

**AGREEMENT REGARDING MUTUAL UNDERTAKINGS**

between

**ZEAL Network SE, London, United Kingdom**

and

**Othello Vier Beteiligungs GmbH & Co. KG, Hamburg, Germany**

and

**Othello Drei Beteiligungs GmbH & Co. KG, Hamburg, Germany**

relating to the acquisition of shares in

**Lotto24 AG, Hamburg, Germany**

dated

**19 November 2018**

**AGREEMENT REGARDING MUTUAL UNDERTAKINGS  
(THE "AGREEMENT")**

between

**ZEAL Network SE**, 5th Floor, One New Change, London EC4M 9AF, United Kingdom, registered at Companies House under SE000078, jointly represented by the members of its Executive Board,

– "Offeror" –

and

**Othello Vier Beteiligungs GmbH & Co. KG, Hamburg**, Steinhöft 11, 20459 Hamburg, Germany, registered in the Commercial Register (*Handelsregister*) of the Local Court (*Amtsgericht*) of Hamburg under HRA 117761, represented by its general partner (*Komplementär*), Günther Consulting GmbH, Steinhöft 11, 20459 Hamburg, Germany, registered in the Commercial Register (*Handelsregister*) of the Local Court (*Amtsgericht*) of Hamburg under HRB 100832, represented by its managing directors

– "Target Shareholder" –

and

**Othello Drei Beteiligungs GmbH & Co. KG, Hamburg**, Steinhöft 11, 20459 Hamburg, Germany, registered in the Commercial Register (*Handelsregister*) of the Local Court (*Amtsgericht*) of Hamburg under HRA 108918, represented by its general partner (*Komplementär*), Othello Drei Beteiligungs-Management GmbH, Steinhöft 11, 20459 Hamburg, Germany, registered in the Commercial Register (*Handelsregister*) of the Local Court (*Amtsgericht*) of Hamburg under HRB 106367, represented by its managing directors

– "Shareholder" –

– the Offeror, the Target Shareholder and the Shareholder each individually a "**Party**"  
and collectively the "**Parties**" –

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## PREAMBLE

- (A) The Offeror is a Societas Europaea with its registered office in England and Wales. Its shares are admitted to trading on the Regulated Market of the Frankfurt Stock Exchange ("**FSE**") under ISIN GB00BHD66J44, but not on any other stock exchange. Trading of the Offeror's shares is effected in the form of so-called Clearstream Interests issued by Clearstream Banking AG, Frankfurt am Main, Germany, acting as nominee for the Offeror's shareholders.
- (B) Lotto24 AG, Straßenbahnring 11, 20251 Hamburg, Germany, is a stock corporation (*Aktiengesellschaft*) under German law ("**Target**"). The Target has its registered seat (*Sitz der Gesellschaft*) in Hamburg, Germany, and is registered in the Commercial Register (*Handelsregister*) of the Local Court (*Amtsgericht*) of Hamburg under HRB 123037. The stated capital (*Grundkapital*) of the Target amounts to EUR 24,154,890 and is divided into 24,154,890 ordinary no-par-value registered shares (*auf den Namen lautende Stammaktien ohne Nennbetrag*) (collectively "**Shares**", and each individually "**Share**"). The Shares are admitted to trading on the Regulated Market of the FSE under ISIN DE000LTT0243, but not on any other stock exchange. The Target Shareholder owns 10.054.316 Shares representing approximately 41.62% of the stated capital of the Target ("**Target Shareholder Shares**"). All Target Shareholder Shares are currently pledged in favour of certain financing banks (the "**Share Pledges**"). It is the Target Shareholder's intention that the Share Pledges will be released before consummation and settlement of the Intended Transaction (as defined below in Preamble (E)).
- (C) The Shareholder owns shares in the Offeror representing approximately 10.22% of the Offeror's share capital.
- (D) The Offeror intends to announce a voluntary takeover offer for all Shares pursuant to Section 29 (1) of the German Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz – "WpÜG"*) ("**Takeover Offer**") pursuant to Section 10 WpÜG on even date herewith (the actual date of the announcement the "**Announcement Date**").



- (E) In accordance with the terms of this Agreement, the Target Shareholder intends to sell and transfer the Target Shareholder Shares to the Offeror by accepting, consummating and settling the Takeover Offer ("**Intended Transaction**").
- (F) The consideration offered in the Takeover Offer for the Shares held by the shareholders of the Target, including the Target Shareholder, is intended (i) to be in the form of newly issued shares ("**Consideration Shares**") in the Offeror and (ii) to reflect the 3-month volume weighted average price of both the shares of the Offeror and the Target as of the Announcement Date ("**Consideration**").
- (G) The settlement of the Takeover Offer is intended to be made subject (*aufschiebende Bedingung*) only to (i) merger clearance, (ii) minimum acceptance threshold of 50% plus one share (iii) the Ministry of the Interior and Sports of Lower Saxony granting a new permit to, or extending an existing permit (or confirming in writing that no extension is required) of, the Target and/or a company which is or can be controlled or consolidated by the Offeror ("**Offeror Group Company**"), to broker lotteries under section 4 and 19 of the State Treaty of Games of Chance (*Glücksspielstaatsvertrag*) to the effect that the Target and/or the Offeror Group Company are also allowed to broker lotteries via the domain [www.tipp24.com](http://www.tipp24.com), (iv) the Ministry of the Interior and Sports of Lower Saxony consenting to (or confirming in writing that no consent is required) the commissioning of an Offeror Group Company by the Target and/or another Offeror Group Company with the provision of certain services in the context of brokering lotteries in Germany and (v) the absence of a material increase of the Target's stated capital (*Grundkapital*), including the issuance of conversion or similar rights.
- (H) Except as otherwise stated in this Agreement, (i) the tender of the Target Shareholder Shares into the Takeover Offer is intended to be subject to the same terms, conditions and procedures as the tender of other Shares, and (ii) the Target Shareholder is intended to benefit from any amendment, revision, extension, or improvement of the Takeover Offer to the same extent as any other person tendering Shares.
- (I) The settlement of the Takeover Offer is intended to be structured to ensure that the voting rights attached to the Target Shareholder Shares are attributed to the Target Shareholder as long as (i) such voting rights are not yet attributed to the Offeror and (ii) the voting rights attached to the Consideration Shares are not yet attributed to the Target Shareholder.
- (J) The Offeror intends to enter into customary irrevocable undertaking agreements ("**Additional Undertakings**") regarding the tender of the Shares held by Mr Jens Schumann (representing approximately 3.65% of the stated capital of the Target) as well as High Street Partners, Ltd. and Working Capital Partners, Ltd. (jointly representing approximately 19.71% of the stated capital of the Target) into the Takeover Offer.
- (K) As a result of the Intended Transaction, by way of acceptance of the Consideration, the combined shareholding of the Target Shareholder and the Shareholder in the Offeror would reach or exceed 30%. The Target Shareholder is willing to enter into the Intended Transaction only subject to a dispensation of the Target Shareholder and all persons acting in concert with it (for the purposes of the UK City code on Takeovers and Mergers ("**Takeover Code**") from the obligation to make a general offer for the shares in the Offeror, such dispensation to be granted by way of a whitewash resolution of the independent shareholders of the Offeror pursuant to Note 1 of the Notes on Dispensations from Rule 9 of the Takeover Code, with the approval by the Panel on Takeovers and Mergers ("**Whitewash**"). The Offeror is willing to take the necessary steps to implement the Whitewash.
- (L) The Parties intend to enter into certain further undertakings and covenants in connection with the Intended Transaction.

Therefore, the Parties hereto agree as follows:



**§ 1**  
**Undertakings of the Target Shareholder**

- 1.1 The Target Shareholder undertakes to the Offeror to accept the Takeover Offer for the Target Shareholder Shares (i) not later than five days on which commercial banks are open for business (other than only by online access) in Frankfurt am Main, Germany ("**Business Days**") after the beginning of the acceptance period (*Annahmefrist*) pursuant to Section 16 (1) sentence 2 WpÜG, provided that such acceptance is compliant with applicable closed periods to which the Target and its directors and persons related to directors are subject under Regulation No 596/2014 on market abuse (MAR), and (ii) in any event no later than on the second last Business Day of the acceptance period (subject to and after any extensions of the acceptance period, if applicable) ("**Acceptance**").
- 1.2 The Target Shareholder is only obligated to accept the Takeover Offer if
- 1.2.1 it conforms to the intentions set out in Preamble (D) to (I); and
- 1.2.2 the Offeror has entered into the Additional Undertakings, provided that such Additional Undertakings (i) must neither (y) be subject to conditions in excess of the conditions set out in this § 1.2, nor (z) provide for withdrawal rights of the relevant offeree in excess of the withdrawal rights set out under § 10 and (ii) contain, inter alia, undertakings of the relevant offeree to the Offeror which are substantially identical to the undertakings of the Target Shareholder set out in (x) § 1.3 below and (y) § 7.2.2 below (being subject to the limitation set out in § 7.3); and
- 1.2.3 the Whitewash has been approved.
- 1.3 The Target Shareholder further undertakes to the Offeror not to (i) offer, sell, transfer, charge, pledge or grant any option over or otherwise dispose of any interest in the Target Shareholder Shares, whether directly or indirectly, except to the Offeror, (ii) solicit or accept any other offer (public or private) directly or indirectly relating to any of the Target Shareholder Shares, (iii) directly or indirectly solicit proposals or offers from third parties for the direct or indirect acquisition of Shares, or (iv) other than in accordance with § 10 withdraw from the Acceptance, regardless of whether or not a right of withdrawal is available pursuant to the Takeover Offer or applicable statutory law and regardless of whether or not any offer for the acquisition of Shares has been announced by any third party, irrespective of the consideration payable pursuant to such offer.
- 1.4 The Offeror is entitled to include in the terms of the Takeover Offer and public announcement related to it the fact that the Target Shareholder has undertaken to accept the Takeover Offer and to abstain from disposing of any of the Target Shareholder Shares other than to the Offeror.
- 1.5 The Target Shareholder undertakes not to acquire, and to procure that none of its Affiliates (as defined in § 14.3) acquire, any Shares, options or other financial instruments in the Target as from the date of this Agreement ("**Signing Date**") for a period of 24 months after the time of completion of the Takeover Offer (such date of completion the "**Settlement Date**"), except as required by, or as required in order to comply with obligations under, statutory law.
- 1.6 The Target Shareholder moreover undertakes to provide to the Offeror on request with all information as the Offeror may reasonably require (considering the legitimate interests of the Target Shareholder and its Affiliates, in particular their interest in confidentiality) for the



