**Arbitration CAS 2016/A/4519 FC Porto v. Hellas Verona FC & Club Cerro Porteño, award of 26 January 2017**

Panel: Prof. Ulrich Haas (Germany), President; Mr José Juan Pintó (Spain); Mr Alasdair Bell (United Kingdom)

*Football*
*Solidarity contribution*
*Validity of internal arrangements shifting the burden to pay the solidarity contribution*
*Principles of interpretation of contracts*
*Legal value of values and texts uploaded in the TMS*

1. **The FIFA Regulations on the Status and Transfer of Players (RSTP) with respect to the financial burden of the solidarity mechanism do not preclude the parties to a contract from freely agreeing as to which of them will bear the financial responsibilty for paying the solidarity amounts which are due under the FIFA rules. Neither the RSTP nor Swiss law forbid the parties to shift the financial burden for the payment of the solidarity contribution from the "seller" of the player to the receiving club.**

2. **According to Art. 18 of the Swiss Code of Obligations (CO), when interpreting a contract, the parties' common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention. This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them. By seeking this ordinary sense, the real intention of the parties must be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith, based on its wording, the context and the concrete circumstances in which it was expressed. Unclear declarations or wordings in a contract will be interpreted against the party that drafted the contract: *in dubio contra stipulatorem*.**

3. **The FIFA Transfer Matching System (TMS) is a simple formality the purpose of which is to make the (contents of) transfer agreements transparent (like a registry). The upload in the TMS is – legally speaking – not a declaration of intent, but a simple act providing information. It is neither apt nor intended to alter or amend prior agreements entered into by the parties. This all the more in view of the fact that the information that can be provided via the TMS is standardised and – in addition – may not correctly reflect the legal situation.**

## I. PARTIES

1. Futebol Clube do Porto – Futebol, SAD (hereinafter referred to as "FC Porto" or "the Appellant") is a professional football club based in Porto, Portugal and affiliated to the Football Federation of Portugal.

2. Hellas Verona Football Club S.p.A. (hereinafter referred to as "Hellas Verona" or "the First Respondent") is a professional football club based in Verona, Italy and affiliated to the Football Federation of Italy.

3. Club Cerro Porteño (hereinafter referred to as "Cerro Porteño" or "the Second Respondent") is a professional football club based in Asunción, Paraguay and affiliated to the Football Federation of Paraguay.

## II. FACTS

4. On 2 September 2013, FC Porto, Hellas Verona and the player J. (hereinafter referred to as "the Player") concluded a transfer agreement entitled *"Professional Football Player Registration Loan Agreement"* (hereinafter referred to as "the Loan Agreement") for the transfer of the Player on a temporarily basis, i.e., for the period starting on 2 September 2013 and ending on 30 June 2014 from FC Porto to Hellas Verona for a total compensation of € 300.000.

5. According to Clause 1.2 of the Loan Agreement FC Porto grants to Hellas Verona an option right to acquire the registration of the Player on a permanent basis for a total compensation of € 15.000.000. The relevant parts of the Loan Agreement regarding the compensation read as follows:

> *"CLAUSE ONE*
>
> *1.1. FC PORTO hereby transfers to VERONA FC the registration of the professional football player J., on a temporarily basis, i.e., for the period starting on the 02nd of September 2013 and ending on the 30th of June 2014 (the "Loan Period").*
>
> *1.2. Furthermore, FC PORTO grants to VERONA FC an option right to acquire the registration of the PLAYER on a permanent basis against the payment of the agreed net amount of € 15.000.000 (Fifteen Million Euros). Such option right can be exercised by VERONA FC until the date of 31st May 2014, by notifying FC PORTO in writing by way of facsimile (+131225070550) or e-mail (juridico@fcporto.pt) and making the respective payment to the Bank account below identified.*
>
> *CLAUSE TWO*
>
> *2.1. In consideration of such loan of the player's registration and option right, VERONA FC agrees and shall pay to FC PORTO, against the presentation of the respective invoice, the net*

*amount of € 300.000 (Three Hundred Thousand Euros), fully payable within 07 days of signing the present agreement.*

*2.2. All payments to FC PORTO are net [which herein means that the amounts referred above are the sums to be paid to FC PORTO after all legal and/or regulatory deductions including but not limited to the FIFA solidarity mechanism – if any – have been made] and made via Bank transfer to FC PORTO'S Bank Account which details are as follows: (…)".*

6. The draft of the Loan Agreement was written by FC Porto and provided to Hellas Verona on 2 September 2013 per e-mail.

7. On 30 September 2013, Hellas Verona paid € 285.000 to FC Porto via bank transfer.

8. On 15 November 2013, Mr Massimiliano Dibrogni in his role as Secretary General of Hellas Verona informed Mr Telma Ribeiro, area claims – accounting and tax from FC Porto, via e-mail as follows:

*"(…) We have retained the portion (5%) relating Solidarity Contribution that we will distribute according to FIFA Regulation. We shall pay at your Club € 8.125 (see attached)".*

9. On 18 November 2013, Telma Ribeiro (FC Porto) answered as follows:

*"Dear Massimiliano,*

*We acknowledge your bank transfer on the 15.11.2013. We are quite satisfied that we have finally reached a conclusion related to this specific payment. However, according to the agreement signed the referred deduction is not due as clause 2.2 is quite clear regarding sum to be paid to FC PORTO.*

*Please do reevaluate your analyses; we shall expect for the transfer of remaining amount - € 15.000.00.*

*(…)".*

10. On 20 November 2013, Telma Ribeiro (FC Porto) reminded as follows:

*"Dear Mr. Dibrogni,*

*Related to previous enlightment, we do need to conclude this all process. We appreciate you could disburse the remaining amount as briefly as possible.*

*(…)".*

11. The same day Massimiliano Dibrogni (Hellas Verona) replied as follows:

*"(…)*

*We understand what you are saying and are very much aware of clause 2.2 of our agreement, but unfortunately the FIFA regulations are extremely clear and we are not in a position to deviate from them.*

*We attach one of the many decisions reached by FIFA in this respect: the new club is ordered to deduct the relevant proportion of 5% of the transfer compensation and to distribute it as solidarity contribution to the potential training club(s) in strict application of the Regulations.*
*Parties to a transfer agreement are not allowed to derogate to the mandatory provisions regarding solidarity mechanism and therefore not permitted to determine that the amount of transfer compensation amounted to a sum net without deduction of the relevant solidarity contribution.*

*In addition to the above, if the amount of € 300'000 that we had agreed was actually net of solidarity contribution, which as you have seen above is not allowed, the real amount of this loan transfer would actually be € 316'000, i.e. higher than the agreed amount indicated on TMS.*

*(…)"* (emphasis added by Mr Massimiliano Dibrogni).

12. On 21 November 2013, Telma Ribeiro (FC Porto) answered as follows:

*"Dear Mr. Dibrogni,*

*I have requested relevant enlightment to our Legal Services, who unfortunately regret your behaviour and position. As far as we are concerned Hellas Verona FC is deliberately breaking an obligation, knowingly assumed by the time that the transfer occurred.*

*In light of the above, we shall expect for the remain bank transfer within a maximum period of 5 days; otherwise we sadly wish to inform that we will be forced to complain to competent authorities.*

*(…)".*

13. On 22 November 2013, Massimiliano Dibrogni (Hellas Verona) replied as follows:

*"Dear Telma,*

*Your Legal Services will most certainly be familiar with the regulations and jurisprudence of FIFA as set out in our previous email so they must know that what you are asking us to do is not in line with the applicable rules.*

*Just for the sake of good order, even if we decided to pay you the full amount without retaining the solidarity contribution in violation of the regulations, we would then have to file a claim against your club at FIFA in order to obtain the reimbursement of the amount paid in excess (see jurisprudence attached).*

> *(…)*
>
> *p.s. You shall find enclosed a copy of the payment of the solidarity contribution (portion of the solidarity contribution: € 2.625 + portion of the undistributed: € 5.500 = € 8.125)".*

14. According to the FIFA Transfer Matching System (hereinafter referred to as "the TMS") Hellas Verona payed € 8.125, i.e. FC Porto's share of the solidarity contribution, the same day.

15. On 5 March 2014, Hellas Verona sent a fax to Mr Jorge Nuno Pinto Da Costa, the president of FC Porto, asking as follows:

> *"(…) For the event that Hellas Verona decided to exercise said option right within the agreed time limit of 31st May 2014, we would like to discuss with you, at your earliest convenience, the modalities of such possible payment, since the transfer contract is silent on this specific point. (…)".*

16. On 11 April 2014, FC Porto replied as follows:

> *"Considering your fax dated from 5th March 2014, about the temporary transfer agreement agreed by Porto, Verona and J., we would like to inform you that, if your Club decides to exercise buy option, it should make the full payment within 72 hours from the official notification of your intention in writing to Porto and that payment should always, in any case, be completed before 31st May 2014".*

17. On 14 May 2014, Hellas Verona informed FC Porto (fax dated 14 May 2014) of its intention to exercise the option right for the permanent transfer of the Player.

18. On 27 May 2014, Hellas Verona payed € 14.250.000 to FC Porto via bank transfer.

19. On 29 May 2014, Mr Paolo Lombardi, the representative of Hellas Verona, sent an e-mail to Mr Daniel Lorenz, director of legal affairs of FC Porto, informing him as follows:

> *"(…)*
>
> *Verona as you know has recently paid to Porto the amount agreed in the transfer agreement of 2nd September 2013 and has done so in accordance with the applicable FIFA Regulations, i.e. by deducting the 5% solidarity contribution.*
>
> *I am aware that the transfer agreement indicates that the amount due to Porto shall be "net", but in accordance with Art. 1 of Annexe 5 of the FIFA Regulations and in line with the goals and the spirit of the provisions governing the solidarity mechanism, the deduction by way of the solidarity contribution of the requisite proportion of 5% of the total transfer compensation paid to the player's former club is mandatory.*

*Clubs are not permitted to deviate from this by agreeing that the amount of transfer compensation be considered "net" of the solidarity contribution, i.e. that the requisite solidarity contribution be paid "in addition" to the amount of transfer compensation agreed between the clubs involved.*

*Also, the jurisprudence of the FIFA Dispute Resolution Chamber (attached) makes it clear, that if, contrary to the Regulations, the player's new club pays 100% of the total transfer compensation to the player's former club without deducting the requisite solidarity contribution (whether by error or pursuant to an agreement between the two clubs involved in the transfer), the player's former club will be deemed to have received the entire solidarity contribution relating to the transfer – it will therefore be deemed to have received more than it was entitled to, should there be other clubs that contributed to the training and education of the player.*

*Whilst the former club will be required to repay to the new club the requisite proportion of the solidarity contribution to which it was not entitled, the player's new club is (irrespective of that repayment) under an obligation to pay the requisite solidarity contribution to the other club(s) involved in the player's training within 30 days of registering the player in accordance with the provisions of Annexe 5 of the FIFA Regulations, notwithstanding the fact that it paid 100% of the transfer compensation to the former club without deducting the appropriate amount for the solidarity contributions payable.*

*I know you are very much familiar with these provisions and jurisprudence and therefore you are aware that, even if Verona paid to you the full amount without retaining the solidarity contribution (in violation of the applicable FIFA regulations) Verona would then have to file a claim against your club at FIFA in order to obtain the reimbursement of the amount paid in excess. The attached jurisprudence shows that Porto would surely be ordered to reimburse to Verona the undue amount received.*

*(…)*

*Finally, you will have noticed that my client has shown its utmost good faith in this matter whereby it made an unprecedented and historic investment for a club of its size (also, paying such significant amount at once is to say the least exceptionally rare these days, even for big clubs!). All Verona wants to do is act in fairness and in compliance with the applicable regulations.*

*I would be most grateful if you could confirm your understanding of and agreement with the above as soon as possible.*

*(…)".*

20. The same day Mr Daniel Lorenz replied to Mr Paolo Lombardi as follows:

*"(…)*

*First of all, I would like to point out that Verona has only paid part of the amount owed as regards the fee due by Verona to FC Porto in consideration for FC Porto's granting to Verona*

*the loan and option right of the Player. Indeed despite having claimed from Verona the outstanding amount of € 6.875 (six thousand eight hundred and seventy five euros) Verona has until today still not made such payment.*

*Secondly, as you acknowledged in your e-mail, from the agreed net amount of € 15.000.000 (Fifteen Million Euros), to be deposited in FC Porto's account until the 31st May 20014 (sic!), we have just received a part of it, i.e., € 14.250.000. Hence, € 750.000 (seven hundred and fifty thousand euros) still remain outstanding.*

*I appreciate all the explanations made by as regards FIFA jurisprudence. Nonetheless, for FC Porto it is crystal clear that in the actual agreement entered into between FC Porto, Verona and the Player, Verona expressly and clearly assumed to pay the solidarity contribution costs to be distributed to the clubs entitled to such compensation (clauses 1 and 2). This understanding and covenant is literally well documented and was never challenged either in the negotiations between the Clubs nor in the exchange of the agreement draft (see agreement hereto attached). Thus when you make reference to an alleged "utmost good faith" of Verona in this particular matter I cannot regard it as other than ludicrous.*

*Please be advised that FC Porto shall not consider the transfer in question as concluded if Verona does not pay the above mentioned outstanding amounts.*

*(…)".*

21. On 29 May 2014, Hellas Verona payed € 756.875 to FC Porto via bank transfer.

22. On 30 May 2014, Mr Paolo Lombardi sent an e-mail to Mr Daniel Lorenz informing him as follows:

*"(…)*

*As a matter of fact, Verona has in the meantime also paid the entire "remaining" amount that you mentioned in your email (copy of payment attached), so to successfully complete the permanent transfer of the player J..*

*Once you are in receipt of this additional payment, I would be most grateful if you could issue an official communication confirming that you have received the full amount indicated in the relevant transfer agreement.*

*(…)".*

23. On 24 October 2014, Cerro Porteño contacted the Federation International de Football Association (hereinafter referred to as "the FIFA") requesting its proportion of solidarity contribution, based on the definitive transfer of the player to Hellas Verona (2.07% of the total transfer fee or € 310.650).

24. After Hellas Verona had stated that it would shortly start distributing the amounts due to Cerro Porteño, the latter informed the FIFA, that no payment had been received by Hellas Verona and requested to submit its claim to the FIFA Dispute Resolution Chamber (hereinafter referred to as "the FIFA DRC").

25. On 3 September 2015, the FIFA DRC rendered a decision on the claim filed by Cerro Porteño (hereinafter referred to as "the Appealed Decision"). In the operative part of the Appealed Decision the FIFA DRC rules as follows:

*"1. The claim of Club Cerro Porteño is partially accepted.*

*2. Hellas Verona FC has to pay to Club Cerro Porteño,* ***within 30 days*** *as from the date of notification of this decision, the amount of EUR 310,500.*

*3. In the event that the aforementioned sum is not paid within the stated time limit, interest of 5% p.a. falls due as of expiry of the stipulated time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*

*4. Any further claim lodged by of Club Cerro Porteño is rejected.*

*5. The final costs of the proceedings in the amount of CHF 22,000 are to be paid by Hellas Verona FC,* ***within 30 days*** *of notification of the present decision, as follows:*
*(…)*

*6. Club Cerro Porteño is directed to inform Hellas Verona FC immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received.*

*7. FC Porto has to reimburse the amount of EUR 310.500 to Hellas Verona FC* ***within 30 days*** *as from the date of notification of this decision.*

*8. If the aforementioned sum is not paid by Porto FC within the aforementioned deadline, interest at the rate of 5% p.a. will fall due as of expiry of the said 30 days' time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*

*9. Hellas Verona FC is directed to inform Porto FC immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".*

26. On 2 March 2016, the grounds of the Appealed Decision were communicated to the Parties. The FIFA DRC stated – *inter alia* – as follows:

*"[…] Taking into account the above arguments, the Chamber observed that the main issue in the current matter is that Porto is of the opinion that the total amount of EUR 15,000,000 is due to it*

*and that, in accordance with article 2.2 of the loan agreement, Verona had to pay, on top of the total loan and transfer compensation of EUR 15,000,000, the relevant amounts concerning solidarity contribution to the club(s) involved in the training and education of the player.*

*In this context, the DRC referred again to art. 21 and art. 1 of Annexe 5 of the Regulations which clearly stipulates that "if a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation (…)".*

*In this respect, the DRC was eager to emphasize that the solidarity mechanism is a principle well established in the Regulations, from which the parties signing a transfer or loan contract cannot derogate through the contents of a contract. In other words, the obligation to distribute solidarity contribution cannot be set aside by means of a contract concluded between the clubs involved in a player's transfer. Thus, as for the distribution of the solidarity contribution, the amount to be taken into account when calculating the solidarity contribution payments due to the club(s) involved in the player's education and training, is the amount actually agreed upon as the total compensation payable by the new club to the former club, regardless of any provision to the contrary stipulated in the transfer or loan contract.*

*In this regard, the Chamber considered that if one would follow Porto's interpretation of art. 2.2 of the loan agreement and its argument that Verona should pay it the total compensation of EUR 15,000,000 without deducting any amount(s) in conformity with the rules regarding solidarity contribution, it would mean that, in the present matter, the amount of EUR 15,000,000 would constitute 95% of the total amount of compensation for the permanent transfer of the player. Consequently, Verona would be responsible to pay the remaining part of 5% to the club(s) involved in the training and education of the player. The DRC stressed that would this line be followed, the total amount of compensation, for the loan and the permanent transfer of the player, would be EUR 15,789,473, which, evidently, would be different from the terms of the agreement signed between the clubs involved in the loan and the subsequent permanent transfer of the player. Consequently, the DRC considered that, should the solidarity contribution be calculated in the way Porto argued, the 5% solidarity contribution would, according to the Regulations, then be calculated on the basis of EUR 15,789,473 instead of EUR 15,000,000, a calculation which, in the Chamber's view, is incorrect as such an approach as to the calculation of the solidarity contribution would destabilize the entire system of the solidarity mechanism and would undermine the legal certainty the Regulations provide for. Therefore, a strict application of the rules regarding solidarity contribution should be followed and, hence, 5% should have been deducted from the EUR 15,000,000 and distributed to the club(s) involved in the player's training and education.*

*Subsequently and considering that Porto received 100% of the transfer fee, the DRC referred to the well-established jurisprudence of the DRC which has to be applied in the present matter, in accordance with which the player's new club is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player's training and education in strict application of art. 1 and art. 2 of Annexe 5 of the Regulations. At the same time, according to said well-established jurisprudence, the player's former club is ordered to reimburse the same proportion(s) of the 5% of the compensation that it received from the player's new club".*

## III. PROCEEDINGS BEFORE THE CAS

27. On 23 March 2016, the Appellant filed an appeal with the Court of Arbitration for Sport (hereinafter referred to as "the CAS") against Hellas Verona, Cerro Porteño and the FIFA related to the Appealed Decision and nominated Mr José J. Pintó as an arbitrator.

