

**THIS NOTICE IS IMPORTANT AND REQUIRES THE IMMEDIATE ATTENTION OF NOTEHOLDERS. IF NOTEHOLDERS ARE IN ANY DOUBT AS TO THE ACTION THEY SHOULD TAKE, THEY SHOULD CONSULT THEIR OWN STOCK BROKER, BANK MANAGER, SOLICITOR, ACCOUNTANT OR OTHER INDEPENDENT PROFESSIONAL ADVISERS AUTHORISED UNDER THE FINANCIAL SERVICES AND MARKETS ACT 2000 IMMEDIATELY (IF YOU ARE RESIDENT IN THE UNITED KINGDOM) OR THEIR OWN APPROPRIATELY AUTHORISED INDEPENDENT FINANCIAL ADVISOR (IF YOU ARE RESIDENT OUTSIDE THE UNITED KINGDOM).**

**THE DISTRIBUTION OF THIS NOTICE MAY BE RESTRICTED BY LAW IN CERTAIN JURISDICTIONS AND PERSONS INTO WHOSE POSSESSION THIS NOTICE COMES ARE REQUESTED TO INFORM THEMSELVES ABOUT, AND TO OBSERVE, SUCH RESTRICTIONS. IF YOU HAVE SOLD OR OTHERWISE TRANSFERRED YOUR ENTIRE HOLDING(S) OF NOTES, PLEASE FORWARD THIS DOCUMENT IMMEDIATELY TO THE PURCHASER OR TRANSFEREE, OR TO THE STOCKBROKER, BANK OR OTHER AGENT THROUGH WHOM THE SALE OR TRANSFER WAS EFFECTED FOR TRANSMISSION TO THE PURCHASER OR TRANSFEREE.**

20 July 2015

**Notice to Holders of Notes (the "Notice")**

**Aviva Investors European Secondary Infrastructure Credit SV S.A.**

*(a securitisation undertaking (organisme de titrisation) in the form of a public limited liability company (société anonyme) incorporated under the laws of Luxembourg having its registered office at 2, boulevard Konrad Adenauer, L-1115 Luxembourg and registered with the Luxembourg register of commerce and companies (R.C.S. Luxembourg) under number B 173.397)*

(the "**Issuer**")

**€450,000,000 Secured Revolving Profit Participating Notes due 2039**

(the "**Notes**")

We refer to:

1. a trust deed dated 25 July 2013 (the "**Trust Deed**") constituting €425,000,000 Secured Revolving Profit Participating Notes due 2039 (the "**Original PPNs**"), as supplemented by a supplemental trust deed dated 9 September 2014 (the "**Supplemental Trust Deed**") constituting €25,000,000 Secured Revolving Profit Participating Notes due 2039 (the "**Further PPNs**"), as amended by a deed of amendment dated 25 November 2014 (the "**2014 Deed of Amendment**"), in each case, between (amongst others) the Issuer, Deutsche Trustee Company Limited as trustee (the "**Trustee**"), Aviva Investors Global Services Limited as investment manager (the "**Investment Manager**"), Deutsche Bank AG, London Branch as, among others, Quotation Agent ("**DB**") and Deutsche Bank Luxembourg S.A. as registrar (the "**Registrar**");
2. an investment management agreement dated 25 July 2013 (the "**Investment Management Agreement**"), as amended by the 2014 Deed of Amendment, in each case, between (amongst others) the Issuer, the Trustee, the Investment Manager, DB and the Registrar;
3. an agency agreement dated 25 July 2013 (the "**Agency Agreement**"), as amended by the 2014 Deed of Amendment, in each case, between (amongst others) the Issuer, the Trustee, the Investment Manager, DB and the Registrar;
4. the conditions of the Original PPNs as amended and restated by the Supplemental Trust Deed and as further amended and restated by the 2014 Deed of Amendment (the "**Original PPN Conditions**"); and
5. the conditions of the Further PPNs as amended and restated by the 2014 Deed of Amendment (the "**Further PPN Conditions**" and, together with the Original PPN Conditions, the "**Conditions**").

Capitalised terms used but not otherwise defined in this Notice shall have the meaning given thereto in the Trust Deed, the Investment Management Agreement, the Agency Agreement or the Conditions as applicable.

### **1. Proposed Consent to Short Notice**

Pursuant to Schedule 4 (*Provisions for Meetings of the Noteholders*) to the Trust Deed, a meeting of the Noteholders to consider an Extraordinary Resolution requires (when the Notes are in global form) at least 21 days' notice (exclusive of the day on which the notice is given and of the day of the meeting) to be given to the relevant Noteholders and/or the Trustee.

Please take notice that the Issuer wishes to seek Noteholders' consent to waive the requirement for such notice period (the "**Proposed Consent to Short Notice**") for the purposes of considering the passing of an Extraordinary Resolution to approve and sanction certain amendments to each of the Conditions and the Investment Management Agreement, as further described in section 2 (*Proposed Amendments*) below and to waive certain breaches and consent to the continuation of appointment of the Custodian and the Paying Agents and an amendment to each of the Conditions, as further described in section 3 (*Proposed Waiver and Consent*) below.

Holders of Notes are requested to approve the Proposed Consent to Short Notice by executing the Consent to Short Notice attached hereto as Annex 1 (the "**Consent to Short Notice**") by NO LATER THAN 5 p.m. (London time) on 29 July 2015 (or such later date as may be notified by the Issuer, with the agreement of the Trustee, to the Noteholders) (the "**Voting Deadline**").

### **2. Proposed Amendments**

Please take notice that, in accordance with the terms of Condition 14 (*Meetings of Noteholders, Modification, Waiver and Substitution*) and Schedule 4 (*Provisions for Meetings of the Noteholders*) to the Trust Deed, the Issuer proposes to amend the definitions of "Maturity Date" and "Note Available Commitment Scheduled Termination Date" in Condition 1.1 (*Definitions*) of each of the Conditions, paragraph (iv) of the Principal Proceeds Priorities of Payments, Condition 4.9 (*Payments to and from the Accounts*) of each of the Conditions, paragraph (c) of the definition of "Portfolio Profile Tests" in clause 1 of the Investment Management Agreement and paragraphs (j), (l) and (n) of the Eligibility Criteria as set out in Schedule 1 to the Investment Management Agreement, by way of an amendment deed in or substantially in the form of the amendment deed attached hereto as Annex 2 (the "**Draft Amendment Deed**") (the "**Proposed Amendments**") (excluding, for the avoidance of doubt, the reference in the Draft Amendment Deed to the amendment of the definition of "Minimum Rating Requirement" in Condition 1.1 of each of the Conditions, which is subject to the approval by the requisite majority of the Noteholders of the Proposed Waiver and Consent, as further described in section 3 (*Proposed Waiver and Consent*) below).

### **3. Proposed Waiver and Consent**

Pursuant to Condition 4.8 (*Accounts*) of each of the Conditions and clause 30.4(b) (*Automatic Termination of Appointment*) of the Agency Agreement, in the event that the Custodian and/or any Paying Agent no longer satisfies the Minimum Rating Requirement, it shall notify the Issuer, the Investment Manager, the Collateral Administrator and the Trustee as soon as practicable and the Issuer shall, upon receiving such notice from the Custodian and/or the relevant Paying Agent (as the case may be), promptly (a) notify the Noteholders in accordance with Condition 16 (*Notices*) that the Custodian and/or the relevant Paying Agent (as the case may be) no longer satisfies the Minimum Rating Requirement and (b) procure the appointment of a replacement Custodian and/or Paying Agent which satisfies the Minimum Rating Requirement in accordance with the Agency Agreement.

Deutsche Bank AG, London Branch ("**DB, London Branch**") is presently appointed as the Custodian and the Principal Paying Agent. The rating of DB, London Branch was downgraded by S&P on 9 June 2015 from "A" to "BBB+" (the "**Downgrade Event**"). The "Minimum Rating Requirement" as at such date was defined in Condition 1.1 of each of the Conditions as follows:

"**Minimum Rating Requirement**" in relation to the Custodian or any Paying Agent means A3 by Moody's, A- by S&P, A- by Fitch, or such other rating as may be agreed in writing by the

Issuer and the Trustee (as directed by the Noteholders acting as a single class by way of an Extraordinary Resolution).

However, no notice of such Downgrade Event was given by DB, London Branch in its respective capacities as the Custodian and the Principal Paying Agent to the Issuer and, in turn, by the Issuer to the Noteholders and no steps have yet been taken by the Issuer to procure the appointment of a replacement Custodian and replacement Paying Agents which satisfy the Minimum Rating Requirement as a result of such Downgrade Event in accordance with Condition 4.8 (*Accounts*) of each of the Conditions and clause 30.4(b) (*Automatic Termination of Appointment*) of the Agency Agreement.

Accordingly, please take notice that the Issuer wishes to (i) seek a waiver from the requisite majority of the Noteholders for the breach by the Custodian, the Paying Agents and the Issuer of the requirements of Condition 4.8 (*Accounts*) of each of the Conditions and clause 30.4(b) (*Automatic Termination of Appointment*) of the Agency Agreement in connection with the Downgrade Event, (ii) amend the definition of "Minimum Rating Requirement" in Condition 1.1 of each of the Conditions as it may apply to DB, London Branch in its capacity as the Custodian and a Paying Agent, as set out in the Draft Amendment Deed and (iii) seek the consent of the requisite majority of the Noteholders to the continuation of DB, London Branch's respective roles as the Custodian and the Principal Paying Agent so long as it satisfies the Minimum Rating Requirement (as to be amended as contemplated in paragraph (ii) above) (the "**Proposed Waiver and Consent**").

#### **4. Written Resolutions**

The Issuer hereby requests that the holders of the Notes agree to:

- (i) the Proposed Amendments and authorise and direct the Trustee to concur with and agree to the Proposed Amendments and to execute an amendment deed in, or substantially in, the form of the Draft Amendment Deed (excluding, for the avoidance of doubt, the reference in the Draft Amendment Deed to the amendment of the definition of "Minimum Rating Requirement" in Condition 1.1 of each of the Conditions, which is subject to the approval by the requisite majority of the Noteholders of the Proposed Waiver and Consent), by passing a resolution in writing in the form attached hereto as Annex 3 (the "**Written Resolution (Amendments)**"); and
- (ii) the Proposed Waiver and Consent and authorise and direct the Trustee to concur with and agree to the Proposed Waiver and Consent and to execute an amendment deed to amend the definition of "Minimum Rating Requirement" in Condition 1.1 of each of the Conditions in, or substantially in, the form of the Draft Amendment Deed, by passing a resolution in writing in the form attached hereto as Annex 4 (the "**Written Resolution (Minimum Rating Requirement)**") and, together with the Written Resolution (Amendments), each a "**Written Resolution**" and together the "**Written Resolutions**").

Pursuant to paragraph 12 (*Written Resolutions*) of Schedule 4 (*Provisions for Meetings of the Noteholders of Each Class*) to the Trust Deed, a resolution in writing which is signed by, or on behalf of, the requisite majority of the holders of the relevant Notes, acting as a class who for the time being are entitled to receive notice of a meeting shall for all purposes be as valid and effective as a Resolution passed at a meeting of the Noteholders.

Please note that each of the Written Resolutions are separate Resolutions and the passing of one Written Resolution is not conditional on the passing of the other Written Resolution.

Pursuant to Condition 16 (*Notices*), it is estimated that the expenses required to give effect to the Written Resolutions shall not exceed EUR 60,000.

Holders of Notes are requested to approve each Written Resolution by NO LATER THAN the Voting Deadline, or, if the requisite majority of holders of the Notes do not consent to the Proposed Consent to Short Notice, by NO LATER THAN 5 p.m. (London time) on 11 August 2015 (the "**Full Voting Deadline**") (or, in each case, such later date as may be notified by the Issuer, with the agreement of the Trustee, to the Noteholders).

For the avoidance of doubt:

- (i) if the required percentage of the Noteholders consent to the Proposed Consent to Short Notice on or before the Voting Deadline, the applicable Written Resolution will be passed and will take effect on or before the Voting Deadline if the required percentage of the Noteholders vote in favour of the applicable Written Resolution on or before the Voting Deadline; or
- (ii) if the required percentage of the Noteholders do not consent to the Proposed Consent to Short Notice on or before the Voting Deadline, either:
  - (A) the applicable Written Resolution will be passed and will take effect on or before the Full Voting Deadline if the required percentage of the Noteholders vote in favour of the applicable Written Resolution on or before the Full Voting Deadline; or
  - (B) the applicable Written Resolution will not be passed and the Proposed Waiver and Consent and Proposed Amendments will not be effected as contemplated herein if the required percentage of the Noteholders do not vote in favour of the applicable Written Resolution on or before the Full Voting Deadline.

Any Noteholders with questions relating to the Proposed Consent to Short Notice, the Proposed Waiver and Consent, the Proposed Amendments or the Written Resolutions are kindly requested to contact the Investment Manager using the details provided below.

In accordance with normal practice, the Trustee expresses no opinion and makes no representations as to the merits of the Proposed Consent to Short Notice, the Proposed Waiver and Consent or the Proposed Amendments or the impact of the Proposed Consent to Short Notice, the Proposed Waiver and Consent or the Proposed Amendments on the interests of Noteholders, but has authorised it to be stated that, on the basis of the information set out herein, it has no objection to the Written Resolutions being submitted to the Noteholders for their consideration. The Trustee urges the Noteholders who are in any doubt as to the impact of the implementation of the Proposed Consent to Short Notice and/or the Written Resolutions to seek their own independent financial and/or legal advice.

## **5. Availability of Documents**

All documents referred to in this Notice, the Consent to Short Notice and the Written Resolutions are available for inspection on and from the date of the Notice, at the offices of the Issuer specified below during ordinary business hours.

## **6. Procedure for voting on the Consent to Short Notice and the Written Resolutions for the Noteholders**

Noteholders wishing to approve and sanction the Proposed Consent to Short Notice, the Proposed Waiver and Consent and/or the Proposed Amendments should:

- (i) notify Euroclear or Clearstream (as applicable) that you consent to the Proposed Consent to Short Notice, the Proposed Waiver and Consent and/or the Proposed Amendments;
- (ii) and instruct Euroclear or Clearstream (as applicable) to notify the same and disclose the amount of Notes it holds to the Trustee;
- (iii) and to block such Notes until the Final Amendment Deed has been executed by the parties thereto;

By providing consent in respect of the Proposed Consent to Short Notice, the Proposed Waiver and Consent and/or the Proposed Amendments, you will be deemed to have instructed the Common Depositary for Euroclear and Clearstream to execute the Consent to Short Notice and/or the applicable Written Resolutions on your behalf.

Any Noteholders who do not wish to approve the Consent to Short Notice and/or the Written Resolutions need take no action but may be bound by any resolutions which are subsequently passed.

By approving the Consent to Short Notice and/or the Written Resolutions, Noteholders will also be representing, warranting and agreeing that they will not transfer any Notes (whether in whole or in part) at any time after the date on which they approve the Consent to Short Notice and/or the Written Resolutions until the earlier of (i) the date that the applicable Written Resolution has been passed and (ii) the Voting Deadline or, if the Proposed Consent to Short Notice is not approved by the requisite majority of Noteholders, the Full Voting Deadline.

For and on behalf of

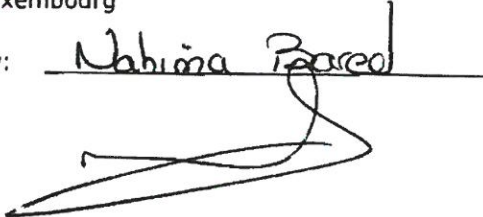
**AVIVA INVESTORS EUROPEAN SECONDARY INFRASTRUCTURE CREDIT SV S.A.**

2 Boulevard Konrad Adenauer

L-1115

Luxembourg

By:

Nahina Pared  




**Mark Phillips**

 **Director**

**Contact Details:**

**To the Issuer:**

Aviva Investors European Secondary Infrastructure Credit SV S.A.

Address: 2 Boulevard Konrad Adenauer  
L-1115  
Luxembourg

Attention: The Directors

Facsimile: +352 421 22 718

**To the Investment Manager:**

Aviva Investors Global Services Limited

Address: 1 Poultry  
London  
EC2R 8EJ

Attention: Company Secretary

Tel: +44 (0)20 7809 7940

**ANNEX 1**

**Consent to Short Notice**

To: **Aviva Investors European Secondary Infrastructure Credit SV S.A.**  
2 Boulevard Konrad Adenauer  
L-1115  
Luxembourg

**Deutsche Trustee Company Limited**  
Winchester House  
1 Great Winchester Street  
London  
EC2N 2DB

Copy to: **Deutsche Bank AG, London Branch**  
Winchester House  
1 Great Winchester Street  
London  
EC2N 2DB

**Aviva Investors European Secondary Infrastructure Credit SV S.A.**  
2, Boulevard Konrad Adenauer  
L-1115  
Luxembourg

We refer to the Notice to Noteholders regarding the Proposed Consent to Short Notice regarding the Written Resolutions in relation to the Notes, dated 20 July 2015 (the "**Notice**"). Capitalised terms used but not otherwise defined in this Notice shall have the meaning given thereto in the Notice (including by way of incorporation).

We, the undersigned, hereby approve and sanction the Proposed Consent to Short Notice as set out in the Notice.

.....

Signed for and on behalf of

*[Insert name of Noteholder]*

Date: 2015

**ANNEX 2**

**Draft Amendment Deed**



## Deed of Amendment

Aviva Investors European Secondary Infrastructure  
Credit SV S.A.

as Issuer

Deutsche Trustee Company Limited

as Trustee

Deutsche Bank AG, London Branch

as Principal Paying Agent, Account Bank, Note Agent, Custodian, Quotation Agent and  
Collateral Administrator

Deutsche Bank Luxembourg S.A.

as Registrar

and

Aviva Investors Global Services Limited

as Investment Manager

relating to €425,000,000 Secured Revolving Profit Participating Notes due 2039 issued  
on 25 July 2013 and €25,000,000 Secured Revolving Profit Participating Notes due 2039  
issued on 9 September 2014

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**THIS DEED OF AMENDMENT** (the "**Deed**") has been executed as a deed and delivered by the parties set out below on 2015

**BETWEEN:**

- (1) **AVIVA INVESTORS EUROPEAN SECONDARY INFRASTRUCTURE CREDIT SV S.A.**, a securitisation undertaking (*organisme de titrisation*) in the form of a public limited liability company (*société anonyme*) incorporated under the laws of Luxembourg having its registered office at 2, Boulevard Konrad Adenauer, L-1115 Luxembourg and registered with the Luxembourg Register of Commerce and Companies under number B-173397 (the "**Issuer**");
- (2) **DEUTSCHE TRUSTEE COMPANY LIMITED** of Winchester House, 1 Great Winchester Street, London EC2N 2DB as trustee for the Noteholders and as security trustee for the Secured Parties (the "**Trustee**", which expression shall, wherever the context so admits, include all other persons or companies for the time being the trustee or trustees appointed pursuant to the Trust Deed);
- (3) **DEUTSCHE BANK AG, LONDON BRANCH** of Winchester House, 1 Great Winchester Street, London EC2N 2DB as principal paying agent, account bank, note agent, custodian, quotation agent and collateral administrator (the "**Principal Paying Agent**", the "**Account Bank**", the "**Note Agent**", the "**Custodian**", the "**Quotation Agent**" and the "**Collateral Administrator**", which expressions shall include any successor principal paying agent, account bank, note agent, custodian and quotation agent appointed pursuant to the terms of the Agency Agreement and any successor collateral administrator appointed pursuant to the Investment Management Agreement as the case may be);
- (4) **DEUTSCHE BANK LUXEMBOURG S.A.**, a public limited liability company (*société anonyme*) incorporated under the laws of Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B-9164 and whose registered office is at 2 Boulevard Konrad Adenauer, L-1115 Luxembourg as registrar (the "**Registrar**", which expression shall include any successor registrar appointed pursuant to the terms of the Agency Agreement); and
- (5) **AVIVA INVESTORS GLOBAL SERVICES LIMITED** of No. 1 Poultry, London EC2R 8EJ as investment manager (the "**Investment Manager**", which expression shall include any successor investment manager appointed pursuant to the terms of the Investment Management Agreement),

together the "**Parties**" and each a "**Party**".

**WHEREAS:**

- (A) The Parties have entered into the following documents (the "**Transaction Documents**" and each a "**Transaction Document**"):
  - (i) a trust deed dated 25 July 2013 (the "**Trust Deed**") constituting €425,000,000 Secured Revolving Profit Participating Notes due 2039 (the "**Original PPNs**"), as supplemented by a supplemental trust deed dated 9 September 2014 (the "**Supplemental Trust Deed**") constituting €25,000,000 Secured Revolving Profit Participating Notes due 2039 (the "**Further PPNs**") and as amended by a deed of amendment dated 25 November 2014 (the "**2014 Deed of Amendment**"), in each case between the Issuer, the Trustee, Deutsche Bank AG, London Branch as the Principal Paying Agent, Account Bank, Collateral Administrator, Custodian, Quotation Agent and Note Agent, the Registrar and the Investment Manager;

- (ii) an investment management agreement dated 25 July 2013 (the "**Investment Management Agreement**"), as amended by the 2014 Deed of Amendment, between the Issuer, the Trustee, the Investment Manager and Deutsche Bank AG, London Branch as the Collateral Administrator and Custodian;
  - (iii) the conditions of the Original PPNs as amended and restated by the Supplemental Trust Deed and as further amended and restated by the 2014 Deed of Amendment (the "**Original PPN Conditions**"); and
  - (iv) the conditions of the Further PPNs as amended and restated by the 2014 Deed of Amendment (the "**Further PPN Conditions**" and, together with the Original PPN Conditions, the "**Conditions**").
- (B) The Parties wish to amend the Conditions and the Investment Management Agreement. Pursuant to Condition 14 (*Meetings of Noteholders, Modification, Waiver and Substitution*) and Schedule 4 (*Provisions for Meetings of the Noteholders*) to the Trust Deed, among other things, an Extraordinary Resolution of the Noteholders is required to sanction any of the following items:
- (a) the modification of any provision relating to the timing and/or circumstances of redemption of the Notes at maturity or otherwise;
  - (b) the modification of any of the provisions of the Note Trust Deeds which would directly and adversely affect the calculation of the amount of any payment of interest or principal on any Notes;
  - (c) any change in the Priorities of Payments; and
  - (d) any modification of the Eligibility Criteria, except as contemplated by the Conditions or the Trust Deed.
- (C) On [●] 2015, the Noteholders acting by Extraordinary Resolution passed a Written Resolution (the "**Written Resolution**") (i) consenting to and waiving the breach by the Custodian, the Paying Agents and the Issuer of the requirements relating to the Minimum Rating Requirement, (ii) consenting to the amendments to the Transaction Documents as set out in clause 2(b) (*Amendments to the Transaction Documents*) of this Deed and (iii) instructing the Trustee to enter into this Deed. The Trustee hereby enters into this Deed on the basis of such instruction.
- (D) This Deed is entered into for the purposes of the Parties consenting to the amendments to the Transaction Documents as set out in clause 2(b) (*Amendments to the Transaction Documents*) of this Deed, in accordance with the requirements of Condition 14 (*Meetings of Noteholders, Modification, Waiver and Substitution*) and Schedule 4 (*Provisions for Meetings of the Noteholders*) to the Trust Deed.

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

All capitalised terms which are defined in a Transaction Document (including by way of incorporation) shall, save to the extent otherwise defined herein, have the same meaning when used in this Deed.

**2. EFFECT OF THIS DEED**

- (a) Each of the Parties has executed and entered into this Deed in order to irrevocably agree and consent to the amendments set out in clause (b) (*Amendments to the Transaction Documents*) of this Deed.

- (b) The Trustee, acting on the direction of the requisite majority of Noteholders as provided in the Written Resolution, hereby waives the breach by the Custodian, the Paying Agents and the Issuer of the requirements of Condition 4.8 (*Accounts*) and clause 30.4(b) (*Automatic Termination of Appointment*) of the Agency Agreement in connection with the Downgrade Event (as defined in the Notice to Noteholders in relation to the Written Resolution dated [●] 2015), and the Trustee hereby consents to the Custodian's and Paying Agents' continuation of their respective roles so long as they satisfy the Minimum Rating Requirement (as amended by this Deed).

### 3. **AMENDMENTS TO THE TRANSACTION DOCUMENTS**

#### 3.1 **Amendment and Restatement of the Original PPN Conditions**

The Parties agree that, with effect from and including the date hereof, the Original PPN Conditions shall be amended and restated in the form set out in schedule 1 (*Amended and Restated Conditions of the Original PPNs*) to this Deed (the "**Amended and Restated Conditions of the Original PPNs**").

References in the Original PPN Conditions to "these Conditions" shall be read and construed as references to the Original PPN Conditions as amended and restated by this Deed and words such as "herein", "hereof", "hereunder", "hereby" and "hereto" where they appear in the Original PPN Conditions shall, in each case, be construed accordingly.

#### 3.2 **Amendment and Restatement of the Further PPN Conditions**

The Parties agree that, with effect from and including the date hereof, the Further PPN Conditions shall be amended and restated in the form set out in schedule 2 (*Amended and Restated Conditions of the Further PPNs*) to this Deed (the "**Amended and Restated Conditions of the Further PPNs**").

References in the Further PPN Conditions to "these Conditions" shall be read and construed as references to the Further PPN Conditions as amended and restated by this Deed and words such as "herein", "hereof", "hereunder", "hereby" and "hereto" where they appear in the Further PPN Conditions shall, in each case, be construed accordingly.

#### 3.3 **Amendment and Restatement of the Investment Management Agreement**

The Parties agree that, with effect from and including the date hereof, the Investment Management Agreement shall be amended and restated in the form set out in schedule 3 (*Amended and Restated Investment Management Agreement*) to this Deed (the "**Amended and Restated Investment Management Agreement**").

References in the Investment Management Agreement to "this Agreement" shall be read and construed as references to the Investment Management Agreement as amended and restated by this Deed and words such as "herein", "hereof", "hereunder", "hereby" and "hereto" where they appear in the Investment Management Agreement shall, in each case, be construed accordingly.

### 4. **PARTIES NOTICE DETAILS**

Any notice or demand to be given, made or served for any purposes under this Deed shall be given, made or served by sending the same by pre-paid post (first class if inland, first class airmail if overseas), or facsimile transmission or by delivering it by hand as follows:

**To the Issuer:** Aviva Investors European Secondary Infrastructure Credit SV S.A.

Address: 2, Boulevard Konrad Adenauer  
L-1115 Luxembourg

Attention: The Directors  
Facsimile: +352 4212 2718

**To the Trustee:** Deutsche Trustee Company Limited

Address: Winchester House  
1 Great Winchester Street  
London  
EC2N 2DB

Attention: The Managing Director (TSS)  
Facsimile: 0207 547 5919

**To the Principal  
Paying Agent,  
Account Bank,  
Collateral  
Administrator, the  
Quotation Agent,  
Custodian and Note  
Agent:**

Deutsche Bank AG, London Branch

Address: Winchester House  
1 Great Winchester Street  
London  
EC2N 2DB

Attention: TSS/SFS/Aviva  
Facsimile: 0207 545 3686

All Notices to the Note Agent should be copied to the Registrar

**To the Registrar:** Deutsche Bank Luxembourg S.A.

Address: 2 Boulevard Konrad Adenauer  
L-1115 Luxembourg

Attention: TSS/SFS/Aviva  
Facsimile: +352 473 136

With a copy to the Principal Paying Agent and the Note Agent

**To the Investment  
Manager:**

Aviva Investors Global Services Limited

Address: No. 1 Poultry  
London  
EC2R 8EJ

Attention: Company Secretary  
Facsimile: 020 7809 7940

or to such other address or facsimile number as shall have been notified (in accordance with this clause 4 (*Parties Notice Details*)) to the other parties hereto and any notice or demand sent by post as aforesaid shall be deemed to have been given, made or served three days in the case of inland post or seven days in the case of overseas post after despatch and any notice or demand sent by facsimile transmission as aforesaid shall be deemed to have been given, made or served 24 hours after the time of despatch; provided that in the case of a notice or demand given by facsimile transmission, such notice or demand shall forthwith be confirmed by post. The failure of the addressee to receive such confirmation shall not invalidate the relevant notice or demand given by facsimile transmission.

5. **FURTHER ASSURANCE**

The Parties shall (in the case of the Trustee, at the expense of the Issuer), at all times on and after the date hereof, do all acts and execute all documents as may be necessary or desirable to give effect to this Deed.

6. **SURVIVAL OF TERMS; CONSTRUCTION**

6.1 **Survival**

The Parties hereby agree that each of the Transaction Documents (as modified and supplemented by this Deed) shall, save as varied by this Deed, remain in full force and effect upon the terms and conditions set out therein.

6.2 **Construction of Transaction Documents**

The Parties hereby agree that from and including the date hereof, each Transaction Document (as modified and supplemented by this Deed) shall, in each case, be read and construed together with this Deed.

7. **LIMITED RECOURSE AND NON-PETITION**

7.1 The obligations of the Issuer to pay amounts due and payable in respect of the Notes and to the other Secured Parties at any time shall be limited to the proceeds available at such time to make such payment in accordance with the Priorities of Payments. If the net proceeds of realisation of the security constituted by the Trust Deed and the Euroclear Pledge Agreement, upon enforcement thereof in accordance with Condition 11 (*Enforcement*) and the provisions of the Trust Deed and the Euroclear Pledge Agreement, are less than the aggregate amount payable in such circumstances by the Issuer in respect of the Notes and to the other Secured Parties (such negative amount being referred to herein as a "shortfall"), the obligations of the Issuer in respect of the Notes and its obligations to the other Secured Parties in such circumstances will be limited to such net proceeds, which shall be applied in accordance with the Priorities of Payments. In such circumstances, the other assets of the Issuer will not be available for payment of such shortfall which shall be borne by the Noteholders, the Trustee and the other Secured Parties in accordance with the Priorities of Payments (applied in reverse order). The rights of the Secured Parties to receive any further amounts in respect of such obligations shall be extinguished and neither the Noteholders or any other Secured Party may take any further action to recover such amounts. Only the Trustee may pursue the remedies available under applicable law, under the Trust Deed and under the Euroclear Pledge Agreement to enforce the rights of a Secured Party against the Issuer, as further detailed in Condition 11.3 (*Only the Trustee to Act*). None of the Noteholders, the Trustee or the other Secured Parties (nor any other person acting on behalf of any of them) shall be entitled at any time to institute against the Issuer, its officers or directors, or join in any institution against the Issuer, its officers or directors, of, any bankruptcy (*faillite*), liquidation, reprieve from payment (*sursis de paiement*), controlled management (*gestion contrôlée*), composition with creditors (*concordat préventif de faillite*), suspension of payments, reorganisation, arrangement, insolvency, winding-up or liquidation proceedings or for the appointment of a liquidator, administrator or similar official, or other proceedings under any applicable bankruptcy or similar law in connection with any obligations of the Issuer relating to the Notes, the Note Trust Deeds or otherwise owed to the Secured Parties, save for lodging a claim in the liquidation of the Issuer which is initiated by another party or taking proceedings to obtain a declaration or judgment as to the obligations of the Issuer.

7.2 None of the Trustee, the directors of the Issuer, the Principal Paying Agent, the Paying Agents, the Registrar, the Collateral Administrator, the Account Bank, the Note Agent, the Quotation Agent and the Custodian or the Investment Manager has any obligation to the

Noteholders for payment of any amount by the Issuer in respect of the Notes. The Notes are corporate obligations of the Issuer only and none of the Trustee, the directors of the Issuer, the Principal Paying Agent, the Paying Agents, the Registrar, the Collateral Administrator, the Account Bank, the Note Agent, the Quotation Agent and the Custodian or the Investment Manager has any liability to the Noteholders for the obligations of the Issuer in respect of the Notes accordingly. For the avoidance of doubt, this clause 7.2 (*Limited Recourse and Non-Petition*) shall not be construed so as to (A) limit the liability or obligations that any of the Trustee, the Issuer, the Principal Paying Agent, the Paying Agents, the Registrar, the Collateral Administrator, the Account Bank, the Note Agent, the Quotation Agent, the Custodian or the Investment Manager or any other party may have or has pursuant to the Note Transaction Documents and the Notes or (B) limit or qualify the rights of any Noteholder (or beneficial owners in respect of the Notes in its capacity as such).

**7.3 Survival of Obligations**

Clauses 7.1 and 7.2 (*Limited Recourse and Non-Petition*) shall survive the termination of this Deed.

**8. STATUS OF DOCUMENTS**

Except as varied by the terms of this Deed, each Transaction Document will remain in full force and effect and any reference in a Transaction Document to that Transaction Document will be construed as a reference to such Transaction Document as amended by this Deed.

**9. COUNTERPARTS**

This Deed may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

**10. THIRD PARTY RIGHTS**

No person shall have any right to enforce any term or condition of this Deed under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

**11. GOVERNING LAW AND JURISDICTION**

**11.1 Governing Law**

This Deed (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Deed or its formation) is governed by and shall be construed in accordance with English law.

**11.2 Jurisdiction**

Each Party irrevocably agrees that the courts of England are to have jurisdiction to hear, decide and/or settle any Proceedings and accordingly any Proceedings may be brought in such courts. The Issuer irrevocably and unconditionally waives and agrees not to raise any objection which it may have now or subsequently to the laying of the venue of any Proceedings in the courts of England and any claim that any Proceedings have been brought in an inconvenient forum and further irrevocably and unconditionally agrees that a judgment in any Proceedings brought in the courts of England shall be conclusive and binding upon the Issuer and may be enforced in the courts of any other jurisdiction. Nothing in this clause 11.2 (*Jurisdiction*) shall limit any right to take Proceedings against the Issuer in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction, whether concurrently or not.



### 11.3 **Agent for Service of Process**

The Issuer irrevocably and unconditionally appoints Aviva Investors Global Services Limited as its service of process agent and in the event of its ceasing so to act will appoint such other person as the Trustee may approve and as the Issuer may nominate in writing to the Trustee for the purpose to accept service of process on its behalf in England in respect of any Proceedings. The Issuer:

- (a) agrees that failure by any such person to give notice of such service of process to the Issuer shall not impair the validity of such service or of any judgment based thereon;
- (b) consents to the service of process in respect of any Proceedings by the airmailing of copies, postage prepaid, to the Issuer in accordance with clause 4 (*Parties Notice Details*); and
- (c) agrees that nothing in this Deed shall affect the right to serve process in any other manner permitted by law.

**IN WITNESS** of which this Deed has been duly executed and is delivered on the date first before written.

## SCHEDULE 1

### AMENDED AND RESTATED CONDITIONS OF THE ORIGINAL PPNs

*The following are the conditions of the PPNs, substantially in the form in which they will be endorsed on such PPNs.*

On the Issue Date the PPNs will be issued in the form of a permanent global certificate (as further defined below, the "**Global Certificate**") without interest coupons or principal receipts which will be deposited with and registered in the name of a nominee for the common depository for Euroclear S.A./N.V. as operator of the Euroclear System and Clearstream Banking, S.A. (the "**Clearing Systems**") and any successor in title thereto.

On the Issue Date the Global Certificate will be issued partly paid up, with a Principal Amount of €425,000,000 and a Drawn Amount of €5,100,000, representing 1.20 per cent. of the Principal Amount of the PPNs. The Drawn Amount of the PPNs may be increased or decreased after the Issue Date to reflect the payments from and to the Noteholders under the Notes and the redemption of the Notes as set out in the Conditions. The issue price of the PPNs equals 100 per cent. of the Drawn Amount of the PPNs. The amount of €5,100,000 (which forms part of the issue price of the PPNs and which will be credited to the Principal Account on the Issue Date) may be invested by the Issuer in Eligible Investments but may not be applied by the Issuer towards the payment of the Initial Set Up Costs until the First Purchase Date.

The issue of €425,000,000 Secured Revolving Profit Participating Notes due 2039 (the "**PPNs**", of Aviva Investors European Secondary Infrastructure Credit SV S.A. (the "**Issuer**")) was authorised by resolution of the board of directors of the Issuer dated 18 July 2013. The PPNs are constituted by a trust deed dated the Issue Date (as defined below) (the "**Trust Deed**", which terms shall include any additional security documents entered into in respect of the Collateral (as defined below) between (amongst others) the Issuer and Deutsche Trustee Company Limited, in its capacity as trustee (the "**Trustee**", which expression shall include all persons for the time being the trustee under the Trust Deed) for the PPN Holders (as defined below)).

These terms and conditions of the PPNs (the "**Conditions**") include summaries of, and are subject to, the detailed provisions of the Trust Deed (which includes the form of the certificate representing the PPNs). The following agreements have also been entered into in relation to the PPNs:

- (a) an agency agreement dated 25 July 2013 (the "**Agency Agreement**") between the Issuer, the Investment Manager, Deutsche Bank AG, London Branch as principal paying agent, account bank, note agent, custodian, quotation agent and collateral administrator (respectively, the "**Principal Paying Agent**", the "**Account Bank**", the "**Note Agent**", the "**Custodian**", the "**Quotation Agent**" and the "**Collateral Administrator**", which terms shall include any successor or substitute principal paying agent, account bank, note agent, custodian or quotation agent, respectively, appointed pursuant to the terms of the Agency Agreement and any successor collateral administrator pursuant to the terms of the Investment Management Agreement) and Deutsche Bank Luxembourg S.A. as registrar (the "**Registrar**", which term shall include any successor or replacement registrar);
- (b) one or more subscription agreements each dated on or about 19 July 2013 (each, a "**Subscription Agreement**", and together, the "**Subscription Agreements**") between the Issuer, the Investment Manager, the Trustee, Deutsche Bank AG, London Branch as Collateral Administrator, Principal Paying Agent and Note Agent, Deutsche Bank Luxembourg S.A. as Registrar and the initial subscriber(s) of the PPNs;
- (c) an administration services and domiciliation agreement dated 18 July 2013 (the "**Administration Agreement**") between the Issuer, Deutsche Bank Luxembourg, S.A. as administrator (the "**Administrator**", which term shall include any successor or replacement administrator) and *Stichting European Secondary Infrastructure Credit*;
- (d) an investment management agreement dated 25 July 2013 (the "**Investment Management Agreement**") between the Issuer and Aviva Investors Global Services Limited as the investment manager (the "**Investment Manager**", which term shall include any successor or replacement investment manager), Deutsche Bank AG, London Branch as the Collateral Administrator and the Custodian and the Trustee;
- (e) a distribution agreement dated 25 July 2013 between the Issuer and Aviva Investors Global Services Limited as non-exclusive global distribution agent (the "**Distribution Agreement**"); and

- (f) a settlement agreement dated on or about 19 July 2013 (the "**Settlement Agreement**") between the Issuer and Deutsche Bank AG, London Branch as settlement agent (the "**Settlement Agent**").

Copies of the Transaction Documents are available for inspection during usual business hours at the registered office of the Trustee (presently at Winchester House, 1 Great Winchester Street, London EC2N 2DB) and of the Principal Paying Agent (presently at Winchester House, 1 Great Winchester Street, London EC2N 2DB) for the time being and in addition they will be made available on the Collateral Administrator's website at <https://tss.sfs.db.com/investpublic>. Each PPN Holder is entitled to the benefit of, is bound by and is deemed to have notice of all the provisions of the Trust Deed and the other Transaction Documents (other than any Subscription Agreement to which it is not a party).

## 1. Definitions

### 1.1 Definitions

"**Acceleration Notice**" has the meaning given thereto in Condition 10.2(a) (*Acceleration*).

"**Accounts**" means the Payment Account, the Issuer Account, the Interest Account, the Principal Account, the Custody Account (including, in each case any sub-account thereof and any account established in replacement thereof), the Expense Reserve Account and the Revolving Reserve Account.

"**Administration Agreement**" means the administrative services and domiciliation agreement dated 18 July 2013 between the Issuer, the Administrator and Stichting European Secondary Infrastructure Credit.

"**Administrative Expenses**" means amounts due and payable by the Issuer:

- (a) in respect of the fees and other amounts payable to the Agents pursuant to the Agency Agreement (including indemnities provided for therein);
- (b) to the Investment Manager pursuant to the Investment Management Agreement (including costs, expenses and indemnities provided for therein, but excluding any Investment Management Fee or value added tax payable thereon, any Due Diligence and Bid Expenses or any Termination Payment);
- (c) in respect of the fees and other amounts payable to the Collateral Administrator pursuant to the Agency Agreement and the Investment Management Agreement (including indemnities provided for therein);
- (d) to the Administrator pursuant to the Administration Agreement;
- (e) to any other Person in respect of any governmental fee or charge (for the avoidance of doubt excluding any taxes) or any statutory indemnity;
- (f) to the independent accountants, agents and counsel of the Issuer;
- (g) to the Irish Stock Exchange, or such other stock exchange or exchange upon which any of the Listed Notes are listed from time to time;
- (h) to any Person, in respect of any other indemnities, fees, costs or expenses or other amounts properly incurred by the Issuer from time to time, contemplated in the Note Conditions or the Note Transaction Documents;
- (i) in respect of any costs in respect of winding up and dissolution of the Issuer;
- (j) in respect of amounts due and payable by the Issuer to an agent bank acting on behalf of the Issuer (in its capacity as a member of a loan syndicate or lender) in relation to the performance of such agent bank's duties under a Debt Investment, to the extent not payable or reimbursed by the relevant Obligor(s), but excluding any amounts paid in respect of the acquisition or purchase price of such Debt Investment;
- (k) in respect of any amounts due and payable by the Issuer as a member of a loan syndicate, to the extent not payable or reimbursed by the relevant Obligor(s) for costs and expenses (including legal fees) incurred on account of any restructuring, insolvency work-out (including the payment of indemnities granted to a steering committee in relation to the restructuring of a Debt Investment) up to an aggregate maximum amount equal to the lower of (x) one per cent. of the aggregate Principal Amount of Notes

which have from time to time been issued and (y) €3,500,000, or such higher figure as may be approved by Extraordinary Resolution of the Noteholders acting as a single class;

- (l) in respect of any additional costs reasonably incurred by the Investment Manager directly relating to the Issuer resulting from the implementation in Luxembourg and/or the United Kingdom of the Alternative Investment Fund Managers Directive (2011/61/EC); and
- (m) in respect of any applicable value added tax required to be paid by the Issuer in respect of any of the foregoing,

including in each case analogous amounts in respect of any other Notes, but excluding (x) (prior to the occurrence of an Event of Default only), in each case, any Extraordinary Administrative Expenses and (y) any amounts payable in connection with the listing of Substitute PPNs pursuant to clause 6.4 (*Listing of Substitute PPNs*) of the Subscription Agreements and any corresponding provision set out in any additional subscription agreement entered into by the Issuer.

**"Administrative Expenses Cap"** means:

- (a) in respect of the first Payment Date, €60,000;
- (b) in respect of the second Payment Date, €120,000, less all amounts paid under paragraph (iv) of the Interest Proceeds Priorities of Payments on the first Payment Date;
- (c) in respect of the third Payment Date, €180,000, less the aggregate of all amounts paid under the said paragraph (iv) on the first and second Payment Dates; and
- (d) in respect of the fourth and each subsequent Payment Date thereafter (including for the avoidance of doubt, the Maturity Date), €230,000, less the aggregate of amounts paid under the said paragraph (iv) on the three Payment Dates immediately preceding the Payment Date in question,

(x) in each case increased by €20,000 for each €100,000,000 by which the total Drawn Amount of all of the Notes issued by the Issuer from time to time exceeds €425,000,000 and (y) such Administrative Expenses Cap to be increased once every seven years from the Issue Date (each such seventh anniversary being a "**re-set date**") based on a review of the then current Administrative Expenses and in an amount to be agreed between the Investment Manager, the Issuer and the Trustee (acting without having to obtain the consent of the Noteholders), provided always that any proposed increase in the Administrative Expenses Cap shall not exceed the Consumer Price Index ("**CPI**") as published by the Office for National Statistics, displayed on the website page at <http://www.ons.gov.uk/taxonomy/index.html?nscl=Consumer+Price+Indices>, from (and including) the Issue Date (or after the Issue Date, the immediately preceding re-set date) up to (but excluding) the relevant date of review.

For the avoidance of doubt, the Administrative Expenses Cap shall not apply following the occurrence of an Event of Default.

**"Affected Collateral"** has the meaning given thereto in Condition 4.10(a)(viii) (*Security*).

**"Affiliate"** or **"Affiliated"** means with respect to a Person:

- (a) any other Person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such Person; or
- (b) any other Person who is a director, officer or employee:
  - (i) of such Person;
  - (ii) of any subsidiary or parent company of such Person; or
  - (iii) of any Person described in paragraph (a) above,

For the purposes of this definition, control of a Person shall mean the power, direct or indirect, (A) to vote more than 50 per cent. of the securities having voting power for the election of directors of such Person, or (B) to direct or control the direction of the management and policies of such Person whether by contract or otherwise.

"**Agent**" means each of the Registrar, the Principal Paying Agent, any other Paying Agent, the Account Bank, the Note Agent, the Custodian, the Quotation Agent or any of them.

"**Authorised Integral Amount**" means €1,000.

"**Authorised Officer**" means, with respect to the Issuer, any director of the Issuer or person who is otherwise authorised to act for the Issuer in matters relating to, and binding upon, the Issuer.

"**Benefit Plan Investor**" means any of the following:

- (a) an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to the fiduciary responsibilities provisions of ERISA;
- (b) a "plan" as defined in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code; or
- (c) any entity whose underlying assets include "plan assets" by reason of any such employee benefit plan's or plan's investment in the entity (including an insurance company general account within the meaning of Section V(e) of prohibited transaction class exemption 95-60) or a "benefit plan investor" as such term is otherwise defined in any regulations promulgated by the U.S. Department of Labor under Section 3(42) of ERISA.

"**Bid**" means the price notified by an investor at which it will subscribe for Replacement PPNs.

"**Bidder**" means an investor who submits a Bid.

"**Business Day**" means (save to the extent otherwise defined) a day:

- (a) which is a TARGET Settlement Day; and
- (b) on which commercial banks and foreign exchange markets settle payments in London and Luxembourg (other than a Saturday or a Sunday).

"**Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Collateral**" means the property, assets and rights described in Condition 4.10 (*Security*) which are charged and assigned to the Trustee from time to time for the benefit of the Secured Parties pursuant to the Trust Deed and the Euroclear Pledge Agreement.

"**Collateral Tax Event**" means at any time, as a result of the introduction of a new, or any change in, any home jurisdiction or foreign tax statute, treaty, regulation, rule, ruling, practice, procedure or judicial decision or interpretation (whether proposed, temporary or final) any interest payments due from the Obligor of any Debt Investment in relation to any Due Period becoming properly subject to the imposition of home jurisdiction or foreign withholding tax so that the aggregate amount of such withholding tax thereon in relation to such Due Period (after taking into account the effect of any applicable gross up provision or double taxation treaty) is equal to or in excess of six per cent. of the aggregate interest payments due on all Debt Investments in relation to such Due Period.

"**Custodial Assets**" means all Debt Investments which are in the form of securities and Eligible Investments and in each case any sums received in respect thereof, which are held from time to time by the Custodian (or any duly authorised Sub-Custodian) pursuant to the terms of the Agency Agreement.

"**Custody Account(s)**" means the custody account or accounts (including any cash account relating to any securities account) established on the books of the Custodian in accordance with the provisions of the Agency Agreement, which term shall include each custody account relating to each such Custody Account (if any).

"**Debt Investment**" means any secured or unsecured loan obligation or debt obligation in which the Issuer has invested by way of the extension of credit, or the purchase or acquisition thereof from time to time (or if the context requires, to be purchased or advanced by or on behalf of the Issuer) each of which the Investment Manager has determined, in accordance with the Investment Management Agreement, satisfies the Eligibility Criteria. For the avoidance of doubt, any obligation which satisfies the Eligibility Criteria at the time the Issuer or the Investment Manager on behalf of the Issuer has entered into a binding commitment to purchase it, shall

constitute a Debt Investment even if it subsequently fails to satisfy paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (m) and/or (n) of the Eligibility Criteria.

**"Default Letter"** has the meaning given thereto in Condition 2(d) (*Failure to make a Note Advance*).

**"Default Letter Notification Date"** means the date on which the relevant Defaulting Noteholder is deemed to have received the Default Letter from the Issuer pursuant to Condition 2(d) (*Failure to make a Note Advance*) in accordance with Condition 16 (*Notices*).

**"Defaulted Note"** has the meaning given thereto in Condition 2(d)(i) (*Failure to make a Note Advance*).

**"Defaulting Noteholder"** has the meaning given thereto in Condition 2(d) (*Failure to make a Note Advance*).

**"Defaulting Noteholder's Account"** means the bank account specified to the Issuer (with a copy to the Principal Paying Agent and the Note Agent) by a Defaulting Noteholder to which Replacement PPN Net Bid Proceeds should be paid and which shall, whilst the Notes held by the relevant Defaulting Noteholder are in global form, be the designated account of the relevant Defaulting Noteholder in the relevant Clearing System.

**"Definitive Certificate"** means a certificate representing one or more Notes in definitive, fully registered, form.

**"Delayed Drawdown Debt Investment"** means a Debt Investment that pursuant to its terms may require one or more future advances to be made to the Obligor by the Issuer which may not permit the re-borrowing of any amount previously repaid, provided that any such Debt Investment will be a Delayed Drawdown Debt Investment only until all commitments to make advances to the Obligor expire or are terminated or reduced to zero.

**"Determination Date"** means the last calendar day of each month prior to each Payment Date.

**"Directive"** has the meaning given to that term in Condition 8.3 (*Registrar and Principal Paying Agent*).

**"Drawn Amount"** means either (i) in relation to any Note at any time, the aggregate of all amounts drawn under such Note at that time or (ii) in respect of any Noteholder, the amounts drawn under its Notes, in each case as the context so requires, in each case for the avoidance of doubt as adjusted to reflect the payments to and from Noteholders under the Notes and the redemption of the Notes as set out in Conditions 2(c)(i), 2(c)(ii), and 7.6 and 7.8; and, in respect of the Notes shall mean such drawn amount of the Notes in accordance with the analogous provisions of the Further PPN Conditions, the Substitute PPN Conditions and the Replacement PPN Conditions.

**"Drawn Percentage"** means, in relation to a Defaulted Note and a Default Letter Notification Date, the percentage that the Drawn Amount of that Defaulted Note represents of the Principal Amount of that Defaulted Note.

**"Due Diligence and Bid Expenses"** means any costs, expenses and/or indemnities which are due and payable by the Issuer to the Investment Manager under the Investment Management Agreement in connection with the Investment Manager carrying out on behalf of the Issuer the due diligence on, and the bidding for, any proposed Debt Investment.

**"Due Period"** means, with respect to any Payment Date, the period commencing on and including the day immediately following the Determination Date prior to the preceding Payment Date (or commencing on and including the First Purchase Date, in the case of the Due Period relating to the first Payment Date) and ending on and including the Determination Date prior to such Payment Date (or, in the case of the Due Period applicable to the Payment Date which is the Redemption Date of any Note, the Due Period for such Note shall end on and include the Business Day preceding such Payment Date).

**"EFTA"** means the European Free Trade Association countries of which comprise Iceland, Liechtenstein, Norway and Switzerland.

**"Electing Noteholder"** has the meaning given thereto in Condition 20(i)(a) (*Noteholders' Restructuring Option*).

**"Eligibility Criteria"** has the meaning given thereto in the Investment Management Agreement.

**"Eligible Investments"** means any investment denominated in Euro, the acquisition (including the manner of acquisition), ownership, enforcement or disposition of which will not cause the Issuer to be treated as engaged in a trade or business within the United States for U.S. federal income tax purposes, that are acquired, and held in a manner that does not violate the investment restrictions set out in the Investment Management Agreement, the nature of which do not violate the investment restrictions set out in the Investment Management Agreement and is one or more of the following obligations or securities, including, without limitation, any Eligible Investments for which the Custodian, the Trustee, the Collateral Administrator or the Investment Manager or an Affiliate of any of them provides services:

- (a) direct obligations of, and obligations the timely payment of principal of and interest under which is fully and expressly guaranteed by, a government of a country in the EU or EFTA with a Long Term Rating equal to A by Standard and Poor's or A by Fitch or A2 by Moody's;
- (b) demand and time deposits in, certificates of deposit of and bankers' acceptances issued by any depository institution (including the Account Bank) or trust company incorporated in the EU or EFTA with a Short Term Rating equal to or higher than A-1 by Standard and Poor's or F1 by Fitch or Prime-1 by Moody's, and in each case, with a maturity of no more than 180 days and subject to supervision and examination by governmental banking authorities;
- (c) commercial paper or other short term obligations that either are bearing interest or are sold at a discount to the face amount thereof with a Short Term Rating equal to or higher than A-1 by Standard and Poor's or F1 by Fitch or Prime-1 by Moody's and have a maturity of not more than 183 days from their date of issuance;
- (d) money market funds which comply with The Undertaking for Collective Investment in Transferable Securities Directive 2001/107/EC and 2001/108/EC ("**UCITS**") and/or exchange-traded funds ("**ETFs**") tracking the EONIA (Euro OverNight Index Average); and
- (e) repurchase agreements invested in the above mentioned financial instruments without maturity constraints,

and, in each case, such instrument or investment provides for payment of a pre-determined fixed amount of principal on maturity that is not subject to change and either (A) has a Stated Maturity (giving effect to any applicable grace period) no later than the second Business Day immediately preceding the Payment Date which immediately follows the date of purchase of such instrument or investment or (B) may be capable of being liquidated on demand, at an amount equal to the purchase price or more without penalty.

**"Eligible Purchaser"** means a purchaser:

- (a) who is a non-U.S. Person (as defined in Regulation S under the Securities Act) in offshore transactions in reliance on Regulation S under the Securities Act;
- (b) who purchases the PPNs subject to the terms and conditions of the PPNs set out in the Trust Deed and the Global Certificate;
- (c) whose purchase of PPNs will not cause an adverse tax consequence to the Issuer;
- (d) whose purchase and holding of PPNs will not be illegal; and
- (e) who is not a Non-Permitted ERISA Holder and is not a Recalcitrant Noteholder.

**"Enforcement Event "** shall mean an event where the security constituted by the Trust Deed over the Collateral becomes enforceable pursuant to Condition 11 (*Enforcement*) by delivery of an Acceleration Notice pursuant to Condition 10 (*Events of Default*).

**"ERISA"** means the United States Employee Retirement Income Security Act of 1974, as amended.

**"EURIBOR"** has the meaning given to that term in Condition 20 (*Restructuring Option*).

**"Euroclear Pledge Agreement"** means the Belgian law pledge agreement dated 25 November 2014 entered into between the Issuer, the Trustee and the Custodian pursuant to the terms of the Trust Deed.

**"Event of Default"** means each of the events defined as such in Condition 10 (*Events of Default*).

**"Expense Reserve Account"** means the interest bearing account described as such in the name of the Issuer with the Account Bank, into which amounts are to be paid in accordance with Condition 4.9(d) (*Expense Reserve Account*) and amounts standing to the credit of which will be used to make certain expense payments.

**"Expense Reserve Account Payment Amount"** means, on the Payment Date immediately following the First Purchase Date, the Target Expense Reserve Balance and in relation to each subsequent Payment Date, an amount equal to the lesser of:

- (a) the Expense Reserve Shortfall; and
- (b) 50 per cent. of the Target Expense Reserve Balance on such Payment Date.

**"Expense Reserve Amount"** means (i) at any time during which the Drawn Amount of the Notes is greater than or equal to €200,000,000, €400,000; and (ii) at any time during which the Drawn Amount of the Notes is less than €200,000,000, €300,000.

**"Expense Reserve Shortfall"** means, on any Payment Date, (i) the difference (if any) between the relevant Target Expense Reserve Balance for such Payment Date and (ii) the amounts credited to the Expense Reserve Account immediately prior to such Payment Date, as determined by the Collateral Administrator on the Determination Date immediately preceding the related Payment Date and notified in writing by the Collateral Administrator to the Investment Manager prior to the related Payment Date.

**"External Repack Notes"** has the meaning given thereto in Condition 20(i)(a)(ii) (*Noteholders' Restructuring Option*).

**"Extraordinary Administrative Expenses"** means all properly documented (by way of invoices) amounts due and payable by the Issuer (and including any VAT in respect thereof):

- (a) to the Trustee pursuant to the Note Trust Deeds in respect of legal fees, costs and expenses (including indemnities provided for therein);
- (b) to the Agents, the Collateral Administrator, the Settlement Agent and their respective officers, directors and employees and the Issuer Indemnified Persons (as defined in the Investment Management Agreement) pursuant to the Agency Agreement, the Investment Management Agreement and the Settlement Agreement (including in each case indemnities provided for therein) in respect of legal fees, costs and expenses incurred by such persons;
- (c) to the Investment Manager pursuant to the Investment Management Agreement (including indemnities provided for therein) in respect of legal fees, costs and expenses incurred by the Investment Manager;
- (d) to the Agents, the Trustee, the Collateral Administrator and their respective officers, directors and employees and the Issuer Indemnified Persons pursuant to the Agency Agreement, the Trust Deed and the Investment Management Agreement (including in each case indemnities provided for therein) in respect of any losses, liabilities, costs, expenses, claims, actions or demands and (in the case of the Issuer Indemnified Persons) all Liabilities and Expenses (each as defined in the Investment Management Agreement) incurred by or made against them or arising in connection with any of the following:
  - (i) any amendment or modification to or restructuring of or work-out of or default under or insolvency of any obligor in connection with any Debt Investment;
  - (ii) any amendment or modification of or waiver in respect of the Notes or any of the Note Transaction Documents;
  - (iii) any Event of Default or Potential Event of Default;
  - (iv) any meeting or resolution of Noteholders; and
  - (v) any of the above in connection with the Restructuring Option,



- (e) without double-counting, to each of the Investment Manager, the Collateral Administrator, the Agents and the Trustee in respect of legal fees, costs and expenses incurred by it in respect of the issuance of any Further PPNs, Replacement PPNs and Substitute PPNs and to the Settlement Agent in respect of legal fees, costs and expenses incurred by it in respect of the issuance of any Further PPNs;
- (f) to the Settlement Agent in respect of the fees and other amounts payable to the Settlement Agent pursuant to the Settlement Agreement (including indemnities provided for therein) but without duplication of any amounts paid as Initial Set-Up Costs or payable under (b) or (e) above,

but in each case, without duplication of any amounts payable under (a) and (b) above, the annual fees payable to the Trustee, the Agents and the Collateral Administrator, and any other amounts payable in accordance with the Priorities of Payments on the related Payment Date;

- (g) to the Investment Manager (and its respective officers, directors and employees) pursuant to the Investment Management Agreement in respect of any losses, liabilities, costs, expenses, claims, actions or demands incurred by or made against them and incurred or made or arising in connection with any of the following:
  - (i) any amendment or modification to or restructuring of or work-out of or default under or insolvency of any obligor in connection with any Debt Investment;
  - (ii) any amendment or modification of or waiver in respect of the Notes or any of the Note Transaction Documents;
  - (iii) any Event of Default or Potential Event of Default;
  - (iv) any meeting or resolution of Noteholders; and
  - (v) any of the above in connection with the Restructuring Option,

but excluding legal fees, costs and expenses, the Due Diligence and Bid Expenses and the Investment Management Fee,

and in each case any analogous amounts in respect of any of the other Notes, in each case in accordance with (x) (prior to the occurrence of an Event of Default) Condition 4.9(d) (*Expense Reserve Account*) and (y) in all other circumstances other than in paragraph (x) above, the applicable Priorities of Payments.

**"Extraordinary Resolution"** means a resolution passed at a meeting of Noteholders duly convened and held in accordance with the Trust Deed by a majority of not less than 66 $\frac{2}{3}$  per cent. of the votes cast or a Written Resolution passed in accordance with paragraph 12 (*Written Resolutions*) of schedule 4 to the Trust Deed.

**"FATCA"** means Sections 1471 through 1474 of the US Internal Revenue Code, an agreement entered into with the US Internal Revenue Service pursuant to such sections of the Code, or an intergovernmental agreement between the United States and another jurisdiction in furtherance of such sections of the Code (including any non-US laws and regulations implementing such an intergovernmental agreement), or any analogous provisions of non-U.S. law.

**"First Purchase Date"** means the date upon which the Issuer first settles the purchase of a Debt Investment.

**"Fitch"** means Fitch Ratings Limited, and any successor or successors thereto.

**"Further Issue Date"** means each date upon which the Issuer issues Further PPNs constituted by a Further PPN Trust Deed.

**"Further Issues"** has the meaning given thereto in Condition 19 (*Further Issues*).

**"Further PPN Conditions"** means the conditions of the Further PPNs as set out in the Further PPN Trust Deed and **"Further PPN Condition"** shall be construed accordingly.

**"Further PPN Holders"** means (a) in relation to Further PPNs in the form of Definitive Certificates, each person in whose name such Further PPNs are registered from time to time on the applicable register and (b) in relation to Further PPNs in the form of one or more global certificates, the several persons who are for the time being the holders of such Further PPNs, which expression shall, whilst such global certificate(s) remain

outstanding, mean in relation to such Further PPNs represented thereby, each person who is for the time being shown in the records of the Clearing System through which interests in the global certificate(s) are held as the holders of a particular principal amount of such Further PPNs for all purposes (in which regard any certificate or other document issued by the Clearing System as to the principal amount of Further PPNs represented by the global certificate(s) standing to the account of any person shall be conclusive and binding for all purposes) other than with respect to the payment of any principal, premium (if any) and interest on such Further PPNs, the right to which shall be vested, as against the Issuer, solely in the registered owner of the global certificate(s) in accordance with and subject to its terms and the terms of the Note Trust Deeds and "**Further PPN Holder**" (in respect of the Further PPNs) shall be construed accordingly.

"**Further PPN Transaction Documents**" means the Further PPN Trust Deeds, the Investment Management Agreement, the Agency Agreement, the Euroclear Pledge Agreement, the Settlement Agreement, the administration agreement, the subscription agreement(s) and the distribution agreement in respect of the Further PPNs and any documents supplemental or ancillary thereto.

"**Further PPN Trust Deed**" means each trust deed constituting the Further PPNs expressed as being supplemental to the Trust Deed.

"**Further PPNs**" has the meaning given to that term in Condition 19 (*Further Issues*).

"**Global Certificate**" means the registered global certificate representing the PPNs in substantially the form attached to the Trust Deed.

"**Illegality Event**" means it has become illegal for the Issuer to perform or comply with any of its obligations under the Note Transaction Documents and the Notes.

"**Impaired Debt Investment**" means any Debt Investment pursuant to which any scheduled principal or interest which is due and payable to the Issuer either (a) has not been received by the Issuer within 10 Business Days of such due date or (b) (as determined by the Investment Manager in its sole discretion based on circumstances then prevailing) is likely not to be received by the Issuer within 10 Business Days of such due date.

"**Impairment Amount**" means, in relation to an Impaired Debt Investment, an amount calculated by the Investment Manager in accordance with the Investment Management Agreement equal to:

- (a) the book value of the relevant Impaired Debt Investment had it not become an Impaired Debt Investment; minus
- (b) the aggregate net present value of the reduced or delayed interest and principal receipts which the Issuer expects to receive under the Impaired Debt Investment, as estimated by the Investment Manager based on information received from the Obligor, discounted at the stipulated interest rate of the relevant Impaired Debt Investment over the remaining life of the Debt Investment.

"**Initial Set Up Costs**" means any establishment and/or set up costs including, but not limited to, legal fees, administrative fees and expenses associated with admission to the Irish Stock Exchange and certain other fees and expenses payable on or about the Issue Date or in the case of Further PPNs, on or about such date when Further PPNs are issued up to an amount equal to the lower of (i) 0.25 per cent. of the aggregate of the Principal Amounts and (ii) €1,200,000.

"**Insolvency Law**" has the meaning given thereto in Condition 10.1(e) (*Insolvency Proceedings*).

"**Interest Account**" means the interest bearing account described as such in the name of the Issuer with the Account Bank into which Interest Proceeds are to be paid.

"**Interest Amount**" means (a) following the delivery of an Acceleration Notice which has not been rescinded and annulled in accordance with Condition 10.3 (*Curing of Default*) or pursuant to an optional redemption in whole in accordance with Condition 7.2 (*Redemption at the Option of the Noteholders*), the amount of interest payable in respect of the PPNs pursuant to Condition 6.2 (*Interest Accrual*) in accordance with Condition 11.2(c) (*Post-Acceleration Priority of Payments*) and (b) in all other circumstances not covered under paragraph (a), the amount of interest payable on each Payment Date in respect of the Notes, being the Interest Proceeds less items (i) to (vi) of the Interest Proceeds Priorities of Payments as calculated by the Collateral Administrator as being payable on such Payment Date in accordance with Condition 4.4 (*Determination and Payment of Amounts*) and Condition 6.3 (*Determination of Interest Amount*).

**"Interest Proceeds Priorities of Payments"** means the priority of payments set out in Condition 4.2(a) (*Application of Interest Proceeds*).

**"Interest Proceeds"** means all amounts paid or payable into the Interest Account from time to time and, with respect to any Payment Date, means any Interest Proceeds received or receivable by the Issuer during the related Due Period and any other amounts to be disbursed as Interest Proceeds on such Payment Date pursuant to Condition 4.2(a) (*Application of Interest Proceeds*).

**"Internal Repack Notes"** has the meaning given thereto in Condition 20(i)(a)(i) (*Noteholders' Restructuring Option*).

**"Investment Company Act"** means the United States Investment Company Act of 1940, as amended.

**"Investment Management Fee"** means the fee payable (in accordance with the Priorities of Payments) to the Investment Manager in arrear on each Payment Date in respect of the immediately preceding Due Period pursuant to the Investment Management Agreement in an amount, as determined by the Collateral Administrator on behalf of the Issuer, equal to the greater of (a) 0.35 per cent. per annum (calculated on the basis of a 360-day year and the actual number of days elapsed in such Due Period) of the aggregate Drawn Amount of the Notes (in respect of the Substitute PPNs, without reduction on account of the Substitute PPN Haircut Percentage) less the aggregate of any Impairment Amounts as at the first Business Day of the Due Period preceding the applicable Payment Date (as notified by the Investment Manager to the Collateral Administrator) and (b) the product of (i) €150,000 and (ii) the fraction, expressed as a percentage, the numerator of which is the number of days elapsed in such Due Period and the denominator of which is 360, together with any VAT chargeable in respect thereof.

**"Investment Manager Breaches"** means the fraud, wilful default or negligence in the performance of the obligations of the Investment Manager, its Affiliates or its or their directors, officers or employees under the Investment Management Agreement which directly result in Losses.

**"Investment Period"** means the period from (and including) the Issue Date to (and including) the later of (i) the Note Available Commitment Termination Date and (ii) the date falling 6 months following the Note Available Commitment Scheduled Termination Date if, on the Business Day immediately preceding the Note Available Commitment Scheduled Termination Date, the Investment Manager (acting on behalf of the Issuer) made a Note Advance Request in an amount up to the Undrawn Amounts on such date and the Note Agent has notified the Noteholders in writing that the Investment Manager wishes to so extend the Investment Period.

**"Issue Date"** or **"First Issue Date"** means 25 July 2013 (or such other date as may shortly follow such date as the Issuer may stipulate and which is notified by the Issuer to the Noteholders in accordance with Condition 16 (*Notices*) (with a copy to the Trustee)).

**"Issuer Account"** means the account established by the Issuer in Luxembourg for the purpose of holding (i) the proceeds of the issue of the Issuer Shares, (ii) such amounts as are necessary for the Issuer to retain sufficient profit in accordance with paragraph (a)(i) of Condition 4.2 (*Pre-Enforcement Priority of Payments*) to pay Luxembourg taxes, (iii) such amounts as are necessary to cover Luxembourg operational costs and (iv) interest earned on the foregoing amounts.

**"Issuer Shares"** means the share capital of the Issuer as at the Issue Date, which comprises 31,000 ordinary voting shares of €1.00 each.

**"Liabilities"** means, collectively, liabilities, obligations, losses, claims, damages, judgments, penalties, assessments, actions, suits, costs, expenses or other similar liabilities (including, without limitation, in respect of taxes, duties, levies, imposts and other charges and all legal fees and disbursements incurred in defending or disputing any of the foregoing and including any VAT or similar tax charged or chargeable in respect thereof).

**"Listed Notes"** means:

- (a) the PPNs;
- (b) the Replacement PPNs;
- (c) the Further PPNs; and

- (d) the Substitute PPNs where the holder of such Substitute PPNs has requested to be listed in accordance with the relevant Subscription Agreement,

in each case, listed from time to time on the Irish Stock Exchange, or another stock exchange or exchange.

**"Long Term Ratings"** means the long term rating assigned by any Rating Agency. In the event that a long term rating has been assigned by more than one Rating Agency, the Long Term Rating shall be the second best such long term rating (for the avoidance of doubt, should two or more of these long term ratings be equivalent, the second best rating shall be such equivalent rating).

**"Losses"** means any losses, claims, damages, judgments, assessments, costs, taxes, charges, demands, expenses or other liabilities incurred by the Issuer, the Trustee, the Noteholders, any other Secured Party or any other person that arise out of or in connection with the performance or non-performance by the Investment Manager of its duties under the Investment Management Agreement.

**"Material Restructuring"** means any reduction or rescheduling of the interest or principal of a debt investment, or release of security, which results, or is expected to result, in a loss of value of the collateral affected by such reduction, rescheduling or release of security of more than 2%. For this purpose, the value of the collateral will be defined as the net present value of future payments discounted at the original interest rate pre-restructuring.

**"Maturity Date"** means 15 October ~~2039~~2041.

**"Minimum Rating Requirement"** in relation to the Custodian or any Paying Agent means A3 by Moody's, ~~A- by S&P, A- by Fitch, or BBB+ by S&P, A- by Fitch~~ (save for so long as Deutsche Bank AG, London Branch is appointed as the Custodian or a Paying Agent, the Minimum Rating Requirement in relation to the Custodian or that Paying Agent shall mean Baa1 by Moody's, BBB+ by S&P, BBB+ by Fitch), or, in any case, such other rating as may be agreed in writing by the Issuer and the Trustee (as directed by the Noteholders acting as a single class by way of an Extraordinary Resolution).<sup>1</sup>

**"Monthly Report"** means the report defined as such in the Investment Management Agreement which is prepared by the Collateral Administrator (in consultation with and based on certain information provided by the Investment Manager), on behalf of the Issuer and made available on the secure investor reporting website by the Collateral Administrator to the Noteholders, the Issuer, the Principal Paying Agent and the Trustee no later than the 15<sup>th</sup> calendar day of each month following the First Purchase Date (and if such a day is not a Business Day, the immediately following Business Day).

**"Moody's"** means Moody's Investors Service Limited, and any successor or successors thereto.

**"Non-Defaulting Noteholders"** means in relation to a Note Advance, each Noteholder who is not a Defaulting Noteholder and who has been requested to make one or more Note Advances.

**"Non-Permitted ERISA Holder"** means any Noteholder who has made or is deemed to have made a prohibited transaction, or made a Benefit Plan Investor or Other Plan Law representation that is subsequently shown to be false or misleading, or whose beneficial ownership otherwise causes a violation of the 25 per cent. limitation set out in Title I of ERISA and Section 4975 of the Code.

**"Note Advance"** means in relation to a Noteholder, each euro denominated advance made by that Noteholder after the Issue Date in an amount equal to the *Pro-Rata* Note Advance on the related Note Advance Date.

**"Note Advance Date"** means such date on which a Note Advance is requested to be made by a Noteholder pursuant to a Note Advance Request.

**"Note Advance Request"** means a notification by the Issuer to the Noteholders requesting a Note Advance from each Noteholder in the amount of its *Pro-Rata* Note Advance.

**"Note Available Commitment Period"** means the period from and including the Issue Date to but excluding the Note Available Commitment Termination Date.

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<sup>1</sup> This amendment is subject to the approval by the requisite majority of the Noteholders of the Proposed Waiver and Consent, as provided in section 3 (Proposed Waiver and Consent) of the Notice to Holders of Notes dated 20 July 2015.

**"Note Available Commitment Scheduled Termination Date"** means ~~the date falling 30 months from the Issue Date~~ 30 September 2016 (and if such date is not a Business Day, the immediately succeeding Business Day).

**"Note Available Commitment Termination Date"** means the earliest of:

- (a) the date on which the Undrawn Amount is zero;
- (b) the date upon which the Notes are redeemed pursuant to Condition 7 (*Redemption*);
- (c) the date on which an Enforcement Event occurs; and
- (d) the Note Available Commitment Scheduled Termination Date,

and in each case above, if such date is not a Business Day, the immediately succeeding Business Day.

On the Business Day immediately preceding the Note Available Commitment Scheduled Termination Date, the Issuer may but is not obliged to, draw down a Note Advance in an amount of up to the Undrawn Amount on such date and credit the proceeds thereof to the Principal Account for the investment thereof in Debt Investments, provided that (x) the Investment Manager (acting on behalf of the Issuer) has entered into negotiations regarding the purchase of such Debt Investments or (y) without prejudice to this sub-paragraph (x), key terms have been agreed or an offer, agreement in principle, letter of intent or memorandum of understanding, has been made or entered into in writing and in good faith by the Investment Manager (acting on behalf of the Issuer) and the seller thereof with the intention of the Issuer purchasing such Debt Investments, (regardless of whether such arrangement is legally binding as at the Note Available Commitment Termination Date) and such purchase under either paragraph (x) or (y) above or a combination of both is expected by the Investment Manager to settle within 6 months of the Note Available Commitment Termination Date.

**"Note Commitment"** means in relation to a Noteholder, the aggregate maximum amount of Note Advances which may be requested of such Noteholder pursuant to the Notes.

**"Note Conditions"** means the Conditions, the Further PPN Conditions, the Substitute PPN Conditions and the Replacement PPN Conditions.

**"Noteholders"** means the PPN Holders, the Further PPN Holders, the Substitute PPN Holders and the Replacement PPN Holders.

**"Noteholder's Specified Address"** means in relation to a Noteholder, as at the date any notice is sent, the address of such Noteholder (if any) which has been notified to the Issuer as such.

**"Notes"** means the €425,000,000 Secured Revolving Profit Participating Notes due 2039 comprising, where the context permits, the notes constituted by the Trust Deed or the Drawn Amount thereof for the time being or, as the context may require, a specific number thereof and includes any replacements for Notes issued pursuant to Condition 13 (*Replacement of PPNs*). References in these Conditions to the "Notes" include any Further PPNs issued pursuant to Condition 19 (*Further Issues*) together with any Replacement PPNs and Substitute PPNs.

**"Note Tax Event"** means, at any time, the introduction of a new, or any change in, any home jurisdiction or foreign tax statute, treaty, regulation, rule, ruling, practice, procedure or judicial decision or interpretation (whether proposed, temporary or final) which results in (or would on the next Payment Date result in) any payment of principal or interest on the Notes becoming properly subject to any deduction or withholding for or on account of any tax (other than with regard to FATCA).

**"Note Transaction Documents"** means the Transaction Documents, the Further PPN Transaction Documents, the Substitute PPN Transaction Documents and the Replacement PPN Transaction Documents.

**"Note Trust Deeds"** means the Trust Deed, any Further PPN Trust Deed, any Substitute PPN Trust Deed and any Replacement PPN Trust Deed, and in each case, any trust deed supplemental thereto.

**"Notice of Default"** has the meaning given thereto in Condition 10.1(d) (*Breach of Other Obligations*).

**"Obligor"** means, in respect of a Debt Investment, the infrastructure company which is the borrower thereunder or issuer thereof or, in either case, the guarantor thereof.

**"Optional Early Redemption Date"** means the first Payment Date falling 15 years after the Issue Date.

**"Optional Early Redemption Event"** means (a) the Optional Early Redemption Date or (b) any Payment Date falling after the date when the aggregate Drawn Amount of the Notes is below 5 per cent. of the aggregate Drawn Amount of the Notes as at the Note Available Commitment Termination Date.

**"Ordinary Resolution"** means a resolution (other than an Extraordinary Resolution or Unanimous Resolution) passed in a meeting of Noteholders (other than the holders of Substitute PPNs) duly convened and held in accordance with the Trust Deed by more than 50 per cent. of the votes cast or a Written Resolution as an Ordinary Resolution passed in accordance with paragraph 12 (*Written Resolutions*) of schedule 4 of the Trust Deed.

**"Other Plan Law"** means any state, local, other federal or non-U.S. laws or regulations that are substantially similar to the prohibited transaction provisions of Section 406 of ERISA or Section 4975 of the Code.

**"Outstanding"** means, as of any date of determination, all of the Notes issued, but not redeemed, as further defined in the Note Trust Deeds, and only in respect of calculating voting rights, giving instructions to the Trustee or determining whether a quorum has been met, the Principal Amount of such Notes whether or not drawn.

**"Partially Drawn Noteholder"** means each Noteholder whose Drawn Amount prior to the Note Available Commitment Termination Date is lower than the aggregate amount of Drawn Amount under the Notes multiplied by such Noteholder's *Pro-Rata* Share of the Undrawn Amount and divided by the aggregate of all of the Noteholders' Undrawn Amounts.

**"Payment Account"** means the account of the Issuer with the Account Bank specified as such, and into and out of which payments are made in accordance with Condition 4.9 (*Payments to and from the Accounts*).

**"Payment Date Report"** means the report defined as such in the Investment Management Agreement which is prepared by the Collateral Administrator (in consultation with and based on certain information provided by the Investment Manager), on behalf of the Issuer and made available on its secure investor reporting website by the Collateral Administrator to the Noteholders, the Issuer and the Trustee not later than the second Business Day preceding the related Payment Date.

**"Payment Dates"** means 15 April, 15 July, 15 October and 15 January in each year, commencing on the first Payment Date immediately following the First Purchase Date, and ending on the Maturity Date, provided that, if any Payment Date would otherwise fall on a day which is not a Business Day, it shall be postponed to the next day that is a Business Day and **"Payment Date"** shall be construed accordingly.

**"Person"** means an individual, corporation (including a business trust), partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

**"Portfolio"** means the portfolio of Debt Investments held by or on behalf of the Issuer from time to time.

**"Post-Acceleration Priority of Payments"** means the priority of payments set out in Condition 11.2(c) (*Post-Acceleration Priority of Payments*).

**"Potential Event of Default"** has the meaning given thereto in the Trust Deed.

**"PPN Holder"** means (a) in relation to PPNs in the form of Definitive Certificates, each person in whose name such PPNs are registered from time to time on the Register and (b) in relation to PPNs in the form of the Global Certificate, the several persons who are for the time being the holders of such PPNs, which expression shall, whilst the Global Certificate remains Outstanding, mean in relation to such PPNs represented thereby, each person who is for the time being shown in the records of the Clearing System through which interests in the Global Certificate are held as the holders of a particular principal amount of such PPNs for all purposes (in which regard any certificate or other document issued by the Clearing System as to the principal amount of PPNs represented by the Global Certificate standing to the account of any person shall be conclusive and binding for all purposes) other than with respect to the payment of any principal, premium (if any) and interest on such PPNs, the right to which shall be vested, as against the Issuer, solely in the registered owner of the Global Certificate in accordance with and subject to its terms and the terms of the Note Trust Deeds and **"holder"** and **"PPN Holder"** (in respect of the PPNs) shall be construed accordingly.

**"PPN Listing Deadline"** means the date falling ninety (90) calendar days after the Issue Date (and if such a date is not a Business Day, the immediately following Business Day).

**"Pre-Enforcement Priority of Payments"** means the Interest Proceeds Priorities of Payments and the Principal Proceeds Priorities of Payments.

**"Principal Account"** means the interest bearing account described as such in the name of the Issuer with the Account Bank into which Principal Proceeds are to be paid.

**"Principal Amount"** means, in respect of any Note, the maximum of the Drawn Amount that may be outstanding thereunder at any time.

**"Principal Proceeds"** means all amounts paid or payable into the Principal Account from time to time and, with respect to any Payment Date, means Principal Proceeds received or receivable by the Issuer during the related Due Period and any other amounts to be disbursed as Principal Proceeds on such Payment Date pursuant to Condition 4.2(b) (*Application of Principal Proceeds*).

**"Principal Proceeds Priorities of Payments"** means the priority of payments set out in Condition 4.2(b) (*Application of Principal Proceeds*).

**"Priorities of Payments"** means the Pre-Enforcement Priority of Payments and the Post-Acceleration Priority of Payments.

**"Pro-Rata Note Advance"** means in relation to a Noteholder and a Note Advance Date, and as specified in the related Note Advance Request, an amount equal to such Noteholder's *Pro-Rata* Share of the aggregate of the related Note Advances requested.

**"Pro-Rata Share"** means with respect to a Noteholder on any date of determination, the fraction (expressed as a percentage) the numerator of which is the Undrawn Amounts of such Noteholder on such date and the denominator of which is the aggregate of all of the Undrawn Amounts of all Noteholders (other than any Defaulting Noteholders and Substitute PPN Holders in relation thereto) on such date.

**"Quarterly Investment Management Report"** means the report defined as such in the Investment Management Agreement which is prepared by the Investment Manager on behalf of the Issuer and made available to the Noteholders, the Issuer and the Trustee not later than the second Business Day preceding the related Payment Date.

**"Rating Agency"** means any of Fitch, Moody's and S&P.

**"Reallocation Premium"** means, in respect of a Further PPN Holder on a Further Issue Date, a premium calculated by the Investment Manager pursuant to the Investment Management Agreement and these Conditions which is equal to the product of (a) the aggregate of (i) any costs incurred in connection with the acquisition of Debt Investments prior to the related Further Issue Date (other than the purchase price); (ii) the Initial Set Up Costs; and (iii) an amount of interest calculated at five per cent. per annum on the amounts specified in (a)(i) and (a)(ii) above and (b) the fraction, expressed as a percentage, the numerator of which is the Further PPN Holder's Principal Amount and the denominator of which is the aggregate of all the Principal Amounts of all Noteholders on such Further Issue Date (including those Notes issued on such Further Issue Date).

**"Reallocation Rebate"** means an equalisation amount payable by the Issuer to certain Noteholders on or promptly after the Note Available Commitment Termination Date to ensure that each Noteholder has paid its *pro-rata* share, based on each Noteholder's Drawn Amount as at the Note Available Commitment Termination Date, of the Initial Set Up Costs, costs incurred in connection with Debt Investments and interests paid thereon pursuant to the "Reallocation Premium", as determined by the Investment Manager prior to the Note Available Commitment Termination Date in accordance with the Investment Management Agreement.

**"Recalcitrant Noteholder"** means a Noteholder who does not comply with the Issuer's request for information or a waiver of law prohibiting disclosure of such information to a taxing authority to enable the Issuer to comply with FATCA.

**"Receiver"** has the meaning given to it in Condition 10.1(e) (*Insolvency Proceedings*).

**"Record Date"** means in relation to a Payment Date, the Business Day immediately preceding such Payment Date.

**"Redemption Date"** means the date specified for redemption of the Notes in whole pursuant to Condition 7.2 (*Redemption at the Option of the Noteholders*) or the date upon which the Notes are accelerated pursuant to Condition 10 (*Events of Default*), or in each case, if such day is not a Business Day, the next Business Day (unless it would fall in the following month, in which case such date shall be brought forward to the immediately preceding Business Day).

**"Redemption Price"** means, (a) in respect of a Defaulted Note, zero and (b) in respect of each other Note, (i) on the Maturity Date, the Drawn Amount thereof and (ii) in all other respects, the aggregate proceeds of sale, amortisation, run-off and/or liquidation of the Collateral or realisation of the security thereover remaining following application thereof in accordance with the Priorities of Payments.

**"Register"** means the register of holders of the title to the Notes kept by the Registrar pursuant to the terms of the Agency Agreement and an up-to-date copy of which will be separately maintained at the registered office of the Issuer by the Administrator.

**"Registrar Business Days"** means a day, other than a Saturday or a Sunday, on which banks are open for business in the local market of the Specified Office of the Registrar.

**"Replacement PPN Conditions"** means the conditions of the Replacement PPNs as set out in the Replacement PPN Trust Deed and **"Replacement PPN Condition"** shall be construed accordingly.

**"Replacement PPN Gross Bid Proceeds"** means, in relation to a Defaulting Noteholder, the highest Bid or Bids obtained by the Issuer and paid by the first subscriber for the relevant Replacement PPNs.

**"Replacement PPN Holders"** means (a) in relation to Replacement PPNs in the form of Definitive Certificates, each person in whose name such Replacement PPNs are registered from time to time on the applicable register and (b) in relation to Replacement PPNs in the form of one or more global certificates, the several persons who are for the time being the holders of such Replacement PPNs, which expression shall, whilst such global certificate(s) remain outstanding, mean in relation to such Replacement PPNs represented thereby, each person who is for the time being shown in the records of the Clearing System through which interests in the global certificate(s) are held as the holders of a particular principal amount of such Replacement PPNs for all purposes (in which regard any certificate or other document issued by the Clearing System as to the principal amount of Replacement PPNs represented by the global certificate(s) standing to the account of any person shall be conclusive and binding for all purposes) other than with respect to the payment of any principal, premium (if any) and interest on such Replacement PPNs, the right to which shall be vested, as against the Issuer, solely in the registered owner of the global certificate(s) in accordance with and subject to its terms and the terms of the Note Trust Deeds and **"Replacement PPN Holder"** (in respect of the Replacement PPNs) shall be construed accordingly.

**"Replacement PPN Net Bid Proceeds"** means, in relation to a Defaulting Noteholder, the highest Bid or Bids obtained by the Issuer and paid by the first subscriber for the relevant Replacement PPNs less all the expenses, costs and taxation incurred and any loss suffered by the Issuer as a result of the Defaulting Noteholder's failure to make a Note Advance and any default interest calculated by the Note Agent in consultation with the Investment Manager on a *prorated* basis using the EURIBOR three (3) month rate which appears on the date on which the default occurred on the display designated as page 248 on the Telerate Monitor, or such other page or service as may replace it for the purpose of displaying EURIBOR rates on the relevant date on which the default occurred plus five hundred (500) basis points applied to the amount due by the Defaulting Noteholder from the relevant Note Advance Date on which the delay in payment occurred, until the date of issuance of the Replacement PPNs.

**"Replacement PPNs"** means in relation to a Defaulted Note, notes issued pursuant to the terms of the related Replacement PPN Trust Deed, the terms and conditions of which are identical to the related Defaulted Notes immediately prior to their cancellation in full at zero save that (a) the Principal Amount shall be reduced by the Shortfall Amount made by Non-Defaulting Noteholders in respect of the default related to such Defaulted Note (but not, for the avoidance of doubt, below the Drawn Amount thereof) and (b) interest shall accrue thereon from and including the issue date thereof. For the avoidance of doubt, Replacement PPNs may be issued in respect of PPNs, Further PPNs and existing Replacement PPNs.



**"Replacement PPN Transaction Documents"** means the Replacement PPN Trust Deeds, the Investment Management Agreement, the Euroclear Pledge Agreement, the Agency Agreement, the administration agreement, the subscription agreement(s) and the distribution agreement in respect of the Replacement PPNs and any documents supplemental or ancillary thereto.

**"Replacement PPN Trust Deed"** means each trust deed constituting the Replacement PPNs, expressed as being supplemental to the Trust Deed.

**"Resolutions"** has the meaning given to that term in Condition 14.1(b)(i) (*Decisions and Meetings of Noteholders*), and **"Resolution"** shall mean any of them.

**"Restructuring Date"** has the meaning given thereto in Condition 20(i)(a) (*Noteholders' Restructuring Option*).

**"Restructuring Option"** has the meaning given thereto in Condition 20(i)(a) (*Noteholders' Restructuring Option*).

**"Restructuring Option A"** has the meaning given thereto in Condition 20(i)(a)(i) (*Noteholders' Restructuring Option*).

**"Restructuring Option B"** has the meaning given thereto in Condition 20(i)(a)(ii) (*Noteholders' Restructuring Option*).

**"Revolving Debt Investment "** means any Debt Investment (other than a Delayed Drawdown Debt Investment) that (i) satisfies the requirements set forth in the Eligibility Criteria and (ii) is a loan (including, without limitation, a revolving loan, funded and unfunded portions of revolving credit lines and letter of credit, guarantee and lending facilities, unfunded commitments under specific and ancillary facilities and other similar loans and investments) that by its terms requires the Issuer either to make one or more future advances to the borrower or to indemnify or reimburse another lender of the borrower in connection with that lender's advances to the borrower for or on behalf of the Issuer; provided that any such obligation, interest or security will be a "Revolving Debt Investment" only until all commitments to make such advances expire or are irrevocably terminated or reduced to zero.

**"Revolving Reserve Account"** means the interest bearing account of the Issuer with the Account Bank into which amounts equal to the Unfunded Amounts in respect of certain Revolving Debt Investments and certain Delayed Drawdown Debt Investments identified by the Investment Manager in its sole discretion in accordance with Condition 4.9(e) (*Revolving Reserve Account*) and certain principal payments received in respect of such Revolving Debt Investments and Delayed Drawdown Debt Investments, are paid.

**"S&P"** means Standard & Poor's Credit Market Services Europe Limited, and any successor or successors thereto.

**"Sale Proceeds"** means proceeds received upon the sale or other realisation of any Debt Investment.

**"Secured Party"** means each of the Noteholders, the Trustee, the Agents, the Investment Manager, the Collateral Administrator, the Administrator and (for as long as the Settlement Agreement has not been terminated in accordance with its terms) the Settlement Agent and **"Secured Parties"** means any two or more of them as the context so requires.

**"Short Term Ratings"** means the short term rating assigned by any Rating Agency. In the event that more than one Short Term Rating has been assigned, the Short Term Rating shall be:

- (a) in respect of two different Short Term Ratings, the lower of such Short Term Ratings; or
- (b) in respect of three different Short Term Ratings, the middle of such Short Term Ratings.

**"Shortfall Amount"** has the meaning given to that term in Condition 2(d)(ii) (*Failure to make a Note Advance*).

**"Specified Office"** means, in respect of the Principal Paying Agent, any Paying Agent or the Registrar, the relevant office set forth at the foot of these Conditions (or such other office as may be notified to the PPN Holders from time to time in accordance with Condition 16 (*Notices*)).

**"Stated Maturity"** means, with respect to any Debt Investment, the date specified in such obligation as the fixed date on which the final payment or repayment of principal of such obligation is due and payable.

**"Sub-Custodian"** means the sub-custodian appointed by the Custodian in accordance with clause 14.4 (*Appointment of Sub-Custodian*) of the Agency Agreement.

**"Substitute PPN"** means a note issued in accordance with Condition 2(d) (*Failure to make a Note Advance*), the terms and conditions of which are identical to those of its related Defaulted PPN as at the related Default Letter Notification Date, save that (a) the Drawn Amount of such Substitute PPN shall be equal to the product of the Drawn Amount of the related Defaulted Note as at the related Default Letter Notification Date and the applicable Substitute PPN Haircut Percentage, (b) the Principal Amount of such Substitute PPN shall equal its Drawn Amount, (c) such Substitute PPN shall be issued in registered global form pursuant to a trust deed supplemental to the Trust Deed, (d) the Substitute PPN Holder shall not, with the exception of Extraordinary Resolutions and Unanimous Resolutions, be entitled to vote on resolutions, directions or authorisations, and (e) no application shall be made to list such Substitute PPNs on any stock exchange unless requested by the holder of such Substitute PPNs in accordance with the relevant Subscription Agreement. For the avoidance of doubt, Substitute PPNs may be issued in respect of PPNs, Further PPNs and Replacement PPNs.

**"Substitute PPN Conditions"** means the conditions of the Substitute PPNs as set out in the Substitute PPN Trust Deed and **"Substitute PPN Condition"** shall be construed accordingly.

**"Substitute PPN Haircut Percentage"** means in relation to a Substitute PPN, the percentage applicable to the Drawn Percentage of the related Defaulted Note at the related Default Letter Notification Date as appearing in the table below:

	Drawn Percentage (DP)			
	DP < 60%	60% < DP < 70%	70% < DP < 80%	80% < DP < 100%
Haircut Percentage	50%	60%	70%	80%

**"Substitute PPN Holders"** means (a) in relation to Substitute PPNs in the form of Definitive Certificates, each person in whose name such Substitute PPNs are registered from time to time on the applicable register and (b) in relation to Substitute PPNs in the form of one or more global certificates, the several persons who are for the time being the persons shown in the records of the Clearing System through which interests in the global certificate(s) are held as the holders of a particular principal amount of such Substitute PPNs for all purposes (in which regard any certificate or other document issued by the Clearing System as to the principal amount of Substitute PPNs represented by the global certificate(s) standing to the account of any person shall be conclusive and binding for all purposes) other than with respect to the payment of any principal, premium (if any) and interest on such Substitute PPNs, the right to which shall be vested, as against the Issuer, solely in the registered owner of the global certificate(s) in accordance with and subject to its terms and the terms of the Substitute PPN Trust Deed and **"Substitute PPN Holder"** (in respect of the Substitute PPNs) shall be construed accordingly.

**"Substitute PPN Transaction Documents"** means the Substitute PPN Trust Deeds, the Investment Management Agreement, the Euroclear Pledge Agreement, the Agency Agreement, the administration agreement, any subscription agreements (if applicable) and the distribution agreement in respect of the Substitute PPNs and any documents supplemental or ancillary thereto.

**"Substitute PPN Trust Deed"** means each trust deed constituting the Substitute PPNs, expressed as being supplemental to the Trust Deed.

**"Target Expense Reserve Balance"** means:

- (a) with respect to each Payment Date prior to the First Purchase Date, zero;
- (b) with respect to the First Purchase Date and each subsequent Payment Date prior to the Note Available Commitment Termination Date, the product of (x) €400,000 divided by the number of Payment Dates from and including the Payment Date immediately following the First Purchase Date to and including the Payment Date falling on or immediately before the Note Available Commitment Scheduled

Termination Date and multiplied by (y) the number of Payment Dates from and including the Payment Date immediately following the First Purchase Date to and including such subsequent Payment Date; and

- (c) with respect to each Payment Date from and including the Note Available Commitment Termination Date, the Expense Reserve Amount.

**"Termination Payment"** means an amount payable to the Investment Manager in connection with, and as a condition to, its removal without Cause (as such term is defined in the Investment Management Agreement) subject to and in accordance with the provisions of the Investment Management Agreement.

**"Transaction Documents"** means the Trust Deed, the Agency Agreement, the Investment Management Agreement, the Administration Agreement, the Subscription Agreements, the Distribution Agreement, the Euroclear Pledge Agreement, the Settlement Agreement and any documents supplemental or ancillary thereto.

**"Trust Collateral"** has the meaning given thereto in Condition 4.10(a)(viii) (*Security*).

**"Trustee Fees and Expenses"** means the fees and expenses and other amounts (including, for the avoidance of doubt, by way of indemnity) payable to the Trustee pursuant to the Trust Deed from time to time (including, for the avoidance of doubt, any applicable value added tax).

**"Unanimous Resolution"** means a resolution passed at a meeting of Noteholders duly convened and held in accordance with the Trust Deed by unanimous consent of all Noteholders voting at such meeting or a Written Resolution passed in accordance with paragraph 12 (*Written Resolutions*) of schedule 4 to the Trust Deed.

**"Undrawn Amount"** means, with respect to any Note and any Noteholder on any date of determination, the difference between its Principal Amount and its Drawn Amount .

**"Unfunded Amount"** means, with respect to any Revolving Debt Investment or Delayed Drawdown Debt Investment identified by the Investment Manager in accordance with condition 4.9(e) (*Revolving Reserve Account*) an amount determined by the Investment Manager in its sole discretion which is necessary or desirable in order for the Issuer to meet its funding obligations under or in connection with the relevant Revolving Debt Investment or Delayed Drawdown Debt Investment.

**"VAT"** means value added tax imposed in any member state of the European Union pursuant to the Council Directive of 28 November 2006 on the common system of value added tax and national legislation implementing or supplemental to that Directive and any other sales or turnover tax of a similar nature imposed in any country that is not a member state of the European Union.

**"Written Resolution"** means any Resolution of the Noteholders (other than, in the case of Ordinary Resolutions, the holders of Substitute PPNs) acting as a single class in writing, as described in Condition 14.1(b)(iv) (*Written Resolutions*) and as further described in the Trust Deed.

## 1.2 Interpretation

In these Conditions:

- (a) headings are inserted for convenience and ease of reference only and shall not affect the interpretation of these Conditions;
- (b) all references to any statute or any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment from time to time of any statutory instrument, order or regulation made thereunder or under such modification or re-enactment;
- (c) all references to any agreement, deed or other document shall refer to such agreement, deed or other document as the same may be amended, supplemented or modified from time to time; and
- (d) references to any person include references to the successors and permitted assigns thereof.

2. **PPNs**

(a) ***Conditions to Note Advances***

Prior to any Note Advance being requested, each of the following conditions precedent shall be satisfied:

- (i) the amount of such Note Advance is in a minimum denomination of €1,000,000 and in excess thereof in one or more multiples of the Authorised Integral Amount, or, if less, an amount equal to the Undrawn Amount;
- (ii) the PPNs have been admitted to the official list of the Irish Stock Exchange and admitted to trading on its regulated market;
- (iii) the Note Available Commitment Termination Date has not occurred; and
- (iv) both prior to and after giving effect to any such Note Advance, no Event of Default or Potential Event of Default shall have occurred, as certified to the Trustee by the Issuer.

(b) ***Use of Proceeds***

The Issuer shall apply all amounts raised from the Note Advances made under the PPNs, after payment of the Initial Set Up Costs, as follows:

- (i) in payment to the Principal Account in accordance with Condition 4.9(b) (Principal Account) and used to, amongst other things, purchase Debt Investments from time to time recommended to it by the Investment Manager;
- (ii) on the First Purchase Date, in an amount equal to the Target Expense Reserve Balance from the proceeds of the first Note Advance, in payment to the Expense Reserve Account in accordance with Condition 4.9(d)(A); and
- (iii) if applicable, in payment into the Revolving Reserve Account for application in the funding of Unfunded Amounts of any Revolving Debt Investments and Delayed Drawdown Debt Investments identified by the Investment Manager when required pursuant to any such obligation,

all as further described in Condition 4.9 (*Payments to and from the Accounts*).

(c) ***Reduction of the Undrawn Amount and Increase of the Drawn Amount***

- (i) Following the payment of a Note Advance by each PPN Holder to the Issuer, the Issuer shall procure that (i) the Drawn Amount of the PPNs is increased by an amount equal to the amount of such Note Advance and (ii) the Undrawn Amount is correspondingly reduced by an amount equal to the amount of such Note Advance.
- (ii) Following any repayment of the PPNs and reduction of the Drawn Amount of the PPNs during the Note Available Commitment Period, the Undrawn Amounts shall be increased by the amount of each such repayment and shall therefore be available to be requested for re-drawing under a Note Advance during the Note Available Commitment Period.

(d) ***Failure to make a Note Advance***

- (i) The aggregate of all Note Advances requested on a Note Advance Date is the "**Aggregate Note Advance**". If any Noteholder has been identified at any time as having failed to advance to the Issuer its *pro rata* share of the Aggregate Note Advance in respect of a Note by close of business on the relevant Note Advance Date (a "**Defaulted Note**" and such Noteholder, a "**Defaulting Noteholder**"), the Issuer shall send such Defaulting Noteholder a default letter (the "**Default Letter**") in accordance with Condition 16 (*Notices*) (with a copy to the Trustee, the Registrar, the Principal Paying Agent and the Note Agent). The Default Letter will specify the amount of the Note Advance that was due and unpaid. Furthermore, the Default Letter shall request that the Defaulting Noteholder confirm to the Issuer the Defaulting Noteholder's

Account to which the Issuer shall, or (whilst the Notes are in global form) the Issuer shall procure that the Clearing Systems shall, pay any Replacement PPN Net Bid Proceeds to which the Defaulting Noteholder may become entitled pursuant to paragraph (v) below.

- (ii) On and from the Default Letter Notification Date, the Issuer is entitled, but is not obliged, to request further Note Advances from non-Defaulting Noteholders (the "**Non-Defaulting Noteholders**") in order to fund all or part of such Defaulting Noteholder's Note Advance, in an amount that is equal to each such Non-Defaulting Noteholder's *Pro-Rata* Share of the aggregate amount which needs to be advanced by all Non-Defaulting Noteholders (such aggregate amount, the "**Shortfall Amount**") and that shall not exceed the Undrawn Amounts of such Non-Defaulting Noteholders.
- (iii) The Issuer shall redeem the Notes of the Defaulting Noteholder on the Default Letter Notification Date in consideration for the issue by the Issuer of a Substitute PPN to the Defaulting Noteholder. The drawn amount of such Substitute PPN shall be equal to the product of the Drawn Amount of the related Defaulted Note and the applicable Substitute PPN Haircut Percentage. The Defaulting Noteholder's obligation to advance its Note Advance shall extinguish upon the issuance by the Issuer to the Defaulting Noteholder of such Substitute PPN.
- (iv) The Issuer shall for a period of 3 months use reasonably commercial efforts to solicit bids (each a "**Bid**") from investors (including the Non-Defaulting Noteholders) (each a "**Bidder**") specifying the issue price at which the Bidder will subscribe for Notes, the terms and conditions of which shall be identical to those of the Notes of that Defaulting Noteholder as at the Default Letter Notification Date ("**Replacement PPNs**") save that (i) the Principal Amount shall be reduced by the Shortfall Amount made by Non-Defaulting Noteholders pursuant to paragraph (ii) above in respect of such default by such Defaulting Noteholder and (ii) interest shall accrue on such Replacement PPN from and including the issue date thereof in accordance with the Priorities of Payments, provided always that the issue price for the Replacement PPNs shall not be lower than an amount equal to (i) the Drawn Amount of the Notes of the relevant Defaulting Noteholder multiplied by (ii) the relevant Substitute PPN Haircut Percentage.
- (v) The Investment Manager shall determine and inform the Note Agent, the Issuer and the Defaulting Noteholder of the Replacement PPN Net Bid Proceeds.
- (vi) Not less than 5 Business Days following the later of (i) receipt by the Issuer of Replacement PPN Bid Proceeds and (ii) receipt of details of the related Defaulting Noteholder's Account, the Issuer shall redeem the related Substitute PPN in consideration for the payment to such Defaulting Noteholder of the Replacement PPN Net Bid Proceeds to the credit of Defaulting Noteholder's Account. On such redemption date the Issuer shall not be obliged to pay any accrued but unpaid interest on such Substitute PPN.
- (vii) The Issuer or the Investment Manager on behalf of the Issuer shall take all commercially reasonable steps to mitigate against any losses, costs or expenses incurred as a result of the Defaulting Noteholder's failure to make a Note Advance.

### 3. **Form, Title and Transfer**

#### 3.1 **Form**

The PPNs are issued in registered form in the denomination of €125,000 without interest coupons.

#### 3.2 **Title**

Title to the PPNs passes upon registration of transfers in the Register in accordance with the provisions of the Agency Agreement. The registered holder of the PPNs will (except as otherwise required by law) be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any interest in it, any writing on it, or its theft or loss) and no person will be liable for so treating such registered holder.

### 3.3 **Transfer of PPNs**

The PPNs may be transferred by surrender at the Specified Office of the Registrar or its agent of the Definitive Certificates representing the PPNs (together with the form of transfer endorsed on the Definitive Certificate duly completed and executed), in each case together with such other evidence and documentation as the Registrar may require.

Any transfer of any PPNs shall be subject to:

- (i) each transfer of a PPN being in respect of the whole of the PPN and not a part;
- (ii) compliance with all applicable laws;
- (iii) the transferee being an Eligible Purchaser,

and any purported transfer in contravention of any of the above conditions shall be void.

### 3.4 **Transfer Free of Charge**

Transfer of PPNs in accordance with these Conditions will be effected without charge by or on behalf of the Issuer or the Registrar, but upon payment of any tax or other governmental charges which may be imposed in relation to it (and/or, at the election of the Registrar or the Issuer, upon the giving of such indemnity as the Registrar or the Issuer may require in respect thereof).

### 3.5 **Closed Periods**

The PPN Holders may not require the transfer of the PPNs to be registered during the period from and including each Determination Date to and including the related Payment Date.

### 3.6 **Forced Transfer of Certain Notes**

- (i) If the Noteholder is determined by the Issuer to be either a Recalcitrant Noteholder or a Non-Permitted ERISA Holder, the Noteholder may be required by the Issuer to sell or otherwise transfer such Notes to an Eligible Purchaser (selected by the Issuer) at a price to be agreed between the Issuer (exercising its sole discretion) and such Eligible Purchaser at the time of sale, subject to the transfer restrictions set out herein. Each Noteholder and each other Person in the chain of title from the Noteholder, by its acceptance of an interest in such Notes, will be deemed to agree to co-operate with the Issuer and the Trustee, to the extent required to effect such transfers. None of the Issuer, the Trustee or any Agent shall be liable to any Person having an interest in the Notes sold or otherwise transferred as a result of any such sale or transfer. The Issuer shall be entitled to deduct from the sale or transfer price an amount equal to all the expenses and costs incurred and any loss suffered by the Issuer as a result of such forced transfer. The Recalcitrant Noteholder or a Non-Permitted ERISA Holder will receive the balance, if any. In addition, the Recalcitrant Noteholder or the Non-Permitted ERISA Holder will indemnify the Issuer, the Trustee and the Registrar and the other Agents for all costs and expenses incurred and any loss incurred (taking into account any amounts deducted from the sale or transfer price for such purpose).
- (ii) If the Issuer is, for any reason, not able to transfer the Notes held by the Recalcitrant Noteholder or Non-Permitted ERISA Holder (as the case may be) to an Eligible Purchaser in accordance with Condition 3.6(i) above, the Recalcitrant Noteholder or Non-Permitted ERISA Holder shall continue to hold such Notes.

## 4. **Status and Priorities of Payments**

### 4.1 **Status**

The PPNs constitute direct, general, secured, unconditional and limited recourse obligations of the Issuer, recourse in respect of which is limited in the manner described in Condition 4.10 (*Limited Recourse*). The Notes are secured on the Collateral in the manner described in Condition 4.10 (*Security*) and the Notes shall at all times rank *pari passu* and rateably and without any preference amongst themselves. The PPNs are constituted by the Trust Deed.

#### 4.2 **Pre-Enforcement Priority of Payments**

The Collateral Administrator shall (other than in the case of an optional redemption in whole pursuant to Condition 7.2 (*Redemption at the Option of the Noteholders*) or following the delivery of an Acceleration Notice), on the basis of the Payment Date Report prepared by the Collateral Administrator as of each Determination Date in consultation with the Investment Manager pursuant to the terms of the Investment Management Agreement, cause the Account Bank to disburse Interest Proceeds and Principal Proceeds from the Interest Account and the Principal Account, respectively, to the Payment Account on the Business Day prior to each Payment Date, and such Interest Proceeds and Principal Proceeds shall be applied in accordance with the following priorities of payments (the "**Pre-Enforcement Priority of Payments**"):

##### (a) ***Application of Interest Proceeds***

Interest Proceeds shall (save for on any Redemption Date relating to any optional redemption of the Notes pursuant to Condition 7.2 (*Redemption at the Option of the Noteholders*) or following the delivery of an Acceleration Notice in which event the Post-Acceleration Priority of Payments shall apply) be applied on any Payment Date and on the Maturity Date in the following order of priority:

- (i) to the payment of Luxembourg taxes not covered in paragraph (a)(ii) below;
- (ii) to the payment of any Luxembourg corporate tax liabilities owing by the Issuer accrued in respect of the related Due Period (as certified by an Authorised Officer of the Issuer to each of the Trustee and the Collateral Administrator);
- (iii) to the payment of accrued and unpaid Trustee Fees and Expenses excluding prior to the occurrence of an Event of Default only any such fees and expenses that are Extraordinary Administrative Expenses;
- (iv) to the payment on a *pro rata* and *pari passu* basis of all amounts then due and payable in respect of (x) the Administrative Expenses (other than item (k) of the "Administrative Expenses" definition), up to an amount equal to the Administrative Expenses Cap (for the avoidance of doubt such Administrative Expenses Cap shall only apply prior to the occurrence of an Event of Default) and (y) item (k) of the "Administrative Expenses" definition;
- (v) on a *pro rata* and *pari passu* basis of (i) the Due Diligence and Bid Expenses (ii) the Investment Management Fee and (iii) any Termination Payment, in each case, due and payable on such Payment Date or Maturity Date to the Investment Manager and any value added tax in respect thereon (whether payable to the Investment Manager or directly to the relevant taxing authority);
- (vi) to the payment into the Expense Reserve Account of an amount equal to the Expense Reserve Account Payment Amount; and
- (vii) any remaining Interest Proceeds, to the payment of all Interest Amounts due and payable on the PPNs and interest due and payable on the other Notes, on a *pro rata* and *pari passu* basis.

##### (b) ***Application of Principal Proceeds***

Principal Proceeds (save for on any Redemption Date relating to any optional redemption of the Notes pursuant to Condition 7.2 (*Redemption at the Option of the Noteholders*) or following the delivery of an Acceleration Notice in which event the Post-Acceleration Priority of Payments shall apply) shall be applied in the following order of priority:

- (i) on each Payment Date, to the payment on a sequential basis of the amounts referred to in paragraphs (i) through (vi) (inclusive) of the Interest Proceeds Priorities of Payments to the extent not paid in full thereunder;
- (ii) on each Payment Date immediately following a Further Issue Date in payment of the Reallocation Premium to the Noteholders (other than the relevant Further PPN Holders) as determined by the Investment Manager;

- (iii) on each Payment Date during the Investment Period, at the discretion of the Investment Manager, either to (i) credit the Principal Account for investment in Debt Investments and/or (ii) the payment of any amounts used to acquire any Debt Investments;
- (iv) on any Payment Date prior to the Maturity Date at the discretion of the ~~Issuer~~Investment Manager (i) in or towards repayment of the Drawn Amount of the Notes, on a *pro rata* and *pari passu* basis and/or (ii) if, on any Determination Date the aggregate principal amount outstanding under the Debt Investments as of the beginning of the Due Period immediately prior to such Payment Date exceeds the Drawn Amount of the Notes, an amount of Principal Proceeds up to such excess, to credit the Interest Account for application under the Interest Proceeds Priorities of Payments, or any combination thereof; and
- (v) on the Maturity Date in redemption in full of the Notes on a *pro rata* and *pari passu* basis.

#### 4.3 Non-payment of Amounts

Failure on the part of the Issuer to pay the Interest Amounts due and payable on the Notes pursuant to Condition 6 (*Interest*) and the Pre-Enforcement Priority of Payments shall not be an Event of Default unless and until such failure continues for a period of at least five Business Days (or where such failure results from an administrative error, in which case, at least seven Business Days), save in each case as the result of any deduction therefrom or the imposition of withholding thereon as set forth in Condition 9 (*Taxation*).

References to the amounts referred to in the Pre-Enforcement Priority of Payments of this Condition shall include any amounts thereof not paid when due in accordance with this Condition on any preceding Payment Date.

#### 4.4 Determination and Payment of Amounts

The Collateral Administrator will on each Determination Date calculate the amounts payable on the applicable Payment Date pursuant to the Priorities of Payments and will notify the Issuer, the Trustee, the Investment Manager, the Principal Paying Agent and the Registrar of such amounts by the second Business Day preceding the applicable Payment Date. The Account Bank (acting in accordance with the Payment Date Report compiled by the Collateral Administrator, on behalf of the Issuer) shall, on behalf of the Issuer not later than 10.00 a.m. (London time) on the Business Day preceding each Payment Date, cause the amounts standing to the credit of the applicable Accounts, to the extent required to pay the amounts referred to in the Pre-Enforcement Priority of Payments which are payable on such Payment Date, to be transferred to the Payment Account in accordance with Condition 4.9 (*Payments to and from the Accounts*) and from the Payment Account to the Principal Paying Agent by 10.00 a.m. (London time) on the Payment Date to the extent necessary to pay amounts due and payable under the PPNs in accordance with and subject to the Priorities of Payments.

#### 4.5 De Minimis Amounts

The Collateral Administrator may adjust the amounts required to be applied in payment of interest or principal on the PPNs from time to time pursuant to the Pre-Enforcement Priority of Payments so that the amount to be so applied in respect of each PPN is a whole amount, not involving any fraction of a Euro.

#### 4.6 Publication of Amounts

The Principal Paying Agent will cause details of the amounts of interest and principal to be paid, any amounts of interest payable but not paid and the Drawn Amount in respect of the PPNs for each Due Period and the relevant Payment Date to be notified at the expense of the Issuer to the Irish Stock Exchange (or any stock exchange on which the PPNs are for the time being listed) and the PPN Holders in accordance with Condition 16 (*Notices*) no later than on the second Business Day preceding each Payment Date.

#### 4.7 Notifications to be Final

All notifications, opinions, determinations, certificates, quotations and decisions given, expressed, made or obtained or discretions exercised for the purposes of the provisions of this Condition 4 (*Status*



*and Priorities of Payments*) will (in the absence of manifest error) be binding on the Issuer and the Secured Parties and no liability to the Issuer or any Noteholder shall be owed by the Collateral Administrator in connection with the exercise or non-exercise by it of their powers, duties and discretions under this Condition 4 (*Status and Priorities of Payments*).

#### 4.8 **Accounts**

The Issuer shall, prior to the Issue Date, open the following accounts with the Account Bank:

- the Payment Account;
- the Interest Account;
- the Principal Account;
- the Expense Reserve Account; and
- the Revolving Reserve Account.

The Issuer shall, prior to the Issue Date, establish the Custody Accounts with the Custodian.

Each of the Paying Agents and the Custodian shall at all times be a financial institution satisfying the Minimum Rating Requirement applicable thereto, which has the necessary regulatory authority, capacity and licences to perform the services required of a Paying Agent or the Custodian.

In the event that the Custodian and/or any Paying Agent no longer satisfies the Minimum Rating Requirement, it shall notify the Issuer, the Investment Manager, the Collateral Administrator and the Trustee as soon as practicable and the Issuer shall, upon receiving such notice from the Custodian and/or the relevant Paying Agent (as the case may be), promptly (a) notify the Noteholders in accordance with Condition 16 (*Notices*) that the Custodian and/or the relevant Paying Agent (as the case may be) no longer satisfies the Minimum Rating Requirement and (b) procure the appointment of a replacement Custodian and/or Paying Agent which satisfies the Minimum Rating Requirement in accordance with the Agency Agreement. The termination of the Custodian and/or Paying Agent will not be effective until a replacement Custodian and/or Paying Agent which satisfies the Minimum Rating Requirement has been appointed.

Amounts standing to the credit of the Accounts from time to time may be invested by the Issuer in Eligible Investments recommended to it by the Investment Manager in accordance with the Investment Management Agreement.

All interest accrued on any of the Accounts from time to time shall be paid into the Interest Account, save to the extent that the Issuer is contractually bound to pay such amounts to a third party. All principal amounts received in respect of Eligible Investments standing to the credit of any Account from time to time shall be credited to that Account upon maturity, save to the extent that the Issuer is contractually bound to pay such amounts to a third party. All interest accrued on such Eligible Investments (including capitalised interest received upon the sale, maturity or termination of any such investment) shall be paid to the Interest Account as, and to the extent provided, above.

Notwithstanding any other provisions of this Condition 4.8 (*Accounts*):

- (a) all amounts standing to the credit of each of the Accounts (other than (i) the Interest Account, (ii) the Payment Account, (iii) the Expense Reserve Account and (iv) all interest accrued on the Accounts) shall be transferred to the Payment Account and shall constitute Principal Proceeds on the Business Day prior to any redemption of the Notes in full; and
- (b) all amounts standing to the credit of the Interest Account, together with all other amounts which do not constitute Principal Proceeds as provided in paragraph (a) above (other than the Expense Reserve Account), shall be transferred to the Payment Account as Interest Proceeds on the Business Day prior to any redemption of the Notes in full.

#### 4.9 **Payments to and from the Accounts**

##### (a) ***Payment Account***

The Issuer shall procure (acting through the Account Bank) payment on the Business Day prior to each Payment Date, of all amounts standing to the credit of each of the Accounts which are required to be transferred from such Accounts to the Payment Account pursuant to this Condition 4.9 (*Payments to and from the Accounts*) for disbursement in accordance with the Pre-Enforcement Priority of Payments.

On each Payment Date, including the Maturity Date, the Principal Paying Agent (acting on the basis of the Payment Date Report) shall disburse such amounts in accordance with the Priorities of Payments on such Payment Date.

No other amounts shall be transferred to or withdrawn from the Payment Account at any other time or in any circumstances, save that (A) all interest accrued on the Payment Account shall be credited to the Interest Account and (B) following the delivery of an Acceleration Notice or on a redemption of the Notes in full, Interest Proceeds, Principal Proceeds and the net proceeds of enforcement of the security over the Collateral shall be credited to the Payment Account (or such other account as the holder of the Notes, entitled to direct the Trustee with respect to enforcement shall designate to the Trustee) and shall be distributed in accordance with the Post-Acceleration Priority of Payments.

##### (b) ***Principal Account***

The Issuer (acting through the Account Bank) will procure that the following amounts are paid into the Principal Account promptly upon receipt thereof and shall constitute Principal Proceeds:

- (i) all premiums (including prepayment premiums) receivable upon redemption of any Debt Investment at maturity or otherwise or upon the sale of any put or call option in respect thereof which is above the outstanding principal amount of any Debt Investment;
- (ii) all fees and commissions received in connection with the purchase or sale of any Debt Investments or work out or restructuring of any Debt Investments;
- (iii) all Sale Proceeds received in respect of a Debt Investment;
- (iv) all amounts transferred to the Principal Account from any other Account;
- (v) any other amounts received in respect of the Collateral which are not required to be paid into another Account;
- (vi) an amount equal to all principal payments received in respect of any Debt Investment, including, without limitation (A) amounts received in respect of any maturity, scheduled amortisation, prepayment or mandatory sinking fund payment on a Debt Investment; and (B) any other principal payments with respect to Debt Investments (to the extent not included in the Sale Proceeds) but excluding any such payments received in respect of any Revolving Debt Investment or Delayed Drawdown Debt Investment, to the extent required to be paid into the Revolving Reserve Account;
- (vii) on each Note Advance Date, the proceeds of each Note Advance received from any Noteholder (net of any amounts paid into the Expense Reserve Account);
- (viii) any Reallocation Premium received from any Noteholder;
- (ix) any Reallocation Rebates received from Noteholders who are not Partially Drawn Noteholders;
- (x) all Replacement PPN Gross Bid Proceeds; and
- (xi) the amount of €5,100,000 which forms part of the issue price of the PPNs and which will be credited to the Principal Account on the Issue Date.

The Issuer (acting through the Account Bank) shall procure payment of the following amounts (and shall ensure that payment of no other amount is made, save to the extent otherwise permitted above) out of the Principal Account:

- (1) on the Business Day prior to each Payment Date, all Principal Proceeds standing to the credit of the Principal Account to the Payment Account to the extent required for disbursement pursuant to the Principal Proceeds Priorities of Payments (save for amounts deposited after the end of the related Due Period and save for amounts to be applied in accordance with item (3) below);
- (2) at any time in repayment of any Notes on a *pro rata* and *pari passu* basis;
- (3) during the Investment Period, to acquire any Debt Investments;
- (4) promptly on or after the Note Available Commitment Termination Date in payment of the Reallocation Rebate to Partially Drawn Noteholders;
- (5) in relation to any costs incurred in connection with the acquisition of Debt Investments;
- (6) not less than ten Business Days following receipt by the Issuer thereof, Replacement PPN Net Bid Proceeds to the related Defaulting Noteholder's Account if the Issuer has been notified thereof in accordance with paragraph (ii) of Condition 2(d) (*Failure to make a Note Advance*);
- (7) all Replacement PPN Net Bid Proceeds not applied in accordance with paragraph (6) above, to the Interest Account; or
- (8) at any time, to the Revolving Reserve Account to the extent required to satisfy the Unfunded Amounts.

(c) ***Interest Account***

The Issuer (acting through the Account Bank) will procure that the following amounts are credited to the Interest Account promptly upon receipt thereof and shall constitute Interest Proceeds:

- (i) all interest accrued on the Accounts from time to time;
- (ii) all amendment and waiver fees, delayed compensation, all late payment fees, all commitment fees, and all other fees and commissions received in connection with any Debt Investments (other than fees and commissions received in connection with the purchase or sale of any Debt Investments or work out or restructuring of any defaulted Debt Investments or Debt Investments which fees and commissions shall be payable into the Principal Account and shall constitute Principal Proceeds);
- (iii) all fees and commissions (such as syndication fees or commitment fees) received in connection with defaulted Debt Investments and the purchase or sale of any Debt Investment;
- (iv) amounts required to be transferred to the Interest Account from any other Account; **and**
- (v) all cash payments of interest in respect of the Debt Investments and any deferred interest received in respect of any Debt Investments including any capitalised interest together with all amounts received by the Issuer by way of gross-up in respect of such interest and in respect of a claim under any applicable double taxation treaty and any interest received in respect of any defaulted Debt Investments; **and**

**(vi) all amounts payable into the Interest Account pursuant to Condition 4.2(b)(iv) (*Application of Principal Proceeds*).**

The Issuer shall procure that all Interest Proceeds standing to the credit of the Interest Account shall be transferred on the Business Day prior to each Payment Date, to the Payment Account to the extent required for disbursement pursuant to the Interest Proceeds Priorities of Payments, save for amounts deposited after the end of the related Due Period.

(d) ***Expense Reserve Account***

The Issuer will procure that the following amounts are paid into the Expense Reserve Account:

- (A) on the First Purchase Date, in an amount equal to the Target Expense Reserve Balance from the proceeds of the first Note Advance; and
- (B) on each Payment Date, the Expense Reserve Account Payment Amount.

The Issuer shall procure payment of the following amounts (and shall ensure that payment of no other amount is made) out of the Expense Reserve Account:

- (1) on the Business Day prior to each Payment Date, any balance standing to the credit of the Expense Reserve Account after providing for the payments referred to in paragraph (3) below on the related Payment Date in excess of the Target Expense Reserve Balance at the end of the related Due Period to the Payment Account for disbursement as Interest Proceeds in accordance with Condition 4.2 (*Pre-Enforcement Priority of Payments*);
- (2) on any date other than a Payment Date, an amount not exceeding €30,000 for any period from (but excluding) the immediately preceding Payment Date to (but excluding) the immediately succeeding Payment Date, in payment of any amounts of the kinds described in items (i), (ii) and (iv) of the Interest Proceeds Priorities of Payments;
- (3) on each Payment Date, in payment of Extraordinary Administrative Expenses in the following order (a) in payment of Extraordinary Administrative Expenses of the Trustee and (b) in payment, on a *pari passu* basis, of Extraordinary Administrative Expenses of the Agents, the Settlement Agent and the Collateral Administrator and their respective officers, directors and employees, the Issuer Indemnified Persons and the Investment Manager; and
- (4) on the Business Day prior to the date of redemption or maturity of the Notes in full, any balance standing to the credit of the Expense Reserve Account after payment or provision for all amounts due and payable in respect of such redemption and all amounts referred to in paragraph (3) above to the Payment Account for disbursement as Interest Proceeds in accordance with Condition 4.2 (*Pre-Enforcement Priority of Payments*) or, as appropriate, Condition 11.2(c) (*Post-Acceleration Priority of Payments*).

(e) ***Revolving Reserve Account***

The Issuer (acting through the Collateral Administrator) shall procure the following amounts are paid into the Revolving Reserve Account:

- (A) upon the acquisition by or on behalf of the Issuer of a Revolving Debt Investment or Delayed Drawdown Debt Investment and if the Investment Manager in its sole discretion determines that it is necessary or desirable to credit the Revolving Reserve Account with an amount in order for the Issuer to meet its funding obligations under or in connection with the relevant Revolving Debt Investment or Delayed Drawdown Debt Investment, the Unfunded Amount of the relevant Revolving Debt Investment or Delayed Drawdown Debt Investment);
- (B) all principal payments received by the Issuer in respect of any Revolving Debt Investment, if and to the extent that the amount of such principal payments may be re-borrowed under such Revolving Debt Investment; and
- (C) all repayments of collateral to the Issuer originally paid by the Issuer pursuant to (1) below.

The Issuer (acting through the Collateral Administrator) shall procure payment of the following amounts (and shall ensure that no other amounts are paid) out of the applicable ledger of the Revolving Reserve Account:

- (1) all amounts required to fund any drawings under the relevant Delayed Drawdown Debt Investments or Revolving Debt Investments identified by the Investment Manager pursuant to Condition 4.9(e)(A) above or required to be deposited in the Issuer's name with any third party as collateral for any reimbursement or indemnification obligations of the Issuer owed to any other lender under such Revolving Debt Investment or Delayed Drawdown Debt Investment or to collateralise the Issuer's obligations to fund drawings under such Delayed

Drawdown Debt Investment or Revolving Debt Investments (subject to such security documentation as may be agreed by such Obligor(s) under the relevant Debt Investment, the Investment Manager acting on behalf of the Issuer and the Trustee);

- (2) (A) at any time at the direction of the Investment Manager (acting on behalf of the Issuer) or (B) upon the sale (in whole or in part) of a Revolving Debt Investment or the reduction, cancellation or expiry of any commitment of the Issuer to make future advances or otherwise extend credit thereunder, any excess of (i) the amount standing to the credit of the Revolving Reserve Account over (ii) the sum of the Unfunded Amounts of all Revolving Debt Investments and Delayed Drawdown Debt Investments, after taking into account such sale or such reduction, cancellation or expiry of commitment;
- (3) at the discretion of the Investment Manager, acting on behalf of the Issuer, to the Principal Account, any amounts standing to the credit of the Revolving Reserve Account which is in excess of the Unfunded Amounts.

#### 4.10 Security

##### (a) Security

As security for its obligations under the PPNs, the other Notes and the Trust Deed, the Issuer, with full title guarantee, in favour of the Trustee for the benefit of the Secured Parties:

- (i) assigns by way of security all of the Issuer's present and future rights, title and interest (and all entitlements or other benefits relating thereto) in respect of all Debt Investments (including any debt or equity obligation received by the Issuer upon a restructuring of a Debt Investment) held by the Issuer from time to time, including, without limitation, monies received in respect thereof, all dividends and distributions paid or payable thereon, all property paid, distributed, accruing or offered at any time on, to or in respect of or in substitution thereof and the proceeds of sale, repayment and redemption thereof;
- (ii) assigns by way of security all of the Issuer's present and future rights, title and interest (and all entitlements or other benefits relating thereto) against the Account Bank under the Agency Agreement and charges by way of a first fixed charge all of the monies standing from time to time to the credit of each of the Accounts (other than the Issuer Account and the Custody Accounts) and the debts represented thereby and including, without limitation, all interest accrued and other monies received in respect thereof. In the case of the Revolving Reserve Account any charge granted under this paragraph shall be subject, and rank subordinate, to any security granted as permitted under paragraph (2) below;
- (iii) assigns by way of security all of the Issuer's rights, title and interest, present and future (and all entitlements or other benefits relating thereto) against the Custodian under the Agency Agreement and charges by way of a first fixed charge over all of the monies and/or securities standing from time to time to the credit of the Custody Accounts and/or accounts established on the books of the Custodian in accordance with the Agency Agreement and each cash account relating thereto, any cash held therein and the debts represented thereby;
- (iv) assigns by way of security all of the Issuer's rights, title and interest, present and future (and all entitlements or other benefits relating thereto) under the Investment Management Agreement, each Subscription Agreement and all other Note Transaction Documents;
- (v) charges by way of a first fixed charge all of its monies held from time to time by the Principal Paying Agent and each other Paying Agent for payment of principal, interest or other amounts on the Notes (if any);
- (vi) assigns by way of security all of the remainder of the Issuer's rights present and future under the Agency Agreement not assigned pursuant to paragraphs (ii), (iii) and (iv) of this Condition 4.10(a) (*Security*) above;

- (vii) subject to any security granted as permitted under paragraph (2) below, charges by way of a first fixed charge all amounts representing all or part of the Unfunded Amount of any Revolving Debt Investment or Delayed Drawdown Debt Investment and deposited in its name with a third party as security for any reimbursement or indemnification obligation of the Issuer owed to any other lender under such Revolving Debt Investment or Delayed Drawdown Debt Investment, subject to the terms of Condition 4.9(e) (*Revolving Reserve Account*); and
- (viii) to the fullest extent permitted by applicable law, charges by way of a floating charge the whole of the Issuer's undertaking and assets to the extent that such undertaking and assets are not subject to any other security created pursuant to the Trust Deed and the Euroclear Pledge Agreement,

excluding for the purpose of (i) to (vii) above any and all assets, property or rights which are located in, or governed by the laws of, Luxembourg and excluding for the purpose of (i) to (viii) above amounts standing to the credit of the Issuer Account.

- (1) If, for any reason, the purported assignment by way of security of, and/or the grant of first fixed charge over (as applicable), the property, assets, rights and/or benefits described above is found to be ineffective in respect of any such property, assets, rights and/or benefits (together the "**Affected Collateral**"), the Issuer shall hold the benefit of the Affected Collateral and any sums received in respect thereof or any security interest, guarantee or indemnity or undertaking of whatever nature given to secure such Affected Collateral (together the "**Trust Collateral**") on trust (as a fiduciary on a fiduciary basis for the purposes of Luxembourg law) for the Trustee (for the benefit of itself and the other Secured Parties) and shall (i) account to the Trustee for or otherwise apply all sums received in respect of such Trust Collateral as the Trustee may direct (provided that subject to the Note Conditions if no Event of Default has occurred and is continuing, the Issuer shall be entitled to apply the benefit of such Trust Collateral and such sums in respect of such Trust Collateral received by it and held on trust (as a fiduciary on a fiduciary basis for the purposes of Luxembourg law) under this Condition without prior direction from the Trustee), (ii) exercise any rights it may have in respect of the Trust Collateral at the prior written direction of the Trustee and (iii) at the Issuer's own cost take such action and execute such documents as the Trustee may in its sole discretion require.
- (2) The Issuer may from time to time grant security by way of a first fixed charge over amounts representing all or part of the Unfunded Amount of any Revolving Debt Investment or Delayed Drawdown Debt Investment and deposited in its name with a third party as security for any reimbursement or indemnification obligation of the Issuer owed to any other lender under such Revolving Debt Investment or Delayed Drawdown Debt Investment, subject to the terms of Condition 4.9(e) (*Revolving Reserve Account*).
- (3) In the event that the ratings of the Custodian or any Paying Agent are downgraded to below the Minimum Rating Requirements or withdrawn, the Custodian or Paying Agent (as the case may be) shall notify the Issuer, the Investment Manager, the Collateral Administrator and the Trustee promptly and the Issuer shall procure the appointment of a replacement Custodian and/or Paying Agent which satisfies the Minimum Rating Requirement in accordance with the Agency Agreement. The termination of the Custodian and/or relevant Paying Agent will not be effective until a replacement Custodian and/or Paying Agent which satisfies the Minimum Rating Requirement has been appointed.
- (4) All deeds, documents, assignments, instruments, bonds, notes, negotiable instruments, papers and any other instruments comprising, evidencing, representing and/or transferring the Portfolio will be deposited with or held by or on behalf of the Custodian until the security over such obligations is irrevocably discharged in accordance with the provisions of the Trust Deed.
- (5) Pursuant to the terms of the Trust Deed, the Trustee is exempted from any liability in respect of any loss or theft of the Collateral, from any obligation to insure the Collateral and from any claim arising from the fact that the Collateral is held in a clearing system or in safe custody by, a bank or other custodian. The Trustee has no responsibility to supervise the administration of the Portfolio by the Collateral Administrator or any other party and is entitled to rely on the certificates or notices of any relevant party without further enquiry. The Trust Deed also provides that the Trustee shall accept without investigation, requisition or objection such right,

benefit, title and interest, if any, as the Issuer may have in and to any of the Collateral and is not bound to make any investigation into the same or into the Collateral in any respect.

- (6) Pursuant to the Euroclear Pledge Agreement, the Issuer has created a Belgian law pledge over the Debt Investments and Eligible Investments from time to time held by the Custodian on behalf of the Issuer in Euroclear.

(b) ***Application of Proceeds upon Enforcement***

The Trust Deed provides that the net proceeds of realisation of, or enforcement with respect to the security over, the Collateral constituted by the Trust Deed, shall be applied in accordance with the Post-Acceleration Priority of Payments.

4.11 **Limited Recourse**

The obligations of the Issuer to pay amounts due and payable in respect of the PPNs and to the other Secured Parties at any time shall be limited to the proceeds available at such time to make such payment in accordance with the Priorities of Payments. If the net proceeds of realisation of the security constituted by the Trust Deed and the Euroclear Pledge Agreement, upon enforcement thereof in accordance with Condition 11 (*Enforcement*) and the provisions of the Trust Deed and the Euroclear Pledge Agreement, are less than the aggregate amount payable in such circumstances by the Issuer in respect of the PPNs and to the other Secured Parties (such negative amount being referred to herein as a "**shortfall**"), the obligations of the Issuer in respect of the PPNs and its obligations to the other Secured Parties in such circumstances will be limited to such net proceeds, which shall be applied in accordance with the Priorities of Payments. In such circumstances, the other assets of the Issuer will not be available for payment of such shortfall which shall be borne by the PPN Holders, the Trustee and the other Secured Parties in accordance with the Priorities of Payments (applied in reverse order). The rights of the Secured Parties to receive any further amounts in respect of such obligations shall be extinguished and neither the PPN Holders or any other Secured Party may take any further action to recover such amounts. Only the Trustee may pursue the remedies available under applicable law, under the Trust Deed and under the Euroclear Pledge Agreement to enforce the rights of a Secured Party against the Issuer, as further detailed in Condition 11.3 (*Only the Trustee to Act*). None of the PPN Holders, the Trustee and the other Secured Parties (and any other person acting on behalf of any of them) shall be entitled at any time to institute against the Issuer, its officers or directors, or join in any institution against the Issuer, its officers or directors, of, any bankruptcy (*faillite*), liquidation, reprieve from payment (*sursis de paiement*), controlled management (*gestion contrôlée*), composition with creditors (*concordat préventif de faillite*), suspension of payments, reorganisation, arrangement, insolvency, winding-up or liquidation proceedings or for the appointment of a liquidator, administrator or similar official, or other proceedings under any applicable bankruptcy or similar law in connection with any obligations of the Issuer relating to the PPNs, the Trust Deed or otherwise owed to the Secured Parties, save for lodging a claim in the liquidation of the Issuer which is initiated by another party or taking proceedings to obtain a declaration or judgment as to the obligations of the Issuer.

None of the Trustee, the directors of the Issuer, the Agents and the Investment Manager has any obligation to the Noteholders for payment of any amount by the Issuer in respect of the Notes.

4.12 **Information Regarding the Portfolio**

The Collateral Administrator shall procure that a copy of each Monthly Report and each Payment Date Report will be forwarded to the Principal Paying Agent where such reports will be available on request by the Noteholders. Each Monthly Report and Payment Date Report will be made available to the Noteholders, the Issuer, the Trustee, the Principal Paying Agent, the Registrar and the Investment Manager *via* the Collateral Administrator's secure investor reporting website currently located at <https://tss.sfs.db.com/investpublic>. It is not intended that such reports will be made in any other format, save in certain limited circumstances with the Collateral Administrator's agreement. The Collateral Administrator's website does not form part of the information provided for the purposes of this Prospectus and disclaimers may be posted with respect to the information posted thereon. Registration may be required for access to such website and a person wishing to access such website may be required to certify that they are Noteholders or otherwise entitled to access such website.

The Investment Manager shall deliver a copy of each Quarterly Investment Management Report to Noteholders no later than the second Business Day preceding the related Payment Date.

## 5. **Covenants of and Restrictions on the Issuer**

### 5.1 **Covenants of the Issuer**

Unless otherwise provided and as more fully described in the Trust Deed, the Issuer covenants to the Trustee on behalf of the holders of the Notes that, for so long as any Note remains Outstanding, the Issuer will:

- (a) take such steps as are reasonable:
  - (i) to ensure that each of the parties to each Note Transaction Document complies with its obligations thereunder; and
  - (ii) to enforce all of its rights in respect of the Collateral;
- (b) comply with its obligations under the Notes and each Note Transaction Document to which it is a party;
- (c) keep proper books of account and records to comply with all applicable laws and allow the Trustee access to such books and records;
- (d) at all times maintain its tax residence exclusively in Luxembourg and not establish a place of business or register as a company in any other jurisdiction;
- (e) pay its debts generally as they fall due;
- (f) do all such things as are necessary to maintain its corporate existence;
- (g) ensure that its "centre of main interests" (as that term is referred to in article 3(1) of Council Regulation (EC) No. 1346/2000 on Insolvency Proceedings) is and remains at all times in Luxembourg;
- (h) use its best endeavours to obtain and maintain a listing of the Listed Notes on the official list of the Irish Stock Exchange. If, however, it is unable to do so, having used such endeavours, or if the maintenance of such listing is agreed by the Trustee to be unduly onerous and the Trustee is satisfied that the interests of the holder of the relevant Listed Notes would not thereby be materially prejudiced, the Issuer will instead use all reasonable endeavours promptly to obtain and thereafter to maintain a listing for such Listed Notes on such other stock exchange(s) as it may (with the prior approval of the Trustee) decide or failing such decision as the Trustee may determine; and
- (i) ensure that any certificate or notice which it delivers to any Secured Party is executed in accordance with the Issuer's constitutional documents.

### 5.2 **Restrictions on the Issuer**

As more fully described in the Trust Deed, for so long as any of the Notes remain Outstanding, the Issuer covenants with the Trustee on behalf of the holders of such Outstanding Notes that it will not, without the prior written consent of the Trustee:

- (a) sell, factor, discount, transfer, assign, lend or otherwise dispose of any of its right, title or interest in or to the Collateral, nor will it create or permit to be outstanding any mortgage, pledge, lien, charge, encumbrance or other security interest over the Collateral except in accordance with the Note Transaction Documents if applicable and other than in respect of amounts withdrawn from the Revolving Reserve Account in accordance with Condition 4.9(e) (*Revolving Reserve Account*);
- (b) sell, factor, discount, transfer, assign, lend or otherwise dispose of, or create or permit to be outstanding any mortgage, pledge, lien, charge, encumbrance or other security interest over, any of its other property or assets or any part thereof or interest therein other than in accordance with the Note Transaction Documents;
- (c) engage in any business other than:



- (i) acquiring and holding any property, assets or rights that are capable of being effectively charged, secured and/or assigned in favour of the Trustee or that are capable of being held on trust (as a fiduciary on a fiduciary basis for the purposes of Luxembourg law) by the Issuer in favour of the Trustee under the applicable Note Transaction Documents;
  - (ii) issuing and performing its obligations under the Notes;
  - (iii) entering into, exercising its rights and performing its obligations under or enforcing its rights under the Trust Deed, the Agency Agreement, and each other Note Transaction Document to which it is a party, as applicable;
  - (iv) performing any act incidental to or necessary in connection with any of the above;
- (d) amend any term or condition of the Notes (save in accordance with the Note Conditions and the Note Trust Deeds);
- (e) agree to any amendment to any provision of, or grant any waiver or consent under any Note Transaction Document to which it is a party;
- (f) incur any indebtedness for borrowed money, other than:
  - (i) in respect of the Notes or any document entered into in connection with the Notes or the sale thereof; or
  - (ii) as otherwise permitted pursuant to the Note Transaction Documents;
- (g) amend its constitutional documents (except if such amendment is not materially prejudicial to the interests of the Noteholders);
- (h) have any subsidiaries or establish any offices, branches or other "establishment" (as that term is used in article 2(h) of Council Regulation (EC) No. 1346/2000 on Insolvency Proceedings) anywhere in the world;
- (i) have any employees (excluding, for the avoidance of doubt, the directors of the Issuer);
- (j) enter into any reconstruction, amalgamation, merger or consolidation;
- (k) convey or transfer any part of its properties or assets (in one or a series of transactions) to any Person, otherwise than as contemplated in the Note Transaction Documents;
- (l) issue any shares or rights in relation to shares (other than such shares as are in issue as at the Issue Date) or redeem or purchase any of its issued share capital;
- (m) enter into any material agreement or contract with any Person (other than an agreement on customary market terms), unless such contract or agreement contains "limited recourse" and "non-petition" provisions similar to clause 31 (*Limited Recourse and Non-Petition*) of the Trust Deed and such Person agrees to be subject to such "limited recourse" and "non-petition" provisions;
- (n) otherwise than as contemplated in the Note Transaction Documents, release the Principal Paying Agent, any other Paying Agent, the Account Bank, the Registrar, the Note Agent, the Quotation Agent, the Collateral Administrator or the Custodian from their respective duties and obligations under the Agency Agreement or the Collateral Administrator or the Investment Manager from their respective duties and obligations under the Investment Management Agreement (including any transactions entered into thereunder), or any obligor from its duties and obligations under any agreement entered into in connection with the Portfolio or, in each case, from any executory obligation thereunder;
- (o) enter into any lease in respect of, or own, premises;
- (p) pay any dividend to its parent until the earliest of (i) the Maturity Date, (ii) the liquidation of the Issuer, and (iii) optional redemption of all the Notes in accordance with Condition 7.2 (*Redemption at the Option of the Noteholders*) or, as may be applicable, any equivalent provision in other Note Conditions; or

- (q) appoint any additional or replacement members of the investment committee of the Investment Manager without the prior consent of the Noteholders (other than the holders of Substitute PPNs) acting as a single class by way of Ordinary Resolution during the Investment Period only.

## 6. Interest

### 6.1 Payment Dates

Interest on the PPNs will be payable in respect of each Due Period in arrear on each Payment Date.

### 6.2 Interest Accrual

The PPNs will begin to bear interest from (and including) the first Note Advance Date. The PPNs will cease to bear interest from (and excluding) the due date for redemption unless payment of principal is improperly withheld or refused. In such event, they shall continue to bear interest at 8 per cent. per annum in accordance with this Condition 6 (*Interest*) (both before and after judgment or other order of an applicable competent court) until the day on which all sums due in respect of the PPNs up to that day are sent by the Registrar to the Noteholders in accordance with Condition 8 (*Payments*).

### 6.3 Determination of Interest Amount

The Interest Amount is payable in respect of the PPNs on any Payment Date on an available funds and on a *pro rata* and *pari passu* basis with reference to their Drawn Amount in accordance with paragraph (vii) of Condition 4.2(a) (*Application of Interest Proceeds*) on each Payment Date or paragraph (D) of Condition 11.2(c) (*Post-Acceleration Priority of Payments*) as applicable.

The Collateral Administrator will determine the Interest Amount payable in respect of each PPN in accordance with Condition 4.4 (*Determination and Payment of Amounts*).

If the Collateral Administrator is unable or unwilling to continue to act as the Collateral Administrator for the purpose of determining the Interest Amount on any PPN, the Issuer shall (with the prior approval of the Trustee) appoint some other bank with similar experience and qualification to act as such in its place. The Collateral Administrator may not resign as collateral administrator without such other successor having been so appointed.

### 6.4 Determination or Calculation by Trustee

If the Collateral Administrator does not at any time for any reason so calculate the Interest Amount payable in respect of the PPNs for a Due Period, the Trustee (or a Person appointed by it for the purpose) shall do so and such determination or calculation shall be deemed to have been made by the Collateral Administrator (without liability on the part of the Collateral Administrator for such calculation) and shall be binding on the PPN Holders. In doing so, the Trustee, or such person appointed by it, shall apply the foregoing provisions of this Condition, with any necessary consequential amendments, to the extent that, in its opinion, it can do so, and in all other respects it shall do so in such manner as it shall deem fair and reasonable in all the circumstances and in reliance on such persons as it has appointed for such purpose. The Trustee shall have no liability to any Person in connection with any determination (including with regard to the timelines thereof) it is required to make pursuant to this Condition 6.4 (*Determination or Calculation by Trustee*).

### 6.5 Notification of Interest Amounts

The Principal Paying Agent will cause the Interest Amounts payable in respect of each PPN for each Due Period and Payment Date to be notified to the Irish Stock Exchange and the PPN Holders in accordance with Condition 4.6 (*Publication of Amounts*).

The Interest Amounts or the Payment Date so notified may subsequently be amended (or appropriate alternative arrangements made with the consent of the Trustee by way of adjustment) without notice in the event of an extension or shortening of the Due Period. If any of the PPNs become due and payable under Condition 10 (*Events of Default*), interest shall nevertheless continue to be calculated as previously by the Collateral Administrator in accordance with this Condition but no publication of the applicable Interest Amounts shall be made unless the Trustee so determines.

All notifications, opinions, determinations, certificates, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of this Condition, whether by any Agent, the Investment Manager, the Collateral Administrator or the Trustee, will be binding on the Issuer, the Agents, the Investment Manager, the Collateral Administrator, the Trustee and the PPN Holders and (in the absence of manifest error and subject to clause 27.14 (*Agent liability*) of the Agency Agreement and clause 10.7 (*Trustee's Liability*) of the Trust Deed) no liability to the Issuer or the PPN Holders shall attach to the Agents, the Investment Manager, the Collateral Administrator or the Trustee in connection with the exercise or non-exercise by them of their powers, duties and discretions under this Condition.

## 7. **Redemption**

### 7.1 **Final Redemption**

Save to the extent previously redeemed and cancelled prior to the Maturity Date, the Notes will be redeemed on the Maturity Date at their Redemption Price applicable as at such date in accordance with the Priorities of Payments.

### 7.2 **Redemption at the Option of the Noteholders**

The Notes shall be redeemable by the Issuer, in whole but not in part, at their Redemption Price, from the proceeds of liquidation or realisation of the Collateral applied in accordance with the Priorities of Payments:

- (i) following the occurrence of a Note Tax Event on any Payment Date falling after such occurrence;
- (ii) following the occurrence of a Collateral Tax Event, on any Payment Date falling after such occurrence;
- (iii) following the occurrence of an Illegality Event, on any Payment Date falling after such occurrence;
- (iv) upon the occurrence of an Optional Early Redemption Event; or
- (v) if the Notes (other than the Substitute PPNs) have not been admitted to the official list of the Irish Stock Exchange and have not been admitted to trading on its regulated market by the PPN Listing Deadline,

in each case at the direction of the Noteholders, (other than the holders of the Substitute PPNs) acting as a single class by Ordinary Resolution in respect of (i), (ii), (iii), (v) or an Optional Early Redemption Event which is not an Optional Early Redemption Date and at the direction of all the Noteholders acting as a single class by Unanimous Resolution in respect of an Optional Early Redemption Event which is an Optional Early Redemption Date, subject to the establishment of a reserve as determined by the Trustee following consultation with the Investment Manager and Collateral Administrator for all administrative and other fees and expenses payable in such circumstances under the Priorities of Payments in priority to the payment of principal on the Notes). The Trustee shall have no liability to any person in connection with the establishment or sufficiency of any reserve made by the Issuer pursuant to this Condition 7.2 (*Redemption at the Option of the Noteholders*).

### 7.3 **Cancellation**

Upon redemption of the Notes by the Issuer the Notes will be cancelled and may not be reissued or resold.

### 7.4 **Notice of Redemption**

The Issuer shall procure that notice of any redemption in accordance with this Condition 7 (*Redemption*) is given to the Noteholders in accordance with Condition 16 (*Notices*) (with copies to the Trustee, the Collateral Administrator and the Investment Manager).

## 7.5 **Purchase of Notes**

Notes may not be purchased by the Issuer at any time.

## 7.6 **Repayment of Note Advances**

Notes may be repaid at any time at the sole discretion of the Issuer out of the Principal Account in accordance with the Priorities of Payments and the other provisions of the Conditions.

## 7.7 **Redemption of the Notes**

Notwithstanding any other provisions of the Note Conditions or the Note Trust Deeds, all references herein and therein to any of the Notes being redeemed in full (save for any Defaulted Notes being redeemed in full without payment) shall be deemed to be amended to the extent required to ensure that the Drawn Amount of the Notes is not less than €1 at all times (for the avoidance of doubt, save for when the Notes have been redeemed in full prior to or on their Maturity Date) and any amounts which are to be applied in redemption of such Notes pursuant hereto which are in excess of the Drawn Amount of the Notes thereof minus €1, shall constitute interest payable in respect of the Notes and shall not be applied in redemption of the Drawn Amount of the Notes, provided always however that such interest payable shall no longer remain outstanding and the Notes shall be redeemed in full by the payment of such interest on the date on which all of the Collateral securing the Notes has been realised for cash.

## 7.8 **Redemption in accordance with the Priorities of Payments**

Save to the extent previously redeemed and cancelled, the Notes will be redeemed on any Payment Date out of Principal Proceeds in accordance with the Pre-Enforcement Priority of Payments or following enforcement of the security in accordance with the Post-Enforcement Priority of Payments.

## 7.9 **Redemption of Defaulted Notes**

Defaulted Notes shall be redeemed without payment on the Default Letter Notification Date. The Issuer shall thereafter issue Substitute PPNs in accordance with Condition 2(d) (*Failure to make a Note Advance*).

## 8. **Payments**

### 8.1 **Method of Payment**

Payments of principal and interest in respect of the PPNs will be made to the holder (or to the first named of joint holders) of the PPN appearing on the Register by wire transfer, in immediately available funds, on the due date to the applicable denominated account maintained by the payee with a bank in western Europe last notified in writing to the Issuer and the Principal Paying Agent by the holder of the PPNs appearing on the Register at the close of business on the Determination Date falling prior to each Payment Date.

### 8.2 **Payments**

All payments are subject in all cases to any applicable fiscal or other laws, regulations and directives, but without prejudice to the provisions of Condition 9 (*Taxation*). No commission shall be charged to the PPN Holders.

### 8.3 **Registrar and Principal Paying Agent**

The Issuer reserves the right at any time, with the approval of the Trustee, to vary or terminate the appointment of the Registrar or the Principal Paying Agent and appoint additional or other Agents, provided that (A) it will maintain (i) a Registrar and (ii) a Principal Paying Agent having specified offices in at least two major European cities approved by the Trustee and (B) it will appoint an additional paying agent in a Member State of the European Union that will not be obliged to withhold or deduct tax pursuant to EC Council Directive 2003/48/EC on Taxation of Savings Income (the "**Directive**") in the form of Interest Payments and shall procure that it shall at all times maintain an Account Bank and Collateral Administrator. Notice of any change in any of the Registrar, the Principal

Paying Agent or the Account Bank or of their specified offices or of the Collateral Administrator will promptly be given to the PPN Holders by the Issuer in accordance with Condition 16 (*Notices*) (with a copy to the Trustee).

## 9. **Taxation**

All payments of principal and interest in respect of the Notes shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature, unless such withholding or deduction is required by law or pursuant to a voluntary agreement entered into with a taxing authority. Any amounts withheld or deducted pursuant to FATCA shall be treated as required by law. For the avoidance of doubt, the Issuer shall not be required to gross up any payments made to the Noteholders and shall withhold or deduct from any such payments any amounts on account of tax where so required by law or any relevant taxing authority. Any such withholding or deduction shall not constitute an Event of Default under Condition 10.1 (*Events of Default*).

Subject as provided below, if the Issuer satisfies the Trustee that it has or will on the occasion of the next payment due in respect of the Notes become obliged by law to withhold or account for tax so that it would be unable to make payment of the full amount that would otherwise be due but for the imposition of such tax, the Issuer (save as provided below) shall use all reasonable endeavours to arrange for the substitution of a company incorporated in another jurisdiction approved by the Trustee as the principal obligor under the Notes, or to change its tax residence to another jurisdiction approved by the Trustee.

Notwithstanding the above, if any taxes referred to in this Condition 9 (*Taxation*) arise:

- (a) due to the connection of any Noteholder with the jurisdiction imposing the withholding tax or requiring the deduction to be made otherwise than by reason only of the holding of any Note or receiving principal or interest in respect thereof; or
  - (b) by reason of the failure by such Noteholder to comply with any request by the Issuer for information or compliance with any administrative procedures that such Noteholder may be required to provide or follow as a pre-condition for exemption from, or reduction in the rate of, deduction or withholding of tax; or
  - (c) in respect of a payment to an individual which is required to be made pursuant to the Directive or any law implementing or complying with, or introduced in order to conform to, that Directive; or
  - (d) in connection with FATCA,
- the requirement to substitute the Issuer as a principal obligor and/or change its residence for taxation purposes shall not apply.

## 10. **Events of Default**

### 10.1 **Events of Default**

The occurrence of any of the following events shall constitute an "**Event of Default**":

#### (a) ***Non-payment of interest***

the Issuer fails to pay any Interest Amount or any other amount of interest in respect of any Notes when the same becomes due and payable, save as the result of any deduction therefrom or the imposition of withholding tax thereon, provided that any such failure to pay such interest continues for a period of five Business Days unless such failure results from an administrative error, in which case, a period of seven Business Days;

#### (b) ***Non-payment of principal***

the Issuer fails to pay any principal when the same becomes due and payable (i) on any Notes on any Redemption Date or (ii) on any Notes on the Maturity Date;

(c) ***Default under Priorities of Payments***

other than a failure referred to in paragraphs (a) and (b) above, the Issuer fails on any Payment Date to disburse amounts available in accordance with the Priorities of Payments, which failure continues for a period of five Business Days;

(d) ***Breach of Other Obligations***

the Issuer does not perform or comply in material respects with any other of its covenants, representations, warranties or other undertakings (or similar) under the Notes or the Note Transaction Documents (other than a covenant, representation, warranty or other agreement a default in the performance or breach of which is specifically referred to elsewhere in this Condition 10.1 (*Events of Default*)), or any representation, warranty or statement of the Issuer made in the Trust Deed, or in any certificate or other writing delivered pursuant thereto or in connection therewith ceases to be correct in all material respects when the same shall have been made, and such default, breach or failure continues for a period of 30 days (or 15 days, in the case of any default, breach or failure of representation or warranty in respect of the Collateral) after notice thereof shall have been given, by registered or certified mail or overnight courier, to the Issuer by the Trustee specifying such default, breach or failure and requiring it to be remedied and stating that such notice is a "**Notice of Default**" hereunder;

(e) ***Insolvency Proceedings***

proceedings are initiated against the Issuer under any applicable liquidation, insolvency, bankruptcy (*faillite*), controlled management (*gestion contrôlée*), suspension of payments (*sursis de paiement*), provisional administration, examination, composition with creditors (*concordat préventif de faillite*), reorganisation or other similar laws (together, "**Insolvency Law**"), or a receiver, *curateur*, examiner, trustee, administrator, *commissaire*, *commissaire de surveillance*, custodian, conservator, liquidator or other similar official (a "**Receiver**") is appointed in relation to the Issuer or in relation to in the opinion of the Trustee the whole or any substantial part of the undertaking or assets of the Issuer; or the Issuer is, or initiates or consents to judicial proceedings relating to, itself under any applicable Insolvency Law, or seeks the appointment of a Receiver, or makes a conveyance or assignment for the benefit of its creditors generally or otherwise becomes subject to any reorganisation or amalgamation (other than on terms previously approved in writing by the Trustee) or the Issuer becomes subject to controlled management (*gestion contrôlée*), suspension of payments (*sursis de paiement*), moratorium or other similar procedure.

## 10.2 **Acceleration**

(a) If an Event of Default occurs and is continuing, the Trustee may, at its discretion and shall, at the request of the Noteholders acting by Ordinary Resolution of the holders of the Notes (other than the holders of the Substitute PPNs) acting as a single class (subject to the Trustee being prefunded and/or indemnified and/or secured to its satisfaction against all liabilities, proceedings, claims and demands to which it may thereby become liable and all costs, charges and expenses which may be incurred by it in connection therewith), give notice to the Issuer that the Notes are to become immediately due and payable (such notice, an "**Acceleration Notice**").

(b) Upon any such notice being given to the Issuer in accordance with paragraph (a) above, the Notes shall immediately become due and repayable at their applicable Redemption Price.

## 10.3 **Curing of Default**

At any time after an Acceleration Notice has been given under Condition 10.2(a) (*Acceleration*) following the occurrence of an Event of Default and prior to commencement of any enforcement of the security pursuant to Condition 11 (*Enforcement*), the Trustee at its discretion may, and if requested by the Noteholders (other than the holders of Substitute PPNs) acting as a single class by Ordinary Resolution, shall (subject, in each case, to the Trustee being prefunded and/or indemnified and/or secured to its satisfaction against all liabilities, proceedings, claims and demands to which it may thereby become liable and all costs, charges and expenses which may be incurred by it in connection therewith) rescind and annul such Acceleration Notice under Condition 10.2(a) (*Acceleration*) above and its consequences if:

(a) the Issuer has paid or deposited with the Trustee a sum sufficient to pay:

- (i) all due but unpaid taxes owing by the Issuer, as certified by an Authorised Officer of the Issuer to the Trustee;
  - (ii) all unpaid Trustee Fees and Expenses; and
  - (iii) all unpaid Administrative Expenses;
- (b) the Trustee has determined that all Events of Default, other than the non-payment of the interest in respect of, or principal of, the Notes that have become due solely as a result of the acceleration thereof under Condition 10.2 (*Acceleration*) above due to such Events of Default, have been cured or waived.

Any previous rescission and annulment of a notice of acceleration pursuant to this Condition 10.3 (*Curing of Default*) shall not prevent the subsequent acceleration of the Notes in accordance with Condition 10.2(a) (*Acceleration*) above.

#### 10.4 **Notification and Confirmation of No Default**

The Issuer shall promptly notify the Noteholders (in accordance with Condition 16 (*Notices*)) and the Trustee in writing upon becoming aware of the occurrence of an Event of Default. The Trust Deed contains provision for the Issuer to provide written confirmation to the Trustee on an annual basis or promptly on request by the Trustee that to the best of the Issuer's knowledge, information and belief, no Event of Default has occurred and that no condition, event or act has occurred which, with the lapse of time and/or the issue, making or giving of any notice, certification, declaration and/or request and/or the taking of any similar action and/or the fulfilment of any similar condition could constitute an Event of Default and that no other matter which is required (pursuant thereto) to be brought to the Trustee's attention has occurred.

### 11. **Enforcement**

#### 11.1 **Security Becoming Enforceable**

Subject as provided in Condition 11.2 (*Enforcement*) below, the security constituted under the Trust Deed and the Euroclear Pledge Agreement over the Collateral shall become enforceable upon the giving of an Acceleration Notice pursuant to Condition 10.2 (*Acceleration*), save in the event that the relevant Event of Default is waived or cured in accordance with Condition 10.3 (*Curing of Default*).

#### 11.2 **Enforcement**

##### (a) ***Security Becoming Enforceable***

Section 103 of the Law of Property Act 1925 (restricting the power of sale) and section 93 of the Law of Property Act 1925 (restricting the right of consolidation) shall not apply to the security constituted by the Trust Deed but so that section 101 of the Law of Property Act 1925 shall apply and have effect on the basis that the Trust Deed constitutes a mortgage within the meaning of that Act and the Trustee is a mortgagee exercising the power of sale conferred on mortgagees by that Act, provided that the Trustee shall not be required to take any such action unless indemnified and/or secured to its satisfaction against all Liabilities to which it may be liable and all costs, charges and expenses which may be incurred in connection therewith.

##### (b) ***Enforcement***

At any time after the Notes become due and payable and the security constituted under the Trust Deed and the Euroclear Pledge Agreement becomes enforceable the Trustee may, at its discretion, and shall if so directed by the Noteholders (other than the holders of Substitute PPNs) acting as a single class by Ordinary Resolution, institute such proceedings against the Issuer as it may think fit to enforce the terms of the Note Trust Deeds, the Euroclear Pledge Agreement and the Notes and pursuant and subject to the terms of the Note Trust Deeds, the Euroclear Pledge Agreement and the Notes, realise and/or otherwise liquidate or sell the Collateral in whole or in part and/or take such action as may be permitted under applicable laws against any Obligor in respect of the Collateral and/or take any other action to enforce the security over the Collateral, in each case without any liability as to the consequence of any action, provided however that the Trustee shall not be bound to institute any such proceedings or take any such other action unless it is directed by the Noteholders (other than the holders of Substitute

PPNs) acting as a single class by Ordinary Resolution and, in each case, the Trustee is prefunded and/or indemnified and/or secured to its satisfaction against all liabilities, proceedings, claims and demands to which it may thereby become liable and all costs, charges and expenses which may be incurred by it in connection therewith.

(c) **Post-Acceleration Priority of Payments**

- (i) Following the delivery of an Acceleration Notice which has not been rescinded and annulled in accordance with Condition 10.3 (*Curing of Default*) or pursuant to an optional redemption in whole in accordance with Condition 7.2 (*Redemption at the Option of the Noteholders*), Interest Proceeds, Principal Proceeds and the net proceeds of enforcement of the security over the Collateral shall be credited to the Payment Account or such other account as the Noteholders (other than the holders of Substitute PPNs) acting as a single class by Ordinary Resolution shall designate to the Trustee and shall be distributed in accordance with the following order of priority but in each case only to the extent that all payments of a higher priority have been made in full (the "**Post-Acceleration Priority of Payments**"):
- (A) to the payment of any Trustee Fees and Expenses;
  - (B) to the payment of any Administrative Expenses, including any Extraordinary Administrative Expenses;
  - (C) to the payment on a *pro rata* and *pari passu* basis of (i) any Investment Management Fee unless the default triggering the delivery of the Acceleration Notice is caused by an Investment Manager Breach and (ii) any Termination Payment;
  - (D) in payment on a *pro rata* basis, to the payment of all Interest Amounts due and payable under the PPNs, interest due and payable on the other Notes, and the Drawn Amount of the Notes; and
  - (E) thereafter, any remaining amounts to be paid out to the Noteholders as interest, on a *pro rata* and *pari passu* basis.
- (ii) Nothing in Condition 11.2(c)(i) shall preclude the Trustee from exercising any right or making any claim which the Issuer has against any Agent, the Investment Manager, the Collateral Administrator and the Administrator under the Note Transaction Documents.

11.3 **Only the Trustee to Act**

Only the Trustee may pursue the remedies available under the Note Trust Deeds and under the Euroclear Pledge Agreement to enforce the rights of the Noteholders or of any of the other Secured Parties under the Note Trust Deeds, the Notes and the Euroclear Pledge Agreement and none of the Noteholders nor any other Secured Party may proceed directly against the Issuer or any of its assets unless the Trustee, having become bound so to proceed in accordance with the terms of the Note Trust Deeds, fails or neglects to do so within a reasonable period of time following the instance of the obligation to proceed having arisen and such failure or neglect is continuing. After realisation of the security which has become enforceable and distribution of the net proceeds in accordance with the Priorities of Payments, neither the Noteholders nor any other Secured Party may take any further steps against the Issuer to recover any sum still unpaid in respect of the Notes or the Issuer's obligations to such Secured Party and all claims against the Issuer to recover any sum still unpaid in respect of the Notes or the Issuer's obligations to such Secured Party, as further described in Condition 4.11 (*Limited Recourse*), and all claims against the Issuer in respect of such sums unpaid shall be extinguished. In particular, none of the Trustee, any Noteholder and any other Secured Party shall be entitled in respect thereof to petition or take any other step for the liquidation, winding-up of the Issuer except to the extent permitted under the Note Trust Deeds.

12. **Prescription**

Claims in respect of principal and interest payable on redemption in full of the relevant PPNs will become void unless presentation for payment is made as required by Condition 7 (*Redemption*) within a period of five years, in the case of interest, and 10 years, in the case of principal, from the applicable Payment Date.



13. **Replacement of the PPNs**

If any PPN is lost, stolen, mutilated, defaced or destroyed it may be replaced at the Specified Office of the Registrar upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence, security, indemnity and otherwise as the Issuer may require (provided that the requirement is reasonable in the light of prevailing market practice). The PPN if mutilated or defaced must be surrendered before a replacement will be issued.

14. **Meetings of Noteholders, Modification, Waiver and Substitution**

14.1 **Meetings of Noteholders**

(a) ***Provisions in Trust Deed***

The Trust Deed contains provisions for convening meetings of the Noteholders (and for passing Written Resolutions) to consider matters affecting the interests of the Noteholders including, without limitation, modifying or waiving certain of the provisions of these Conditions and the substitution of the Issuer in certain circumstances. The provisions in this Condition 14 (*Meetings of Noteholders, Modification, Waiver and Substitution*) are descriptive of the detailed provisions of the Trust Deed.

(b) ***Decisions and Meetings of Noteholders***

(i) ***General***

Decisions may be taken by Noteholders acting as a single class by way of (in the case of Noteholders other than the Substitute PPN Holders) Ordinary Resolution or (in the case of all Noteholders) Extraordinary Resolution or Unanimous Resolution (together, the "**Resolutions**"). Such Resolutions can be effected either at a duly convened meeting of the applicable Noteholders or by the applicable Noteholders resolving in writing, in each case, in at least the minimum percentages specified in the table "**Minimum Percentage Voting Requirements**" in paragraph (iii) (*Minimum Voting Rights*) below. In the case of Ordinary Resolutions, meetings of the Noteholders (other than the Substitute PPN Holders) may be convened by the Issuer, the Trustee or by the Trustee acting upon the request of one or more Noteholders (other than the holders of Substitute PPN Holders) holding not less than ten per cent. in Drawn Amount of the Notes (other than the Substitute PPNs), subject to certain conditions including minimum notice periods. In the case of Extraordinary Resolutions or Unanimous Resolutions, meetings of the Noteholders may be convened by the Issuer, the Trustee or by the Trustee acting upon the request of one or more Noteholders holding not less than ten per cent. in Drawn Amount of the Notes, subject to certain conditions including minimum notice periods.

(ii) ***Quorum***

The quorum required for any meeting convened to consider an Ordinary Resolution, Extraordinary Resolution or Unanimous Resolution, or at any adjourned meeting to consider such a Resolution, shall be as set out in the relevant column and row corresponding to the type of Resolution in the table "**Quorum Requirements**" below.

**Quorum Requirements**

<b>Type of Resolution</b>	<b>Any meeting other than a meeting adjourned for want of quorum</b>	<b>Meeting previously adjourned for want of quorum</b>
Extraordinary Resolution/Unanimous Resolution	Two or more persons holding or representing not less than 66⅔ per cent. of the aggregate of the Drawn Amount of Notes	Two or more persons holding or representing not less than 25 per cent. of the aggregate of the Drawn Amount of Notes
Ordinary Resolution of all Noteholders (other than the	Two or more persons holding or representing not less than 50 per cent. of the aggregate	Two or more persons holding or representing any PPNs regardless of the aggregate of

<b>Type of Resolution</b>	<b>Any meeting other than a meeting adjourned for want of quorum</b>	<b>Meeting previously adjourned for want of quorum</b>
Substitute PPN Holders)	of the Drawn Amount of Notes (other than Substitute PPNs)	the Drawn Amount of Notes (other than Substitute PPNs)

The Trust Deed does not contain any provision for higher quorums in any circumstances.

(iii) **Minimum Voting Rights**

Set out in the table "**Minimum Percentage Voting Requirements**" below are the minimum percentages required to pass the Resolutions specified in such table which (A) in the event that such Resolution is being considered at a duly convened meeting of the Noteholders shall be determined by reference to the percentage which the aggregate Drawn Amount of the Notes which have voted in favour of such Resolution represents of the aggregate Drawn Amount of all Notes which have voted at such meeting or (B) in the case of any Written Resolution, shall be determined by reference to the percentage which the aggregate Drawn Amount of the relevant Notes which have voted in favour of such Resolution represents of the aggregate Drawn Amount of all the relevant Notes entitled to be voted on in respect of such Written Resolution.

The voting threshold at any Noteholders' meeting in respect of an Ordinary Resolution is more than 50 per cent. of the aggregate of the Drawn Amount of the Notes (other than Substitute PPNs) represented at the meeting and voted, and the voting threshold at any Noteholders' meeting in respect of an Extraordinary Resolution is at least 66⅔ per cent. of the aggregate of the Drawn Amount of the Notes represented at the meeting and voted. Accordingly, it is likely that, at any meeting of the relevant Noteholders, an Ordinary Resolution may be passed with less than 50 per cent. of all the Noteholders (other than Substitute PPNs), and an Extraordinary Resolution or Unanimous Resolution may be passed with less than 66⅔ per cent. of all the Noteholders.

**Minimum Percentage Voting Requirements**

<b>Type of Resolution</b>	<b>Minimum Percentage Voting Requirements for duly convened meetings</b>	<b>Minimum Percentage Voting Requirements for Written Resolutions</b>
Extraordinary Resolution of all Noteholders	66⅔ per cent. of the aggregate Drawn Amount of Notes which have voted at the relevant meeting.	66⅔ per cent. of the aggregate Drawn Amount of Notes which are entitled to vote.
Ordinary Resolution of all Noteholders (other than the Substitute PPN Holders)	More than 50 per cent. of the aggregate Drawn Amount of Notes (other than Substitute PPNs) which have voted at the relevant meeting.	More than 50 per cent. of the aggregate Drawn Amount of Notes (other than Substitute PPNs) which are entitled to vote.
Unanimous Resolution of all Noteholders	100 per cent. of the aggregate Drawn Amount of Notes which have voted at the relevant meeting.	100 per cent. of the aggregate Drawn Amount of Notes which are entitled to vote.

(iv) **Written Resolutions**

Any Written Resolution may be contained in one document or in several documents in like form each signed by or on behalf of one or more of the relevant Noteholders holding not less than the "Minimum Percentage Voting Requirements" as described above and as determined in

accordance with Condition 14.1(b)(iii) (*Minimum Voting Rights*) and the date of such Written Resolution shall be the date on which the latest such document is signed.

(v) **All Resolutions Binding**

Any Resolution duly passed shall be binding on all Noteholders, including the Substitute PPN Holders (regardless of whether or not a Noteholder was present at the meeting at which such Resolution was passed, if applicable).

(vi) **Extraordinary Resolution**

Any Resolution to sanction any of the following items will be required to be passed by an Extraordinary Resolution (in each case, unless stipulated otherwise in the Note Transaction Documents and subject to anything else contemplated in the Note Trust Deeds or the relevant Note Transaction Document, as applicable):

- (A) the exchange or substitution of the Notes for, or the conversion of the Notes into, shares, bonds or other obligations or securities of the Issuer or any other entity;
- (B) the modification of any provision relating to the timing and/or circumstances of redemption of the Notes at maturity or otherwise (including the circumstances in which the maturity of such Notes may be accelerated);
- (C) the modification of any of the provisions of the Note Trust Deeds which would directly and adversely affect the calculation of the amount of any payment of interest or principal on any Notes;
- (D) the adjustment of the Drawn Amount of the Notes other than in accordance with the Note Conditions;
- (E) a change in the currency of payment of the Notes;
- (F) any change in the Priorities of Payments;
- (G) the modification of the provisions concerning the quorum required at any meeting of Noteholders or the minimum percentage required to pass an Ordinary Resolution, an Extraordinary Resolution, a Written Resolution or any other provision of the Note Conditions which requires the written consent of the holders of a requisite principal amount of Notes which remain Outstanding;
- (H) any modification of any Note Transaction Document having a material adverse effect on the security over the Collateral constituted by the Trust Deed;
- (I) any item expressly requiring approval by Extraordinary Resolution pursuant to the Note Conditions or any Note Transaction Document;
- (J) any modification of this Condition 14; and
- (K) any modification of the Eligibility Criteria, except as contemplated by the Conditions or the Trust Deed.

## 14.2 **Modification and Waiver**

The Trust Deed and the Investment Management Agreement provide that, without the consent of the Noteholders, and without any requirement for the Trustee to consult the Noteholders concerning such amendments to the extent they fall within the paragraphs below, and notwithstanding the provisions of Condition 14.1(b)(vi) (*Extraordinary Resolution*), the Issuer may amend, modify, supplement and/or waive the relevant provisions of the Note Trust Deeds and/or any other Note Transaction Documents (subject to the consent of the other parties thereto) (as applicable), subject to the prior written consent of the Trustee for any of the following purposes:

- (a) to add to the covenants of the Issuer for the benefit of the Noteholders or to surrender any right or power in the Note Trust Deeds conferred upon the Issuer;

- (b) to charge, convey, transfer, assign, mortgage or pledge any property to or with the Trustee;
- (c) to correct or amplify the description of any property at any time subject to the security of the Trust Deed and the Euroclear Pledge Agreement, or to better assure, convey and confirm unto the Trustee any property subject or required to be subject to the security of the Trust Deed (including, without limitation, any and all actions necessary or desirable as a result of changes in law or regulations) or subject to the security of the Trust Deed and the Euroclear Pledge Agreement, any additional property;
- (d) to evidence and provide for the acceptance of appointment under the Trust Deed by a successor Trustee subject to and in accordance with the terms of the Trust Deed and to add to or change any of the provisions of the Trust Deed as shall be necessary to facilitate the administration of the trusts under the Trust Deed by more than one Trustee, pursuant to the requirements of the relevant provisions of the Trust Deed;
- (e) to make such changes as shall be necessary or advisable in order for the Listed Notes to be (or to remain) listed on the official list of the Irish Stock Exchange or any other exchange;
- (f) save as contemplated in Condition 14.3 (*Substitution*) below, to take any action advisable to prevent the Issuer from becoming subject to withholding or other taxes, fees or assessments;
- (g) to enter into any additional agreements not expressly prohibited by the Note Trust Deeds;
- (h) to make any other modification of any of the provisions of the Note Trust Deeds or any other Note Transaction Document which, in the determination of the Trustee, is of a formal, minor or technical nature or is made to correct a manifest error;
- (i) to make any other modification (save as otherwise provided in the Note Trust Deeds or the relevant Note Transaction Document), and/or give any waiver or authorisation of any breach or proposed breach, of any of the provisions of the Note Trust Deeds or any other Note Transaction Document which is, in the determination of the Trustee, not materially prejudicial to the interests of the Noteholders; and
- (j) to make any amendments to the Trust Deed and the other Note Transaction Documents to enable the Issuer to comply with FATCA,

provided that the Trustee may, in connection with any request to consent to such modification, waiver or authorisation, procure and rely on (without liability) such professional assistance, including legal opinions from such professional advisors as it may require, the cost of which shall be treated as Trustee Fees and Expenses.

Any such modification, authorisation or waiver shall be binding on all the Noteholders and the other Secured Parties and shall be notified by the Issuer to the Noteholders as soon as practicable in accordance with Condition 16 (*Notices*).

Under no circumstances shall the Trustee be required to give such consent on less than 21 days' notice and it shall be entitled to obtain such advice in connection with giving such consent as it sees fit.

### 14.3 **Substitution**

The Trust Deed contains provisions permitting the Trustee to agree, subject to such amendment of the Note Trust Deeds and such other conditions as the Trustee may require (in each case, as directed by the Noteholders (other than the holders of Substitute PPNs) acting as a single class by way of an Ordinary Resolution), to the substitution of any other company in place of the Issuer, or of any previous substituted company, as principal debtor under the Note Trust Deeds and the Notes, if required for taxation purposes. In the case of such a substitution the Trustee may agree, (with the consent of the Noteholders (other than the holders of Substitute PPNs) acting as a single class by way of Ordinary Resolution) to a change of the law governing the Notes and/or the Note Trust Deeds. Any substitution agreed by the Trustee pursuant to this Condition 14.3 (*Substitution*) shall be binding on the Noteholders, and shall be notified by the Issuer to the Noteholders as soon as practicable in accordance with Condition 16 (*Notices*).

The Trustee may, subject to the satisfaction of certain conditions, agree to a change in the place of residence of the Issuer for taxation purposes after obtaining the consent of the Noteholders (other than the holders of Substitute PPNs) acting as a single class by way of Ordinary Resolution, provided the Issuer does all such things

as the Trustee may require in order that such change in the place of residence of the Issuer for taxation purposes is fully effective and complies with such other requirements which are in the interests of the Noteholders as it may direct.

The Issuer shall procure that, so long as the Listed Notes are listed on the official list of the Irish Stock Exchange, any material amendments or modifications to the Note Conditions, the Note Trust Deeds or such other conditions made pursuant to Condition 14 (*Meetings of Noteholders, Modification, Waiver and Substitution*) shall be notified to the Irish Stock Exchange.

#### **15. Indemnification of the Trustee**

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility in certain circumstances in the absence of negligence, wilful misconduct or fraud, including provisions relieving it from instituting proceedings to enforce repayment or to enforce the security constituted by or pursuant to the Trust Deed, unless prefunded and/or indemnified and/or secured to its satisfaction against all liabilities, proceedings, claims and demands to which it may become liable and all costs, charges and expenses which may be properly incurred by it in connection therewith. The Trustee is entitled to enter into business transactions with the Issuer and any entity related to the Issuer without accounting for any profit. The Trustee is exempted from any liability in respect of any loss or theft of the Collateral from any obligation to insure, or to monitor the provisions of any insurance arrangements in respect of, the Collateral (and for the avoidance of doubt, under the Trust Deed the Trustee is under no such obligation) and from any claim arising from the fact that the Collateral is held in safe custody by a bank or other custodian. The Trustee shall not be responsible for the performance by the Agents of any of their duties under the Agency Agreement, the performance by the Collateral Administrator of its duties under the Investment Management Agreement, the performance by the Investment Manager of its duties under the Investment Management Agreement or for the performance by any other Person appointed by the Issuer in relation to the Notes. The Trustee shall not have any responsibility for the validity or enforceability of the Collateral or for the administration, management or operation of the Collateral including a request by the Collateral Administrator to release any of the Collateral from time to time.

The Trust Deed contains provisions for the retirement of the Trustee and the removal of the Trustee but no such retirement or removal shall become effective until a successor trustee is appointed in accordance with its terms.

#### **16. Notices**

Notices to the Noteholders will be valid if posted to the Noteholder's Specified Address by pre-paid, first class mail (or any other manner approved by the Trustee which may be by electronic transmission). Any such notice shall be deemed to have been given three days (in the case of inland mail) or seven days (in the case of overseas mail) after the date of despatch thereof to such Noteholder

The Trustee shall be at liberty to sanction some other method of giving notice to the Noteholder if, in the Trustee's opinion, such other method is reasonable having regard to market practice then prevailing and provided that notice of such other method is given to the Noteholders in such manner as the Trustee shall require.

The Issuer shall procure that any notices to Noteholders in respect of an Ordinary Resolution, Extraordinary Resolution or Unanimous Resolution will contain either an estimate or a cap on the expenses required to give effect to the relevant Resolution provided that failure by the Issuer to do so shall not result in the related notice being invalidated.

#### **17. Third Party Rights**

No person shall have any right to enforce any term or condition of the PPNs under the Contracts (Rights of Third Parties) Act 1999.

#### **18. Governing Law and Jurisdiction**

##### **18.1 Governing Law**

The Trust Deed and the PPNs and any non-contractual obligations arising out of or in connection with them are governed by and shall be construed in accordance with English law. The provisions of articles 86 to 97 of the Luxembourg law of 10 August 1915 on commercial companies, as amended, are excluded.

## 18.2 Jurisdiction

The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the PPNs, and accordingly, any legal action or proceedings arising out of or in connection with the PPNs ("**Proceedings**") may be brought in such courts. The Issuer has in the Trust Deed irrevocably submitted to the jurisdiction of such courts and waives any objection to Proceedings in any such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This submission is made for the benefit of the Noteholders, the Trustee and the Custodian and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

## 18.3 Agent for Service of Process

The Issuer appoints Aviva Investors Global Services Limited as its agent in England to receive service of process in any Proceedings in England based on any of the PPNs. If for any reason the Issuer does not have such agent in England, it will promptly appoint a substitute process agent and notify the Trustee and the PPN Holders of such appointment. Nothing herein shall affect the right to service of process in any other manner permitted by law.

## 19. Further Issues

The Issuer may from time to time, prior to the Note Available Commitment Termination Date, by written notice to the Trustee at least 10 days prior to the proposed date of issue, create and issue further notes (such notes, the "**Further PPNs**") having the same terms and conditions as the PPNs then outstanding (subject as provided below). Such Further PPNs shall not be consolidated and form a single series with, but shall rank *pari passu* with, the PPNs then outstanding and the Issuer shall use the net proceeds of issue in payment to the Principal Account to, amongst others, acquire Debt Investments, provided that:

- (i) the aggregate Principal Amount of Notes issued by the Issuer may not exceed €1,000,000,000;
- (ii) the terms (other than the date of issuance, the issue price, the amount of the Reallocation Premium and if applicable, the date from which interest will accrue) of such Further PPNs must be identical to the terms of the previously issued PPNs;
- (iii) such Further PPNs must be issued for a cash sale price and the net proceeds (excluding any Reallocation Premium) invested in Debt Investments, or pending such investment, deposited in the Principal Account;
- (iv) the Reallocation Premium attributable to such further issue shall be deposited in the Principal Account;
- (v) (so long as the existing PPNs are listed on the official list of the Irish Stock Exchange) the Further PPNs to be issued are in accordance with the requirements of the Irish Stock Exchange and are listed on the official list of the Irish Stock Exchange (for so long as the guidelines of the Irish Stock Exchange so require); and
- (vi) such additional issuances are in accordance with all applicable laws including, without limitation, the securities and banking laws and regulations of Ireland.

References to PPNs in these Conditions include (unless the context requires otherwise) any Further PPNs issued pursuant to this Condition 19. Any Further PPNs shall, subject to the aforementioned conditions, be constituted by a deed supplemental to the Trust Deed.

## 20. Restructuring Option

### (i) *Noteholders' Restructuring Option*

Subject as further provided in this Condition 20, the Noteholders will have the option (but not the obligation) either to:

- (a) elect to have their investment in the Notes restructured (the "**Restructuring Option**") on a date not later than the second Payment Date following the expiry of the Investment

Period (the "**Restructuring Date**"). The Notes of those Noteholders electing to exercise the Restructuring Option (each an "**Electing Noteholder**") shall be either:

- (i) amended so that the Notes can be exchanged for notes issued by the Issuer ("**Internal Repack Notes**") that will pay interest at a specified margin over the offered note for three-month Euro deposits that appears on the display designated as page 248 on the Telerate Monitor (or such other page or service as may replace it for the purposes of displaying EURIBOR rates) ("**EURIBOR**") and will follow a defined amortisation schedule ("**Restructuring Option A**"); or
  - (ii) exchanged in accordance with Condition 20(v) (*Mechanics of Exchange*) for notes ("**External Repack Notes**") issued by a bankruptcy remote special purpose repackaging entity, which will follow a defined amortisation schedule and which are secured on the relevant Notes and an interest rate swap which pays interest at a specified margin over EURIBOR ("**Restructuring Option B**"); or
- (b) not to elect for the Restructuring Option described above and retain their existing Notes.

It is intended that the Internal Repack Notes issued under Restructuring Option A and the External Repack Notes issued under Restructuring Option B will qualify for favourable accounting treatment under Article R332-19 of the French Insurance Code.

(ii) ***Determination by Investment Manager***

The Restructuring Date shall be determined by the Investment Manager and shall be notified by the Investment Manager to the Noteholders, together with the margin over EURIBOR not later than 20 Business Days prior to the Restructuring Date.

(iii) ***Exercise of the Restructuring Option***

If some or all of the Noteholders entitled to do so choose to exercise the Restructuring Option B, the Notes of such Electing Noteholder shall (subject to Condition 20(iv) (*Approval of Restructuring Option Terms*)) be restructured in accordance with the Restructuring Option B. If all (but not some only) of the Noteholders entitled to do so, choose to exercise the Restructuring Option A, their Notes shall (subject to Condition 20(iv) (*Approval of Restructuring Option Terms*)) be restructured in accordance with the Restructuring Option A.

(iv) ***Approval of Restructuring Option Terms***

The obligation of an Electing Noteholder to participate in the Restructuring Option shall be conditional upon:

- (a) in the case of Restructuring Option A, the approval by all Noteholders, acting by unanimous consent, of the amendments to the Note Conditions and to the Note Transaction Documents proposed by the Investment Manager, acting on behalf of the Issuer, to give effect to the restructuring under Restructuring Option A and to approve the terms of the Internal Repack Notes and the implementation of such amendments; and
- (b) in the case of Restructuring Option B, such Electing Noteholder's approval of the terms and conditions and of the Repack Notes and the provisions of the subscription agreement under terms of which it will subscribe for the External Repack Notes.

(v) ***Mechanics of Exchange***

Each exchange of (i) Notes for Internal Repack Notes in accordance with Restructuring Option A or (ii) Notes for External Repack Notes in accordance with Restructuring Option B, shall be effected by delivery to the Principal Paying Agent by the Electing Noteholder of its Notes and a duly completed Exchange Notice not more than 10 Business Days nor less than 5 Business Days prior to the applicable Restructuring Date. An Exchange Notice and the Notes so delivered may not be withdrawn without the prior consent of the Issuer. The Principal Paying Agent shall copy the Exchange Notice received to each of the Issuer, the Trustee, the Collateral Administrator, the other Agents and the Investment Manager.

## SCHEDULE 2

### AMENDED AND RESTATED CONDITIONS OF THE FURTHER PPNs

*The following are the conditions of the PPNs, substantially in the form in which they will be endorsed on such PPNs.*

On 9 September 2014 (the "**Issue Date**") €25,000,000 Secured Revolving Profit Participating Notes due 2039 (the "**PPNs**") will be issued in accordance with Condition 19 (*Further Issues*) of the €425,000,000 secured revolving profit participating notes due 2039 (the "**Original PPNs**") issued on 25 July 2013 (the "**Original Issue Date**") in the form of a permanent global certificate (as further defined below, the "**Global Certificate**") without interest coupons or principal receipts which will be deposited with and registered in the name of a nominee for the common depository for Euroclear S.A./N.V. as operator of the Euroclear System and Clearstream Banking, S.A. (the "**Clearing Systems**") and any successor in title thereto.

On the Issue Date the Global Certificate will be issued partly paid up, with a Principal Amount of €25,000,000 and a Drawn Amount of €72,500, representing 0.29 per cent. of the Principal Amount of the PPNs. The Drawn Amount of the PPNs may be increased or decreased after the Issue Date to reflect the payments from and to the Noteholders under the Notes and the redemption of the Notes as set out in the Conditions. The issue price of the PPNs equals 100 per cent. of the Drawn Amount of the PPNs.

The issue of €25,000,000 Secured Revolving Profit Participating Notes due 2039 (the "**PPNs**"), of Aviva Investors European Secondary Infrastructure Credit SV S.A. (the "**Issuer**") was authorised by resolution of the board of directors of the Issuer dated 1 September 2014. The PPNs are constituted by a deed dated 9 September 2014 (the "**Supplemental Trust Deed**") that is supplemental to the trust deed dated 25 July 2013 (the "**Original Trust Deed**") and together with the Supplemental Trust Deed, the "**Trust Deed**"), which terms shall include any additional security documents entered into in respect of the Collateral (as defined below) between (amongst others) the Issuer and Deutsche Trustee Company Limited, in its capacity as trustee (the "**Trustee**", which expression shall include all persons for the time being the trustee under the Trust Deed) for the PPN Holders (as defined below)).

These terms and conditions of the PPNs (the "**Conditions**") include summaries of, and are subject to, the detailed provisions of the Trust Deed (which includes the form of the certificate representing the PPNs). The following agreements have also been entered into in relation to the PPNs:

- (a) an agency agreement dated 25 July 2013 (the "**Agency Agreement**") between the Issuer, the Investment Manager, Deutsche Bank AG, London Branch as principal paying agent, account bank, note agent, custodian, quotation agent and collateral administrator (respectively, the "**Principal Paying Agent**", the "**Account Bank**", the "**Note Agent**", the "**Custodian**", the "**Quotation Agent**" and the "**Collateral Administrator**", which terms shall include any successor or substitute principal paying agent, account bank, note agent, custodian or quotation agent, respectively, appointed pursuant to the terms of the Agency Agreement and any successor collateral administrator pursuant to the terms of the Investment Management Agreement) and Deutsche Bank Luxembourg S.A. as registrar (the "**Registrar**", which term shall include any successor or replacement registrar);
- (b) a subscription agreement dated on or about 4 September 2014 (the "**Subscription Agreement**") between the Issuer, the Investment Manager, the Trustee, Deutsche Bank AG, London Branch as Collateral Administrator, Principal Paying Agent and Note Agent, Deutsche Bank Luxembourg S.A. as Registrar and the initial subscriber of the PPNs and the subscription agreements each dated 25 July 2013 between the Issuer, the Investment Manager, the Trustee, Deutsche Bank AG, London Branch as Collateral Administrator, Principal Paying Agent and Note Agent, Deutsche Bank Luxembourg S.A. as Registrar and the subscribers of the Original PPNs;
- (c) an administration services and domiciliation agreement dated 18 July 2013 (the "**Administration Agreement**") between the Issuer, Deutsche Bank Luxembourg, S.A. as administrator (the "**Administrator**", which term shall include any successor or replacement administrator) and *Stichting* European Secondary Infrastructure Credit;
- (d) an investment management agreement dated 25 July 2013 (the "**Investment Management Agreement**") between the Issuer and Aviva Investors Global Services Limited as the investment manager (the "**Investment Manager**", which term shall include any successor or replacement



investment manager), Deutsche Bank AG, London Branch as the Collateral Administrator and the Custodian and the Trustee;

- (e) a distribution agreement dated 25 July 2013 between the Issuer and Aviva Investors Global Services Limited as non-exclusive global distribution agent (the "**Distribution Agreement**"); and
- (f) a settlement agreement dated on or about 19 July 2013 (the "**Settlement Agreement**") between the Issuer and Deutsche Bank AG, London Branch as settlement agent (the "**Settlement Agent**").

Copies of the Transaction Documents are available for inspection during usual business hours at the registered office of the Trustee (presently at Winchester House, 1 Great Winchester Street, London EC2N 2DB) and of the Principal Paying Agent (presently at Winchester House, 1 Great Winchester Street, London EC2N 2DB) for the time being and in addition they will be made available on the Collateral Administrator's website at <https://tss.sfs.db.com/investpublic>. Each PPN Holder is entitled to the benefit of, is bound by and is deemed to have notice of all the provisions of the Trust Deed and the other Transaction Documents (other than any Subscription Agreement to which it is not a party).

## 1. Definitions

### 1.1 Definitions

"**Acceleration Notice**" has the meaning given thereto in Condition 10.2(a) (*Acceleration*).

"**Accounts**" means the Payment Account, the Issuer Account, the Interest Account, the Principal Account, the Custody Account (including, in each case any sub-account thereof and any account established in replacement thereof), the Expense Reserve Account and the Revolving Reserve Account.

"**Administration Agreement**" means the administrative services and domiciliation agreement dated 18 July 2013 between the Issuer, the Administrator and Stichting European Secondary Infrastructure Credit.

"**Administrative Expenses**" means amounts due and payable by the Issuer:

- (a) in respect of the fees and other amounts payable to the Agents pursuant to the Agency Agreement (including indemnities provided for therein);
- (b) to the Investment Manager pursuant to the Investment Management Agreement (including costs, expenses and indemnities provided for therein, but excluding any Investment Management Fee or value added tax payable thereon, any Due Diligence and Bid Expenses or any Termination Payment);
- (c) in respect of the fees and other amounts payable to the Collateral Administrator pursuant to the Agency Agreement and the Investment Management Agreement (including indemnities provided for therein);
- (d) to the Administrator pursuant to the Administration Agreement;
- (e) to any other Person in respect of any governmental fee or charge (for the avoidance of doubt excluding any taxes) or any statutory indemnity;
- (f) to the independent accountants, agents and counsel of the Issuer;
- (g) to the Irish Stock Exchange, or such other stock exchange or exchange upon which any of the Listed Notes are listed from time to time;
- (h) to any Person, in respect of any other indemnities, fees, costs or expenses or other amounts properly incurred by the Issuer from time to time, contemplated in the Note Conditions or the Note Transaction Documents;
- (i) in respect of any costs in respect of winding up and dissolution of the Issuer;
- (j) in respect of amounts due and payable by the Issuer to an agent bank acting on behalf of the Issuer (in its capacity as a member of a loan syndicate or lender) in relation to the performance of such agent bank's duties under a Debt Investment, to the extent not payable or reimbursed by the relevant Obligor(s), but excluding any amounts paid in respect of the acquisition or purchase price of such Debt Investment;

- (k) in respect of any amounts due and payable by the Issuer as a member of a loan syndicate, to the extent not payable or reimbursed by the relevant Obligor(s) for costs and expenses (including legal fees) incurred on account of any restructuring, insolvency work-out (including the payment of indemnities granted to a steering committee in relation to the restructuring of a Debt Investment) up to an aggregate maximum amount equal to the lower of (x) one per cent. of the aggregate Principal Amount of Notes which have from time to time been issued and (y) €3,500,000, or such higher figure as may be approved by Extraordinary Resolution of the Noteholders acting as a single class;
- (l) in respect of any additional costs reasonably incurred by the Investment Manager directly relating to the Issuer resulting from the implementation in Luxembourg and/or the United Kingdom of the Alternative Investment Fund Managers Directive (2011/61/EC); and
- (m) in respect of any applicable value added tax required to be paid by the Issuer in respect of any of the foregoing,

including in each case analogous amounts in respect of any other Notes, but excluding (x) (prior to the occurrence of an Event of Default only), in each case, any Extraordinary Administrative Expenses and (y) any amounts payable in connection with the listing of Substitute PPNs pursuant to clause 6.4 (*Listing of Substitute PPNs*) of the Subscription Agreements and any corresponding provision set out in any additional subscription agreement entered into by the Issuer.

**"Administrative Expenses Cap"** means:

- (a) in respect of the first Payment Date, €60,000;
- (b) in respect of the second Payment Date, €120,000, less all amounts paid under paragraph (iv) of the Interest Proceeds Priorities of Payments on the first Payment Date;
- (c) in respect of the third Payment Date, €180,000, less the aggregate of all amounts paid under the said paragraph (iv) on the first and second Payment Dates; and
- (d) in respect of the fourth and each subsequent Payment Date thereafter (including for the avoidance of doubt, the Maturity Date), €230,000, less the aggregate of amounts paid under the said paragraph (iv) on the three Payment Dates immediately preceding the Payment Date in question,

(x) in each case increased by €20,000 for each €100,000,000 by which the total Drawn Amount of all of the Notes issued by the Issuer from time to time exceeds €425,000,000 and (y) such Administrative Expenses Cap to be increased once every seven years from the Original Issue Date (each such seventh anniversary being a "**re-set date**") based on a review of the then current Administrative Expenses and in an amount to be agreed between the Investment Manager, the Issuer and the Trustee (acting without having to obtain the consent of the Noteholders), provided always that any proposed increase in the Administrative Expenses Cap shall not exceed the Consumer Price Index ("**CPI**") as published by the Office for National Statistics, displayed on the website page at <http://www.ons.gov.uk/taxonomy/index.html?nscl=Consumer+Price+Indices>, from (and including) the Issue Date (or after the Issue Date, the immediately preceding re-set date) up to (but excluding) the relevant date of review.

For the avoidance of doubt, the Administrative Expenses Cap shall not apply following the occurrence of an Event of Default.

**"Affected Collateral"** has the meaning given thereto in Condition 4.10(a)(viii) (*Security*).

**"Affiliate"** or **"Affiliated"** means with respect to a Person:

- (a) any other Person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such Person; or
- (b) any other Person who is a director, officer or employee:
  - (i) of such Person;
  - (ii) of any subsidiary or parent company of such Person; or

(iii) of any Person described in paragraph (a) above,

For the purposes of this definition, control of a Person shall mean the power, direct or indirect, (A) to vote more than 50 per cent. of the securities having voting power for the election of directors of such Person, or (B) to direct or control the direction of the management and policies of such Person whether by contract or otherwise.

"**Agent**" means each of the Registrar, the Principal Paying Agent, any other Paying Agent, the Account Bank, the Note Agent, the Custodian, the Quotation Agent or any of them.

"**Authorised Integral Amount**" means €1,000.

"**Authorised Officer**" means, with respect to the Issuer, any director of the Issuer or person who is otherwise authorised to act for the Issuer in matters relating to, and binding upon, the Issuer.

"**Benefit Plan Investor**" means any of the following:

- (a) an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to the fiduciary responsibilities provisions of ERISA;
- (b) a "plan" as defined in Section 4975(e)(1) of the Code that is subject to Section 4975 of the Code; or
- (c) any entity whose underlying assets include "plan assets" by reason of any such employee benefit plan's or plan's investment in the entity (including an insurance company general account within the meaning of Section V(e) of prohibited transaction class exemption 95-60) or a "benefit plan investor" as such term is otherwise defined in any regulations promulgated by the U.S. Department of Labor under Section 3(42) of ERISA.

"**Bid**" means the price notified by an investor at which it will subscribe for Replacement PPNs.

"**Bidder**" means an investor who submits a Bid.

"**Business Day**" means (save to the extent otherwise defined) a day:

- (a) which is a TARGET Settlement Day; and
- (b) on which commercial banks and foreign exchange markets settle payments in London and Luxembourg (other than a Saturday or a Sunday).

"**Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Collateral**" means the property, assets and rights described in Condition 4.10 (*Security*) which are charged and assigned to the Trustee from time to time for the benefit of the Secured Parties pursuant to the Trust Deed and the Euroclear Pledge Agreement.

"**Collateral Tax Event**" means at any time, as a result of the introduction of a new, or any change in, any home jurisdiction or foreign tax statute, treaty, regulation, rule, ruling, practice, procedure or judicial decision or interpretation (whether proposed, temporary or final) any interest payments due from the Obligor of any Debt Investment in relation to any Due Period becoming properly subject to the imposition of home jurisdiction or foreign withholding tax so that the aggregate amount of such withholding tax thereon in relation to such Due Period (after taking into account the effect of any applicable gross up provision or double taxation treaty) is equal to or in excess of six per cent. of the aggregate interest payments due on all Debt Investments in relation to such Due Period.

"**Custodial Assets**" means all Debt Investments which are in the form of securities and Eligible Investments and in each case any sums received in respect thereof, which are held from time to time by the Custodian (or any duly authorised Sub-Custodian) pursuant to the terms of the Agency Agreement.

"**Custody Account(s)**" means the custody account or accounts (including any cash account relating to any securities account) established on the books of the Custodian in accordance with the provisions of the Agency Agreement, which term shall include each custody account relating to each such Custody Account (if any).

"**Debt Investment**" means any secured or unsecured loan obligation or debt obligation in which the Issuer has invested by way of the extension of credit, or the purchase or acquisition thereof from time to time (or if the

context requires, to be purchased or advanced by or on behalf of the Issuer) each of which the Investment Manager has determined, in accordance with the Investment Management Agreement, satisfies the Eligibility Criteria. For the avoidance of doubt, any obligation which satisfies the Eligibility Criteria at the time the Issuer or the Investment Manager on behalf of the Issuer has entered into a binding commitment to purchase it, shall constitute a Debt Investment even if it subsequently fails to satisfy paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (m) and/or (n) of the Eligibility Criteria.

**"Default Letter"** has the meaning given thereto in Condition 2(d) (*Failure to make a Note Advance*).

**"Default Letter Notification Date"** means the date on which the relevant Defaulting Noteholder is deemed to have received the Default Letter from the Issuer pursuant to Condition 2(d) (*Failure to make a Note Advance*) in accordance with Condition 16 (*Notices*).

**"Defaulted Note"** has the meaning given thereto in Condition 2(d)(i) (*Failure to make a Note Advance*).

**"Defaulting Noteholder"** has the meaning given thereto in Condition 2(d) (*Failure to make a Note Advance*).

**"Defaulting Noteholder's Account"** means the bank account specified to the Issuer (with a copy to the Principal Paying Agent and the Note Agent) by a Defaulting Noteholder to which Replacement PPN Net Bid Proceeds should be paid and which shall, whilst the Notes held by the relevant Defaulting Noteholder are in global form, be the designated account of the relevant Defaulting Noteholder in the relevant Clearing System.

**"Definitive Certificate"** means a certificate representing one or more Notes in definitive, fully registered, form.

**"Delayed Drawdown Debt Investment"** means a Debt Investment that pursuant to its terms may require one or more future advances to be made to the Obligor by the Issuer which may not permit the re-borrowing of any amount previously repaid, provided that any such Debt Investment will be a Delayed Drawdown Debt Investment only until all commitments to make advances to the Obligor expire or are terminated or reduced to zero.

**"Determination Date"** means the last calendar day of each month prior to each Payment Date.

**"Directive"** has the meaning given to that term in Condition 8.3 (*Registrar and Principal Paying Agent*).

**"Drawn Amount"** means either (i) in relation to any Note at any time, the aggregate of all amounts drawn under such Note at that time or (ii) in respect of any Noteholder, the amounts drawn under its Notes, in each case as the context so requires, in each case for the avoidance of doubt as adjusted to reflect the payments to and from Noteholders under the Notes and the redemption of the Notes as set out in Conditions 2(c)(i), 2(c)(ii), and 7.6 and 7.8; and, in respect of the Notes shall mean such drawn amount of the Notes in accordance with the analogous provisions of the Further PPN Conditions, the Substitute PPN Conditions and the Replacement PPN Conditions.

**"Drawn Percentage"** means, in relation to a Defaulted Note and a Default Letter Notification Date, the percentage that the Drawn Amount of that Defaulted Note represents of the Principal Amount of that Defaulted Note.

**"Due Diligence and Bid Expenses"** means any costs, expenses and/or indemnities which are due and payable by the Issuer to the Investment Manager under the Investment Management Agreement in connection with the Investment Manager carrying out on behalf of the Issuer the due diligence on, and the bidding for, any proposed Debt Investment.

**"Due Period"** means, with respect to any Payment Date, the period commencing on and including the day immediately following the Determination Date prior to the preceding Payment Date (or commencing on and including the First Purchase Date, in the case of the Due Period relating to the first Payment Date) and ending on and including the Determination Date prior to such Payment Date (or, in the case of the Due Period applicable to the Payment Date which is the Redemption Date of any Note, the Due Period for such Note shall end on and include the Business Day preceding such Payment Date).

**"EFTA"** means the European Free Trade Association countries of which comprise Iceland, Liechtenstein, Norway and Switzerland.

**"Electing Noteholder"** has the meaning given thereto in Condition 20(i)(a) (*Noteholders' Restructuring Option*).

**"Eligibility Criteria"** has the meaning given thereto in the Investment Management Agreement.

**"Eligible Investments"** means any investment denominated in Euro, the acquisition (including the manner of acquisition), ownership, enforcement or disposition of which will not cause the Issuer to be treated as engaged in a trade or business within the United States for U.S. federal income tax purposes, that are acquired, and held in a manner that does not violate the investment restrictions set out in the Investment Management Agreement, the nature of which do not violate the investment restrictions set out in the Investment Management Agreement and is one or more of the following obligations or securities, including, without limitation, any Eligible Investments for which the Custodian, the Trustee, the Collateral Administrator or the Investment Manager or an Affiliate of any of them provides services:

- (a) direct obligations of, and obligations the timely payment of principal of and interest under which is fully and expressly guaranteed by, a government of a country in the EU or EFTA with a Long Term Rating equal to A by Standard and Poor's or A by Fitch or A2 by Moody's;
- (b) demand and time deposits in, certificates of deposit of and bankers' acceptances issued by any depository institution (including the Account Bank) or trust company incorporated in the EU or EFTA with a Short Term Rating equal to or higher than A-1 by Standard and Poor's or F1 by Fitch or Prime-1 by Moody's, and in each case, with a maturity of no more than 180 days and subject to supervision and examination by governmental banking authorities;
- (c) commercial paper or other short term obligations that either are bearing interest or are sold at a discount to the face amount thereof with a Short Term Rating equal to or higher than A-1 by Standard and Poor's or F1 by Fitch or Prime-1 by Moody's and have a maturity of not more than 183 days from their date of issuance;
- (d) money market funds which comply with The Undertaking for Collective Investment in Transferable Securities Directive 2001/107/EC and 2001/108/EC ("**UCITS**") and/or exchange-traded funds ("**ETFs**") tracking the EONIA (Euro OverNight Index Average); and
- (e) repurchase agreements invested in the above mentioned financial instruments without maturity constraints,

and, in each case, such instrument or investment provides for payment of a pre-determined fixed amount of principal on maturity that is not subject to change and either (A) has a Stated Maturity (giving effect to any applicable grace period) no later than the second Business Day immediately preceding the Payment Date which immediately follows the date of purchase of such instrument or investment or (B) may be capable of being liquidated on demand, at an amount equal to the purchase price or more without penalty.

**"Eligible Purchaser"** means a purchaser:

- (a) who is a non-U.S. Person (as defined in Regulation S under the Securities Act) in offshore transactions in reliance on Regulation S under the Securities Act;
- (b) who purchases the PPNs subject to the terms and conditions of the PPNs set out in the Trust Deed and the Global Certificate;
- (c) whose purchase of PPNs will not cause an adverse tax consequence to the Issuer;
- (d) whose purchase and holding of PPNs will not be illegal; and
- (e) who is not a Non-Permitted ERISA Holder and is not a Recalcitrant Noteholder.

**"Enforcement Event"** shall mean an event where the security constituted by the Trust Deed over the Collateral becomes enforceable pursuant to Condition 11 (*Enforcement*) by delivery of an Acceleration Notice pursuant to Condition 10 (*Events of Default*).

**"ERISA"** means the United States Employee Retirement Income Security Act of 1974, as amended.

"**EURIBOR**" has the meaning given to that term in Condition 20 (*Restructuring Option*).

"**Euroclear Pledge Agreement**" means the Belgian law pledge agreement dated 25 November 2014 entered into between the Issuer, the Trustee and the Custodian pursuant to the terms of the Trust Deed.

"**Event of Default**" means each of the events defined as such in Condition 10 (*Events of Default*).

"**Expense Reserve Account**" means the interest bearing account described as such in the name of the Issuer with the Account Bank, into which amounts are to be paid in accordance with Condition 4.9(d) (*Expense Reserve Account*) and amounts standing to the credit of which will be used to make certain expense payments.

"**Expense Reserve Account Payment Amount**" means, on the Payment Date immediately following the First Purchase Date, the Target Expense Reserve Balance and in relation to each subsequent Payment Date, an amount equal to the lesser of:

- (a) the Expense Reserve Shortfall; and
- (b) 50 per cent. of the Target Expense Reserve Balance on such Payment Date.

"**Expense Reserve Amount**" means (i) at any time during which the Drawn Amount of the Notes is greater than or equal to €200,000,000, €400,000; and (ii) at any time during which the Drawn Amount of the Notes is less than €200,000,000, €300,000.

"**Expense Reserve Shortfall**" means, on any Payment Date, (i) the difference (if any) between the relevant Target Expense Reserve Balance for such Payment Date and (ii) the amounts credited to the Expense Reserve Account immediately prior to such Payment Date, as determined by the Collateral Administrator on the Determination Date immediately preceding the related Payment Date and notified in writing by the Collateral Administrator to the Investment Manager prior to the related Payment Date.

"**External Repack Notes**" has the meaning given thereto in Condition 20(i)(a)(ii) (*Noteholders' Restructuring Option*).

"**Extraordinary Administrative Expenses**" means all properly documented (by way of invoices) amounts due and payable by the Issuer (and including any VAT in respect thereof):

- (a) to the Trustee pursuant to the Note Trust Deeds in respect of legal fees, costs and expenses (including indemnities provided for therein);
- (b) to the Agents, the Collateral Administrator, the Settlement Agent and their respective officers, directors and employees and the Issuer Indemnified Persons (as defined in the Investment Management Agreement) pursuant to the Agency Agreement, the Investment Management Agreement and the Settlement Agreement (including in each case indemnities provided for therein) in respect of legal fees, costs and expenses incurred by such persons;
- (c) to the Investment Manager pursuant to the Investment Management Agreement (including indemnities provided for therein) in respect of legal fees, costs and expenses incurred by the Investment Manager;
- (d) to the Agents, the Trustee, the Collateral Administrator and their respective officers, directors and employees and the Issuer Indemnified Persons pursuant to the Agency Agreement, the Trust Deed and the Investment Management Agreement (including in each case indemnities provided for therein) in respect of any losses, liabilities, costs, expenses, claims, actions or demands and (in the case of the Issuer Indemnified Persons) all Liabilities and Expenses (each as defined in the Investment Management Agreement) incurred by or made against them or arising in connection with any of the following:
  - (i) any amendment or modification to or restructuring of or work-out of or default under or insolvency of any obligor in connection with any Debt Investment;
  - (ii) any amendment or modification of or waiver in respect of the Notes or any of the Note Transaction Documents;
  - (iii) any Event of Default or Potential Event of Default;

- (iv) any meeting or resolution of Noteholders; and
  - (v) any of the above in connection with the Restructuring Option,
- (e) without double-counting, to each of the Investment Manager, the Collateral Administrator, the Agents and the Trustee in respect of legal fees, costs and expenses incurred by it in respect of the issuance of any Further PPNs, Replacement PPNs and Substitute PPNs and to the Settlement Agent in respect of legal fees, costs and expenses incurred by it in respect of the issuance of any Further PPNs;
- (f) to the Settlement Agent in respect of the fees and other amounts payable to the Settlement Agent pursuant to the Settlement Agreement (including indemnities provided for therein) but without duplication of any amounts paid as Initial Set Up Costs or payable under (b) or (e) above,

but in each case, without duplication of any amounts payable under (a) and (b) above, the annual fees payable to the Trustee, the Agents and the Collateral Administrator, and any other amounts payable in accordance with the Priorities of Payments on the related Payment Date;

- (g) to the Investment Manager (and its respective officers, directors and employees) pursuant to the Investment Management Agreement in respect of any losses, liabilities, costs, expenses, claims, actions or demands incurred by or made against them and incurred or made or arising in connection with any of the following:
- (i) any amendment or modification to or restructuring of or work-out of or default under or insolvency of any obligor in connection with any Debt Investment;
  - (ii) any amendment or modification of or waiver in respect of the Notes or any of the Note Transaction Documents;
  - (iii) any Event of Default or Potential Event of Default;
  - (iv) any meeting or resolution of Noteholders; and
  - (v) any of the above in connection with the Restructuring Option,

but excluding legal fees, costs and expenses, the Due Diligence and Bid Expenses and the Investment Management Fee,

and in each case any analogous amounts in respect of any of the other Notes, in each case in accordance with (x) (prior to the occurrence of an Event of Default) Condition 4.9(d) (*Expense Reserve Account*) and (y) in all other circumstances other than in paragraph (x) above, the applicable Priorities of Payments.

**"Extraordinary Resolution"** means a resolution passed at a meeting of Noteholders duly convened and held in accordance with the Trust Deed by a majority of not less than 66 $\frac{2}{3}$  per cent. of the votes cast or a Written Resolution passed in accordance with paragraph 12 (*Written Resolutions*) of schedule 4 to the Trust Deed.

**"FATCA"** means Sections 1471 through 1474 of the US Internal Revenue Code, an agreement entered into with the US Internal Revenue Service pursuant to such sections of the Code, or an intergovernmental agreement between the United States and another jurisdiction in furtherance of such sections of the Code (including any non-US laws and regulations implementing such an intergovernmental agreement), or any analogous provisions of non-U.S. law.

**"First Purchase Date"** means the date upon which the Issuer first settled the purchase of a Debt Investment in respect of the Original PPNs.

**"Fitch"** means Fitch Ratings Limited, and any successor or successors thereto.

**"Further Issue Date"** means each date upon which the Issuer issues Further PPNs constituted by a Further PPN Trust Deed.

**"Further Issues"** has the meaning given thereto in Condition 19 (*Further Issues*).

**"Further PPN Conditions"** means the conditions of the Further PPNs as set out in the Further PPN Trust Deed and **"Further PPN Condition"** shall be construed accordingly.

**"Further PPN Holders"** means (a) in relation to Further PPNs in the form of Definitive Certificates, each person in whose name such Further PPNs are registered from time to time on the applicable register and (b) in relation to Further PPNs in the form of one or more global certificates, the several persons who are for the time being the holders of such Further PPNs, which expression shall, whilst such global certificate(s) remain outstanding, mean in relation to such Further PPNs represented thereby, each person who is for the time being shown in the records of the Clearing System through which interests in the global certificate(s) are held as the holders of a particular principal amount of such Further PPNs for all purposes (in which regard any certificate or other document issued by the Clearing System as to the principal amount of Further PPNs represented by the global certificate(s) standing to the account of any person shall be conclusive and binding for all purposes) other than with respect to the payment of any principal, premium (if any) and interest on such Further PPNs, the right to which shall be vested, as against the Issuer, solely in the registered owner of the global certificate(s) in accordance with and subject to its terms and the terms of the Note Trust Deeds and **"Further PPN Holder"** (in respect of the Further PPNs) shall be construed accordingly.

**"Further PPN Transaction Documents"** means the Further PPN Trust Deeds, the Investment Management Agreement, the Agency Agreement, the Euroclear Pledge Agreement, the Settlement Agreement, the administration agreement, the Subscription Agreement and the Distribution Agreement in respect of the Further PPNs and any documents supplemental or ancillary thereto.

**"Further PPN Trust Deed"** means each trust deed constituting the Further PPNs expressed as being supplemental to the Trust Deed.

**"Further PPNs"** has the meaning given to that term in Condition 19 (*Further Issues*).

**"Global Certificate"** means the registered global certificate representing the PPNs in substantially the form attached to the Trust Deed.

**"Illegality Event"** means it has become illegal for the Issuer to perform or comply with any of its obligations under the Note Transaction Documents and the Notes.

**"Impaired Debt Investment"** means any Debt Investment pursuant to which any scheduled principal or interest which is due and payable to the Issuer either (a) has not been received by the Issuer within 10 Business Days of such due date or (b) (as determined by the Investment Manager in its sole discretion based on circumstances then prevailing) is likely not to be received by the Issuer within 10 Business Days of such due date.

**"Impairment Amount"** means, in relation to an Impaired Debt Investment, an amount calculated by the Investment Manager in accordance with the Investment Management Agreement equal to:

- (a) the book value of the relevant Impaired Debt Investment had it not become an Impaired Debt Investment; minus
- (b) the aggregate net present value of the reduced or delayed interest and principal receipts which the Issuer expects to receive under the Impaired Debt Investment, as estimated by the Investment Manager based on information received from the Obligor, discounted at the stipulated interest rate of the relevant Impaired Debt Investment over the remaining life of the Debt Investment.

**"Initial Set Up Costs"** means any establishment and/or set up costs including, but not limited to, legal fees, administrative fees and expenses associated with admission to the Irish Stock Exchange and certain other fees and expenses payable on or about the Original Issue Date or in the case of Further PPNs, on or about such date when Further PPNs are issued up to an amount equal to the lower of (i) 0.25 per cent. of the aggregate of the Principal Amounts and (ii) €1,200,000.

**"Insolvency Law"** has the meaning given thereto in Condition 10.1(e) (*Insolvency Proceedings*).

**"Interest Account"** means the interest bearing account described as such in the name of the Issuer with the Account Bank into which Interest Proceeds are to be paid.

**"Interest Amount"** means (a) following the delivery of an Acceleration Notice which has not been rescinded and annulled in accordance with Condition 10.3 (*Curing of Default*) or pursuant to an optional redemption in whole in accordance with Condition 7.2 (*Redemption at the Option of the Noteholders*), the amount of interest payable in respect of the PPNs pursuant to Condition 6.2 (*Interest Accrual*) in accordance with Condition 11.2(c) (*Post-Acceleration Priority of Payments*) and (b) in all other circumstances not covered under paragraph



(a), the amount of interest payable on each Payment Date in respect of the PPNs, being the Interest Proceeds less items (i) to (vi) of the Interest Proceeds Priorities of Payments as calculated by the Collateral Administrator as being payable on such Payment Date in accordance with Condition 4.4 (*Determination and Payment of Amounts*) and Condition 6.3 (*Determination of Interest Amount*).

**"Interest Proceeds Priorities of Payments"** means the priority of payments set out in Condition 4.2(a) (*Application of Interest Proceeds*).

**"Interest Proceeds"** means all amounts paid or payable into the Interest Account from time to time and, with respect to any Payment Date, means any Interest Proceeds received or receivable by the Issuer during the related Due Period and any other amounts to be disbursed as Interest Proceeds on such Payment Date pursuant to Condition 4.2(a) (*Application of Interest Proceeds*).

**"Internal Repack Notes"** has the meaning given thereto in Condition 20(i)(a)(i) (*Noteholders' Restructuring Option*).

**"Investment Company Act"** means the United States Investment Company Act of 1940, as amended.

**"Investment Management Fee"** means the fee payable (in accordance with the Priorities of Payments) to the Investment Manager in arrear on each Payment Date in respect of the immediately preceding Due Period pursuant to the Investment Management Agreement in an amount, as determined by the Collateral Administrator on behalf of the Issuer, equal to the greater of (a) 0.35 per cent. per annum (calculated on the basis of a 360-day year and the actual number of days elapsed in such Due Period) of the aggregate Drawn Amount of the Notes (in respect of the Substitute PPNs, without reduction on account of the Substitute PPN Haircut Percentage) less the aggregate of any Impairment Amounts as at the first Business Day of the Due Period preceding the applicable Payment Date (as notified by the Investment Manager to the Collateral Administrator) and (b) the product of (i) €150,000 and (ii) the fraction, expressed as a percentage, the numerator of which is the number of days elapsed in such Due Period and the denominator of which is 360, together with any VAT chargeable in respect thereof.

**"Investment Manager Breaches"** means the fraud, wilful default or negligence in the performance of the obligations of the Investment Manager, its Affiliates or its or their directors, officers or employees under the Investment Management Agreement which directly result in Losses.

**"Investment Period"** means the period from (and including) the Original Issue Date to (and including) the later of (i) the Note Available Commitment Termination Date and (ii) the date falling 6 months following the Note Available Commitment Scheduled Termination Date if, on the Business Day immediately preceding the Note Available Commitment Scheduled Termination Date, the Investment Manager (acting on behalf of the Issuer) made a Note Advance Request in an amount up to the Undrawn Amounts on such date and the Note Agent has notified the Noteholders in writing that the Investment Manager wishes to so extend the Investment Period.

**"Issue Date"** means 9 September 2014 (or such other date as may shortly follow such date as the Issuer may stipulate and which is notified by the Issuer to the Noteholders in accordance with Condition 16 (*Notices*) (with a copy to the Trustee)).

**"Issuer Account"** means the account established by the Issuer in Luxembourg for the purpose of holding (i) the proceeds of the issue of the Issuer Shares, (ii) such amounts as are necessary for the Issuer to retain sufficient profit in accordance with paragraph (a)(i) of Condition 4.2 (*Pre-Enforcement Priority of Payments*) to pay Luxembourg taxes, (iii) such amounts as are necessary to cover Luxembourg operational costs and (iv) interest earned on the foregoing amounts.

**"Issuer Shares"** means the share capital of the Issuer as at the Original Issue Date, which comprises 31,000 ordinary voting shares of €1.00 each.

**"Liabilities"** means, collectively, liabilities, obligations, losses, claims, damages, judgments, penalties, assessments, actions, suits, costs, expenses or other similar liabilities (including, without limitation, in respect of taxes, duties, levies, imposts and other charges and all legal fees and disbursements incurred in defending or disputing any of the foregoing and including any VAT or similar tax charged or chargeable in respect thereof).

**"Listed Notes"** means:

- (a) the Original PPNs;

- (b) the PPNs;
- (c) the Replacement PPNs;
- (d) the Further PPNs; and
- (e) the Substitute PPNs where the holder of such Substitute PPNs has requested to be listed in accordance with the relevant Subscription Agreement,

in each case, listed from time to time on the Irish Stock Exchange, or another stock exchange or exchange.

**"Long Term Ratings"** means the long term rating assigned by any Rating Agency. In the event that a long term rating has been assigned by more than one Rating Agency, the Long Term Rating shall be the second best such long term rating (for the avoidance of doubt, should two or more of these long term ratings be equivalent, the second best rating shall be such equivalent rating).

**"Losses"** means any losses, claims, damages, judgments, assessments, costs, taxes, charges, demands, expenses or other liabilities incurred by the Issuer, the Trustee, the Noteholders, any other Secured Party or any other person that arise out of or in connection with the performance or non-performance by the Investment Manager of its duties under the Investment Management Agreement.

**"Material Restructuring"** means any reduction or rescheduling of the interest or principal of a debt investment, or release of security, which results, or is expected to result, in a loss of value of the collateral affected by such reduction, rescheduling or release of security of more than 2%. For this purpose, the value of the collateral will be defined as the net present value of future payments discounted at the original interest rate pre-restructuring.

**"Maturity Date"** means 15 October ~~2039~~2041.

**"Minimum Rating Requirement"** in relation to the Custodian or any Paying Agent means A3 by Moody's, ~~A- by S&P, A- by Fitch, or~~BBB+ by S&P, A- by Fitch (save for so long as Deutsche Bank AG, London Branch is appointed as the Custodian or a Paying Agent, the Minimum Rating Requirement in relation to the Custodian or that Paying Agent shall mean Baa1 by Moody's, BBB+ by S&P, BBB+ by Fitch), or, in any case, such other rating as may be agreed in writing by the Issuer and the Trustee (as directed by the Noteholders acting as a single class by way of an Extraordinary Resolution).<sup>1</sup>

**"Monthly Report"** means the report defined as such in the Investment Management Agreement which is prepared by the Collateral Administrator (in consultation with and based on certain information provided by the Investment Manager), on behalf of the Issuer and made available on the secure investor reporting website by the Collateral Administrator to the Noteholders, the Issuer, the Principal Paying Agent and the Trustee no later than the 15<sup>th</sup> calendar day of each month following the First Purchase Date (and if such a day is not a Business Day, the immediately following Business Day).

**"Moody's"** means Moody's Investors Service Limited, and any successor or successors thereto.

**"Non-Defaulting Noteholders"** means in relation to a Note Advance, each Noteholder who is not a Defaulting Noteholder and who has been requested to make one or more Note Advances.

**"Non-Permitted ERISA Holder"** means any Noteholder who has made or is deemed to have made a prohibited transaction, or made a Benefit Plan Investor or Other Plan Law representation that is subsequently shown to be false or misleading, or whose beneficial ownership otherwise causes a violation of the 25 per cent. limitation set out in Title I of ERISA and Section 4975 of the Code.

**"Note Advance"** means in relation to a Noteholder, each euro denominated advance made by that Noteholder after the Issue Date in an amount equal to the *Pro-Rata* Note Advance on the related Note Advance Date.

**"Note Advance Date"** means such date on which a Note Advance is requested to be made by a Noteholder pursuant to a Note Advance Request.

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<sup>1</sup> [This amendment is subject to the approval by the requisite majority of the Noteholders of the Proposed Waiver and Consent, as provided in section 3 \(Proposed Waiver and Consent\) of the Notice to Holders of Notes dated 20 July 2015.](#)

**"Note Advance Request"** means a notification by the Issuer to the Noteholders requesting a Note Advance from each Noteholder in the amount of its *Pro-Rata* Note Advance.

**"Note Available Commitment Period"** means the period from and including the Issue Date to but excluding the Note Available Commitment Termination Date.

**"Note Available Commitment Scheduled Termination Date"** means ~~the date falling 30 months from the Original Issue Date~~ 30 September 2016 (and if such date is not a Business Day, the immediately succeeding Business Day).

**"Note Available Commitment Termination Date"** means the earliest of:

- (a) the date on which the Undrawn Amount is zero;
- (b) the date upon which the Notes are redeemed pursuant to Condition 7 (*Redemption*);
- (c) the date on which an Enforcement Event occurs; and
- (d) the Note Available Commitment Scheduled Termination Date,

and in each case above, if such date is not a Business Day, the immediately succeeding Business Day.

On the Business Day immediately preceding the Note Available Commitment Scheduled Termination Date, the Issuer may but is not obliged to, draw down a Note Advance in an amount of up to the Undrawn Amount on such date and credit the proceeds thereof to the Principal Account for the investment thereof in Debt Investments, provided that (x) the Investment Manager (acting on behalf of the Issuer) has entered into negotiations regarding the purchase of such Debt Investments or (y) without prejudice to this sub-paragraph (x), key terms have been agreed or an offer, agreement in principle, letter of intent or memorandum of understanding, has been made or entered into in writing and in good faith by the Investment Manager (acting on behalf of the Issuer) and the seller thereof with the intention of the Issuer purchasing such Debt Investments, (regardless of whether such arrangement is legally binding as at the Note Available Commitment Termination Date) and such purchase under either paragraph (x) or (y) above or a combination of both is expected by the Investment Manager to settle within 6 months of the Note Available Commitment Termination Date.

**"Note Commitment"** means in relation to a Noteholder, the aggregate maximum amount of Note Advances which may be requested of such Noteholder pursuant to the Notes.

**"Note Conditions"** means the Original PPN Conditions, the Conditions, the Further PPN Conditions, the Substitute PPN Conditions and the Replacement PPN Conditions.

**"Noteholders"** means the Original PPN Holders, the PPN Holders, the Further PPN Holders, the Substitute PPN Holders and the Replacement PPN Holders.

**"Noteholder's Specified Address"** means in relation to a Noteholder, as at the date any notice is sent, the address of such Noteholder (if any) which has been notified to the Issuer as such.

**"Notes"** means the €25,000,000 Secured Revolving Profit Participating Notes due 2039 comprising, where the context permits, the notes constituted by the Supplemental Trust Deed or the Drawn Amount thereof for the time being or, as the context may require, a specific number thereof and includes any replacements for Notes issued pursuant to Condition 13 (*Replacement of PPNs*). References in these Conditions to the "Notes" include any Further PPNs issued pursuant to Condition 19 (*Further Issues*) together with the Original PPNs and Replacement PPNs and Substitute PPNs.

**"Note Tax Event"** means, at any time, the introduction of a new, or any change in, any home jurisdiction or foreign tax statute, treaty, regulation, rule, ruling, practice, procedure or judicial decision or interpretation (whether proposed, temporary or final) which results in (or would on the next Payment Date result in) any payment of principal or interest on the Notes becoming properly subject to any deduction or withholding for or on account of any tax (other than with regard to FATCA).

**"Note Transaction Documents"** means the Transaction Documents, the Further PPN Transaction Documents, the Substitute PPN Transaction Documents and the Replacement PPN Transaction Documents.

**"Note Trust Deeds"** means the Trust Deed, any Further PPN Trust Deed, any Substitute PPN Trust Deed and any Replacement PPN Trust Deed, and in each case, any trust deed supplemental thereto.

**"Notice of Default"** has the meaning given thereto in Condition 10.1(d) (*Breach of Other Obligations*).

**"Obligor"** means, in respect of a Debt Investment, the infrastructure company which is the borrower thereunder or issuer thereof or, in either case, the guarantor thereof.

**"Optional Early Redemption Date"** means the first Payment Date falling 15 years after the Original Issue Date.

**"Optional Early Redemption Event"** means (a) the Optional Early Redemption Date or (b) any Payment Date falling after the date when the aggregate Drawn Amount of the Notes is below 5 per cent. of the aggregate Drawn Amount of the Notes as at the Note Available Commitment Termination Date.

**"Ordinary Resolution"** means a resolution (other than an Extraordinary Resolution or Unanimous Resolution) passed in a meeting of Noteholders (other than the holders of Substitute PPNs) duly convened and held in accordance with the Trust Deed by more than 50 per cent. of the votes cast or a Written Resolution as an Ordinary Resolution passed in accordance with paragraph 12 (*Written Resolutions*) of schedule 4 of the Trust Deed.

**"Original Issue Date"** means 25 July 2013, being the date on which the Original PPNs are issued.

**"Original PPN Conditions"** means the conditions of the Original PPNs.

**"Original PPN Holders"** means the holders of the Original PPNs.

**"Other Plan Law"** means any state, local, other federal or non-U.S. laws or regulations that are substantially similar to the prohibited transaction provisions of Section 406 of ERISA or Section 4975 of the Code.

**"Outstanding"** means, as of any date of determination, all of the Notes issued, but not redeemed, as further defined in the Note Trust Deeds, and only in respect of calculating voting rights, giving instructions to the Trustee or determining whether a quorum has been met, the Principal Amount of such Notes whether or not drawn.

**"Partially Drawn Noteholder"** means each Noteholder whose Drawn Amount prior to the Note Available Commitment Termination Date is lower than the aggregate amount of Drawn Amount under the Notes multiplied by such Noteholder's *Pro-Rata* Share of the Undrawn Amount and divided by the aggregate of all of the Noteholders' Undrawn Amounts.

**"Payment Account"** means the account of the Issuer with the Account Bank specified as such, and into and out of which payments are made in accordance with Condition 4.9 (*Payments to and from the Accounts*).

**"Payment Date Report"** means the report defined as such in the Investment Management Agreement which is prepared by the Collateral Administrator (in consultation with and based on certain information provided by the Investment Manager), on behalf of the Issuer and made available on its secure investor reporting website by the Collateral Administrator to the Noteholders, the Issuer and the Trustee not later than the second Business Day preceding the related Payment Date.

**"Payment Dates"** means 15 April, 15 July, 15 October and 15 January in each year, commencing on the first Payment Date immediately following the First Purchase Date, and ending on the Maturity Date, provided that, if any Payment Date would otherwise fall on a day which is not a Business Day, it shall be postponed to the next day that is a Business Day and **"Payment Date"** shall be construed accordingly.

**"Person"** means an individual, corporation (including a business trust), partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated association or government or any agency or political subdivision thereof.

**"Portfolio"** means the portfolio of Debt Investments held by or on behalf of the Issuer from time to time.

**"Post-Acceleration Priority of Payments"** means the priority of payments set out in Condition 11.2(c) (*Post-Acceleration Priority of Payments*).

**"Potential Event of Default"** has the meaning given thereto in the Trust Deed.

**"PPN Holder"** means (a) in relation to PPNs in the form of Definitive Certificates, each person in whose name such PPNs are registered from time to time on the Register and (b) in relation to PPNs in the form of the Global Certificate, the several persons who are for the time being the holders of such PPNs, which expression shall, whilst the Global Certificate remains Outstanding, mean in relation to such PPNs represented thereby, each person who is for the time being shown in the records of the Clearing System through which interests in the Global Certificate are held as the holders of a particular principal amount of such PPNs for all purposes (in which regard any certificate or other document issued by the Clearing System as to the principal amount of PPNs represented by the Global Certificate standing to the account of any person shall be conclusive and binding for all purposes) other than with respect to the payment of any principal, premium (if any) and interest on such PPNs, the right to which shall be vested, as against the Issuer, solely in the registered owner of the Global Certificate in accordance with and subject to its terms and the terms of the Note Trust Deeds and **"holder"** and **"PPN Holder"** (in respect of the PPNs) shall be construed accordingly.

**"PPN Listing Deadline"** means the date falling ninety (90) calendar days after the Issue Date (and if such a date is not a Business Day, the immediately following Business Day).

**"Pre-Enforcement Priority of Payments"** means the Interest Proceeds Priorities of Payments and the Principal Proceeds Priorities of Payments.

**"Principal Account"** means the interest bearing account described as such in the name of the Issuer with the Account Bank into which Principal Proceeds are to be paid.

**"Principal Amount"** means, in respect of any Note, the maximum of the Drawn Amount that may be outstanding thereunder at any time.

**"Principal Proceeds"** means all amounts paid or payable into the Principal Account from time to time and, with respect to any Payment Date, means Principal Proceeds received or receivable by the Issuer during the related Due Period and any other amounts to be disbursed as Principal Proceeds on such Payment Date pursuant to Condition 4.2(b) (*Application of Principal Proceeds*).

**"Principal Proceeds Priorities of Payments"** means the priority of payments set out in Condition 4.2(b) (*Application of Principal Proceeds*).

**"Priorities of Payments"** means the Pre-Enforcement Priority of Payments and the Post-Acceleration Priority of Payments.

**"Pro-Rata Note Advance"** means in relation to a Noteholder and a Note Advance Date, and as specified in the related Note Advance Request, an amount equal to such Noteholder's *Pro-Rata* Share of the aggregate of the related Note Advances requested.

**"Pro-Rata Share"** means with respect to a Noteholder on any date of determination, the fraction (expressed as a percentage) the numerator of which is the Undrawn Amounts of such Noteholder on such date and the denominator of which is the aggregate of all of the Undrawn Amounts of all Noteholders (other than any Defaulting Noteholders and Substitute PPN Holders in relation thereto) on such date.

**"Quarterly Investment Management Report"** means the report defined as such in the Investment Management Agreement which is prepared by the Investment Manager on behalf of the Issuer and made available to the Noteholders, the Issuer and the Trustee not later than the second Business Day preceding the related Payment Date.

**"Rating Agency"** means any of Fitch, Moody's and S&P.

**"Reallocation Premium"** means, in respect of a Further PPN Holder on a Further Issue Date, a premium calculated by the Investment Manager pursuant to the Investment Management Agreement and these Conditions which is equal to the product of (a) the aggregate of (i) any costs incurred in connection with the acquisition of Debt Investments prior to the related Further Issue Date (other than the purchase price); (ii) the Initial Set Up Costs; and (iii) an amount of interest calculated at five per cent. per annum on the amounts specified in (a)(i) and (a)(ii) above and (b) the fraction, expressed as a percentage, the numerator of which is the Further PPN Holder's Principal Amount and the denominator of which is the aggregate of all the Principal Amounts of all Noteholders on such Further Issue Date (including those Notes issued on such Further Issue Date).

**"Reallocation Rebate"** means an equalisation amount payable by the Issuer to certain Noteholders on or promptly after the Note Available Commitment Termination Date to ensure that each Noteholder has paid its *pro-rata* share, based on each Noteholder's Drawn Amount as at the Note Available Commitment Termination Date, of the Initial Set Up Costs, costs incurred in connection with Debt Investments and interests paid thereon pursuant to the "Reallocation Premium", as determined by the Investment Manager prior to the Note Available Commitment Termination Date in accordance with the Investment Management Agreement.

**"Recalcitrant Noteholder"** means a Noteholder who does not comply with the Issuer's request for information or a waiver of law prohibiting disclosure of such information to a taxing authority to enable the Issuer to comply with FATCA.

**"Receiver"** has the meaning given to it in Condition 10.1(e) (*Insolvency Proceedings*).

**"Record Date"** means in relation to a Payment Date, the Business Day immediately preceding such Payment Date.

**"Redemption Date"** means the date specified for redemption of the Notes in whole pursuant to Condition 7.2 (*Redemption at the Option of the Noteholders*) or the date upon which the Notes are accelerated pursuant to Condition 10 (*Events of Default*), or in each case, if such day is not a Business Day, the next Business Day (unless it would fall in the following month, in which case such date shall be brought forward to the immediately preceding Business Day).

**"Redemption Price"** means, (a) in respect of a Defaulted Note, zero and (b) in respect of each other Note, (i) on the Maturity Date, the Drawn Amount thereof and (ii) in all other respects, the aggregate proceeds of sale, amortisation, run-off and/or liquidation of the Collateral or realisation of the security thereover remaining following application thereof in accordance with the Priorities of Payments.

**"Register"** means the register of holders of the title to the Notes kept by the Registrar pursuant to the terms of the Agency Agreement and an up-to-date copy of which will be separately maintained at the registered office of the Issuer by the Administrator.

**"Registrar Business Days"** means a day, other than a Saturday or a Sunday, on which banks are open for business in the local market of the Specified Office of the Registrar.

**"Replacement PPN Conditions"** means the conditions of the Replacement PPNs as set out in the Replacement PPN Trust Deed and **"Replacement PPN Condition"** shall be construed accordingly.

**"Replacement PPN Gross Bid Proceeds"** means, in relation to a Defaulting Noteholder, the highest Bid or Bids obtained by the Issuer and paid by the first subscriber for the relevant Replacement PPNs.

**"Replacement PPN Holders"** means (a) in relation to Replacement PPNs in the form of Definitive Certificates, each person in whose name such Replacement PPNs are registered from time to time on the applicable register and (b) in relation to Replacement PPNs in the form of one or more global certificates, the several persons who are for the time being the holders of such Replacement PPNs, which expression shall, whilst such global certificate(s) remain outstanding, mean in relation to such Replacement PPNs represented thereby, each person who is for the time being shown in the records of the Clearing System through which interests in the global certificate(s) are held as the holders of a particular principal amount of such Replacement PPNs for all purposes (in which regard any certificate or other document issued by the Clearing System as to the principal amount of Replacement PPNs represented by the global certificate(s) standing to the account of any person shall be conclusive and binding for all purposes) other than with respect to the payment of any principal, premium (if any) and interest on such Replacement PPNs, the right to which shall be vested, as against the Issuer, solely in the registered owner of the global certificate(s) in accordance with and subject to its terms and the terms of the Note Trust Deeds and **"Replacement PPN Holder"** (in respect of the Replacement PPNs) shall be construed accordingly.

**"Replacement PPN Net Bid Proceeds"** means, in relation to a Defaulting Noteholder, the highest Bid or Bids obtained by the Issuer and paid by the first subscriber for the relevant Replacement PPNs less all the expenses, costs and taxation incurred and any loss suffered by the Issuer as a result of the Defaulting Noteholder's failure to make a Note Advance and any default interest calculated by the Note Agent in consultation with the Investment Manager on a *prorated* basis using the EURIBOR three (3) month rate which appears on the date on which the default occurred on the display designated as page 248 on the Telerate Monitor, or such other page or service as may replace it for the purpose of displaying EURIBOR rates on the relevant date on which the default

occurred plus five hundred (500) basis points applied to the amount due by the Defaulting Noteholder from the relevant Note Advance Date on which the delay in payment occurred, until the date of issuance of the Replacement PPNs.

**"Replacement PPNs"** means in relation to a Defaulted Note, notes issued pursuant to the terms of the related Replacement PPN Trust Deed, the terms and conditions of which are identical to the related Defaulted Notes immediately prior to their cancellation in full at zero save that (a) the Principal Amount shall be reduced by the Shortfall Amount made by Non-Defaulting Noteholders in respect of the default related to such Defaulted Note (but not, for the avoidance of doubt, below the Drawn Amount thereof) and (b) interest shall accrue thereon from and including the issue date thereof. For the avoidance of doubt, Replacement PPNs may be issued in respect of PPNs, Further PPNs and existing Replacement PPNs.

**"Replacement PPN Transaction Documents"** means the Replacement PPN Trust Deeds, the Investment Management Agreement, the Euroclear Pledge Agreement, the Agency Agreement, the administration agreement, the subscription agreement(s) and the distribution agreement in respect of the Replacement PPNs and any documents supplemental or ancillary thereto.

**"Replacement PPN Trust Deed"** means each trust deed constituting the Replacement PPNs, expressed as being supplemental to the Trust Deed.

**"Resolutions"** has the meaning given to that term in Condition 14.1(b)(i) (*Decisions and Meetings of Noteholders*), and **"Resolution"** shall mean any of them.

**"Restructuring Date"** has the meaning given thereto in Condition 20(i)(a) (*Noteholders' Restructuring Option*).

**"Restructuring Option"** has the meaning given thereto in Condition 20(i)(a) (*Noteholders' Restructuring Option*).

**"Restructuring Option A"** has the meaning given thereto in Condition 20(i)(a)(i) (*Noteholders' Restructuring Option*).

**"Restructuring Option B"** has the meaning given thereto in Condition 20(i)(a)(ii) (*Noteholders' Restructuring Option*).

**"Revolving Debt Investment"** means any Debt Investment (other than a Delayed Drawdown Debt Investment) that (i) satisfies the requirements set forth in the Eligibility Criteria and (ii) is a loan (including, without limitation, a revolving loan, funded and unfunded portions of revolving credit lines and letter of credit, guarantee and lending facilities, unfunded commitments under specific and ancillary facilities and other similar loans and investments) that by its terms requires the Issuer either to make one or more future advances to the borrower or to indemnify or reimburse another lender of the borrower in connection with that lender's advances to the borrower for or on behalf of the Issuer; provided that any such obligation, interest or security will be a "Revolving Debt Investment" only until all commitments to make such advances expire or are irrevocably terminated or reduced to zero.

**"Revolving Reserve Account"** means the interest bearing account of the Issuer with the Account Bank into which amounts equal to the Unfunded Amounts in respect of certain Revolving Debt Investments and certain Delayed Drawdown Debt Investments identified by the Investment Manager in its sole discretion in accordance with Condition 4.9(e) (*Revolving Reserve Account*) and certain principal payments received in respect of such Revolving Debt Investments and Delayed Drawdown Debt Investments, are paid.

**"S&P"** means Standard & Poor's Credit Market Services Europe Limited, and any successor or successors thereto.

**"Sale Proceeds"** means proceeds received upon the sale or other realisation of any Debt Investment.

**"Secured Party"** means each of the Noteholders, the Trustee, the Agents, the Investment Manager, the Collateral Administrator, the Administrator and (for as long as the Settlement Agreement has not been terminated in accordance with its terms) the Settlement Agent and **"Secured Parties"** means any two or more of them as the context so requires.

**"Short Term Ratings"** means the short term rating assigned by any Rating Agency. In the event that more than one Short Term Rating has been assigned, the Short Term Rating shall be:

- (a) in respect of two different Short Term Ratings, the lower of such Short Term Ratings; or
- (b) in respect of three different Short Term Ratings, the middle of such Short Term Ratings.

"**Shortfall Amount**" has the meaning given to that term in Condition 2(d)(ii) (*Failure to make a Note Advance*).

"**Specified Office**" means, in respect of the Principal Paying Agent, any Paying Agent or the Registrar, the relevant office set forth at the foot of these Conditions (or such other office as may be notified to the PPN Holders from time to time in accordance with Condition 16 (*Notices*)).

"**Stated Maturity**" means, with respect to any Debt Investment, the date specified in such obligation as the fixed date on which the final payment or repayment of principal of such obligation is due and payable.

"**Sub-Custodian**" means the sub-custodian appointed by the Custodian in accordance with clause 14.4 (*Appointment of Sub-Custodian*) of the Agency Agreement.

"**Substitute PPN**" means a note issued in accordance with Condition 2(d) (*Failure to make a Note Advance*), the terms and conditions of which are identical to those of its related Defaulted PPN as at the related Default Letter Notification Date, save that (a) the Drawn Amount of such Substitute PPN shall be equal to the product of the Drawn Amount of the related Defaulted Note as at the related Default Letter Notification Date and the applicable Substitute PPN Haircut Percentage, (b) the Principal Amount of such Substitute PPN shall equal its Drawn Amount, (c) such Substitute PPN shall be issued in registered global form pursuant to a trust deed supplemental to the Trust Deed, (d) the Substitute PPN Holder shall not, with the exception of Extraordinary Resolutions and Unanimous Resolutions, be entitled to vote on resolutions, directions or authorisations, and (e) no application shall be made to list such Substitute PPNs on any stock exchange unless requested by the holder of such Substitute PPNs in accordance with the relevant Subscription Agreement. For the avoidance of doubt, Substitute PPNs may be issued in respect of PPNs, Further PPNs and Replacement PPNs.

"**Substitute PPN Conditions**" means the conditions of the Substitute PPNs as set out in the Substitute PPN Trust Deed and "**Substitute PPN Condition**" shall be construed accordingly.

"**Substitute PPN Haircut Percentage**" means in relation to a Substitute PPN, the percentage applicable to the Drawn Percentage of the related Defaulted Note at the related Default Letter Notification Date as appearing in the table below:

	Drawn Percentage (DP)			
	DP < 60%	60% < DP < 70%	70% < DP < 80%	80% < DP < 100%
Haircut Percentage	50%	60%	70%	80%

"**Substitute PPN Holders**" means (a) in relation to Substitute PPNs in the form of Definitive Certificates, each person in whose name such Substitute PPNs are registered from time to time on the applicable register and (b) in relation to Substitute PPNs in the form of one or more global certificates, the several persons who are for the time being the persons shown in the records of the Clearing System through which interests in the global certificate(s) are held as the holders of a particular principal amount of such Substitute PPNs for all purposes (in which regard any certificate or other document issued by the Clearing System as to the principal amount of Substitute PPNs represented by the global certificate(s) standing to the account of any person shall be conclusive and binding for all purposes) other than with respect to the payment of any principal, premium (if any) and interest on such Substitute PPNs, the right to which shall be vested, as against the Issuer, solely in the registered owner of the global certificate(s) in accordance with and subject to its terms and the terms of the Substitute PPN Trust Deed and "**Substitute PPN Holder**" (in respect of the Substitute PPNs) shall be construed accordingly.

"**Substitute PPN Transaction Documents**" means the Substitute PPN Trust Deeds, the Investment Management Agreement, the Euroclear Pledge Agreement, the Agency Agreement, the administration agreement, any subscription agreements (if applicable) and the distribution agreement in respect of the Substitute PPNs and any documents supplemental or ancillary thereto.



**"Substitute PPN Trust Deed"** means each trust deed constituting the Substitute PPNs, expressed as being supplemental to the Trust Deed.

**"Target Expense Reserve Balance"** means:

- (a) with respect to each Payment Date prior to the First Purchase Date, zero;
- (b) with respect to the First Purchase Date and each subsequent Payment Date prior to the Note Available Commitment Termination Date, the product of (x) €400,000 divided by the number of Payment Dates from and including the Payment Date immediately following the First Purchase Date to and including the Payment Date falling on or immediately before the Note Available Commitment Scheduled Termination Date and multiplied by (y) the number of Payment Dates from and including the Payment Date immediately following the First Purchase Date to and including such subsequent Payment Date; and
- (c) with respect to each Payment Date from and including the Note Available Commitment Termination Date, the Expense Reserve Amount.

**"Termination Payment"** means an amount payable to the Investment Manager in connection with, and as a condition to, its removal without Cause (as such term is defined in the Investment Management Agreement) subject to and in accordance with the provisions of the Investment Management Agreement.

**"Transaction Documents"** means the Trust Deed, the Agency Agreement, the Investment Management Agreement, the Administration Agreement, the Subscription Agreements, the Distribution Agreement, the Euroclear Pledge Agreement, the Settlement Agreement and any documents supplemental or ancillary thereto.

**"Trust Collateral"** has the meaning given thereto in Condition 4.10(a)(viii) (*Security*).

**"Trustee Fees and Expenses"** means the fees and expenses and other amounts (including, for the avoidance of doubt, by way of indemnity) payable to the Trustee pursuant to the Trust Deed from time to time (including, for the avoidance of doubt, any applicable value added tax).

**"Unanimous Resolution"** means a resolution passed at a meeting of Noteholders duly convened and held in accordance with the Trust Deed by unanimous consent of all Noteholders voting at such meeting or a Written Resolution passed in accordance with paragraph 12 (*Written Resolutions*) of schedule 4 to the Trust Deed.

**"Undrawn Amount"** means, with respect to any Note and any Noteholder on any date of determination, the difference between its Principal Amount and its Drawn Amount .

**"Unfunded Amount"** means, with respect to any Revolving Debt Investment or Delayed Drawdown Debt Investment identified by the Investment Manager in accordance with condition 4.9(e) (*Revolving Reserve Account*) an amount determined by the Investment Manager in its sole discretion which is necessary or desirable in order for the Issuer to meet its funding obligations under or in connection with the relevant Revolving Debt Investment or Delayed Drawdown Debt Investment.

**"VAT"** means value added tax imposed in any member state of the European Union pursuant to the Council Directive of 28 November 2006 on the common system of value added tax and national legislation implementing or supplemental to that Directive and any other sales or turnover tax of a similar nature imposed in any country that is not a member state of the European Union.

**"Written Resolution"** means any Resolution of the Noteholders (other than, in the case of Ordinary Resolutions, the holders of Substitute PPNs) acting as a single class in writing, as described in Condition 14.1(b)(iv) (*Written Resolutions*) and as further described in the Trust Deed.

## 1.2 Interpretation

In these Conditions:

- (a) headings are inserted for convenience and ease of reference only and shall not affect the interpretation of these Conditions;

- (b) all references to any statute or any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment from time to time of any statutory instrument, order or regulation made thereunder or under such modification or re-enactment;
- (c) all references to any agreement, deed or other document shall refer to such agreement, deed or other document as the same may be amended, supplemented or modified from time to time; and
- (d) references to any person include references to the successors and permitted assigns thereof.

## 2. **PPNs**

### (a) ***Conditions to Note Advances***

Prior to any Note Advance being requested, each of the following conditions precedent shall be satisfied:

- (i) the amount of such Note Advance is in a minimum denomination of €1,000,000 and in excess thereof in one or more multiples of the Authorised Integral Amount, or, if less, an amount equal to the Undrawn Amount;
- (ii) the PPNs have been admitted to the official list of the Irish Stock Exchange and admitted to trading on its regulated market;
- (iii) the Note Available Commitment Termination Date has not occurred; and
- (iv) both prior to and after giving effect to any such Note Advance, no Event of Default or Potential Event of Default shall have occurred, as certified to the Trustee by the Issuer.

### (b) ***Use of Proceeds***

The Issuer shall apply all amounts raised from the Note Advances made under the PPNs, after payment of the Initial Set Up Costs, as follows:

- (i) in payment to the Principal Account in accordance with Condition 4.9(b) (Principal Account) and used to, amongst other things, purchase Debt Investments from time to time recommended to it by the Investment Manager;
- (ii) on the First Purchase Date, in an amount equal to the Target Expense Reserve Balance from the proceeds of the first Note Advance, in payment to the Expense Reserve Account in accordance with Condition 4.9(d)(A); and
- (iii) if applicable, in payment into the Revolving Reserve Account for application in the funding of Unfunded Amounts of any Revolving Debt Investments and Delayed Drawdown Debt Investments identified by the Investment Manager when required pursuant to any such obligation,

all as further described in Condition 4.9 (*Payments to and from the Accounts*).

### (c) ***Reduction of the Undrawn Amount and Increase of the Drawn Amount***

- (i) Following the payment of a Note Advance by each PPN Holder to the Issuer, the Issuer shall procure that (i) the Drawn Amount of the PPNs is increased by an amount equal to the amount of such Note Advance and (ii) the Undrawn Amount is correspondingly reduced by an amount equal to the amount of such Note Advance.
- (ii) Following any repayment of the PPNs and reduction of the Drawn Amount of the PPNs during the Note Available Commitment Period, the Undrawn Amounts shall be increased by the amount of each such repayment and shall therefore be available to be requested for re-drawing under a Note Advance during the Note Available Commitment Period.

(d) **Failure to make a Note Advance**

- (i) The aggregate of all Note Advances requested on a Note Advance Date is the "**Aggregate Note Advance**". If any Noteholder has been identified at any time as having failed to advance to the Issuer its *pro rata* share of the Aggregate Note Advance in respect of a Note by close of business on the relevant Note Advance Date (a "**Defaulted Note**" and such Noteholder, a "**Defaulting Noteholder**"), the Issuer shall send such Defaulting Noteholder a default letter (the "**Default Letter**") in accordance with Condition 16 (*Notices*) (with a copy to the Trustee, the Registrar, the Principal Paying Agent and the Note Agent). The Default Letter will specify the amount of the Note Advance that was due and unpaid. Furthermore, the Default Letter shall request that the Defaulting Noteholder confirm to the Issuer the Defaulting Noteholder's Account to which the Issuer shall, or (whilst the Notes are in global form) the Issuer shall procure that the Clearing Systems shall, pay any Replacement PPN Net Bid Proceeds to which the Defaulting Noteholder may become entitled pursuant to paragraph (v) below.
- (ii) On and from the Default Letter Notification Date, the Issuer is entitled, but is not obliged, to request further Note Advances from non-Defaulting Noteholders (the "**Non-Defaulting Noteholders**") in order to fund all or part of such Defaulting Noteholder's Note Advance, in an amount that is equal to each such Non-Defaulting Noteholder's *Pro-Rata* Share of the aggregate amount which needs to be advanced by all Non-Defaulting Noteholders (such aggregate amount, the "**Shortfall Amount**") and that shall not exceed the Undrawn Amounts of such Non-Defaulting Noteholders.
- (iii) The Issuer shall redeem the Notes of the Defaulting Noteholder on the Default Letter Notification Date in consideration for the issue by the Issuer of a Substitute PPN to the Defaulting Noteholder. The drawn amount of such Substitute PPN shall be equal to the product of the Drawn Amount of the related Defaulted Note and the applicable Substitute PPN Haircut Percentage. The Defaulting Noteholder's obligation to advance its Note Advance shall extinguish upon the issuance by the Issuer to the Defaulting Noteholder of such Substitute PPN.
- (iv) The Issuer shall for a period of 3 months use reasonably commercial efforts to solicit bids (each a "**Bid**") from investors (including the Non-Defaulting Noteholders) (each a "**Bidder**") specifying the issue price at which the Bidder will subscribe for Notes, the terms and conditions of which shall be identical to those of the Notes of that Defaulting Noteholder as at the Default Letter Notification Date ("**Replacement PPNs**") save that (i) the Principal Amount shall be reduced by the Shortfall Amount made by Non-Defaulting Noteholders pursuant to paragraph (ii) above in respect of such default by such Defaulting Noteholder and (ii) interest shall accrue on such Replacement PPN from and including the issue date thereof in accordance with the Priorities of Payments, provided always that the issue price for the Replacement PPNs shall not be lower than an amount equal to (i) the Drawn Amount of the Notes of the relevant Defaulting Noteholder multiplied by (ii) the relevant Substitute PPN Haircut Percentage.
- (v) The Investment Manager shall determine and inform the Note Agent, the Issuer and the Defaulting Noteholder of the Replacement PPN Net Bid Proceeds.
- (vi) Not less than 5 Business Days following the later of (i) receipt by the Issuer of Replacement PPN Bid Proceeds and (ii) receipt of details of the related Defaulting Noteholder's Account, the Issuer shall redeem the related Substitute PPN in consideration for the payment to such Defaulting Noteholder of the Replacement PPN Net Bid Proceeds to the credit of Defaulting Noteholder's Account. On such redemption date the Issuer shall not be obliged to pay any accrued but unpaid interest on such Substitute PPN.
- (vii) The Issuer or the Investment Manager on behalf of the Issuer shall take all commercially reasonable steps to mitigate against any losses, costs or expenses incurred as a result of the Defaulting Noteholder's failure to make a Note Advance.

3. **Form, Title and Transfer**

3.1 **Form**

The PPNs are issued in registered form in the denomination of €125,000 without interest coupons.

### 3.2 **Title**

Title to the PPNs passes upon registration of transfers in the Register in accordance with the provisions of the Agency Agreement. The registered holder of the PPNs will (except as otherwise required by law) be treated as its absolute owner for all purposes (whether or not it is overdue and regardless of any notice of ownership, trust or any interest in it, any writing on it, or its theft or loss) and no person will be liable for so treating such registered holder.

### 3.3 **Transfer of PPNs**

The PPNs may be transferred by surrender at the Specified Office of the Registrar or its agent of the Definitive Certificates representing the PPNs (together with the form of transfer endorsed on the Definitive Certificate duly completed and executed), in each case together with such other evidence and documentation as the Registrar may require.

Any transfer of any PPNs shall be subject to:

- (i) each transfer of a PPN being in respect of the whole of the PPN and not a part;
- (ii) compliance with all applicable laws;
- (iii) the transferee being an Eligible Purchaser,

and any purported transfer in contravention of any of the above conditions shall be void.

### 3.4 **Transfer Free of Charge**

Transfer of PPNs in accordance with these Conditions will be effected without charge by or on behalf of the Issuer or the Registrar, but upon payment of any tax or other governmental charges which may be imposed in relation to it (and/or, at the election of the Registrar or the Issuer, upon the giving of such indemnity as the Registrar or the Issuer may require in respect thereof).

### 3.5 **Closed Periods**

The PPN Holders may not require the transfer of the PPNs to be registered during the period from and including each Determination Date to and including the related Payment Date.

### 3.6 **Forced Transfer of Certain Notes**

- (i) If the Noteholder is determined by the Issuer to be either a Recalcitrant Noteholder or a Non-Permitted ERISA Holder, the Noteholder may be required by the Issuer to sell or otherwise transfer such Notes to an Eligible Purchaser (selected by the Issuer) at a price to be agreed between the Issuer (exercising its sole discretion) and such Eligible Purchaser at the time of sale, subject to the transfer restrictions set out herein. Each Noteholder and each other Person in the chain of title from the Noteholder, by its acceptance of an interest in such Notes, will be deemed to agree to co-operate with the Issuer and the Trustee, to the extent required to effect such transfers. None of the Issuer, the Trustee or any Agent shall be liable to any Person having an interest in the Notes sold or otherwise transferred as a result of any such sale or transfer. The Issuer shall be entitled to deduct from the sale or transfer price an amount equal to all the expenses and costs incurred and any loss suffered by the Issuer as a result of such forced transfer. The Recalcitrant Noteholder or a Non-Permitted ERISA Holder will receive the balance, if any. In addition, the Recalcitrant Noteholder or the Non-Permitted ERISA Holder will indemnify the Issuer, the Trustee and the Registrar and the other Agents for all costs and expenses incurred and any loss incurred (taking into account any amounts deducted from the sale or transfer price for such purpose).
- (ii) If the Issuer is, for any reason, not able to transfer the Notes held by the Recalcitrant Noteholder or Non-Permitted ERISA Holder (as the case may be) to an Eligible Purchaser in accordance with Condition 3.6(i) above, the Recalcitrant Noteholder or Non-Permitted ERISA Holder shall continue to hold such Notes.

#### 4. **Status and Priorities of Payments**

##### 4.1 **Status**

The PPNs constitute direct, general, secured, unconditional and limited recourse obligations of the Issuer, recourse in respect of which is limited in the manner described in Condition 4.10 (*Limited Recourse*). The Notes are secured on the Collateral in the manner described in Condition 4.10 (*Security*) and the Notes shall at all times rank *pari passu* and rateably and without any preference amongst themselves. The PPNs are constituted by the Supplemental Trust Deed.

##### 4.2 **Pre-Enforcement Priority of Payments**

The Collateral Administrator shall (other than in the case of an optional redemption in whole pursuant to Condition 7.2 (*Redemption at the Option of the Noteholders*) or following the delivery of an Acceleration Notice), on the basis of the Payment Date Report prepared by the Collateral Administrator as of each Determination Date in consultation with the Investment Manager pursuant to the terms of the Investment Management Agreement, cause the Account Bank to disburse Interest Proceeds and Principal Proceeds from the Interest Account and the Principal Account, respectively, to the Payment Account on the Business Day prior to each Payment Date, and such Interest Proceeds and Principal Proceeds shall be applied in accordance with the following priorities of payments (the "**Pre-Enforcement Priority of Payments**"):

###### (a) ***Application of Interest Proceeds***

Interest Proceeds shall (save for on any Redemption Date relating to any optional redemption of the Notes pursuant to Condition 7.2 (*Redemption at the Option of the Noteholders*) or following the delivery of an Acceleration Notice in which event the Post-Acceleration Priority of Payments shall apply) be applied on any Payment Date and on the Maturity Date in the following order of priority:

- (i) to the payment of Luxembourg taxes not covered in paragraph (a)(ii) below;
- (ii) to the payment of any Luxembourg corporate tax liabilities owing by the Issuer accrued in respect of the related Due Period (as certified by an Authorised Officer of the Issuer to each of the Trustee and the Collateral Administrator);
- (iii) to the payment of accrued and unpaid Trustee Fees and Expenses excluding prior to the occurrence of an Event of Default only any such fees and expenses that are Extraordinary Administrative Expenses;
- (iv) to the payment on a *pro rata* and *pari passu* basis of all amounts then due and payable in respect of (x) the Administrative Expenses (other than item (k) of the "Administrative Expenses" definition), up to an amount equal to the Administrative Expenses Cap (for the avoidance of doubt such Administrative Expenses Cap shall only apply prior to the occurrence of an Event of Default) and (y) item (k) of the "Administrative Expenses" definition;
- (v) on a *pro rata* and *pari passu* basis of (i) the Due Diligence and Bid Expenses (ii) the Investment Management Fee and (iii) any Termination Payment, in each case, due and payable on such Payment Date or Maturity Date to the Investment Manager and any value added tax in respect thereon (whether payable to the Investment Manager or directly to the relevant taxing authority);
- (vi) to the payment into the Expense Reserve Account of an amount equal to the Expense Reserve Account Payment Amount; and
- (vii) any remaining Interest Proceeds, to the payment of all Interest Amounts due and payable on the PPNs and interest due and payable on the other Notes, on a *pro rata* and *pari passu* basis.

###### (b) ***Application of Principal Proceeds***

Principal Proceeds (save for on any Redemption Date relating to any optional redemption of the Notes pursuant to Condition 7.2 (*Redemption at the Option of the Noteholders*) or following the delivery of an Acceleration Notice in which event the Post-Acceleration Priority of Payments shall apply) shall be applied in the following order of priority:

- (i) on each Payment Date, to the payment on a sequential basis of the amounts referred to in paragraphs (i) through (vi) (inclusive) of the Interest Proceeds Priorities of Payments to the extent not paid in full thereunder;
- (ii) on each Payment Date immediately following a Further Issue Date in payment of the Reallocation Premium to the Noteholders (other than the relevant Further PPN Holders) as determined by the Investment Manager;
- (iii) on each Payment Date during the Investment Period, at the discretion of the Investment Manager, either to (i) credit the Principal Account for investment in Debt Investments and/or (ii) the payment of any amounts used to acquire any Debt Investments;
- (iv) on any Payment Date prior to the Maturity Date at the discretion of the ~~Issuer~~**Investment Manager (i)** in or towards repayment of the Drawn Amount of the Notes, on a *pro rata* and *pari passu* basis and/or (ii) if, on any Determination Date, the aggregate principal amount outstanding under the Debt Investments as of the beginning of the Due Period immediately prior to such Payment Date exceeds the Drawn Amount of the Notes, an amount of Principal Proceeds up to such excess, to credit the Interest Account for application under the Interest Proceeds Priorities of Payments, or any combination thereof; and
- (v) on the Maturity Date in redemption in full of the Notes on a *pro rata* and *pari passu* basis.

#### 4.3 Non-payment of Amounts

Failure on the part of the Issuer to pay the Interest Amounts due and payable on the Notes pursuant to Condition 6 (*Interest*) and the Pre-Enforcement Priority of Payments shall not be an Event of Default unless and until such failure continues for a period of at least five Business Days (or where such failure results from an administrative error, in which case, at least seven Business Days), save in each case as the result of any deduction therefrom or the imposition of withholding thereon as set forth in Condition 9 (*Taxation*).

References to the amounts referred to in the Pre-Enforcement Priority of Payments of this Condition shall include any amounts thereof not paid when due in accordance with this Condition on any preceding Payment Date.

#### 4.4 Determination and Payment of Amounts

The Collateral Administrator will on each Determination Date calculate the amounts payable on the applicable Payment Date pursuant to the Priorities of Payments and will notify the Issuer, the Trustee, the Investment Manager, the Principal Paying Agent and the Registrar of such amounts by the second Business Day preceding the applicable Payment Date. The Account Bank (acting in accordance with the Payment Date Report compiled by the Collateral Administrator, on behalf of the Issuer) shall, on behalf of the Issuer not later than 10.00 a.m. (London time) on the Business Day preceding each Payment Date, cause the amounts standing to the credit of the applicable Accounts, to the extent required to pay the amounts referred to in the Pre-Enforcement Priority of Payments which are payable on such Payment Date, to be transferred to the Payment Account in accordance with Condition 4.9 (*Payments to and from the Accounts*) and from the Payment Account to the Principal Paying Agent by 10.00 a.m. (London time) on the Payment Date to the extent necessary to pay amounts due and payable under the PPNs in accordance with and subject to the Priorities of Payments.

#### 4.5 De Minimis Amounts

The Collateral Administrator may adjust the amounts required to be applied in payment of interest or principal on the PPNs from time to time pursuant to the Pre-Enforcement Priority of Payments so that the amount to be so applied in respect of each PPN is a whole amount, not involving any fraction of a Euro.

#### 4.6 Publication of Amounts

The Principal Paying Agent will cause details of the amounts of interest and principal to be paid, any amounts of interest payable but not paid and the Drawn Amount in respect of the PPNs for each Due Period and the relevant Payment Date to be notified at the expense of the Issuer to the Irish Stock

Exchange (or any stock exchange on which the PPNs are for the time being listed) and the PPN Holders in accordance with Condition 16 (*Notices*) no later than on the second Business Day preceding each Payment Date.

#### 4.7 **Notifications to be Final**

All notifications, opinions, determinations, certificates, quotations and decisions given, expressed, made or obtained or discretions exercised for the purposes of the provisions of this Condition 4 (*Status and Priorities of Payments*) will (in the absence of manifest error) be binding on the Issuer and the Secured Parties and no liability to the Issuer or any Noteholder shall be owed by the Collateral Administrator in connection with the exercise or non-exercise by it of their powers, duties and discretions under this Condition 4 (*Status and Priorities of Payments*).

#### 4.8 **Accounts**

The Issuer has opened the following accounts with the Account Bank:

- the Payment Account;
- the Interest Account;
- the Principal Account;
- the Expense Reserve Account; and
- the Revolving Reserve Account.

The Issuer has established the Custody Accounts with the Custodian.

Each of the Paying Agents and the Custodian shall at all times be a financial institution satisfying the Minimum Rating Requirement applicable thereto, which has the necessary regulatory authority, capacity and licences to perform the services required of a Paying Agent or the Custodian.

In the event that the Custodian and/or any Paying Agent no longer satisfies the Minimum Rating Requirement, it shall notify the Issuer, the Investment Manager, the Collateral Administrator and the Trustee as soon as practicable and the Issuer shall, upon receiving such notice from the Custodian and/or the relevant Paying Agent (as the case may be), promptly (a) notify the Noteholders in accordance with Condition 16 (*Notices*) that the Custodian and/or the relevant Paying Agent (as the case may be) no longer satisfies the Minimum Rating Requirement and (b) procure the appointment of a replacement Custodian and/or Paying Agent which satisfies the Minimum Rating Requirement in accordance with the Agency Agreement. The termination of the Custodian and/or Paying Agent will not be effective until a replacement Custodian and/or Paying Agent which satisfies the Minimum Rating Requirement has been appointed.

Amounts standing to the credit of the Accounts from time to time may be invested by the Issuer in Eligible Investments recommended to it by the Investment Manager in accordance with the Investment Management Agreement.

All interest accrued on any of the Accounts from time to time shall be paid into the Interest Account, save to the extent that the Issuer is contractually bound to pay such amounts to a third party. All principal amounts received in respect of Eligible Investments standing to the credit of any Account from time to time shall be credited to that Account upon maturity, save to the extent that the Issuer is contractually bound to pay such amounts to a third party. All interest accrued on such Eligible Investments (including capitalised interest received upon the sale, maturity or termination of any such investment) shall be paid to the Interest Account as, and to the extent provided, above.

Notwithstanding any other provisions of this Condition 4.8 (*Accounts*):

- (a) all amounts standing to the credit of each of the Accounts (other than (i) the Interest Account, (ii) the Payment Account, (iii) the Expense Reserve Account and (iv) all interest accrued on the Accounts) shall be transferred to the Payment Account and shall constitute Principal Proceeds on the Business Day prior to any redemption of the Notes in full; and

- (b) all amounts standing to the credit of the Interest Account, together with all other amounts which do not constitute Principal Proceeds as provided in paragraph (a) above (other than the Expense Reserve Account), shall be transferred to the Payment Account as Interest Proceeds on the Business Day prior to any redemption of the Notes in full.

#### 4.9 **Payments to and from the Accounts**

##### (a) ***Payment Account***

The Issuer shall procure (acting through the Account Bank) payment on the Business Day prior to each Payment Date, of all amounts standing to the credit of each of the Accounts which are required to be transferred from such Accounts to the Payment Account pursuant to this Condition 4.9 (*Payments to and from the Accounts*) for disbursement in accordance with the Pre-Enforcement Priority of Payments.

On each Payment Date, including the Maturity Date, the Principal Paying Agent (acting on the basis of the Payment Date Report) shall disburse such amounts in accordance with the Priorities of Payments on such Payment Date.

No other amounts shall be transferred to or withdrawn from the Payment Account at any other time or in any circumstances, save that (A) all interest accrued on the Payment Account shall be credited to the Interest Account and (B) following the delivery of an Acceleration Notice or on a redemption of the Notes in full, Interest Proceeds, Principal Proceeds and the net proceeds of enforcement of the security over the Collateral shall be credited to the Payment Account (or such other account as the holder of the Notes, entitled to direct the Trustee with respect to enforcement shall designate to the Trustee) and shall be distributed in accordance with the Post-Acceleration Priority of Payments.

##### (b) ***Principal Account***

The Issuer (acting through the Account Bank) will procure that the following amounts are paid into the Principal Account promptly upon receipt thereof and shall constitute Principal Proceeds:

- (i) all premiums (including prepayment premiums) receivable upon redemption of any Debt Investment at maturity or otherwise or upon the sale of any put or call option in respect thereof which is above the outstanding principal amount of any Debt Investment;
- (ii) all fees and commissions received in connection with the purchase or sale of any Debt Investments or work out or restructuring of any Debt Investments;
- (iii) all Sale Proceeds received in respect of a Debt Investment;
- (iv) all amounts transferred to the Principal Account from any other Account;
- (v) any other amounts received in respect of the Collateral which are not required to be paid into another Account;
- (vi) an amount equal to all principal payments received in respect of any Debt Investment, including, without limitation (A) amounts received in respect of any maturity, scheduled amortisation, prepayment or mandatory sinking fund payment on a Debt Investment; and (B) any other principal payments with respect to Debt Investments (to the extent not included in the Sale Proceeds) but excluding any such payments received in respect of any Revolving Debt Investment or Delayed Drawdown Debt Investment, to the extent required to be paid into the Revolving Reserve Account;
- (vii) on each Note Advance Date, the proceeds of each Note Advance received from any Noteholder (net of any amounts paid into the Expense Reserve Account);
- (viii) any Reallocation Premium received from any Noteholder;
- (ix) any Reallocation Rebates received from Noteholders who are not Partially Drawn Noteholders;
- (x) all Replacement PPN Gross Bid Proceeds; and



- (xi) the amount of €72,500 which forms part of the issue price of the PPNs and which will be credited to the Principal Account on the Issue Date.

The Issuer (acting through the Account Bank) shall procure payment of the following amounts (and shall ensure that payment of no other amount is made, save to the extent otherwise permitted above) out of the Principal Account:

- (1) on the Business Day prior to each Payment Date, all Principal Proceeds standing to the credit of the Principal Account to the Payment Account to the extent required for disbursement pursuant to the Principal Proceeds Priorities of Payments (save for amounts deposited after the end of the related Due Period and save for amounts to be applied in accordance with item (3) below);
- (2) at any time in repayment of any Notes on a *pro rata* and *pari passu* basis;
- (3) during the Investment Period, to acquire any Debt Investments;
- (4) promptly on or after the Note Available Commitment Termination Date in payment of the Reallocation Rebate to Partially Drawn Noteholders;
- (5) in relation to any costs incurred in connection with the acquisition of Debt Investments;
- (6) not less than ten Business Days following receipt by the Issuer thereof, Replacement PPN Net Bid Proceeds to the related Defaulting Noteholder's Account if the Issuer has been notified thereof in accordance with paragraph (ii) of Condition 2(d) (*Failure to make a Note Advance*);
- (7) all Replacement PPN Net Bid Proceeds not applied in accordance with paragraph (6) above, to the Interest Account; or
- (8) at any time, to the Revolving Reserve Account to the extent required to satisfy the Unfunded Amounts.

(c) ***Interest Account***

The Issuer (acting through the Account Bank) will procure that the following amounts are credited to the Interest Account promptly upon receipt thereof and shall constitute Interest Proceeds:

- (i) all interest accrued on the Accounts from time to time;
- (ii) all amendment and waiver fees, delayed compensation, all late payment fees, all commitment fees, and all other fees and commissions received in connection with any Debt Investments (other than fees and commissions received in connection with the purchase or sale of any Debt Investments or work out or restructuring of any defaulted Debt Investments or Debt Investments which fees and commissions shall be payable into the Principal Account and shall constitute Principal Proceeds);
- (iii) all fees and commissions (such as syndication fees or commitment fees) received in connection with defaulted Debt Investments and the purchase or sale of any Debt Investment;
- (iv) amounts required to be transferred to the Interest Account from any other Account; **and**
- (v) all cash payments of interest in respect of the Debt Investments and any deferred interest received in respect of any Debt Investments including any capitalised interest together with all amounts received by the Issuer by way of gross-up in respect of such interest and in respect of a claim under any applicable double taxation treaty and any interest received in respect of any defaulted Debt Investments; **and**

**(vi) all amounts payable into the Interest Account pursuant to Condition 4.2(b)(iv) (*Application of Principal Proceeds*)**

The Issuer shall procure that all Interest Proceeds standing to the credit of the Interest Account shall be transferred on the Business Day prior to each Payment Date, to the Payment Account to the extent required for disbursement pursuant to the Interest Proceeds Priorities of Payments, save for amounts deposited after the end of the related Due Period.

(d) ***Expense Reserve Account***

The Issuer will procure that the following amounts are paid into the Expense Reserve Account:

- (A) on the First Purchase Date, in an amount equal to the Target Expense Reserve Balance from the proceeds of the first Note Advance; and
- (B) on each Payment Date, the Expense Reserve Account Payment Amount.

The Issuer shall procure payment of the following amounts (and shall ensure that payment of no other amount is made) out of the Expense Reserve Account:

- (1) on the Business Day prior to each Payment Date, any balance standing to the credit of the Expense Reserve Account after providing for the payments referred to in paragraph (3) below on the related Payment Date in excess of the Target Expense Reserve Balance at the end of the related Due Period to the Payment Account for disbursement as Interest Proceeds in accordance with Condition 4.2 (*Pre-Enforcement Priority of Payments*);
- (2) on any date other than a Payment Date, an amount not exceeding €30,000 for any period from (but excluding) the immediately preceding Payment Date to (but excluding) the immediately succeeding Payment Date, in payment of any amounts of the kinds described in items (i), (ii) and (iv) of the Interest Proceeds Priorities of Payments;
- (3) on each Payment Date, in payment of Extraordinary Administrative Expenses in the following order (a) in payment of Extraordinary Administrative Expenses of the Trustee and (b) in payment, on a *pari passu* basis, of Extraordinary Administrative Expenses of the Agents, the Settlement Agent and the Collateral Administrator and their respective officers, directors and employees, the Issuer Indemnified Persons and the Investment Manager; and
- (4) on the Business Day prior to the date of redemption or maturity of the Notes in full, any balance standing to the credit of the Expense Reserve Account after payment or provision for all amounts due and payable in respect of such redemption and all amounts referred to in paragraph (3) above to the Payment Account for disbursement as Interest Proceeds in accordance with Condition 4.2 (*Pre-Enforcement Priority of Payments*) or, as appropriate, Condition 11.2(c) (*Post-Acceleration Priority of Payments*).

(e) ***Revolving Reserve Account***

The Issuer (acting through the Collateral Administrator) shall procure the following amounts are paid into the Revolving Reserve Account:

- (A) upon the acquisition by or on behalf of the Issuer of a Revolving Debt Investment or Delayed Drawdown Debt Investment and if the Investment Manager in its sole discretion determines that it is necessary or desirable to credit the Revolving Reserve Account with an amount in order for the Issuer to meet its funding obligations under or in connection with the relevant Revolving Debt Investment or Delayed Drawdown Debt Investment, the Unfunded Amount of the relevant Revolving Debt Investment or Delayed Drawdown Debt Investment);
- (B) all principal payments received by the Issuer in respect of any Revolving Debt Investment, if and to the extent that the amount of such principal payments may be re-borrowed under such Revolving Debt Investment; and
- (C) all repayments of collateral to the Issuer originally paid by the Issuer pursuant to (1) below.

The Issuer (acting through the Collateral Administrator) shall procure payment of the following amounts (and shall ensure that no other amounts are paid) out of the applicable ledger of the Revolving Reserve Account:

- (1) all amounts required to fund any drawings under the relevant Delayed Drawdown Debt Investments or Revolving Debt Investments identified by the Investment Manager pursuant to Condition 4.9(e)(A) above or required to be deposited in the Issuer's name with any third party as collateral for any reimbursement or indemnification obligations of the Issuer owed to any other lender under such Revolving Debt Investment or Delayed Drawdown Debt Investment or to collateralise the Issuer's obligations to fund drawings under such Delayed Drawdown Debt Investment or Revolving Debt Investments (subject to such security documentation as may be agreed by such Obligor(s) under the relevant Debt Investment, the Investment Manager acting on behalf of the Issuer and the Trustee);
- (2) (A) at any time at the direction of the Investment Manager (acting on behalf of the Issuer) or (B) upon the sale (in whole or in part) of a Revolving Debt Investment or the reduction, cancellation or expiry of any commitment of the Issuer to make future advances or otherwise extend credit thereunder, any excess of (i) the amount standing to the credit of the Revolving Reserve Account over (ii) the sum of the Unfunded Amounts of all Revolving Debt Investments and Delayed Drawdown Debt Investments, after taking into account such sale or such reduction, cancellation or expiry of commitment;
- (3) at the discretion of the Investment Manager, acting on behalf of the Issuer, to the Principal Account, any amounts standing to the credit of the Revolving Reserve Account which is in excess of the Unfunded Amounts.

#### 4.10 **Security**

##### (a) **Security**

As security for its obligations under the PPNs, the other Notes and the Trust Deed, the Issuer, with full title guarantee, in favour of the Trustee for the benefit of the Secured Parties:

- (i) assigns by way of security all of the Issuer's present and future rights, title and interest (and all entitlements or other benefits relating thereto) in respect of all Debt Investments (including any debt or equity obligation received by the Issuer upon a restructuring of a Debt Investment) held by the Issuer from time to time, including, without limitation, monies received in respect thereof, all dividends and distributions paid or payable thereon, all property paid, distributed, accruing or offered at any time on, to or in respect of or in substitution thereof and the proceeds of sale, repayment and redemption thereof;
- (ii) assigns by way of security all of the Issuer's present and future rights, title and interest (and all entitlements or other benefits relating thereto) against the Account Bank under the Agency Agreement and charges by way of a first fixed charge all of the monies standing from time to time to the credit of each of the Accounts (other than the Issuer Account and the Custody Accounts) and the debts represented thereby and including, without limitation, all interest accrued and other monies received in respect thereof. In the case of the Revolving Reserve Account any charge granted under this paragraph shall be subject, and rank subordinate, to any security granted as permitted under paragraph (2) below;
- (iii) assigns by way of security all of the Issuer's rights, title and interest, present and future (and all entitlements or other benefits relating thereto) against the Custodian under the Agency Agreement and charges by way of a first fixed charge over all of the monies and/or securities standing from time to time to the credit of the Custody Accounts and/or accounts established on the books of the Custodian in accordance with the Agency Agreement and each cash account relating thereto, any cash held therein and the debts represented thereby;
- (iv) assigns by way of security all of the Issuer's rights, title and interest, present and future (and all entitlements or other benefits relating thereto) under the Investment Management Agreement,

the Subscription Agreement, the subscription agreements entered into in respect of the Original PPNs and all other Note Transaction Documents;

- (v) charges by way of a first fixed charge all of its monies held from time to time by the Principal Paying Agent and each other Paying Agent for payment of principal, interest or other amounts on the Notes (if any);
- (vi) assigns by way of security all of the remainder of the Issuer's rights present and future under the Agency Agreement not assigned pursuant to paragraphs (ii), (iii) and (iv) of this Condition 4.10(a) (*Security*) above;
- (vii) subject to any security granted as permitted under paragraph (2) below, charges by way of a first fixed charge all amounts representing all or part of the Unfunded Amount of any Revolving Debt Investment or Delayed Drawdown Debt Investment and deposited in its name with a third party as security for any reimbursement or indemnification obligation of the Issuer owed to any other lender under such Revolving Debt Investment or Delayed Drawdown Debt Investment, subject to the terms of Condition 4.9(e) (*Revolving Reserve Account*); and
- (viii) to the fullest extent permitted by applicable law, charges by way of a floating charge the whole of the Issuer's undertaking and assets to the extent that such undertaking and assets are not subject to any other security created pursuant to the Trust Deed and the Euroclear Pledge Agreement,

excluding for the purpose of (i) to (vii) above any and all assets, property or rights which are located in, or governed by the laws of, Luxembourg and excluding for the purpose of (i) to (viii) above amounts standing to the credit of the Issuer Account.

- (1) If, for any reason, the purported assignment by way of security of, and/or the grant of first fixed charge over (as applicable), the property, assets, rights and/or benefits described above is found to be ineffective in respect of any such property, assets, rights and/or benefits (together the "**Affected Collateral**"), the Issuer shall hold the benefit of the Affected Collateral and any sums received in respect thereof or any security interest, guarantee or indemnity or undertaking of whatever nature given to secure such Affected Collateral (together the "**Trust Collateral**") on trust (as a fiduciary on a fiduciary basis for the purposes of Luxembourg law) for the Trustee (for the benefit of itself and the other Secured Parties) and shall (i) account to the Trustee for or otherwise apply all sums received in respect of such Trust Collateral as the Trustee may direct (provided that subject to the Note Conditions if no Event of Default has occurred and is continuing, the Issuer shall be entitled to apply the benefit of such Trust Collateral and such sums in respect of such Trust Collateral received by it and held on trust (as a fiduciary on a fiduciary basis for the purposes of Luxembourg law) under this Condition without prior direction from the Trustee), (ii) exercise any rights it may have in respect of the Trust Collateral at the prior written direction of the Trustee and (iii) at the Issuer's own cost take such action and execute such documents as the Trustee may in its sole discretion require.
- (2) The Issuer may from time to time grant security by way of a first fixed charge over amounts representing all or part of the Unfunded Amount of any Revolving Debt Investment or Delayed Drawdown Debt Investment and deposited in its name with a third party as security for any reimbursement or indemnification obligation of the Issuer owed to any other lender under such Revolving Debt Investment or Delayed Drawdown Debt Investment, subject to the terms of Condition 4.9(e) (*Revolving Reserve Account*).
- (3) In the event that the ratings of the Custodian or any Paying Agent are downgraded to below the Minimum Rating Requirements or withdrawn, the Custodian or Paying Agent (as the case may be) shall notify the Issuer, the Investment Manager, the Collateral Administrator and the Trustee promptly and the Issuer shall procure the appointment of a replacement Custodian and/or Paying Agent which satisfies the Minimum Rating Requirement in accordance with the Agency Agreement. The termination of the Custodian and/or relevant Paying Agent will not be effective until a replacement Custodian and/or Paying Agent which satisfies the Minimum Rating Requirement has been appointed.

- (4) All deeds, documents, assignments, instruments, bonds, notes, negotiable instruments, papers and any other instruments comprising, evidencing, representing and/or transferring the Portfolio will be deposited with or held by or on behalf of the Custodian until the security over such obligations is irrevocably discharged in accordance with the provisions of the Trust Deed.
- (5) Pursuant to the terms of the Trust Deed, the Trustee is exempted from any liability in respect of any loss or theft of the Collateral, from any obligation to insure the Collateral and from any claim arising from the fact that the Collateral is held in a clearing system or in safe custody by, a bank or other custodian. The Trustee has no responsibility to supervise the administration of the Portfolio by the Collateral Administrator or any other party and is entitled to rely on the certificates or notices of any relevant party without further enquiry. The Trust Deed also provides that the Trustee shall accept without investigation, requisition or objection such right, benefit, title and interest, if any, as the Issuer may have in and to any of the Collateral and is not bound to make any investigation into the same or into the Collateral in any respect.
- (6) Pursuant to the Euroclear Pledge Agreement, the Issuer has created a Belgian law pledge over the Debt Investments and Eligible Investments from time to time held by the Custodian on behalf of the Issuer in Euroclear.

(b) ***Application of Proceeds upon Enforcement***

The Trust Deed provides that the net proceeds of realisation of, or enforcement with respect to the security over, the Collateral constituted by the Trust Deed, shall be applied in accordance with the Post-Acceleration Priority of Payments.

4.11 **Limited Recourse**

The obligations of the Issuer to pay amounts due and payable in respect of the PPNs and to the other Secured Parties at any time shall be limited to the proceeds available at such time to make such payment in accordance with the Priorities of Payments. If the net proceeds of realisation of the security constituted by the Trust Deed and the Euroclear Pledge Agreement, upon enforcement thereof in accordance with Condition 11 (*Enforcement*) and the provisions of the Trust Deed and the Euroclear Pledge Agreement, are less than the aggregate amount payable in such circumstances by the Issuer in respect of the PPNs and to the other Secured Parties (such negative amount being referred to herein as a "**shortfall**"), the obligations of the Issuer in respect of the PPNs and its obligations to the other Secured Parties in such circumstances will be limited to such net proceeds, which shall be applied in accordance with the Priorities of Payments. In such circumstances, the other assets of the Issuer will not be available for payment of such shortfall which shall be borne by the PPN Holders, the Trustee and the other Secured Parties in accordance with the Priorities of Payments (applied in reverse order). The rights of the Secured Parties to receive any further amounts in respect of such obligations shall be extinguished and neither the PPN Holders or any other Secured Party may take any further action to recover such amounts. Only the Trustee may pursue the remedies available under applicable law, under the Trust Deed and under the Euroclear Pledge Agreement to enforce the rights of a Secured Party against the Issuer, as further detailed in Condition 11.3 (*Only the Trustee to Act*). None of the PPN Holders, the Trustee and the other Secured Parties (and any other person acting on behalf of any of them) shall be entitled at any time to institute against the Issuer, its officers or directors, or join in any institution against the Issuer, its officers or directors, of, any bankruptcy (*faillite*), liquidation, reprieve from payment (*sursis de paiement*), controlled management (*gestion contrôlée*), composition with creditors (*concordat préventif de faillite*), suspension of payments, reorganisation, arrangement, insolvency, winding-up or liquidation proceedings or for the appointment of a liquidator, administrator or similar official, or other proceedings under any applicable bankruptcy or similar law in connection with any obligations of the Issuer relating to the PPNs, the Trust Deed or otherwise owed to the Secured Parties, save for lodging a claim in the liquidation of the Issuer which is initiated by another party or taking proceedings to obtain a declaration or judgment as to the obligations of the Issuer.

None of the Trustee, the directors of the Issuer, the Agents and the Investment Manager has any obligation to the Noteholders for payment of any amount by the Issuer in respect of the Notes.

#### 4.12 **Information Regarding the Portfolio**

The Collateral Administrator shall procure that a copy of each Monthly Report and each Payment Date Report will be forwarded to the Principal Paying Agent where such reports will be available on request by the Noteholders. Each Monthly Report and Payment Date Report will be made available to the Noteholders, the Issuer, the Trustee, the Principal Paying Agent, the Registrar and the Investment Manager *via* the Collateral Administrator's secure investor reporting website currently located at <https://tss.sfs.db.com/investpublic>. It is not intended that such reports will be made in any other format, save in certain limited circumstances with the Collateral Administrator's agreement. The Collateral Administrator's website does not form part of the information provided for the purposes of this Prospectus and disclaimers may be posted with respect to the information posted thereon. Registration may be required for access to such website and a person wishing to access such website may be required to certify that they are Noteholders or otherwise entitled to access such website.

The Investment Manager shall deliver a copy of each Quarterly Investment Management Report to Noteholders no later than the second Business Day preceding the related Payment Date.

### 5. **Covenants of and Restrictions on the Issuer**

#### 5.1 **Covenants of the Issuer**

Unless otherwise provided and as more fully described in the Trust Deed, the Issuer covenants to the Trustee on behalf of the holders of the Notes that, for so long as any Note remains Outstanding, the Issuer will:

- (a) take such steps as are reasonable:
  - (i) to ensure that each of the parties to each Note Transaction Document complies with its obligations thereunder; and
  - (ii) to enforce all of its rights in respect of the Collateral;
- (b) comply with its obligations under the Notes and each Note Transaction Document to which it is a party;
- (c) keep proper books of account and records to comply with all applicable laws and allow the Trustee access to such books and records;
- (d) at all times maintain its tax residence exclusively in Luxembourg and not establish a place of business or register as a company in any other jurisdiction;
- (e) pay its debts generally as they fall due;
- (f) do all such things as are necessary to maintain its corporate existence;
- (g) ensure that its "centre of main interests" (as that term is referred to in article 3(1) of Council Regulation (EC) No. 1346/2000 on Insolvency Proceedings) is and remains at all times in Luxembourg;
- (h) use its best endeavours to obtain and maintain a listing of the Listed Notes on the official list of the Irish Stock Exchange. If, however, it is unable to do so, having used such endeavours, or if the maintenance of such listing is agreed by the Trustee to be unduly onerous and the Trustee is satisfied that the interests of the holder of the relevant Listed Notes would not thereby be materially prejudiced, the Issuer will instead use all reasonable endeavours promptly to obtain and thereafter to maintain a listing for such Listed Notes on such other stock exchange(s) as it may (with the prior approval of the Trustee) decide or failing such decision as the Trustee may determine; and
- (i) ensure that any certificate or notice which it delivers to any Secured Party is executed in accordance with the Issuer's constitutional documents.

#### 5.2 **Restrictions on the Issuer**

As more fully described in the Trust Deed, for so long as any of the Notes remain Outstanding, the Issuer covenants with the Trustee on behalf of the holders of such Outstanding Notes that it will not, without the prior written consent of the Trustee:

- (a) sell, factor, discount, transfer, assign, lend or otherwise dispose of any of its right, title or interest in or to the Collateral, nor will it create or permit to be outstanding any mortgage, pledge, lien, charge, encumbrance or other security interest over the Collateral except in accordance with the Note Transaction Documents if applicable and other than in respect of amounts withdrawn from the Revolving Reserve Account in accordance with Condition 4.9(e) (*Revolving Reserve Account*);
- (b) sell, factor, discount, transfer, assign, lend or otherwise dispose of, or create or permit to be outstanding any mortgage, pledge, lien, charge, encumbrance or other security interest over, any of its other property or assets or any part thereof or interest therein other than in accordance with the Note Transaction Documents;
- (c) engage in any business other than:
  - (i) acquiring and holding any property, assets or rights that are capable of being effectively charged, secured and/or assigned in favour of the Trustee or that are capable of being held on trust (as a fiduciary on a fiduciary basis for the purposes of Luxembourg law) by the Issuer in favour of the Trustee under the applicable Note Transaction Documents;
  - (ii) issuing and performing its obligations under the Notes;
  - (iii) entering into, exercising its rights and performing its obligations under or enforcing its rights under the Trust Deed, the Agency Agreement, and each other Note Transaction Document to which it is a party, as applicable;
  - (iv) performing any act incidental to or necessary in connection with any of the above;
- (d) amend any term or condition of the Notes (save in accordance with the Note Conditions and the Note Trust Deeds);
- (e) agree to any amendment to any provision of, or grant any waiver or consent under any Note Transaction Document to which it is a party;
- (f) incur any indebtedness for borrowed money, other than:
  - (i) in respect of the Notes or any document entered into in connection with the Notes or the sale thereof; or
  - (ii) as otherwise permitted pursuant to the Note Transaction Documents;
- (g) amend its constitutional documents (except if such amendment is not materially prejudicial to the interests of the Noteholders);
- (h) have any subsidiaries or establish any offices, branches or other "establishment" (as that term is used in article 2(h) of Council Regulation (EC) No. 1346/2000 on Insolvency Proceedings) anywhere in the world;
- (i) have any employees (excluding, for the avoidance of doubt, the directors of the Issuer);
- (j) enter into any reconstruction, amalgamation, merger or consolidation;
- (k) convey or transfer any part of its properties or assets (in one or a series of transactions) to any Person, otherwise than as contemplated in the Note Transaction Documents;
- (l) issue any shares or rights in relation to shares (other than such shares as are in issue as at the Issue Date) or redeem or purchase any of its issued share capital;
- (m) enter into any material agreement or contract with any Person (other than an agreement on customary market terms), unless such contract or agreement contains "limited recourse" and "non-petition" provisions similar to clause 31 (*Limited Recourse and Non-Petition*) of the Trust Deed and such Person agrees to be subject to such "limited recourse" and "non-petition" provisions;
- (n) otherwise than as contemplated in the Note Transaction Documents, release the Principal Paying Agent, any other Paying Agent, the Account Bank, the Registrar, the Note Agent, the Quotation Agent,

the Collateral Administrator or the Custodian from their respective duties and obligations under the Agency Agreement or the Collateral Administrator or the Investment Manager from their respective duties and obligations under the Investment Management Agreement (including any transactions entered into thereunder), or any obligor from its duties and obligations under any agreement entered into in connection with the Portfolio or, in each case, from any executory obligation thereunder;

- (o) enter into any lease in respect of, or own, premises;
- (p) pay any dividend to its parent until the earliest of (i) the Maturity Date, (ii) the liquidation of the Issuer, and (iii) optional redemption of all the Notes in accordance with Condition 7.2 (*Redemption at the Option of the Noteholders*) or, as may be applicable, any equivalent provision in other Note Conditions; or
- (q) appoint any additional or replacement members of the investment committee of the Investment Manager without the prior consent of the Noteholders (other than the holders of Substitute PPNs) acting as a single class by way of Ordinary Resolution during the Investment Period only.

## 6. Interest

### 6.1 Payment Dates

Interest on the PPNs will be payable in respect of each Due Period in arrear on each Payment Date.

### 6.2 Interest Accrual

The PPNs will begin to bear interest from (and including) the first Note Advance Date. The PPNs will cease to bear interest from (and excluding) the due date for redemption unless payment of principal is improperly withheld or refused. In such event, they shall continue to bear interest at 8 per cent. per annum in accordance with this Condition 6 (*Interest*) (both before and after judgment or other order of an applicable competent court) until the day on which all sums due in respect of the PPNs up to that day are sent by the Registrar to the Noteholders in accordance with Condition 8 (*Payments*).

### 6.3 Determination of Interest Amount

The Interest Amount is payable in respect of the PPNs on any Payment Date on an available funds and on a *pro rata* and *pari passu* basis with reference to their Drawn Amount in accordance with paragraph (vii) of Condition 4.2(a) (*Application of Interest Proceeds*) on each Payment Date or paragraph (D) of Condition 11.2(c) (*Post-Acceleration Priority of Payments*) as applicable.

The Collateral Administrator will determine the Interest Amount payable in respect of each PPN in accordance with Condition 4.4 (*Determination and Payment of Amounts*).

If the Collateral Administrator is unable or unwilling to continue to act as the Collateral Administrator for the purpose of determining the Interest Amount on any PPN, the Issuer shall (with the prior approval of the Trustee) appoint some other bank with similar experience and qualification to act as such in its place. The Collateral Administrator may not resign as collateral administrator without such other successor having been so appointed.

### 6.4 Determination or Calculation by Trustee

If the Collateral Administrator does not at any time for any reason so calculate the Interest Amount payable in respect of the PPNs for a Due Period, the Trustee (or a Person appointed by it for the purpose) shall do so and such determination or calculation shall be deemed to have been made by the Collateral Administrator (without liability on the part of the Collateral Administrator for such calculation) and shall be binding on the PPN Holders. In doing so, the Trustee, or such person appointed by it, shall apply the foregoing provisions of this Condition, with any necessary consequential amendments, to the extent that, in its opinion, it can do so, and in all other respects it shall do so in such manner as it shall deem fair and reasonable in all the circumstances and in reliance on such persons as it has appointed for such purpose. The Trustee shall have no liability to any Person in connection with any determination (including with regard to the timelines thereof) it is required to make pursuant to this Condition 6.4 (*Determination or Calculation by Trustee*).



## 6.5 Notification of Interest Amounts

The Principal Paying Agent will cause the Interest Amounts payable in respect of each PPN for each Due Period and Payment Date to be notified to the Irish Stock Exchange and the PPN Holders in accordance with Condition 4.6 (*Publication of Amounts*).

The Interest Amounts or the Payment Date so notified may subsequently be amended (or appropriate alternative arrangements made with the consent of the Trustee by way of adjustment) without notice in the event of an extension or shortening of the Due Period. If any of the PPNs become due and payable under Condition 10 (*Events of Default*), interest shall nevertheless continue to be calculated as previously by the Collateral Administrator in accordance with this Condition but no publication of the applicable Interest Amounts shall be made unless the Trustee so determines.

All notifications, opinions, determinations, certificates, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of this Condition, whether by any Agent, the Investment Manager, the Collateral Administrator or the Trustee, will be binding on the Issuer, the Agents, the Investment Manager, the Collateral Administrator, the Trustee and the PPN Holders and (in the absence of manifest error and subject to clause 27.14 (*Agent liability*) of the Agency Agreement and clause 10.7 (*Trustee's Liability*) of the Trust Deed) no liability to the Issuer or the PPN Holders shall attach to the Agents, the Investment Manager, the Collateral Administrator or the Trustee in connection with the exercise or non-exercise by them of their powers, duties and discretions under this Condition.

## 7. Redemption

### 7.1 Final Redemption

Save to the extent previously redeemed and cancelled prior to the Maturity Date, the Notes will be redeemed on the Maturity Date at their Redemption Price applicable as at such date in accordance with the Priorities of Payments.

### 7.2 Redemption at the Option of the Noteholders

The Notes shall be redeemable by the Issuer, in whole but not in part, at their Redemption Price, from the proceeds of liquidation or realisation of the Collateral applied in accordance with the Priorities of Payments:

- (i) following the occurrence of a Note Tax Event on any Payment Date falling after such occurrence;
- (ii) following the occurrence of a Collateral Tax Event, on any Payment Date falling after such occurrence;
- (iii) following the occurrence of an Illegality Event, on any Payment Date falling after such occurrence;
- (iv) upon the occurrence of an Optional Early Redemption Event; or
- (v) if the Notes (other than the Substitute PPNs) have not been admitted to the official list of the Irish Stock Exchange and have not been admitted to trading on its regulated market by the PPN Listing Deadline,

in each case at the direction of the Noteholders, (other than the holders of the Substitute PPNs) acting as a single class by Ordinary Resolution in respect of (i), (ii), (iii), (v) or an Optional Early Redemption Event which is not an Optional Early Redemption Date and at the direction of all the Noteholders acting as a single class by Unanimous Resolution in respect of an Optional Early Redemption Event which is an Optional Early Redemption Date, subject to the establishment of a reserve as determined by the Trustee following consultation with the Investment Manager and Collateral Administrator for all administrative and other fees and expenses payable in such circumstances under the Priorities of Payments in priority to the payment of principal on the Notes). The Trustee shall have no liability to any person in connection with the establishment or sufficiency of any reserve made by the Issuer pursuant to this Condition 7.2 (*Redemption at the Option of the Noteholders*).

### 7.3 **Cancellation**

Upon redemption of the Notes by the Issuer the Notes will be cancelled and may not be reissued or resold.

### 7.4 **Notice of Redemption**

The Issuer shall procure that notice of any redemption in accordance with this Condition 7 (*Redemption*) is given to the Noteholders in accordance with Condition 16 (*Notices*) (with copies to the Trustee, the Collateral Administrator and the Investment Manager).

### 7.5 **Purchase of Notes**

Notes may not be purchased by the Issuer at any time.

### 7.6 **Repayment of Note Advances**

Notes may be repaid at any time at the sole discretion of the Issuer out of the Principal Account in accordance with the Priorities of Payments and the other provisions of the Conditions.

### 7.7 **Redemption of the Notes**

Notwithstanding any other provisions of the Note Conditions or the Note Trust Deeds, all references herein and therein to any of the Notes being redeemed in full (save for any Defaulted Notes being redeemed in full without payment) shall be deemed to be amended to the extent required to ensure that the Drawn Amount of the Notes is not less than €1 at all times (for the avoidance of doubt, save for when the Notes have been redeemed in full prior to or on their Maturity Date) and any amounts which are to be applied in redemption of such Notes pursuant hereto which are in excess of the Drawn Amount of the Notes thereof minus €1, shall constitute interest payable in respect of the Notes and shall not be applied in redemption of the Drawn Amount of the Notes, provided always however that such interest payable shall no longer remain outstanding and the Notes shall be redeemed in full by the payment of such interest on the date on which all of the Collateral securing the Notes has been realised for cash.

### 7.8 **Redemption in accordance with the Priorities of Payments**

Save to the extent previously redeemed and cancelled, the Notes will be redeemed on any Payment Date out of Principal Proceeds in accordance with the Pre-Enforcement Priority of Payments or following enforcement of the security in accordance with the Post-Enforcement Priority of Payments.

### 7.9 **Redemption of Defaulted Notes**

Defaulted Notes shall be redeemed without payment on the Default Letter Notification Date. The Issuer shall thereafter issue Substitute PPNs in accordance with Condition 2(d) (*Failure to make a Note Advance*).

## 8. **Payments**

### 8.1 **Method of Payment**

Payments of principal and interest in respect of the PPNs will be made to the holder (or to the first named of joint holders) of the PPN appearing on the Register by wire transfer, in immediately available funds, on the due date to the applicable denominated account maintained by the payee with a bank in western Europe last notified in writing to the Issuer and the Principal Paying Agent by the holder of the PPNs appearing on the Register at the close of business on the Determination Date falling prior to each Payment Date.

### 8.2 **Payments**

All payments are subject in all cases to any applicable fiscal or other laws, regulations and directives, but without prejudice to the provisions of Condition 9 (*Taxation*). No commission shall be charged to the PPN Holders.

### 8.3 Registrar and Principal Paying Agent

The Issuer reserves the right at any time, with the approval of the Trustee, to vary or terminate the appointment of the Registrar or the Principal Paying Agent and appoint additional or other Agents, provided that (A) it will maintain (i) a Registrar and (ii) a Principal Paying Agent having specified offices in at least two major European cities approved by the Trustee and (B) it will appoint an additional paying agent in a Member State of the European Union that will not be obliged to withhold or deduct tax pursuant to EC Council Directive 2003/48/EC on Taxation of Savings Income (the "**Directive**") in the form of Interest Payments and shall procure that it shall at all times maintain an Account Bank and Collateral Administrator. Notice of any change in any of the Registrar, the Principal Paying Agent or the Account Bank or of their specified offices or of the Collateral Administrator will promptly be given to the PPN Holders by the Issuer in accordance with Condition 16 (*Notices*) (with a copy to the Trustee).

## 9. Taxation

All payments of principal and interest in respect of the Notes shall be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature, unless such withholding or deduction is required by law or pursuant to a voluntary agreement entered into with a taxing authority. Any amounts withheld or deducted pursuant to FATCA shall be treated as required by law. For the avoidance of doubt, the Issuer shall not be required to gross up any payments made to the Noteholders and shall withhold or deduct from any such payments any amounts on account of tax where so required by law or any relevant taxing authority. Any such withholding or deduction shall not constitute an Event of Default under Condition 10.1 (*Events of Default*).

Subject as provided below, if the Issuer satisfies the Trustee that it has or will on the occasion of the next payment due in respect of the Notes become obliged by law to withhold or account for tax so that it would be unable to make payment of the full amount that would otherwise be due but for the imposition of such tax, the Issuer (save as provided below) shall use all reasonable endeavours to arrange for the substitution of a company incorporated in another jurisdiction approved by the Trustee as the principal obligor under the Notes, or to change its tax residence to another jurisdiction approved by the Trustee.

Notwithstanding the above, if any taxes referred to in this Condition 9 (*Taxation*) arise:

- (a) due to the connection of any Noteholder with the jurisdiction imposing the withholding tax or requiring the deduction to be made otherwise than by reason only of the holding of any Note or receiving principal or interest in respect thereof; or
- (b) by reason of the failure by such Noteholder to comply with any request by the Issuer for information or compliance with any administrative procedures that such Noteholder may be required to provide or follow as a pre-condition for exemption from, or reduction in the rate of, deduction or withholding of tax; or
- (c) in respect of a payment to an individual which is required to be made pursuant to the Directive or any law implementing or complying with, or introduced in order to conform to, that Directive; or
- (d) in connection with FATCA,

the requirement to substitute the Issuer as a principal obligor and/or change its residence for taxation purposes shall not apply.

## 10. Events of Default

### 10.1 Events of Default

The occurrence of any of the following events shall constitute an "**Event of Default**":

(a) ***Non-payment of interest***

the Issuer fails to pay any Interest Amount or any other amount of interest in respect of any Notes when the same becomes due and payable, save as the result of any deduction therefrom or the imposition of withholding tax thereon, provided that any such failure to pay such interest continues for a period of five Business Days unless such failure results from an administrative error, in which case, a period of seven Business Days;

(b) ***Non-payment of principal***

the Issuer fails to pay any principal when the same becomes due and payable (i) on any Notes on any Redemption Date or (ii) on any Notes on the Maturity Date;

(c) ***Default under Priorities of Payments***

other than a failure referred to in paragraphs (a) and (b) above, the Issuer fails on any Payment Date to disburse amounts available in accordance with the Priorities of Payments, which failure continues for a period of five Business Days;

(d) ***Breach of Other Obligations***

the Issuer does not perform or comply in material respects with any other of its covenants, representations, warranties or other undertakings (or similar) under the Notes or the Note Transaction Documents (other than a covenant, representation, warranty or other agreement a default in the performance or breach of which is specifically referred to elsewhere in this Condition 10.1 (*Events of Default*)), or any representation, warranty or statement of the Issuer made in the Trust Deed, or in any certificate or other writing delivered pursuant thereto or in connection therewith ceases to be correct in all material respects when the same shall have been made, and such default, breach or failure continues for a period of 30 days (or 15 days, in the case of any default, breach or failure of representation or warranty in respect of the Collateral) after notice thereof shall have been given, by registered or certified mail or overnight courier, to the Issuer by the Trustee specifying such default, breach or failure and requiring it to be remedied and stating that such notice is a "**Notice of Default**" hereunder;

(e) ***Insolvency Proceedings***

proceedings are initiated against the Issuer under any applicable liquidation, insolvency, bankruptcy (*faillite*), controlled management (*gestion contrôlée*), suspension of payments (*sursis de paiement*), provisional administration, examination, composition with creditors (*concordat préventif de faillite*), reorganisation or other similar laws (together, "**Insolvency Law**"), or a receiver, *curateur*, examiner, trustee, administrator, *commissaire*, *commissaire de surveillance*, custodian, conservator, liquidator or other similar official (a "**Receiver**") is appointed in relation to the Issuer or in relation to in the opinion of the Trustee the whole or any substantial part of the undertaking or assets of the Issuer; or the Issuer is, or initiates or consents to judicial proceedings relating to, itself under any applicable Insolvency Law, or seeks the appointment of a Receiver, or makes a conveyance or assignment for the benefit of its creditors generally or otherwise becomes subject to any reorganisation or amalgamation (other than on terms previously approved in writing by the Trustee) or the Issuer becomes subject to controlled management (*gestion contrôlée*), suspension of payments (*sursis de paiement*), moratorium or other similar procedure.

## 10.2 **Acceleration**

(a) If an Event of Default occurs and is continuing, the Trustee may, at its discretion and shall, at the request of the Noteholders acting by Ordinary Resolution of the holders of the Notes (other than the holders of the Substitute PPNs) acting as a single class (subject to the Trustee being prefunded and/or indemnified and/or secured to its satisfaction against all liabilities, proceedings, claims and demands to which it may thereby become liable and all costs, charges and expenses which may be incurred by it in connection therewith), give notice to the Issuer that the Notes are to become immediately due and payable (such notice, an "**Acceleration Notice**").

(b) Upon any such notice being given to the Issuer in accordance with paragraph (a) above, the Notes shall immediately become due and repayable at their applicable Redemption Price.

### 10.3 **Curing of Default**

At any time after an Acceleration Notice has been given under Condition 10.2(a) (*Acceleration*) following the occurrence of an Event of Default and prior to commencement of any enforcement of the security pursuant to Condition 11 (*Enforcement*), the Trustee at its discretion may, and if requested by the Noteholders (other than the holders of Substitute PPNs) acting as a single class by Ordinary Resolution, shall (subject, in each case, to the Trustee being prefunded and/or indemnified and/or secured to its satisfaction against all liabilities, proceedings, claims and demands to which it may thereby become liable and all costs, charges and expenses which may be incurred by it in connection therewith) rescind and annul such Acceleration Notice under Condition 10.2(a) (*Acceleration*) above and its consequences if:

- (a) the Issuer has paid or deposited with the Trustee a sum sufficient to pay:
  - (i) all due but unpaid taxes owing by the Issuer, as certified by an Authorised Officer of the Issuer to the Trustee;
  - (ii) all unpaid Trustee Fees and Expenses; and
  - (iii) all unpaid Administrative Expenses;
- (b) the Trustee has determined that all Events of Default, other than the non-payment of the interest in respect of, or principal of, the Notes that have become due solely as a result of the acceleration thereof under Condition 10.2 (*Acceleration*) above due to such Events of Default, have been cured or waived.

Any previous rescission and annulment of a notice of acceleration pursuant to this Condition 10.3 (*Curing of Default*) shall not prevent the subsequent acceleration of the Notes in accordance with Condition 10.2(a) (*Acceleration*) above.

### 10.4 **Notification and Confirmation of No Default**

The Issuer shall promptly notify the Noteholders (in accordance with Condition 16 (*Notices*)) and the Trustee in writing upon becoming aware of the occurrence of an Event of Default. The Trust Deed contains provision for the Issuer to provide written confirmation to the Trustee on an annual basis or promptly on request by the Trustee that to the best of the Issuer's knowledge, information and belief, no Event of Default has occurred and that no condition, event or act has occurred which, with the lapse of time and/or the issue, making or giving of any notice, certification, declaration and/or request and/or the taking of any similar action and/or the fulfilment of any similar condition could constitute an Event of Default and that no other matter which is required (pursuant thereto) to be brought to the Trustee's attention has occurred.

## 11. **Enforcement**

### 11.1 **Security Becoming Enforceable**

Subject as provided in Condition 11.2 (*Enforcement*) below, the security constituted under the Trust Deed and the Euroclear Pledge Agreement over the Collateral shall become enforceable upon the giving of an Acceleration Notice pursuant to Condition 10.2 (*Acceleration*), save in the event that the relevant Event of Default is waived or cured in accordance with Condition 10.3 (*Curing of Default*).

### 11.2 **Enforcement**

#### (a) ***Security Becoming Enforceable***

Section 103 of the Law of Property Act 1925 (restricting the power of sale) and section 93 of the Law of Property Act 1925 (restricting the right of consolidation) shall not apply to the security constituted by the Trust Deed but so that section 101 of the Law of Property Act 1925 shall apply and have effect on the basis that the Trust Deed constitutes a mortgage within the meaning of that Act and the Trustee is a mortgagee exercising the power of sale conferred on mortgagees by that Act, provided that the Trustee shall not be required to take any such action unless indemnified and/or secured to its satisfaction against all Liabilities to which it may be liable and all costs, charges and expenses which may be incurred in connection therewith.

(b) ***Enforcement***

At any time after the Notes become due and payable and the security constituted under the Trust Deed and the Euroclear Pledge Agreement becomes enforceable the Trustee may, at its discretion, and shall if so directed by the Noteholders (other than the holders of Substitute PPNs) acting as a single class by Ordinary Resolution, institute such proceedings against the Issuer as it may think fit to enforce the terms of the Note Trust Deeds, the Euroclear Pledge Agreement and the Notes and pursuant and subject to the terms of the Note Trust Deeds, the Euroclear Pledge Agreement and the Notes, realise and/or otherwise liquidate or sell the Collateral in whole or in part and/or take such action as may be permitted under applicable laws against any Obligor in respect of the Collateral and/or take any other action to enforce the security over the Collateral, in each case without any liability as to the consequence of any action, provided however that the Trustee shall not be bound to institute any such proceedings or take any such other action unless it is directed by the Noteholders (other than the holders of Substitute PPNs) acting as a single class by Ordinary Resolution and, in each case, the Trustee is prefunded and/or indemnified and/or secured to its satisfaction against all liabilities, proceedings, claims and demands to which it may thereby become liable and all costs, charges and expenses which may be incurred by it in connection therewith.

(c) ***Post-Acceleration Priority of Payments***

- (i) Following the delivery of an Acceleration Notice which has not been rescinded and annulled in accordance with Condition 10.3 (*Curing of Default*) or pursuant to an optional redemption in whole in accordance with Condition 7.2 (*Redemption at the Option of the Noteholders*), Interest Proceeds, Principal Proceeds and the net proceeds of enforcement of the security over the Collateral shall be credited to the Payment Account or such other account as the Noteholders (other than the holders of Substitute PPNs) acting as a single class by Ordinary Resolution shall designate to the Trustee and shall be distributed in accordance with the following order of priority but in each case only to the extent that all payments of a higher priority have been made in full (the "**Post-Acceleration Priority of Payments**"):
- (A) to the payment of any Trustee Fees and Expenses,
  - (B) to the payment of any Administrative Expenses, including any Extraordinary Administrative Expenses;
  - (C) to the payment on a *pro rata* and *pari passu* basis of (i) any Investment Management Fee unless the default triggering the delivery of the Acceleration Notice is caused by an Investment Manager Breach and (ii) any Termination Payment;
  - (D) in payment on a *pro rata* basis, to the payment of all Interest Amounts due and payable under the PPNs, interest due and payable on the other Notes, and the Drawn Amount of the Notes; and
  - (E) thereafter, any remaining amounts to be paid out to the Noteholders as interest, on a *pro rata* and *pari passu* basis.
- (ii) Nothing in Condition 11.2(c)(i) shall preclude the Trustee from exercising any right or making any claim which the Issuer has against any Agent, the Investment Manager, the Collateral Administrator and the Administrator under the Note Transaction Documents.

11.3 **Only the Trustee to Act**

Only the Trustee may pursue the remedies available under the Note Trust Deeds and under the Euroclear Pledge Agreement to enforce the rights of the Noteholders or of any of the other Secured Parties under the Note Trust Deeds, the Notes and the Euroclear Pledge Agreement and none of the Noteholders nor any other Secured Party may proceed directly against the Issuer or any of its assets unless the Trustee, having become bound so to proceed in accordance with the terms of the Note Trust Deeds, fails or neglects to do so within a reasonable period of time following the instance of the obligation to proceed having arisen and such failure or neglect is continuing. After realisation of the security which has become enforceable and distribution of the net proceeds in accordance with the Priorities of Payments, neither the Noteholders nor any other Secured Party may take any further steps against the Issuer to recover any sum still unpaid in respect of the Notes or the Issuer's obligations to

such Secured Party and all claims against the Issuer to recover any sum still unpaid in respect of the Notes or the Issuer's obligations to such Secured Party, as further described in Condition 4.11 (*Limited Recourse*), and all claims against the Issuer in respect of such sums unpaid shall be extinguished. In particular, none of the Trustee, any Noteholder and any other Secured Party shall be entitled in respect thereof to petition or take any other step for the liquidation, winding-up of the Issuer except to the extent permitted under the Note Trust Deeds.

12. **Prescription**

Claims in respect of principal and interest payable on redemption in full of the relevant PPNs will become void unless presentation for payment is made as required by Condition 7 (*Redemption*) within a period of five years, in the case of interest, and 10 years, in the case of principal, from the applicable Payment Date.

13. **Replacement of the PPNs**

If any PPN is lost, stolen, mutilated, defaced or destroyed it may be replaced at the Specified Office of the Registrar upon payment by the claimant of the expenses incurred in connection with such replacement and on such terms as to evidence, security, indemnity and otherwise as the Issuer may require (provided that the requirement is reasonable in the light of prevailing market practice). The PPN if mutilated or defaced must be surrendered before a replacement will be issued.

14. **Meetings of Noteholders, Modification, Waiver and Substitution**

14.1 **Meetings of Noteholders**

(a) ***Provisions in Trust Deed***

The Trust Deed contains provisions for convening meetings of the Noteholders (and for passing Written Resolutions) to consider matters affecting the interests of the Noteholders including, without limitation, modifying or waiving certain of the provisions of these Conditions and the substitution of the Issuer in certain circumstances. The provisions in this Condition 14 (*Meetings of Noteholders, Modification, Waiver and Substitution*) are descriptive of the detailed provisions of the Trust Deed.

(b) ***Decisions and Meetings of Noteholders***

(i) ***General***

Decisions may be taken by Noteholders acting as a single class by way of (in the case of Noteholders other than the Substitute PPN Holders) Ordinary Resolution or (in the case of all Noteholders) Extraordinary Resolution or Unanimous Resolution (together, the "**Resolutions**"). Such Resolutions can be effected either at a duly convened meeting of the applicable Noteholders or by the applicable Noteholders resolving in writing, in each case, in at least the minimum percentages specified in the table "**Minimum Percentage Voting Requirements**" in paragraph (iii) (*Minimum Voting Rights*) below. In the case of Ordinary Resolutions, meetings of the Noteholders (other than the Substitute PPN Holders) may be convened by the Issuer, the Trustee or by the Trustee acting upon the request of one or more Noteholders (other than the holders of Substitute PPN Holders) holding not less than ten per cent. in Drawn Amount of the Notes (other than the Substitute PPNs), subject to certain conditions including minimum notice periods. In the case of Extraordinary Resolutions or Unanimous Resolutions, meetings of the Noteholders may be convened by the Issuer, the Trustee or by the Trustee acting upon the request of one or more Noteholders holding not less than ten per cent. in Drawn Amount of the Notes, subject to certain conditions including minimum notice periods.

(ii) ***Quorum***

The quorum required for any meeting convened to consider an Ordinary Resolution, Extraordinary Resolution or Unanimous Resolution, or at any adjourned meeting to consider such a Resolution, shall be as set out in the relevant column and row corresponding to the type of Resolution in the table "**Quorum Requirements**" below.

### Quorum Requirements

Type of Resolution	Any meeting other than a meeting adjourned for want of quorum	Meeting previously adjourned for want of quorum
Extraordinary Resolution/Unanimous Resolution	Two or more persons holding or representing not less than 66⅔ per cent. of the aggregate of the Drawn Amount of Notes	Two or more persons holding or representing not less than 25 per cent. of the aggregate of the Drawn Amount of Notes
Ordinary Resolution of all Noteholders (other than the Substitute PPN Holders)	Two or more persons holding or representing not less than 50 per cent. of the aggregate of the Drawn Amount of Notes (other than Substitute PPNs)	Two or more persons holding or representing any PPNs regardless of the aggregate of the Drawn Amount of Notes (other than Substitute PPNs)

The Trust Deed does not contain any provision for higher quorums in any circumstances.

(iii) **Minimum Voting Rights**

Set out in the table "**Minimum Percentage Voting Requirements**" below are the minimum percentages required to pass the Resolutions specified in such table which (A) in the event that such Resolution is being considered at a duly convened meeting of the Noteholders shall be determined by reference to the percentage which the aggregate Drawn Amount of the Notes which have voted in favour of such Resolution represents of the aggregate Drawn Amount of all Notes which have voted at such meeting or (B) in the case of any Written Resolution, shall be determined by reference to the percentage which the aggregate Drawn Amount of the relevant Notes which have voted in favour of such Resolution represents of the aggregate Drawn Amount of all the relevant Notes entitled to be voted on in respect of such Written Resolution.

The voting threshold at any Noteholders' meeting in respect of an Ordinary Resolution is more than 50 per cent. of the aggregate of the Drawn Amount of the Notes (other than Substitute PPNs) represented at the meeting and voted, and the voting threshold at any Noteholders' meeting in respect of an Extraordinary Resolution is at least 66⅔ per cent. of the aggregate of the Drawn Amount of the Notes represented at the meeting and voted. Accordingly, it is likely that, at any meeting of the relevant Noteholders, an Ordinary Resolution may be passed with less than 50 per cent. of all the Noteholders (other than Substitute PPNs), and an Extraordinary Resolution or Unanimous Resolution may be passed with less than 66⅔ per cent. of all the Noteholders.

### Minimum Percentage Voting Requirements

Type of Resolution	Minimum Percentage Voting Requirements for duly convened meetings	Minimum Percentage Voting Requirements for Written Resolutions
Extraordinary Resolution of all Noteholders	66⅔ per cent. of the aggregate Drawn Amount of Notes which have voted at the relevant meeting.	66⅔ per cent. of the aggregate Drawn Amount of Notes which are entitled to vote.
Ordinary Resolution	More than 50 per cent. of the	More than 50 per cent. of



<b>Type of Resolution</b>	<b>Minimum Percentage Voting Requirements for duly convened meetings</b>	<b>Minimum Percentage Voting Requirements for Written Resolutions</b>
of all Noteholders (other than the Substitute PPN Holders)	aggregate Drawn Amount of Notes (other than Substitute PPNs) which have voted at the relevant meeting.	the aggregate Drawn Amount of Notes (other than Substitute PPNs) which are entitled to vote.
Unanimous Resolution of all Noteholders	100 per cent. of the aggregate Drawn Amount of Notes which have voted at the relevant meeting.	100 per cent. of the aggregate Drawn Amount of Notes which are entitled to vote.

(iv) ***Written Resolutions***

Any Written Resolution may be contained in one document or in several documents in like form each signed by or on behalf of one or more of the relevant Noteholders holding not less than the "Minimum Percentage Voting Requirements" as described above and as determined in accordance with Condition 14.1(b)(iii) (*Minimum Voting Rights*) and the date of such Written Resolution shall be the date on which the latest such document is signed.

(v) ***All Resolutions Binding***

Any Resolution duly passed shall be binding on all Noteholders, including the Substitute PPN Holders (regardless of whether or not a Noteholder was present at the meeting at which such Resolution was passed, if applicable).

(vi) ***Extraordinary Resolution***

Any Resolution to sanction any of the following items will be required to be passed by an Extraordinary Resolution (in each case, unless stipulated otherwise in the Note Transaction Documents and subject to anything else contemplated in the Note Trust Deeds or the relevant Note Transaction Document, as applicable):

- (A) the exchange or substitution of the Notes for, or the conversion of the Notes into, shares, bonds or other obligations or securities of the Issuer or any other entity;
- (B) the modification of any provision relating to the timing and/or circumstances of redemption of the Notes at maturity or otherwise (including the circumstances in which the maturity of such Notes may be accelerated);
- (C) the modification of any of the provisions of the Note Trust Deeds which would directly and adversely affect the calculation of the amount of any payment of interest or principal on any Notes;
- (D) the adjustment of the Drawn Amount of the Notes other than in accordance with the Note Conditions;
- (E) a change in the currency of payment of the Notes;
- (F) any change in the Priorities of Payments;
- (G) the modification of the provisions concerning the quorum required at any meeting of Noteholders or the minimum percentage required to pass an Ordinary Resolution, an Extraordinary Resolution, a Written Resolution or any other provision of the Note Conditions which requires the written consent of the holders of a requisite principal amount of Notes which remain Outstanding;
- (H) any modification of any Note Transaction Document having a material adverse effect on the security over the Collateral constituted by the Trust Deed;

- (I) any item expressly requiring approval by Extraordinary Resolution pursuant to the Note Conditions or any Note Transaction Document;
- (J) any modification of this Condition 14; and
- (K) any modification of the Eligibility Criteria, except as contemplated by the Conditions or the Trust Deed.

#### 14.2 **Modification and Waiver**

The Trust Deed and the Investment Management Agreement provide that, without the consent of the Noteholders, and without any requirement for the Trustee to consult the Noteholders concerning such amendments to the extent they fall within the paragraphs below, and notwithstanding the provisions of Condition 14.1(b)(vi) (*Extraordinary Resolution*), the Issuer may amend, modify, supplement and/or waive the relevant provisions of the Note Trust Deeds and/or any other Note Transaction Documents (subject to the consent of the other parties thereto) (as applicable), subject to the prior written consent of the Trustee for any of the following purposes:

- (a) to add to the covenants of the Issuer for the benefit of the Noteholders or to surrender any right or power in the Note Trust Deeds conferred upon the Issuer;
- (b) to charge, convey, transfer, assign, mortgage or pledge any property to or with the Trustee;
- (c) to correct or amplify the description of any property at any time subject to the security of the Trust Deed and the Euroclear Pledge Agreement, or to better assure, convey and confirm unto the Trustee any property subject or required to be subject to the security of the Trust Deed (including, without limitation, any and all actions necessary or desirable as a result of changes in law or regulations) or subject to the security of the Trust Deed and the Euroclear Pledge Agreement, any additional property;
- (d) to evidence and provide for the acceptance of appointment under the Trust Deed by a successor Trustee subject to and in accordance with the terms of the Trust Deed and to add to or change any of the provisions of the Trust Deed as shall be necessary to facilitate the administration of the trusts under the Trust Deed by more than one Trustee, pursuant to the requirements of the relevant provisions of the Trust Deed;
- (e) to make such changes as shall be necessary or advisable in order for the Listed Notes to be (or to remain) listed on the official list of the Irish Stock Exchange or any other exchange;
- (f) save as contemplated in Condition 14.3 (*Substitution*) below, to take any action advisable to prevent the Issuer from becoming subject to withholding or other taxes, fees or assessments;
- (g) to enter into any additional agreements not expressly prohibited by the Note Trust Deeds;
- (h) to make any other modification of any of the provisions of the Note Trust Deeds or any other Note Transaction Document which, in the determination of the Trustee, is of a formal, minor or technical nature or is made to correct a manifest error;
- (i) to make any other modification (save as otherwise provided in the Note Trust Deeds or the relevant Note Transaction Document), and/or give any waiver or authorisation of any breach or proposed breach, of any of the provisions of the Note Trust Deeds or any other Note Transaction Document which is, in the determination of the Trustee, not materially prejudicial to the interests of the Noteholders; and
- (j) to make any amendments to the Trust Deed and the other Note Transaction Documents to enable the Issuer to comply with FATCA,

provided that the Trustee may, in connection with any request to consent to such modification, waiver or authorisation, procure and rely on (without liability) such professional assistance, including legal opinions from such professional advisors as it may require, the cost of which shall be treated as Trustee Fees and Expenses.

Any such modification, authorisation or waiver shall be binding on all the Noteholders and the other Secured Parties and shall be notified by the Issuer to the Noteholders as soon as practicable in accordance with Condition 16 (*Notices*).

Under no circumstances shall the Trustee be required to give such consent on less than 21 days' notice and it shall be entitled to obtain such advice in connection with giving such consent as it sees fit.

#### 14.3 **Substitution**

The Trust Deed contains provisions permitting the Trustee to agree, subject to such amendment of the Note Trust Deeds and such other conditions as the Trustee may require (in each case, as directed by the Noteholders (other than the holders of Substitute PPNs) acting as a single class by way of an Ordinary Resolution), to the substitution of any other company in place of the Issuer, or of any previous substituted company, as principal debtor under the Note Trust Deeds and the Notes, if required for taxation purposes. In the case of such a substitution the Trustee may agree, (with the consent of the Noteholders (other than the holders of Substitute PPNs) acting as a single class by way of Ordinary Resolution) to a change of the law governing the Notes and/or the Note Trust Deeds. Any substitution agreed by the Trustee pursuant to this Condition 14.3 (*Substitution*) shall be binding on the Noteholders, and shall be notified by the Issuer to the Noteholders as soon as practicable in accordance with Condition 16 (*Notices*).

The Trustee may, subject to the satisfaction of certain conditions, agree to a change in the place of residence of the Issuer for taxation purposes after obtaining the consent of the Noteholders (other than the holders of Substitute PPNs) acting as a single class by way of Ordinary Resolution, provided the Issuer does all such things as the Trustee may require in order that such change in the place of residence of the Issuer for taxation purposes is fully effective and complies with such other requirements which are in the interests of the Noteholders as it may direct.

The Issuer shall procure that, so long as the Listed Notes are listed on the official list of the Irish Stock Exchange, any material amendments or modifications to the Note Conditions, the Note Trust Deeds or such other conditions made pursuant to Condition 14 (*Meetings of Noteholders, Modification, Waiver and Substitution*) shall be notified to the Irish Stock Exchange.

#### 15. **Indemnification of the Trustee**

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility in certain circumstances in the absence of negligence, wilful misconduct or fraud, including provisions relieving it from instituting proceedings to enforce repayment or to enforce the security constituted by or pursuant to the Trust Deed, unless prefunded and/or indemnified and/or secured to its satisfaction against all liabilities, proceedings, claims and demands to which it may become liable and all costs, charges and expenses which may be properly incurred by it in connection therewith. The Trustee is entitled to enter into business transactions with the Issuer and any entity related to the Issuer without accounting for any profit. The Trustee is exempted from any liability in respect of any loss or theft of the Collateral from any obligation to insure, or to monitor the provisions of any insurance arrangements in respect of, the Collateral (and for the avoidance of doubt, under the Trust Deed the Trustee is under no such obligation) and from any claim arising from the fact that the Collateral is held in safe custody by a bank or other custodian. The Trustee shall not be responsible for the performance by the Agents of any of their duties under the Agency Agreement, the performance by the Collateral Administrator of its duties under the Investment Management Agreement, the performance by the Investment Manager of its duties under the Investment Management Agreement or for the performance by any other Person appointed by the Issuer in relation to the Notes. The Trustee shall not have any responsibility for the validity or enforceability of the Collateral or for the administration, management or operation of the Collateral including a request by the Collateral Administrator to release any of the Collateral from time to time.

The Trust Deed contains provisions for the retirement of the Trustee and the removal of the Trustee but no such retirement or removal shall become effective until a successor trustee is appointed in accordance with its terms.

#### 16. **Notices**

Notices to the Noteholders will be valid if posted to the Noteholder's Specified Address by pre-paid, first class mail (or any other manner approved by the Trustee which may be by electronic transmission). Any such notice shall be deemed to have been given three days (in the case of inland mail) or seven days (in the case of overseas mail) after the date of despatch thereof to such Noteholder

The Trustee shall be at liberty to sanction some other method of giving notice to the Noteholder if, in the Trustee's opinion, such other method is reasonable having regard to market practice then prevailing and provided that notice of such other method is given to the Noteholders in such manner as the Trustee shall require.

The Issuer shall procure that any notices to Noteholders in respect of an Ordinary Resolution, Extraordinary Resolution or Unanimous Resolution will contain either an estimate or a cap on the expenses required to give effect to the relevant Resolution provided that failure by the Issuer to do so shall not result in the related notice being invalidated.

## 17. **Third Party Rights**

No person shall have any right to enforce any term or condition of the PPNs under the Contracts (Rights of Third Parties) Act 1999.

## 18. **Governing Law and Jurisdiction**

### 18.1 **Governing Law**

The Trust Deed and the PPNs and any non-contractual obligations arising out of or in connection with them are governed by and shall be construed in accordance with English law. The provisions of articles 86 to 97 of the Luxembourg law of 10 August 1915 on commercial companies, as amended, are excluded.

### 18.2 **Jurisdiction**

The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the PPNs, and accordingly, any legal action or proceedings arising out of or in connection with the PPNs ("**Proceedings**") may be brought in such courts. The Issuer has in the Trust Deed irrevocably submitted to the jurisdiction of such courts and waives any objection to Proceedings in any such courts whether on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This submission is made for the benefit of the Noteholders, the Trustee and the Custodian and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

### 18.3 **Agent for Service of Process**

The Issuer appoints Aviva Investors Global Services Limited as its agent in England to receive service of process in any Proceedings in England based on any of the PPNs. If for any reason the Issuer does not have such agent in England, it will promptly appoint a substitute process agent and notify the Trustee and the PPN Holders of such appointment. Nothing herein shall affect the right to service of process in any other manner permitted by law.

## 19. **Further Issues**

The Issuer may from time to time, prior to the Note Available Commitment Termination Date, by written notice to the Trustee at least 10 days prior to the proposed date of issue, create and issue further notes (such notes, the "**Further PPNs**") having the same terms and conditions as the PPNs then outstanding (subject as provided below). Such Further PPNs shall not be consolidated and form a single series with, but shall rank *pari passu* with, the PPNs then outstanding and the Issuer shall use the net proceeds of issue in payment to the Principal Account to, amongst others, acquire Debt Investments, provided that:

- (i) the aggregate Principal Amount of Notes issued by the Issuer may not exceed €1,000,000,000;
- (ii) the terms (other than the date of issuance, the issue price, the amount of the Reallocation Premium and if applicable, the date from which interest will accrue) of such Further PPNs must be identical to the terms of the previously issued PPNs;
- (iii) such Further PPNs must be issued for a cash sale price and the net proceeds (excluding any Reallocation Premium) invested in Debt Investments, or pending such investment, deposited in the Principal Account;

- (iv) the Reallocation Premium attributable to such further issue shall be deposited in the Principal Account;
- (v) (so long as the existing PPNs are listed on the official list of the Irish Stock Exchange) the Further PPNs to be issued are in accordance with the requirements of the Irish Stock Exchange and are listed on the official list of the Irish Stock Exchange (for so long as the guidelines of the Irish Stock Exchange so require); and
- (vi) such additional issuances are in accordance with all applicable laws including, without limitation, the securities and banking laws and regulations of Ireland.

References to PPNs in these Conditions include (unless the context requires otherwise) the Original PPNs and any Further PPNs issued pursuant to this Condition 19. Any Further PPNs shall, subject to the aforementioned conditions, be constituted by a deed supplemental to the Trust Deed.

## 20. **Restructuring Option**

### (i) *Noteholders' Restructuring Option*

Subject as further provided in this Condition 20, the Noteholders will have the option (but not the obligation) either to:

- (a) elect to have their investment in the Notes restructured (the "**Restructuring Option**") on a date not later than the second Payment Date following the expiry of the Investment Period (the "**Restructuring Date**"). The Notes of those Noteholders electing to exercise the Restructuring Option (each an "**Electing Noteholder**") shall be either:
  - (i) amended so that the Notes can be exchanged for notes issued by the Issuer ("**Internal Repack Notes**") that will pay interest at a specified margin over the offered note for three-month Euro deposits that appears on the display designated as page 248 on the Telerate Monitor (or such other page or service as may replace it for the purposes of displaying EURIBOR rates) ("**EURIBOR**") and will follow a defined amortisation schedule ("**Restructuring Option A**"); or
  - (ii) exchanged in accordance with Condition 20(v) (*Mechanics of Exchange*) for notes ("**External Repack Notes**") issued by a bankruptcy remote special purpose repackaging entity, which will follow a defined amortisation schedule and which are secured on the relevant Notes and an interest rate swap which pays interest at a specified margin over EURIBOR ("**Restructuring Option B**"); or
- (b) not to elect for the Restructuring Option described above and retain their existing Notes.

It is intended that the Internal Repack Notes issued under Restructuring Option A and the External Repack Notes issued under Restructuring Option B will qualify for favourable accounting treatment under Article R332-19 of the French Insurance Code.

### (ii) *Determination by Investment Manager*

The Restructuring Date shall be determined by the Investment Manager and shall be notified by the Investment Manager to the Noteholders, together with the margin over EURIBOR not later than 20 Business Days prior to the Restructuring Date.

### (iii) *Exercise of the Restructuring Option*

If some or all of the Noteholders entitled to do so choose to exercise the Restructuring Option B, the Notes of such Electing Noteholder shall (subject to Condition 20(iv) (*Approval of Restructuring Option Terms*)) be restructured in accordance with the Restructuring Option B. If all (but not some only) of the Noteholders entitled to do so, choose to exercise the Restructuring Option A, their Notes shall (subject to Condition 20(iv) (*Approval of Restructuring Option Terms*)) be restructured in accordance with the Restructuring Option A.

(iv) ***Approval of Restructuring Option Terms***

The obligation of an Electing Noteholder to participate in the Restructuring Option shall be conditional upon:

- (a) in the case of Restructuring Option A, the approval by all Noteholders, acting by unanimous consent, of the amendments to the Note Conditions and to the Note Transaction Documents proposed by the Investment Manager, acting on behalf of the Issuer, to give effect to the restructuring under Restructuring Option A and to approve the terms of the Internal Repack Notes and the implementation of such amendments; and
- (b) in the case of Restructuring Option B, such Electing Noteholder's approval of the terms and conditions and of the Repack Notes and the provisions of the subscription agreement under terms of which it will subscribe for the External Repack Notes.

(v) ***Mechanics of Exchange***

Each exchange of (i) Notes for Internal Repack Notes in accordance with Restructuring Option A or (ii) Notes for External Repack Notes in accordance with Restructuring Option B, shall be effected by delivery to the Principal Paying Agent by the Electing Noteholder of its Notes and a duly completed Exchange Notice not more than 10 Business Days nor less than 5 Business Days prior to the applicable Restructuring Date. An Exchange Notice and the Notes so delivered may not be withdrawn without the prior consent of the Issuer. The Principal Paying Agent shall copy the Exchange Notice received to each of the Issuer, the Trustee, the Collateral Administrator, the other Agents and the Investment Manager.

**SCHEDULE 3**

**AMENDED AND RESTATED INVESTMENT MANAGEMENT AGREEMENT**



# Investment Management Agreement

Aviva Investors European Secondary Infrastructure  
Credit SV S.A.

as Issuer

and

Deutsche Trustee Company Limited

as Trustee

and

Deutsche Bank AG, London Branch

as Collateral Administrator and Custodian

and

Aviva Investors Global Services Limited

as Investment Manager

relating to the issue of Notes by the Issuer

25 July 2013 ~~and~~ as amended on 25 November 2014 and as further  
amended and restated on [●] 2015



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**THIS AGREEMENT** is made as a deed on 25 July ~~2013~~2013 (as amended on 25 November 2014 and as further amended and restated on [●] 2015).

**BETWEEN:**

- (1) **AVIVA INVESTORS EUROPEAN SECONDARY INFRASTRUCTURE CREDIT SV S.A.**, a securitisation undertaking (*organisme de titrisation*) in the form of a public limited liability company (*société anonyme*) incorporated under the laws of Luxembourg having its registered office at 2, Boulevard Konrad Adenauer, L-1115 Luxembourg and registered with the Luxembourg Register of Commerce and Companies under number B-173397 (the "**Issuer**");
- (2) **DEUTSCHE TRUSTEE COMPANY LIMITED** of Winchester House, 1 Great Winchester Street, London EC2N 2DB as trustee (the "**Trustee**", which expression shall, wherever the context so admits, include all other persons or companies for the time being the trustee or trustees appointed pursuant to the Trust Deed) for the Noteholders and as security trustee for the Secured Parties;
- (3) **DEUTSCHE BANK AG, LONDON BRANCH** of Winchester House, 1 Great Winchester Street, London EC2N 2DB as collateral administrator and custodian (the "**Collateral Administrator**" and the "**Custodian**", which expressions shall include any successor collateral administrator and custodian appointed pursuant to the terms of this Agreement and the Agency Agreement respectively); and
- (4) **AVIVA INVESTORS GLOBAL SERVICES LIMITED** of No. 1 Poultry, London EC2R 8EJ as investment manager (the "**Investment Manager**", which expression shall include any successor investment manager appointed pursuant to the terms of this Agreement).

**THE PARTIES AGREE AS FOLLOWS:**

**A. DEFINITIONS, INTERPRETATION**

**1. DEFINITIONS**

In this Agreement, the terms set out below shall have the following meanings:

**"Accountants"** has the meaning given thereto in clause 18.1 (*Appointment of Accountants*);

**"Applicable Law"** means all applicable United Kingdom statutes, rules, regulations and orders, including, without limitation, FSMA and the FCA Rules, as replaced, amended or re-enacted from time to time;

**"Assignment"** means an interest in a loan acquired by way of novation or assignment;

**"Authorised Person"** has the meaning given to it in the Agency Agreement;

**"Basic Termination Event"** has the meaning set out in clause 13.8 (*Basic Termination Events*);

**"Board"** has the meaning set out in clause 4.6 (*Review by Board of Directors*);

**"Collateral Administrator Breach"** means, on the part of the Collateral Administrator:

- (a) any material breach of the provisions of this Agreement relating to the timing of the calculation of any tests or requirements to be undertaken by the Collateral Administrator pursuant hereto; or

- (b) any material failure in the issuance and delivery of any Reports required to be delivered by the Collateral Administrator pursuant hereto; or
- (c) any act or omission constituting breach of its obligations under this Agreement arising out of wilful default, fraud or negligence in the performance of its obligations under this Agreement; or
- (d) with respect to any material information concerning the Collateral Administrator provided in writing to the Issuer or to another person on its behalf by the Collateral Administrator expressly for inclusion in the section of the Prospectus headed "*Description of the Collateral Administrator*" (and any other material information concerning the Collateral Administrator contained in the Prospectus) at the date of the Prospectus and as at the Issue Date, to the best of the knowledge and belief of the Collateral Administrator (which has taken all reasonable care to ensure such is the case), such information is not in accordance with the facts and/or omits anything likely to affect the impact of such information; or
- (e) any representation or warranty made by it pursuant to clause 13.6 (*Collateral Administrator Representations and Warranties*) proving to have been incorrect in any material respect when made; or
- (f) any other material breach of its obligations under this Agreement;

**"Collateral Database"** has the meaning given thereto in clause 16.1(a) (*Duties of the Collateral Administrator*);

**"Conditions"** means the terms and conditions of the PPNs as set out in schedule 2 (*Conditions of the PPNs*) to the Trust Deed and **"Condition"** means such of the Conditions as is specified thereafter;

**"Custodial Assets"** means all Debt Investments and Eligible Investments and in each case any sums received in respect thereof, which are held from time to time by the Custodian (or any duly authorised Sub-Custodian) pursuant to the terms of the Agency Agreement;

**"EEA"** means the European Economic Area, the countries of which comprise the EU Member States;

**"EFTA"** means the European Free Trade Association countries of which comprise Iceland, Liechtenstein, Norway and Switzerland;

**"Eligible Construction Risk Sectors"** means the following sectors as set out in the table below:

<b>Eligible Construction Risk Sectors</b>	
<b>Transportation</b>	
Road	Yes
Rail	No
Light Rail	No
Port	No
Airport	No
Urban Transport	Yes
Rolling stock	Yes
<b>Social Infrastructure</b>	
Healthcare	Yes
Education (including student accommodation)	Yes
Other Government Building (including judiciary, military & offices)	Yes

<b>Utilities</b>	
Gas Transmission and Distribution	Yes
Electricity Transmission and Distribution	Yes
Water (including Wastewater)	Yes
Oil and Gas Storage	No
LNG (unloading/regasification terminals)	No
Telecom Transmission	Yes
Waste	No
<b>Renewables</b>	
Wind Farms	No
Solar	No
<b>Power</b>	
Thermal Power Generation	No

"Eligible Sectors" means the following sectors set out in the table below:

<b>Eligible Sectors</b>
<b>Transportation</b>
Road
Rail
Light Rail
Port
Airport
Urban Transport
Rolling stock
<b>Social Infrastructure</b>
Healthcare
Education (including student accommodation)
Other Government Building (including judiciary, military & offices)
<b>Utilities</b>
Gas Transmission and Distribution
Electricity Transmission and Distribution
Water (including Wastewater)
Oil and Gas Storage
Telecom Transmission
Waste
LNG (unloading/regasification terminals)
<b>Renewables</b>
Wind Farms
Solar
<b>Power</b>
Thermal Power Generation

"Eligibility Criteria" means the criteria set out in schedule 1 (*Eligibility Criteria*) to this Agreement which each Debt Investment is required to satisfy (i) as at the later of the Issue Date and the time the Issuer enters into a binding commitment to acquire each such Debt Investment and (ii) in relation to paragraph (l) of the Eligibility Criteria only, at any time;

"FSMA" means the Financial Services and Markets Act 2000 as amended from time to time;

"FCA" means the Financial Conduct Authority (including any successor or replacement organisation following amalgamation, merger or otherwise) recognised under the Financial Services and Markets Act 2000 (including any statutory modification or re-enactment thereof or any regulation or orders made thereunder);

**"FCA Rules"** means the Handbook of Rules and Guidance of the FCA as amended, varied or substituted from time to time;

**"Indemnified Party"** has the meaning given in clause 10.2(b) (*Issuer and Investment Manager Indemnities*);

**"Indemnifying Party"** means the Issuer pursuant to clause 10.2 (*Issuer and Investment Manager Indemnities*);

**"Investment Management Fee"** has the meaning given to that term in clause 12.1(a) (*Investment Management Fee*);

**"Investment Manager Breaches"** has the meaning given to that term in clause 10.1 (*Limits on Responsibility of the Investment Manager*);

**"Investment Manager Termination Event"** has the meaning set out in clause 13.9 (*Investment Manager Termination Events*);

**"Investment Committee"** means the body of members within the Investment Manager which carries out the investment advisory functions of the Investment Manager contemplated under this Agreement;

**"Issuer Indemnification Matter"** means:

- (a) any breach by the Issuer of any of its representations or warranties set out in this Agreement in any material respect;
- (b) any breach by the Issuer of any of its material obligations under this Agreement;
- (c) the failure of the Issuer to perform any of its material duties or obligations under or in connection with any Debt Investment; and
- (d) any suit, claim or action (including any lender liability or equitable subordination claim) arising out of or in connection with any act or omission of the Issuer as it relates to any Debt Investment (other than any suit, claim or action arising directly as a result of an Investment Manager Breach or a Collateral Administrator Breach, as applicable);

**"Issuer Indemnified Party"** has the meaning given in clause 21.2(b) (*Indemnity of the Issuer*);

**"Issuer Indemnifying Party"** means the Issuer pursuant to clause 21.2(b) (*Indemnity of the Issuer*);

**"Issuer Order"** means an order in writing, in any form as is agreed from time to time between the Collateral Administrator, the Trustee and the Investment Manager, from the Investment Manager acting on behalf of the Issuer, notifying the Trustee, the Collateral Administrator and, if applicable, the Account Bank:

- (a) of a proposed sale of and/or acquisition of and/or exercise of any rights under any Debt Investment and, in the case of any proposed sale, directing the Trustee to release the relevant Debt Investment from the security constituted by or pursuant to the Trust Deed; and/or
- (b) of an Offer made in respect of any Debt Investment or an option exercisable thereunder and directing the Custodian to take any action required in order to take up such Offer or exercise such option in accordance with the instruction set out therein; and/or

- (c) of a proposed transfer of funds from, to or between any of the Accounts (provided that no Issuer Order shall be required for the transfer of any amounts standing to the credit of any of the Accounts by the Collateral Administrator, acting on behalf of the Issuer, to the extent required to enable all amounts due to be paid pursuant to the Priorities of Payments on any Payment Date to be made),

in each case containing such information as is required pursuant to the provisions of this Agreement and such other information as is reasonably required by the Collateral Administrator and the Trustee and, if applicable, the Account Bank, including details of the action to be taken pursuant to such Issuer Order, the terms of the relevant Note Transaction Documents which authorise such action to be taken, details of any criteria required to be satisfied prior to such action being taken and evidence or certification that each such criteria has been satisfied;

**"Liabilities"** means, collectively, liabilities, obligations, losses, claims, damages, judgments, penalties, assessments, actions, suits, costs, expenses or other similar liabilities (including, without limitation, in respect of taxes, duties, levies, imposts and other charges and all legal fees and disbursements incurred in defending or disputing any of the foregoing and including any VAT or similar tax charged or chargeable in respect thereof);

**"MiFID"** has the meaning given to that term in clause 13.3(j) (*Independent Representation*);

**"Minimum Long Term Rating"** means a rating of Baa2 from Moody's, BBB from S&P or BBB from Fitch;

**"Monthly Report"** means the report relating to the Portfolio referred to in clause 19 (*Reports*) and schedule 2 (*Description of the Reports*) of this Agreement which is prepared by the Collateral Administrator in accordance with clause 16.1(d) (*Duties of the Collateral Administrator*);

**"Note Commitment"** means in relation to a Noteholder, the obligation of such Noteholder at any time to make Note Advances pursuant to and in the aggregate amount specified in the related Subscription Agreement;

**"Offer"** means, with respect to any Debt Investment, (a) any offer by the Obligor under such obligation or by any other Person made to all of the creditors of such Obligor in relation to such obligation to purchase or otherwise acquire such obligation (other than pursuant to any redemption in accordance with the terms of the related underlying instruments) or to convert or exchange such obligation into or for cash, securities or any other type of consideration or (b) any solicitation by the Obligor or any other Person to amend, modify or waive any provision of such obligation or any related underlying instrument;

**"Participation"** means an interest in relation to a loan which is a Debt Investment acquired indirectly by the Issuer by way of a sub-participation;

**"Payment Date Report"** means the report referred to in clause 19 (*Reports*) and schedule 2 (*Description of the Reports*) of this Agreement which is prepared by the Collateral Administrator in accordance with clause 16.1(d) (*Duties of the Collateral Administrator*);

**"Potential Termination Event"** means any condition, event or act which, with the giving of notice or the lapse of time or both, would constitute a Termination Event;

**"Portfolio Profile Tests"** means the following:

- (a) not more than 25 per cent of the aggregate of Drawn Amounts of all Noteholders shall be invested in Debt Investments with Obligors located in Italy and/or Spain;
- (b) not more than 20 per cent of the aggregate of Drawn Amounts of all Noteholders shall be invested in Participations;
- (c) not more than ~~20~~25 per cent of the aggregate of Drawn Amounts of all Noteholders shall be invested in renewable sector Debt Investments which have been identified as such by the Investment Manager; and
- (d) the Portfolio Weighted Average Life shall be no more than twelve (12) years. For these purposes, "**Portfolio Weighted Average Life**" of the Debt Investments as at the end of the Investment Period shall be expressed as a number of years and calculated by (i) summing the products obtained by multiplying (a) the scheduled payments of each Debt Investment (excluding any defaulted Debt Investments) that is then held by the Issuer and that is intended to mature or amortise in accordance with the amortisation schedule of the relevant Debt Investment by (b) the number of years from the end of the Investment Period to the payment date set out in the amortisation schedule which corresponds to the relevant scheduled payment set out in sub-paragraph (a) above and (ii) dividing such sum by the aggregate principal balance of all Debt Investments (excluding defaulted Debt Investments);

"**Prospectus**" means the prospectus dated 18 July 2013 in respect of the PPNs;

"**Quarterly Investment Management Report**" has the meaning given to that term in clause 19.4 (*Quarterly Investment Management Reports*);

"**Reports**" means each Monthly Report, each Payment Date Report and each Quarterly Investment Management Report as further described in schedule 2 (*Description of the Reports*) to this Agreement;

"**Scheduled Distribution**" means with respect to any Debt Investment, for each Due Date, the scheduled payment of principal, interest, dividend, premium and/or other amount due on such Due Date with respect to such obligation, determined in accordance with the assumptions set out in clause 3 (*Determinations in Respect of the Portfolio and Accounts*);

"**Selling Institution**" means an institution from which an interest in a Debt Investment is acquired either directly (by way of novation or assignment) or indirectly (by way of sub-participation);

"**Substitute Criteria**" shall have the meaning given to that term in clause 14.6 (*Termination or Resignation not Effective until Eligible Successor Appointed*);

"**Termination Event**" means a Basic Termination Event or (in relation to the Investment Manager only) an Investment Manager Termination Event;

"**Trust Deed**" means the trust deed dated on or about the date hereof between, amongst others, the Issuer and the Trustee in respect of the PPNs, as modified, restated and/or supplemented from time to time;

"**UK Tax Representative Liability**" means any liability of the Issuer to UK corporation tax or non resident income tax and/or interest and/or penalties thereon which is imposed on, or claimed by the UK tax authorities from, the Investment Manager (and any costs or expenses reasonably incurred by the Investment Manager in relation hereto) as a result of its appointment or the performance by it of its rights and obligations as Investment Manager under this Agreement in the UK; and

"VAT" means value added tax imposed in any member state of the European Union pursuant to the Council Directive of 28 November 2006 on the common system of value added tax and national legislation implementing or supplemental to that Directive and any other sales or turnover tax of a similar nature imposed in any country that is not a member state of the European Union.

## 2. **INTERPRETATION**

### 2.1 **Capitalised Terms**

Capitalised terms used and not otherwise defined in this Agreement shall have the meanings given thereto in the Trust Deed (including the Conditions). In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Trust Deed, the terms of the Trust Deed shall prevail.

### 2.2 **References to Statutes, etc.**

All references in this Agreement to any statute or any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof of any statutory instrument, order or regulation made thereunder or under such modification or re-enactment.

### 2.3 **References to other Documents, etc.**

All references in this Agreement to any agreement (including this Agreement), deed or other document, shall refer to such agreement, deed or other document as the same may be amended, supplemented or modified from time to time. For the avoidance of doubt, all references herein to the Note Trust Deeds shall include references to the applicable Note Conditions.

### 2.4 **References to Sections, Clauses, Paragraphs and Schedules**

In this Agreement references to sections, clauses, paragraphs and schedules shall, unless the context otherwise requires, be construed as references to the sections, clauses, paragraphs and schedules of or to this Agreement.

### 2.5 **References to Capacities of Parties**

References in this Agreement to any party acting in a particular capacity shall be construed as references to such party acting solely in the capacity to which reference is made.

### 2.6 **Duties and Obligations of Parties**

For the avoidance of doubt, the parties to this Agreement shall only assume obligations and duties in relation to the Note Transaction Documents if and to the extent they have agreed in writing to assume such obligations or duties in the Note Transaction Documents to which they are a party.

## 3. **DETERMINATIONS IN RESPECT OF THE PORTFOLIO AND ACCOUNTS**

All calculations with respect to distributions (including Scheduled Distributions) on any asset within the Portfolio shall be made based on information regarding the terms of each such asset and upon report of payments, if any, received thereon that are furnished to the Issuer by or on behalf of the Obligor thereunder and, to the extent they are not manifestly in error, such information or report may be conclusively relied upon in making such calculations.



## **B. INVESTMENT MANAGEMENT AND ADVISORY SERVICES**

### **4. INVESTMENT MANAGER'S DUTIES**

#### **4.1 Appointment and authority of the Investment Manager**

##### **(a) Appointment**

Subject to the terms (including, without limitation, clause 5.3 (*Investment Manager to act for Trustee*)), conditions and restrictions set out in this Agreement, the Issuer hereby appoints the Investment Manager to perform certain investment advisory and management functions in accordance with the provisions of this Agreement and applicable laws and the Investment Manager hereby accepts such appointments in the terms set forth herein.

##### **(b) Compliance**

The Investment Manager undertakes to take all such action as may be required to ensure that it is in compliance with and performs its obligations under this Agreement in compliance with any laws, regulations or requirements applicable to it in the performance of its obligations under this Agreement including, without limitation, any laws, regulations or requirements applicable to the performance of its obligations under this Agreement to an entity such as the Issuer which is a securitisation undertaking (*organisme de titrisation*) in the form of a public limited liability company (*société anonyme*) incorporated under, and governed by, the laws of Luxembourg.

##### **(c) Authority**

The Investment Manager's duties and authority to act as Investment Manager hereunder are limited to the duties and authority specifically provided for in this Agreement. Unless otherwise expressly stated in this Agreement, the Investment Manager shall not be deemed to assume the obligations of the Issuer under the Notes or the Note Trust Deeds or under any other document or agreement to which the Issuer is a party.

#### **4.2 Standard of Care**

The Investment Manager will, except as otherwise expressly provided in this Agreement, perform its obligations honestly, fairly and professionally and in accordance with a standard of care that is reasonably expected of a professional investment manager providing similar investment advisory and management services.

#### **4.3 Services**

To the extent necessary or appropriate to perform such duties and subject to clause 4.5 (*Actions for which the prior express approval of the Issuer is required*), the Issuer hereby grants to the Investment Manager the power to negotiate, execute and deliver all necessary and appropriate documents and instruments in the name and on behalf of the Issuer with respect to any Debt Investment. The activities engaged in pursuant to the provisions of this Agreement by the Investment Manager shall be subject to review by the Board of Directors of the Issuer pursuant to clause 4.6 (*Review by Board of Directors*).

#### **4.4 Obligations and Authority**

##### **(a) Obligations and Authority**

Subject to clause 4.5(a) (*Actions for which the prior express approval of the Issuer is required*) and clause 5.3 (*Investment Manager to act for Trustee*), the Issuer

hereby appoints the Investment Manager and, where applicable, authorises and appoints the Investment Manager, as agent of the Issuer, in each case, in accordance with the provisions of this Agreement and the Note Trust Deeds and grants the Investment Manager full authority and delegates to the Investment Manager the power in the name of the Issuer on the Issuer's behalf to:

- (i) (A) identify and conduct due diligence on potential investment opportunities, consult and appoint any third party advisers whose expertise or advice may be necessary or desirable in assisting the Investment Manager's assessment of any potential investment opportunity and assess on behalf of the Issuer from time to time Debt Investments which satisfy the Eligibility Criteria and (B) make recommendations for the acquisition thereof by the Issuer;
- (ii) enter into any Participations or Assignments as appropriate and as further described in clause 25 (*The Portfolio*) of this Agreement;
- (iii) monitor the Portfolio on behalf of the Issuer (including, without limitation, monitoring whether any Debt Investment held in the Portfolio becomes a defaulted Debt Investment from time to time) and to effect any changes to the Portfolio, subject at all times to compliance with the Eligibility Criteria;
- (iv) if applicable, participate on behalf of the Issuer in a committee or group formed by creditors or shareholders of an issuer of, or an Obligor under, any Debt Investment and participate, on behalf of the Issuer in any workout, restructuring of any Debt Investment (including discussing the acceptance of any security in exchange for or in satisfaction of such Debt Investment) and/or the reorganisation of any such issuer or obligor;
- (v) as agent of the Issuer, attend and/or vote or refrain from attending and/or voting at any meeting of the holders of, or other persons participating in or entitled to any rights or benefits under, or to otherwise exercise or refrain from exercising any voting rights arising in respect of, any Debt Investment (including, but not limited to, those relating to amendments, waivers and offers);
- (vi) exercise all other rights and take any other actions contemplated to be exercised or taken by the Investment Manager, acting on behalf of the Issuer, in this Agreement and the Note Trust Deeds (including the Note Conditions);
- (vii) advise the Issuer in respect of the issuance of any Note Advance Requests in respect of the Notes;
- (viii) exercise all discretions, make all judgements and determinations and give directions and take all other actions the Investment Manager is authorised or required to exercise, make or take under this Agreement or pursuant to the Note Conditions, the Note Trust Deeds and any other Note Transaction Document, including taking any action in respect of any judicial proceedings derived from or related to the Portfolio (including, for the avoidance of doubt, the taking of any enforcement action);
- (ix) make recommendations to the Issuer for the disposal of Debt Investments in the Portfolio, including but not limited to, disposals to be made in connection with any redemption of the Notes pursuant to Condition 7.2 (*Redemption at the Option of the Noteholders*), or Condition 10 (*Events of Default*) and Condition 11 (*Enforcement*) and the corresponding Note Conditions for the other Notes;

- (x) put in place and negotiate on behalf of the Issuer all Debt Investments to be made by the Issuer in order to ensure that the Issuer remains and will remain passive;
- (xi) in its sole discretion, purchase from time to time Eligible Investments out of the balances standing to the credit of the Accounts, other than the Payment Account;
- (xii) during the Investment Period make recommendations to the Issuer for the acquisition of new Debt Investments on behalf of the Issuer satisfying the Eligibility Criteria at the time that the binding commitment to acquire such new Debt Investments is entered into;
- (xiii) inform the Collateral Administrator in writing when a Debt Investment becomes a defaulted Debt Investment for inclusion in the Monthly Reports and Payment Date Reports;
- (xiv) provide relevant information related to the Portfolio which is reasonably requested by the Collateral Administrator, the Issuer, the Trustee, independent accountants and other parties provided the Investment Manager has or can reasonably obtain and/or disclose such information (subject to any confidentiality requirements);
- (xv) make recommendations to the Issuer in relation to any Material Restructuring (which, for the avoidance of doubt, includes insolvency work-outs and managing the costs of work-outs) of any Debt Investments and in relation to the Restructuring Option;
- (xvi) perform the day to day management of the Portfolio, including but not limited to, (aa) responding to Obligors' and agents' requests, (bb) obtaining consents and waivers, (cc) monitoring the performance of the Obligors and monitoring covenant compliance and defaults in the Portfolio, (dd) reporting to the Noteholders on the performance of the Portfolio and (dd) carrying out negotiations in respect of the Portfolio;
- (xvii) calculate the Reallocation Premium, in respect of a Further PPN Holder and a Further Issue Date;
- (xviii) calculate the Reallocation Rebate, in respect of a Partially Drawn Noteholder and the Note Available Commitment Termination Date;
- (xix) compile and deliver the Quarterly Investment Management Report in accordance with clause 19.4 (*Quarterly Investment Management Report*);
- (xx) upon an acquisition of a Debt Investment, promptly identify the business sector to which the relevant Debt Investment relates for the purposes of enabling the Collateral Administrator to maintain the Collateral Database;
- (xxi) determine and notify the Issuer (with a copy to the Collateral Administrator and the Account Bank) which portion of the proceeds from each Note Advance will be paid into the Expense Reserve Account and into the Principal Account as Principal Proceeds;
- (xxii) on the Business Day immediately preceding the Note Available Commitment Scheduled Termination Date, in the Investment Manager's sole discretion, (aa) draw down Note Advances in accordance with the relevant Subscription Agreement in an amount up to the Undrawn Amount on such date and credit the proceeds thereof to the Principal Account for the investment thereof in Debt Investments, provided that (x) the Investment Manager (acting on

behalf of the Issuer) has entered into negotiations regarding the purchase of such Debt Investments or (y) without prejudice to sub-paragraph (x), key terms have been agreed or an offer, agreement in principle, letter of intent or memorandum of understanding, has been made or entered into in writing and in good faith by the Investment Manager (acting on behalf of the Issuer) and the seller thereof with the intention of the Issuer purchasing such Debt Investments, (regardless of whether such arrangement is legally binding as at the Note Available Commitment Termination Date) and such purchase under either paragraph (x) or (y) above or a combination of both is expected by the Investment Manager to settle within 6 months of the Note Available Commitment Termination Date and (bb) confirm in writing to the Note Agent that it wishes to extend the Investment Period;

(xxiii) in relation to an Impaired Debt Investment, determine the Impairment Amount in accordance with clause 4.12 (*Determination of Impairment Amounts*); and

(xxiv) in relation to a Noteholder and a Note Advance Date:

- (x) determine the Note Advance;
- (y) for the purposes of determining the Note Advance in paragraph (x) above, determine the *Pro-Rata* Note Advance; and
- (z) for the purposes of determining the *Pro-Rata* Note Advance in paragraph (y) above, determine the aggregate amount required to fund the Expense Reserve Account, the Initial Set Up Costs and the acquisition of the Debt Investments and any related costs on the related Note Advance Date,

and to specify in the related Note Advance Request, each of the Note Advance amount, the *Pro-Rata* Note Advance amount and a breakdown of the amounts set out in paragraph (z).

**(b) Repayment of Reallocation Rebate**

The Investment Manager shall, based on the Note Register provided to it by the Note Agent pursuant to the Agency Agreement and in any event by a date falling at least 5 Business Days prior to the Note Available Commitment Termination Date, (i) confirm in writing to the Issuer (with a copy to the Collateral Administrator) as to whether a Noteholder is, as at the Note Available Commitment Termination Date, entitled to a Reallocation Rebate and if applicable, the amount of such Reallocation Rebate and (ii) on behalf of the Issuer, deliver a Note Advance Request to the Note Agent and each Noteholder (with a copy to the Trustee, the Registrar and the Collateral Administrator) in accordance with the relevant Subscription Agreement specifying (x) the requested Note Advance(s) amount, which shall be an amount equal to or greater than the aggregate of the Reallocation Rebate(s) owed by the Issuer to certain Noteholders and (y) the date on which the Note Advance(s) (such date being a date falling on or before the Note Available Commitment Termination Date) must be made to enable the Issuer to pay the Reallocation Rebate to such Noteholders on the Note Available Commitment Termination Date in accordance with the relevant Subscription Agreement.

**(c) Revolving Debt Investments and Delayed Drawdown Debt Investments**

- (i) The Investment Manager (acting on behalf of the Issuer) may from time to time acquire Debt Investments which are Revolving Debt Investments or

Delayed Drawdown Debt Investments. Each Revolving Debt Investment and Delayed Drawdown Debt Investment will, pursuant to its terms, require the Issuer to make one or more future advances or other extensions of credit (including extensions of credit made on an unfunded basis pursuant to which the Issuer may be required to reimburse the provider of a guarantee or other ancillary facilities made available to the Obligor thereof in the event of any default by the Obligor thereof in respect of its reimbursement obligations in connection therewith). Such Revolving Debt Investments and Delayed Drawdown Debt Investments may or may not provide that it may be repaid and reborrowed from time to time by the Obligor thereunder. Upon acquisition of any Revolving Debt Investment or Delayed Drawdown Debt Investment, the Issuer shall deposit into the Revolving Reserve Account and shall maintain from time to time in the Revolving Reserve Account amounts equal to the combined aggregate principal amounts of the Unfunded Amounts under each of the Revolving Debt Investments and Delayed Drawdown Debt Investments.

- (ii) Upon acquisition of any Revolving Debt Investment or Delayed Drawdown Debt Investment, the Investment Manager, acting on behalf of the Issuer shall procure that amounts are deposited into the Revolving Reserve Account so that the aggregate of the balance standing to the credit of the Revolving Reserve Account at least equals the aggregate of all Unfunded Amounts in respect of all Revolving Debt Investments and Delayed Drawdown Debt Investments.
- (iii) To the extent required, the Investment Manager (acting on behalf of the Issuer) may direct that amounts standing to the credit of the Revolving Reserve Account be deposited with a third party from time to time as collateral for any reimbursement or indemnification obligations owed by the Issuer to any other lender in connection with a Revolving Debt Investment or a Delayed Drawdown Debt Investment or to collateralise the Issuer's obligation to fund drawings under any Delayed Drawdown Debt Investments or Revolving Debt Investments and upon receipt of an Issuer Order, the Trustee shall release such amounts from the security granted thereover pursuant to the Trust Deed.

(d) **Investment Committee**

Should any member of the Investment Committee cease to be employed by the Investment Manager and/or its Affiliates, the Investment Manager shall (i) notify the Issuer (with a copy to the Trustee), and (ii) seek to appoint a suitable replacement or successor with similar experience. Any additional or replacement members of the Investment Committee shall be proposed by the Investment Manager and/or its Affiliates (as the case may be) and appointed by the Issuer, subject to consent of the Noteholders (other than Substitute PPN Holders) acting by way of Ordinary Resolution during the Investment Period only. For the avoidance of doubt, such Noteholders' approval of the replacement Investment Committee member will not be required after the Investment Period.

(e) **Execution**

The Investment Manager shall have the power to execute and deliver all necessary or appropriate documents and instruments as agent for and on behalf of the Issuer with respect to the Debt Investments to the extent required to carry out its duties under this Agreement, including, without limitation, any instruments of transfer or other agreements or documents relating to the Portfolio (which the Issuer has authorised the Investment Manager to enter into on its behalf under the provisions

of this Agreement), and to inform the Issuer in respect of all actions to be taken by the Issuer thereunder.

#### 4.5 **Actions for which the prior express approval of the Issuer is required**

- (a) The Investment Manager shall have no power or authority to enter into, effect or implement on behalf of the Issuer:
- (i) the acquisition of any Debt Investments;
  - (ii) the disposal of any Debt Investments;
  - (iii) any Material Restructuring (which, for the avoidance of doubt, includes insolvency work-outs and managing the cost of work-outs) of any Debt Investments; or
  - (iv) the Restructuring Option,
- unless such acquisition, disposal, Material Restructuring or Restructuring Option has been approved by the Issuer in writing following a recommendation presented to it by the Investment Manager.
- (b) The procedures to be followed by the Investment Manager in relation to any recommendations made in respect of clause 4.5(a) above are as follows:
- (i) The Investment Manager shall provide the Issuer with all information as the Issuer may reasonably require in relation to the relevant acquisition, disposal, Material Restructuring or Restructuring Option as described in clause 4.5(a) above.
  - (ii) The Board shall as soon as reasonably practicable, and in any event no later than three Business Days after receiving the recommendation(s) and documentation from the Investment Manager pursuant to clause 4.5(a) above (such date, the "**Recommendation Deadline**"), either approve (subject to any such amendments or qualifications as the Board may require) or reject the Investment Manager's recommendation(s) and shall promptly notify such approval or rejection in writing to the Investment Manager.
  - (iii) In the event the Board approves the relevant recommendation(s) in writing prior to the expiry of the Recommendation Deadline, the Investment Manager will be entitled to take such action immediately following such approval (subject to any amendments or qualifications required by the Issuer) in order to implement the recommendation(s).
  - (iv) If the Investment Manager has not received any notice from the Board approving or rejecting the recommendation(s) by the Recommendation Deadline, the Investment Manager shall be entitled to assume that such recommendation has not been approved, and shall not take any further action to implement the recommendation(s) unless subsequently instructed by the Board to do so. The parties agree that notwithstanding a failure by the Board to approve the recommendation(s) by the Recommendation Deadline, nothing shall preclude the Board from approving such recommendation(s) after the Recommendation Deadline.
- (c) If at any time the Investment Manager considers, in light of market or other circumstances prevailing at the time, that any of the procedures set out in clause 4.5(b) above are not appropriate or any matter referred to in clause 4.5(a) requires the taking of immediate action, the Investment Manager shall seek the

written approval of the Board to carry out any such action as referred to in clause 4.5(a) above and in such case the Board shall ensure that a decision is made and received by the Investment Manager within one Business Day of receipt of the relevant information (such date, the "**Expedited Recommendation Deadline**"). If the Board vetoes or rejects such action by the Expedited Recommendation Deadline, then the Investment Manager shall not be entitled to take any further action to implement the recommendation(s). If the Investment Manager has not received any notice from the Board approving or rejecting the recommendation(s) by the Expedited Recommendation Deadline, the Investment Manager shall be entitled to assume that such recommendation has not been approved and shall not take any further action to implement the recommendation(s) unless subsequently instructed by the Board to do so. The parties agree that notwithstanding a failure by the Board to approve the recommendation(s) by the Expedited Recommendation Deadline, nothing shall preclude the Board from approving such recommendation(s) after the Expedited Recommendation Deadline.

#### 4.6 **Review by Board of Directors**

The Board of Directors of the Issuer (the "**Board**") shall meet to consider any recommendations or requests made to the Issuer by the Investment Manager as soon as reasonably practicable and otherwise no less than once in each calendar quarter (with the provision of appropriate reports from the Investment Manager to the Issuer at the request of the Issuer) to discuss and review the Portfolio, including the performance of the Investment Manager. The Board may require the attendance of representatives of the Investment Manager at such meetings to discuss and explain the overall performance of the Investment Manager and/or any information on the Collateral (including the Portfolio) and all other activities incidental thereto that it may reasonably require in connection with its review. On the basis of the above review and the explanations provided by the Investment Manager, the Board may take a decision as to whether or not it wishes to initiate procedures to remove the Investment Manager in accordance with the relevant provisions of this Agreement.

#### 4.7 **Direction of Custodian**

The Issuer, or the Investment Manager on behalf of the Issuer, may at any time, subject to any transfer, disposal, acquisition, investment or other restrictions contained in this Agreement and otherwise in accordance with this Agreement, direct the Custodian to take any of the following actions:

- (a) if applicable, retain any Debt Investment;
- (b) if applicable, dispose of any Debt Investment in the open market or otherwise;
- (c) if applicable, tender any Debt Investment pursuant to an Offer;
- (d) if applicable, consent to any proposed amendment, modification or waiver to the terms and conditions of any Debt Investment;
- (e) if applicable, retain or dispose of any securities or other property (if other than cash) received with respect to any Debt Investment;
- (f) if applicable, waive or elect not to exercise remedies in respect of any default with respect to any defaulted Debt Investment;
- (g) if applicable, vote to accelerate the maturity of any defaulted Debt Investment;
- (h) if applicable, participate on behalf of the Issuer in a committee or group formed by creditors or shareholders of an Obligor under, any Debt Investment and agree on behalf of the Issuer to any restructuring of any Debt Investment (including the

acceptance of any security in exchange for or in satisfaction of such Debt Investment) and/or the reorganisation of any such Obligor;

- (i) if applicable, exercise any other rights or remedies contemplated to be exercised by the Custodian with respect to any Debt Investment; and/or
- (j) accept into custody as a custodial asset any Debt Investment which is a security.

#### **4.8 Note Trust Deeds**

The Investment Manager shall comply with the Note Trust Deeds (including the Note Conditions) affecting or relating to its duties and functions to be performed under this Agreement. The Issuer agrees that it shall not approve any amendment to the Notes or the Note Trust Deeds (including the Note Conditions) that affects the obligations of the Investment Manager unless the Investment Manager has been given prior written notice of such amendment and consented thereto in writing.

#### **4.9 Notification of Receipt by Custodian**

The Custodian shall notify the Issuer, the Collateral Administrator, the Investment Manager and the Trustee upon receipt of any distributions in respect of the Portfolio or receipt of any security or property in exchange for any Debt Investments, including receipt of any:

- (a) Principal Proceeds;
- (b) Interest Proceeds; and
- (c) distributions received upon the Stated Maturity of any Debt Investment, (distinguishing between the same).

#### **4.10 Co-operation with Collateral Administrator**

Subject to any confidentiality undertaking given by the Issuer and/or the Investment Manager or to which the Issuer and/or the Investment Manager is subject, the Investment Manager shall co-operate with the Collateral Administrator and shall provide and verify such information within the Investment Manager's actual knowledge and control, which the Collateral Administrator may reasonably request, in connection with the Collateral Administrator's:

- (a) maintenance of the Collateral Database;
- (b) calculation of, and determining compliance of the Portfolio with the Portfolio Profile Tests;
- (c) calculation of the Redemption Prices and any amounts payable in accordance with the Priorities of Payments;
- (d) preparation of the Monthly Reports, the Payment Date Reports and Payment Date instructions; and
- (e) other obligations in relation to which the Investment Manager is specified, in the Note Transaction Documents, as providing information or assistance to, or co-operating or liaising with, the Collateral Administrator.



#### 4.11 **Review of Reports**

The Investment Manager, acting on behalf of the Issuer, shall review the contents of the Reports, instructions and statements, the data supplied to the Collateral Administrator which is reflected in the Reports and the calculations contained therein.

#### 4.12 **Determination of Impairment Amounts**

The Investment Manager shall determine whether a Debt Investment is an Impaired Debt Investment for the purposes of calculating the Investment Management Fee. The Investment Manager shall use a valuation method consistent with the International Accounting Standard 39 when determining the Impairment Amount in respect of an Impaired Debt Investment, and may take into account, amongst other things:

- (a) whether the relevant Obligor has defaulted in its payment under that Debt Investment for more than 10 Business Days of its due date;
- (b) any information received from the relevant Obligor which may indicate a default under that Debt Investment or a deferral or reduction in the principal and interest which may be received by the Issuer under that Debt Investment; and
- (c) the Investment Manager's estimation of any expected deferral or reduction in the principal and interest payable under that Debt Investment.

### 5. **NOTIFICATION OF DISTRIBUTIONS AND DESIGNATION OF MONIES RECEIVED**

#### 5.1 **Power of Attorney**

Subject to clause 4.5 (*Actions for which the prior express approval of the Issuer is required*), the Issuer by this Agreement makes, constitutes and appoints the Investment Manager, with full power of substitution, as its true and lawful agent and attorney, with full discretionary power and authority in its name, place and stead, to sign, execute, certify, swear to, acknowledge, deliver, file, receive and record any and all documents that the Investment Manager deems appropriate or necessary in connection with the Investment Manager's powers and duties under this Agreement. The foregoing power of attorney is by this Agreement declared to be irrevocable and, subject to any applicable Luxembourg laws and regulations, it will survive and not be affected by the subsequent bankruptcy or insolvency or dissolution of the Issuer; provided that the foregoing power of attorney will expire, and the Investment Manager will cease to have any power to act as the Issuer's attorney, upon the earlier of the termination of this Agreement and the termination, resignation or removal of the Investment Manager in accordance with the terms hereof. The Issuer will, from time to time, execute and deliver to the Investment Manager, or cause to be executed and delivered to the Investment Manager, all such other powers of attorney, proxies, instruments, documents and assurances as the Investment Manager may reasonably request for the purpose of enabling the Investment Manager to exercise the rights and powers which it is entitled to exercise pursuant to this Agreement.

#### 5.2 **Grant of Security Interest**

Upon any acquisition of Debt Investments after the Issue Date, all of the Issuer's right, title and interest to such Debt Investments shall be granted by way of security to the Trustee in accordance with clause 10.1 (*Charge and Assignment*) of the Trust Deed and pursuant to any additional security document(s) as shall be necessary or as the Trustee may properly require to ensure that the Trustee is granted a first charge or first priority security interest in relation to such Debt Investments.

### 5.3 **Investment Manager to act for Trustee**

At any time after any Event of Default or Potential Event of Default shall have occurred which has not been remedied or waived or the Trustee shall have received any money that it proposes to pay under clause 13 (*Payments and Application of Monies*) of the Trust Deed to the relevant Noteholders, the Trustee may by notice in writing to the Issuer and the Investment Manager (such notice to include that an Event of Default or Potential Event of Default has occurred which has not been remedied or waived), require the Investment Manager until notified by the Trustee to the contrary and so far as permitted by applicable law:

- (a) to act thereafter as Investment Manager of the Trustee under the provisions of the Trust Deed *mutatis mutandis* on the terms provided in this Agreement (save that the Trustee's liability under any provisions thereof for the indemnification, remuneration and payment of out of pocket expenses of the Investment Manager shall be limited to the amounts for the time being held by the Trustee on the trusts constituted by the Trust Deed, as may be supplemented by a Note Trust Deed, relating to the relevant Notes and available for such purpose); and/or
- (b) to deliver up all monies, documents and records held by it in respect of the relevant Notes to the Trustee or as the Trustee shall direct in such notice, provided that such notice shall be deemed not to apply to any document or record which the Investment Manager is obliged not to release by any applicable law or regulation.

