

[•] 2019

[NEWCO2]

and

**NYRSTAR NV**

and

**THE LAW DEBENTURE TRUST CORPORATION p.l.c.**

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**DEED OF WAIVER**

**relating to the  
EUR 115 million 5.00 per cent. Convertible  
Bonds due 2022  
convertible into Ordinary Shares of Nyrstar NV**

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**Freshfields Bruckhaus Deringer**

Freshfields Bruckhaus Deringer LLP  
65 Fleet Street  
London EC4Y 1HS

This Deed of Waiver is made on [●] 2019

**BETWEEN:**

- (1) **NYRSTAR NV**, a Belgian corporation (*naamloze vennootschap / societe anonyme*) registered with the register of legal persons (*rechtspersonenregister / registre des personnes morales*) under enterprise number (*ondernemingsnummer / numero d'entreprise*) RPR/RPM 0888.728.945 (Turnhout)) (the **Original Issuer**);
- (2) **[NEWCO2]** (the **Co-Obligor**); and
- (3) **THE LAW DEBENTURE TRUST CORPORATION p.l.c.** acting in its capacity as trustee of the trust created by the Trust Deed (as defined below) (in such capacity the **Trustee**).

**WHEREAS:**

- (A) On 11 July 2016, the Original Issuer authorised the issue of EUR 115 million 5.00 per cent. senior (guaranteed) unsecured convertible bonds due 2022 (the **Bonds**) which are constituted by a trust deed dated 11 July 2016 and made between the Original Issuer and the Trustee (as supplemented by the Supplemental Trust Deed referred to below, the **Trust Deed**).
- (B) The Original Issuer has undertaken a comprehensive capital structure review, and has reached agreement with certain members of its key stakeholder groups in respect of a financial restructuring. Details of the financial restructuring (the **Restructuring**) are set out in the press release issued by the Original Issuer and made available on its website ([www.nyrstar.com](http://www.nyrstar.com)) on 15 April 2019.
- (C) On 14 April 2019, the Original Issuer, Nyrstar Netherlands (Holdings) B.V., Nyrstar Sales & Marketing AG, Trafigura Pte Ltd, certain holders the 8.5% senior notes due 2019 and 6.875% senior notes due 2024 each issued by Nyrstar Netherlands (Holdings) B.V. (the **High Yield Bonds**) and certain holders of the Bonds entered into a lock-up agreement (the **Lock-Up Agreement**).
- (D) Pursuant to a Resolution passed at a meeting of the Bondholders held on 21 May 2019 (the **Meeting of the Bondholders**), the parties agreed to modify the Trust Deed and the Conditions pursuant to a supplemental trust deed to provide for, *inter alia*, the Co-Obligor to accede as a co-obligor on a joint and several basis with the Original Issuer in respect of the primary obligation to pay principal, interest, premium and other amounts payable in respect of the Bonds and the Trust Deed (the **Supplemental Trust Deed**). The Supplemental Trust Deed is dated on around the date of this Deed of Waiver.

**NOW THIS DEED WITNESSETH** and it is hereby agreed and declared as follows:

**1. DEFINITIONS AND INTERPRETATIONS**

- 1.1 All words and expressions defined in the Trust Deed shall where the context so requires and admits have the same meaning in this Deed of Waiver and the

principles of construction specified in the Trust Deed shall where the context so requires and admits also apply to this Deed of Waiver.

## 2. WAIVER OF CERTAIN EVENTS OF DEFAULT OR POTENTIAL EVENTS OF DEFAULT

2.1 Pursuant to the direction given to it at the Meeting of the Bondholders, the Trustee hereby irrevocably grants a waiver of any Event of Default or Potential Event of Default under the Trust Deed that may have arisen or may arise:

- (a) under Condition 9(c)(ii) or (iii) in respect of the failure to pay (when due) or at the end of any applicable grace period any other present or future indebtedness of the Original Issuer or any of the Guarantors or any of the Issuer's Material Subsidiaries for or in respect of moneys borrowed or raised (or under any guarantee for moneys borrowed or raised), if such indebtedness is not permitted to be paid pursuant to the terms of the Lock-Up Agreement (including, but not limited to, the failure to pay the March 2019 coupon payment under the High Yield Bonds);
- (b) under Condition 9(f) in relation to any events or circumstances relating to the Restructuring including the negotiation, entry into or performance of the Lock-Up Agreement;
- (c) under Condition 9(g) in relation to any order or corporate action which is contemplated by and consistent with the Lock-Up Agreement; or
- (d) as a result of any failure to notify the Trustee pursuant to Clause 10.1.3 of the Trust Deed (or otherwise) of any of the Events of Default or Potential Events of Default specified in (a) through (c) above,

in each case for the duration of the Support Period (as defined below) (together, the *Waivers*).

2.2 Upon the expiration of the Support Period the Waivers shall be automatically annulled without any action by any party and any deemed or actual Event of Default or Potential Event of Default that occurred relating to the Waivers and any consequences thereof shall be reinstated as if such Event of Default or Potential Event of Default had been continuing since the date it originally occurred.

2.3 For the purposes of this Clause 2, the *Support Period* means the period ending upon the earlier of: (a) the termination of the Lock-Up Agreement in accordance with its terms; and (b) 31 August 2019

2.4 For the avoidance of doubt, this Deed of Waiver is given without prejudice to any rights, powers and remedies in respect of any breach or proposed breach of any of the covenants or provisions of the Trust Deed or the Conditions not within the scope of Clause 2.1 above.

2.5 All of the Trustee's rights, powers and remedies under the Trust Deed and the Conditions are expressly reserved, for and on behalf of itself and the

Bondholders. Failure to take immediate action does not constitute a waiver of the Trustee's rights or the rights of the Bondholders.

**3. EXPENSES**

- 3.1 The Original Issuer (failing whom each of the Guarantors) will reimburse the Trustee in accordance with clauses 11.2 and 11.3 of the Trust Deed for all fees, costs and expenses properly incurred by it in connection with the negotiation, preparation and execution of this Deed of Waiver and any related documentation and the circumstances relating thereto (including the fees and expenses of legal advisors and any applicable value added taxes).

**4. GOVERNING LAW AND JURISDICTION**

- 4.1 The provisions relating to governing law and jurisdiction in clause 21 (*Applicable Law and Dispute Resolution*) of the Trust Deed shall apply, *mutatis mutandis*, to this Deed of Waiver.

**5. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person shall have any right to enforce any provision of this Deed of Waiver under the Contracts (Rights of Third Parties) Act 1999.

**6. COUNTERPARTS**

This Deed of Waiver may be executed in any number of counterparts, each of which shall be deemed an original.

**IN WITNESS WHEREOF** this Deed of Waiver has been executed as a deed by the parties hereto and is intended to be and is hereby delivered on the day first before written.

**EXECUTED AND DELIVERED** )  
as a deed for and on behalf of )  
**NYRSTAR NV** )

**EXECUTED AND DELIVERED** )  
as a deed for and on behalf of )  
**[NEWCO2]** )

acting by two directors or by a director and secretary:

Director:

Director/Secretary:

Acting solely in accordance with the direction of the Bondholders given by way of the Resolution passed at meeting of the Bondholders held on 21 May 2019, the Trustee hereby executes this Deed of Waiver and grants the waivers set out in clause 2 (*Waiver of certain Events of Default or Potential Events of Default*) of this Deed:

The common seal of **THE LAW** )  
**DEBENTURE TRUST CORPORATION** )  
**p.l.c.** was affixed to this Deed in the )  
presence of: )

Director:

Name:

Authorised signatory name: