

[•] 2019

[NEWCO2]

and

NYRSTAR NV

and

THE LAW DEBENTURE TRUST CORPORATION p.l.c

FIRST SUPPLEMENTAL TRUST DEED

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



Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer LLP
65 Fleet Street
London EC4Y 1HS

This Supplemental Trust Deed is made on [●] 2019

BETWEEN:

- (1) NYRSTAR (the *Original Issuer*);
- (2) [NEWCO2] (the *Acceding 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) This Supplemental Trust Deed is supplemental to a trust deed (the *Trust Deed*) dated 11 July 2016 and made between the Original Issuer, 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), and the Trustee constituting EUR 115 million 5.00 per cent. senior (guaranteed) unsecured convertible bonds due 2022 (ISIN: BE6288132101) (the *Bonds*).
- (B) The Bonds are convertible and/or exchangeable into new or existing ordinary shares of the Original Issuer (the *Ordinary Shares*), in accordance with the Conditions (as defined in the Trust Deed).
- (C) Pursuant to Resolutions passed at a meeting of the Bondholders held on 21 May 2019 (the *21 May Resolution*), the parties hereto have agreed to modify the Trust Deed and the Conditions to allow the Acceding 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 with effect from the date of this Supplemental Trust Deed.

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 Supplemental Trust Deed and the principles of construction specified in Clause 1.2 of the Trust Deed shall where the context so requires and admits also apply to this Supplemental Trust Deed. In addition, the following expressions shall have the following meanings:

Lock-Up Agreement means the lock-up agreement dated on (or about) 14 April 2019, between, among others, 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. and certain holders of the Bonds.

2. Assumption of Primary Debt Obligation on a Joint and Several Basis

- 2.1. With effect from the date of this Supplemental Trust Deed, the Acceding Co-Obligor agrees to be bound by the terms of the Trust Deed, the Bonds and the Coupons as fully as if the Acceding Co-Obligor had been named in the Trust Deed and on the Bonds and the Coupons as principal debtor (and not merely a surety) alongside the Original Issuer on a joint and several basis, and accordingly shall assume a primary obligation (on a joint and several basis with the Original Issuer) to pay all principal, interest and premium in respect of the Bonds and any other amounts payable to the Trustee pursuant to the provisions of the Trust Deed.
- 2.2. Subject to Clause 3 below, the Acceding Co-Obligor shall assume all the rights and obligations of the Original Issuer under the Trust Deed and the Conditions, save that the following provisions of the Trust Deed shall not apply to the Acceding Co-Obligor:
 - (a) Condition 5 (*Conversion of Bonds*), and any related provisions relating to delivery of an Optional Redemption Notice, Shareholder Event Notice, Change of Control Notice, Conversion Rights, Ordinary Shares and any conversion and the delivery of Ordinary Shares;
 - (b) the definitions of “Change of Control” and “Ordinary Shares”;
 - (c) Condition 10 (*Undertakings*);
 - (d) Clauses 8 (*Conversion Rights*) and 9 (*Covenants relating to Conversion Rights*);
 - (e) any undertaking contained in Clause 10 (*Covenants*) which provides for the delivery of any form of document, notice or other information or for the preparation and/or provision of any financial statements or accounts; and
 - (f) any right contained in Clause 16.2 (*Substitution*) which gives the Issuer the right to request a substitution of the Original Issuer as Issuer.
- 2.3 For the avoidance of doubt, the proviso to Clause 2.2(e) above shall not affect the right of the Trustee to require any opinions, certificates and/or information regarding the Acceding Co-Obligor from the Issuer under clause 10.1.1 of the Trust Deed, or any other provision contained in clause 10 (*Covenants*) of the Trust Deed.

3. Relationship of the Acceding Co-Obligor with the Provisions for Meetings of the Bondholders

- 3.1. The Acceding Co-Obligor hereto acknowledges the operation of the Code in relation to meetings of the Bondholders convened in accordance with the provisions of Condition 13(a) (*Meetings of Bondholders*) and Schedule 4 of

the Trust Deed (*Provisions for Meetings of the Bondholders*) (the **Relevant Provisions**), and their applicability to the Original Issuer as a Belgian corporation (*naamloze vennootschap / societe anonyme*).

- 3.2. Notwithstanding any other provision of the Supplemental Trust Deed, the Acceding Co-Obligor shall have no rights or obligations in relation to any meeting of the Bondholders convened in accordance with the Relevant Provisions (whether with respect to the giving of notice, the conduct of proceedings, attendance or otherwise), save that any Resolution (including a Written Resolution and the 20 May Resolution) shall be binding on it, and the Acceding Co-Obligor undertakes to comply with the terms of any such Resolution, Written Resolution and the 20 May Resolution. The Relevant Provisions shall be read and construed accordingly.
- 3.3. The Original Issuer shall not exercise any right it has in connection with the Relevant Provisions without first obtaining the prior written consent of the Acceding Co-Obligor and the Acceding Co-Obligor shall have the right to direct the Original Issuer to call a meeting of the Bondholders in accordance with the Relevant Provisions, provided that such rights of consent or direction shall be subject to any overriding provisions of Belgian law.
- 3.4. In addition to the provisions set out in Clause 12 of the Trust Deed, the Trustee:
 - (a) may assume that the Original Issuer has obtained the Co-Obligor's prior written consent when exercising any rights it has in connection with the Relevant Provisions; and
 - (b) shall not be liable to any person (including the Co-Obligor) by reason of having acted upon any Resolution, any Written Resolution and/or the 20 May Resolution or any other resolution purporting to have been passed at any meeting of the holders of the Bonds in respect whereof minutes have been made and signed even though it may be found that the Acceding Co-Obligor had not given its prior written consent to the Original Issuer (as contemplated by Clause 3.3 above).

4. Covenants

- 4.1 Each of the Original Issuer and the Acceding Co-Obligor shall notify the Trustee in writing forthwith upon the termination of the Lock-Up Agreement in accordance with its terms and shall provide the Trustee with a copy of the Lock-Up Agreement upon reasonable request.

5. Relationship with the Trust Deed

This Supplemental Trust Deed is supplemental to the Trust Deed and, subject to the amendments to be effected to the Trust Deed hereunder, the Trust Deed and the Bonds shall remain in full force and effect and the Trust Deed and this Supplemental Trust Deed shall be read and construed together as one deed. A memorandum of this Supplemental Trust Deed shall be endorsed on the original of the Trust Deed by the Trustee and on the duplicate thereof by the Original Issuer.

6. Relationship between Acceding Co-Obligor and Original Issuer

In order to facilitate the English Scheme and the Restructuring (each as defined in the convening notice dated 6 May 2019 in relation to the meeting at which the 21 May Resolution was passed), the Acceding Co-Obligor and the Original Issuer agree as between themselves upon the accession of the Acceding Co-Obligor as a primary obligor taking effect pursuant to this Supplemental Trust Deed, that if the Acceding Co-Obligor later procures the release of the Bonds (other than by payment of sums due under the Bonds), no contribution claim from the Original Issuer to the Acceding Co-Obligor will arise upon such release (or vice-versa if the Original Issuer procures the release of the Bonds (other than by payment of sums due under the Bonds))

7. Notices

For the purposes of Clause 20 (*Communications*) of the Trust Deed, the notice details of the Acceding Co-Obligor shall be as follows:

[NewCo2]

[•]

Email: [•]

8. Governing Law and Jurisdiction

7.1 Clause 21.1 (*Governing law*) of the Trust Deed shall apply, *mutatis mutandis*, to this Supplemental Trust Deed.

7.2 With effect from the date hereof, clause 21.2.1 (*Jurisdiction*) of the Trust Deed shall be deleted and replaced with the following:

"The courts of England and Wales shall have exclusive jurisdiction to settle any disputes that arise out of or in connection with the Trust Deed and the Bonds, and accordingly any legal action or proceedings arising out of or in connection with the Trust Deed and the Bonds (*Proceedings*) may be brought in such courts. The Original Issuer, the Acceding Co-Obligor and the Trustee (in its own capacity as such and on behalf of the Bondholders) irrevocably submit to the jurisdiction of such courts and waive any objection to Proceedings in such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. Notwithstanding the foregoing, Belgian courts have exclusive jurisdiction over matters concerning the validity of decisions of the board of directors of the Original Issuer, of the general meeting of Shareholders of the Original Issuer and of the general meeting of Bondholders."

9. Contracts (Rights of Third Parties) Act 1999

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

10. Counterparts

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

IN WITNESS WHEREOF this Supplemental Trust Deed 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)
[NEWCO])

acting by two directors or by a director and secretary:

Director:

Director/Secretary:

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: