;
- (ii) in case of a Determination Event (IPO) the issuance price per Share;
- (iii) in case of a Determination Event (Liquidation) the aggregate amount of net liquidation proceeds *divided* by the aggregate number of Shares; and
- (iv) in case of a Determination Event (Anniversary), either (i) if the Shares are then admitted to trading on a recognized stock exchange, the Fair Market Value per Share, or (ii) if the Shares are not admitted for trading at any stock exchange, for the net asset value of the Issuer to be derived from its latest audited financial statements divided by the number of Shares;

in each case (i) through (iv) taking into consideration the dilution which will occur upon the conversion of the Partial Bonds (or a portion thereof) into Settlement Shares (it being understood that in cases (i), (ii) and alternative (i) of (iv) such dilution is already reflected in the respective value without requiring further adjustment).

"Aggregate Net Profits" means the balance of all cash flows (both positive and negative) of the Investor(s) holding Qualified Shares in connection with its or their investment in the Shares (including transaction fees (however, excluding any payment made pursuant to section 8(b) of the Interim Investors Agreement among the Investors) and expenses incurred and any collateral funding required for potential payment obligation in connections with such investment), provided that with respect to Remaining Shares subparagraph (v) of the IRR definition shall apply accordingly.

"Qualified Shares" means all Determination Shares of Investors with respect to whom the IRR is at least %.

(b) Mandatory Conversion

The Issuer shall immediately, i.e. within 5 Business Days from the occurrence of a Mandatory Conversion Event at the latest, notify

- (i) the Holders of such occurrence pursuant to Section 13;

- (ii) the number of Bonds the mandatory conversion of which is necessary to effect the respective mandatory conversion in its entirety pursuant to the below terms; and
- (iii) the Holders in writing of the individual steps for the exercise of the mandatory conversion.

In this case and save for Section 7(c), the Issuer and the Conversion Agent shall, in cooperation with the Holder and pursuant to Section 8(a), exercise the mandatory conversion of a number of Bonds in accordance with this Section 7(b). Fractions of Settlement Shares will not be delivered and will not be compensated in cash.

"Mandatory Conversion Date" means the Business day falling 5 Business Days following the date on which the notice pursuant to Section 7(b)(i) is issued following a Mandatory Conversion Event.

"Mandatory Conversion Event" means any Determination Event other than a Determination Event (Disposal).

Upon the occurrence of any Mandatory Conversion Event,

- (i) a mandatory conversion shall only be effected if and to the extent such mandatory conversion does not result in the Maximum Threshold being exceeded; and
- (ii) a number of Bonds determined on the basis of the applicable Conversion Ratio multiplied with the fraction of (A) the Number of Settlement Shares resulting from the relevant Determination Event to be converted upon the Mandatory Conversion Event (as numerator) and (B) the aggregate Number of Settlement Shares resulting from the relevant Determination Event (as denominator), shall convert into the Number of Settlement Shares to be converted upon the Mandatory Conversion Event.

In any event provided that upon the occurrence of a Regulatory Conversion Event all Bonds shall be mandatorily converted in accordance with the provisions of Section 6.

(c) Voluntary Conversion

In the event of the occurrence of a Voluntary Conversion Event, the Issuer grants to each Holder the right to convert each Bond in accordance with this Section 7(c) by giving a Conversion Notice on any Business Day. The Conversion Agent will determine the Number of Settlement Shares to be delivered per Bond by the Issuer on conversion (including fractions of Settlement Shares). Fractions of Settlement Shares for the aggregate number of Bonds delivered by a Holder for conversion shall be aggregated, and the result of such aggregation shall be rounded down to the next full Settlement Share. Any remaining fraction of a Settlement Share arising after such aggregation will not be delivered and will not be compensated in cash.

A **"Voluntary Conversion Event"** shall occur either:

- (i) upon the occurrence of any Mandatory Conversion Event, if and to the extent such Mandatory Conversion Event results in the Maximum

Threshold being exceeded, in which case such mandatory conversion shall be postponed and converted into a conversion right (the "**Conversion Right (Maximum Threshold)**") which may be exercised by the Holder at any time (the "**Voluntary Conversion (Maximum Threshold)**") in accordance with Section 8(b), however, provided that the Conversion Ratio to be applied to such Voluntary Conversion (Maximum Threshold) shall be equal to the Conversion Ratio as determined with respect to such Mandatory Conversion Event; or

