

INVITATION

TO THE ANNUAL
GENERAL MEETING

2020



BILFINGER

**Invitation to the Annual General Meeting
of Bilfinger SE, Mannheim, June 24, 2020** **4**

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Invitation to the Annual General Meeting

Bilfinger SE

Mannheim

ISIN DE0005909006

German Securities Identification Code

(Wertpapier-Kenn-Nr.) 590 900

The shareholders in our Company are hereby invited to the

Annual General Meeting

to be held on

Wednesday, June 24, 2020, 10:00 hrs

(Central European Summer Time – CEST).

The Annual General Meeting will be held as a **virtual General Meeting** without the physical presence of the shareholders or their proxies. The participation of the shareholders and their proxies takes place exclusively by means of electronic communication in accordance with the provisions and explanations contained hereinafter (following the Agenda).

Agenda

1. Presentation of the adopted annual financial statements, the approved group financial statements and the combined management report of Bilfinger SE and the group, and the report of the Supervisory Board (*Aufsichtsrat*) for the 2019 fiscal year

The documents set out above and the proposal for the use of unappropriated retained earnings as well as explanatory notes relating to the information provided pursuant to Sections 289a (1) and 315a (1) of the German Commercial Code (*Handelsgesetzbuch, HGB*) in conjunction with Article 83 (1) sentence 2 of the German Introductory Act to the Commercial Code (*Einführungsgesetz zum Handelsgesetzbuch, EGHGB*) will be available from the date of this calling notice and also during the Annual General Meeting on the internet at

<http://www.bilfinger.com/en/annual-general-meeting>.

The Supervisory Board approved the annual financial statements prepared by the Executive Board (*Vorstand*) and the group financial statements for the 2019 fiscal year in accordance with Section 172 of the German Stock Corporation Act (*Aktiengesetz, AktG*) on March 10, 2020 and has thus adopted the annual financial statements. Therefore, the General Meeting does not adopt the annual financial statements and does not approve the group financial statements in accordance with Section 173 AktG. The documents set out above must be made available to the General Meeting only, without a resolution being required under the AktG.

2. Resolution on the use of the unappropriated retained earnings of the 2019 fiscal year

With respect to current developments, namely related the COVID-19 pandemic and its impact on the global economy, simultaneously with the substantial reduction in the oil price, the Executive Board of Bilfinger SE, for the benefit of Bilfinger, resolved to withdraw the original proposal dated March 10, 2020, concerning the use of the unappropriated retained earnings of the 2019 fiscal year, and to submit the following proposal concerning the use of the unappropriated retained earnings.

The Executive Board and the Supervisory Board propose that the unappropriated retained earnings reported in the annual financial statements for the 2019 fiscal year, amounting to EUR 44,209,042.00, be used as follows:

Distribution of a dividend in the amount of EUR 0.12 per no-par-value share carrying dividend rights:	EUR 4,834,954.80
Carryforward of the residual amount to the next fiscal year:	EUR 39,374,087.20
Unappropriated retained earnings:	EUR 44,209,042.00

The dividend thus amounts to 4.0 percent of the capital stock carrying dividend rights in the amount of EUR 120,873,870.00 as at April 30, 2020 (divided into 40,291,290 no-par-value shares) taking into consideration Section 254 para. 1 German Stock Corporation Act (*Aktiengesetz, AktG*).

Until such time as the resolution concerning the use of unappropriated retained earnings is adopted, the number of shares carrying dividend rights may change as a result of possible changes in the number of treasury shares. In such event, the Executive Board and the Supervisory Board will submit an adjusted resolution proposal concerning the use of unappropriated retained earnings to the General Meeting, which will also provide for a distribution of EUR 0.12 per no-par-value share.

3. Resolution on the formal approval of the acts of the Executive Board with respect to the 2019 fiscal year

It is intended to resolve on the formal approval of the acts of the members of the Executive Board who were in office during the 2019 fiscal year on an individual basis.

The Supervisory Board and the Executive Board propose that

- a) formal approval of his acts be granted to Mr Thomas Blades for his term in office during the 2019 fiscal year,
- b) formal approval of his acts be granted to Mr Michael Bernhardt for his term in office during the 2019 fiscal year,
- c) formal approval of his acts be granted to Mr Duncan Hall for his term in office during the 2019 fiscal year, and
- d) formal approval of her acts be granted to Ms Christina Johanson for her term in office during the 2019 fiscal year.

4. Resolution on the formal approval of the acts of the Supervisory Board with respect to the 2019 fiscal year

It is intended to resolve on the formal approval of the acts of the members of the Supervisory Board who were in office during the 2019 fiscal year also on an individual basis.

The Executive Board and the Supervisory Board propose that

- a) formal approval of his acts be granted to Dr Eckhard Cordes for his term in office during the 2019 fiscal year,
- b) formal approval of his acts be granted to Mr Stephan Brückner for his term in office during the 2019 fiscal year,

- c) formal approval of her acts be granted to Ms Agnieszka Al-Selwi for her term in office during the 2019 fiscal year,
- d) formal approval of her acts be granted to Ms Dorothée Deuring for her term in office during the 2019 fiscal year,
- e) formal approval of her acts be granted to Ms Lone Fønss Schrøder for her term in office during the 2019 fiscal year, i.e. from January 1, 2019 until May 8, 2019,
- f) formal approval of her acts be granted to Ms Nicoletta Giadrossi for her term in office during the 2019 fiscal year, i.e. from July 11, 2019 until December 31, 2019,
- g) formal approval of his acts be granted to Dr Ralph Heck for his term in office during the 2019 fiscal year,
- h) formal approval of her acts be granted to Ms Susanne Hupe for her term in office during the 2019 fiscal year,
- i) formal approval of his acts be granted to Mr Rainer Knerler for his term in office during the 2019 fiscal year,
- j) formal approval of her acts be granted to Dr Janna Köke for her term in office during the 2019 fiscal year,
- k) formal approval of his acts be granted to Mr Frank Lutz for his term in office during the 2019 fiscal year,
- l) formal approval of his acts be granted to Mr Jörg Sommer for his term in office during the 2019 fiscal year, and
- m) formal approval of his acts be granted to Mr Jens Tischendorf for his term in office during the 2019 fiscal year.

5. Appointment of the auditors of the financial statements and group financial statements for the 2020 fiscal year as well as of the auditors to be commissioned to review the semi-annual financial report 2020

Following a recommendation by the Audit Committee (*Prüfungsausschuss*), the Supervisory Board proposes that the following resolution be passed:

- a) Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, Mannheim, are appointed as auditors of the financial statements and group financial statements for the 2020 fiscal year.
- b) Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, Mannheim, are appointed as auditors to review the semi-annual financial report for the first six months of the 2020 fiscal year.

The Audit Committee stated in its recommendation that it is free from undue influence by third parties and that no restrictive clause according to Article 16 (6) of the Statutory Audit Regulation (EU) No 537/2014 that would limit the choice of the General Meeting has been imposed on the Audit Committee.

6. Resolution on the approval of a Profit and Loss Transfer Agreement with Bilfinger Infrastructure Mannheim GmbH

Bilfinger SE, as the controlling entity, and Bilfinger Infrastructure Mannheim GmbH, as the dependent entity, entered into a Profit and Loss Transfer Agreement on February 18, 2020. In order for the Profit and Loss Transfer Agreement to become effective, both the General Meeting of Bilfinger SE and the shareholders' meeting of Bilfinger Infrastructure Mannheim GmbH must give their consent. The shareholders' meeting of Bilfinger Infrastructure Mannheim GmbH has already consented to the agreement.

The essential content of the Profit and Loss Transfer Agreement is as follows:

- Bilfinger Infrastructure Mannheim GmbH is obligated to transfer all of its profits to Bilfinger SE in accordance with and following the terms of Section 301 AktG.
- Bilfinger Infrastructure Mannheim GmbH may only use amounts from the annual net profit to create revenue reserves (Section 272 (3) HGB) if Bilfinger SE consents to that and to the extent that this is permitted under commercial law and is commercially justified according to a reasonable commercial assessment (*bei vernünftiger kaufmännischer Betrachtung*). Any other revenue reserves pursuant to Section 272 (3) HGB created during the term of the Agreement must be liquidated at Bilfinger SE's request and used to compensate for any annual net loss or transferred as profits. No capital reserves or pre-contractual revenue reserves may be transferred as profits or used to compensate for any annual net loss, however.
- Bilfinger SE is obligated to compensate Bilfinger Infrastructure Mannheim GmbH for any annual net loss incurred by it during the term of the Agreement – without taking into account the obligation to compensate for losses – to the extent that such annual net loss is not compensated for by using those amounts from the other revenue reserves that have been allocated to such revenue reserves during the term of the Agreement.
- The Profit and Loss Transfer Agreement will become effective only upon its registration with the commercial register of Bilfinger Infrastructure Mannheim GmbH. If the Profit and Loss Transfer Agreement is registered with the commercial register of Bilfinger Infrastructure Mannheim GmbH during the 2020 fiscal year, as intended, it will apply retroactively from January 1, 2020. Otherwise, it will apply retroactively to the period from the beginning of the relevant fiscal year of Bilfinger Infrastructure Mannheim GmbH in which it takes effect.
- The Profit and Loss Transfer Agreement has a fixed term of five years. The agreement will renew for one more year in each

case unless it is terminated in writing by a party to the agreement giving three months' notice before the end of the term of the agreement.

- Both parties to the agreement may terminate the agreement during the above-mentioned minimum term of five years if there is good cause. A good cause will be deemed to exist, in particular, if Bilfinger SE disposes of, or otherwise transfers, more than 50 percent of its shareholding in Bilfinger Infrastructure Mannheim GmbH to a third party.
- The contract contains a typical severability clause in case any provisions in the contract are or become invalid or impracticable.

Bilfinger Infrastructure Mannheim GmbH is a wholly owned subsidiary of Bilfinger SE. Therefore, no guaranteed dividend or compensation is to be paid to minority shareholders pursuant to Sections 304, 305 AktG. For the same reason, there is no need to perform an expert audit of the Profit and Loss Transfer Agreement.

The Executive Board and the Supervisory Board propose to resolve as follows:

The Profit and Loss Transfer Agreement dated February 18, 2020 between Bilfinger SE and Bilfinger Infrastructure Mannheim GmbH, registered with the commercial register of the Local Court (*Amtsgericht*) of Mannheim under HRB 717875, is approved.

Information on Agenda Item 6:

From the date of this calling notice and also during the Annual General Meeting, the following documents are available on the internet at

[http://www.bilfinger.com/en/annual-general-meeting:](http://www.bilfinger.com/en/annual-general-meeting)

- the Profit and Loss Transfer Agreement between Bilfinger SE and Bilfinger Infrastructure Mannheim GmbH,

- the annual financial statements of Bilfinger SE and the group financial statements and combined management reports of Bilfinger SE and the group for the 2017, 2018 and 2019 fiscal years,
- the annual financial statements of Bilfinger Infrastructure Mannheim GmbH for the 2017, 2018 and 2019 fiscal years, and
- the joint report prepared by the Executive Board of Bilfinger SE and the Managing Directors of Bilfinger Infrastructure Mannheim GmbH in accordance with Section 293a AktG on the Profit and Loss Transfer Agreement.

7. Elections to the Supervisory Board

Ms Lone Fønss Schrøder resigned from her office as a shareholder representative on the Supervisory Board of Bilfinger SE with effect from the Annual General Meeting of Bilfinger SE on May 8, 2019. On July 11, 2019, the Local Court (*Amtsgericht*) of Mannheim appointed Ms Nicoletta Giadrossi as her successor who resigned from her office with effect from the beginning of this year's Annual General Meeting 2020 and, correspondingly, is not available as a candidate for the election.

In addition, Mr Jens Tischendorf also resigned from his office as a shareholder representative on the Supervisory Board of Bilfinger SE with effect from the beginning of this year's Annual General Meeting 2020.

Against this background, the successors for the two resigning Supervisory Board members shall be proposed to the Annual General Meeting for election.

Pursuant to Article 40 (2) and (3) SE Regulation, Section 17 of the German SE Implementation Act (*SE-Ausführungsgesetz, SE-AG*), Section 21 (3) of the German Act on Employee Involvement in European Companies (*SE-Beteiligungsgesetz, SE-BG*), Part C: Employee Participation on the Supervisory Board (*Mitbestimmung im*

Aufsichtsrat) and Clauses 19 and 21 of the Agreement on Employee Involvement (*Vereinbarung über die Beteiligung der Arbeitnehmer*) of Bilfinger SE (formerly Bilfinger Berger SE), and Section 11 of the Articles of Incorporation, the Supervisory Board is composed of twelve members, namely six shareholder representatives and six employee representatives. The shareholder representatives are elected by the General Meeting. The six employee representatives are appointed by the SE works council in accordance with the procedure stipulated in the Employee Participation Agreement (*Mitbestimmungsvereinbarung*).

Based on the recommendation put forward by the Nomination Committee (*Nominierungsausschuss*) of the Supervisory Board, the Supervisory Board proposes that

- a) Dr Bettina Volkens,
resident in Königstein,
Supervisory Board member and freelance consultant,

be elected to the Supervisory Board as shareholder representative, for the period starting at the end of the General Meeting on June 24, 2020 and, pursuant to Article 12 (2) sentences 1 and 2 of the Articles of Incorporation, lasting for the rest of Ms Lone Fønss Schrøder's term of office, i.e. ending at the end of the General Meeting that resolves on the formal approval of the acts performed in the 2020 fiscal year, but not for a period exceeding six years;

- b) Mr Robert Schuchna,
resident in Lachen, Switzerland,
Partner at Cevian Capital,

be elected to the Supervisory Board as shareholder representative, for the period starting at the end of the General Meeting on June 24, 2020 and, pursuant to Article 12 (2) sentences 1 and 2 of the Articles of Incorporation, lasting for the rest of Mr Jens Tischendorf's term of office, i.e. ending at the

end of the General Meeting that resolves on the formal approval of the acts performed in the 2020 fiscal year, but not for a period exceeding six years.

In the opinion of the Supervisory Board, there are no personal or business relations between the candidates on the one hand and the entities of the Bilfinger group, the corporate bodies of Bilfinger SE or a shareholder holding a material share in Bilfinger SE on the other hand which could be relevant for the election decision of the General Meeting.