preparation of any document or announcement to be issued by or on behalf of the Offeror in connection with the Takeover Offer.

## § 2

### Undertakings of the Offeror

- 2.1 Subject to the approval of the Whitewash by the independent shareholders of the Offeror, the Offeror undertakes to the Target Shareholder (i) to settle the Takeover Offer (which, for the avoidance of doubt, the Offeror shall be under no obligation to launch) in accordance with its terms, any (further) applicable legal requirements and the intentions set out in Preamble (D) to (I) as promptly as reasonably possible, and (ii) not to take any action that would have the effect of delaying, impairing or impeding the settlement of the Takeover Offer, and, in particular, (iii) not to withdraw from or otherwise nullify the Takeover Offer, regardless of whether a right of withdrawal and/or nullification is available pursuant to the Takeover Offer or applicable statutory law and regardless of whether or not any offer for the acquisition of Shares has been announced by any third party, irrespective of the consideration payable pursuant to such offer.
- 2.2 The Offeror further undertakes to the Target Shareholder not to acquire any Shares (including shares issued by the Target in the future) for a consideration exceeding the Consideration for a period of 24 months following the Settlement Date except (i) in connection with a squeeze-out of the minority shareholders (*Übertragung der Aktien der Minderheitsaktionäre*) of the Target, (ii) in connection with the conclusion of a domination and profit and loss transfer agreement (*Beherrschungs- und Gewinnabführungsvertrag*) or (iii) otherwise with the prior consent of the Target Shareholder.
- 2.3 Subject to the approval of the Whitewash by the independent shareholders of the Offeror, the Offeror undertakes to the Target Shareholder not to (i) waive any of the conditions to which the Takeover Offer will be subject to nor (ii) to change the acceptance threshold set out in Preamble (G)(ii), in each case without the prior written approval (which shall include approval via email) by the Target Shareholder. Such approval by the Target Shareholder shall release the Offeror from any obligation pursuant to this Agreement to have the Takeover Offer conform to the respective intention set out in Preamble (G) and shall invalidate any right of the Target Shareholder pursuant to this Agreement which would arise from the Takeover Offer not conforming to such intention.
- 2.4 The Offeror undertakes to the Target Shareholder within a period of three years from the Settlement Date neither to propose nor to support any resolution, nor to implement any measure, except for a measure which must be implemented under a resolution passed by the general meeting of the Offeror, which would cause the percentage of the sum of all voting shares in the Offeror held by the Target Shareholder and its Affiliates in the total number of issued and outstanding voting shares in the Offeror (the "**Target Shareholder Voting Shares Percentage**") to drop below (i) 33%; or, should the Target Shareholder Voting Shares Percentage upon settlement of the Takeover Offer (the "**Settlement Date Target Shareholder Voting Shares Percentage**") be smaller than 33%, (ii) the Settlement Date Target Shareholder Voting Shares Percentage. This undertaking shall not apply to any resolution of the general meeting of the Offeror authorising its directors to allot equity securities for cash subject to an offer of such securities to existing shareholders on a pre-emptive basis.



- 2.5 In the event that the Target Shareholder and/or any Affiliate of the Target Shareholder and/or any person acting in concert within the meaning of section 2(5) WpÜG with the Target Shareholder and/or any of its Affiliates should upon or after the Settlement Date be obliged under applicable laws to issue a mandatory takeover offer for shares in the Target because the Target Shareholder and/or any of its Affiliates acquire control over the Target within the meaning of sections 29(2), 30 WpÜG (after having lost the control existing on the date hereof) as a consequence of the Offeror becoming a subsidiary (*Tochterunternehmen* within the meaning of section 2(5) WpÜG – "**Subsidiary**") of the Target Shareholder and/or of any of its Affiliates and/or any person acting in concert within the meaning of section 2(5) WpÜG with the Target Shareholder and/or any of its Affiliates, the Offeror undertakes to the Target Shareholder
- 2.5.1 not to tender, and to procure that none of its Subsidiaries tender, any shares in the Target held by the Offeror or any of its Subsidiaries (as the case may be) in the context of such mandatory offer; and
- 2.5.2 to make all declarations, and to procure that its relevant Subsidiaries make all declarations, which are required under applicable laws and/or by the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*; "**BaFin**") to ensure that the financing confirmation to be issued by the Offeror and/or its Affiliates and/or any person acting in concert within the meaning of section 2(5) WpÜG with the Target Shareholder and/or any of its Affiliates in accordance with section 13 WpÜG does not have to cover the offer price which would otherwise be payable under the relevant mandatory offer for the shares in the Target being held by the Offeror or any of its Subsidiaries (as the case may be).

### § 3

#### Guarantee Undertakings of the Offeror to the Target Shareholder; Liability of the Offeror

- 3.1 The Offeror hereby guarantees by way of an independent guarantee undertaking (*verschuldensunabhängiges selbständiges Garantieverprechen*) according to Section 311 (1) of the German Civil Code (*Bürgerliches Gesetzbuch* – "**BGB**") to the Target Shareholder that the following statements contained in this § 3.1 are accurate, in each case on the Signing Date and on the Settlement Date, unless otherwise specified below:
- 3.1.1 The Offeror has been duly established and validly exists.
- 3.1.2 The Offeror has the unrestricted right, power, authority and capacity to execute, consummate and settle this Agreement. The execution and consummation of this Agreement and the execution, consummation and settlement of the Intended Transaction by the Offeror do not violate the articles of association or other corporate documents, as the case may be, or any other legal obligation of the Offeror.
- 3.1.3 No insolvency or similar proceedings have been, or have been threatened to be, opened or applied for regarding the Offeror or its assets.
- 3.1.4 This Agreement constitutes legal, valid and binding obligations of the Offeror enforceable in accordance with its terms.
- 3.1.5 Neither the Offeror nor any of its Affiliates will make any public or private offer for Shares, including the Target Shareholder Shares, other than the Takeover Offer until the Settlement Date.



- 3.2 In the event of (i) an inaccuracy of any of the guarantee undertakings by the Offeror in § 3.1 and/or (ii) a breach of any of the undertakings of the Offeror in § 2, § 7, § 8 and § 9, in each case irrespective of any responsibility (*Verantwortlichkeit*) on the Offeror's part, the Offeror shall put the Target Shareholder in the same position it would be in had the undertaking(s) been accurate or were the undertaking(s) not breached, either by providing for such position in kind (*Naturalrestitution*), or, at the election of the Target Shareholder, by paying to the Target Shareholder an amount necessary to hold harmless (*schadlos stellen*) the Target Shareholder against all Losses (as defined below) which it would not have suffered if the respective undertaking(s) had been accurate or were the undertaking(s) not breached (*Schadensersatz in Geld*). "Losses" shall mean all liabilities, reasonable costs and expenses and other damages within the meaning of Section 249 BGB, excluding, however, lost profits (*entgangener Gewinn*) and other consequential or indirect damages (*Folgeschäden, mittelbare Schäden*), frustrated expenses (*vergebliche Aufwendungen*) within the meaning of Sec. 284 BGB, and internal administration and overhead costs. For the avoidance of doubt, the right of the Target Shareholder to assert specific performance (*Erfüllung*) of any of the undertakings and guarantee undertakings and other obligations of the Offeror expressly provided for in this Agreement remains unaffected.
- 3.3 To the extent legally permissible, any claims of the Target Shareholder against the Offeror in the event of (i) an inaccuracy of any of the guarantee undertakings by the Offeror in § 3.1 and (ii) a breach of any of the undertakings of the Offeror in § 2.1, § 2.3, § 8, § 9.1 and § 9.2 shall be time-barred (*verjährt*) on the expiration of 18 months as of the Signing Date. Other claims of the Target Shareholder against the Offeror under this Agreement shall, to the extent legally permissible, be time-barred (*verjährt*) pursuant to §§ 195, 199 BGB, whereby § 203 BGB shall not apply.

#### § 4

##### **Guarantee Undertakings of the Target Shareholder to the Offeror; Liability of the Target Shareholder**

- 4.1 The Target Shareholder hereby guarantees by way of an independent guarantee undertaking (*verschuldensunabhängiges selbständiges Garantieverprechen*) according to Section 311 (1) BGB to the Offeror that the following statements contained in this § 4.1 are accurate, in each case on the Signing Date and on the Settlement Date, unless otherwise specified:
- 4.1.1 The Target Shareholder has been duly established and validly exists.
- 4.1.2 The Target Shareholder has the unrestricted right, power, authority and capacity to execute, consummate and settle this Agreement and the Intended Transaction. The execution and consummation of this Agreement and the execution, consummation and settlement of the Intended Transaction by the Target Shareholder do not violate the articles of association or other corporate documents, as the case may be, or any other legal obligation of the Target Shareholder.
- 4.1.3 No insolvency or similar proceedings have been, or have been threatened to be, opened or applied for regarding the Target Shareholder or its assets.
- 4.1.4 This Agreement constitutes legal, valid and binding obligations of the Target Shareholder enforceable in accordance with their terms, and the Intended Transaction will constitute legal, valid and binding obligations of the Target Shareholder enforceable in accordance with their terms.



- 4.1.5 On the Settlement Date, the Target Shareholder will hold and transfer sole, unrestricted legal and beneficial title (*uneingeschränkte rechtliche und wirtschaftliche Inhaberschaft*) to the Target Shareholder Shares and any ancillary rights appertaining thereto.
- 4.1.6 On the Settlement Date, the Target Shareholder Shares and any ancillary rights pertaining thereto will not be encumbered (*belastet*) with rights that a third party could raise against the Offeror.
- 4.1.7 The Target Shareholder has no actual knowledge (*positive Kenntnis*) pursuant to which information provided to the Offeror, its employees, managers, consultants, agents or advisors in the course of the preparation of the Intended Transaction constitutes inside information according to Regulation No 596/2014 on market abuse (MAR) on the Signing Date; for the avoidance of doubt, the Parties agree that this guarantee undertaking does not apply with respect to any information which arises from the conclusion of this Agreement or the compliance with the obligations stipulated therein.

The Offeror acknowledges that the Share Pledges exist at the date hereof and will continue to exist until the release of the Share Pledges prior to the Settlement Date, and that the existence of the Share Pledges at any time prior to the Settlement Date shall not constitute a breach of the guarantee undertakings of the Target Shareholder set out in this § 4.1. The Offeror shall not bring any claims against the Target Shareholder based on the fact that the Share Pledges exist at any time prior to the Settlement Date, provided that (i) the guarantee undertakings of the Target Shareholder set out in § 4.1.5 and § 4.1.6 (which are given as of the Settlement Date) as well as (ii) the Target Shareholder's obligation to accept the Takeover Offer subject to the terms and conditions of this Agreement shall remain unaffected.

- 4.2 In the event of (i) an inaccuracy of any of the guarantee undertakings by the Target Shareholder in § 4.1 and/or (ii) a breach of the undertakings of the Target Shareholder in § 1, § 5.2, § 7, § 8 and § 9, in each case irrespective of any responsibility (*Verantwortlichkeit*) on the Target Shareholder's part, the Target Shareholder shall put the Offeror in the same position it would be in had the undertaking(s) been accurate or were the undertaking not breached, either by providing for such position in kind (*Naturalrestitution*), or, at the election of the Offeror, by paying to the Offeror an amount necessary to hold harmless (*schadlos stellen*) the Offeror against all Losses which it would not have suffered if the respective undertaking(s) had been accurate or were the undertaking not breached (*Schadensersatz in Geld*). For the avoidance of doubt, the right of the Offeror to assert specific performance (*Erfüllung*) of any of the undertakings and guarantee undertakings and other obligations of the Target Shareholder expressly provided for in this Agreement remains unaffected.
- 4.3 To the extent legally permissible, any claims of the Offeror against the Target Shareholder in the event of (i) an inaccuracy of any of the guarantee undertakings by the Offeror in § 4.1 and (ii) a breach of any of the undertakings of the Offeror in § 1 (except for § 1.5), § 5.2, § 8, § 9.1 and § 9.2 shall be time-barred (*verjährt*) on the expiration of 18 months as of the Signing Date. Other claims of the Offeror against the Target Shareholder under this Agreement shall, to the extent legally permissible, be time-barred (*verjährt*) pursuant to §§ 195, 199 BGB, whereby § 203 BGB shall not apply.

## § 5

### Covenants of the Target Shareholder

- 5.1 Nothing in this Agreement shall require the Target Shareholder to act in breach of any fiduciary duties that it is owing to the Target pursuant to statutory law or a breach of any other statutory law or stock exchange regulations.
- 5.2 The Target Shareholder shall:
- 5.2.1 refrain, and procure that its Affiliates refrain, from any action, voting or other behaviour by which the Takeover Offer is or could be materially harmed or negatively affected;
  - 5.2.2 not engage, and procure that none of its Affiliates engages, in any discussion or negotiation with any party concerning any competing offer and the terms and conditions thereof;
  - 5.2.3 support the Takeover Offer in a reasonable manner, in particular:
    - 5.2.3.1 by publicly announcing a positive statement on the Takeover Offer;
    - 5.2.3.2 by not using its voting rights in the Target in a manner materially detrimental to the success of the Takeover Offer;
  - 5.2.4 appeal to the supervisory board (*Aufsichtsrat*) of the Target to refrain from approving, until the Settlement Date, any extraordinary business of the Target, and to refrain from amending and/or extending the service contracts of the members of the management board (*Vorstand*),

while the performance of any of the above covenants, to the extent it would disclose the contents of this Agreement or the Intended Transaction to the Target's management board (*Vorstand*) or supervisory board (*Aufsichtsrat*), shall only be made upon the declaration of the express consent of the Offeror.

## § 6

### Undertakings of the Shareholder to the Offeror

- 6.1 The Shareholder shall exercise its voting rights as a shareholder of the Offeror to approve the resolutions proposed by the Offeror to its shareholders regarding (i) the making of the Takeover Offer, (ii) the acquisition of Shares in pursuance of the Takeover Offer from, or from persons connected with, Oliver Jaster and Jens Schumann (as members of the Offeror's Supervisory Board), and (iii) an authorization of the Executive Board of the Offeror to allot such number of shares in the Offeror as required to fund the Consideration.
- 6.2 The Shareholder shall refrain from exercising its voting rights as a shareholder of the Offeror in respect of a resolution proposed by the Offeror to its shareholders to approve the Whitewash.
- 6.3 The Shareholder undertakes not to acquire, and to procure that none of its Affiliates acquire, any Shares, options or other financial instruments in the Target as from Signing Date for a period of 24 months after the Settlement Date, except as required by, or as required in order to comply with obligations under, statutory law.
- 6.4 The Shareholder shall furthermore reasonably cooperate with the Offeror to implement the Whitewash, including but not limited to providing information on the Target Shareholder and



its group required to be presented to the Offeror's shareholders in connection with the Whitewash.

- 6.5 § 4.2 shall apply accordingly to the undertakings set forth in this § 6. To the extent legally permissible, any claims of the Offeror against the Shareholder under this Agreement shall be time-barred (*verjährt*) on the expiration of 18 months as of the Signing Date. In deviation from the foregoing sentence any claims of the Offeror against the Shareholder in the event of a breach of the covenant in § 6.3 shall, to the extent legally permissible, be time-barred (*verjährt*) pursuant to §§ 195, 199 BGB, whereby § 203 BGB shall not apply.

## § 7

### Relocation of the Offeror

- 7.1 The Offeror has come to the conclusion that for regulatory reasons (in particular in order to facilitate the granting, respectively extension, of the permits and consents referred to in Preamble (G)(iii) and (iv)) and in view of the underlying commercial rationale of the Transaction and the business transformation as set out below in § 8.4, it will be in the Offeror's best interest to transfer the Offeror's corporate seat to Germany pursuant to Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company ("**Relocation**") in the case of a successful Takeover Offer.
- 7.2 Against this background,
- 7.2.1 the Offeror shall (i) submit the Relocation for approval to the Offeror's general meeting within six months from the Settlement Date and (ii) implement the Relocation without undue delay after approval of the relevant measure by the general meeting of the Offeror; and
- 7.2.2 the Shareholder and the Target Shareholder shall support all measures required in order to implement a Relocation proposed by the Offeror to its shareholders; in particular (without limitation), the Target Shareholder and the Shareholder shall vote in favor of a Relocation at the relevant general meeting of the Offeror; and
- 7.2.3 provided that the Relocation has become effective, the Target Shareholder shall (or shall procure that the respective then Affiliate of the Target Shareholder shall) make a voluntary takeover offer for all shares in the Offeror in accordance with the rules and stipulations of the WpÜG if (i) the Target Shareholder and/or a then Affiliate of the Target Shareholder acquire shares, options or other financial instruments in the Offeror during a period of five years from the Settlement Date other than as a consequence of the settlement of the Offer, and (ii) such acquisition results in the total number of shares in the Offeror held by, or attributed pursuant to Section 30(1) and (2) WpÜG to, the Target Shareholder and/or a then Affiliate of the Target Shareholder to exceed 45% of all shares then issued by the Offeror.
- 7.3 § 7.2 shall not apply if, assuming that all Parties act as stipulated therein, the Relocation cannot be implemented anymore (*Umsetzung ist unmöglich geworden*) for legal reasons, in particular as a consequence of a withdrawal of the United Kingdom from the European Union; in this case, the Parties will cooperate in good faith to achieve effects which come as close as possible to the Relocation.
- 7.4 § 4.2 shall apply accordingly to the covenants of the Shareholder set forth in this § 7. To the extent legally permissible, any claims of the Offeror against the Shareholder under this § 7

shall be time-barred (*verjährt*) pursuant to §§ 195, 199 BGB, whereby § 203 BGB shall not apply.

## **§ 8**

### **Mutual Undertakings**

The Parties undertake to use their respective reasonable endeavours (*sich angemessen zu bemühen*) to have following changes to the boards of the Target and the Offeror and to the business of the Offeror implemented following the completion of the Takeover Offer implemented:

- 8.1 Initial composition of the supervisory board (*Aufsichtsrat*) of the Target: Dr Helmut Becker (as chairman), a member nominated by the Target Shareholder and an independent member.
- 8.2 Composition of the management board (*Vorstand*) of the Target: Petra von Strombeck, Magnus von Zitzewitz, Dr. Felix Menden, Jonas Mattsson.
- 8.3 Composition of the executive board of the Offeror: Dr. Helmut Becker (chairman and CEO), Jonas Mattsson, Petra von Strombeck, Magnus von Zitzewitz.
- 8.4 Transformation of the German-language secondary lottery business currently operated on the tipp24.com website to a brokerage business operating under German lottery brokerage licenses within a period of 12 months following the Settlement Date.

## **§ 9**

### **Cooperation**

- 9.1 The Offeror and the Target Shareholder undertake to each other in connection with the Transaction to cooperate in good faith in order to obtain the approvals and decisions which are required to implement, or beneficial for the implementation of, the Intended Transaction in accordance with the intentions set out in Preamble (D) to (I).
- 9.2 The Offeror and the Target Shareholder undertake to each other not to provide, and to ensure that none of their respective Affiliates provide, any material documents (whether in hardcopy, electronic form or otherwise) in connection with the Transaction to the German state lotteries, any other regulator or any stock exchange authority without the prior approval of the other Party, unless such approval is unreasonably withheld or delayed. Sentence 1 also applies to the submission of documents by third parties (in particular, by the Target) if such submission by the third party is made in coordination or consultation with the Offeror or the Target Shareholder respectively.
- 9.3 It is the Parties' mutual understanding that, upon implementation of the Intended Transaction, Günther SE will achieve a controlling influence in the meaning of section 290 para. 1, first sentence of the German Commercial Code (*Handelsgesetzbuch – HGB*) over the Offeror and, hence, the Target, and that the Offeror and the Target will, *inter alios*, have to be included in the consolidated accounts of Günther SE. In this case, as of such point of time and for as long as the Offeror and the Target will have to be included in the consolidated accounts of Günther SE, the Offeror undertakes to the Target Shareholder to provide Günther SE without undue delay upon Günther SE's request with all information and documents at its disposal which Günther SE reasonably requires in order to draw up its consolidated accounts (covering, *inter alios*, the Offeror and the Target).



## **§ 10**

### **Withdrawal**

- 10.1** Each of the Target Shareholder and the Shareholder is entitled to withdraw (*zurücktreten*) (i) from this Agreement, and (ii), as the case may be, if legally permissible, from the Acceptance or otherwise nullify the Acceptance:
- 10.1.1** if the Takeover Offer is not announced by the Offeror by the end of the date hereof (Central European Time); or
- 10.1.2** if the Takeover Offer has been withdrawn or otherwise nullified; or
- 10.1.3** if the offer document for the Takeover Offer has not been submitted to BaFin by ) by (i) 19 December 2018 or, if BaFin grants an extension pursuant to § 14(1) WpÜG, (ii) 16 January 2019; or
- 10.1.4** if the acceptance period for the Takeover Offer has not started by (i) in case of § 10.1.3(i), 11 January 2019 and (ii) in case of § 10.1.3(ii), 4 February 2019;
- 10.1.5** if the Settlement Date would be later than 19 November 2019;
- 10.1.6** if (i) the Takeover Offer does not conform to any of the intentions set out in Preamble (D) to (I) or (ii) the Whitewash has been denied by either the independent shareholders of the Offeror, the UK Panel on Takeovers and Mergers or the Offeror;
- 10.1.7** if any of the conditions pursuant to §§ 1.2.2 and 1.2.3 has not occurred by the time of the publication of the offer document relating to the Takeover Offer at the latest; or
- 10.1.8** if the Offeror, without the prior written approval (which shall include approval via email) by the Target Shareholder, (i) waives any of the conditions to which the Takeover Offer will be subject to or (ii) changes the acceptance threshold set out in Preamble (G)(ii).
- 10.2** Save for the events expressly provided in this Agreement, each Party hereby, to the extent legally permissible, waives any rights to withdraw from or otherwise nullify this Agreement or, respectively, the Takeover Offer or, respectively, the Acceptance.

## **§ 11**

### **Confidentiality**

- 11.1** The confidentiality agreement among the Offeror and Günther Holding SE of 6 September 2017 ("**Confidentiality Agreement**") shall apply accordingly to this Agreement, its contents as well as the information that this Agreement was concluded, with binding effect on all Parties to this Agreement. The Target Shareholder and the Shareholder hereby confirm that the provisions of the Confidentiality Agreement are known to them.
- 11.2** The Parties acknowledge that this Agreement will be disclosed to the Offeror's shareholders in connection with the Whitewash and hereby consent to such disclosure.

## **§ 12**

### **Notices**

All notices, requests and other communication in connection with this Agreement shall be made in writing in the English language and shall be delivered personally or sent by registered mail (*Einschreiben*), via E-mail-transmitted PDF copies of originals, or via courier, to the addresses below or to such other addresses as may be specified by any Party to the other Parties in the same manner:

#### **12.1** if to the Offeror:

Dr Helmut Becker  
ZEAL Network SE, 5th Floor, One New Change, London EC4M 9AF, United Kingdom  
E-mail: [REDACTED]

#### **12.2** if to the Target Shareholder or the Shareholder:

Thorsten Hehl  
Günther Holding SE, Slomanhaus, Steinhöft 11, 20459 Hamburg, Deutschland  
E-mail: [REDACTED]

or to such other recipients or addresses which may be notified by any Party to the other Parties in the future in writing.

## **§ 13**

### **Costs**

Each Party shall bear its own costs, including advisor's fees, arising in connection with the preparation, negotiation, execution, implementation, consummation and settlement of this Agreement.

## **§ 14**

### **Miscellaneous**

- 14.1** This Agreement shall not grant any claims, rights or other remedies to, and is not intended to operate for the benefit of any third party.
- 14.2** Any amendments to this Agreement (including amendments to this paragraph) shall be valid only if made in writing, unless another form is required by mandatory law; Section 127 (2) BGB shall apply.
- 14.3** All words used in this Agreement will be construed to be of such gender or number as the circumstances require. The words "*including*" and "*in particular*" shall not limit the preceding or following words or terms. In this Agreement "**Affiliate**" or "**Affiliates**" (*verbundenes* respectively *verbundene Unternehmen*) has the meaning according to Section 15 German Stock Corporation Act (*Aktiengesetz*).
- 14.4** Wherever English terms are included herein with respect to which German terms have been inserted in brackets and/or italics either immediately after the English term or elsewhere herein, the respective German terms alone rather than the English terms shall be decisive for the interpretation of such term in this Agreement.



- 14.5 No Party shall be entitled to assign any rights or claims under this Agreement without the prior written approval (which shall include approval via email) by the other Parties.
- 14.6 Except as explicitly provided for herein, no Party shall be entitled to any set-off (*Aufrechnung*) or retention (*Zurückbehaltung*) with respect to any rights or claims under this Agreement unless the right or claim of the Party claiming a right of set-off or retention has been acknowledged in writing by the other Party or has been confirmed by a final judicial decision (*rechtskräftig festgestellt*).
- 14.7 In the event that one or more individual provisions of this Agreement are entirely or partially invalid or unenforceable, or become so in the future, or if this Agreement contains gaps, the validity and effectiveness of the remaining provisions of this Agreement shall remain unaffected. In the place of the invalid, unenforceable, or missing provision(s), this Agreement shall be deemed to contain such other provision or provisions that are valid and enforceable and correspond to the provision(s) that the Parties would have agreed to, giving consideration to the economic purpose of this Agreement, had they known on the signing of this Agreement about the invalidity, unenforceability or absence of the provision(s) contained herein. Each Party undertakes to confirm the applicability of such substitute provision in the form required, which shall be at least in written form.

## **§ 15**

### **Governing Law and Arbitration**

- 15.1 This Agreement and any disputes arising out of or in connection with it shall be governed by and construed in accordance with the substantive laws of the Federal Republic of Germany without giving effect to the choice of law principles thereof which would result in the application of the laws of any other jurisdiction.
- 15.2 All disputes arising out of or in connection with this Agreement, including disputes on its conclusion, binding effect, amendment and termination, shall be resolved, to the exclusion of the ordinary courts, by a three-person arbitral tribunal in accordance with the Arbitration Rules of the German Arbitration Institute (DIS). One co-arbitrator shall be nominated by the Offeror and the other jointly by the remaining Parties. The language of the arbitration shall be English. The seat of the arbitration shall be Hamburg, Germany.

*[intentionally left blank; signature blocks to follow on next page]*

*[Signature page]*

**For the Offeror:**

Name: Dr Helmut Becker  
Position: CEO  
Date: .....

(Signature)

Jonas Mattsson  
CFO  
19 November 2018

(Signature)

**For the Target Shareholder:**

Name: Thorsten Hehl  
Position: Managing Director  
Date: 19 November 2018

.....  
(Signature)

Yi Feng  
Managing Director  
19 November 2018

.....  
(Signature)

**For the Shareholder:**

Name: Thorsten Hehl  
Position: Managing Director  
Date: 19 November 2018

.....  
(Signature)

Yi Feng  
Managing Director  
19 November 2018

.....  
(Signature)



[Signature page]

**For the Offeror:**

Name: Dr Helmut Becker  
Position: CEO  
Date: 19 November 2018

Jonas Mattsson  
CFO  
19 November 2018

.....  
(Signature)

.....  
(Signature)

**For the Target Shareholder:**

Name: Thorsten Hehl  
Position: Managing Director  
Date: 19 November 2018

Yi Feng  
Managing Director  
19 November 2018

.....  
(Signature)

.....  
(Signature)

**For the Shareholder:**

Name: Thorsten Hehl  
Position: Managing Director  
Date: 19 November 2018

Yi Feng  
Managing Director  
19 November 2018

.....  
(Signature)

.....  
(Signature)