- (ii) upon the occurrence of a Determination Event (Disposal) (the "**Conversion Right (Disposal)**")

provided that

- (A) the Conversion Right (Disposal) may only be exercised together with or following the occurrence of a Mandatory Conversion Event and shall be deemed to have been fully exercised (after having become exercisable) and the respective Holder shall be obligated to take all steps as set out in Section 8(b) in any event (i) at the latest upon the respective Holder (and any of its Affiliates) having disposed of all its Shares or (ii) if the respective Holder (and any of its Affiliates) does not own any Shares (the "**Voluntary Conversion (Disposal)**");
- (B) the Conversion Ratio to be applied to such Voluntary Conversion (Disposal) shall be equal to the Conversion Ratio as determined with respect to such Determination Event (Disposal); and
- (C) to the extent that there are more than one (1) Holders of the same Holder Group at the time of occurrence of the Mandatory Conversion Event, the number of Bonds per Holder of such Holder Group subject to the Conversion Right (Maximum Threshold) shall be determined on a *pro rata* basis.

"**Maximum Threshold**" means a (direct or indirect through an Affiliate) participation of a Holder in the Issuer in the aggregate amount of % of all Shares minus a number of Shares corresponding to the number of Shares held by the respective Holder Group plus one Share.

In any event provided that upon the occurrence of a Regulatory Conversion Event all Bonds shall be mandatorily converted in accordance with the provisions of Section 6. However, in such event the respective Holder may determine (by sending a notice to that effect to the Conversion Agent) within 5 Business Days following the Regulatory Conversion Event to receive a number of Settlement Shares determined pursuant to the Conversion Ratio applicable to the respective Mandatory Conversion Event or the Determination Event (Disposal), as the case may be, in accordance with Section 7(a) (the "**Determined Settlement Shares**").

Section 8 Conversion Procedures

(a) Mandatory Conversion

- (i) The delivery of Settlement Shares by the Issuer upon the mandatory conversion pursuant to Section 7(b) is made in lieu of any payment of

principal of the Bonds and shall constitute a discharge of the Issuer from its corresponding obligation to repay the Principal Amount of the Bonds in cash. Accordingly, as of the day of the occurrence of a Mandatory Conversion Event, a Holder shall not have any right to require the repayment of the Principal Amount of the Bonds, but only the right to require the delivery of the Settlement Shares pursuant to Section 7.

- (ii) For purposes of the mandatory conversion, the Bonds mandatorily converted must be transferred to the Conversion Agent. The Bonds shall be transferred to the Conversion Agent to be held for the account of the Holder for transfer to the Issuer.
- (iii) Each Holder instructs and authorizes the Conversion Agent to mandatorily convert the delivered Bonds into Settlement Shares pursuant to and in conformity with the Conversion Notice issued by the respective Holder. The authorization of the Conversion Agent shall be unconditional and irrevocable and is binding on each Holder.
- (iv) The Conversion Agent shall exercise the mandatory conversion with effect on the relevant Settlement Date.
- (v) Subject to Section 8(a)(vii), the delivery of the Settlement Shares will be made to the Conversion Agent for onward-delivery and transfer to the respective Holder or a person designated earlier in writing by the Holder.
- (vi) The Issuer will pay all transfer taxes and similar duties, if any, which may be imposed in connection with the mandatory conversion and the delivery of the Settlement Shares by the Conversion Agent.
- (vii) In case of a mandatory conversion pursuant to Section 7(b) each Holder shall, by 10:00 hours (CET) on the third (3rd) Business Day following the date on which the notice to the Holders pursuant to Section 7(b) sentence 1(i) is received:
 - (A) issue a written notice and/or a declaration ("**Conversion Notice**") to the Conversion Agent, containing the direction of the Holder to sign the exercise notice pursuant to Section 198 paragraph 1 AktG and/or the subscription certificate pursuant to Sections 203 paragraph 1, 185 paragraph 1 AktG on behalf of the Holder;
 - (B) make any Additional Payment to the Conversion Agent; and
 - (C) deliver the respective Bonds to the Conversion Agent pursuant to Section 8(a)(ii).

In the event of the fulfillment of the duties of each Holder pursuant to Section 8(a)(vii)(A) through (C), the Conversion Agent shall determine the Number of Settlement Shares (including fractions of Settlement Shares) to be delivered per Bond by the Issuer upon the exercise of the mandatory conversion.

In this case, fractions of Settlement Shares for the aggregate number of Bonds delivered by a Holder for mandatory conversion shall be aggregated, and the result of such aggregation shall be rounded down to the next full

Settlement Share. Any remaining fraction of a Settlement Share arising after such aggregation will not be delivered and will not be compensated in cash.

In the case of a notice by a Holder pursuant to Section 8(a)(vii)(A) and a delivery pursuant to Section 8(a)(vii)(C), the Issuer will deliver the Number of Settlement Shares as determined in accordance with this Section 8(a)(vii) on the Settlement Date to the Conversion Agent for delivery and transfer to such Holder or a person earlier designated in writing by the Holder. After delivery of the Settlement Shares, the Issuer shall register the Holder or the third person designated by the Holder as the holder of the Settlement Shares with the share register.

The Issuer will cancel each Bond duly converted in accordance with this Section 8(a)(vii).

(b) Voluntary Conversion

- (i) To exercise the Conversion Right pursuant to Section 7(c), the Holder must deliver at its own expense during normal business hours to the Conversion Agent a duly completed and executed Conversion Notice.

The Conversion Notice is irrevocable and will, among other things:

- (A) specify the number of Bonds with respect to which the Conversion Right will be exercised; and
- (B) specify the directions of the Holders to sign on behalf of the Holder the exercise notice pursuant to Sec. 198 paragraph 1 AktG and/or the subscription certificate pursuant to Secs. 203 paragraph 1, 185 paragraph 1 AktG.
- (ii) The exercise of the Conversion Right further requires that the Bonds for which the Conversion Right is intended to be exercised will be delivered to the Conversion Agent. The Holder authorizes and instructs the Conversion Agent to exercise the voluntary conversion of the delivered Bonds into Settlement Shares pursuant to and in conformity with Conversion Notice issued by the respective Holder.
- (iii) Upon fulfilment of all requirements specified in Section 8(b)(i) and (ii) for the exercise of the Conversion Right, the Conversion Agent will verify whether the total number of Bonds delivered to the Conversion Agent matches, exceeds or falls short of the total number of Bonds specified on the Conversion Notice. In the event of any such excess or shortfall, the Conversion Agent will arrange to deliver to the Holder the lower of (A) such total Number of Settlement Shares which corresponds to the number of Bonds set forth in the Conversion Notice, or (B) such total Number of Settlement Shares which corresponds to the number of Bonds in fact delivered. Any Bonds delivered in excess of the number of Bonds specified in the Conversion Notice will be returned to the Holder.
- (iv) The Holder shall not be entitled to exercise the Conversion Right to the extent the issuance of Settlement Shares resulting therefrom would result in the Maximum Threshold being exceeded. To the extent that there is more than one Holder of the same Holder Group at the time of occurrence of the

Mandatory Conversion Event, the Maximum Threshold shall be determined on a *pro rata* basis in proportion to the relation between the nominal amounts of the shareholdings of the respective Holders of such Holder Group.

- (v) The Conversion Right will be validly exercised on the relevant Voluntary Conversion Date. The right of the Holder exercising the Conversion Right to convert a Bond will terminate upon the valid exercise of the Conversion Right; instead, the Issuer will be obliged to deliver Settlement Shares.

"Voluntary Conversion Date" means the Business Day on which the last of the prerequisites specified in Section 8(b)(i), (ii) and (iii) for the exercise of the Conversion Right by the Holder has been fulfilled.

- (vi) Upon any exercise of the Conversion Right, the Issuer will issue the Number of Settlement Shares as determined in accordance with Section 7(a) and this Section 8(b) on the Settlement Date to the Conversion Agent for transfer and delivery to the Holder or a person designated earlier in writing by the Holder. After delivery of the Settlement Shares, the Issuer shall register the Holder or the third person designated by the Holder as the holder of the Settlement Shares with the share register.

The Issuer will cancel each Bond duly converted in accordance with this Section 8(b).

- (vii) The Issuer will pay all transfer taxes and similar duties, if any, which may be imposed in connection with the voluntary mandatory conversion and the delivery of the Settlement Shares by the Conversion Agent.

Section 9 Adjustment of Conditional Capital

- (a) The shares to be delivered upon conversion in accordance with the terms of these Terms and Conditions will derive from (i) the conditional capital created pursuant to the resolution of the shareholders meeting held on 1 October 2014 in an amount of EUR or (ii) future conditional capital (the "**Conditional Capital**") of the Issuer; rights to full dividends for the Financial Year in which they were issued and all following Financial Years will be attached to such Shares.
- (b) To the extent any capital increase pursuant to Sections 182 *et seqq.* AktG shall be effected, the managing board (*Vorstand*) of the Issuer shall include a proposal regarding an increase of the Conditional Capital (the "**Conditional Capital Increase**") in the relevant invitation for the general meeting that shall resolve about such capital increase at least on a *pro rata* basis in proportion to such intended capital increase.
- (c) The Issuer will procure delivery of the Settlement Shares through the Conversion Agent. In the event of a conversion pursuant to Section 7, Settlement Shares are to be provided in the order of receipt of the Conversion Notice and, in case of concurrent receipt, on a *pro rata* basis in proportion to the nominal amounts of the Bonds concerned. In the event of a mandatory conversion for regulatory reasons pursuant to Section 6 Determined Settlement Shares are to be provided on a *pro*

rata basis in proportion to the number of Determined Settlement Shares each relevant Holder is entitled to.