28. In its appeal the Appellant referred to another decision of the FIFA DRC rendered the same day and concerning the same issues (but involving a different Second Respondent, i.e. Club Atlético River Plate) which had been appealed by FC Porto with the CAS on the same day. The case at issue was given the reference *CAS 2016/A/4518 FC Porto v. Hellas Verona FC & Club Atlético River Plate and FIFA*. The Appellant requested a consolidation of the two proceedings.

29. On 1 April 2016, the CAS Court Office informed the Parties that the consolidation of appeal proceedings was only possible in the case of appeals directed against the same decision. In addition, the letter made reference to Art. R50 (2) of the Code of Sports-related Arbitration (hereinafter referred to as "the CAS Code") and invited the Parties to inform the CAS Court Office within three days, whether they agree to submit the proceedings CAS 2016/A/4518 and CAS 2016/A/4519 to the same panel.

30. By letter dated 4 April 2016, the Appellant requested a five-day extension of the time limit to file its Appeal Brief pursuant to Art. R32 of the CAS Code. The request was granted the same day.

31. With letter dated 6 April 2016, the FIFA requested to be excluded as a party in the present procedure and in the procedure CAS 2016/A/4518.

32. On 7 April 2016, the First Respondent informed the CAS Court Office that it agreed with the consolidation of the two proceedings.

33. With letter dated 8 April 2016, the CAS Court Office invited the First Respondent to confirm, that the consent expressed by it related to submitting the proceedings to the same panel, since the prerequisites for a consolidation of the proceedings pursuant to Art. R52 of the CAS Code were not fulfilled (as indicated in the letter dated 1 April 2016).

34. On 8 April 2016, the Appellant requested that the deadline to file the Appeal Brief be suspended until it was determined whether the two proceedings were to be submitted to the same panel.

35. On the same date, the First Respondent agreed to the submission of the two proceedings to the same panel and nominated Mr Alasdair Bell as arbitrator.

36. With letter dated 11 April 2016, the Respondents were invited to comment on the Appellant's request within two days. In the meantime, the deadline for the filing of the Appeal Brief was suspended.

37. On 11 April 2016, the CAS Court Office invited the Second Respondent to inform it, whether it agreed to the nomination of Mr Alasdair Bell as arbitrator.

38. The same day, the Appellant agreed to remove the FIFA as a respondent in the proceedings (both in CAS 2016/A/4518 and in CAS 2016/A/4519).

39. With letter dated 19 April 2016, the CAS Court Office advised the Parties that the Second Respondent had failed to express its position on the Appellant's request for the two proceedings to be submitted to the same panel. Consequently, the President of the CAS Appeals Arbitration Division, or her Deputy, shall decide this matter. Furthermore, the Second Respondent was advised, that its failure to comment on the (joined) appointment of Mr Alasdair Bell as arbitrator shall be deemed as an acceptance of his nomination.

40. On 20 April 2016, the CAS Court Office advised the Parties, that the Deputy President of the Appeals Arbitration Division had decided to submit both proceedings to the same panel. Furthermore, the Appellant was informed, that its deadline to file its Appeal Brief resumed of receipt of the letter at issue.

41. On 21 April 2016, the Appellant filed its Appeal Brief.

42. On 22 April 2016, the Second Respondent informed the CAS Court Office that it agreed with the appointments of Mr Alasdair Bell and Mr José J. Pintó as arbitrators.

43. On 13 May 2016, the Second Respondent submitted its Answer.

44. On 16 May 2016, the First Respondent submitted its Answer.

45. With letter dated 30 May 2016, the First Respondent informed the CAS Court Office that it deemed a hearing not to be necessary and that the Panel may decide the matter based on written submissions only.

46. With letter dated the same day, the Appellant advised the CAS Court Office of its preference for a hearing.

47. On 31 May 2016, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties, that the Panel appointed to decide the dispute at hand was constituted as follows:

President: Mr Ulrich Haas, Professor in Zurich, Switzerland
Arbitrators: Mr José J. Pintó, Attorney-at-law, Barcelona, Spain
Mr Alasdair Bell, Attorney-at-law, Nyon, Switzerland.

48. With letter dated 6 June 2016, the CAS Court Office advised the Parties that Ms Zdravka Bozic had been appointed to assist the Panel as an ad-hoc clerk.

49. On 13 July 2016, the CAS Court Office informed the parties that Messrs Daniel Lorenz, Raul Pais da Costa, Urgel Martins and Isidoro Gimenez will be heard as witnesses. Further the Appellant was requested to provide written witness statements within the meaning of Art. R51 of the CAS Code.

50. With letters dated 29 and 31 July 2016, the Appellant provided witnesses statements provided by Messrs Urgel Martins and Isidoro Gimenez. The Appellant informed the CAS Court Office that no witness statement was provided for Mr Raul Pais da Costa as he will not be attending the hearing as a witness.

51. On 12 August 2016, the CAS Court Office informed the Parties that the hearing in this case will be held on 27 October 2016 at 09:30 (CET).

52. On 12 September 2016, the Appellant informed the CAS Court Office that Messrs Isidoro Gimenez and Mr Urgel Martins are going to attend the hearing.

53. On 13 October 2016, the CAS Court Office requested the Parties to sign and return a copy of the Order of Procedure (hereinafter referred to as the "OoP") by 20 October 2016.

54. The same day the Appellant sent a signed copy of the OoP.

55. On 14 October 2016, the First Respondent sent a signed copy of the OoP.

56. On 17 October 2016, the Second Respondent sent a signed copy of the OoP.

57. On 25 October 2016, the Appellant informed the CAS Court Office that one of its witnesses Mr Isidoro Gimenez was not able to attend the hearing due to a medical issue. The Appellant attached a (new) witness statement of Mr Isidoro Gimenez which was accepted by the First Respondent and which replaced the witness statement previously provided.

58. With letter dated 26 October 2016, the Appellant provided the evidence that Mr Isidoro Gimenez currently is in hospital care.

59. A hearing was held on 27 October 2016 in Lausanne. The Appellant was represented by Mr David Casserly. The First Respondent was represented by Messrs Paolo Lombardi and Anton Sotir. The Second Respondent was represented by Mr Sergio A. Sánchez Fernández. Mr Martin Urgel, former Legal Director of FC Porto was also heard as a witness. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings.

## IV. PARTIES' RESPECTIVE REQUESTS FOR RELIEF AND BASIC POSITIONS

60. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

### A. The Appellant

61. On 23 March 2016, in its statements of appeal, and on 21 April 2016, in its appeal brief, the Appellant requests – *inter alia* – to:

 1. *"Set aside paragraphs 6, 7 and 8 of section III of the decision of the FIFA Dispute Resolution Chamber dated 3 September 2015,*
 *Or in the alternative,*
 *Set aside the decision of the FIFA Dispute Resolution Chamber dated 3 September 2015;*
 2. *Confirm that Futebol Clube do Porto – Futebol, SAD is not bound to reimburse Hellas Verona Football Club S.p.A. for any amounts which Hellas Verona Football Club S.p.A. is liable to pay as solidarity contribution to Club Atletico River Plate;*
 3. *Order Hellas Verona Football Club S.p.A. to pay the full amount of the CAS Arbitration costs;*
 4. *Order Hellas Verona Football Club S.p.A. and the Fédération Internationale de Football Association to pay a significant contribution towards the legal costs and other related expenses of Futebol Clube do Porto – Futebol, SAD, at least in the amount € 30,000".*

 In its appeal brief dated 21 April 2016, the Appellant amended its prayer for relief in no. 4 and requests now as follows:

 4. *Order Hellas Verona Football Club S.p.A. to pay a significant contribution towards the legal costs and other related expenses of Futebol Clube do Porto – Futebol, SAD, at least in the amount € 20,000.*

62. The Appellant's submissions on the merits can summarized in their main parts as follows:

 a. *"When negotiating the amounts that would be payable for the loan and potential permanent transfer of the Player, FC Porto stipulated that all amounts that had been agreed to would have to be received by FC Porto in full and that, therefore, any legal or regulatory payments or deductions, including, but not limited to, FIFA solidarity contribution, would be the responsibility of Verona. Verona accepted FC Porto's stipulation unconditionally".*

 b. *"Verona did not suggest any amendments to the draft contract that had been sent for its analysis on the same day (2 September 2013), Verona and FC Porto entered into the Loan Agreement".*

 c. *"In addition to having indicated in clauses 1.2 and 2.1 that the amounts payable woult be "net", the Parties' agreement in this respect was reflected in very clear terms in Clause 2.2 of the Loan Agreement,*

*which provides as follows: "All payments to FC Porto are net [which herein means that the amounts referred above are the sums to be paid to FC PORTO after all legal and/or regulatory deductions including but not limited to the FIFA solidarity mechanism – if any – have been made] […]"*.

d. The Appellant stated, that the deduction of the 5% was contrary to the Loan Agreement and requested the outstanding amount. FC Porto clarified, that it did not share the First Respondent's interpretation of the FIFA Regulations.

e. *"Having been notified of FC Porto's refusal to agree to deviate from the terms of the contract, Verona paid the outstanding amounts (the deductions made in relation to both the loan fee and the transfer fee) on the following day, 29 May 2014. (…) As the Panel will note, Verona did not reserve any rights or impose any condition when making this payment. (…) This is the final confirmation that Verona accepted that the agreement between the parties was for a net payment and that Verona accepted that such amount was payable by Verona to FC Porto"*.

f. Clubs involved in the transfer of a professional football player can conclude an agreement as to which club must bear the financial obligation for the payment of solidarity contribution. The Appellant basis this findings on the following arguments:

(1) the wording in Art. 21 of the FIFA Regulations, Art.1, 2.1 and 2.2 of Annexe 5 of the FIFA Regulations according to which:

- *"The new club will deduct 5% of the transfer compensation;*
- *The new club will calculate the proportion to which each training club is entitled;*
- *Finally, the new club will distribute the solidarity contribution according to its calculation to each training club"*.
- The Appellant concludes that *"Article 1 of Annex 5 creates therefore a regulatory obligation of the new club towards the training clubs for the payment of solidarity contribution"*.

(2) *"[F]ive leading CAS awards that establish a clear line of case law in this regard"*. The Appellant finds that *"[t]he CAS' well established jurisprudence is that there is nothing in the FIFA RSTP* [the FIFA Regulations] *or in Swiss law that prevents the new club and the former club from agreeing to transfer the burden for the payment of the solidarity contribution from the former club to the new club"*.

(3) All five CAS awards applied versions of the FIFA Regulations dated 2005 or later. The Appellant further notes that *"the CAS' established jurisprudence in relation to this issue actually precedes the first of the cases discussed (CAS 2008/A/1544 […]). Although based on a slightly different version of the FIFA regulations (the 2001 Edition), the Awards in the CAS arbitrations CAS 2006/A/1018 […] and CAS 2006/A/1158/1160/1161 […] already confirmed that the clubs were at liberty to contractually allocate the burden for solidarity contribution"*.

(4) With reference to the first of the five CAS awards (CAS 2008/A/1544 […]), the Appellant submits – *inter alia* – as follows:

- *"(…) the two clubs entered into a transfer contract (…) and agreed that the transfer fee would be paid "net"*.
- One of the training clubs claimed for solidarity contribution from Al Arabi. Al Arabi accepted its obligation to pay solidarity contribution to the training club, but argued that it should be reimbursed for that amount by Mallorca. FIFA decided, that Al Arabi had to pay solidarity contribution to the player's training club and ordered Mallorca to reimburse Al Arabi for this amount.
- On appeal, the CAS Panel stated – inter alia – as follows:

  *"Therefore, the 2005 version of the FIFA Regulations does not prohibit the parties' stipulations providing that the new club, instead of the former club, will carry the financial burden of the solidarity contribution. Moreover, under Swiss law, such contractual stipulation would also be allowed. In this regard, article 19 of the Swiss Code of Obligations affirms the parties' freedom to contract (…).*

  *Moreover, Art. 20 of the Swiss CO* [the Swiss Code of Obligations] *adds: "Contracts containing provisions which are impossible, illegal or contra bonos mores are invalid"*.

  *Furthermore, neither the 2005 FIFA Regulations nor other FIFA rules do prohibit the parties to [agree] on such an internal arrangement: rather, FIFA is keen with its rules to make sure that no internal arrangement between transferring club and new club can anyhow complicate the legal position of such other clubs that are entitled to solidarity contribution.*

  *Therefore, upon an analysis of the aforementioned provisions, the Panel concludes that neither the relevant provisions of the FIFA Regulations nor those of Swiss law forbid the parties to stipulate who will carry the final financial burden of the solidarty contribution"*.

(5) With reference to the second CAS award (CAS 2009/A/1773 […]), the Appellant submits – *inter alia* – as follows:

- *"(…) the two clubs entered into a transfer contract (…) and agreed that the "complete amount" was payable upon receipt of the applicable invoice"*.
- On appeal, the CAS Panel – referring to CAS 2008/A/1544 […] and CAS 2006/A/1018 […] – stated – *inter alia* – as follows:

  *"The Panel sees no reason to depart from the above-mentioned CAS jurisprudence. Indeed, there are no provisions in the FIFA Regulations or in the Swiss legislation, nor have any been pointed out by the parties, suggesting that an "internal arrangement" between the clubs involved in a transfer is prohibited, as long as the new club remains responsible vis a vis the clubs that trained the player.*

  *[…] the Panel wishes to clarify that the FIFA Regulations do not leave the issue of internal relationship between new and former club entirely in the hands of the clubs involved in a transfer. It is clear from the wording of Article 21 that the new club "retains and*

*distributes" an amount which is "deducted" from the transfer sum owed to the former club. Thus, the FIFA Regulations clearly indicate that, although payment of solidarity contribution is effected by the new club, the financial burden in fact lies with the former club, which is in principle deprived from the 5% of its right on the agreed transfer amount. The legal relationship between new and former club created by Article 21 of the FIFA Regulations becomes even more evident through the "reimbursement mechanism" which has evolved in the FIFA DRC jurisprudence and been accepted by CAS: in case the new club pays the entire (i.e. without deducting 5%) transfer sum to the former club and is ordered by FIFA to pay the solidarity contribution to the clubs that trained the player, it is entitled to claim back the 5% of the transfer fee from the former club.*

*It follows that, as regards the internal relationship between new and former club and <u>in the absence of any agreement to the contrary</u>, Article 21 of the FIFA Regulations imposes the financial burden of solidarity contribution on the former club. Therefore, Borussia being the former club of the Player, it bears the procedural onus of proving that an agreement shifting the said burden to América was concluded in the present case. (…)"* (emphasis added by the Appellant).

- The Appellant summarizes the findings as follows: *"In that case, the Panel found that there had been no agreement between the parties with respect to who would bear the liability for solidarity contribution and therefore confirmed the FIFA decisions. However, the award clearly confirmed the CAS' previous ruling that the clubs involved in a transfer of a professional footbal player can indeed agree on which club will bear the final financial obligation for the payment of solidarity contribution".*

(6) With reference to CAS 2012/A/2707 […] the Appellant submits – *inter alia* – as follows:

- *"(…) the two clubs signed an agreement (…) which provided that (…) "The club Dynamo de Kiev will be in charge of the 5% solidarity mechanism stipulated in annex 5 of FIFA regulations complementarily to the principal and complementary compensation for the transfer of the player Diakhate Pape".*
- *Nancy requested that, in addition to the agreed transfer fee, Dynamo would pay the solidarity contribution to which Nancy was entitled as one of the player's training clubs. Dynamo refused to pay Nancy's share of solidarity contribution, arguing that the transfer fee paid to Nancy already included that solidarity contribution, and that Dynamo was obliged only to pay solidarity contribution to the other training clubs, excluding Nancy".*
- Nancy filed a claim with FIFA, which was rejected.
- On appeal, the CAS Panel reversed the FIFA decision and stated – *inter alia* – as follows:

  *"The FIFA DRC basically holds the dismissal of Nancy's claim in the fact that in accordance with the FIFA RSTP [the FIFA Regulations], the amount corresponding to the solidarity mechanism shall be mandatorily deducted by the new club from the transfer compensation, not being the clubs entitled to derogate the aforementioned compulsory rule.*

*Therefore, the parties were not permitted to determine that the amount of transfer compensation amounted to a sum net without deduction of the solidarity contribution, which made the FIFA DRC consider that Nancy already received from Dynamo the solidarity contribution relating to the relevant transfer of the Player.*

*(…)*

*In the present case, the Player was transferred from Nancy to Dynamo before the expiry of his contract, so in accordance with the FIFA RSTP* [the FIFA Regulations], *the solidarity contribution shall accrue. However it shall be also regarded again that the parties agreed in article 3 of the Convention that Dynamo would bear the solidarity contribution "en complément de l'indemnité de mutation définitive principale et complémentaire du joueur".*

*The Panel, after analysing the provisions of the FIFA RSTP* [the FIFA Regulations] *on the solidarity mechanism, understands that article 3 of the Convention is not contrary to those provisions.*

*(…)*

*However, in the Panel's view, there is no legal obstacle which prevents the clubs from agreeing (as the parties did in the case at stake) that the new club, apart from paying the transfer price, additionally bears the solidarity contribution.*

*(…)*

*Therefore, upon an analysis of the aforementioned provisions, the Panel concludes* ***that neither the relevant provisions of the FIFA Regulations nor those of Swiss law forbid the parties to stipulate who will carry the final financial burden of the solidarty contribution****"* (emphasis added).

(7) With reference to CAS 2013/A/3403-3404 & 3405 […] the Appellant submits – *inter alia* – as follows:

- *"(…) the two clubs entered into a transfer agreement (…) and agreed that: "All taxes and expenses, including those relating to the FIFA rules (5% solidarity contribution) will be borne by THE NEW CLUB, and will not be deducted from the above transfer fee".*
- As well as in the previously discussed awards, the training clubs claimed for solidarity contribution before FIFA. Again the new club was ordered to pay solidarity contribution and the former to reimburse the new club.
- During the CAS proceedings, the new club admitted, that it had agreed in the transfer contract to bear the reponsibility for the solidarity payments and decided to withdraw its claim for reimbursement. With regard to the DRC decisions, the Sole Arbitrator noted: *"(…) CAS jurisprudence exists where it is mentioned that the mechanism of the solidarity contribution is not compulsory as far as a mutual agreement between the parties does not circumvent the duty to pay the solidarity contributions to the entitled clubs. Since Al Nasr has confirmed its duty to pay the solidarity contributions to the training clubs, the Sole Arbitrator considers that the mechanism of solidarity contribution was not circumvented by the mutual agreement between the parties.*

*Hence, the Sole Arbitrator considers it inaccurate to overrule the bilateral transfer agreement and the acknowledgement of the Appellant's prayers for relief (alternatively) by the Respondent in the case at hand".*

- The Appellant concludes that *"[t]his award demonstrates, once again, that the CAS' clear jurispurdence is that the FIFA DRC's approach of overruling bilateral agreements between clubs concerning solidarity contribution, is incorrect".*

(8) Regarding the last of the five CAS awards referred to (CAS 2015/A/4137 Olympique Lyonnais vs. AS Roma), the Appellant submits – *inter alia* – as follows:

- *"(…) the two clubs entered into a transfer agreement (…) and agreed that the transfer fee would be payable in three instalments "net of any local taxes, VAT and solidarity contribution". Moreover, the Parties agreed in the transfer contract as follows: "the transfer compensation […] set out in this agreement does not include the FIFA solidarity contribution. Such compensation will be borne by AS Roma, and will not be deducted from the transfer compensation"".*

- Lyon – the former club – requested its share of solidarity contribution. AS Roma – the *new* club – refused to pay, arguing that those amounts were already included in the transfer fee. Lyon filed a claim with FIFA requesting the payment of its share of solidarity contribution. AS Roma filed a counter-claim requesting the reimbursement, since AS Roma did not deduct 5% of the transfer compensation as required by the FIFA Regulations. FIFA rejected Lyon's claim and partially accepted AS Roma's counter-claim, ordering Lyon to reimburse AS Roma for part of the solidarity payments that AS Roma had made to the player's training clubs.

- On *appeal*, the Sole Arbitrator reversed the FIFA decision, ordering AS Roma to pay Lyon its share of solidarity contribution and stated – *inter alia* – as follows:

  *"The DRC correctly explained that the net agreement between the parties leads to the situation that the agreed transfer sum of EUR 11,000,000.00 constitutes only 95% of the total amount of compensation for the transfer of the player, while the gross transfer value is EUR 11,578,947 (EUR 11,000,000.00 / 95 x 100 = EUR 11,578,947).*

  *(…)*

  *the parties comply with the principles outlined above, the Sole Arbitrator fails to see any destabilizing effect of the Transfer Agreement on the solidarity system as a whole and how it would undermine the legal certainty of the RSTP* [the FIFA Regulation]. *The wording of the Transfer Agreement is clear (…). The fact that a net agreement leads to the situation that a club can no longer calculate the solidarity contribution simply by deducting 5% from the amount stipulated in the transfer contract but that it will have to make a slightly more sophisticated calculation as mentioned above (first step: transfer fee / 95 x 100 = gross transfer value; second step: gross transfer value x 0.05 = solidarity contribution), does not lead to a destabilization [sic] of the system".*

(9) In light of the five awards discussed, the Appellant concludes that *"(…) neither the relevant provisions of the FIFA Regulations nor those of Swiss Law prevent the parties from stipulating which club will bear the financial burden of the solidarity contribution and, in case the new club agrees to bear the responsibility to pay the solidarity contribution, it will have to do so in addition to the payment of the agreed transfer fee"*.

g. The Parties in the present case did conclude an agreement designed to shift the financial obligation to pay the solidarity contribution. The Appellant bases this finding on the following arguments:

(1) Clause 1.2, 2.1 and 2.2 of the Loan Agreement provide, that the fees for the loan of the Player and his permanent transfer are "net" and define the "net amount" as follows: *"All payments to FC Porto are* ***net*** *[which herein means that the amounts referred above are the sums to be paid to FC Porto* ***after all legal and/or regulatory deductions including but not limited to the FIFA solidarity mechanism*** *(…)"* (emphasis added).

(2) With reference to Art. 18.1 of the Swiss Code of Obligation (hereinafter referred to as the "Swiss CO") the Appellant submits – *inter alia* – that the starting point for any contract interpretation is the wording of the clause itself. Only if the wording is not clear, the intention of the parties has to be taken into account. *"FC Porto therefore submits that the wording of the relevant clauses is clear and does not require any additional effort of interpretation"*.

(3) Referring to the e-mail correspondence between the Parties, the Appellant states that Hellas Verona never disputed the Loan Agreement and never denied, that it was bound to bear any solidarity contribution. *"Rather, Verona's position was that, due to the relevant provisions of the FIFA RSTP* [the FIFA Regulations]*, it could not comply with the agreement"*. Moreover, *"the fact, that Verona was considering paying the amounts (but then claim them back) is evidence itself that Verona was aware that that was its contractual obligation, as otherwise there would be no reason for any payment in that regard to be made to FC Porto"*.

h. The Appellant submits that it is evident, that Hellas Verona acted in bad faith towards FC Porto. When negotiating the Loan Agreement and the amounts payable, Hellas Verona accepted the arrangement unconditionally. After deducting 5% of the payments made and having been requested by FC Porto to comply with the terms of the agreement, Hellas Verona *"confirmed that it was 'very much aware of clause 2.2' of the Loan Agreement, but referred to FIFA's regulations and jurisprudence as supposedly preventing it from making the payments which it had contractually agreed to. Verona's reliance on FIFA jurisprudence regarding solidarity contribution as an excuse not to comply with the terms it had agreed to, was in bad faith"*.

i. Hellas Verona's bad faith approach is also evidenced by the fact that it had no intention of keeping the Player for the following season, but instead wanted to sell him to AS Roma in order to make a profit from the transfer. As a result of the Player's impressive

performance, *"both clubs were aware at that time that whichever club controlled the Player's registration was set to make a very considerable profit from his re-sale. Indeed, during the same transfer window, Verona transferred the Player to AS Roma for a reported transfer fee of approximately €22M, which can rise to €24.5M"*. By paying the entire transfer compensation Hellas Verona got its ownership of the registration of the Player undisputed and was able to proceed with a subsequent transfer. *"By subsequently filing a claim at the DRC and requesting that FC Porto be ordered to reimburse the solidarity amounts which it had paid to the training clubs, Verona violated two fundamental principles of Swiss law: the principle of non concedit venire contra factum proprium and the principle of pacta sunt servanda. Under Swiss law, a party cannot set itself in contradiction to its previous conduct vis-à-vis another party if the latter party has acted in reasonable reliance on such conduct. When FC Porto approved the Player's permanent transfer to Verona, thereby relinquishing its own opportunity to sell the Player for significant profit, it was acting in reasonable reliance on the expectation that it would retain the full amount of the transfer fee agreed between the parties and paid by Verona (it relied on the same fact when it initially entered into the contract). FC Porto's expectation was created by Verona when it complied with the terms of the contract and acceded to FC Porto's request to pay the full transfer fee, without stipulating any condition, or reserving its legal rights in any way"*. The Appellant concludes, that – in the event that the Panel would consider, that the Parties were not permitted to contractually shift the burden for the solidarity contribution – Hellas Verona should be prevented from relying on any potential invalidity of the Loan Agreement pursuant to the principle of *non concedit venire contra factum proprium.*

j. The Appellant refers to CAS 2005/A/973 […] where the CAS Panel found as follows: *"The Panel is of the opinion that the basic legal principle pacta sunt servanda should never be easily disregared. The facts of this case lead the Panel to believe that the Player tried to circumvent this fundamental principle of the law of contracts. (…) Based on the foregoing, the Panel is of the opinion that the Respondent decided to escape his obligations by artificially claiming the nullity of the unilateral option set forth by the Contract. (…) The Player's attitude is not bona fide and is in violation of the principle pacta sunt servanda"*. The Appellant concludes that *"[i]n the present case, Verona accepted the terms of the Loan Agreement and then sought to avoid its responsibilities by claiming that the obligation which it had agreed to in relation to the solidarity contribution payments was contrary to FIFA's rules and jurisprudence, so as to evade an expense that it had freely accepted to bear. Verona's conduct was not bona fide and violated the principle of pacta sunt servanda"*.

**B. The First Respondent**

63. In its answer dated 16 May 2016, the First Respondent requests to:

1. *"**REJECTING** the Appellant's appeal in its entirely and **CONFIRMING** the FIFA Decisions; and*
2. ***ORDERING** the Appellant to bear all procedural costs incurred with these proceedings; and*
3. ***ORDERING** the Appellant to cover the First Respondent's legal costs related to these proceedings, in the amount that will be deemed adequate"* (emphasis original).

64. The First Respondent submits the following reasoning in support of its requests:

a. Pursuant to Art. 21 of the FIFA Regulations and Art. 1 of Annexe 5 of the FIFA Regulations 5% of any transfer compensation shall be deducted. *"It is not left to the parties' discretion to modify this fundamental and mandatory principle, thus no contractual arrangement to the contrary may be accepted"*.

b. *"Consequently, the FIFA Regulations clearly indicate that, although the payment of solidarity contribution is distributed by the new club, the financial burden in fact lies with the former club, which is ultimately deprived of the 5% of the agreed transfer amount"*.

c. The First Respondent stated that the deduction of the 5% was in compliance with the mandatory FIFA Regulations. *"(…) Verona always made abundantly clear to Porto that it was not in a position to circumvent the applicable FIFA Regulations by failing to deduct the relevant 5%. (…) As regards specifically the Transfer Amount, only at a later stage, under Porto's threat to not release the Player permanently, did Verona pay Porto the remaining (undue) 5%"*.

d. *"Ever since the principle of solidarity mechanism came into force on 1st September 2001, clubs worldwide have been instructed that any international transfer, which entails the payment of compensation, is subject to a 5% deduction from said compensation by the player's new club. In a manner of speaking, ever since 2001, clubs involved in the transfer market have been aware that the price ultimately paid to the player's former club is 95% of the transfer amount agreed. This principle has been engraved in all FIFA regulations since 2001 and has been invariably confirmed in all decisions reached by the DRC in relation to solidarity contribution. By way of clarification, the 2005 edition of the FIFA Regulations introduced the current wording which, as reported above, explicitly requires that 5% of any compensation paid to the player's former club must be deducted by the new club from the total amount of this compensation"*.

e. *"Porto is a top European football club, which is involved in several international transfers every year. Therefore, they must be aware of this principle and that a deviation from it is not permitted"*.

f. The well-established jurisprudence of the FIFA DRC never suggested, that under FIFA Regulations the parties may deviate from the prescribed calculation of solidarity contribution and often made an explicit reference to the mandatory deduction of 5%. This has also been confirmed by the Players' Status Committee. In addition, the FIFA jurisprudence established the principle that in case the total transfer compensation (i.e. 100%) is paid to the former club, the new club remains under the obligation to pay the solidarity contribution to the entitled clubs. However, the new club is entitled to claim the respective amounts from the former club.

g. Pursuant to Art. 13 of the FIFA Statutes *"the decisions taken by the FIFA bodies are as mandatory as the FIFA Regulations"*.

h. *"The consistency of the FIFA jurisprudence is also confirmed by the CAS awards referred to by the Appellant in its submissions, whereby the appealed FIFA decisions were always in compliance with the above-mentioned principle. Moreover, even after the mere five CAS awards quoted by the Appellant, FIFA has never ceased to confirm such principle"*.

i. With reference to the CAS awards cited by the Appellant, the First Respondent notes that they *"are based on different factual and/or legal background and therefore the relevant findings cannot apply in the present case"*. Its submissions in support of this statement and requests can be submitted – *inter alia* – as follows:

   (1) Regarding the award in CAS 2015/A/4137 […], the First Respondent submits that *"the award is based on a tranfer agreement whereby the parties expressly agreed that solidarity contribution had to be borne by the player's new club AS Roma"*.

   (2) The same goes – according to the First Respondent *"… for the award in the proceedings CAS 2013/A/3403-3405 […], which is based on a contract according to which the parties explicitly agreed that the 5% solidarity contribution would be borne by the new club, and not be deducted from the transfer compensation"*.

   (3) *"[C]ontrary to the above-mentioned scenarios, the Loan Agreement is silent on the specific issue of which of the parties has to carry the burden of the solidarity contributions. Stating that an amount has to be received "net" (…), does not adress the question of who shall carry the burden of the solidarity contribution. For this reason, in compliance with the applicable FIFA Regulations, and as stated in the FIFA Decisions, the solidarity contribution shall ultimately be borne by Porto, as a result of the deduction performed by Verona"*.

   (4) In CAS 2009/A/1773-1774 […] the decision of the FIFA DRC that formed the matter in dispute pointed out that Art. 21 of the FIFA Regulations *"is mandatory and its implementation shall not be affected by clubs involved in a player's transfer agreeing upon other terms"*. In its award the CAS Panel clarified that *"in the absence of any agreement to the contrary, Article 21 of the FIFA Regulations imposes the financial burden of solidarity contribution to the former club"*.

j. Regarding the transfer amount and the burden of the solidarity contribution the First Respondent states that *"under no point did the parties indicate the alleged "gross amount" in the Loan Agreement"*. The only amount indicated in the Loan Agreement is € 15,000,000. Thus, the First Respondent questions: *"(…) how much is the solidarity contribution to be allegedly added to the "net" amount? Is it the whole 5% solidarity contribution or is it only the proportion that Cerro Porteño and River Plate are entitled to? And if this is the case, is Porto's proportion of solidarity contribution included in the Transfer Amount or excluded from it? Also, what are the "legal and/or regulatory" costs and how much do they amount to? The parties to the Loan Agreement did not specify any of the above"*.

k. The First Respondent submits that the Appellant has failed to present any evidence that the Parties had agreed on shifting the burden of solidarity contribution from FC Porto to Hellas Verona. Also – according to the First Responent – the Appellant *"fell short of proving in this proceedings that such burden was to be sustained by Verona"*.

l. In light of the above-cited CAS jurisprudence the First Respondent concludes that FC Porto *"did not provide any evidence of the fact that the reference it made to a "net" amount under clause*

*2.2 of the Loan Agreement equates to the fact that Verona has to pay the entire 5% solidarity contribution to all entitled clubs in addition to the Transfer Amount. (…) A simple reference to a "net" transfer amount does not adress the issue of which party must bear the solidarity contribution due to all entitled clubs. To this end, one may argue that if the party drafting a contract indicates that the amount due to it has to be "net" of solidarity contribution, this may well refer to that party's own proportion of solidarity contribution, and not to the whole 5%".*

m. According to the First Responent the facts described by it are also reflected and confirmed by the TMS. The relevant TMS Report shows that the "fixed transfer fee" agreed is € 15.000.000. This figure is of particular importance for training clubs, since they rely on on this amount in order to calculate the correct solidarity contribution. They cannot know of any additional agreements between the parties. *"This is a matter of protection of the legitimate rights of thid parties, as well as of legal certainty".*

n. As correctly stated by the FIFA DRC in the Appealed Decision, the amount to be taken into account is the amount actually agreed upon as the total compensation payable, *"regardless of any provision to the contrary stipulated in the transfer or loan contract".* This interpretation has been consistently adopted by the jurisprudence of the FIFA. In the present case the amount agreed as total compensation payable is € 15.300.000.

o. The fact that minutes after the signing of the Loan Agreement both parties to the transfer indicated the same amount in the FIFA TMS shows, that the Appellant was fully aware, that the fixed transfer fee is the amount from which 5% must be deducted and consequently, *"did not act in good faith in the execution of the Loan Agreement".*

p. Referring to the Appellant's attitude during the execution of the Loan Agreement, the First Respondent submitted in support of its requests – *inter alia* - as follows:

(1) The Player unexpectedly played an outstanding season during the loan period. This provoked a *"somewhat hostile"* attitude from the Appellant towards the First Respondent, *"possibly"* because the Appellant realised, that the Player might be transferred to a third club for a higher fee than expected.

(2) The Appellant advised the First Respondent that in case it exercised the option right, the entire amount had to be paid within 72 hours of notification, and in any event by no later than 31 May 2014. *"One-off payments of such magnitude are extremely unlikely in the football transfer market (…)*[and] *an indication that Porto was not willing to facilitate Verona's execution of the Loan Agreement".*

(3) In addition, the Appellant threatened the First Respondent at the time of the payment of the Transfer Amount in case it would not transfer the Player if the 5% were withheld. *"What is more, under paragraphs 126 and 129 of the Appeal Brief, Porto openly admits that, because of Verona's additional payment, it '…did not seek to block or delay' the Player's transfer. It is extraordinary how Porto would admit to such a blatant violation of the FIFA Regulations. Such a conduct is in open violation of the applicable*

*regulations, namely Article 9 par. 9 of the FIFA Regulations, whereby a player's transfer cannot be subject to any condition, including of course the payment of transfer compensation"*.

q. The allegation of the Appellant stating that the First Respondent paid the full amount without reserving any right and, thus, confirmed that such amount was payable *"does not correspond to reality"*. The First Respondent advised FC Porto of its intention to claim back with FIFA any undue amount. In fact, the Appellant raised an objection, when the First Respondent deducted the relevant 5%, but failed to follow suit and did not take any action, which could also be interpreted as a confirmation of acceptance of the Appellant's position.

r. The First Respondent's behaviour was consistent by deducting the relevant 5% when paying the loan amount as well as when paying the transfer amount. *"Verona had one, very good reason to pay 100% of the Transfer Amount in violation of the FIFA Regulations: to secure the Player's permanent transfer, pursuant to Porto's well-documented threat"*.

(1) *"The Loan Agreement was drafted by Porto and signed by all parties for acceptance in the last hours of the last day of the summer registration period relevant to the 2013/2014 season"*.

(2) *"As the TMS Report relevant to the Player's transfer indicates, the Loan Agreement was uploaded on 2nd September 2013 at 19:48CET and the ITC [International Transfer Certificate] request was filed at 22:10CET on the same day, i.e. a few minutes prior to the closure of the registration period"*.

(3) *"In spite of having indicated, on the very same day as the Loan Agreement, the Loan Amount in TMS as EUR 300'000 (or matched Verona's relevant indication), from which the 5% solidarity contribution must be retained according to the FIFA Regulations, Porto subsequently contested such deduction by alleging that it was contrary to what had been agreed"*.

(4) *"Finally, Verona duly distributed the amounts due as solidarity contribution to all entitled clubs, including Porto. In spite of its initial disagreement however, Porto did not put in place any action whatsoever against Verona in respect of the deduction from the payment of the Loan Amount". (…) "No claim was ever filed with FIFA by Porto in relation to the deduction applied by Verona to the payment of the Loan Amount"*.

(5) *"However, with the sole aim to successfully exercise the option right and to complete the permanent transfer of the Player, on 29th May 2014 Verona paid the additional 5% that it had previously deducted from the Transfer Amount, as demanded by Porto"*.

s. It was not the First Respondent's intention to unjustly enrich itself by retaining the relevant 5% since the amount had to be distributed to all entitled clubs. *"In fact, the payment of 100% of the Transfer Amount has unjusty enriched Porto"*.

t. Further, the First Respondent did not violate the principles of *pacta sunt servanda* and *venire contra factum proprium* by *"subsequently filing a claim at the DRC"* as stated by the Appellant. It just replied to the requests made by the training clubs.

u. *"The Appellant purports that in the above-cited email the First Respondent would have accepted the interpretation of clause 2.2 of the Loan Agreement according to which it would bear the solidarity contribution. Truth is, in these emails Verona simply acknowledged the existence of such clause, but at no point did Verona accept that clause 2.2 entails a shift in the burden as far as the payment of solidarity contribution is concerned"*.

v. With reference to the principle of *in dubio contra proferentem*, according to which the preferred interpretation should be the one that works against the interests of the party who drafted the agreement, the First Respondent submits that it was the Appellant who drafted the Loan Agreement. *"Therefore, between the two interpretations of the Loan Agreement, one in favour of said shift and the other against it, (…) the Panel shall prefer the interpretation that works against Porto, having the latter drafted the Loan Agreement"*.

### C. The Second Respondent

65. In its answer dated 13 May 2016, the Second Respondent submits the following request:

> *"(…) we sincerely appreciate if the Panel could issue a partial award on this case, in which be clearly stated that the order from FIFA to HELLAS VERONA to pay to CERRO PORTENO is definitive, and, that nobody has appealed against it, so, as consequence, issue a partial award ratifying the FIFA decision related the paragraph 1.- 2.- and 3 of the FIFA Decision appealed against by PORTO FC, and order HELLAS VERONA to pay to CERRO PORTENO the amount fixed on the FIFA Decision, 310.500.-€ plus interest"*.

66. By CAS letter dated 13 July 2016, the Parties were informed that the request of the Second Respondent was denied.

67. During the hearing held on 27 October 2016 the Second Respondent was asked by the Panel to specify its request. Thereupon the Second Respondent requested the Panel to confirm the Appealed Decision.

## V. JURISDICTION

68. Under the heading "Clause Nine", the Loan Agreement contains a dispute resolution clause that reads as follows:

> *"9.1 The present Agreement shall be exclusively regulated under its clauses, the FIFA regulations* [Regulation on the Status and Transfer of Players, hereinafter referred to as the "FIFA Regulations" or the "Regulations"] *and Swiss Private Law.*

> *9.2 The parties hereby elect the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, to rule over any dispute that may arise from this Agreement.*
>
> *9.3 For the CAS proceedings the parties elect English language and agree that any dispute shall be handled by a single judge in a swift proceeding, according to article 44.4 of the CAS Code.*
>
> *9.4 The CAS decision shall be final and the parties waive their right to appeal".*

69. Pursuant to Art. 67 of the FIFA Statutes, appeals against final decisions passed by FIFA's legal bodies shall be lodged with CAS within 21 days of notification of the decision in question. Recourse may only be made to CAS after all other internal channels have been exhausted. The Panel, thus, has jurisdiction with respect to all parties involved pursuant to Art. 67 of the FIFA Statutes.

70. The jurisdiction of the CAS further follows from the OoP that has been duly signed by the Parties. Finally, the Panel notes that the jurisdiction of the CAS has not been contested by any of the Parties to this proceeding. In light of the above, it must be concluded that the Panel enjoys jurisdiction to decide the present dispute.

## VI. ADMISSIBILITY

71. In order for an appeal to be admissible, Art. R47 of the CAS Code requires that there is a decision that forms the object of the appeal. The second prerequisite stipulated by Art. R47 of the CAS Code is that all internal remedies available to the parties must be exhausted before filing an appeal to the CAS. Finally, the time limits for appeal must be observed for an appeal to be admissible.

72. As the Appealed Decision qualifies as a "decision" within the meaning of Art. R47 of the CAS Code and the Appeal complies with all other requirements of Art. R47 of the CAS Code, it follows that the appeal is admissible.

## VII. OTHER PROCEDURAL ISSUES

### A. The status of Mr. Martins

73. In its answer dated 13 May 2016, the First Respondent noted as follows:

> *"(…) the Appellant called Porto's Mr Daniel Lorenz as witness. In this respect, should Mr Lorenz be admitted to participate in the hearing, it should be established whether he would take part in in representation of the Appellant or as a witness. Most crucially, Mr Lorenz has in the meantime become a CAS arbitrator, and the First Respondent respectfully submits that the opportunity of his participation in these CAS proceedings as a witness is questionable at best.*

*As fas as Porto's Messrs Pais da Costa and Martins are concerned, the only issue would be to establish whether they would take part in the relevant hearing in representation of the Appellant or as witnesses"*.

74. On 13 July 2016, the parties were advised that Messrs Pais da Costa and Martins will be heard "as witnesses". In doing so the Panel does not ignore the close relationship between the Appellant and the above-named persons. However, in application of Art. 182 (2) and 184 of the Swiss Private International Law Act (hereinafter referred to as the "PILA") the Panel finds that such close relationship does not prevent these persons to be heard as witnesses from the outset. However, the Panel informed the parties that it will take into account the close relationship between the witnesses and the Appellant when (freely) assessing the evidence. At the hearing held on 27 October 2016, only Mr Urgel Martins gave evidence.

**B. The request of the Second Respondent**

75. In its answer dated 13 May 2016, the Second Respondent submitted the following request:

> *"(…) we sincerely appreciate if the Panel could issue a partial award on this case, in which be clearly stated that the order from FIFA to HELLAS VERONA to pay to CERRO PORTENO is definitive, and, that nobody has appealed against it, so, as consequence, issue a partial award ratifying the FIFA decision related the paragraph 1.- 2.- and 3 of the FIFA Decision appealed against by PORTO FC, and order HELLAS VERONA to pay to CERRO PORTENO the amount fixed on the FIFA Decision, 310.500.-€ plus interest"*.

76. With letter dated 13 July 2016 the Parties were informed that the request of the Second Respondent was denied.

77. The issue of a (partial) award is at the discretion of the Panel. In the specific circumstances of the present case and in view of the fact that the whole case is ready for decision and no part has to be postponed the Panel rejected the request of the Second Respondent.

**C. The substitution of the witness statement**

78. At the hearing the First Respondent consented that the witness statement originally provided by Mr Isidoro Gimenez on 29 July 2016 be substituted with the witness statement provided by the Appellant on 25 October 2016 and that the latter be taken on file even though Mr Isidoro Gimenez was not available for cross-examination.

## VIII. APPLICABLE LAW

79. Art. R58 of the CAS Code provides the following:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the*

*country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

80. In its submissions the Appellant relies on the provisions of Art. R58 of the CAS Code, Art. 66.2 of the FIFA Statutes, Art. 25.6 of the FIFA Regulations, Art. 2 of the FIFA Rules Governing the Procedures of the Player's Status Committee and the Dispute Resolution Chamber (hereinafter referred to as the "FIFA Rules") and Clause 9.1 of the Loan Agreement, which provides as follows:

*CLAUSE NINE*

*"9.1. The present Agreement shall be exclusively regulated under its clauses, the FIFA regulations and Swiss Private Law".*

81. The Appellant concludes, *"that the CAS should apply the FIFA Statutes and regulations and Swiss subsidiarily".*

82. With reference to Art. 26 of the FIFA Regulations and Art. 21 (2) of the FIFA Rules, the Appellant submits that *"(…) the 2012 edition of said regulations* [the FIFA Regulations] *shall apply to the present dispute. (…) the 2014 edition of the FIFA Rules (…) shall apply to the present dispute".*

83. Further, the Appellant states that the 12th chapter of the PILA applies to the proceedings.

84. The First Respondent agrees with the application of the 2012 edition of the FIFA Regulations and, additionally, Swiss law. Furthermore, in the hearing held on 27 October 2016 both Parties agreed that Swiss law also applies to the interpretation of the Loan Agreement.

## IX. MERITS

85. This case – in principle – pivots around two main questions, i.e.

1. is there party autonomy to shift responsibility for the payment of the solidarity amounts as provided for in Art. 21 and Art. 1 of Annexe 5 of the FIFA Regulations (2012 edition)?
2. If the first question is to be answered in the affirmative, did the Parties in the present case conclude an agreement as to which party shall bear the financial obligation for the payment of solidarity contribution?

**A. Party autonomy**

***1) The FIFA provisions***

86. Whether or not the Parties have autonomy to shift the financial obligation for the payment of the solidarity contribution must be assessed through interpretation of the relevant provisions.

87. Art. 21 of the FIFA Regulations provides:

> *"If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution). The provisions concerning solidarity contributions are set out in Annexe 5 of these regulations".*

Moreover, Art. 1 of Annex 5 adds:

> *"If a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years. (…)".*

88. The Panel notes that none of these provisions explicitly dictates which club will be responsible for paying the solidarity amounts due to previous clubs.

***2) Contradicting jurisprudence of the FIFA DRC and CAS***

89. However, the Panel is also aware of the jurisprudence of the FIFA DRC. The latter is rather restrictive, when it comes to shifting the burden for the payment of the solidarity contribution. The FIFA DRC in cases where the parties had agreed to the payment of the transfer fee as "a net amount" refers to its well-established jurisprudence *"in accordance with which the player's new club is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player's training in strict application of the Regulations. At the same time, the player's former club is ordered to reimburse the same proportion(s) of the 5% of the compensation that it received from the player's new club"* (see FIFA DRC, Decision number 08142588, 28 August 2015, para. 25; FIFA DRC, Decision number 1210702, 7. December 2010, para. 14; FIFA DRC, Decision number 7816a, 3. July 2008, para 8; FIFA DRC, Decision number 281320, 15 February 2008, para. 15; FIFA DRC, Decision number 117953a, 2 November 2007, para. 14; FIFA DRC, Decision number 117953b, 2 November 2007, para. 14; FIFA DRC, Decision number 117568, 2 November 2007, para. 9). The FIFA DRC also sustains the supremacy of its own interpretation of its regulations in cases in which the parties clearly and expressly stipulated that the receiving club (i.e. the club to which the player is transferred) shall carry the financial burden of the solidarity contribution (see FIFA DRC, Decision number 971212a, 14 September 2007, para. 12; FIFA DRC, Decision number 971212b, 14 September 2007, para. 12; FIFA DRC, Decision number 87505, 10 August 2007, para. 10).

90. The CAS jurisprudence contradicts the above FIFA practice. According to the CAS jurisprudence the FIFA Regulations do *"not prohibit the parties' stipulations providing that the new club, instead of the former club, will carry the financial burden of the solidarity contribution"* (see CAS 2008/A/1544, para. 16; CAS 2009/A/1773 & CAS 2009/A/1774, para. 15 and 16; CAS 2012/A/2707, para 106-108; CAS 2015/A/4137, para 101-106; CAS 2015/A/4105, para. 40).

***3) The principle according to Swiss Law***

91. The Panel follows this jurisprudence by the CAS. The Panel is comforted in its view by the fact that according to Swiss law party autonomy is the principle and mandatory provisions are the exceptions. In particular, Art. 19 and 20 of the Swiss CO affirm the parties' freedom to contract. The provisions read as follows:

> *Art. 19*
>
> *"(1) Within the limits of the law the contents of a contract are at the discretion of the parties.*
>
> *(2) Contracts containing arrangements differing from the legal provisions are only valid in cases where the law lays down no invariable rule, or if the differences do not offend against public policy, good morals or individual rights".*
>
> *Art. 20*
>
> *"(1) Contracts containing provisions which are impossible, illegal or contra bonos mores are invalid.*
>
> *(2) But if the objection applies only to single parts of the contract, then the invalidity only extends to those parts, unless it appears that the contract would not have been entered into without the invalid parts".*

***4) No public interest apparent***

92. It appears from the Appealed Decision that FIFA opposes the shifting of the obligation to pay solidarity contribution for some public interest. The FIFA DRC refers in that respect to some kind of "destabilizing effect". This Panel, however, fails to see in what respect the shifting of the payment obligation would undermine the purpose or the legal certainty of the FIFA regulations. As correctly provided by the Panel in CAS 2015/A/4137: *"The fact that a net agreement leads to the situation that a club can no longer calculate the solidarity contribution simply by deducting 5% from the amount stipulated in the transfer contract but that it will have to make a slightly more sophisticated calculation as mentioned above (first step: transfer fee / 95 x 100 = gross transfer value; second step: gross transfer value x 0.05 = solidarity contribution), does not lead to a destabilization of the system"* (CAS 2015/A/4317, para. 104). This Panel agrees in full with the finding of the other CAS Panel.

***5) Conclusion***

93. The Panel finds – in line with the submissions of the Parties at the hearing – that the FIFA Regulations with respect to the financial burden of the solidarity mechanism do not preclude the parties to a contract from freely agreeing as to which of them will bear the financial

responsibilty for paying the solidarity amounts which are due under the FIFA rules. Thus, the Panel finds that neither the FIFA Regulations nor Swiss law forbid the Parties to shift the financial burden for the payment of the solidarity contribution from the "seller" of the player to the receiving club.

**B. The exercise of party autonomy in the case at hand**

94. The Parties disagree in the case at hand whether or not by concluding the Loan Agreement they have exercised their contractual autonomy. While the Appellant answers this question in the affirmative, the First Respondent submits that the derogation from the above FIFA principles is not sufficiently explicit.

95. The relevant part of the Loan Agreement relating to the financial burden of the payment of the solidarity contribution reads as follows:

> *"CLAUSE TWO*
>
> *(…)*
>
> *2.2. All payments to FC PORTO are* ***net [which herein means that the amounts referred above are the sums to be paid to FC PORTO after all legal and/or regulatory deductions including but not limited to the FIFA solidarity mechanism – if any – have been made]*** *and made via Bank transfer to FC PORTO'S Bank Account which details are as follows: (…)"*
>
> (emphasis added by the Panel).

96. In view of the fact that both Parties agreed to apply Swiss law to the interpretation of the Loan Agreement, the Panel must determine the will of the Parties based on the application of Art. 18 Swiss CO. The latter provision reads as follows:

> *"When interpreting the form and the contents of a contract, the mutually agreed real intention of the parties must be considered and not incorrect terms or expressions used by the parties by mistake or in order to conceal the true nature of the contract […]".*

97. The methodology of interpretation according to Art. 18 Swiss CO has been described by the competent Panel in CAS 2008/A/1544 as follows:

> *"(…) the parties' common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention (WINIGER, Commentaire Romand – CO I, Basel 2003, n. 18-20 ad Art. 18 CO). This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them (WINIGER, op. cit., n. 26 ad art. 18 CO; WIEGAND, Obligationenrecht I, Basel 2003, n. 19 ad art. 18*

*CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (WINIGER, op. cit., n. 33, 37 and 134 ad art. 18 CO; WIEGAND, op. cit., n. 29 and 30 ad art. 18 CO)*

*By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith ('Treu und Glauben': WIEGAND, op. cit., n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451, consid. 3a). Unclear declarations or wordings in a contract will be interpreted against the party that drafted the contract (ATF 124III 155, 158, consid. 1b): It is of the responsibility of the author of the contract to choose its formulation with adequate precision (In dubio contra stipulatorem – WINIGER, op. cit., n. 50 ad 18 CO). Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law (ATF 126 III 388, 391, consid. 9d), under which the accrued protection of the weakest party"* (CAS 2008/A/1544, para. 24).

98. In the case at hand the Parties are in disagreement what their (subjective) intentions were at the time of the execution of the Loan Agreement. Thus, the Panel must proceed with an objective interpretation of the text. The Panel notes the Parties have defined the word "net" and thereby declared what meaning shall be attributed to this term. According thereto *"net" "(…) means that the amounts referred above are the sums to be paid to FC PORTO after all legal and/or regulatory deductions <u>including but not limited to the FIFA solidarity mechanism</u> – if any – have been made]"* (emphasis added by the Panel). In light of the definition the Panel finds that the objective meaning of the term "net" becomes crystal clear and does not leave room for any further interpretation. According thereto the financial burden for the payment of the solidarity mechanism shall be borne by the First Respondent and not by the Appellant. Since there is only one possible interpretation that can be attributed to this wording, there is no room for the application of the principle of *contra proferentem*.

99. The Panel further finds that the contents of the Loan Agreement was not altered or changed afterwards. In particular, the Panel finds that the values/text that were uploaded in the TMS by the Parties do not constitute an amendment of the Loan Agreement. The TMS is a simple formality the purpose of which is to make the (contents of) transfer agreements transparent (like a registry). The upload in the TMS is – legally speaking – not a declaration of intent, but a simple act providing information. It is neither apt nor intended to alter or amend prior agreements entered into by the parties. This all the more in view of the fact that the information that can be provided via the TMS is standardised and – in addition – may not correctly reflect the legal situation. In this respect the Panel notes that according to TMS the solidarity contribution for the Second Respondent was paid on 28 March 2014. However, it appears from the file that the Second Respondent contacted FIFA on 30 September 2014 requesting the payment of the solidarity contribution due to it.

100. As a result, the Panel rules that the Parties in the present case did conclude an agreement according to which the First Respondent shall bear – solely – the financial obligation for the payment of solidarity contribution.

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules:**

1. The appeal filed on 23 March 2016 by FC Porto Futebol SAD against the decision issued on 3 September 2015 by the Dispute Resolution Chamber of FIFA is upheld.

2. The decision issued on 3 September 2015 by the Dispute Resolution Chamber of FIFA is set aside.

3. FC Porto Futebol SAD is not bound to reimburse Hellas Verona Football Club S.p.A. for any amounts which Hellas Verona Football Club S.p.A. is liable to pay as solidarity contribution to Club Cerro Porteño.

4. (…).

5. All other motions and prayers for relief are dismissed.