In accordance with Section 124 (2) sentence 2 AktG, the following is disclosed:

Section 17 (2) sentence 1 SE-AG requires that the percentage of female and male members of the Supervisory Board of a listed SE must at least be 30 percent each. This means that at least four members of the Supervisory Board of Bilfinger SE must be women and at least four members must be men in order to reach the minimum percentage required as described above. There has been no objection to this minimum percentage being fulfilled jointly by the shareholders and the employees.

Currently, three women and three men are members of the Supervisory Board as employee representatives. If the candidates proposed by the Supervisory Board were elected, two women and four men would be members of the Supervisory Board as shareholder representatives. Consequently, the minimum percentage required would continue to be fulfilled.

For its election proposal, the Supervisory Board made sure that the candidates proposed can spend the expected amount of time.

The candidates' CVs (including information pursuant to Section 125 (1) sentence 5 AktG) are attached to this calling notice as "Annex to Agenda Item 7: Elections to the Supervisory Board".

8. Resolution on the approval of a settlement agreement with former Executive Board members of Bilfinger SE pursuant to Section 93 (4) sentence 3 AktG (in conjunction with Article 51 SE-VO)

On March 9, 2020, Bilfinger SE, represented by its Supervisory Board and by its Executive Board, entered an extra-judicial liability and coverage settlement agreement with several former Executive Board members and with several D&O insurers (hereinafter also referred to as **"Settlement Agreement"**). To become effective, this Settlement Agreement requires the approval of the General Meeting of Bilfinger SE in accordance with Section 93 (4) sentence 3 AktG (in conjunction with Article 51 SE-VO).

The Supervisory Board and the Executive Board propose to resolve as follows:

The Settlement Agreement between Bilfinger SE, the former Executive Board members Mr Herbert Bodner, Mr Joachim Enenkel, Dr Jochen Keysberg, Prof Dr Roland Koch, Mr Pieter Koolen, Mr Joachim Müller, Dr Joachim Ott, Prof Klaus Raps, Mr Kenneth D. Reid, Prof Hans Helmut Schetter, Dr Jürgen M. Schneider, and Mr Thomas Töpfer and the D&O insurers Allianz Global Corporate & Specialty SE, AIG Europe S.A., Zurich Insurance plc Niederlassung für Deutschland, and HDI Global SE dated March 9, 2020, is approved.

**Information on Agenda Item 8:
Wording of the Settlement Agreement**

The Settlement Agreement reads as follows:

Settlement Agreement

between

1. **Bilfinger SE**, Oskar-Meixner-Straße 1, 68163 Mannheim, represented by the Executive Board, which is represented by the chairman of the Executive Board, Mr Thomas Blades, and the Executive Board member Ms Christina Johansson, and the Supervisory Board, which is represented by the chairman of the Supervisory Board, Dr Eckhard Cordes,
– hereinafter referred to as “**Bilfinger**” or “**Company**” –
and
2. **Allianz Global Corporate & Specialty SE**, Fritz-Schäffer-Straße 9, 81373 Munich, represented by Mr Jörg Ahrens and Mr Stephan Kammertöns,
– hereinafter referred to as “**AGCS**” –
and
3. **AIG Europe S.A.**, German head office, Neue Mainzer Straße 46-50, 60311 Frankfurt am Main, represented by Mr Michael Unglaub and Mr Klaus Goldschmidt,
– hereinafter referred to as “**AIG**” –
and
4. **Zurich Insurance plc Niederlassung für Deutschland**, Platz der Einheit 2, 60327 Frankfurt am Main, represented by Mr. Markus Both and Ms. Kirsten Siemon,
– hereinafter referred to as “**Zurich**” –
and
5. **HDI Global SE**, HDI-Platz 1, 30659 Hanover, represented by Ms Karen Böttcher,
– hereinafter referred to as “**HDI**” –

– Parties 2 to 5 collectively referred to as “**D&O Insurers**” –

- and
6. **Mr Herbert Bodner**, Wiesbaden,
and
 7. **Mr Joachim Enenkel**, Mandaluyong City, Philippines,
and
 8. **Dr Jochen Keysberg**, Wiesbaden,
and
 9. **Prof Dr Roland Koch**, Frankfurt am Main,
and
 10. **Mr Pieter Koolen**, Nootdorp, Netherlands,
and
 11. **Mr Joachim Müller**, Heppenheim,
and
 12. **Dr Joachim Ott**, Wiesbaden,
and
 13. **Prof Klaus Raps**, Oberursel,
and
 14. **Mr Kenneth D. Reid**, Singapore,
and
 15. **Prof Hans Helmut Schetter**, Seeheim-Jugenheim,
and
 16. **Dr Jürgen M. Schneider**, Weinheim,
and
 17. **Mr Thomas Töpfer**, Neustadt an der Weinstraße,

– Parties 6 to 17 collectively referred to as
“Former Executive Board Members”

and individually **“Former Executive Board Member”** –

– **Bilfinger**, the **D&O Insurers** and the **Former Executive Board Members** hereinafter collectively referred to as
“Parties” and individually as **“Party”** –

Preliminary remarks

I. Parties and D&O insurance

- (A) Bilfinger, registered in the commercial register of the local court (*Amtsgericht*) of Mannheim under HRB 710296, is a public European stock corporation which acts as the group managing holding company of the Bilfinger Group (Bilfinger including all of its former and current controlled entities (*abhängige Unternehmen*) within the meaning of section 17 of the German Stock Corporation Act (*Aktiengesetz – AktG*), the latter hereinafter referred to as **“Group Companies”**, hereinafter collectively: the **“Bilfinger Group”**). The Bilfinger Group is an international industrial services provider which is active worldwide in the areas of consulting, engineering, manufacturing and installation as well as maintenance concepts.
- (B) Since 01 June 2000, Bilfinger has maintained a D&O insurance policy with AGCS as primary insurer (hereinafter referred to as **“Primary Policy”**). The Primary Policy (policy no. DEF001250) provides insurance cover for persons specified in the policy (the **“Insured Persons”** and each of them individually an **“Insured Person”**) who are or were working for Bilfinger or any co-insured companies within the meaning of the Primary Policy against any claims for damages brought against them. The group of Insured Persons comprises, in particular, former and current board members, including the Former Executive Board Members. The amount insured under the Primary Policy for each insured event and each insurance year is EUR 25 million. Moreover, the Former Executive Board Members Herbert Bodner, Joachim Enenkel, Dr Jochen Keysberg, Prof Dr Roland Koch, Pieter Koolen, Joachim Müller, Prof Klaus Raps, Kenneth D. Reid, Prof Hans Helmut Schetter and Thomas Töpfer are each maintaining an insurance policy on self-insured retention (*Selbstbehaltsversicherung*) (collectively referred to as the **“Insurance Policies on Self-Insured Retention”**).
- (C) Since 01 June 2000, Bilfinger has maintained an excess D&O insurance policy with the policy no. Y 55 151 4876 with AIG as first

excess insurer and, since 01 January 2008, an excess D&O insurance policy with policy no. Y 55 151 4334 with AIG as fourth excess insurer. During the insurance period from 01 January 2018 until 01 January 2020, the amounts insured were EUR 10 million (hereinafter referred to as "**First Excess Policy**") and EUR 25 million (hereinafter referred to as "**Fourth Excess Policy**").

- (D) From 01 January 2005 to 31 December 2019, Bilfinger maintained an excess D&O insurance policy with the policy no. 802.380.092.343 with Zurich, which was the leading insurer of the second excess layer. During the insurance period from 01 January 2018 to 31 December 2019, the amount insured of that layer was EUR 35 million (hereinafter referred to as "**Second Excess Policy**").
- (E) Since 25 July 2006, Bilfinger has maintained an excess D&O insurance policy with the policy no. 65000878 01415 177 2659000 with HDI, which is the leading insurer of the third excess layer. During the insurance period from 01 January 2018 to 01 January 2020, the amount insured of that layer was EUR 30 million (hereinafter referred to as "**Third Excess Policy**").
- (F) The Primary Policy, the First Excess Policy, the Second Excess Policy, the Third Excess Policy and the Fourth Excess Policy will hereinafter be collectively referred to as "**D&O Insurance Policy**".

II. CMS matter

- (A) In November 2006, the Executive Board of Bilfinger Berger AG (Bilfinger's legal predecessor) resolved to establish a group-wide compliance management system ("**CMS**"). At that time, the issue of compliance within the Bilfinger Group was addressed by a code of conduct that consisted of principles and guidelines of conduct. In the period from 2007 to 2010, the Bilfinger Group had a largely decentralised CMS, in combination with individual elements centrally managed at the level of Bilfinger Berger AG. From January 2011, the CMS had been converted, with the assistance of external advisers, into a centralised group-wide CMS, in which the compliance officers responsible for the subgroups were staff of Bilfinger Berger SE (Bilfinger's legal predecessor) supervised by the Chief Compliance Officer. Commencing with the year 2007, Bilfinger Group's CMS has been repeatedly reviewed in different contexts by external advisers, which have also made proposals for improving and further developing the CMS.
- (B) The CMS was then further expanded, following an agreement entered into with the U.S. Department of Justice ("**DOJ**", referred to as deferred prosecution agreement) in late 2013 under which the Company undertook to pay a fine in the amount of U.S.\$32 million, to provide evidence of having set up an effective compliance system within a specified period of time and to instruct a compliance monitor to assess and monitor the CMS and its effectiveness. The reason for the agreement with the DOJ were bribery payments to Nigerian public officials in the context of a contract awarded to a joint venture in which Bilfinger participated for the extension of a natural gas pipeline in Nigeria in 2003. According to information provided by Bilfinger, the assessment performed by the compliance monitor found that Bilfinger's compliance processes as well as the CMS as a whole had serious deficiencies.
- (C) With the assistance of external advisers, Bilfinger's Supervisory Board – also taking into account the compliance monitor's

findings, but without limitation to such findings – assessed, for the period from March 2006 to March 2016 (“**Investigation Period**”), whether Bilfinger is entitled to claims for damages against former Executive Board members. Based on the investigation’s findings available to it, the Supervisory Board is of the view that the Former Executive Board Members breached their duties of care in connection with establishing, developing and maintaining the CMS in the period from December 2006 to late March 2015 (“**Breach-of-Duty Period**”). Aside from that, the investigation did not reveal – subject to the Mauell matter – any indication to support claims for damages against the Former Executive Board Members. On this basis, the Supervisory Board is of the view that the Company is entitled to claims for damages against the Former Executive Board Members in the aggregate amount of at least EUR 79,023,880.79. By way of letters dated 15 May 2019, Bilfinger held the Former Executive Board Members liable to pay compensation for this damage.

- (D) The Former Executive Board Members deny having breached their duties of care in connection with establishing, developing and maintaining the CMS. The same applies to the question of whether this resulted in damage for which the Former Executive Board Members are liable to pay compensation. The D&O Insurers share the Former Executive Board Members’ view and have reserved the right to examine their liability. The D&O Insurers do not recognise the matter described here as correct or as a binding precedent for possible future claims.

- (E) Furthermore, Bilfinger’s Executive Board assessed, with the assistance of external advisers, whether any Supervisory Board members can be said to have breached their duties in monitoring the Executive Board in connection with the CMS Matter during the Investigation Period. No breaches of duties of care giving rise to liability were identified in the course of this assessment.

- (F) All breaches of duty by Insured Persons during the Investigation Period which result or may result from or in connection with the aforementioned matter – irrespective of the level of the group at which they occurred – will hereinafter be referred to as **“CMS Matter”**.

III. Mauell matter

- (A) In 2012, Bilfinger Berger Power Services GmbH (renamed Bilfinger Berger Power Systems GmbH in 2013), which has in the meantime been merged into Bilfinger as the ultimate parent company, acquired 100% of the shares in Helmut Mauell GmbH, which acted as the parent company of the Mauell group (hereinafter collectively referred to as **“Mauell Group”**). In the years following the acquisition, the Mauell Group’s profitability and economic performance fell clearly short of its forecasted performance. Subsequent restructuring efforts failed. Efforts to sell, which had been undertaken since late 2014, also remained unsuccessful. In April 2016, the acquisition of the shares was reversed.
- (B) The Company’s Supervisory Board assessed, with the assistance of external advisers, whether the Company is entitled to claims for damages against former Executive Board members arising from and in connection with the acquisition of the Mauell Group. Based on the investigation’s findings available to it, the Supervisory Board is of the view that there was a failure to carry out, or carry out to the required extent, assessments required as part of the due diligence and that the entire Executive Board and the presiding committee of the Supervisory Board, in deciding on whether to acquire the Mauell Group, had not been informed, or had not been sufficiently informed, about identified risks by the Former Executive Board Members then responsible for that remit, Joachim Enenkel and Joachim Müller. On this basis, the Company’s Supervisory Board takes the view that the Former Executive Board Members Joachim Enenkel and Joachim Müller breached their duties of care in connection with acquiring the Mauell Group and that, as a result, the Company is entitled to claims for damages against the

Former Executive Board Members Joachim Enenkel and Joachim Müller in the amount of at least EUR 32,652,732.08. By way of letters dated 15 May 2019, the Company held the Former Executive Board Members Joachim Enenkel and Joachim Müller liable to pay compensation for this damage.

- (C) The Former Executive Board Members Joachim Enenkel and Joachim Müller deny having breached their duties of care in connection with acquiring the Mauell Group. The same applies to the question of whether this resulted in damage for which the Former Executive Board Members Joachim Enenkel and Joachim Müller are liable to pay compensation. The D&O Insurers share the view held by the Former Executive Board Members Joachim Enenkel and Joachim Müller and have reserved the right to examine their liability.
- (D) All breaches of duty by Insured Persons which result or may result from the aforementioned matter will hereinafter be referred to as **“Mauell Matter”**.

IV. Intended settling effect

This Settlement Agreement is intended to conclusively end the legal dispute between the Parties about the claims arising from or in connection with the CMS Matter and the Mauell Matter without prejudice to the legal and factual situation and without acknowledging any legal obligation and by upholding the respective positions on liability and coverage in terms of the legal status regarding liability and coverage, to avoid a lengthy legal dispute and to reach an agreement that is, in the Company's view, economically adequate for all Parties.

Now therefore, the Parties agree as follows:

1 Benefits provided by the D&O Insurers

- 1.1** The primary and self-insured retention insurer, AGCS, will pay an amount of EUR 14,000,000.00 (in words: Euro fourteen million) to Bilfinger.
- 1.2** AIG will pay an amount of EUR 1,400,000.00 (in words: Euro one million four hundred thousand) to Bilfinger.
- 1.3** Zurich will pay an amount of EUR 1,200,000.00 (in words: Euro one million two hundred thousand) to Bilfinger.
- 1.4** HDI will pay an amount of EUR 150,000.00 (in words: Euro one hundred fifty thousand) to Bilfinger.
- 1.5** The payments pursuant to Clauses 1.1 to 1.4 of this Settlement Agreement (the “**Shares in the Settlement**”, hereinafter collectively referred to as “**Settlement Amount**”) will in each case become due within three weeks of the receipt of
- a counterpart of this Settlement Agreement signed by the Parties in a legally valid manner by AGCS (Clause 9.3) and
 - a copy of the notarial record of the resolution of the general meeting pursuant to Clause 5.1 of this Settlement Agreement by AGCS.
- The payment of the Shares in the Settlement may also be made before they become due.
- 1.6** The D&O Insurers owe the Shares in the Settlement as several debtors (*Teilschuldner*). There is no joint and several debt (*Gesamtschuld*) of the D&O Insurers.
- 1.7** The payment of the Shares in the Settlement in accordance with Clauses 1.1 to 1.4 will be made to the following account of Bilfinger, indicating the subject “Project Mannheim”:

[*account details*]

1.8 If one or more Shares in the Settlement have not been paid into the aforementioned account of Bilfinger until the expiry of one week after the due date (Clause 1.5), Bilfinger may withdraw from this Settlement Agreement in its entirety. Before exercising the right of withdrawal, the relevant D&O Insurer must be granted a grace period of one week. There will be no right of withdrawal if any Share in the Settlement has not been credited until the expiry of one week after the due date exclusively due to a mistake of the bank or if the payment is subsequently made until the expiry of the grace period granted at the latest and if, in both cases, the relevant payment is credited to Bilfinger's account within the grace period granted. There will also be no right of withdrawal if any interest owed after the due date is not paid. The D&O Insurers and the Former Executive Board Members must be informed without undue delay if one or more Shares in the Settlement have not been credited in due time, if a grace period is granted and if the right of withdrawal is exercised (Clause 9.1). In the event of a withdrawal, Bilfinger will repay any Shares in the Settlement that have already been paid into the account to the relevant D&O Insurers within one week. Bilfinger may not raise any objections or defences against the D&O Insurers' claims for repayment.

2 Withdrawal of the appeal lodged by the Former Executive Board Member Joachim Enenkel and corresponding waiver of the reimbursement of costs by the Company

2.1 Since February 2017, an action brought by the Former Executive Board Member Joachim Enenkel against the Company concerning the validity of the Company's notice of extraordinary termination of the executive board member service agreement of the Former Executive Board Member Joachim Enenkel had been pending before the Regional Court (*Landgericht – LG*) of Mannheim under case no. 6 O 70/17. By judgment dated 06 September 2019, the Regional Court of Mannheim dismissed the action. The Former Executive Board Member Joachim Enenkel lodged an appeal against this judgment with the Higher Regional Court (*Oberlandesgericht – OLG*) of Karlsruhe (case no. 1 U 158/19).

2.2 In the course of the comprehensive and final settlement of all disputed matters resulting from and/or in connection with the CMS Matter and the Mauell Matter as well as his former work as an Executive Board member, the Former Executive Board Member Joachim Enenkel, performing an agreement dated 23 December 2019, which is attached to this Settlement Agreement as Annex 2.2 (hereinafter referred to as “**Enenkel Agreement**”), withdrew the appeal pending before the Higher Regional Court of Karlsruhe. In addition, subject to the condition precedent set out in Clause 5.1 of this Settlement Agreement, the Former Executive Board Member Joachim Enenkel hereby waives any possible claims for remuneration arising from the executive board member service agreement concluded with the Company. In return, the Company undertook, on the basis of the Enenkel Agreement and subject to the condition precedent set out in Clause 5.1 of this Settlement Agreement, not to pursue its claim for the reimbursement of the costs for the legal proceedings conducted to date and not to file a corresponding application for reimbursement of litigation costs (*Kostenfestsetzungsantrag*).

3 Discharging and settling effect

3.1 Upon the fulfilment of the condition precedent pursuant to Clause 5.1 of this Settlement Agreement and the receipt of the Settlement Amount in accordance with Clause 1 of this Settlement Agreement by Bilfinger, all claims of Bilfinger against the Former Executive Board Members arising in connection with the CMS Matter with regard to establishing, developing and maintaining the CMS and from the Mauell Matter, including all claims asserted by Bilfinger against the Former Executive Board Members by letter dated 15 May 2019, as well as all possible claims of the Former Executive Board Members against Bilfinger in connection with the CMS Matter and the Mauell Matter, including the investigation, pursuit and public announcement of possible claims arising from these matters by Bilfinger, (hereinafter collectively referred to as “**Discharged Matters**”) will, subject to Clause 3.5, be finally and definitively discharged and settled. This applies irrespective of

whether the relevant claims or rights are present or future claims or rights, known or unknown claims or rights, conditional or unconditional claims or rights, the relevant person's own claims or rights or claims or rights resulting from the relevant person being subrogated to the rights of another person, irrespective of the legal reason.

3.2 Bilfinger offers Supervisory Board members in office during the Investigation Period individually by means of a unilateral, unconditional and irrevocable declaration of intent issued for an indefinite period of time and to be forwarded by the D&O-Insurers in the event of the Supervisory Board members in office during the Investigation Period being held liable to finally and definitively discharge and settle any claims – non-existent according to information provided by Bilfinger – against Supervisory Board members in office during the Investigation Period based on the matter set out in Clause II. (E) (offer for the conclusion of a waiver agreement (*Erlassvertrag*) pursuant to section 397 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*)).

This applies irrespective of whether the relevant claims or rights are present or future claims or rights, known or unknown claims or rights, conditional or unconditional claims or rights, the relevant person's own claims or rights or claims or rights resulting from the relevant person being subrogated to the rights of another person, irrespective of the legal reason. The relevant Supervisory Board member may accept Bilfinger's offer by means of a simple declaration in text form. In order for this declaration of acceptance to become effective, it only needs to be received by the D&O Insurers (see Clause 9.1).

3.3 Bilfinger offers Insured Persons that are not party to this Settlement Agreement, except for the Supervisory Board members referred to in Clause 3.2, (hereinafter collectively referred to as "**Other Insured Persons**" and individually referred to as "**Other Insured Person**") individually by means of a unilateral, unconditional and irrevocable declaration of intent issued for an indefinite period of time and to be forwarded by the D&O Insurers in the

event of the relevant Other Insured Person being held liable to finally and definitively discharge and settle all claims of Bilfinger against the relevant Other Insured Person in connection with the CMS Matter and the Mauell Matter and all possible claims of the relevant Other Insured Person against Bilfinger in connection with the CMS Matter and the Mauell Matter including the investigation, pursuit and public announcement of possible claims arising from these matters by Bilfinger (offer for the conclusion of a settlement pursuant to section 779 of the German Civil Code) if and to the extent

- (a) the claims of Bilfinger are covered by the D&O Insurance Policy; and
- (b) compensation for the relevant damage has already been claimed from the Former Executive Board Members in the context of the Discharged Matters.

This applies irrespective of whether the relevant claims or rights are present or future claims or rights, known or unknown claims or rights, conditional or unconditional claims or rights, the relevant person's own claims or rights or claims or rights resulting from the relevant person being subrogated to the rights of another person, irrespective of the legal reason. The relevant Other Insured Person may accept Bilfinger's offer by means of a simple declaration in text form. In order for this declaration of acceptance to become effective, it only needs to be received by the D&O Insurers (see Clause 9.1).

3.4 Upon the fulfilment of the condition precedent pursuant to Clause 5.1 of this Settlement Agreement and the receipt of the Settlement Amount in accordance with Clause 1 of this Settlement Agreement by Bilfinger, all claims under the insurance coverage of Bilfinger and the Former Executive Board Members against the D&O Insurers based on the Discharged Matters as well as all possible claims of the D&O Insurers against Bilfinger and the Former Executive Board Members in connection with the Discharged Matters will, subject to Clause 3.6, be finally and definitively discharged and settled, provided that, pursuant to the insurance

contract and the German Insurance Contract Act (*Versicherungsvertragsgesetz – VVG*), the Parties are entitled to dispose over claims arising from the D&O Insurance Policy and the Insurance Policies on Self-Insured Retention. This applies irrespective of whether the relevant claims or rights are present or future claims or rights, known or unknown claims or rights, conditional or unconditional claims or rights, the relevant person’s own claims or rights or claims or rights resulting from the relevant person being subrogated to the rights of another person, irrespective of the legal reason.

3.5 Any claims of the Former Executive Board Members against Bilfinger for the inspection and/or delivery of documents and information (i) pursuant to a service agreement or (ii) pursuant to the law for the purposes of legal defence are excluded from the discharging and settling effect set out in Clause 3.1.

3.6 Any claims of the Former Executive Board Members against the D&O Insurers for the reimbursement of reasonable and necessary costs of defending the claims for damages in connection with the Discharged Matters are excluded from the discharging and settling effect set out in Clause 3.4 if and to the extent such claims have not yet been reimbursed at the time of the fulfilment of the condition precedent pursuant to Clause 5.1 of this Settlement Agreement and the payment of the Settlement Amount in accordance with Clause 1. AGCS affirms that it will examine these unsettled claims for reimbursement of costs without undue delay and that it will subsequently satisfy these claims in a timely manner.

4 Indemnifications

4.1 If, after the signing of this Settlement Agreement, Bilfinger or other current Group Companies assert, irrespective of the legal reason, claims for damages

- (a) against Former Executive Board Members arising from Discharged Matters or
- (b) against Supervisory Board members in office during the

Investigation Period resulting from the matter set out in Clause II. (E) or

(c) against Other Insured Persons resulting from the CMS Matter or the Mauell Matter

in court or out of court, Bilfinger will indemnify the D&O Insurers against any claims under the insurance coverage and any related court costs and reasonable and necessary out-of-court costs. The indemnification obligation will also apply to the extent that compensation for damage has already been claimed from the Former Executive Board Members in the context of the Discharged Matters, excluding the Settlement Amount. Such indemnification will not give rise to any claims of Bilfinger against the D&O Insurers under the insurance coverage.

Subject to any damage for which compensation has already been claimed from the Former Executive Board Members in the context of the Discharged Matters, the indemnification obligation under paragraph 1(c) does not extend to claims arising from matters in respect of which notices of circumstances were given to the D&O Insurers after the end of the Breach-of-Duty Period which were not withdrawn.

The indemnification obligation will not exist if the Insured Person held liable acknowledges corresponding claims for damages without Bilfinger's consent but with the consent of the D&O Insurers, if the Insured Person held liable enters into a settlement on such claims without Bilfinger's consent but with the consent of the D&O Insurers or if the Insured Person held liable finally refrains from making use of existing defence options with the consent of the D&O Insurers before Bilfinger has consented to such course of action in writing. Furthermore, there will be no indemnification obligation if the D&O Insurers acknowledge corresponding claims under the insurance coverage without Bilfinger's prior written consent. Something different will only apply if the D&O Insurers are obliged to provide cover under the relevant insurance contract, with the D&O Insurer bearing the burden of proof.

4.2 If, after the signing of this Settlement Agreement, Bilfinger or current Group Companies

(a) hold Former Executive Board Members liable in connection with the CMS Matter with regard to establishing, developing and maintaining the CMS or

(b) hold Other Insured Persons liable on the basis of the CMS Matter and, as a result of being held liable, Other Insured Persons, on the basis of the CMS Matter with regard to establishing, developing and maintaining the CMS, serve third-party notice to any Former Executive Board Members or assert recourse claims against any Former Executive Board Members, Bilfinger will indemnify such Former Executive Board Members against these claims and any related court costs and reasonable and necessary out-of-court costs.

This indemnification obligation will not exist if the Former Executive Board Member acknowledges such claims for damages or recourse claims without Bilfinger's consent, enters into a settlement on such claims without Bilfinger's consent or finally refrains from making use of existing defence options before Bilfinger has consented to such course of action in writing.

4.3 The D&O Insurers will (a) inform Bilfinger without undue delay in the event that there are still any claims under the insurance coverage against them and (b) pay any payments made to Insured Persons to Bilfinger without undue delay after having received reimbursement from the Insured Persons in the event that the Insured Persons have to repay these payments.

4.4 Apart from holding the Former Executive Board Members liable as a result of and in connection with the Discharged Matters, Bilfinger does currently not hold any Other Insured Persons liable for damages as a result of or in connection with the CMS Matter or the Mauell Matter in court or out of court.

4.5 Bilfinger affirms that it or other current Group Companies have not assigned and will not assign any claims for damages pursuant to Clause 4.1 (a) to (c) to third parties and that such claims have not

been transferred and will not be transferred by way of a statutory transfer of claim (*Anspruchsübergang*) (prohibition of assignment). If Insured Persons are nevertheless held liable on the basis of such claims by third parties after having been subrogated to the rights of another person, Bilfinger will indemnify the D&O Insurers against any claims under the insurance coverage and any related court costs and reasonable and necessary out-of-court costs in accordance with Clause 4.1. Such indemnification will not give rise to any claims of Bilfinger under the insurance coverage.

4.6 The limitation period for the indemnification claims agreed above will only start to run from the point in time when claims against the D&O Insurers or against the Former Executive Board Members are asserted.

5 Condition precedent, reimbursement

5.1 Clauses 1 to 4 of this Settlement Agreement will become effective (Condition precedent) retroactively (*ex tunc*) (signing of this Settlement Agreement pursuant to Clause 9.3) if Bilfinger's general meeting resolves to consent to this Settlement Agreement and no minority the shares of which in the aggregate reach ten per cent of the share capital requests that an objection be recorded (section 93 para. 4 sentence 3 of the German Stock Corporation Act).

5.2 If the nullity and/or invalidity of this Settlement Agreement is declared in a final and non-appealable court decision or if an action for avoidance and/or declaration of nullity of the resolution of Bilfinger's general meeting approving this Settlement Agreement is upheld in a final and non-appealable court decision, Clauses 1 to 4 of this Settlement Agreement will cease to be effective with retroactive effect. The payments pursuant to Clause 1 of this Settlement Agreement must be reimbursed to the relevant D&O Insurer within one week from the point in time when the nullity or invalidity of this Settlement Agreement is declared in a final and non-appealable court decision or the final and non-appealable

judgment upholding an action for avoidance or declaration of nullity of the resolution of Bilfinger's general meeting approving the Settlement Agreement is passed. Bilfinger may not raise any objections or defences against the D&O Insurers' claims for repayment.

5.3 If an action for avoidance and/or declaration of nullity of the resolution of Bilfinger's general meeting approving this Settlement Agreement has been filed, Bilfinger will inform the D&O Insurers and the Former Executive Board Members about this without undue delay. The Parties make explicitly clear that the filing of an action for avoidance and/or declaration of nullity of the resolution of Bilfinger's general meeting approving this Settlement Agreement will not be an obstacle to the fulfilment of the condition precedent pursuant to Clause 5.1 of this Settlement Agreement.

5.4 Subject to Clause 5.1 (Condition precedent), all other provisions of this Settlement Agreement will become effective immediately upon the signing by the relevant Former Executive Board Member and thus independently of the signing by the other Former Executive Board Members and the D&O Insurers. With the exception of Clause 6 (Waiver of the statute of limitations), this applies accordingly to the relevant D&O Insurers.

6 Waiver of the statute of limitations

6.1 The Former Executive Board Members waive the statute of limitations with regard to the alleged claims for damages Bilfinger has against them on the basis of and/or in connection with the CMS Matter and the Mauell Matter, provided that they have not already become statute-barred at the time this Settlement Agreement is signed. At the latest, this waiver will end six months after Bilfinger's 2020 annual general meeting, which has been scheduled to take place on 23 April 2020.

6.2 If an action for avoidance and/or declaration of nullity of the resolution of Bilfinger's general meeting approving this Settlement

Agreement is brought or the nullity and/or invalidity of this Settlement Agreement is otherwise claimed, the waiver declared pursuant to Clause 6.1 of this Settlement Agreement will end six months after (i) the point in time when the nullity and/or invalidity of this Settlement Agreement is declared in a final and non-appealable court decision or (ii) the point in time when the action for avoidance and/or declaration of nullity of the resolution of Bilfinger's general meeting approving this Settlement Agreement is upheld in a final and non-appealable court decision.

7 Costs

The Parties will carry all costs they have incurred or will incur in connection with the preparation and implementation of this Settlement Agreement themselves. This does not affect possible claims of the Former Executive Board Members against the D&O Insurers to be reimbursed for reasonable and necessary costs (see also Clause 3.6).

8 Confidentiality and communication

8.1 The Parties mutually undertake that they will treat the existence and content of this Settlement Agreement as strictly confidential until the Settlement Agreement has been disclosed for the purpose of passing a resolution on it pursuant to section 93 para. 4 sentence 3 of the German Stock Corporation Act in the course of convening the general meeting of Bilfinger.

8.2 Clause 8.1 of this Settlement Agreement will not include (i) the disclosure of this Settlement Agreement in the course of preparatory measures for convening the general meeting of Bilfinger (e.g. to the general meeting service provider or the German Federal Gazette (*Bundesanzeiger*)), (ii) any statutory announcement or disclosure obligations of Bilfinger and (iii) the D&O Insurers' obligations to provide information to co-insurers, reinsurers or supervisory authorities.

9 Powers of attorney (*Vollmachten*), notifications and signatures

9.1 All notifications and declarations made due to or in connection with this Settlement Agreement will be sent by facsimile or e-mail to the following addresses:

For Bilfinger:

Linklaters LLP
[contact details]

For the D&O Insurers and the Former Executive Board Members:

BLD Bach Langheid Dallmayr Rechtsanwälte
Partnerschaftsgesellschaft mbB
[contact details]

9.2 Bilfinger irrevocably instructs and authorises the law firm Linklaters LLP, Frankfurt am Main, to receive and forward all notifications and declarations in connection with this Settlement Agreement. The D&O Insurers and the Former Executive Board Members equally instruct and authorise the law firm BLD Bach Langheid Dallmayr Rechtsanwälte Partnerschaftsgesellschaft mbB, Cologne.

9.3 This Settlement Agreement need not be signed on a uniform document by all Parties. Instead, each Party will forward – in deviation from Clause 9.1 in the original – seventeen copies of that signature page to this Settlement Agreement which pertains to the respective Party, and which has been signed in handwriting, to the law firm Linklaters LLP, Frankfurt am Main. In accordance with Clause 9.1, Bilfinger will inform the D&O Insurers and the Former Executive Board Members when all Parties to this Settlement Agreement have signed. The Parties irrevocably authorise the law firm Linklaters LLP, Frankfurt am Main, to collate the originals of the signature pages with one original of this Settlement Agreement each and to forward them to the Parties.

10 Miscellaneous

- 10.1** There are no ancillary agreements to this Settlement Agreement. Modifications or amendments to this Settlement Agreement – including this Clause 10.1 – require the written form (*Schriftform*) pursuant to section 126 of the German Civil Code under exclusion of section 127 para. 2 of the German Civil Code. Clause 9.3 will apply mutatis mutandis.
- 10.2** This Settlement Agreement will be exclusively subject to German law under exclusion of its international private law. The place of performances of all services to be performed under this Settlement Agreement will be Mannheim.
- 10.3** All contractual or noncontractual disputes arising between individual or all Parties out of or in connection with this Settlement Agreement or its validity will, in accordance with the arbitration agreement attached hereto as Annex 10.3, which is part of this Settlement Agreement, be finally settled according to the Rules of Arbitration of the German Institution of Arbitration e.V. (DIS) (*Schiedsgerichtsordnung der Deutschen Institution für Schiedsgerichtsbarkeit e.V. (DIS)*) without recourse to the courts of general jurisdiction.
- 10.4** If any provision or part of any provision of this Settlement Agreement is or becomes invalid or unenforceable or if there is an omission in this Settlement Agreement, the validity or enforceability of the remaining provisions will not be affected thereby. Any such invalid, unenforceable or missing provision will be replaced by a reasonable and legally valid provision which comes closest to the economic purpose the Parties intended or would have intended if they had considered the invalidity, unenforceability or incompleteness. Any possible invalidity of this Settlement Agreement between individual Parties will not affect its validity regarding the relationship of the remaining Parties. The Parties may not rely on an invalidity (*Unwirksamkeit*) pursuant to section 779 of the German Civil Code.

[Signatures]

Annex 2.2 to the Settlement Agreement dated March 9, 2020

Agreement

between

Bilfinger SE, represented by the Supervisory Board (*Aufsichtsrat*), which is represented by the Chairman of the Supervisory Board (*Aufsichtsratsvorsitzender*), Dr Eckhard Cordes, Oskar-Meixner Straße 1, 68163 Mannheim, represented by Latham & Watkins LLP, Reuterweg 20, 60323 Frankfurt am Main,

– hereinafter referred to as Bilfinger –

and

Mr Joachim Enenkel, [*address details*], Mandaluyong City, Philippines, represented by Rechtsanwälte & Notare Holthoff-Pförtner, Rütenscheider Str. 199, 45131 Essen,

– hereinafter referred to as Mr Enenkel –

the following Agreement is entered into:

1. Mr Enenkel will withdraw the appeal (*Berufung*) brought by him (case no. 1 U 158/19) against a first-instance decision by the Regional Court (*Landgericht – LG*) of Mannheim (case no. 6 O 70/17) by 31 December 2019 at the latest.
2. Regarding the costs of the litigation pursuant to no. 1, the parties agree as follows:
 - a) Mr Enenkel will bear the court fees and lawyers' fees and expenses of the law firm Holthoff-Pförtner.
 - b) Bilfinger itself will bear the lawyers' fees and expenses incurred by it. In particular, Bilfinger undertakes not to file any

application for reimbursement of litigation costs once the appeal has been withdrawn in accordance with no. 1. This undertaking, or rather, waiver on Bilfinger's part is subject to the condition precedent that Bilfinger's general meeting resolve to approve the settlement in the case of Project Mannheim pursuant to section 93 para. 4 sentence 3 of the German Stock Corporation Act (*Aktiengesetz – AktG*) without a minority the shares of which in the aggregate reach ten per cent of the share capital requesting that an objection be recorded.

3. For the purpose of concluding this Agreement, it is not required that it be in the form of a deed signed by each party. If a party signs a copy and sends it to the respective other party/the latter's counsel (by email/by fax or as original document), this will be sufficient.

[Signatures]

Annex 10.3 to the Settlement Agreement dated March 9, 2020

Arbitration Agreement

between

1. **Bilfinger SE**, Oskar-Meixner-Straße 1, 68163 Mannheim, represented by the Executive Board, which is represented by the chairman of the Executive Board, Mr Thomas Blades, and the Executive Board member Ms Christina Johansson, and the Supervisory Board, which is represented by the chairman of the Supervisory Board, Dr Eckhard Cordes,

– hereinafter referred to as “**Bilfinger**” or “**Company**” –

and

2. **Allianz Global Corporate & Specialty SE**, Fritz-Schäffer-Straße 9, 81373 Munich,

– hereinafter referred to as “**AGCS**” –

and

3. **AIG Europe S.A.**, German head office, Neue Mainzer Straße 46-50, 60311 Frankfurt am Main,

– hereinafter referred to as “**AIG**” –

and

4. **Zurich Insurance Plc.**, Platz der Einheit 2, 60327 Frankfurt am Main,

– hereinafter referred to as “**Zurich**” –

and

5. **HDI Global SE**, HDI-Platz 1, 30659 Hannover,

– hereinafter referred to as “**HDI**” –

– Parties 2 to 5 collectively referred to as “**D&O Insurers**” –

and

6. **Mr Herbert Bodner**, Wiesbaden,

and

7. **Mr Joachim Enenkel**, Mandaluyong City, Philippines,

and

8. **Dr Jochen Keysberg**, Wiesbaden,

and

9. **Prof Dr Roland Koch**, Frankfurt am Main,

and

10. **Mr Pieter Koolen**, Nootdorp, Netherlands,

and

11. **Mr Joachim Müller**, Heppenheim,

and

12. **Dr Joachim Ott**, Wiesbaden,

and

13. **Prof Klaus Raps**, Oberursel,

and

14. **Mr Kenneth D. Reid**, Singapore,

and

15. **Prof Hans Helmut Schetter**, Seeheim-Jugenheim,

and

16. **Dr Jürgen M. Schneider**, Weinheim,

and

17. **Mr Thomas Töpfer**, Neustadt an der Weinstraße,

– Parties 6 to 17 collectively referred to as
“**Former Executive Board Members**” and individually
“**Former Executive Board Member**” –

– **Bilfinger**, the **D&O Insurers** and the **Former Executive Board Members** hereinafter collectively referred to as
“**Parties**” and individually as “**Party**” –

Preliminary remark

- (A) By letters dated 15 May 2019, Bilfinger held the Former Executive Board Members liable to pay compensation for damage which, in the Company's view, it had incurred in connection with establishing, developing and maintaining the Company's compliance management system in the period from December 2006 to late March 2015.
- (B) In addition, by letters dated 15 May 2019, Bilfinger held the Former Executive Board Members Joachim Enenkel and Joachim Müller liable to pay compensation for damage which, in the Company's view, it had incurred in connection with the acquisition of the Mauell group.
- (C) Without prejudice to the legal and factual situation and without acknowledging any legal obligation and by upholding the respective positions on liability and coverage, the Parties entered into a settlement agreement ("**Settlement Agreement**"), to which this Arbitration Agreement is attached as Annex 10.3, to end their dispute for good, to avoid a lengthy legal dispute and to reach an agreement that is economically adequate for Bilfinger, the Former Executive Board Members and the D&O Insurers.

Now therefore, the Parties agree as follows:

1 Arbitration Agreement

- 1.1** All contractual or noncontractual disputes arising between individual, several or all Parties out of or in connection with the Settlement Agreement or its validity shall be finally settled according to the Rules of Arbitration of the German Institution of Arbitration e.V. (DIS) (*Schiedsgerichtsordnung der Deutschen Institution für Schiedsgerichtsbarkeit e.V. (DIS)*) without recourse to the ordinary courts of law.

The Parties expressly consent to claims that exist between more than two Parties being dealt with in one single arbitration proceeding ("**Multi-Party Proceedings**").

1.2 The place of arbitration is Mannheim.

1.3 The arbitration tribunal consists of three (3) arbitrators.

1.4 The language of proceedings is German. However, the Parties are permitted to furnish proof in the form of English documents.

2 Confidentiality

2.1 The Parties mutually undertake that they will treat the existence and content of this Arbitration Agreement and any arbitration proceeding conducted under this Arbitration Agreement as strictly confidential.

2.2 Clause 2.1 of this Arbitration Agreement will not include (i) the disclosure of this Arbitration Agreement to the general meeting of Bilfinger pursuant to section 93 para. 4 sentence 3 of the German Stock Corporation Act (*Aktiengesetz – AktG*) (in conjunction with Article 9(1)(c)ii of the SE Regulation), including the explanatory report prepared by the Executive Board and Supervisory Board of Bilfinger, (ii) the provision of information to shareholders in the general meeting of Bilfinger pursuant to section 131 of the German Stock Corporation Act (in conjunction with Article 53 of the SE Regulation), (iii) any other statutory announcement or disclosure obligations of Bilfinger and (iv) the D&O Insurers' obligations to provide information to co-insurers, reinsurers or supervisory authorities.

3 Jurisdiction

The Higher Regional Court (*Oberlandesgericht*) of Frankfurt am Main is the court of competent jurisdiction within the meaning of section 1062 para. 1 of the German Code of Civil Procedure (*Zivilprozessordnung – ZPO*).

4 Governing law

This Arbitration Agreement will be exclusively subject to German law under exclusion of its international private law.

[Signatures]

Report of the Supervisory Board and the Executive Board

The Supervisory Board and the Executive Board of Bilfinger SE resolved the following written report, which explains in detail the essential content of the Settlement Agreement as well as Bilfinger SE's motives for the conclusion of such Settlement Agreement.

By way of the Settlement Agreement, which is put to the vote under item 8 of the agenda, Bilfinger SE ("**Bilfinger**" or the "**Company**") intends to end the legal dispute between the Company and its former Executive Board members Herbert Bodner, Joachim Enenkel, Dr Jochen Keysberg, Prof Dr Roland Koch, Pieter Koolen, Joachim Müller, Dr Joachim Ott, Prof Klaus Raps, Kenneth D. Reid, Prof Hans Helmut Schetter, Dr Jürgen M. Schneider and Thomas Töpfer ("**Former Executive Board Members**") in connection with establishing, developing and maintaining the compliance management system in the period from 2006 to 2015 ("**CMS Matter**") on the one hand and the Former Executive Board Members Joachim Enenkel and Joachim Müller in connection with acquiring the Mauell Group in 2012 ("**Mauell Matter**") on the other, to avoid a lengthy legal dispute and to achieve a settlement that is economically reasonable for the Company.

1 Background to the Settlement Agreement

1.1 CMS Matter

In November 2006, the executive board of Bilfinger Berger AG (Bilfinger's legal predecessor) resolved to establish a group-wide compliance management system ("**CMS**"). At that time, the issue of compliance within the Bilfinger Group was addressed by a code of conduct that consisted of principles and guidelines of conduct. In the period from 2007 to 2010, the Bilfinger Group had a largely decentralised CMS, in combination with individual elements centrally managed at the level of Bilfinger Berger AG. From January 2011, the CMS had been converted, with the assistance of external advisers, into a centralised group-wide CMS, in which the compliance officers responsible for the subgroups were staff of

Bilfinger Berger SE (Bilfinger's legal predecessor) supervised by the Chief Compliance Officer. Commencing with the year 2007, the Bilfinger Group's CMS has been repeatedly reviewed in different contexts by external advisers, which have also made proposals for improving and further developing the CMS.

The CMS was then further expanded, following an agreement entered into with the U.S. Department of Justice ("**DOJ**") (referred to as a deferred prosecution agreement) in late 2013, under which the Company undertook to pay a fine in the amount of USD 32,000,000.00, to provide evidence of having set up an effective compliance system within a specified period of time and to instruct a compliance monitor to assess and monitor the CMS and its effectiveness. Backdrop of the agreement with the DOJ were bribery payments to Nigerian public officials in the context of a contract awarded to a joint venture in which Bilfinger participated for the extension of a natural gas pipeline in Nigeria in 2003. According to information provided by Bilfinger, the assessment performed by the compliance monitor in 2015 found that Bilfinger's compliance processes as well as the CMS as a whole had serious deficiencies.

With the assistance of external advisers, Bilfinger's Supervisory Board – also taking into account the compliance monitor's findings, but without limitation to such findings – assessed, for the period from March 2006 to March 2016 ("**Investigation Period**"), whether Bilfinger is entitled to claims for damages against former Executive Board members. Based on the investigation's findings available to it, the Supervisory Board is of the view that the Former Executive Board Members breached their duties of care in connection with establishing, developing and maintaining the CMS in the period from December 2006 to late March 2015 ("**Breach-of-Duty Period**"). Aside from that, the assessment did not find – subject to the Mauell Matter – any indication to support claims for damages against the Former Executive Board Members. On this basis, Bilfinger held the Former Executive Board Members liable to pay compensation for damage in the aggregate amount of at least EUR 79,023,880.79 by letters dated 15 May 2019.

The Former Executive Board Members deny having breached their duties of care in connection with establishing, developing and maintaining the CMS. The same applies to the question of whether this resulted in damage for which the Former Executive Board Members are liable to pay compensation. The D&O insurers share the Former Executive Board Members' view, have reserved the right to examine their liability and do not recognise the matter described here as correct or as a binding precedent for possible future claims.

Furthermore, Bilfinger's Executive Board assessed, with the assistance of external advisers, whether any Supervisory Board members can be said to have breached their duties in monitoring the Executive Board in connection with the CMS Matter during the Investigation Period. No breaches of duties of care giving rise to liability were identified in the course of this assessment.

1.2 Mauell Matter

In 2012, Bilfinger Berger Power Services GmbH (renamed Bilfinger Berger Power Systems GmbH in 2013), which has in the meantime been merged into Bilfinger as the ultimate parent company, acquired 100 percent of the shares in Helmut Mauell GmbH, which acted as the parent company of the Mauell group (hereinafter collectively referred to as "**Mauell Group**"). In the years following the acquisition, the Mauell Group's profitability and economic performance fell clearly short of its forecasted performance. Subsequent restructuring efforts failed. Efforts to sell, which had been undertaken since late 2014, also remained unsuccessful. In April 2016, the acquisition of the shares was reversed.

The Company's Supervisory Board assessed, with the assistance of external advisers, whether the Company is entitled to claims for damages against former Executive Board members arising from and in connection with the acquisition of the Mauell Group. Based on the investigation's findings available to it, the Supervisory Board is of the view that there was a failure to carry out, or carry out to the required extent, assessments required as part of the due diligence and that the entire Executive Board and the presiding

committee of the Supervisory Board, in deciding on whether to acquire the Mauell Group, had not been informed, or had not been sufficiently informed, about identified risks by the Former Executive Board Members then responsible for that remit, Joachim Enenkel and Joachim Müller. On this basis, the Company's Supervisory Board takes the view that the Former Executive Board Members Joachim Enenkel and Joachim Müller breached their duties of care in connection with acquiring the Mauell Group and that, as a result, the Company is entitled to claims for damages against the Former Executive Board Members Joachim Enenkel and Joachim Müller. By way of letters dated 15 May 2019, the Company held the Former Executive Board Members Joachim Enenkel and Joachim Müller liable to pay compensation for damage in the amount of at least EUR 32,652,732.08.

The Former Executive Board Members Joachim Enenkel and Joachim Müller deny having breached their duties of care in connection with acquiring the Mauell Group. The same applies to the question of whether this resulted in damage for which the Former Executive Board Members Joachim Enenkel and Joachim Müller are liable to pay compensation. The D&O insurers share the view held by the Former Executive Board Members Joachim Enenkel and Joachim Müller and have reserved the right to examine their liability.

1.3 Damage

Based on the financial loss that, from the Company's perspective, was incurred by it in connection with the CMS Matter and the Mauell Matter, it has brought claims for damages against the Former Executive Board Members in an aggregate amount of at least EUR 111,676,612.87. Of this amount, EUR 79,023,880.79 is attributable to the CMS Matter and EUR 32,652,732.08 is attributable to the Mauell Matter.

With regard to the CMS Matter, the damage claimed comprises the following heads of damage: fines in the United States in a (pro rata) amount of EUR 3,268,249.44 and in Brazil in an amount of EUR 2,658,169.73, costs incurred in connection with compliance

monitorship in an amount of EUR 21,150,446.34 and costs of compliance investigations in an amount of EUR 19,968,450.48. In addition to that, there are costs of developing the CMS in an amount of EUR 29,843,900.24 and costs of examining the CMS in an amount of EUR 1,341,848.60, as well as costs for legal advice incurred in connection with the assessment commissioned by the Company's Supervisory Board of whether there were any claims for damages in an amount of EUR 792,815.97.

With regard to the Mauell Matter, the damage for which compensation is claimed comprises the purchase price of the Mauell Group (less the revenues generated from the guarantee and the reversal) in an amount of EUR 3,693,636.49, the Mauell Group's transferred operating losses in an amount of EUR 27,671,460.40, advisors' costs in an amount of EUR 875,862.43, as well as costs for legal advice incurred in connection with the assessment commissioned by the Company's Supervisory Board of whether there were any claims for damages in an amount of EUR 411,772.76.

The Former Executive Board Members and the D&O insurers deny that damage in this amount was incurred. Equally, they deny that there is a causal link between the claimed heads of damage and their conduct that was found to be in breach of duties by Bilfinger.

2 D&O insurance scheme and insurance policies on self-insured retention

2.1 Under D&O insurance the insurer undertakes, if claims for damages are brought against an insured person, to defend any unfounded claims, to bear the costs of defending the claims made, and to indemnify that insured person against any justified claims. As members of the Company's Executive Board in the period from 2006 to 2015, the Former Executive Board Members are among the insured persons under a D&O insurance scheme entered into by the Company, which consists of a primary policy and seven other policies referred to as excess insurance policies and the aggregate insured amount of which exceeds the amount of the damage claimed from the Former Executive Board Members.

2.2 Furthermore, each of the Former Executive Board Members Herbert Bodner, Joachim Enenkel, Dr Jochen Keysberg, Prof Dr Roland Koch, Pieter Koolen, Joachim Müller, Prof Klaus Raps, Kenneth D. Reid, Prof Hans Helmut Schetter and Thomas Töpfer maintain an insurance policy on self-insured retention with the primary insurer AGCS, under which the self-insured retention required pursuant to section 93 para. 2 sentence 3 of the German Stock Corporation Act (*Aktiengesetz – AktG*) and as agreed in the primary policy entered into with AGCS in the present case, is fully insured. The terms of office of the Former Executive Board Members Dr Joachim Ott and Dr Jürgen M. Schneider ended before the provision on compulsory self-insured retention set forth in section 93 para. 2 sentence 3 of the German Stock Corporation Act entered into force so that in these cases this provision does not apply and no insurance policies on self-insured retention are in place.

3 Legal framework for the document submitted to the general meeting

Pursuant to section 93 para. 4 sentence 3 of the German Stock Corporation Act, a company may only waive claims for damages against (former) executive board members or conclude a settlement regarding such claims if three years have passed since the

claim arose, the general meeting approves and no minority the shares of which in the aggregate reach ten per cent of the share capital requests that an objection be recorded. These requirements formally apply to settlement agreements with (former) executive board members only. However, since in the case at hand a liability settlement is combined with a coverage settlement, they apply to the entire Settlement Agreement put to the vote under agenda item 8 in the present case.

In the present case, the three-year period has in each case expired. The date when the claim arises is decisive for determining the commencement of the period. A claim arises as soon as the elements of the offence giving rise to liability are met, i.e. as soon as a breach of duty has been committed and damage has been incurred. The three-year period will begin to run, irrespective of whether the development of the damage is completed, on the date when the first heads of damage are known, once the claim can be asserted by bringing an action (for performance (*Leistungsklage*) or declaratory relief (*Feststellungsklage*)). With regard to all relevant matters, more than three years have passed since that date. Therefore, it is permissible for the general meeting to put the question of whether to conclude the Settlement Agreement to the vote.

4 Material contents of the Settlement Agreement

The wording of the Settlement Agreement is reproduced under item 8 of the agenda. The material obligations and legal effects of the Settlement Agreement can be summarised as follows:

- 4.1** Pursuant to clause 1 of the Settlement Agreement the D&O insurers undertake to pay to Bilfinger an aggregate amount of EUR 16,750,000.00. In addition to this, there will be what amounts to a value contribution in the amount of EUR 1,450,000.00 for Bilfinger, which, taking into account existing legal risks, corresponds to the accounting value of the withdrawal of an appeal lodged by the Former Executive Board Member Joachim Enenkel, which has been pending before the Higher Regional Court (*Oberlandesgericht – OLG*) of Karlsruhe (clause 2 of the Settlement Agreement in conjunction

with the agreement with the Former Executive Board Member Joachim Enenkel dated 23 December 2019 regarding the appeal's withdrawal, Annex 2.2 to the Settlement Agreement). This value contribution corresponds to the provision established in respect of the matter, less any costs incurred for 2019. The withdrawn appeal had been brought against a first-instance decision by the Regional Court (*Landgericht – LG*) of Mannheim (case no.: 6 O 70/17) regarding the validity of the notice of extraordinary termination (*außerordentliche Kündigung*) given by the Company in respect of the executive board member service agreement with the Former Executive Board Member Joachim Enenkel in October 2015. The Regional Court of Mannheim had dismissed the action brought by the Former Executive Board Member Joachim Enenkel in a decision against which Mr Enenkel had lodged an appeal. Such appeal was withdrawn on 23 December 2019. The Company undertakes in return not to pursue its claim for the reimbursement of the costs for the legal proceedings conducted to date and not to file a corresponding application for reimbursement of litigation costs, subject to the condition precedent that the general meeting approve the present settlement (for details, cf. Section 4.7).

4.2 Pursuant to clause 3.1 of the Settlement Agreement, with it taking effect, all claims of Bilfinger against the Former Executive Board Members arising in connection with the CMS Matter with regard to establishing, developing and maintaining the CMS and from the Mauell Matter, including all claims asserted by Bilfinger against the Former Executive Board Members by claim letters dated 15 May 2019, as well as all possible claims of the Former Executive Board Members against Bilfinger in connection with the CMS Matter and the Mauell Matter, including the investigation, pursuit and public announcement of possible claims arising from these matters by Bilfinger, will be finally and conclusively discharged and settled. Certain contractual and statutory claims of the Former Executive Board Members for inspection and/or surrender of documents and information against Bilfinger will not be discharged or settled pursuant to clause 3.1 in conjunction with clause 3.5 of the Settlement Agreement.

4.3 Since the D&O insurers will only consider concluding a settlement if, as a result of their payments, they obtain legal certainty that it will no longer be possible to bring any claims based on the CMS and Mauell Matters against them in the future, the Company has, in addition, agreed in clauses clause 3.2 and 3.3 of the Settlement Agreement to offer to insured persons other than the Former Executive Board Members to conclude, to a certain extent, liability settlements or waiver agreements in order to settle claims in connection with the CMS and Mauell Matters. For one thing, this is merely a precautionary measure concerning any breaches of duties which any members of the Supervisory Board may have committed when supervising the Executive Board in connection with the CMS Matter (clause 3.2) – which, however, have not been found by Bilfinger based on the findings of an internal investigation. For another, the offers to conclude liability settlements or waiver agreements include any breaches of duties committed by other insured persons, i.e. especially board members and further insured persons of group companies, as well as any counterclaims brought in connection with the CMS and Mauell Matters (clause 3.3).

4.4 However, the offer to conclude a liability settlement pursuant to clause 3.3 of the Settlement Agreement only stands if, and to the extent that, there is insurance cover for the relevant claims under the D&O insurance policy. As a result, in cases where insured persons other than the Former Executive Board Members or Supervisory Board members in terms of clause 3.2 of the Settlement Agreement have knowingly breached their duties, Bilfinger will continue to be able to assert claims for damages against such persons. In addition, such offer to settle will only apply to damage in respect of which claims arising from the CMS and Mauell Matters have already been brought against the Former Executive Board Members. Conversely, Bilfinger is obliged pursuant to clause 4 of the Settlement Agreement to indemnify the D&O insurers, in cases where, as a result of any claims being brought by insured persons other than the Former Executive Board Members or Supervisory Board members pursuant to clause 3.2 of the Settlement Agreement, such D&O insurers are initially obliged to make (advance)

payments under the existing coverage for defence costs. However, as soon as it is established in such a case that there is no insurance cover, e.g. due to a knowing breach of duty, any such payments made must be repaid to Bilfinger without undue delay after they have been reimbursed.

4.5 Furthermore, pursuant to clause 3.4 of the Settlement Agreement, with it taking effect, all claims of Bilfinger and the Former Executive Board Members under the insurance coverage against the D&O insurers based on the matters discharged under clause 3.1 of the Settlement Agreement, as well as, conversely, any claims the D&O insurers may have against Bilfinger and the Former Executive Board Members in connection with such matters, will be finally and conclusively discharged and settled. Any claims of the Former Executive Board Members for the reimbursement of reasonable and necessary costs of defending the claims for damages in connection with the matters discharged under clause 3.1 of the Settlement Agreement will not be discharged or settled if, and to the extent that, such costs have not yet been reimbursed at the time of the Settlement Agreement's entry into effect and payment of the settlement amount by the D&O insurers.

4.6 Clause 4 of the Settlement Agreement provides for indemnification for the benefit of the D&O insurers and the Former Executive Board Members in the event that, contrary to the intended final discharge and settlement of claims pursuant to clauses 3.1 to 3.3 of the Settlement Agreement, claims for damages are nevertheless brought against any insured persons by Bilfinger, any current group companies or any third parties after such insured persons have been subrogated to the rights of another person, by way of assignment of rights or statutory transfer of a claim. No indemnification will apply to matters concerning insured persons other than the Former Executive Board Members or Supervisory Board members in terms of clause 3.2 of the Settlement Agreement in respect of which notices of circumstances were given to the D&O insurers after the end of the Breach-of-Duty Period which were not withdrawn. On the other hand, the indemnification will

apply to the extent the damage has already been claimed from the Former Executive Board Members in the context of the CMS and Mauell Matters.

4.7 Clause 5.1 of the Settlement Agreement accounts for the reservation of the general meeting's right to approve, which is provided for in section 93 para. 4 sentence 3 of the German Stock Corporation Act, by stipulating that it is a condition precedent to clauses 1 to 4 of the Settlement Agreement taking effect that Bilfinger's general meeting resolve to approve the draft settlement without a minority the shares of which in the aggregate reach ten per cent of the share capital requesting that an objection be recorded. Clauses 5.2 and 5.3 of the Settlement Agreement provide for the event that the approving resolution passed by the general meeting is challenged by an action relating to deficits of a resolution (*Beschlussmängelklage*). While the mere filing of such an action will not prevent clauses 1 to 4 of the Settlement Agreement from taking effect, the success of such an action will result in clauses 1 to 4 of the Settlement Agreement ceasing to be valid with retroactive effect.

Derogating from clause 5.1 of the Settlement Agreement, pursuant to clause 5.4 of the Settlement Agreement, all other settlement arrangements (with the exception of clauses 1 to 4) have become effective immediately as early as upon the signing by the relevant Former Executive Board Member and thus independent from the other Former Executive Board Members' and D&O insurers' signatures. This concerns in particular the waiver of the statute of limitations provided for in clause 6 of the Settlement Agreement, which ensures that, in the period subsequent to the end of the Former Executive Board Members' existing waivers of the statute of limitations until the date of the general meeting, claims will not become statute-barred, even if the general meeting does not validly approve the Settlement Agreement or if the Settlement Agreement does not become valid for any other reasons.

5 Main reasons for concluding the Settlement Agreement

The Company's Supervisory Board and Executive Board are convinced that concluding the Settlement Agreement put to the vote under item 8 of the agenda is in Bilfinger's corporate interest. This view is based on the following considerations:

The Supervisory Board and the Executive Board are of the view that, in the Company's interest, the settlement amount of EUR 16,750,000.00 regarding the CMS and Mauell Matters, plus what amounts to a value contribution in the amount of approximately EUR 1,450,000.00 for Bilfinger, as a result of the absence of litigation risk because the Former Executive Board Member Joachim Enenkel withdrew the action brought by him regarding disputed claims under his executive board member service agreement and waived such claims and as a result of the reversal of the provision made on this basis, is financially appropriate. It is true that, the financial losses incurred by the Company from its point of view clearly exceed the aggregate beneficial amount of approximately EUR 18,200,000.00. However, also from the Company's point of view, the question of the amount of damages that might be awarded under a final judgement if these claims for damages were brought in court and the question of whether, subsequently, liquidation of damages would actually be possible cannot be answered conclusively. As holds true for any judicial dispute, if the claims for damages were brought in court in the present case, this would involve litigation risk, which might result in such claims for damages not being awarded or not being awarded in full. The courts would have to rule on a number of complex issues of fact and law in case there was a contentious dispute between the Company and the Former Executive Board Members. It can be expected that the Former Executive Board Members would raise a multitude of factual and legal objections to defend these claims for damages. Many of the issues of law raised as a result have not yet been decided either by courts of lower instances or by courts of last resort. Furthermore, it will, in any case, be many years before final decisions of courts adjudicating at last instance can be expected.

Even if the Company were awarded damages in an amount significantly exceeding the settlement amount in judicial proceedings against the Former Executive Board Members, this would not mean that the Company would receive a corresponding amount of funds. Rather, it must be assumed that the payment of such damages would by far exceed the personal financial capacities of the Former Executive Board Members, in which case the decisive question would be whether the D&O insurers were to make payment. The D&O insurers agreed – according to their own statements and in line with their obligations under the insurance contract with Bilfinger – to pay the defence costs of the Former Executive Board Members against whom claims have been brought and reserved the right to further examine the claims for damages brought by Bilfinger against the Former Executive Board Members. The insurers' examination would also address any exclusions provided for in the insurance contract as well as, first and foremost, the scope and interpretation of such exclusions. In this context, it might become necessary, subsequent to litigating the liability issues, to additionally litigate, in further judicial proceedings, the question of whether, and if so, to what extent, any claims for damages possibly awarded to the Company are insured. As a result, the Supervisory Board and the Executive Board also had to consider the risk that such exclusions might apply when weighing advantages against disadvantages. To the extent that questions regarding insurance would have to be submitted to further judicial proceedings, it would, again, be many years before final decisions of courts adjudicating at last instance could be expected.

Notwithstanding this, pursuing the claims asserted against the Former Executive Board Members would, in any case, have resulted in all parties to the proceedings – including, consequently, the Company as the claimant – incurring significant costs. Even in the event that the Company prevailed fully, it would not be ensured that the defendants would be ordered to reimburse the legal costs actually incurred. In the event of complete or partial defeat, the Company would have to bear, in whole or in part, any costs of the proceedings incurred in addition to its (remaining) damage. In con-

trast, by concluding the Settlement Agreement with the Former Executive Board Members and the D&O insurers before any action is brought, it is possible to entirely avoid costs of litigation. Finally, in case the claims were pursued in court, considerable human resources of the Company, which can be used more effectively in economic terms elsewhere, would be tied up for a considerable period of time.

Furthermore, the Supervisory Board and the Executive Board are convinced that it is, generally, not in the well-understood interest of the Company and corporate interest to be a party to public judicial proceedings in which conduct of its Former Executive Board Members, which in some cases occurred a long time ago, is publicly discussed and evaluated. In this respect, the Supervisory Board and the Executive Board see the risk that, in the public's perception, Bilfinger's significant achievements and successes in terms of compliance management accomplished in recent years are counteracted by misconduct of former officers and employees which occurred in the past. Such false public perception could have a negative impact on the current business activities and reputation of the Company and the entire Bilfinger Group, which, in the view of the Supervisory Board and the Executive Board, must be avoided in the corporate interest.

In view of the fact that (i) the by far largest portion of the damage incurred by the Company was caused by merely negligent organisational shortcomings of the Former Executive Board Members, (ii) the Former Executive Board Members strongly deny the allegations made against them, (iii) the compulsory self-insured retention required by law – to the extent applicable to the present case – is in each case fully insured under policies maintained with the primary insurer AGCS, which is a party to the Settlement Agreement, and (iv) the settlement amount of EUR 16,750,000.00, plus the aforementioned value contribution in an amount of approximately EUR 1,450,000.00, is financially appropriate, the Supervisory Board and the Executive Board consider it to be reasonable and, taking into account Bilfinger's corporate interest, well justifiable, not to impose an obligation on the Former Executive Board Members to

make a financial contribution of their own under the Settlement Agreement, other than that of the Former Executive Board Member Joachim Enenkel, who has withdrawn the appeal lodged by him and has waived the corresponding claims.

6 Summarising recommendation

On this basis, the Supervisory Board and the Executive Board are convinced that, in the well-understood interest of the Company, the Settlement Agreement put to the vote under item 8 of the agenda is preferable to pursuing claims for damages or claims under the insurance coverage in court. In an overall assessment, the Supervisory Board and the Executive Board come to the conclusion that the Company's interest and the corporate interest to definitively conclude the legal review and analysis of the aforementioned matters prevail. Therefore, the Supervisory Board and the Executive Board propose that the general meeting approve the Settlement Agreement.

9. Resolution on the amendment of Article 19 of the Articles of Incorporation of Bilfinger SE

The Company's Articles of Incorporation should provide a number of options in the future to make it easier and more flexible for shareholders to attend the General Meeting and to exercise their voting rights. Specifically, the Articles of Incorporation should in future authorize the Executive Board to allow shareholders to participate online and cast their votes by post.

The Executive Board and the Supervisory Board propose to resolve as follows:

Article 19 of the Articles of Incorporation is amended and, in total, restated as follows:

“§ 19 Attendance, Voting by Proxy, Audio and Visual Broadcasts

- (1) Shareholders are entitled to attend the General Meeting and to exercise their voting rights only if they have registered prior to the General Meeting and furnished evidence of their shareholding to the Company.
- (2) The application for registration must be submitted in German or English and must be received by the Company, at the address specified for this purpose in the calling notice, at least six days prior to the date of the General Meeting.
- (3) Evidence of shareholdings must be furnished by way of a confirmation issued by a depository bank in text form in German or English. The confirmation issued by the depository bank must relate to the beginning of the twenty-first day prior to the date of the General Meeting. With respect to the furnishing of such evidence, paragraph 2 above shall apply *mutatis mutandis*.

- (4) The Executive Board is authorized to provide that shareholders can attend the General Meeting without being present at its location and without a proxy and that they can exercise all or some of their rights in whole or in part by electronic communication.
- (5) The Executive Board is authorized to provide that shareholders, also without attending the meeting, may cast their votes in writing or by electronic communication (postal vote).
- (6) Voting rights may be exercised by proxy. Such proxy authorization must be granted or revoked and evidence of the proxy authorization to be provided to the Company must be provided in the form prescribed by law. The calling notice may specify less strict requirements in this context.
- (7) The Executive Board is authorized to provide for audio and visual broadcasting of the General Meeting to be permitted.”

Conditions for attending the General Meeting and other information pursuant to Section 121 (3) sentence 3 AktG

Due to the spread of the SARS-CoV-2 virus (COVID-19 pandemic), the Executive Board, with the approval of the Supervisory Board, has decided that this year's Annual General Meeting will be held as a **virtual General Meeting** without the physical presence of the shareholders or their proxies and with some peculiarities explained hereinafter. The legal basis for this is Article 2 Section 1 (2) sentence 1, (6) of the Act to Mitigate the Consequences of the COVID-19 Pandemic in Civil, Bankruptcy and Criminal Procedure Law (*Gesetz zur Abmilderung der Folgen der COVID-19-Pandemie im Zivil-, Insolvenz- und Strafverfahrensrecht, COVID-19 Act*). The peculiarities concern, in particular, the course of the Annual General Meeting and the exercise of shareholder rights. We therefore ask our shareholders to pay particular attention to the following information:

Conditions for attending the virtual General Meeting and exercising voting rights

Shareholders are entitled to attend the virtual General Meeting and to exercise their voting rights in accordance with the provisions and explanations below only if they have registered prior to the General Meeting and furnished evidence of their shareholding to the Company.

The right to attend this year's virtual General Meeting can only be exercised by authorizing the proxies designated by the Company. In addition, the voting right can be exercised by electronic submission of postal votes, even without attending the General Meeting. Authorization of other persons is also possible; however, such persons must then also either vote electronically by post or authorize the proxies desig-

nated by the Company. Further information, also concerning the transmission of the General Meeting via the Online Service on the internet, can be found in the Sections “Voting electronically by post”, “Voting by proxy” and “Transmission of the General Meeting” below.

The application for registration must be submitted in German or English. Evidence of shareholding must be furnished by way of a confirmation issued by the depositary bank in text form in German or English. The confirmation issued by the depositary bank must relate to Friday, June 12, 2020, 0:00 hrs (CEST). The application for registration must be received by the Company no later than by the end of Wednesday, June 17, 2020, 24:00 hrs (CEST), and, deviating therefrom, the evidence of shareholding must be received by the Company no later than by the end of Saturday, June 20, 2020, 24:00 hrs (CEST), both at the address specified below:

Bilfinger SE
c/o C-HV AG
Gewerbepark 10
92289 Ursensollen
Germany

or by **fax** to: +49 (0) 9628 92 99 871

or by **e-mail** to: Anmeldestelle@c-hv.com

Pursuant to Section 123 (4) sentence 5 AktG, a person is deemed to be a shareholder in relation to the Company for the purpose of attending the General Meeting and exercising voting rights only if evidence of shareholding (as described above) has been furnished. In order for shareholders to be entitled to attend the General Meeting and to exercise their voting rights, they must therefore hold their shares at the beginning of Friday, June 12, 2020, 0:00 hrs (CEST). Shareholders who have registered for attendance at the General Meeting are not thereby prevented from freely disposing of their shares.

Access cards

Following the timely receipt of the application for registration and the evidence of shareholding by the Company at the address (or fax number or e-mail address, respectively) stated above, access cards for the virtual General Meeting will be sent to the shareholders which will contain, among other things, personalized access data (access card number and internet access code) for the Online Service on the website of the Company. To ensure that the access cards are received in time, we would request that shareholders register and send evidence of their shareholding to the Company as early as possible.

Virtual General Meeting without physical presence of the shareholders or their proxies

This year's Annual General Meeting takes place as a virtual General Meeting without the physical presence of the shareholders or their proxies. Therefore,

1. the video and audio transmission of the entire Annual General Meeting takes place via the Online Service on the internet (see the Section "Transmission of the General Meeting" below),
2. shareholders can exercise their voting rights via electronic communication (by postal vote) and granting of power of attorney; this does not affect the option for granting power of attorney in other ways, for example by post or fax (see the Sections "Voting electronically by post" and "Voting by proxy" below),
3. the shareholders will be given an opportunity to ask questions by electronic communication (see the Section "Shareholder rights – Shareholders' right to ask questions" below), and
4. in deviation from Section 245 no. 1 AktG, the shareholders who have exercised their voting right in accordance with no. 2 above are given the opportunity to object to a resolution of the Annual General Meeting, waiving the requirement to appear at the Annual General Meeting.