- (d) To the extent that the Issuer is unable to deliver Settlement Shares to the Holders, the rights of each respective Holder of a Bond to the delivery of Settlement Shares shall be deferred until a delivery of Settlement Shares is possible again.

Section 10 Termination

To the extent legally permissible, the termination of the Bonds by a Holder shall be excluded with a view to the purpose of the Bonds to serve as liable capital.

Section 11 Related Party Transactions

For the purposes of this Terms and Conditions, any transfer of Shares by an Investor on the one hand to an Affiliate of such Investor on the other hand or between two Affiliates of such Investor (each a “**Related Party Transaction**”) shall not have any economic effect under these Terms and Conditions and therefore be deemed as having not occurred where and to the extent appropriate. In particular, any transfer of Shares in a Related Party Transaction shall be deemed not to constitute a disposal for purposes of these Terms and Conditions, and any subsequent disposal by the Affiliated transferee shall be deemed a disposal by the initial Investor.

Section 12 Paying Agent; Conversion Agent

- (a) _____ will be the paying agent (the “**Paying Agent**”) and the initial conversion agent (the “**Initial Conversion Agent**” and, together with any additional conversion agents appointed by the Issuer pursuant to paragraph (b), the “**Conversion Agent**”). The address of the offices of the Initial Conversion Agent is:

The Conversion Agent is exempt from the restrictions set forth in Section 181 German Civil Code (*Bürgerliches Gesetzbuch*) and any similar restrictions of laws applicable in other jurisdictions.

In no event may the office of a Conversion Agent be located within the United States or its possessions.

- (b) The Issuer is obligated upon written demand and with the consent of all Holders to appoint other banks of international standing as Conversion Agent. Furthermore, the Issuer is obligated upon written demand and with the consent of all Holders to terminate the appointment of a bank as Conversion Agent. Such appointment or termination shall be published without undue delay pursuant to Section 13.
- (c) All determinations, calculations and adjustments made by the Conversion Agent will be made in conjunction with the Issuer and will, in the absence of any

incorrectness and to the extent that the Holders agree, be conclusive and binding upon the Issuer and all Holders.

The Conversion Agent may engage the services of any lawyers or other experts whose advice or services it deems necessary and may rely upon any advice so obtained. The Conversion Agent will not assume any liability against the Issuer and/or the Holders in connection with any actions taken or not taken in good faith in accordance with such advice.

- (d) The Conversion Agent acting in such capacity acts exclusively as agent of the Issuer. There is no agency or fiduciary relationship between the Conversion Agent and the Holders except for the implementation of the conversion of the Bonds.

Section 13 Notices

- (a) The Issuer shall transmit all notices concerning the Bonds to the Holders via fax or overnight courier.
- (b) Holders must notify the Issuer of any changes of their address and/or fax number in writing. Future Holders must notify the Issuer of their address and fax number in writing. Up until such notice, the current address and/or the address of the current Holder notified to the Issuer are deemed valid.

Section 14 Miscellaneous

- (a) If and to the extent that any amendments to these Terms and Conditions are required due to regulatory changes, requests by BaFin or any other competent authority, or for any other reason, in order for the Bonds to continue to qualify as Additional Tier 1 capital within the meaning of the CRR, the Issuer and the Holders shall use all commercially reasonable efforts to implement such changes to these Terms of Conditions as soon as reasonably practicable.
- (b) The form and content of the Bonds as well as all rights and obligations arising from these Terms and Conditions for the Holders and the Issuer shall in all respects be governed by, and construed in accordance with, German law.
- (c) The District Court of Frankfurt am Main shall have non-exclusive jurisdiction for all legal disputes arising in connection with the Bonds.
- (d) If any court of competent jurisdiction holds any provision of these Terms and Conditions invalid or unenforceable, the other provisions of these Terms and Conditions shall remain in full force and effect. It is the express intent of the Parties that the validity and enforceability of all other provisions of these Terms and Conditions shall be maintained and that this Section 14 (d) shall not merely result in a reversal of the burden of proof but that Section 139 of the German Civil Code (*BGB*) is hereby excluded in its entirety.