Shareholders who have duly submitted their application for registration as well as evidence of their shareholding to the Company can access the password-protected Online Service at the internet address

<http://www.bilfinger.com/en/annual-general-meeting>

still on the day of the Annual General Meeting and during the whole course of the Annual General Meeting. There, still on the day of the Annual General Meeting and until the beginning of the vote on the resolution proposals in the General Meeting, they can exercise their voting rights via electronic communication (by postal vote) and issue powers of attorney and instructions on how to exercise the voting rights to the proxy designated by the Company. In addition, from the beginning until the end of the General Meeting, they can object to a resolution of the General Meeting. Shareholders can find the necessary access data for the Online Service on the access card sent by post.

Questions must be submitted by electronic communication at least two days before the Annual General Meeting. Further information on the exercise of the right to ask questions can be found in the Section “Shareholder rights – Shareholders' right to ask questions” below.

Voting electronically by post

Shareholders and shareholder representatives, respectively, can cast their votes electronically without attending the virtual General Meeting (postal vote). The prerequisite for exercising voting rights through electronic postal voting is that registration and evidence of shareholding are provided in due time and form (see the Section “Conditions for attending the virtual General Meeting and exercising voting rights” above).

For the electronic submission of postal votes, their revocation or changes, the Company offers the password-protected Online Service at

<http://www.bilfinger.com/en/annual-general-meeting>

which will still be available on the day of the virtual General Meeting and until the beginning of the vote on the resolution proposals in the General Meeting. Shareholders can find the necessary access data for the Online Service and further information on the access card sent by post.

Voting by proxy

Shareholders may elect to have their voting rights exercised by a proxy, namely by a proxy designated by the Company and bound by instructions, but also e.g. by a bank, a shareholders' association or another proxy nominated by the shareholder (who, however, for this year's virtual General Meeting must also either use electronic postal voting or authorize the proxy designated by the Company). Registration and evidence of shareholding in due form and time are also required in this case (see the Section "Conditions for attending the virtual General Meeting and exercising voting rights" above).

It is possible to appoint a proxy both prior to and during the General Meeting, and such proxy may also be appointed prior to registration. Proxies may be appointed by way of the shareholder making a declaration to the relevant proxy or to the Company.

In the event that the granting of proxy authorization does not fall within the scope of application of Section 135 AktG (i.e. if the proxy is not an intermediary, a shareholders' association, a proxy advisor or another person with equivalent status under Section 135 (8) AktG and the granting of proxy authorization does not fall within the scope of application of Section 135 AktG on any other grounds), the proxy authorization must be granted or revoked, and evidence of the proxy authoriza-

tion to be provided to the Company must be provided in text form (Section 126b of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*)) in accordance with Section 134 (3) sentence 3 AktG. No use is made of the authorization under Article 19 (4) sentence 3 of the Articles of Incorporation to specify requirements that are less strict than the text form as the form required by law. The special provisions set out below additionally apply where authorization is granted to proxies designated by the Company.

In the event that the granting of proxy authorization falls within the scope of application of Section 135 AktG (i.e. if the proxy is an intermediary, a shareholders' association, a proxy advisor or another person with equivalent status under Section 135 (8) AktG or the granting of proxy authorization falls within the scope of application of Section 135 AktG on other grounds), text form is neither required pursuant to Section 134 (3) sentence 3 AktG, nor do the Articles of Incorporation contain a specific provision governing such case. Intermediaries, shareholders' associations, proxy advisors, and other persons with equivalent status under Section 135 (8) AktG may, therefore, use forms for the granting of proxy authorization which need only comply with the applicable statutory provisions, in particular those contained in Section 135 AktG. Reference is hereby made to the special procedure pursuant to Section 135 (1) sentence 5 AktG.

Please note that your proxies (including intermediaries, proxy advisors, shareholders' associations and other persons with equivalent status under Section 135 (8) AktG), in order to cast votes, must also use the proxies designated by the Company or electronic postal voting for this year's virtual General Meeting. If your proxy should or would like to use the password-protected Online Service for this purpose, you have to forward the access data on your access card.

We offer our shareholders the option of authorizing proxies designated by the Company and bound by instructions even prior to the General Meeting. The proxies designated by the Company will in any event require instructions in order to exercise voting rights. If no such instructions are given, they will not exercise their authorization. The proxies designated by the Company are obligated to vote in accordance with the instructions given to them.

For authorizing the proxies designated by the Company and giving instructions to them, the Company offers the password-protected Online Service at

<http://www.bilfinger.com/en/annual-general-meeting>

which will still be available on the day of the virtual General Meeting and until the beginning of the vote on the resolution proposals in the General Meeting. Shareholders can find the necessary access data for the Online Service and further information on the access card sent by post. In order to ensure timely receipt of the access card, registration and submission of evidence should take place as early as possible.

In addition, shareholders wishing to authorize the proxies designated by the Company and to give instructions to them may use the form submitted to them together with the access card for the virtual General Meeting. The completed form is to be sent to the Company's address:

Bilfinger SE
c/o C-HV AG
Gewerbepark 10
92289 Ursensollen
Germany

or by **fax** to: +49 (0) 9628 92 99 871

or by **e-mail** to: hv@bilfinger.com

and must be received no later than by the end of Monday, June 22, 2020, 24:00 hrs (CEST); otherwise, it cannot be taken into account for organizational reasons. In this respect, too, we would like to point out that registration and submission of evidence should take place as early as possible to ensure timely receipt of the access card and the form.

If authorization is granted by way of a declaration made to the Company, no additional evidence of proxy authorization is required. If, however, proxy authorization is granted by way of declaration to the proxy appointed, the Company may demand to see evidence of such authorization, unless – where the granting of proxy authorization falls within the scope of application of Section 135 AktG – otherwise provided for under Section 135 AktG. In accordance with Section 134 (3) sentence 4 AktG, the following means of electronic communication is available (to the shareholder or the proxy appointed) for sending the evidence of authorization: The evidence of appointment of a proxy may be sent to the Company by e-mail to: **hv@bilfinger.com**. It will be ensured that “Word”, “PDF”, “JPG”, “TXT” and “TIF” documents sent as e-mail attachments will be taken into account (with the possibility of existing e-mails being forwarded). The Company is only able to draw the link between evidence of proxy authorization that is sent by e-mail and a specific application for registration if such authorization or the corresponding e-mail states either the name and address of the relevant shareholder or the number of the access card.

Shareholders will receive a proxy form by post together with their access card. A proxy form is also available on the internet at

<http://www.bilfinger.com/en/annual-general-meeting>.

The use of these forms is not mandatorily required by applicable law, under the Articles of Incorporation or otherwise by the Company. In the interests of problem-free processing we ask, however, that these forms be used for granting proxy authorization if proxies are appointed by way of declaration to the Company. Declarations to be made to the Company that are relevant for the appointment of proxies may in particular be submitted at the address, fax number or e-mail address stated for the application for registration.

Information on the shareholder rights in accordance with Article 56 SE Regulation, Section 50 (2) SE-AG, Section 122 (2), Section 126 (1), Section 127 and Section 131 (1) AktG, Article 2 Section 1 COVID-19 Act

Requests for additional agenda items pursuant to Article 56 SE Regulation, Section 50 (2) SE-AG, Section 122 (2) AktG, Article 2 Section 1 (3) sentence 4 COVID-19 Act

Under Article 56 SE Regulation, Section 50 (2) SE-AG and Section 122 (2) AktG, shareholders collectively holding at least one-twentieth of the capital stock or at least EUR 500,000.00 in total (the latter corresponding to 166,667 shares) may request that additional items be added to the agenda and made public. Such requests must be made in writing to the Company's Executive Board and, pursuant to Article 2 Section 1 (3) sentence 4 of the COVID-19 Act, must have been received by the Company by no later than Tuesday, June 9, 2020, 24:00 hrs (CEST). The request may be sent to the following address:

Bilfinger SE
Executive Board
Oskar-Meixner-Straße 1
68163 Mannheim
Germany

Any additions to the agenda which require publication and were not published with the calling notice will be published in the German Federal Gazette (*Bundesanzeiger*) without undue delay (*unverzüglich*) after having been received by the Company and will be forwarded for publication to media which can be expected to publish the information across the entire European Union. Any requests for additional items to be added to the agenda which are received by the Company once the General Meeting has been convened will also be made available on the internet at

<http://www.bilfinger.com/en/annual-general-meeting>

and thereby communicated to the shareholders without undue delay after having been received by the Company.

Counter-motions and nominations pursuant to Section 126 (1) and Section 127 AktG

The shareholders' rights to make motions and nominations relating to particular agenda items and the rules of procedure are excluded according to the legal concept of the COVID-19 Act; this is because the Executive Board, with the approval of the Supervisory Board, decided to conduct a virtual General Meeting in accordance with Article 2 Section 1 (1), (2), (6) of the COVID-19 Act. Nevertheless, the Company will give shareholders the opportunity to submit countermotions and nominations prior to the Annual General Meeting in accordance with Sections 126, 127 AktG and in accordance with the following explanations:

The Company will make corresponding countermotions and nominations available at the internet address:

<http://www.bilfinger.com/en/annual-general-meeting>

including the name of the shareholder, the reasons, which are not required for nominations, and any statement by the management, if received by the Company by no later than Tuesday, June 9, 2020, 24:00 hrs (CEST), at the address:

Bilfinger SE
Executive Board
Oskar-Meixner-Straße 1
68163 Mannheim
Germany

or by **fax** to: +49 (0) 621 459-2221

or by **e-mail** at: hv@bilfinger.com

and the other requirements in accordance with Section 126 AktG and Section 127 AktG are met.

However, in accordance with the legal concept of the COVID-19 Act, corresponding counter motions and nominations will not be put to the vote at the Annual General Meeting and will not be dealt with in any other way.

Shareholders' right to ask questions

Shareholders having properly registered for the virtual Annual General Meeting will be given the opportunity to ask questions by electronic communication (Article 2 Section 1 (2) sentence 1 no. 3 COVID-19 Act).

The Executive Board, with the approval of the Supervisory Board, decided that questions must be submitted by electronic communication no later than two days before the Annual General Meeting (Article 2 Section 1 (2) sentence 2, half sentence 2 COVID-19 Act, see also the Section "Virtual General Meeting without physical presence of the shareholders or their proxies" above). This means that the questions must be received no later than June 21, 2020, 24:00 hrs (CEST), via the password-protected Online Service at the internet address

<http://www.bilfinger.com/en/annual-general-meeting>.

Shareholders can find the necessary access data for the Online Service on the access card sent by post. In your own interest, please contact your depository institution as early as possible to ensure early registration and timely receipt of the access card.

We explicitly point out that the Executive Board, in accordance with Article 2 Section 1 (2) sentence 2, half sentence 1 COVID-19 Act, will decide at its dutiful, free discretion which questions will be answered and how they will be answered.

Further information

Waiving the requirement to appear at the Annual General Meeting, the shareholders who have exercised their voting right via electronic communication (by postal vote) or via granting of power of attorney are given the opportunity to object to a resolution of the Annual General

Meeting. Corresponding declarations are to be submitted to the Company via the Online Service and are possible from the beginning of the General Meeting until the General Meeting is closed by the Chairman.

Further information on the shareholders' rights, in particular information relating to additional requirements above and beyond compliance with the relevant deadlines, is available on the internet at:

<http://www.bilfinger.com/en/annual-general-meeting>.

Transmission of the General Meeting

On June 24, 2020, beginning at 10:00 hrs (CEST), the entire Annual General Meeting will be available to the properly registered shareholders and their proxies live in video and audio via the password-protected Online Service at the internet address:

<http://www.bilfinger.com/en/annual-general-meeting>.

The Annual General Meeting is broadcast from the offices of the Company (Oskar-Meixner-Straße 1, 68163 Mannheim). In addition to the Chairman of the General Meeting and to the Executive Board members, the notary retained to take the minutes of the General Meeting and the proxies designated by the Company will be present there.

Access to the Online Service, and thereby the possibility to follow the General Meeting, will be granted to the shareholders and their proxies, respectively, after entering the access card number and the corresponding internet access code, as set out on the access card.

Following the transmission of the General Meeting on the internet via the Online Service does not constitute a participation in the General Meeting in the meaning of Section 118 (1) sentence 2 AktG.

Documents relating to the General Meeting, website offering information pursuant to Section 124a AktG

The content of the calling notice, a statement of why no resolution is to be passed in respect of Agenda Item 1, the documents to be made available to the General Meeting, the total number of shares and voting rights existing on the date of the calling notice, a form for granting proxy authorization, and any requests for additional agenda items within the meaning of Article 56 SE Regulation, Section 50 (2) SE-AG, Section 122 (2) AktG, Article 2 Section 1 (3) sentence 4 COVID-19 Act are available on the internet at:

<http://www.bilfinger.com/en/annual-general-meeting>.

Total number of shares and voting rights

Bilfinger SE's capital stock is divided into 44,209,042 no-par-value shares, each of which carries one vote. Therefore, the total number of voting rights existing on the date of the calling notice is 44,209,042.

Information on data protection

The Company processes personal data of the shareholders and of possible shareholders' representatives for the preparation and execution of the virtual General Meeting. These data especially include the name, the place of residence and the address, respectively, a possible e-mail address, the respective number of shares, the number of the access card, any proxy voting authorizations and the exercise of the voting right. As the case may be, further personal data may be considered.

Person Responsible, purpose and legal basis

The Company is responsible for data processing. The purpose of data processing is to enable the shareholders and the shareholders' representatives to participate in the virtual General Meeting and to exercise their rights prior to and during the virtual General Meeting. Legal basis for the data processing is Article 6 (1) sentence 1 (c) and (f) of the General Data Protection Regulation (*Datenschutz-Grundverordnung, DSGVO*).

Recipient

As to the virtual General Meeting, the Company retains various service providers and consultants. They will only receive the personal data that are necessary to provide the requested services. The service providers and consultants will process the data solely in accordance with the instructions of the Company. Furthermore, personal data is provided to shareholders and shareholders' representatives in accordance with legal provisions, namely by way of the list of participants (*Teilnehmerverzeichnis*).

Storage period

The personal data will be stored in accordance with legal obligations or as long as the Company has a legitimate interest in the storage, e.g. in the case of a judicial or extra-judicial dispute relating to the virtual General Meeting. The personal data will be deleted subsequently.

Data subject rights

Subject to certain legal requirements, you have the right of access, rectification, restriction, objection and erasure with regard to your personal data and the processing of your personal data, respectively, as well as a right to request data portability in accordance with Chapter III DSGVO. Furthermore, you are entitled to lodge a complaint with the supervisory authorities for data protection according to Article 77 DSGVO.

Contact details

The contact details of the Company are as follows:

Bilfinger SE
Oskar-Meixner-Straße 1
68163 Mannheim
Germany

Our data protection officer can be contacted at:

dataprivacy@bilfinger.com

Mannheim, May 2020

Bilfinger SE
The Executive Board

Annex to Agenda Item 7: Elections to the Supervisory Board

Information on the shareholder representatives
nominated for election

Dr. Bettina Volkens, Königstein

Supervisory Board member and
freelance consultant

Personal Data

Date of birth: June 15, 1963

Place of birth: Bremen



Relevant knowledge, skills and professional experience

Education

Studies of Law, University of Göttingen
Legal Clerkship, Judicial Authorities Berlin

Career

- | | |
|-------------|--|
| 1996 – 1997 | Wessing & Partner,
Attorney-at-Law (<i>Rechtsanwältin</i>) |
| 1997 – 2000 | Deutsche Bahn AG,
Central Department Law and Environmental Law,
Corporate Counsel |
| 2000 – 2003 | Deutsche Bahn AG,
Head of Client Team Law and Head of the
Executive Board Office Passenger Traffic |

2003 – 2005	DB Regio AG, Member of the Regional Management North-East, Staff
2006 – 2011	DB Regio AG, Chief Human Resources Officer; 2008 – 2011 in the same person Head of Staff Passenger Traffic
2011 – 2012	DB Mobility Logistics AG, Head of Staff Development Group & Group Senior Management
2012 – 2013	Deutsche Lufthansa AG, Head of Senior Management Group
2013 – 2019	Deutsche Lufthansa AG, Member of the Executive Board & Chief Human Resources Officer, responsible for Staff & Law; 2013 – 2014 in the same person Member of the Executive Board for Passage, Staff & Decentralized Stations

Membership of statutory supervisory boards of other German companies:

CompuGroup Medical SE & Co. KGaA (elected on May 13, 2020; constitution of this Supervisory Board only with effect of a currently still ongoing change of legal form)

Membership of comparable supervisory bodies of commercial enterprises in Germany and abroad:

None

No further essential functions in the meaning of C.14 of the German Corporate Governance Code

Robert Schuchna, Lachen, Switzerland

Partner at Cevian Capital



Personal Data

Date of birth: March 4, 1988

Place of birth: Marktredwitz

Relevant knowledge, skills and professional experience

Education

Bachelor and Master of Arts in Banking & Finance,
University of Zurich

Chartered Financial Analyst (CFA)

Career

Since 2011 Cevian Capital, Switzerland

2018 – 2020 Cevian Capital AG,
Managing Director

Since 2020 Cevian Capital,
Partner

Membership of statutory supervisory boards of other German companies:

None

Membership of comparable supervisory bodies of commercial enterprises in Germany and abroad:

None

No further essential functions in the meaning of C.14 of the German Corporate Governance Code

Development in the financial year 2019

KEY FIGURES FOR THE BILFINGER GROUP

in € million

	2019	2018	Δ in %
Orders received	4,159	4,459	-7 (org: -4)
Order backlog	2,567	2,818	-9 (org: -7)
Revenue	4,327	4,153	4 (org: 6)
EBITDA adjusted	212	129	64
EBITA adjusted	104	65	60 (org: 65)
EBITA margin adjusted (in %)	2.4	1.6	
EBITA	32	-7	
Adjusted net profit	49	36	36
Adjusted earnings per share (in €)	1.23	0.87	
Net profit	24	-24	
Operating cash flow	110	50	121
Adjusted operating cash flow	181	110	65
Free cash flow	57	-4	
Adjusted free cash flow	128	56	127
Capital expenditure on P, P & E	64	66	-3
Employees (number at reporting date)	34,120	35,905	-5

Business development

In the Engineering & Maintenance Europe segment, orders received of €2,711.2 million (previous year: €2,889.6 million) were below the relatively high prior-year figure, while orders received in the Engineering & Maintenance International segment increased to €856.7 million (previous year: €784.3 million). For Technologies, orders received declined to €456.5 million (previous year: €648.3 million); here, the awarding of significant projects was shifted into 2020. At Group level, a figure of €4,158.8 million was achieved (previous year: €4,458.5 million).

Revenue in the Engineering & Maintenance Europe segment was stable at €2,748.6 million (previous year: €2,724.9 million). In Engineering & Maintenance International, revenue was up significantly at €911.6 million (previous year: €752.1 million) and in Technologies to €538.5 million (previous year: €503.4 million). The Group recorded an increase to €4,326.9 million (previous year: €4,152.6 million), corresponding to organic growth of 6 percent.

Adjusted EBITA of €104.0 million (previous year: €65.1 million) was well above the prior-year figure. In relation to revenue, the adjusted EBITA margin was 2.4 percent (previous year: 1.6 percent). Adjusted EBITA in the Engineering & Maintenance Europe segment of €101.3 million (previous year: €102.8 million) was at the magnitude of the previous year. The EBITA margin was 3.7 percent (previous year: 3.8 percent). Adjusted EBITA in the Engineering & Maintenance International segment grew to €42.3 million (previous year: €31.6 million); the adjusted EBITA margin in this segment was 4.6 percent (previous year: 4.2 percent). At Technologies, adjusted EBITA was -€27.9 million (previous year: -€26.1 million), which corresponds to an EBITA margin of -5.2 percent (previous year: -5.2 percent). This meant that the targeted significant improvement as compared with the prior year was not achieved.

Net profit increased considerably to €24.2 million (previous year: -€24.3 million) and was thus positive again for the first time since 2016. Discontinued operations made a significant contribution here of €23.6 million. Adjusted net profit from continuing operations was also increased to €49.5 million (previous year: €36.2 million).

Return on capital employed (ROCE) improved again, reaching 1.8 percent in the reporting year (previous year: 0.1 percent).

Investments in property, plant and equipment and intangible assets decreased slightly to €63.6 million (previous year: €65.6 million). These outflows were countered by lower cash inflows of €10.2 million (previous year: €12.1 million). Net investments were nearly unchanged at €53.4 million (previous year: €53.5 million). Overall, a significantly positive free cash flow of €56.9 million was generated, following a prior-year figure that was still slightly negative at -€3.6 million. Adjusted free cash flow also improved considerably to €127.9 million (previous year: €56.4 million).

CONSOLIDATED INCOME STATEMENT (ABRIDGED VERSION)

in € million

	2019	2018
Revenue	4,326.9	4,152.6
Cost of sales	-3,915.1	-3,762.0
Gross profit	411.8	390.6
Selling and administrative expense	-379.5	-402.5
Impairment losses and reversals of impairment losses in accordance with IFRS 9	1.2	-0.3
Other operating income and expense	-25.3	-14.3
Income from investments accounted for using the equity method	19.9	14.3
Earnings before interest and taxes (EBIT)	28.1	-12.2
Financial result	-21.9	15.0
Earnings before taxes	6.2	2.8
Income taxes	-3.9	-22.8
Earnings after taxes from continuing operations	2.3	-20.0
Earnings after taxes from discontinued operations	23.6	-3.3
Earnings after taxes	25.9	-23.3
thereof non-controlling interests	1.7	1.0
Net profit	24.2	-24.3
Average number of shares (in thousand)	40,284	41,458
Earnings per share (in €)*	0.60	-0.59
thereof from continuing operations	0.01	-0.51
thereof from discontinued operations	0.59	-0.08

* Basic earnings per share are equal to diluted earnings per share.

CONSOLIDATED BALANCE SHEET
(ABRIDGED VERSION)

in € million

	Dec.31,2019	Dec.31, 2018
Assets		
Non-current assets		
Intangible assets	802.5	803.9
Property, plant and equipment	311.9	324.0
Right of use assets from leases	227.4	0.0
Other non-current assets	334.6	486.5
	1,676.4	1,614.4
Current assets		
Receivables and other current assets	1,178.6	1,237.4
Marketable securities	0.0	120.0
Cash and cash equivalents	499.8	453.8
Assets classified as held for sale	0.0	50.4
	1,678.4	1,861.6
Total	3,354.8	3,476.0
Equity & liabilities		
Equity	1,152.9	1,204.7
Non-current liabilities		
Provisions for pensions and similar obligations	338.0	288.2
Non-current financial debt	551.3	10.8
Other non-current liabilities	27.9	64.1
	917.2	363.1
Current liabilities		
Current financial debt	49.7	501.6
Other current liabilities	1,235.0	1,380.6
Liabilities classified as held for sale	0.0	26.0
	1,284.7	1,908.2
Total	3,354.8	3,476.0

CONSOLIDATED STATEMENT OF CASH FLOWS (ABRIDGED VERSION)

in € million

Cash flow from operating activities of continuing operations

thereof special items

Adjusted cash flow from operating activities of continuing operations

Capital expenditure on P, P & E and intangible assets

Proceeds from the disposal of property, plant and equipment

Net cash outflow for property, plant and equipment / intangible assets

Free cash flow from continuing operations

thereof special items

Adjusted free cash flow from continuing operations

Payments made / proceeds from the disposal of financial assets

Investments in financial assets

Changes in marketable securities

Cash flow from financing activities of continuing operations

Share buyback

Dividends

Borrowing

Repayment of financial debt

Interest paid

Change in cash and cash equivalents of continuing operations

Change in cash and cash equivalents of discontinued operations

Change in value of cash and cash equivalents due to changes in foreign exchange rates

Change in cash and cash equivalents

Cash and cash equivalents at January 1

Change in cash and cash equivalents of assets classified as held for sale

Cash and cash equivalents at December 31

	2019	2018
	110.3	49.9
	-71.0	-60.0
	181.3	109.9
	-63.6	-65.6
	10.2	12.1
	-53.4	-53.5
	56.9	-3.6
	-71.0	-60.0
	127.9	56.4
	143.0	0.3
	-1.8	-0.7
	119.9	27.4
	-243.8	-167.5
	0.0	-111.3
	-42.9	-44.1
	375.5	3.4
	-549.6	-0.4
	-26.8	-15.1
	74.2	-144.1
	-32.3	-15.4
	0.8	-0.8
	42.7	-160.3
	453.8	617.1
	3.3	-3.0
	499.8	453.8

SEGMENT REPORTING BY BUSINESS SEGMENT

in € million

Technologies
Engineering
& Maintenance
Europe

	2019	2018	2019	2018
External revenue	536.1	499.7	2,723.4	2,695.3
Internal revenue	2.4	3.7	25.2	29.6
Total revenue	538.5	503.4	2,748.6	2,724.9
EBITA adjusted (segment earnings)	-27.9	-26.1	101.3	102.8
Special items	-7.2	-14.4	-20.2	-3.8
EBITA (segment earnings)	-35.1	-40.5	81.1	99.1
Amortization of intangible assets from acquisitions and impairment of goodwill	-0.6	-0.6	-0.6	-1.2
EBIT (segment earnings)	-35.7	-41.1	80.5	97.8
therein depreciation of property, plant and other intangible assets	-3.3	-3.7	-38.4	-39.1
therein depreciation of rights of use from leases	-4.4	0.0	-30.2	0.0
therein income from investments accounted for using the equity method	0.0	0.0	1.0	2.8
Segment assets December 31	417.8	445.8	1,494.0	1,381.3
thereof investments in associates and joint ventures accounted for using the equity method	0.0	0.0	1.9	4.0
Segment liabilities December 31	252.3	340.3	618.3	673.2
Investments in property, plant and equipment	2.8	3.4	49.9	41.9
Capitalization of rights of use from leases	1.6	0.0	19.8	0.0
Employees December 31	2,415	2,458	23,508	24,009

SEGMENT REPORTING BY REGION

in € million

Germany
Rest of Europe

	2019	2018	2019	2018
External revenue	963.3	970.2	2,305.4	2,323.8
Non-current assets at December 31	682.9	543.0	413.5	313.8

Engineering & Maintenance International		Total of segments		Reconciliation Group				Total continuing operations	
2019	2018	2019	2018	2019	2018			2019	2018
910.9	752.1	4,170.4	3,947.1	156.5	205.5			4,326.9	4,152.6
0.7	0.0	28.3	33.3	-28.3	-33.3			0.0	0.0
911.6	752.1	4,198.7	3,980.4	128.2	172.2			4,326.9	4,152.6
42.3	31.6	115.7	108.3	-11.8	-43.2			103.9	65.1
-5.7	-0.6	-33.1	-18.8	-38.8	-53.8			-71.9	-72.6
36.6	31.0	82.6	89.6	-50.5	-97.0			32.1	-7.5
-2.7	-2.8	-3.9	-4.6	0.0	-0.1			-3.9	-4.7
33.9	28.2	78.7	84.9	-50.5	-97.1			28.2	-12.2
-6.4	-5.2	-48.1	-48.0	-7.2	-17.1			-55.3	-65.1
-5.2	0.0	-39.8	0.0	-11.5	0.0			-51.3	0.0
17.9	11.5	18.9	14.3	1.0	0.0			19.9	14.3
501.3	516.9	2,413.1	2,344.0	941.7	1,132.1			3,354.8	3,476.1
7.8	23.9	9.7	27.9	8.8	7.0			18.5	34.9
178.3	201.2	1,048.9	1,214.7	1,153.0	1,056.6			2,201.9	2,271.3
6.9	5.3	59.6	50.6	4.0	15.0			63.6	65.6
5.8	0.0	27.2	0.0	13.1	0.0			40.3	0.0
6,667	7,647	32,590	34,114	1,530	1,791			34,120	35,905
America		Africa		Asia		Australia		Total continuing operations	
2019	2018	2019	2018	2019	2018	2019	2018	2019	2018
798.3	643.4	123.9	89.3	136.0	125.8	0.0	0.1	4,326.9	4,152.6
225.9	246.7	6.4	2.5	13.2	21.9	0.0	0.0	1,341.9	1,127.9

Corporate Headquarters

Oskar-Meixner-Straße 1
68163 Mannheim, Germany
www.bilfinger.com

Chairman of the Supervisory Board

Dr. Eckhard Cordes

Executive Board

Thomas Blades, Chairman
Christina Johansson
Duncan Hall

Place of Registration and Commercial Register

Mannheim
District Court Mannheim
Register of Companies HRB 710296

ISIN DE0005909006
German Securities Identification Number
(*Wertpapier-Kenn-Nr.*) 590 900