For the avoidance of doubt, the Investment Manager is not under any obligation to monitor or investigate whether an Event of Default or a Potential Event of Default has occurred or has been remedied or waived.

### 5.4 **Limited Duties and Obligations; No Partnership or Joint Venture**

The Investment Manager will not have any duties or obligations except those expressly set forth in this Agreement. Without limiting the generality of the foregoing, (i) the Investment Manager will not be subject to any fiduciary or other implied duties, (ii) the Investment Manager will not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by this Agreement and/or the Note Trust Deeds, and (iii) except as expressly set forth in this Agreement, the Investment Manager will not have any duty to disclose, and will not be liable for the failure to disclose, any information relating to any Obligor under any Debt Investments or any of its Affiliates that is communicated to or obtained by the Investment Manager or any of its Affiliates. The Issuer agrees that the Investment Manager is an independent contractor and not a general agent of the Issuer and that, except as expressly provided in this Agreement, the Investment Manager will not have authority to act for or represent the Issuer in any way and will not otherwise be deemed to be the Issuer's agent. Nothing contained in this Agreement will (a) create or constitute the Issuer and the Investment Manager as members of any partnership, joint venture, association, syndicate, unincorporated business or other separate entity, (b) be construed to impose any liability as such on either of them, or (c) be deemed to confer on either of them any express, implied, or apparent authority to incur any obligation or liability on behalf of the other entity, save to the extent expressly specified in this Agreement.

### 5.5 **Reliance on Collateral Administrator**

In the performance of certain functions specified in this clause 5 (*Notification of Distributions and Designation of Monies Received*), the Investment Manager is only able to fulfil its duties following receipt from the Collateral Administrator of certain assistance, determinations and/or certain confirmations as provided for in this Agreement. In the event the Collateral Administrator fails to give any such assistance, confirmation and/or determination, the Investment Manager shall not incur any liability for failing to comply

with its obligations pursuant to this Agreement to the extent such failure is attributable to the failure of the Collateral Administrator to provide such assistance, confirmation and/or determination.

#### 5.6 **Reliance on Advisers**

The Investment Manager will be entitled to rely upon, and will not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by an Authorised Person. Subject to the standard of care described in clause 4.2 (*Standard of Care*) above, the Investment Manager also may rely upon any statement made to it orally or by telephone and believed by it in good faith to be made by an Authorised Person, and will not incur any liability for relying thereon. Subject to the standard of care described in clause 4.2 (*Standard of Care*) above, the Investment Manager may consult with and appoint legal counsel, accountants and other experts selected by it in good faith, and will not be liable for any action taken or not taken by it in good faith in accordance with the advice of any such legal counsel, accountants or experts.

#### 5.7 **Limitation of Duties**

In exercising its powers and duties under this Agreement, the Investment Manager shall not be required to, and shall not be responsible for any failure to, take any actions whatsoever in relation to any part of the Portfolio if to do so would result in the Investment Manager breaching any law or regulation to which the Investment Manager is subject.

### 6. **CONDUCT OF BUSINESS BY THE INVESTMENT MANAGER**

#### 6.1 **Brokerage**

- (a) The Investment Manager shall use all reasonable efforts to obtain best execution of orders placed by it in carrying out its obligations under this Agreement.
- (b) The Investment Manager shall not be responsible for any loss incurred by reason of any act or omission of any broker who effects transactions with respect to the Portfolio.
- (c) Subject to the Investment Manager's obligations and the authority and acknowledgements set forth herein, the Investment Manager may execute any transaction it enters into on behalf of the Issuer in accordance with the terms of this Agreement in relation to the Portfolio with or through itself or any of its Affiliates as agent as it shall determine in its sole discretion, and may execute transactions on behalf of the Issuer in accordance with the terms of this Agreement in which it, its Affiliates and/or their personnel have interests.

#### 6.2 **Secondary Record Keeper**

- (a) Subject to the paragraph below, the Investment Manager will maintain appropriate records relating to services performed hereunder, and such records will, subject to any applicable law or any obligation of confidentiality, be accessible for inspection by a representative of the Issuer, the Trustee and the Collateral Administrator at a mutually agreed time during normal business hours and upon not less than 5 Business Days' prior notice.
- (b) The Investment Manager shall maintain a record of all transactions entered into on behalf of the Issuer with respect to the Portfolio, but such record shall be of a duplicate or secondary nature only. All primary records and documents in respect of such transactions received by the Investment Manager shall be provided by the

Investment Manager to, and shall be held by, the Collateral Administrator, as agent for the Issuer.

- (c) The Investment Manager shall, if required by the Issuer, (and as between the Investment Manager and the Issuer at the Issuer's expense) provide to the Issuer or the Collateral Administrator in a timely manner such data (which shall be additional to that contained in the Monthly Reports and the Payment Date Reports) as the Issuer and/or the Collateral Administrator may reasonably require, subject to any applicable law and any obligation of confidentiality.

### 6.3 Issuer Orders

- (a) Any acquisition or sale of a Debt Investment for the Issuer shall only be made upon delivery of an Issuer Order by the Investment Manager to the Issuer, the Trustee and the Collateral Administrator, signed by the Investment Manager which provides certification by the Investment Manager of satisfaction of the relevant conditions or criteria required to be satisfied in connection with such action pursuant to the terms of this Agreement.
- (b) All Issuer Orders delivered pursuant to the Note Transaction Documents will contain details of any commissions, remuneration or profits (including an explanation as to the type of commissions, remuneration or profits) received or to be received by the Investment Manager in respect of the relevant sale of and/or exercise of any rights under a Debt Investment and the Issuer hereby consents to the receipt by the Investment Manager of such commissions, remuneration or profits. For the avoidance of doubt, the fees set forth in clause 12 (*Fees and Expenses of the Investment Manager*) shall be abated by the commissions, remuneration or profits received by the Investment Manager referred to in this clause (b).

### 6.4 Information

Subject to any confidentiality undertaking given by the Investment Manager or to which the Issuer and/or the Investment Manager is subject and subject to any legal or regulatory restriction to which the Issuer or the Investment Manager is subject, the Investment Manager shall provide to the Collateral Administrator and the Accountants appointed by the Issuer pursuant to this Agreement all reports, data and other information (including, without limitation, any letters of representation in its possession) relating to the Collateral that the Collateral Administrator or such Accountants may reasonably require in connection with the proper performance of their respective appointments.

### 6.5 Agent

In the event that the Investment Manager sells any assets to the Issuer as agent, such sale shall be effected on terms which are not less favourable than terms agreed on an arm's length basis.

## 7. ADDITIONAL ACTIVITIES OF THE INVESTMENT MANAGER AND AFFILIATES

### 7.1 Permitted Activities of the Investment Manager

The Investment Manager and its Affiliates are hereby authorised:

- (a) to act in multiple capacities, and, in particular in relation to the Investment Manager's obligations set forth in clause 4 (*Investment Manager's Duties*) above, to effect transactions with or for the Issuer's account in instances in which the Investment Manager and its Affiliates may have multiple interests;

- (b) along with their directors, principals, officers and employees, to have multiple advisory, financial and other interests in the Portfolio;
- (c) to act as investment adviser, investment manager or portfolio servicer to clients in financial advisory asset management and other capacities in relation to obligations included in the Portfolio that may be purchased, sold or held on the Issuer's behalf; and
- (d) along with their directors, principals, officers and employees to serve as directors of companies the obligations of which may comprise assets purchased, sold or held by the Issuer.

The Issuer hereby acknowledges that at times, these activities may cause departments of the Investment Manager and its Affiliates to give advice to clients that may cause these clients to take actions adverse to the interests of the Issuer and could affect the price and availability of the obligations that the Investment Manager seeks to buy or sell for the Issuer's account, which could adversely impact the financial returns of the Issuer in respect of the Portfolio, and, may effect transactions for such clients or proprietary accounts at prices or rates that may be more or less favourable than the prices or rates applying to transactions effected for the Issuer.

## 7.2 General

Nothing in this Agreement will prevent the Investment Manager or any of its Affiliates from engaging in other businesses, or from rendering services of any kind to the Issuer, its Affiliates, the Trustee, the Collateral Administrator, any Noteholder or any other Person or entity to the extent permitted by applicable law provided that the Investment Manager will not carry out any transactions on behalf of the Issuer save as provided by this Agreement. Without prejudice to the generality of the foregoing, the Investment Manager and any current or former shareholder, directors, officers, employees and agents of the Investment Manager or its Affiliates may, among other things:

### (a) **Serve as Directors**

serve as directors (whether supervisory or managing), officers, employees, agents, nominees or signatories for any obligor under any assets forming part of the Portfolio provided that such activity would not have a material adverse effect on the Collateral;

### (b) **Receive Fees**

receive fees for services of any nature rendered to the Obligor in respect of any Debt Investment included in the Portfolio or such Obligor's respective Affiliates, provided that in the reasonable judgement of the Investment Manager, such activity will not have a material adverse effect on the enforceability of the Debt Investments contained in the Portfolio;

### (c) **Be a Creditor**

be a secured or unsecured creditor of, and/or hold an equity interest in any Obligor in respect of, any Debt Investment included in the Portfolio;

### (d) **Be a Member of a Creditors' Committee**

serve as a member of any "creditors' committee" with respect to any Debt Investment included in the Portfolio which has become or, in the Investment Manager's reasonable opinion, may become a defaulted Debt Investment;

(e) **Acquire from/Sell to Issuer**

acquire or sell any asset forming part of the Collateral from or to the Issuer while acting in the capacity of agent, but only in compliance with the provisions of this Agreement;

(f) **Engage in Marketing**

act as a distributor of or market any Debt Investment or Note, subject to all applicable laws;

(g) **Act as Investment Manager**

act as the portfolio servicer, investment manager or investment adviser to any other person, entity or fund;

(h) **Maintain Relationships**

maintain any other relationships with issuers of, or obligors of obligations included in the Portfolio or other obligations; and

(i) **Engage in Other Businesses**

engage in any other business and furnish investment management and advisory services to others, including Persons that may have investment policies similar to those followed by the Investment Manager with respect to the Portfolio and which may own loans or other debt obligations which are the same type, as the Debt Investments or which may own other loans or other debt obligations of Obligor in respect of Debt Investments. Any action taken by the Investment Manager with respect to the Portfolio will not be proprietary to the Issuer. The Investment Manager will be free, in its sole discretion, to make recommendations to others, or effect transactions on behalf of itself or for others, which may be the same as or different from those effected with respect to the Portfolio.

**7.3 Acting as Agent, Interests**

(a) **Acting as Agent**

Nothing contained in this Agreement shall prevent the Investment Manager or any of its Affiliates, acting as agent on behalf of others, from buying or selling, or from recommending to or directing any other account to buy or sell, at any time, assets of the same kind or class, or assets of a different kind or class of the same obligor, as those eligible to be acquired or sold by the Investment Manager (acting on behalf of the Issuer) under this Agreement.

(b) **Interests**

It is understood that, to the extent permitted by applicable law, the Investment Manager, its Affiliates, and any officer, partner, director, stockholder or employee of the Investment Manager or any such Affiliate or any member of their families or any Person or entity advised by the Investment Manager may have an interest in a particular transaction or in assets of the same kind or class, or assets of a different kind or class of the same obligor, as those whose acquisition or sale the Investment Manager may execute, direct or advise hereunder.

**7.4 Protection for Inaction**

The Investment Manager may, unless the Investment Manager determines in its reasonable judgment that such purchase or sale is appropriate and notwithstanding any

other provisions of this Agreement, at any time refrain from executing on behalf of the Issuer the acquisition or sale hereunder of obligations of:

- (a) Persons of which the Investment Manager, its Affiliates or any of their or their Affiliates' officers, partners, directors or employees are partners, directors, officers or employees; or
- (b) Persons for which the Investment Manager or any of its Affiliates acts as financial adviser or investment manager or adviser; or
- (c) Persons about which the Investment Manager or any of its Affiliates has information which the Investment Manager deems confidential, non-public, price sensitive or which otherwise might prohibit it from trading such assets in accordance with applicable laws including, without limitation, any insider dealing laws; or
- (d) a vehicle or fund in respect of whose assets the Investment Manager acts as investment manager or adviser.

In addition, the Investment Manager shall not be obliged to pursue with respect to the Portfolio any particular investment opportunity of which it becomes aware.

#### **7.5 Knowledge in Investment Manager's Possession**

The Issuer acknowledges that certain employees of the Investment Manager and its Affiliates may possess information relating to certain Obligors of Debt Investments included in the Portfolio, that is not known to employees of the Investment Manager who are responsible for performing the obligations of the Investment Manager hereunder. The Investment Manager will be required to act hereunder with respect to any information within its possession only if such information was known or should reasonably have been known to those employees of the Investment Manager responsible for performing the obligations of the Investment Manager hereunder.

### **8. CONFLICTS OF INTEREST**

#### **8.1 Method of Dealing in Debt Investments**

- (a) Subject to the provisions of this Agreement, the Investment Manager shall have full and complete discretion to effect transactions with or through any one or more dealers or other agents whom the Investment Manager may select, including any Affiliate of the Investment Manager and to deal on such markets or exchanges and with such counterparties as the Investment Manager thinks fit.
- (b) Without reference to the Issuer but subject to the provisions of this Agreement, the Investment Manager may, where it considers it may benefit the Issuer, effect transactions hereunder with the Issuer or on the Issuer's behalf notwithstanding that the Investment Manager or any Affiliate of the Investment Manager or any agent selected by the Investment Manager may have a material interest in the transaction or that the circumstances give rise to a conflict of duty.
- (c) The Investment Manager may effect transactions hereunder with or through brokers or agents of its own choice (provided that, where necessary, such brokers or agents are authorised to conduct securities business in Luxembourg).
- (d) Without prior reference to the Issuer, but subject to the provisions of this Agreement, the Investment Manager may effect any transaction hereunder with or for the Issuer in which the Investment Manager has any relationship with another Person which may involve or conflict with the Investment Manager's duty to the Issuer.

- (e) The Investment Manager may without reference to the Issuer or any other party deal or arrange for the dealing on the Issuer's behalf in:
  - (i) loans or other debt obligations (including but not limited to the Notes) of which the issue or offer for sale was undertaken, managed or arranged by the Investment Manager or an Affiliate of the Investment Manager (as initial purchasers or otherwise);
  - (ii) loans or other debt obligations which have been issued by, held or acquired for the account of any Affiliate of the Investment Manager; and
  - (iii) loans or other debt obligations issued by, purchased or sold to anyone with whom any Affiliate of the Investment Manager or the Investment Manager itself has an investment management or other relationship.
- (f) For the avoidance of doubt, it is agreed that the Investment Manager may also from time to time:
  - (i) purchase or sell for its other customers' investments held, purchased or sold for the Issuer's account; and
  - (ii) have investment management or other relationships with companies, issuers or obligors whose loans and other debt obligations are held, purchased or sold for the Issuer's account.
- (g) The Investment Manager may deal for the Issuer in circumstances in which the relevant deal is not regulated by the rules of any stock exchange or investment exchange.

## 8.2 **Acquisitions from Certain Accounts and Portfolios**

After the Issue Date and subject to the other provisions of this Agreement, the Investment Manager may, on behalf of the Issuer, sell any Debt Investment to any account or portfolio for which the Investment Manager serves as investment manager or investment adviser provided that all such Debt Investments are sold on an arm's length basis.

## 8.3 **Regulatory Compliance**

The Investment Manager will comply with its regulatory obligations in resolving any conflicts of interest that arise under this Agreement.

## 9. **OBLIGATIONS OF THE INVESTMENT MANAGER**

### 9.1 **No Breach by the Issuer**

The Investment Manager shall endeavour to ensure that no action is taken by it that would:

- (a) result in the Issuer acting otherwise than in accordance with its constitutional documents;
- (b) to the best of its knowledge and belief, result in the Issuer being in breach of any law of Luxembourg or any other applicable jurisdiction or any rule or regulation of any governmental body or agency having jurisdiction over the Issuer including, without limitation, any securities laws or conduct of business laws of Luxembourg or any other applicable jurisdiction, where such breach could have a material adverse effect on the Issuer;



- (c) require registration of the Issuer or the Portfolio as an "investment company" under the Investment Company Act;
- (d) result in the Issuer violating the terms of the Note Trust Deeds, any of the Note Conditions or any other Note Transaction Document;
- (e) adversely affect the interests of any of the Secured Parties in any material respect (save to the extent contemplated under clause 8 (*Conflicts of Interest*) or as permitted under this Agreement or the Note Conditions);
- (f) result in the Issuer being in breach of any confidentiality undertaking given by it, or any other obligation of confidentiality by which it is bound, in respect of any asset in the Portfolio from time to time, unless required by any applicable law or regulation; or
- (g) result in the Issuer being subject to UK corporation tax on profits or to UK non-residents income tax on profits,

provided that the Investment Manager will be entitled to rely on any legal opinion from a reputable law firm of international standing experienced in such matters for the purposes of satisfying its obligations to the Issuer under this clause 9.1 (*No Breach by the Issuer*), where (i) the advice given pursuant to such opinion is in sufficiently precise terms to permit the Investment Manager reasonably to decide upon a course of action and (ii) the Issuer has the benefit of such opinion and is entitled to rely thereon.

If the Investment Manager is required or requested to take any action which it believes would require it to breach any of the foregoing provisions (including any actions provided for or explicitly envisaged by this Agreement), the Investment Manager shall promptly notify the Issuer and the Trustee of the Investment Manager's judgement that such action would have one or more of the consequences set out above and need not take such action unless (i) the action would not have the consequences set out in clause 9.1(c) (*No Breach by the Issuer*) above, (ii) the Issuer again requests the Investment Manager to do so and the Trustee has consented thereto in writing (with a copy of such consent to the Investment Manager on behalf of the Issuer) and (iii) arrangements satisfactory to the Investment Manager and the Trustee are made to secure, insure or indemnify each of them from any liability each of them may incur as a result of such action.

## 9.2 **Notification**

The Investment Manager shall, upon the execution of any sale and/or acquisition of any Debt Investment, notify the Collateral Administrator of such sale and/or acquisition, as applicable.

## 10. **LIMITS OF INVESTMENT MANAGER RESPONSIBILITY; INDEMNITIES**

### 10.1 **Limits on Responsibility of the Investment Manager**

- (a) The Investment Manager assumes no responsibility under this Agreement other than to render the services called for hereunder in good faith and, subject to the standard of care described in clause 4.2 (*Standard of Care*) above, will not be responsible for any action or inaction of the Issuer taken, or not taken as the case may be, at the direction of the Investment Manager or any other party to this Agreement. The Investment Manager and its Affiliates will not be liable to the Issuer, the Trustee, the Noteholders, any other Secured Party or any other person for any losses, claims, damages, judgments, assessments, costs, taxes, charges, demands, expenses or other liabilities (collectively, "**Losses**"), incurred by the Issuer, the Trustee, the Noteholders, any other Secured Party or any other person that arise out of or in connection with the performance or non-performance by the Investment Manager of its duties hereunder, except to the extent that:

- (i) such Losses which result directly from the fraud, wilful default or negligence in the performance of the obligations of the Investment Manager, its Affiliates or its or their directors, officers or employees thereunder; and
- (ii) with respect to the information concerning the Investment Manager provided in writing by the Investment Manager for inclusion in the section of the Prospectus headed "*Description of Investment Manager*" (and any other information concerning the Investment Manager in the Prospectus), at the date of the Prospectus (including as of the date of any supplement thereto) and as at the Issue Date, to the best of the knowledge and belief of the Investment Manager (which has taken all reasonable care to ensure that such is the case), such information is not in accordance with the facts and omits anything likely to affect the impact of such information;

where, in each case, either:

- (A) the amount of Loss incurred by the Issuer arising from any one particular circumstance exceeds £500; or
- (B) the aggregate amount of all Losses in the calendar year in which the relevant Losses are incurred exceeds £2,500.

For the purposes of this clause 10, the matters described in clause 10.1(a)(i) and (ii) above are referred to as "**Investment Manager Breaches**".

- (b) The Issuer acknowledges that the only information concerning the Investment Manager provided in writing by the Investment Manager for inclusion in the Prospectus is under the section headed "*Description of the Investment Manager*".
- (c) Notwithstanding this clause 10.1, the Investment Manager's liability under this Agreement does not extend to:
  - (i) any loss or exposure arising out of the investment performance or profitability of the Notes, any obligation comprised in the Portfolio, any investment decision made or investment held in accordance with this Agreement; or
  - (ii) any loss or exposure arising as a result of implementing an instruction from the Issuer or the Trustee; or
  - (iii) any special, consequential or indirect loss or damage which term shall include without limitation any consequential or indirect economic losses or any loss of turnover, profit or business incurred or suffered by the parties to this Agreement.
- (d) In no circumstances will any of the directors, officers, shareholders, partners, members, agents or employees of the Investment Manager or any of its Affiliates have any liability to the Issuer, the Trustee, the Noteholders, any other Secured Party or any other Person. Furthermore the Investment Manager (i) does not assume any fiduciary duty with regard to the Issuer or the Noteholders; (ii) does not guarantee or otherwise assume any responsibility for the performance by any other party of their respective obligations under any Note Transaction Documents; and (iii) shall incur no liability to anyone in acting upon any signature, instrument, statement, notice, resolution, request, direction, consent, order, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be properly executed or signed by the proper party or parties.

## 10.2 Issuer and Investment Manager Indemnities

### (a) Indemnity of the Investment Manager

The Investment Manager shall indemnify and hold harmless (the Investment Manager in such case, the "**IM Indemnifying Party**") the Issuer, the Collateral Administrator and the Trustee (each, an "**IM Indemnified Party**" and collectively the "**IM Indemnified Parties**") from and against any direct Liabilities (to the exclusion of any consequential or indirect economic losses or any loss of turnover, profits or business) resulting from Investment Manager Breaches, and shall reimburse each such IM Indemnified Party for all documented expenses reasonably incurred related thereto (including, without limitation, fees and expenses of legal counsel and all other costs of investigating, preparing, pursuing, disputing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation caused by, or arising out of or in connection with, any such Investment Manager Breaches), except to the extent that such claims result directly from the wilful default, fraud or negligence of the IM Indemnified Party under this Agreement. The Investment Manager undertakes that it shall pay any amount payable to any IM Indemnified Party hereunder to such IM Indemnified Party, which payment shall be in satisfaction of such amount payable.

### (b) Indemnity of the Issuer

The Issuer shall, subject to clause 35 (*Limited Recourse and Non-Petition*), indemnify and hold harmless (the Issuer in such case, the "**Indemnifying Party**") each of the Investment Manager, its directors, officers, agents, delegates and employees (each such party an "**Indemnified Party**" and such parties collectively in such case, the "**Indemnified Parties**") from and against any and all Liabilities reasonably incurred by any such Indemnified Party (other than any UK Tax Representative Liabilities in respect of the Investment Manager) resulting from an Issuer Indemnification Matter, save to the extent that such Liability would not have arisen but for an Investment Manager Breach, and in addition shall reimburse each such Indemnified Party for all properly documented (by way of invoices) fees and expenses (including properly documented (by way of invoices) fees and expenses of legal counsel) (collectively, the "**Expenses**") as such Expenses are reasonably incurred in investigating, preparing, pursuing, disputing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "**Actions**"), caused by, or arising out of or in connection with, any such Issuer Indemnification Matter, the issuance of the Notes, the transactions contemplated by the Prospectus or this Agreement, and/or any action taken by, or any failure to act by, such Indemnified Party under this Agreement; provided that no Indemnified Party will be indemnified for any Liabilities or Expenses it incurs as a result of such Indemnified Party's acts or omissions which constitute an Investment Manager Breach or because of the wilful default, fraud or negligence of such Indemnified Party under this Agreement. The Issuer undertakes to the Investment Manager that it shall pay to the Investment Manager any amount payable to any Indemnified Party hereunder, which payment shall be in satisfaction of such amount payable. Notwithstanding anything contained in this Agreement to the contrary, the obligations of the Issuer under this clause 10 (*Limits Of Investment Manager Responsibility; Indemnities*) will be payable solely out of the Collateral in accordance with the Priorities of Payments as an "Administrative Expense", or out of the Expense Reserve Account, as provided in the Note Conditions and will survive termination of this Agreement and resignation or removal of the Investment Manager.

### 10.3 UK Tax Representative Liability

The Issuer agrees to indemnify the Investment Manager against any UK Tax Representative Liabilities provided that this clause 10.3 shall not apply to the extent that such liabilities would not have arisen but for a breach by the Investment Manager of a representation or warranty made by it in this Agreement or any failure by the Investment Manager to comply with the provisions of this Agreement.

### 10.4 Indemnification Procedures

With respect to any claim made or threatened against an Indemnified Party, or compulsory process or request or other notice of any loss, claim, damage or liability served upon an Indemnified Party, for which such Indemnified Party is or may be entitled to indemnification under this clause 10 (*Limits of Investment Manager Responsibility; Indemnities*), such Indemnified Party will (or with respect to Indemnified Parties that are directors, officers, shareholders, partners, members, agents, employees, delegates or controlling persons of the Investment Manager or any of its Affiliates cause such Indemnified Party to):

- (a) give written notice to the Indemnifying Party of such claim as soon as reasonably practicable after such Indemnified Party's receipt of actual notice that such claim is made or threatened, which notice to the Indemnifying Party will, insofar as such information is available to the Indemnified Party, specify in reasonable detail the nature of the claim and the amount (or an estimate of the amount) of the claim; provided that the failure of any Indemnified Party to provide such notice to the Indemnifying Party will not relieve the Indemnifying Party of its obligations under this clause 10 (*Limits of Investment Manager Responsibility; Indemnities*) unless the Indemnifying Party is materially prejudiced or otherwise forfeits rights or defences by reason of such failure;
- (b) at the Indemnifying Party's expense, provide the Indemnifying Party such information and co-operation with respect to such claim as the Indemnifying Party may reasonably require, including making appropriate personnel available to the Indemnifying Party at such reasonable times as the Indemnifying Party may request;
- (c) at the Indemnifying Party's expense, co-operate and take all such steps as the Indemnifying Party may reasonably request to preserve and protect any defence to such claim;
- (d) in the event suit is brought with respect to such claim, upon reasonable prior notice, afford to the Indemnifying Party the right, which the Indemnifying Party may exercise in its sole discretion and at its own expense, to participate in the investigation, defence and settlement of such claim;
- (e) not release, settle any such claim, make any admission with respect thereto (other than routine or incontestable admissions or factual admissions, the failure to make which would expose such Indemnified Party to unindemnified liability) nor permit a default or consent to the entry of any judgment in respect thereof, in each case without the prior written consent of the Indemnifying Party; and
- (f) upon reasonable prior notice, afford to the Indemnifying Party the right, in its sole discretion and at its sole expense, to assume the defence of such claim (including, the right to designate legal counsel reasonably acceptable to the Indemnified Party and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claim); provided that if the Indemnifying Party assumes the defence of such claim, it will not be liable for any fees and expenses of legal counsel for any Indemnified Party incurred thereafter in connection with such claim

(except that if such Indemnified Party reasonably determines that legal counsel designated by the Indemnifying Party has a conflict of interest in connection with its representation of such Indemnified Party, such Indemnifying Party will pay the reasonable fees and disbursements of one legal counsel (in addition to any local counsel) separate from its own legal counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances).

**10.5 Waiver of Indemnification**

In the event that any Indemnified Party waives its right to indemnification hereunder, the Indemnifying Party will not be entitled to appoint legal counsel to represent such Indemnified Party nor will the Indemnifying Party reimburse such Indemnified Party for any costs of legal counsel to such Indemnified Party.

**10.6 No Limitation on Other Rights**

Nothing in this Agreement will in any way constitute a waiver or limitation of any rights which the Indemnified Party may otherwise have at law or in equity.

**10.7 Survival of Indemnities**

The provisions of this clause 10 (*Limits of Investment Manager Responsibility; Indemnities*) shall survive the termination of this Agreement (including for the avoidance of doubt, the removal or resignation of the Investment Manager under this Agreement).

**11. CONFIDENTIALITY**

**11.1 Maintenance of Records**

The Investment Manager and the Collateral Administrator shall maintain appropriate books of account and records relating to services performed hereunder, and such books of account and records shall subject to any applicable law, be accessible for inspection, on reasonable request, by a representative of the Issuer, the Trustee and the Accountants appointed by the Issuer, as the case may be, pursuant to this Agreement at any time during normal business hours and, prior to an Event of Default or Potential Event of Default (as defined in the Trust Deed) occurring, on not less than five Business Days' prior written notice.

**11.2 Ratings**

The Issuer and the Investment Manager each hereby agrees, in connection with any rating assigned to any Debt Investment which is a shadow rating or confidential credit estimate given by each Rating Agency, that it will not disclose such shadow rating or confidential credit estimate, as applicable, to any Person (other than the Trustee, the Collateral Administrator and their professional advisers) who is not a Person acting on behalf of the Issuer or the Investment Manager, as the case may be, whether directly or indirectly.

**11.3 Confidentiality**

Subject to the other terms of this Agreement, each of the Investment Manager and the Collateral Administrator will keep confidential any and all information obtained in connection with the services rendered hereunder and will not disclose any such information to non-Affiliated third parties except:

- (a) to any representative of the Trustee or any Appointee or the Accountants appointed by the Issuer or the Trustee (as the case may be) as referred to above;

- (b) to the extent permitted with the prior written consent of the Issuer or after an Event of Default shall have occurred which has not been remedied or waived, the Trustee;
- (c) to the Custodian, the Principal Paying Agent, Account Bank and/or any other Agent, to the extent that such information is necessary to their obligations and functions under the Note Transaction Documents;
- (d) in connection with establishing trading or investment accounts or otherwise in connection with effecting transactions on behalf of the Issuer;
- (e) as required by law, regulation, court order or the rules or regulations of any self-regulatory organisation, body or official having jurisdiction over the Investment Manager or the Collateral Administrator, as the case may be;
- (f) to its professional advisers;
- (g) such information as shall have been publicly disclosed other than in violation of this Agreement;
- (h) such information concerning an Obligor under a Debt Investment to the extent required to be disclosed in connection with the administration of such Debt Investment; or
- (i) such information that was or is obtained by the Investment Manager or the Collateral Administrator (as the case may be) on a non-confidential basis, as long as the Investment Manager or the Collateral Administrator (as the case may be) does not know or have reason to know of any breach by such source of any confidentiality obligations with respect thereto.

In no event, however, will the Investment Manager or the Collateral Administrator be required to disclose to any party any information with respect to any particular Debt Investment that the Issuer, the Investment Manager or the Collateral Administrator is obligated by the terms of that Debt Investment to refrain from disclosing or which will violate any applicable law prohibiting such disclosure.

Notwithstanding anything in this Agreement or the Note Trust Deeds to the contrary, the Investment Manager, the Issuer, the Trustee, the Collateral Administrator, the Custodian and the holders and beneficial owners of the Notes (and each of their respective employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure (in each case, under applicable federal, state or local law) of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to them relating to such U.S. tax treatment and U.S. tax structure); provided that such U.S. tax treatment and U.S. tax structure shall be kept confidential to the extent reasonably necessary to comply with applicable U.S. federal or state laws.

## 12. FEES AND EXPENSES OF THE INVESTMENT MANAGER

### 12.1 Fees

#### (a) Investment Management Fee

The Investment Manager will receive a fee comprising the Investment Management Fee payable in arrear on each Payment Date in accordance with the Priorities of Payments. The Investment Management Fee is equal to the greater of (a) 0.35 per cent. per annum (calculated on the basis of a 360-day year and the actual number of days elapsed in such Due Period) of the aggregate Drawn Amount of the Notes (in respect of the Substitute PPNs, without reduction on account of the Substitute

PPN Haircut Percentage) less the aggregate of any Impairment Amounts as at the first Business Day of the Due Period preceding the applicable Payment Date (as notified by the Investment Manager to the Collateral Administrator), and (b) the product of (i) €150,000 and (ii) the fraction, expressed as a percentage, the numerator of which is the number of days elapsed in such Due Period and the denominator of which is 360, together with any VAT chargeable in respect thereof, payable in arrear on each Payment Date in accordance with the Priorities of Payments together with any VAT in respect thereof whether payable to the Investment Manager or directly to the relevant taxing authority (the "**Investment Management Fee**").

(b) **Value Added Tax**

Any VAT or any similar tax payable in respect of any Investment Management Fee to the extent not included in the definitions thereof, shall be payable by the Issuer to the Investment Manager or the relevant tax authority, as the case may be, on each Payment Date, subject to the Priorities of Payments.

12.2 **Pro Rating of Fees**

If the Investment Manager resigns or is removed pursuant to clause 14 (*Termination*) or if this Agreement is terminated pursuant to such clause 14 (*Termination*) the Investment Management Fee calculated as provided in this clause 12 (*Fees and Expenses of the Investment Manager*) shall be pro rated for any partial Due Periods during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such removal or termination, as applicable, in accordance with the Priorities of Payments.

12.3 **Adjustment of Fees**

(a) The Investment Management Fee payable to any successor Investment Manager may be adjusted by the Issuer as subject to clause 14.6 (*Termination or Resignation not Effective until Eligible Successor Appointed*) below, and subject to the prior consent of the Trustee and the holders of the Notes acting by Extraordinary Resolution in accordance with Condition 14 (*Meetings of Noteholders, Modification, Waiver and Substitution*).

(b) The Investment Manager may, in its own discretion, enter into arrangements (including via side letters) with certain Noteholders pursuant to which the Investment Manager refunds or rebates (out of the Investment Management Fee it receives) such Noteholders for their acceptance to invest into the Notes. Such refunds or rebates will be:

(i) in an amount which is dependent on the size of the Note Commitment of such Noteholders undertaken in their respective Subscription Agreements (for these purposes, such Note Commitment shall be determined as being the aggregate of the Note Commitments of such Noteholders acting for or on behalf of different accounts); and

(ii) consistently applied across all Noteholders who are the subject of such refund or rebate arrangements.

12.4 **Expenses**

Subject to clause 12.5 (*Costs and Expenses incurred by the Investment Manager*) below, the Investment Manager shall be responsible for expenses incurred in the performance of its obligations under this Agreement (including, but not limited to, promotional expenses and the fees of any third party employed by the Investment Manager), provided however that:

- (a) the expenses of employing external lawyers or consultants, court agents and any court costs in connection with the restructuring and/or default of any Debt Investment or the taking of any legal action or judicial proceeding in respect of or in connection with any Debt Investment and which are reasonably incurred;
- (b) the expenses of employing external lawyers to provide advice with respect to any applicable laws in connection with the performance of the Investment Manager's services under this Agreement including, without limitation, as may be necessary or desirable in order to ensure compliance with the provisions of clause 24 (*Eligibility Criteria*) and which are reasonably incurred;
- (c) any and all costs and expenses invoiced in the name of the Issuer and reasonably incurred in connection with the acquisition or disposition of any assets in the Portfolio, including:
  - (i) investment related travel, communications and related expenses;
  - (ii) amounts in connection with the termination, cancellation or abandonment of a potential acquisition or disposition of an asset that is not consummated;
  - (iii) any and all costs and expenses incurred in connection with the servicing of the assets in the Portfolio;
  - (iv) any and all costs and expenses incurred in connection with the Notes and other indebtedness of the Issuer;
  - (v) any and all legal and accountants' fees and disbursements relating to the Issuer (including in-house legal and accountancy services provided by or on behalf of the Investment Manager to the Issuer as may be reasonably allocated to the Issuer);
  - (vi) any and all insurance premiums or expenses incurred in connection with the activities of the Issuer by the Investment Manager;
  - (vii) any and all costs and expenses incurred in connection with the Investment Manager's information systems relating to the Issuer and the assets in the Portfolio and the communications with the Noteholders (including charges related to annual meetings); and
  - (viii) any and all expenses incurred to comply with any law or regulation related to the activities of the Issuer and the Investment Manager,

and such amount (together with any irrecoverable VAT thereon) shall be reimbursed by the Issuer on each Payment Date (and for the avoidance of doubt not at any other time) as an "Administrative Expense" subject to the Priorities of Payments.

#### 12.5 **Costs And Expenses incurred by the Investment Manager**

The costs and expenses (including the fees and disbursements of counsel and accountants) (including any irrecoverable VAT thereon), reasonably incurred by the Investment Manager in connection with the negotiation and preparation of and the execution of this Agreement, and all matters incidental thereto including, without limitation, any amendment thereto, shall be borne by the Issuer. Notwithstanding anything contained herein to the contrary, the obligations of the Issuer under this clause 12.5 (*Costs And Expenses incurred by the Investment Manager*) shall be payable solely out of the Collateral subject to the Priorities of Payments as an "Administrative Expense" subject to the Priorities of Payments.



## 12.6 VAT Returns

The Investment Manager shall provide the Issuer and the Collateral Administrator on or prior to each Payment Date with a list of all invoices which have been paid by it on behalf of the Issuer and copies of the same invoices together with a report stating the date on which such invoices have been paid and all other relevant information to enable the Issuer to properly file its Luxembourg VAT returns (if any).

## 12.7 Trust Deed and Constitutional Documents

True and complete copies of the Trust Deed and the Issuer's constitutional documents have been or, by no later than the Issue Date, shall be delivered by the Issuer to the Investment Manager.

## 13. REPRESENTATIONS, WARRANTIES AND COVENANTS

### 13.1 Issuer Representations and Warranties

The Issuer hereby represents and warrants to its best knowledge to each of the Investment Manager, the Collateral Administrator, the Custodian and the Trustee on each day during the term of this Agreement as follows:

#### (a) Due Incorporation

The Issuer has been duly incorporated and is validly existing under the laws of Luxembourg, has the full corporate power and authority to own its assets and the obligations owned and proposed to be owned by it and included in the Collateral and to transact the business in which it is presently engaged and is duly qualified under the laws of each jurisdiction where the performance of its obligations under the PPNs and the Transaction Documents to which it is a party would require such qualification, except for any failure to be so qualified, authorised or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Issuer.

#### (b) Full Power and Authority

The Issuer has full corporate power and authority to execute, deliver and perform its obligations under the PPNs and the Transaction Documents to which it is a party and has taken all necessary action to authorise the execution, delivery and performance of the PPNs and the Transaction Documents to which it is a party and the performance of all obligations imposed upon it thereunder.

#### (c) No Consent etc.

No consent of any other person including, without limitation, shareholders and creditors of the Issuer, and no licence, permit, approval or authorisation of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, is required by the Issuer in connection with the PPNs and the Transaction Documents to which it is a party or the execution, delivery, performance, validity or enforceability of the PPNs and the Transaction Documents to which it is a party or the obligations imposed upon it thereunder.

#### (d) Legal, Valid and Binding Obligations

Each of the Transaction Documents to which it is a party and the PPNs constitutes, and each instrument or document required thereunder, when executed and delivered by the Issuer, shall constitute the legally valid and binding obligations of the Issuer enforceable against the Issuer in accordance with its terms, subject as to enforcement, to (x) the effect of bankruptcy (*faillite*), insolvency, liquidation,

reprieve from payment (*sursis de paiement*), controlled management (*gestion contrôlée*), composition with creditors (*concordat préventif de faillite*) or similar laws affecting generally the enforcement of creditors' rights, as such laws would apply in the event of any bankruptcy (*faillite*), receivership, insolvency, liquidation, reprieve from payment (*sursis de paiement*), controlled management (*gestion contrôlée*), composition with creditors (*concordat préventif de faillite*) or similar event applicable to the Issuer and (y) general equitable principles (whether enforceability of such principles is considered in a proceeding at law or in equity).

(e) **No Violation or Conflict**

The execution, delivery and performance of each of the Transaction Documents to which it is a party do not violate or breach any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any agreement, instrument or undertaking binding on or affecting it or any of its assets.

(f) **No Breach**

The execution, delivery and performance of the Transaction Documents to which it is a party and the PPNs and any documents and instruments required thereunder shall not cause a breach of any provision of any existing law or regulation binding on the Issuer, or any order, judgment, award or decree of any court, arbitrator or governmental authority binding on or applicable to the Issuer.

(g) **No Breach of Constitutional Documents**

The Issuer is not in breach of its constitutional documents or in breach of or in default under the Trust Deed or the PPNs or any contract or agreement to which it is a party or by which it or any of its assets may be bound, or any applicable statute or any rule, regulation or order of any court, government agency or body having jurisdiction over the Issuer or its properties, the breach of which or default under which would have a material adverse effect on the validity or enforceability of, or the performance by the Issuer of its obligations under, any Transaction Document by which it is bound.

(h) **Board Meetings of the Issuer**

Meetings of the Board shall be held at least quarterly (with additional meetings being held as appropriate to consider any recommendation made in accordance with clause 4.5(a) (*Actions for which the prior express approval of the Issuer is required*)), shall be physically held in Luxembourg and shall take place and be conducted in accordance with the constitutional documents of the Issuer. Full minutes shall be taken of each such meeting of the Board, which shall accurately reflect such meeting. Telephone meetings of the Board of the Issuer shall not be held with any director participating by telephone, or by other means of electronic communication, from any jurisdiction other than Luxembourg.

(i) **Central Management and Control**

The Issuer will at all times maintain its central management and control and its place of effective management only in Luxembourg.

(j) **Residence of the Directors**

The majority of the directors of the Issuer are and will continue to be resident for tax purposes only in Luxembourg.

(k) **Experience of Board Members**

Each Board member has the expertise and experience to exercise a proper management and control function in relation to the business of the Issuer.

(l) **Independence of the Board**

The Board will act independently in the exercise of its functions and will give due consideration to decisions, including the entering into of any agreements based on information available to them.

(m) **Prospectus**

The Prospectus, as of the date thereof (including as of the date of any supplement thereto) and as of the Issue Date, to the best of the knowledge and belief of the Issuer (which has taken all reasonable care to ensure that such is the case), contains such information which is in accordance with the facts and does not omit anything likely to affect the impact of such information. The preceding sentence does not apply to any information provided by (i) the Investment Manager in the section entitled "*Description of the Investment Manager*" and (ii) the Collateral Administrator in the section entitled "*Description of the Collateral Administrator*".

(n) **Management**

The Issuer will ensure that the Board shall manage the affairs of the Issuer in accordance with the terms of this Agreement and proper and prudent business practice in Luxembourg and in accordance with Luxembourg law and accounting practice and shall maintain the register of shareholders of the Issuer solely in Luxembourg and (ignoring for this purpose the appointment of the Investment Manager) shall not establish any subsidiaries, offices, branches or permanent establishments (as that term is interpreted under either UK domestic law or UK/Luxembourg Income Tax Treaty) anywhere in the world other than Luxembourg (save where it may do so in accordance with or as a consequence of action taken in accordance with the terms of this Agreement).

(o) **Absence of Certain Events**

No Termination Event or Potential Termination Event with respect to it has occurred and is continuing, and no Termination Event or Potential Termination Event would occur as a result of its entering into or performing its obligations under this Agreement.

(p) **Absence of Litigation**

There is not pending or, to the best of its knowledge, threatened against it or against any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.

(q) **No Tax Avoidance**

The Issuer is not entering into the transactions comprised in the Transaction Documents for a tax avoidance purpose.

## 13.2 **Issuer covenants**

The Issuer agrees with the Investment Manager, the Collateral Administrator, the Custodian and the Trustee that:

(a) **Tax Covenants**

The Issuer covenants and agrees that, unless otherwise specifically required by any provision of this Agreement or by applicable law, the Issuer shall use its best efforts to ensure that no action is taken by it, and shall not intentionally or with reckless disregard take any action, which would subject the Issuer to UK taxation, provided that, the Issuer will not be in breach of this clause 13.2(a) if it endeavours to ensure that it complies with provisions of schedule 3 (*Issuer Tax Procedures*) hereto.

(b) **True Copies Delivered**

True and complete copies of each of the Note Transaction Documents and the Issuer's constitutional documents have been, or will upon demand be, delivered to the Investment Manager and the Trustee.

(c) **Notice from the Issuer to the Investment Manager of Certain Events**

The Issuer will promptly notify the Investment Manager, the Trustee, the Collateral Administrator and the Custodian if (i) any Termination Event or Potential Termination Event shall occur with respect to the Issuer, or (ii) any representation, warranty or certification previously made by the Issuer would, if repeated on any subsequent date, be incorrect or misleading in any material respect.

(d) **Delivery of Amended Documents**

The Issuer will deliver to the Investment Manager and the Trustee a true and complete copy of each amendment to the Issuer's constitutional documents and the Note Transaction Documents as promptly as practicable after its adoption or amendment.

(e) **Amendments to Note Transaction Documents**

The Issuer will not permit any amendment to the Notes (including, without limitation, the Note Conditions thereof), the Note Trust Deeds or any other Note Transaction Document that affects the obligation, rights or interests of the Investment Manager under this Agreement or any other Note Transaction Document including, without limitation, the amount or priority of any fees or other amounts payable to the Investment Manager, to become effective unless the Investment Manager has been given prior written notice of such amendment and has consented thereto in writing.

(f) **Treaty Formalities**

The Issuer shall promptly take any action which is reasonably requested by the Investment Manager in order to complete any procedural formalities which are to be taken to ensure that the Issuer receives interest on any Debt Investments without, or with a reduction in, withholding or deduction for or on account of tax as a result of the application of any relevant double-taxation treaty or of the Luxembourg tax regulations.

(g) **Payment of Stamp Duty**

The Issuer will pay any stamp duty or any other similar duty or transfer tax levied or imposed upon itself, the Investment Manager, the Trustee, the Custodian or the Collateral Administrator in consequence of the execution of this Agreement or any transaction effected by any such party in respect of the execution or performance of this Agreement by a jurisdiction in which any of them is incorporated, organised, managed or controlled, or considered to have its seat, or in which a branch or

office through which any of them is acting for the purpose of this Agreement is located and will indemnify the Investment Manager, the Trustee, the Custodian and the Collateral Administrator against any stamp duty or any other similar duty or transfer tax levied or imposed upon the Investment Manager, the Trustee, the Custodian or the Collateral Administrator or any transaction effected by any such party as contemplated by this Agreement.

(h) **Accounts**

The Issuer will procure that the Accounts are managed in accordance with Condition 4.8 (*Accounts*) and Condition 4.9 (*Payments to and from the Accounts*) and otherwise in accordance with the Note Conditions and Note Transaction Documents and will procure that all amounts will be disbursed from the relevant Account on each Payment Date pursuant to the Priorities of Payments and/or the Note Conditions in accordance with clause 17.1 (*Priorities of Payments*).

(i) **Investment Manager Name**

For so long as Aviva Investors Global Services Limited or an Affiliate of Aviva Investors Global Services Limited is the Investment Manager, the Issuer will be permitted to use the "Aviva" name, provided however, that if the Investment Manager ceases to be Aviva Investors Global Services Limited or an Affiliate of Aviva Investors Global Services Limited, the Issuer shall promptly use commercially reasonable efforts to change its name to remove all references to "Aviva" from its name. In addition, the Investment Manager may change its name at any time, without the consent of the Issuer.

### 13.3 **Investment Manager Representations and Warranties**

The Investment Manager represents and warrants on the date of this Agreement to the Issuer, the Collateral Administrator, the Custodian and the Trustee that:

(a) **Status**

The Investment Manager is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing.

(b) **Powers**

The Investment Manager has the power and authority to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorise such execution, delivery and performance; and this Agreement has been, and each other such document will be, duly executed and delivered by it.

(c) **No Violation or Conflict**

Such execution, delivery and performance do not materially violate or breach any law or regulation applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any agreement, instrument or undertaking binding on or affecting it or any of its assets except to the extent that any such breach or violation could not reasonably be expected to have a material adverse effect on the ability of the Investment Manager's ability to perform its obligation under this Agreement.

(d) **Consents**

The Investment Manager has provided all notifications and obtained all consents and licences that are required to have been obtained by it with respect to this Agreement which consents are in full force and effect and it is in compliance with all conditions of any such consents, except to the extent that the failure to comply could not reasonably be expected to have a material adverse effect on the ability of the Investment Manager to perform its obligations under their Agreement.

(e) **Obligations Binding**

This Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(f) **Absence of Certain Events**

No Termination Event or Potential Termination Event with respect to it has occurred and is continuing, and no Termination Event or Potential Termination Event would occur as a result of its entering into or performing its obligations under this Agreement.

(g) **Absence of Litigation**

There is not pending or, to the best of its knowledge and belief, threatened against it, any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.

(h) **Disclosure**

All written information provided by the Investment Manager to the Issuer in connection with this Agreement and with regard to the Investment Manager and its investment advisory methodology, personnel and trading record is, as of the date of the information, true, accurate and complete in every material respect.

(i) **Prospectus**

The section entitled "*Description of the Investment Manager*", contained in the Prospectus, is as of the date of such Prospectus (including as of the date of any supplement thereto) and as of the Issue Date, to the best of the knowledge and belief of the Investment Manager (which has taken all reasonable care to ensure such is the case) in accordance with the facts and does not omit anything likely to affect the import of such information.

(j) **Independent Representation**

The Investment Manager is acting on behalf of the Issuer in an independent capacity and is an investment firm authorised in the UK under The Markets in Financial Instruments Directive ("**MiFID**") and undertakes to remain so independent.

(k) **No UK VAT**

For so long as the Issuer is registered for VAT in Luxembourg, the services under this Agreement rendered by the Investment Manager are not subject to UK VAT.

(l) **Tax residency of the Investment Manager**

The Investment Manager is resident for tax purposes in the UK.

(m) **Acting on behalf of the Issuer**

The Investment Manager does not carry out any transactions on behalf of the Issuer save as provided for by the terms of this Agreement and the other Transaction Documents.

(n) **United States Investment Advisers Act of 1940**

The Investment Manager is not required to be registered as an "investment adviser" under the Investment Advisers Act of 1940, as amended, and shall so register at any time it is required to do so pursuant to the Investment Advisers Act of 1940, as amended.

(o) **Permanent Establishment in the UK**

For times during which the Investment Manager is exercising any authority to do business on behalf of the Issuer in the UK:

- (i) the Investment Manager will not carry out any transactions or business with the Issuer other than as contemplated in the Transaction Documents;
- (ii) the Investment Manager shall at all times carry on a business of providing investment management and advisory services, and the services to be provided to the Issuer by it in accordance with this Agreement shall be provided in the ordinary course of that business; and
- (iii) the fees payable by the Issuer to the Investment Manager for investment management and advisory services pursuant to this Agreement are at a rate not less than is customary for the class of business in question, in the knowledge of the Investment Manager.

13.4 **Basic Covenants**

So long as any party has or may have any obligation under this Agreement, each party (other than the Trustee and the Custodian) agrees with each of the others as follows:

(a) **Maintain Authorisations**

It will maintain in full force and effect all consents that are required to be obtained by it with respect to this Agreement and will use all reasonable efforts to obtain any that may become necessary in the future.

(b) **Compliance with Laws**

It is and will be in compliance with all applicable laws and regulations to which it may be subject (including, for the avoidance of doubt, MiFID).

### 13.5 Covenants of the Investment Manager

The Investment Manager agrees with the Issuer, the Collateral Administrator, the Custodian and the Trustee that:

(a) **Notice of Termination Event or Potential Termination Event**

It will promptly notify the Issuer, the Trustee, the Custodian and the Collateral Administrator if, to the best of its knowledge, any Termination Event has occurred or Potential Termination Event will occur in relation to it.

(b) **Notice of Breach of Representation**

It will promptly notify the Issuer, the Trustee, the Custodian and the Collateral Administrator if, to the best of its knowledge, any representation, warranty or certification made under this Agreement would, if repeated on any subsequent date, be incorrect or misleading in any material respect.

(c) **Obligations of Investment Manager**

Notwithstanding any other provision in this Agreement to the contrary, the Investment Manager will not take any discretionary action that would reasonably be expected to cause an Event of Default or a Potential Event of Default.

(d) **Provide Information**

To enable the Issuer to review the performance and other aspects of the Portfolio from time to time and without prejudice to the generality of the foregoing, to enable the Issuer to carry out its quarterly review pursuant to clause 4.6 (*Review by Board of Directors*) above, the Investment Manager will provide to the Issuer such information, reports and/or documents as may be available and as may be reasonably required by the Issuer to enable the Issuer to review the performance and other aspects of the Portfolio as may be reasonably requested by the Issuer from time to time.

(e) **No Taxable Activities in the U.S.**

The Investment Manager will not conduct any activity or take any action that would cause the Issuer to be engaged, or deemed to be engaged, in the conduct of a trade or business in the United States for United States federal income tax purposes or otherwise to be subject to United States federal or state income tax on a net income basis. In furtherance and not in limitation of the foregoing, the Investment Manager will not, when acting on behalf of the Issuer, act through any agent, employee, affiliate, office, fixed place of business, or permanent establishment within the United States.

(f) **Note Transaction Documents**

For times during which the Investment Manager is exercising any discretionary authority on behalf of the Issuer:

- (i) the Investment Manager will not carry out any transactions or business other than as contemplated in the Note Transaction Documents; and
- (ii) the Investment Manager covenants that it and any other person to whom its duties under this Agreement are delegated in whole or in part in accordance with clause 28.1 (*Delegation by the Investment Manager*) below will comply with the representations provided by the Investment Manager under the Note Transaction Documents.



### 13.6 Collateral Administrator Representations and Warranties

The Collateral Administrator hereby represents and warrants to the Investment Manager, the Issuer and the Trustee on each day during the term of this Agreement as follows:

(a) **Due Organisation**

The Collateral Administrator has been duly incorporated and is validly existing under the laws of the country of its incorporation and has full corporate power and authority to own its assets and to transact the business in which it is presently engaged and is duly qualified, authorised or licensed under the laws of each jurisdiction where the conduct of its business requires, or the performance of its obligations under this Agreement would require such qualification, authorisation or licence, except for any failure to be so qualified, authorised or licensed that would not in the aggregate have a material adverse effect on the business, operations, assets or financial condition of the Collateral Administrator or on the ability of the Collateral Administrator to perform its obligations under, or on the validity or enforceability of this Agreement.

(b) **Full Power and Authority**

The Collateral Administrator has full corporate power and authority to execute, deliver and perform each of the Transaction Documents to which it is a party and all obligations required thereunder and has taken all necessary corporate action to authorise each of the Transaction Documents to which it is a party on the terms and conditions thereof, and the execution, delivery and performance of each of the Transaction Documents to which it is a party and all obligations required thereunder.

(c) **No Consent etc.**

No consent of any other person including, without limitation, shareholders and creditors of the Collateral Administrator, and no license, permit, approval or authorisation of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority is required by the Collateral Administrator in connection with each of the Transaction Documents to which it is a party or the execution, delivery, performance, validity or enforceability of each of the Transaction Documents to which it is a party and the obligations imposed upon it thereunder.

(d) **Legal, Valid and Binding Obligations**

Each of the Transaction Documents to which it is a party constitutes, and each instrument and document required thereunder, when executed and delivered by the Collateral Administrator thereunder, will constitute, the legal, valid and binding obligations of the Collateral Administrator enforceable against the Collateral Administrator in accordance with their terms subject, as to enforcement, (a) to the effect of bankruptcy, insolvency or similar laws affecting generally the enforcement of creditors' rights as such laws would apply in the event of any bankruptcy, receivership, insolvency or similar event applicable to the Collateral Administrator and (b) to general equitable principles (whether enforceability of such principles is considered in a proceeding at law or in equity).

(e) **No Violation or Conflict**

The execution, delivery and performance of each of the Transaction Documents to which it is a party do not violate or breach any law or regulation applicable to it, any provision of its constitutional documents, any order, judgment, award or

decree of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

(f) **Prospectus**

The section entitled "*Description of the Collateral Administrator*", contained in the Prospectus, is as of the date of such Prospectus (including as of the date of any supplement thereto) and as of the Issue Date, to the best of the knowledge and belief of the Collateral Administrator (which has taken all reasonable care to ensure such is the case) in accordance with the facts and does not omit anything likely to affect the import of such information.

(g) **Absence of Certain Events**

No Basic Termination Event or Potential Termination Event with respect to it has occurred and is continuing, and no Basic Termination Event or Potential Termination Event would occur as a result of its entering into or performing its obligations under this Agreement.

(h) **Absence of Litigation**

There is not pending or, to the best of its knowledge, threatened against it or against any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.

(i) **No Winding-up**

To the best of its knowledge (or in its opinion such action will not have a material effect on its duties hereunder), it has not taken or had any legal proceedings initiated or threatened against it for its winding-up, dissolution, administration or for the appointment of a receiver, liquidator, administrator, sequestrator of the Collateral Administrator or of the whole of its assets or revenues under any insolvency law in any jurisdiction; in its actual knowledge (or in its opinion such action will not have a material effect on its duties hereunder), no execution or distress has been levied against and no person has taken possession of the whole of the property, undertaking and/or assets of it; and in its actual knowledge (or in its opinion such action will not have a material effect on its duties hereunder), it is not insolvent and has not ceased or suspended generally payment of its debts or formally announced any intention to do so.

**13.7 Covenants of the Collateral Administrator**

(a) The Collateral Administrator covenants with each of the Issuer, the Investment Manager and the Trustee that, without prejudice to any of its specific obligations under this Agreement:

(i) it will devote to the performance of its obligations under this Agreement at least the same amount of time and attention, and exercise at least the same level of skill, care and diligence, in the performance of those obligations in a manner consistent with the practices and procedures of a professional collateral administrator and as if it were administering its own assets as opposed to those of the Issuer;

(ii) it will comply with any directions, orders and instructions which the Issuer or, following the service of a notice under clause 15.315.2 (*Collateral Administrator to act for Trustee*), the Trustee may from time to time give to

it in connection with the performance of its obligations under this Agreement;

- (iii) it will use its commercially reasonable endeavours to keep in force all licences, approvals, authorisations and consents which may be necessary in connection with the performance of its obligations under this Agreement and shall perform its obligations under this Agreement in such a way as not to prejudice the continuation of any such approval, authorisation, consent or licence;
- (iv) it will promptly, upon becoming aware thereof, notify each of the other parties hereto in writing of any breach of any of its representations, warranties, covenants and undertakings herein; and
- (v) at the cost of the Issuer, it will execute all such further documents, and do all such acts and things as may be necessary at any time or times in the reasonable opinion of the Trustee to give effect to this Agreement of which it has notice.

### 13.8 **Basic Termination Events**

The occurrence at any time with respect to a party (other than the Trustee or the Custodian) of any of the following events constitutes a "**Basic Termination Event**" with respect to such party:

(a) **Failure to Pay**

Failure by such party to make, when due, any payment to be made by it under this Agreement, if such failure is not remedied on or before the tenth day after written notice of such failure is given to such party.

(b) **Breach of terms of this Agreement**

Failure by such party to comply with or perform any material agreement or obligation (other than a payment obligation) to be complied with or performed by such party in accordance with this Agreement and such failure (if remediable) is not remedied on or before the thirtieth day after written notice of such failure is given to such party.

(c) **Misrepresentation**

A representation made or deemed to have been made by such party in or pursuant to this Agreement proves to have been incorrect or misleading in any material respect when made or deemed to have been made.

(d) **Certain Corporate Transactions**

The party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and either (i) at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all of the obligations of such party under this Agreement by operation of law or pursuant to an agreement reasonably satisfactory to the other parties to this Agreement, or (ii) the creditworthiness of the resulting, surviving or transferee Person is materially weaker than that of such party immediately prior to such action.

(e) **Bankruptcy**

The party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, administration or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (i) to (vii) (inclusive) above; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(f) **Change in Law**

Due to the adoption of, or any change in, any applicable law after the date hereof, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after the date hereof, it becomes unlawful for such party to perform any obligation (contingent or otherwise) which such party has under this Agreement.

13.9 **Investment Manager Termination Events**

The occurrence at any time of any of the following events constitutes an "**Investment Manager Termination Event**":

(a) **Fraud**

The Investment Manager or any of its senior executive officers being convicted by a court of competent jurisdiction in connection with any action that constitutes fraud or criminal activity or any of (not subject to further appeal) its executives or officers or any of its professionals responsible for the servicing of the Portfolio of the Issuer is convicted by a court of competent jurisdiction of any action that constitutes fraud or criminal activity whilst carrying out its investment management and advisory activities or portfolio servicing activities.

(b) **Illegality**

It becomes unlawful for the Investment Manager to perform any of its obligations under this Agreement (other than as a result of a change in any applicable law or regulation).

(c) **Consents**

The Investment Manager fails to maintain in force and effect all applicable governmental and regulatory consents required to perform its obligations under this Agreement.

(d) **Default**

A default in the payment of principal of or interest on the Notes when due and payable resulting from or is caused by a breach by the Investment Manager of its duties under this Agreement, which breach or default is not cured within any applicable grace period.

14. **TERMINATION**

14.1 **Automatic Termination**

This Agreement will automatically terminate upon the earlier to occur of:

- (a) the payment in full of the Notes and the termination of the Note Trust Deeds in accordance with their terms; and
- (b) the liquidation of the Collateral and the final distribution of the proceeds of such liquidation as provided in the Note Trust Deeds.

14.2 **Termination at Election of the Investment Manager**

(a) **Resignation by the Investment Manager**

Subject to clause 14.6 (*Termination or Resignation not Effective until Eligible Successor Appointed*) below but notwithstanding any other provision hereof to the contrary, the Investment Manager may resign at any time, upon 45 days' (or such shorter notice as is acceptable to the Issuer) prior written notice to the Issuer (with a copy to each of the Trustee and the Collateral Administrator).

(b) **On Occurrence of a Basic Termination Event**

On the occurrence (and subject to the continuance) of a Basic Termination Event in respect of the Issuer, subject to clause 14.6 (*Termination or Resignation not Effective until Eligible Successor Appointed*) below, the Investment Manager may terminate this Agreement by giving ten days' written notice to the Issuer (with a copy to each of the Trustee and the Collateral Administrator).

14.3 **Termination for Tax Reasons**

Subject to clause 14.6 (*Termination or Resignation not Effective until Eligible Successor Appointed*) below, if at any time:

- (a) the appointment or activities of the Investment Manager under this Agreement; and/or
- (b) the activities of an agent appointed by the Investment Manager pursuant to clause 28.1 (*Delegation by the Investment Manager*) below,

constitutes a UK permanent establishment of the Issuer for UK tax purposes and thereby causes the Issuer to become subject to UK corporation tax (or UK non-resident income tax) on profits of trading activities carried on by the Issuer that are attributable to that permanent establishment or in the reasonable opinion of the Issuer or the Trustee is likely to give rise to such tax (in each case a "**Tax Termination Event**"), then, subject to

clause 14.6 (*Termination or Resignation not Effective until Eligible Successor Appointed*) below, the Investment Manager may be removed by the Issuer at its own discretion or as directed by the Noteholders (other than the holders of Substitute PPNs) acting as a single class by Ordinary Resolution provided that no such removal will be effective until a substitute Investment Manager is appointed.

#### 14.4 **Removal for Cause; Removal without Cause**

##### (a) **Removal for Cause**

The Investment Manager may be removed for Cause upon ten days' prior written notice by the Trustee (with a copy to the Issuer), at the direction of the Noteholders, acting as a single class by Extraordinary Resolution (excluding any Notes held by the Investment Manager or its Affiliates), provided that notice of such removal shall have been given to the Noteholders by the Issuer in accordance with this Agreement. For purposes of this Agreement, "**Cause**" means:

- (i) the Investment Manager wilfully breaches, or wilfully takes any action which it knows violates in any material respect, any provision of this Agreement, a Note Trust Deed or any other Note Transaction Document to which it is a party, as are applicable to it;
- (ii) the Investment Manager breaches in any material respect any provision of this Agreement, a Note Trust Deed or any other Note Transaction Document to which it is a party, as are applicable to it (other than as specified in paragraph (i) above) and where the Investment Manager fails to cure such breach within 30 days after the earlier of (x) the Investment Manager becoming aware of, or (y) the Investment Manager receiving notice from the Issuer or the Trustee of, such breach or, if such breach is not capable of cure within 30 days, the Investment Manager fails to cure such breach within the period in which a reasonably diligent person could cure such breach (in no event more than 90 days);
- (iii) the failure of any representation, warranty, certification or statement made or delivered by the Investment Manager, in or pursuant to this Agreement, the Note Trust Deeds or any other Note Transaction Document to which it is a party to be correct in any material respect when made and such failure (x) has a material adverse effect on the Issuer or is, in the determination of the Trustee, materially prejudicial to the interests of the Noteholders and (y) no correction is made for a period of 30 days after the Investment Manager becoming aware of, or its receipt of notice from the Issuer or the Trustee of, such failure;
- (iv) the Investment Manager has:
  - (A) an administrative receiver or a receiver appointed over the whole or any part of its assets;
  - (B) an order made or resolution passed for its administration or winding-up (unless as part of a scheme of reconstruction or amalgamation);
  - (C) compounded with or convenes a meeting of its creditors; or
  - (D) allowed, permits or does anything analogous to any of the foregoing under Applicable Law;
- (v) the occurrence of any event which under the laws of any jurisdiction has a similar or analogous effect to any of those events mentioned in paragraph (iv);

- (vi) the occurrence of an Event of Default specified in paragraphs (a) and (b) of Condition 10.1 (*Events of Default*) of the PPNs and the corresponding Note Condition for the other Notes which is a direct consequence of the actions or omissions of the Investment Manager;
- (vii) the occurrence of an act by the Investment Manager that constitutes fraud or criminal activity in the performance of its obligations under this Agreement or any other Note Transaction Document to which it is a party, or its other investment management and advisory activities, or the Investment Manager being found guilty of having committed a criminal offence related to the management of investments similar in nature and character to those which comprise the Collateral;
- (viii) the Investment Manager ceases to be authorised such that, as a result of such change, the Investment Manager no longer has the legal or regulatory capacity to perform its obligations as Investment Manager in accordance with this Agreement; or
- (ix) the Investment Manager breaches any law or regulation applicable to the performance of its obligations or its provision of investment management and advisory services under this Agreement and such breach is, in the determination of the Trustee, materially prejudicial to the interests of the Noteholders and the Investment Manager fails to cure such breach within 30 days after either notice of such failure is given to the Investment Manager or the Investment Manager has actual knowledge of such breach, whichever is earlier.

If any of the events specified in paragraphs (i) to (ix) above (inclusive) shall occur, the Investment Manager, shall give prompt written notice thereof to the Issuer, the Trustee, the Collateral Administrator and the holders of all Outstanding Notes upon the Investment Manager becoming aware of the occurrence of such event.

**(b) Removal without Cause**

- (i) The Investment Manager may be removed without Cause upon prior written notice given by the Trustee (with a copy to the Issuer, the Investment Manager, the Noteholders and the Collateral Administrator) in accordance with clause 33 (*Notices*) below, at the direction of the Noteholders acting as a single class by Unanimous Resolution (which, for the avoidance of doubt, excludes any Notes held by, for the benefit of, for the account of or on behalf of the Investment Manager but includes any Notes held by, for the benefit of, for the account of or on behalf of the Investment Manager's Affiliates).
- (ii) The removal of the Investment Manager pursuant to this clause 14.4(b) shall only be effective if:
  - (A) the Investment Manager has been notified by the Trustee of such removal in accordance with clause 14.4(b)(i) above and 10 days have elapsed since the relevant notice has been deemed to have been given, made or served in accordance with clause 33 below;
  - (B) the conditions precedent to the removal of the Investment Manager set out in clause 14.6(a) have been satisfied and a substitute Investment Manager has been appointed in accordance with 14.6(b)(i); and

- (C) the Investment Manager has been paid a termination payment (the "**Termination Payment**") equal to the net present value of the aggregate Investment Management Fees which would have been paid to the Investment Manager during the 5 year period following the effective date of the removal of the Investment Manager pursuant to this clause 14.4(b), but for such removal without Cause. The net present value of the aggregate Investment Management Fees shall, for the purposes of this clause 14.4(b), be calculated using a 5 per cent. discount rate and be based on the amortisation profile of the Portfolio as recorded in the Collateral Database and the Termination Payment shall be paid in accordance with Condition 4.2(a)(v) of the Pre-Enforcement Priority of Payments or Condition 11.2(c)(C) of the Post-Acceleration Priority of Payments, as the case may be. The Termination Payment shall be due and payable on the date on which the removal of the Investment Manager shall, but for the payment of the Termination Payment pursuant to this clause 14.4(b)(ii)(C), otherwise be effective.

#### 14.5 **Notes held by Investment Manager**

- (a) Any Notes held by, for the benefit of, for the account of or on behalf of the Investment Manager and/or its Affiliates or by accounts over which any of them exercise discretionary voting authority will have no voting rights with respect to any vote (or written direction or consent) in connection with the removal of the Investment Manager and will be deemed not to be Outstanding in connection with any such vote, written direction or consent, provided that (i) in the case of a termination of the Investment Manager without Cause pursuant to clause 14.4(b) and the appointment of a substitute Investment Manager pursuant to clause 14.6(b)(i), any Notes held by the Investment Manager's Affiliates will have, subject to clause 14.5(b), voting rights (including in respect of written directions and consents) with respect to such termination and appointment and (ii) in all other cases, any Notes held by the Investment Manager and/or its Affiliates will have voting rights (including in respect of written directions and consents) with respect to, subject to clause 14.5(b), the appointment or replacement of the Investment Manager and all other matters as to which Noteholders are entitled to vote in accordance with this Agreement.
- (b) Where the appointment of the Investment Manager is terminated under this Agreement and the proposed replacement Investment Manager is an Affiliate of the Investment Manager, any Notes held by or on behalf of the Investment Manager and/or its Affiliates or by accounts over which any of them exercise discretionary voting authority will have no voting rights and be deemed not to be Outstanding for the purposes of any vote to appoint a replacement Investment Manager.

#### 14.6 **Termination or Resignation not Effective until Eligible Successor Appointed**

- (a) Subject to the provisions of this clause 14.6 no termination, resignation or removal of the Investment Manager under this Agreement will be effective:
  - (i) unless an Eligible Successor (as defined below) has agreed in writing to assume all of the Investment Manager's duties and obligations under all the relevant Note Transaction Documents and such assumption has become effective;
  - (ii) if the appointment of the Eligible Successor causes the Issuer or the Portfolio to be required to register under the provisions of the Investment Company Act; or



- (iii) if such Eligible Successor will cause the Issuer to be resident in, or have a permanent establishment in, any jurisdiction other than Luxembourg, or deemed to be, resident for tax purposes, or have a permanent establishment in, or be engaged or deemed to be engaged, in the conduct of a trade or business in any jurisdiction other than Luxembourg.

An "**Eligible Successor**" means an established institution:

- (A) which has demonstrated an ability to professionally and competently perform duties similar to those imposed upon the Investment Manager and with a substantially similar (or better) level of expertise;
- (B) which is legally qualified and has the legal and regulatory capacity to act as the Investment Manager under this Agreement, as successor to the Investment Manager in the assumption of all of the responsibilities, duties and obligations of the Investment Manager hereunder; and
- (C) which will perform its duties under this Agreement without causing adverse tax consequences to the Issuer or the holders of any Notes,

paragraphs (A) to (C), (inclusive) constituting the "**Substitute Criteria**".

- (b) The Issuer shall only appoint a substitute Investment Manager, and such appointment shall only be effective:
  - (i) if, in the case of a termination of the Investment Manager without Cause pursuant to clause 14.4(b) above, the Noteholders acting as a single class by Extraordinary Resolution (which, for the avoidance of doubt, excludes any Notes held by the Investment Manager but (with the exception of the proposed appointment of a replacement Investment Manager which is an Affiliate of the Investment Manager as contemplated in clause 14.5(b)) includes any Notes held by, for the benefit of, for the account of or on behalf of the Investment Manager's Affiliates) direct the Issuer to appoint that substitute Investment Manager (the Issuer shall be deemed to consent to such appointment upon receiving such direction from such Noteholders acting as a single class by Extraordinary Resolution); and
  - (ii) in all other cases, if that substitute Investment Manager is an Eligible Successor which satisfies the Substitute Criteria, and the Noteholders acting as a single class by Extraordinary Resolution direct the Issuer to appoint that substitute Investment Manager (the Issuer shall be deemed to consent to such appointment upon receiving such direction from the Noteholders acting as a single class by Extraordinary Resolution).
- (c) The Investment Management Fee may be adjusted by the Issuer (with the consent of an Extraordinary Resolution of the Noteholders acting as a single class) in the event of a replacement or substitute Investment Manager being appointed.

#### 14.7 **Action Upon Termination**

From and after the effective date of its resignation or removal pursuant to this clause 14 (*Termination*), the Investment Manager shall not, unless otherwise provided in clause 14.8 (*Co-operation in Proceedings*) below, be entitled to compensation for further services under this Agreement, but shall be paid all compensation accrued to the effective date of resignation or removal, as the case may be, as provided in clause 12.2 (*Pro Rating of Fees*) hereof, and shall be entitled to receive any amounts owing under clause 10.1 (*Limits on Responsibility of the Investment Manager*). Upon the effective date of

termination or resignation of the Investment Manager under this Agreement, the Investment Manager will as soon as practicable:

- (a) take reasonable steps to complete all transactions initiated prior to the relevant Termination Event;
- (b) deliver to the Trustee or the Eligible Successor all property and documents of the Trustee or the Issuer or otherwise in the custody of the Investment Manager relating to the Portfolio; and
- (c) account to the Trustee with respect to the books and records delivered to the Trustee or the Eligible Successor appointed pursuant to clause 14.6 (*Termination or Resignation not Effective until Eligible Successor Appointed*) above.

Notwithstanding such termination, but subject to the other provisions hereof, each party shall remain liable for its acts and omissions hereunder arising prior thereto and for any expenses, losses, damages, liabilities, demands, charges and claims of any nature whatsoever in respect of or arising out of its breach of this Agreement.

#### **14.8 Co-operation in Proceedings**

The Investment Manager agrees that, notwithstanding any termination, it will reasonably co-operate in any Proceeding arising in connection with this Agreement or the Portfolio (excluding any such Proceeding in which claims are asserted against the Investment Manager or any Affiliate of the Investment Manager) and shall undertake the actions or steps contemplated in clause 14.7(a), (b) or (c), so long as the Investment Manager will, in each case, have been offered reasonable security, indemnity or other provision against the costs, expenses and liabilities that might be incurred in connection therewith.

#### **14.9 Existing Transactions**

Termination of the Investment Manager's appointment shall be without prejudice to the completion of transactions already initiated on behalf of the Issuer.

#### **14.10 Liability upon Termination, Resignation or Removal**

If this Agreement is terminated pursuant to this clause 14 (*Termination*), such termination shall be without any further liability or obligation of any party to the other, except as provided in clause 12 (*Fees and Expenses of the Investment Manager*), clause 10.1 (*Limits on Responsibility of the Investment Manager*), clause 14.7 (*Action upon Termination*), clause 20 (*Fees and Expenses of the Collateral Administrator*), clause 21 (*Limits on Responsibility of the Collateral Administrator*) and clause 35 (*Limited Recourse and Non-Petition*) of this Agreement. Termination is without prejudice to accrued rights of any party and provisions intended to survive termination and to the right and obligations of the Investment Manager and the Collateral Administrator, respectively, to settle outstanding obligations for transactions in progress; provided however that such obligations become legally binding prior to a termination event pursuant to this clause 14 (*Termination*) or notice to that effect has been given by the Issuer, the Investment Manager or the Collateral Administrator, as the case may be.

### **C. COLLATERAL ADMINISTRATION**

#### **15. POWERS AND DUTIES OF THE COLLATERAL ADMINISTRATOR**

##### **15.1 Appointment and Authority**

- (a) Subject to clause 15.3 (*Collateral Administrator to act for Trustee*) below the Issuer hereby appoints the Collateral Administrator to act as agent of the Issuer in connection with the administrative matters set out herein relating to the Issuer,

and the Collateral Administrator agrees to act as agent of the Issuer (and, where relevant, the Trustee) in accordance with the terms of this Agreement and the Collateral Administrator hereby accepts such appointment in the terms of this Agreement. The Collateral Administrator's duties and authority to act as collateral administrator hereunder are limited to the duties and authority specifically provided for in this Agreement and the Trust Deed. The Collateral Administrator shall not be deemed to assume the obligations of the Issuer or any other person under the Conditions or the Trust Deed or any other Transaction Documents.

- (b) For the avoidance of doubt, the duties and responsibilities of the Collateral Administrator shall, on and from the date of this Agreement, be construed as referring to such duties and responsibilities as set out herein in relation to and in connection with the PPNs only, and following any subsequent issuances of Further PPNs, Substitute PPNs and/or Replacement PPNs, shall be construed as referring to such duties and responsibilities in relation to and in connection with the Notes outstanding following such issuance.

#### 15.2 **Standard of care**

Subject to the terms of this Agreement, the Collateral Administrator shall exercise the due care of a professional collateral administrator, which shall not be a standard which is lower than that applied to its own similar assets in the relevant market with respect to the Collateral in its possession or control.

#### 15.3 **Collateral Administrator to act for Trustee**

At any time after any Event of Default or Potential Event of Default shall have occurred which has not been remedied or waived or the Trustee shall have received any money that it proposes to pay under clause 13 (*Payments and Application of Monies*) of the Trust Deed to the relevant Noteholders, the Trustee may by notice in writing to the Issuer and the Collateral Administrator (such notice to include that an Event of Default or Potential Event of Default has occurred which has not been remedied or waived), require the Collateral Administrator until notified by the Trustee to the contrary and so far as permitted by applicable law:

- (a) to act thereafter as Collateral Administrator of the Trustee under the provisions of the Trust Deed *mutatis mutandis* on the terms provided in the Agency Agreement and this Agreement (save that the Trustee's liability under any provisions thereof for the indemnification, remuneration and payment of out of pocket expenses of the Collateral Administrator shall be limited to the amounts for the time being held by the Trustee on the trusts constituted by the Trust Deed, as may be supplemented by a Note Trust Deed relating to the relevant Notes and available for such purpose); and/or
- (b) to deliver up all monies, documents and records held by it in respect of the relevant Notes to the Trustee or as the Trustee shall direct in such notice, provided that such notice shall be deemed not to apply to any document or record which the Collateral Administrator is obliged not to release by any applicable law or regulation.

For the avoidance of doubt, the Collateral Administrator is not under any obligation to monitor or investigate whether an Event of Default or a Potential Event of Default has occurred or has been remedied or waived.

## 16. DUTIES OF THE COLLATERAL ADMINISTRATOR

### 16.1 Duties of the Collateral Administrator

Without prejudice to the generality of clause 15.1 (*Appointment and Authority*) above, the Issuer hereby directs and authorises the Collateral Administrator to perform the following duties in respect of the Portfolio:

- (a) to create and maintain a collateral database (the "**Collateral Database**"), which shall contain details of the Portfolio from time to time, which shall include:
  - (i) in respect of each Debt Investment:
    - (A) the outstanding loan amount;
    - (B) the name of each borrower;
    - (C) the country of incorporation or domiciliation of each borrower;
    - (D) the business sector to which the relevant Debt Investment relates (as identified by the Investment Manager to the Collateral Administrator promptly after the relevant Debt Investment was acquired by the Issuer);
    - (E) any publicly available rating applicable to the relevant Debt Investment;
    - (F) the scheduled payment amortisation (including the related payment dates) of the relevant Debt Investment up until the maturity date of the relevant Debt Investment;
    - (G) the reference rate and reference rate setting date applicable to the relevant Debt Investment;
    - (H) the margin (including any step-margin margin) of the relevant Debt Investment;
    - (I) each interest payment date of the relevant Debt Investment; and
    - (J) at any time after the Investment Period, the amortisation schedule relating to each Debt Investment after the end of the Investment Period for the purposes of calculating the Portfolio Weighted Average Life of the Debt Investments as at the end of the Investment Period;
  - (ii) the Balances of each of the Accounts;
- (b)
  - (i) to promptly provide information from the Collateral Database as may be reasonably requested by the Investment Manager from time to time;
  - (ii) to update the Collateral Database to take account of the sale or acquisition of Debt Investments;
  - (iii) to monitor payments and receipts of proceeds in respect of the Collateral Database and, without prejudice to the Investment Manager's duties under Clause 4 (*Investment Manager's Duties*), to promptly inform the Issuer and the Investment Manager of any default in respect thereof; and
  - (iv) to monitor the Collateral Database and without prejudice to the Investment Manager's duties under clause 4.4 (*Obligations and Authority*), to promptly

inform the Issuer and the Investment Manager of any default, prepayment or any action undertaken or omission under any Debt Investment which are within the actual knowledge of the Collateral Administrator acting in its capacity as such may, in the Collateral Administrator's reasonable opinion, adversely affect the Portfolio;

- (c) to assist the Accountants in the performance of the functions in respect of the Portfolio required pursuant to clause 18 (*Independent Accountants*);
- (d) to calculate and determine compliance of the Portfolio with the Portfolio Profile Tests at the end of the Investment Period and to record such calculations in the Monthly Report immediately succeeding the end of the Investment Period, and notify the Investment Manager, the Issuer and the Trustee of the results thereof;
- (e)
  - (i) subject to clause 16.3(b) (*Assistance of Investment Manager*), and at the expense of the Issuer and in consultation with and based on information provided by the Investment Manager, to compile and make available the Monthly Report no later than the 15<sup>th</sup> calendar day of each month following the First Purchase Date (and if such day is not a Business Day, the immediately following Business Day) in accordance with clause 19 (*Reports*) to the Issuer, the Trustee, the Investment Manager, the Principal Paying Agent and the Noteholders. For the avoidance of doubt, no Monthly Report will be prepared in the month preceding the month in which a Payment Date Report is due;
  - (ii) not later than the second Business Day preceding the relevant Payment Date, on behalf, and at the expense of the Issuer and in consultation with and based on information provided by the Investment Manager to compile and make available the Payment Date Report in accordance with clause 19 (*Reports*) (prepared and determined as of the Determination Date immediately preceding the relevant Payment Date) to the Issuer, the Trustee, the Investment Manager, the Principal Paying Agent and the Registrar and to the Noteholders;
- (f) to calculate on each Determination Date the amounts to be disbursed pursuant to the Priorities of Payments on each related Payment Date pursuant to the Priorities of Payments and/or the Conditions and to notify the Issuer, the Trustee, the Investment Manager, the Principal Paying Agent and the Registrar of such amounts by the second Business Day preceding the applicable Payment Date, and to procure disbursement of the same from the relevant Accounts in accordance with clause 17.1 (*Priorities of Payments*);
- (g) to determine the amounts required to be notified in accordance with clause 17.1(b) (*Calculations of the Collateral Administrator*);
- (h) preparing Payment Date instructions;
- (i) to manage or procure the management on behalf of the Issuer of each of the Accounts, to monitor the Balances from time to time and to direct payments into and out of each Account in accordance with Condition 4 (*Status and Priorities of Payments*) and the corresponding Note Conditions for the other Notes and the Agency Agreement;
- (j) to calculate the Redemption Price and any other sums payable upon any redemption of the Notes in accordance with the Priorities of Payments;
- (k) to the extent that such is reasonably within its power, to assist the Investment Manager in carrying out such other calculations and determinations as may

expressly be required of the Collateral Administrator in respect of the Portfolio, the Notes or monies credited to the Accounts from time to time;

- (l) to provide the Issuer on each Payment Date with a list of all invoices which have been paid by it on behalf of the Issuer and copies of the same invoices together with a report stating the date on which such invoices have been paid and all other relevant information to enable the Issuer to properly file its VAT obligations (if any);
- (m) to prepare each Monthly Report and Payment Date Report, and to make available to the Issuer and the Investment Manager the data (to the extent such data has been provided to the Collateral Administrator) underlying the Monthly Reports or the Payment Date Reports on or about the date of delivery of such Monthly Reports or Payment Date Reports;
- (n) if required by the Issuer or the Investment Manager, and to the extent that such information is in the possession of the Collateral Administrator by virtue of its acting as Collateral Administrator hereunder, to provide to the Issuer or the Investment Manager such data (in such format as the systems of the Collateral Administrator are capable of producing) (additional to the Monthly Reports or the Payment Date Reports) as the Issuer or the Investment Manager may reasonably require;
- (o) to be responsible for the designating of any accrued interest included in the proceeds of sale of any Debt Investment as Interest Proceeds (other than any accrued interest on defaulted Debt Investments);
- (p) if the Collateral Administrator, in its sole opinion, believes it has identified a manifest error in performing its obligations under clause 3 (*Determinations in respect of the Portfolio and Accounts*), it shall promptly notify the Issuer and the Investment Manager of the same, provided that there shall be no obligation on the Collateral Administrator to check or monitor for any such manifest errors nor any liability to any party for failing to identify or notify of any matter which is subsequently revealed to be a manifest error; and
- (q) to make available the articles of association of the Issuer, the Trust Deed, the Agency Agreement, the Administration Agreement, the Investment Management Agreement and the Distribution Agreement on the Collateral Administrator's secure investor reporting website at <https://tss.sfs.db.com/investpublic>.

## 16.2 Allocation of Distributions

The parties acknowledge that, pursuant to the provisions of the Agency Agreement, the Custodian and the Account Bank are required upon request to notify the Collateral Administrator, the Investment Manager and the Trustee upon receipt of any payments in respect of the Portfolio (including, for the avoidance of doubt, proceeds of sale of any asset in the Portfolio) or receipt of any security or property in exchange for any Debt Investment. Upon receipt of such notification from the Custodian or Account Bank, as applicable, the Collateral Administrator shall determine (in consultation with the Investment Manager) to which Account such payment should be credited and, following such determination, together with details of whether such payment constitutes Interest Proceeds and/or Principal Proceeds, shall notify the Custodian or Account Bank, as applicable, the Issuer and the Investment Manager of such determination and shall direct the Account Bank to credit the proceeds of such Distributions to the relevant Account.

### 16.3 Assistance of Investment Manager

- (a) In the performance of certain functions specified in this clause 16 (*Duties of the Collateral Administrator*), the Collateral Administrator shall be obliged to promptly fulfil its duties following receipt from the Investment Manager or certain other third parties of such orders, determinations, information, calculations and/or certain certifications as are required of the Investment Manager or certain other third parties pursuant to this Agreement and the other Note Transaction Documents. In the event the Investment Manager or certain other third parties fail to give any such order, request, certification, information, calculations and/or determination after having been requested to do so by the Collateral Administrator or fails to do so in a timely manner, the Collateral Administrator shall not incur any liability for failing to comply with its obligations pursuant to this Agreement or any other Note Transaction Document.
- (b) Upon confirmation of the review by the Investment Manager of the Reports and related instructions, statements and data as provided in clause 4.11 (*Review of Reports*), the Collateral Administrator shall make the Monthly Reports and the Payment Date Reports available via its secure investor reporting website after execution by the Issuer or the Investment Manager on behalf of the Issuer, as applicable.
- (c) Subject to clause 15.3 (*Collateral Administrator to act for Trustee*) above, if, in performing its duties under this Agreement, the Collateral Administrator is required to decide between alternative courses of action, the Collateral Administrator may request written instructions from the Investment Manager (acting on behalf of the Issuer) as to the course of action desired by it. If the Collateral Administrator does not receive such instructions within two Business Days after it has requested them, it may, but shall be under no duty to, take or refrain from taking any action. The Collateral Administrator shall act in accordance with instructions received after such two Business Day period except to the extent it has already taken, or committed itself to take, action inconsistent with such instructions, and, provided the Collateral Administrator has acted in good faith and in accordance with this Agreement, the Collateral Administrator shall have no liability arising from relying and acting upon any such instructions. The Collateral Administrator shall be entitled to rely on the advice of legal counsel, independent accountants and other professional advisors in performing its duties hereunder and shall be deemed to have acted in good faith if it acts in accordance with such advice.
- (d) The Collateral Administrator shall not incur any liability for any loss incurred by any person by reason only of the action or inaction of the Investment Manager (on its own behalf and on behalf of the Issuer) or by reason of any information being withheld from the Collateral Administrator on grounds of confidentiality in accordance with clause 4.10 (*Co-operation with Collateral Administrator*).

### 16.4 Distributions and Monies Available for Investment

- (a) The Custodian pursuant to clause 12.1(b) (*No Instructions required*) of the Agency Agreement is required to (i) promptly notify the Collateral Administrator, the Trustee and the Investment Manager (with a copy of any such notice to the Trustee and the Issuer) upon receipt and the deposit thereof into the Custody Account of any Scheduled Distributions in respect of the Custodial Assets and any security or property offered or delivered in exchange for any Custodian Assets, in each case, to the extent held by it and (ii) in the case of cash Scheduled Distributions, transfer such amounts to the Account Bank for deposit into the relevant Account of the Issuer as appropriate. In addition, the Investment Manager shall, as soon as reasonably practicable, notify the Collateral Administrator and the Trustee of any

Scheduled Distributions, security or property received in respect of any of the Portfolio of which it becomes aware.

- (b) Upon receipt of the notification referred to in clause 16.4(a) above, the Collateral Administrator shall (following consultation with the Investment Manager in the case of any accrued interest included in any proceeds of sale or receipt of any fees or commissions) determine whether such Scheduled Distribution should be credited to the Principal Account or the Interest Account and, following such determination, shall notify the Custodian and the Investment Manager of such determination and shall, as soon as reasonably practicable, direct the Account Bank and (to the extent applicable) the Custodian to credit the proceeds of such Scheduled Distribution to the relevant Account.
- 16.5 Notwithstanding anything to the contrary expressed or implied in this Agreement, the Collateral Administrator shall not be under any fiduciary duty towards any other party hereto nor under any obligations other than those for which express provision is made in this Agreement.
- 16.6 The Collateral Administrator may consult on any legal matter, any legal adviser selected by it and it shall not be liable in respect of anything done, or omitted to be done, relating to that matter in good faith in accordance with the adviser's opinion.
- 16.7 The Collateral Administrator shall not have any liability to any third party for the obligations of the Issuer under the Notes or any of the Note Transaction Documents or have any liability to the Issuer, the Trustee, the Account Bank, the Agents, the Noteholders, any other parties or any other person for any failure by the Issuer to make any payment due by it under the Notes or any of the Note Transaction Documents.
- 16.8 The Collateral Administrator may refrain from doing anything which would or might reasonably be expected to, in its reasonable opinion, be contrary to any law in any jurisdiction or any directive of any agency or any state to which it is subject or which would or might reasonably be expected to, in its reasonable opinion, otherwise render it liable to any person and may do anything in its opinion necessary to comply with any such law or directive.
- 16.9 The Issuer, the Trustee, the Investment Manager and the Account Bank agree following a request, to promptly provide the Collateral Administrator with all the information available to it that it may reasonably require in sufficient time to allow the Collateral Administrator to perform its duties and the Collateral Administrator is hereby authorised to rely and act upon such instructions or information as it shall receive.
- 16.10 The Collateral Administrator shall not be obliged to make any payment or take any action or refrain from taking any action under this Agreement unless it has, in its reasonable opinion, received sufficient information (by way of prior written instructions) about the allocation of payments, amount or destination of any payment, or the identity and payment details of the recipient of such payment or otherwise in sufficient time to enable it to do so and the Collateral Administrator shall not be liable for any loss which may be caused as a result of it receiving insufficient information or failing to request such information.
- 16.11 The Collateral Administrator undertakes either (a) to assume the custody (in electronic form only) of all the documentation in respect of the Debt Investments or (b) to procure that a third party assumes, at the Issuer's sole cost, the custody (in electronic form only) of all of the documentation in respect of the Debt Investments. Copies of any such documentation will be provided by the Collateral Administrator, upon request, to the Issuer, the Trustee, the Investment Manager and/or any Agents.



## 17. DETERMINATIONS OF AMOUNTS PAYABLE

### 17.1 Priorities of Payments

#### (a) Collateral Administrator to Request

The Collateral Administrator shall request (in the case of (i) to (iii) below, by no later than 5.00 p.m. (London time) on each Determination Date):

- (i) the Account Bank to notify it of the Balance standing to the credit of each Account held with it at close of business (London time) on such Determination Date;
- (ii) the Custodian to notify it of the amount standing to the credit of each Account held with it at close of business (London time) on such Determination Date;
- (iii) the Issuer to notify it of all taxes, Trustee Fees and Expenses and Administrative Expenses which are due and payable on the related Payment Date distinguishing between the different types of payment due and of any amounts required to be retained by the Issuer as a taxable profit margin; and
- (iv) in addition, the Collateral Administrator shall make such other requests of the parties referred to in clauses 17.1(a)(i) to 17.1(a)(iii) above (and shall otherwise communicate and liaise with such parties) at such times as the Collateral Administrator considers reasonable or necessary in order for it to comply with its obligations under clause 16.1 (*Duties of the Collateral Administrator*).

#### (b) Calculations of the Collateral Administrator

Subject to notification to the Collateral Administrator of the information referred to in clause 17.1(a) (*Collateral Administrator to Request*), the Collateral Administrator shall, in consultation with the Investment Manager, on each Determination Date, calculate each of the amounts payable on the applicable Payment Date out of Interest Proceeds and Principal Proceeds pursuant to the Priorities of Payments and prepare the applicable Payment Date Report reflecting such calculations and shall notify the Issuer, the Trustee and the Investment Manager of the amount of any Interest Proceeds and/or Principal Proceeds required to make the payments determined pursuant to such calculations.

#### (c) Collateral Administrator to Direct Account Bank, Principal Paying Agent and Custodian

The Collateral Administrator shall, as soon as reasonably practicable after the calculations referred to in clause 17.1(b) (*Calculations of the Collateral Administrator*) have been determined in consultation with the Investment Manager on behalf of the Issuer, direct the Account Bank, the Principal Paying Agent or the Custodian, as applicable (with respect to directions to the Account Bank or the Custodian, with a copy of such direction to the Principal Paying Agent):

- (i) by no later than 10.00 a.m. (London time) one Business Day prior to the relevant Payment Date to transfer Principal Proceeds, Interest Proceeds, and/or other permitted amounts to the extent required following calculation of the Priorities of Payments, from the applicable Accounts in accordance with Condition 4.9 (*Payments to and from Accounts*) and the corresponding Note Conditions for the other Notes to the Payment Account; and

(ii) by no later than 10.00 a.m. (London time) on the relevant Payment Date to disburse the amounts so calculated in accordance with Condition 4.2 (*Pre-Enforcement Priority of Payments*) and Condition 11 (*Enforcement*) and the corresponding Note Conditions for the other Notes on the relevant Payment Date.

(d) **No Liability for Collateral Administrator**

The Collateral Administrator shall not incur any liability hereunder for any instructions to the Account Bank or the Custodian, as applicable, given in good faith by the Collateral Administrator which the Collateral Administrator reasonably believes the Issuer is liable to pay. The Collateral Administrator shall not be liable to any person by reason of having given payment instructions in reliance upon any invoice submitted for the account of the Issuer and the Collateral Administrator shall be entitled to assume the performance of the service (if any) to which the invoice relates. Until it shall have been notified in writing or have actual knowledge thereof the Collateral Administrator shall be entitled to assume that no Event of Default or Potential Event of Default has occurred and is continuing.

(e) **Maintenance of Records**

The Collateral Administrator shall maintain appropriate records relating to its determinations in respect of the Priorities of Payments and/or Note Conditions on any Determination Date, and such records shall, subject to any applicable law, be accessible for inspection by representatives of the Issuer, the Trustee, the Registrar, the Investment Manager and the Accountants at any time during normal business hours upon not less than five Business Days' prior notice.

(f) **Adjustment of Amounts**

The Collateral Administrator on behalf of the Issuer may, in its absolute discretion, adjust the amounts required to be applied in payment of principal on the Notes from time to time pursuant to the Priorities of Payments so that the amount to be so applied in respect of each Note is a whole amount, not involving any fraction of a cent or, at the discretion of the Collateral Administrator, part of a Euro.

17.2 **Optional Redemption**

Following confirmation by the Principal Paying Agent to the Collateral Administrator of the exercise by the Noteholders of their right of optional redemption pursuant to Condition 7.2 (*Redemption at the Option of the Noteholders*), and subject to the establishment of a reasonable reserve as determined by the Trustee following consultation with the Investment Manager and the Collateral Administrator for all Administrative Expenses payable in such circumstances under the Priorities of Payments prior to the payment of principal on the Notes, the Collateral Administrator shall request notification from the Account Bank of the Balances standing to the credit of each of the Accounts.

18. **INDEPENDENT ACCOUNTANTS**

18.1 **Appointment of Accountants**

On or prior to the Issue Date, the Issuer shall appoint one or more firms of independent certified public accountants (*réviseur d'entreprises agréées*) of recognised international reputation to assist with the preparation of its management and annual accounts and to audit its annual accounts (the "**Accountants**", which term shall include any replacement or substitute firm of independent certified public accountants (*réviseur d'entreprises agréées*) of recognised international reputation appointed pursuant to clause 18.3 (*Resignation of Accountants*) below) for the purpose of preparing and delivering the

reports or certificates of such Accountants required pursuant to this clause 18 (*Independent Accountants*).

#### 18.2 **Accountant's Activities**

The activities of the Accountants shall be conducted pursuant to an engagement letter between the Issuer and an officer of such Accountants.

#### 18.3 **Resignation of Accountants**

Upon any resignation by its Accountants, the Issuer shall promptly appoint a successor thereto that shall also be a firm of independent certified public accountants of recognised international reputation (approved by the Trustee) and shall notify such appointment to the Trustee, the Investment Manager and the Collateral Administrator. If the Issuer fails to appoint a successor to a firm of independent certified public accountants (*réviseur d'entreprises agréées*) which has resigned within 30 days after such resignation, the Issuer shall promptly notify the Trustee, the Investment Manager and the Collateral Administrator of such failure in writing. If the Issuer shall not have appointed a successor within ten days thereafter, the Trustee may (but shall not be obliged to) promptly appoint a successor firm of independent certified public accountants of recognised international reputation and shall notify such appointment to the Collateral Administrator, the Investment Manager and the Issuer in writing. The firm of independent certified public accountants so appointed shall, effective upon its appointment in this clause 18.3, be the Accountants referred to in this Agreement.

#### 18.4 **Accountants' Fees**

The fees of the Accountants as agreed by the Issuer reasonably and in good faith shall be payable on the Issue Date out of the net proceeds of the Notes and thereafter by the Issuer on each Payment Date in accordance with Condition 3(i) (*Accounts*) and subject to the Priorities of Payments. The Trustee shall not be liable to pay the fees of any Accountants appointed by it.

#### 18.5 **Information**

The Collateral Administrator shall, in so far as it is reasonable to do so and within its possession or knowledge, provide to the Accountants all reports, data and other information (including, without limitation, any letters of representations) that such Accountants may require in connection with such appointment.

#### 18.6 **Audited Accounts**

The Issuer shall cause the Accountants to carry out an audit of the annual accounts prepared by the Issuer.

### 19. **REPORTS**

#### 19.1 **Compilation of Reports**

The Collateral Administrator shall, on behalf of the Issuer and in consultation with the Investment Manager, compile each of the Monthly Reports and the Payment Date Reports in accordance with the requirements of schedule 2 (*Description of the Reports*), taking into account such amendments thereto as may be agreed from time to time by the Issuer, the Investment Manager, the Trustee and the Collateral Administrator.

#### 19.2 **Information**

Each Report compiled by the Collateral Administrator shall state that it is for informational purposes only, that certain information included in the Report is estimated, approximated

or projected and that the Report is provided without any representations or warranties as to accuracy or completeness and that none of the Issuer, the Trustee, the Investment Manager or the Collateral Administrator will have any liability for such estimates, approximations or projections.

### 19.3 **Confidentiality**

Nothing, in this clause 19 (*Reports*), shall oblige the Investment Manager or the Collateral Administrator to disclose, whether directly or indirectly, any information held under an obligation of confidentiality.

### 19.4 **Quarterly Investment Management Reports**

The Investment Manager, shall on behalf of the Issuer, (i) deliver reports which relate to the Portfolio which are in addition to the Monthly Reports and the Payment Date Reports produced by the Collateral Administrator (the "**Quarterly Investment Management Reports**") prepared and determined as of the Determination Date immediately preceding the relevant Payment Date comprising the following information (the provision of such detailed information being subject to any confidentiality obligations binding on the Issuer):

- (a) a brief description of each Obligor's activity;
- (b) the performance status of Debt Investments;
- (c) commentary on the construction progress for Debt Investments where the Obligor is undertaking significant construction activity;
- (d) compliance of the Obligors with their financial covenants;
- (e) outstanding waiver requests;
- (f) commentary on refinancing or repayments expected to fall in the next 12 months,

and (ii) provide such Quarterly Investment Management Reports to the Issuer, the Collateral Administrator, the Trustee and the Noteholders not later than the second Business Day preceding the related Payment Date. Each of the Issuer, the Collateral Administrator, the Trustee and the Noteholders agree that any Quarterly Investment Management Report provided to them by the Investment Manager are for informational purposes only, and that the Investment Manager shall not have any liability to the Issuer for such Quarterly Investment Management Reports.

## 20. **FEES AND EXPENSES OF THE COLLATERAL ADMINISTRATOR**

### 20.1 **Fees**

Subject to the Priorities of Payments, the Issuer agrees to pay, and the Collateral Administrator shall be entitled to receive, as compensation for the Collateral Administrator's performance of its duties under this Agreement, the fees set out in a side letter, dated on or about the date hereof, between the Collateral Administrator and the Issuer which fees shall be payable quarterly in arrear on each Payment Date in accordance with the Priorities of Payments.

### 20.2 **Expenses**

The Collateral Administrator shall be responsible for ordinary expenses incurred in the performance of its obligations under this Agreement provided however that legal fees, fees of other professional advisers, printing and travel fees and expenses, and wire charges and other out of pocket expenses reasonably incurred in the performance of its

obligations under this Agreement shall be reimbursed by the Issuer upon receipt of a claim from the Collateral Administrator in respect thereof in accordance with the Priorities of Payments and Condition 4.9 (*Payments to and from Accounts*) and the corresponding Note Conditions for the other Notes.

### 20.3 **Pro-rating of Fees**

If the Collateral Administrator resigns or its appointment is terminated pursuant to clause 22 (*Change of the Collateral Administrator*) below or otherwise, the fees calculated as provided in this clause 20 (*Fees and Expenses of the Collateral Administrator*) shall be pro rated for any partial Due Periods during which this Agreement was in effect and shall be due and payable on the first Payment Date following the date of such termination subject to the Priorities of Payments.

### 20.4 **Adjustment of Fees**

The fee payable to any successor collateral administrator may be increased by the Issuer subject to the prior consent of the Trustee (as directed by the holders of the Notes acting by Extraordinary Resolution in accordance with Condition 14 (*Meetings of Noteholders, Modification, Waiver and Substitution*)) subject to and in accordance with clause 22.4 (*Appointment of Successor Collateral Administrator*).

### 20.5 **Payment**

All amounts payable by the Issuer to the Collateral Administrator pursuant to this Agreement shall become due and payable on the next following Payment Date, in accordance with the Priorities of Payments.

## 21. **LIMITS ON RESPONSIBILITY OF THE COLLATERAL ADMINISTRATOR**

### 21.1 **Liability of Collateral Administrator**

(a) The Collateral Administrator:

- (i) shall not be responsible for any action of the Issuer, the Trustee or the Investment Manager in declining to follow any advice, direction, instruction or recommendation of the Collateral Administrator;
- (ii) does not assume any fiduciary duty with regard to the Issuer or the Noteholders;
- (iii) does not guarantee or otherwise assume any responsibility for the performance of the Notes, any obligation comprised in the Portfolio or the performance by any third party of any contract entered into by or on behalf of the Issuer;
- (iv) does not guarantee or otherwise assume any responsibility for the performance of any other party under any Note Transaction Document; and
- (v) shall incur no liability to anyone in acting upon any signature, instrument, statement, notice, resolution, request, direction, consent, order, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be properly executed or signed by the proper party or parties.

(b) Subject to clause 21.2(a) (*Indemnity of the Collateral Administrator*), the Collateral Administrator shall not be liable for any loss or damage suffered by the Issuer or any other CA Indemnified Party (as defined below) as a result of the Collateral Administrator performing its duties under and in accordance with this Agreement

and the other Note Transaction Documents unless the same results from an act of fraud, wilful default or negligence on the part of the Collateral Administrator or its directors, officers, agents, delegates and employees. All references in this Agreement and the other Note Transaction Documents to the liability and responsibility of the Collateral Administrator shall, with the exception of clause 21.2(a) (*Indemnity of the Collateral Administrator*), be subject in all cases to this clause 21.1(b) (*Liability of Collateral Administrator*).

- (c) Notwithstanding any provision of this Agreement or any other Note Transaction Document to the contrary, the Collateral Administrator shall not in any event be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), whether or not foreseeable, even if the Collateral Administrator had been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence, for breach of contract or otherwise, provided, however, that this clause 21.1(c) (*Liability of Collateral Administrator*) shall not be deemed to apply in the event of a determination of fraud on the part of the Collateral Administrator in a non-appealable judgment by a court having jurisdiction.

## 21.2 Indemnities

### (a) Indemnity of the Collateral Administrator

The Collateral Administrator shall indemnify and hold harmless (the Collateral Administrator in such case, the "**CA Indemnifying Party**") the Issuer, the Investment Manager and the Trustee (each, a "**CA Indemnified Party**" and collectively the "**CA Indemnified Parties**") from and against any direct Liabilities (to the exclusion of any consequential or indirect economic losses or any loss of turnover, profits or business) resulting from a Collateral Administrator Breach, and shall reimburse each such CA Indemnified Party for all documented expenses reasonably incurred related thereto (including, without limitation, fees and expenses of legal counsel and all other costs of investigating, preparing, pursuing, disputing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation caused by, or arising out of or in connection with, any such Collateral Administrator Breach), except to the extent that such claims result directly from the wilful default, fraud or negligence of the CA Indemnified Party under this Agreement. The Collateral Administrator undertakes that it shall pay any amount payable to any CA Indemnified Party hereunder to such CA Indemnified Party, which payment shall be in satisfaction of such amount payable.

### (b) Indemnity of the Issuer

The Issuer shall, subject to clause 35 (*Limited Recourse and Non-Petition*) indemnify and hold harmless (the Issuer in such case, the "**Issuer Indemnifying Party**") each of the Collateral Administrator, its directors, officers, agents, delegates and employees (each such party, an "**Issuer Indemnified Party**" and such parties collectively in such case, the "**Issuer Indemnified Parties**") from and against any and all Liabilities reasonably incurred by any such Issuer Indemnified Party resulting from an Issuer Indemnification Matter, save to the extent that such Liability would not have arisen but for a Collateral Administrator Breach, and in addition will reimburse each such Issuer Indemnified Party for all properly documented fees (by way of invoices) and expenses (including properly documented fees (by way of invoices) and expenses of legal counsel) (collectively, the "**Expenses**") as such Expenses are reasonably incurred in investigating, preparing, pursuing, disputing or defending any claim, action, proceeding or investigation with respect to any pending or threatened litigation (collectively, the "**Actions**") caused by, or arising out of or in connection with, any such Issuer

Indemnification Matter, the issuance of the Notes, the transactions contemplated by the Prospectus or this Agreement, and/or any action taken by, or any failure to act by, such Issuer Indemnified Party under this Agreement; provided that no Issuer Indemnified Party will be indemnified for any Liabilities or Expenses it incurs as a result of such Issuer Indemnified Party's acts or omissions which constitute a Collateral Administrator Breach, or because of the wilful default, fraud or negligence of such Issuer Indemnified Party under this Agreement. The Issuer undertakes to the Collateral Administrator that it shall pay to the Collateral Administrator any amount payable to any Issuer Indemnified Party hereunder, which payment shall be in satisfaction of such amount payable. Notwithstanding anything contained in this Agreement to the contrary, the obligations of the Issuer under such provisions of this Agreement will be payable solely out of the Collateral in accordance with the Priorities of Payments as an "Administrative Expense" subject to the Priorities of Payments, or out of the Expense Reserve Account, as provided in the Note Conditions and will survive termination of this Agreement, and resignation or removal of the Collateral Administrator.

Subject to the foregoing, the Issuer shall make payment of all amounts required to be made pursuant to the provisions of this clause 21.2(b) (*Indemnity of the Issuer*) to or for the account of the Issuer Indemnified Party from time to time promptly upon receipt of bills or invoices relating thereto.

(c) **Survival of Indemnities**

The provisions of this clause 21.2 (*Indemnities*) shall survive the termination of this Agreement (including for the avoidance of doubt, any resignation or removal of the Collateral Administrator pursuant to clause 22 (*Change of the Collateral Administrator*)).

**21.3 Currency Conversion**

Any payments to be made, or amounts received, under this Agreement (including, but not limited to, in respect of Eligible Investments) which are denominated in a currency other than Euro shall be converted into the relevant currency, or Euro as the case may be, by the Collateral Administrator acting on the instructions of the Investment Manager on behalf of the Issuer, which conversion shall be conducted in a commercially reasonable manner. In no event shall the Collateral Administrator be liable to any party for the conversion rate so obtained or for any deficiency in amounts arising from such conversion.

**22. CHANGE OF THE COLLATERAL ADMINISTRATOR**

**22.1 Removal of Collateral Administrator without Cause**

Subject to clause 22.4 (*Appointment of Successor Collateral Administrator*) below, the appointment of the Collateral Administrator pursuant to this Agreement may be terminated without cause at any time upon 90 days' prior written notice to the Collateral Administrator (with a copy to the Account Bank, the Custodian and the Investment Manager) by the Issuer or the Trustee at its discretion or acting upon the written directions of the holders of the Notes, acting by Extraordinary Resolution (subject to being indemnified and/or secured and/or prefunded to its satisfaction), such notice to be copied to the Issuer or Trustee (as applicable), the Investment Manager, the Account Bank, the Custodian and the Noteholders in accordance with Condition 16 (*Notices*).

**22.2 Removal of Collateral Administrator with Cause**

Subject to clause 22.4 (*Appointment of Successor Collateral Administrator*) below, the appointment of the Collateral Administrator pursuant to this Agreement may be terminated if (i) a Basic Termination Event with respect to the Collateral Administrator has

occurred and is continuing or (ii) with cause by the Issuer or the Trustee at its discretion or acting upon the written directions of the holders of the Notes (other than holders of the Substitute PPNs) acting by Ordinary Resolution (in each case in respect of the Trustee, subject to being indemnified and/or secured and/or prefunded to its satisfaction), forthwith upon prior written notice to the Collateral Administrator copied to the Issuer or the Trustee (as applicable), the Investment Manager, the Account Bank, the Custodian and to the Noteholders in accordance with Condition 16 (*Notices*). For purposes of determining "cause" with respect to the termination of the appointment of the Collateral Administrator under this Agreement in accordance with this clause 22.2 such term shall mean any one of the following events:

- (a) the Collateral Administrator shall be fraudulent or in default in the performance of any of its material duties under this Agreement and, in the case of default, shall not cure such default within 30 days of the occurrence of such default (or, if such default cannot be cured in such time, has not given within such 30 days such assurance of cure as shall be reasonably satisfactory to the Issuer, the Trustee and the Investment Manager); or
- (b) the Collateral Administrator is adjudged bankrupt or insolvent, or shall file a voluntary petition in bankruptcy or make an assignment for the benefit of its creditors or consent to the appointment of a receiver or similar official to all or any substantial part of its property, or if a receiver of it or of all or any substantial part of its property shall be appointed, or if any public officer shall take charge or control of the Collateral Administrator or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, or a resolution is passed or an order made for the winding up of the Collateral Administrator (other than pursuant to a consolidation, amalgamation or merger) or for any substantial part of its property, or order the winding-up or liquidation of its affairs; or
- (c) the Collateral Administrator shall commence a voluntary case under applicable bankruptcy, insolvency or other similar law, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Collateral Administrator or in respect of any substantial part of its property, or shall make any general arrangement for the benefit of creditors, or shall fail generally to pay its debts as they become due.

If any of the events specified in clause 22.2(b) or 22.2(c) above shall occur, the Collateral Administrator shall give written notice thereof to the Issuer, the Trustee and the Investment Manager as soon as reasonably practicable after the happening of such event.

### **22.3 Resignation of Collateral Administrator**

Notwithstanding any other provision hereof to the contrary, but subject to clause 22.4 (*Appointment of Successor Collateral Administrator*) below, the Collateral Administrator may resign its appointment under this Agreement without cause upon 90 days' prior written notice and with cause upon 10 days' prior written notice to the Issuer and the Trustee (with a copy to the Account Bank, the Custodian and the Investment Manager). Following receipt of a notice of resignation from the Collateral Administrator, the Issuer shall promptly give notice thereof to the Noteholders in accordance with Condition 16 (*Notices*).

### **22.4 Appointment of Successor Collateral Administrator**

- (a) Upon retirement, resignation or removal of the Collateral Administrator and while any of the Notes are outstanding, the Issuer, in consultation with the Investment



Manager or the Investment Manager on its behalf, shall use its best efforts to appoint a person who:

- (i) has demonstrated an ability to perform professionally and competently duties similar to those imposed upon the Collateral Administrator under this Agreement and has a substantially similar (or higher) level of expertise; and
- (ii) has the necessary regulatory approvals and has the capacity to act as collateral administrator under this Agreement,

as successor to the Collateral Administrator hereunder in the assumption of all the duties, responsibilities and obligations of the Collateral Administrator hereunder and under the other Note Transaction Documents to which the Collateral Administrator is a party.

- (b) No termination, resignation or removal of the Collateral Administrator shall be effective unless the successor Collateral Administrator has entered into an agreement in accordance with the terms of this clause 22.4.
- (c) The successor collateral administrator must satisfy the requirements set out in clause 22.4(a) and shall enter into an agreement on substantially the same terms as the Collateral Administrator under the terms of this Agreement. For the avoidance of doubt, no Noteholder consent will be required for such appointment if the successor collateral administrator enters into an agreement on substantially the same terms as the Collateral Administrator under the terms of this Agreement. Any request for an increase in the successor collateral administrator's fees will be deemed to be not on substantially the same terms and accordingly will require the prior consent of the Trustee as directed by the Noteholders acting by Extraordinary Resolution. In such circumstances, the Issuer shall as soon as practicable and in any event within five Business Days of it being so notified that an Extraordinary Resolution is required, (x) collate fee quotes from at least one collateral administrator providing similar services on the market and satisfying the requirements set out in clause 22.4(a) and (y) issue a notice convening a meeting of the Noteholders on 21 clear days' notice for the purpose of considering and, if thought fit, passing an Extraordinary Resolution to either approve the proposed increase in fees from the proposed successor collateral administrator, or approve the identity of a proposed new collateral administrator from the Issuer's collation of fee quotes. If the Noteholders fail to approve the appointment or fees proposed, then the resigning collateral administrator or, as the case may be, the collateral administrator whose appointment is being terminated is entitled to make the appointment with the consent (including as to identity and fees) of the Issuer and the Trustee, such consent not to be unreasonably withheld or delayed by the Issuer and the Trustee.

## 22.5 **Liability upon Termination, Resignation or Removal**

If this Agreement is terminated pursuant to this clause 22 (*Change of Collateral Administrator*), such termination shall be without any further liability or obligation of any party to the other, except as provided in clause 20 (*Fees and Expenses of the Collateral Administrator*), clause 21 (*Limits on Responsibility of the Collateral Administrator*) and clause 35 (*Limited Recourse and Non-Petition*) of this Agreement. Termination is without prejudice to accrued rights of any party and provisions intended to survive termination and to the right of the Collateral Administrator to settle outstanding obligations for transactions in progress provided however that such obligations become legally binding prior to a termination event pursuant to this clause 22 (*Change of the Collateral Administrator*) and/or notice of such termination event has been given by the Issuer or the Collateral Administrator, as the case may be.

## 22.6 **Effect of Resignation**

Upon the termination, resignation or removal of the Collateral Administrator becoming effective:

- (a) the Collateral Administrator shall, subject to any confidentiality undertaking, forthwith transfer all records and the collateral database (whether in written, electronic or other form) held by it in connection with this Agreement to the successor Collateral Administrator, or as the Trustee may otherwise direct;
- (b) all rights, authorities and powers of the Collateral Administrator under this Agreement shall be terminated and be of no further effect and the Collateral Administrator shall not hold itself out in any way as the agent of the Issuer or the Trustee; and
- (c) from and including the effective date of resignation or removal of the Collateral Administrator, the Collateral Administrator shall not be entitled to compensation for further services under this Agreement, but shall be paid all compensation (including for the avoidance of doubt, all fees) accrued to the date of such resignation or removal, as provided in clause 20.3 (*Pro-rating of Fees*) above.

## 22.7 **Notification**

The Issuer shall notify the Trustee, the Investment Manager, the Account Bank, the Custodian and the Agents in the event of any termination, resignation or removal of the Collateral Administrator and/or the appointment of any successor.

## 22.8 **Merger or Consolidation of Collateral Administrator**

A corporation into which the Collateral Administrator is merged or converted or with which it is consolidated or which results from a merger, conversion or consolidation to which it is a party shall, to the extent permitted by applicable law, be the successor Collateral Administrator under this Agreement. The Collateral Administrator agrees to do all such further acts and things (if any) as are necessary to give effect to this clause 22.8. The Collateral Administrator shall forthwith notify the other parties to this Agreement as soon as practicable after it becomes aware that any such event shall occur, giving details of the date on which such event is to occur and of the successor Collateral Administrator.

## 22.9 **Vesting of Powers of Successor Collateral Administrator**

Upon any successor Collateral Administrator appointed hereunder executing, acknowledging and delivering to the Issuer and the Trustee an instrument accepting such appointment hereunder, it shall, without any further act, deed or conveyance, become vested with all authority, rights, powers, trusts, indemnities, duties and obligations of the Collateral Administrator hereunder.

## 23. **SUSPENSION OF ACQUISITIONS**

Notwithstanding any other provision of this Agreement, the Investment Manager shall not take any other action in respect of the Collateral at any time following the notification to it of the occurrence of an Event of Default under the Notes which is continuing, save to the extent that such commitment was entered into prior to the notification of such Event of Default to the Investment Manager or unless directed to do so by the Trustee.

## **D. REQUIREMENTS RELATING TO THE PORTFOLIO**

### **24. ELIGIBILITY CRITERIA**

- 24.1 Each asset acquired by the Issuer that is intended to constitute a Debt Investment, shall be required to satisfy each of the Eligibility Criteria (i) as at the later of the Issue Date and the time of entry by the Issuer into a legally binding commitment to acquire such asset and (ii) in relation to paragraph (I) of the Eligibility Criteria only, at any time and, in respect of transactions involving Debt Investments entered into after the Issue Date, the acquisition thereof shall be subject to delivery of an Issuer Order by the Investment Manager to the Trustee, which attaches certification from the Investment Manager that such Debt Investment satisfies the Eligibility Criteria. For the avoidance of doubt, in respect of the purchase of a Debt Investment entered into after the Issue Date, the subsequent failure of any Debt Investment to satisfy any of the Eligibility Criteria shall not prevent any obligation which would otherwise be a Debt Investment from being a Debt Investment so long as such obligation satisfied the Eligibility Criteria as at the later of the Issue Date and the entry by the Issuer into a binding agreement to purchase such obligation.
- 24.2 If the Eligibility Criteria are no longer satisfied in respect of any Debt Investment (i) on any date subsequent to the date on which the Issuer enters into a binding commitment to acquire such Debt Investment and (ii) in relation to paragraph (I) of the Eligibility Criteria only, at any time; or if the Portfolio Profile Tests (or any of them) are no longer satisfied at the end of the Investment Period in respect of the Portfolio, there shall be no obligation on the Issuer and the Investment Manager on behalf of the Issuer to take any action to bring the Portfolio into compliance with the Eligibility Criteria (in respect of each Debt Investment individually), or the Portfolio Profile Tests (in respect of the Portfolio as a whole).

### **25. THE PORTFOLIO**

#### **25.1 Terms and Conditions applicable to the Sale of Debt Investments**

Debt Investments may be sold at any time upon the recommendation of the Investment Manager in the following circumstances only:

- (a) to the Investment Manager's knowledge, no Event of Default having occurred which is continuing; and
- (b) the Investment Manager believes that such sale is in the best interests of Noteholders.

The Investment Manager intends to recommend the sale of Debt Investments only as a last resort and after work-outs and restructuring methods have been fully exhausted.

#### **25.2 Reinvestment of Debt Investments**

During the Investment Period, the Investment Manager may, at its discretion, recommend to the Issuer to reinvest Principal Proceeds in the purchase of new Debt Investments satisfying the Eligibility Criteria provided that immediately after each such purchase to the Investment Manager's knowledge, no Event of Default has occurred that is continuing at the time of such purchase.

#### **25.3 Liquidation of Collateral**

##### **(a) *Sale of Debt Investments Process***

In connection with the sale of all or a portion of the Portfolio, the Investment Manager may recommend a sale and/or transfer of assets and liabilities at prices

determined by the Investment Manager, acting in a commercially reasonable manner, including, but not limited to, by reference to a private or public bid process pursuant to which the Investment Manager will solicit for bids from at least 2 bidders.

(b) ***Liquidation in Whole***

In the event of an optional redemption of the Notes in whole, the Investment Manager shall:

- (i) make recommendations to the Issuer in respect of and, as far as practicable, facilitate the liquidation of the Portfolio and any other Collateral, in accordance with Condition 7.2 (*Redemption at the Option of the Noteholders*) subject to any limitations or restrictions set out in the Note Conditions and the Note Trust Deeds in order to procure that the proceeds thereof are in immediately available funds by one Business Day prior to the applicable scheduled Redemption Date; and
- (ii) in accordance with terms set out in this Agreement, use commercially reasonable efforts to procure the sale, assignment, termination and/or other disposal of the Portfolio so that the proceeds thereof are in immediately available funds not later than one Business Day prior to such scheduled Redemption Date. The settlement dates for any such sales of Debt Investments shall be no later than one Business Day prior to the applicable scheduled Redemption Date.

(c) ***Highest Available Price***

The Investment Manager shall only recommend a sale of any asset or group of assets together forming part of the Portfolio at a price which it believes to be reasonably close to the highest fully actionable price for such asset or group of assets together.

(d) ***Role of Investment Manager***

In connection with the liquidation of the Portfolio the Investment Manager shall act solely for the Issuer and will not be responsible to any other person (including Noteholders) for the provision of such service. The Investment Manager shall have no duties (including any fiduciary duties) or responsibilities to the Noteholders or the Trustee and no fiduciary duties to the Issuer. In connection with the sale of all or a portion of the Portfolio (including, without limitation, pursuant to one or more binding agreements as described below), the Investment Manager may recommend a sale and/or transfer of assets and liabilities at prices determined by the Investment Manager, acting in a commercially reasonable manner, including, but not limited to, by reference to a private or public bid process pursuant to which the Investment Manager will solicit for bids from at least 2 bidders. The Investment Manager shall have no liability to the Issuer, the Trustee, the Secured Parties or any other person for determining prices in such manner.

(e) ***Liquidation of Collateral upon Enforcement of Security***

Upon receipt of notification from the Trustee of the enforcement of security over the Collateral, the Investment Manager will act as directed to act for the Trustee pursuant to clause 5.3 (*Investment Manager to act for Trustee*) acting in accordance with clause 12 of the Trust Deed (*Enforcement of Security*) and Condition 11 (*Enforcement*) and the corresponding Note Conditions for the other Notes (including, for the avoidance of doubt, acting as directed by the Trustee

(acting in its capacity as Pledgee under the Euroclear Pledge Agreement) pursuant to and in accordance with 10.2 (*Enforcement*) of the Euroclear Pledge Agreement).

#### 25.4 **Block Trades**

The requirements described in this clause 25 with respect to the Portfolio shall be deemed to be satisfied upon any sale and/or purchase of Debt Investments on any day in the event that such Debt Investments satisfy such requirements in aggregate rather than on an individual basis.

#### 25.5 **Eligible Investments**

The Issuer or the Investment Manager may from time to time purchase Eligible Investments out of the balances standing to the credit of the Accounts, other than the Payment Account. For the avoidance of doubt, Eligible Investments may be sold by the Issuer or the Investment Manager at any time.

#### 25.6 **Participations**

The Investment Manager may recommend from time to time that the Issuer acquire Debt Investments from Selling Institutions by way of Participation, provided that at such time such Participation satisfies the minimum rating requirement in respect of the Selling Institution as set out in paragraph (e) of the Eligibility Criteria and subject, at the end of the Investment Period, to satisfaction of limb (ii) of the Portfolio Profile Tests.

#### 25.7 **Assignments**

The Investment Manager may recommend from time to time that the Issuer acquire Debt Investments from Selling Institutions by way of Assignment provided that at the time such Assignment is acquired the Issuer or the Investment Manager shall have complied, to the extent within their control, with any requirements relating to such Assignment set out in the relevant loan documentation for such Debt Investment (including, without limitation, with respect to the form of such Assignment and obtaining the consent of any person specified in the relevant loan documentation).

#### 25.8 **Double Tax Treaties and Potential Withholding**

##### (a) **Withholding Tax**

The Investment Manager, acting on behalf of the Issuer, shall investigate whether any Debt Investment acquired is subject to any withholding tax in any relevant jurisdiction and, if so, whether the Obligor thereunder is required to make "gross-up" payments in respect of the full amount of any such tax withheld or whether such withholding can be eliminated pursuant to the provisions of an applicable double tax treaty or local legislation. Following any determination that a claim under a double tax treaty or local legislation will be required to eliminate or reduce any withholding or deduction for or on account of tax in respect of any Debt Investment, the Investment Manager shall promptly notify the Issuer of such fact and the Issuer, or an agent on the Issuer's behalf, will take all reasonable and necessary action under the terms of any applicable double tax treaty or local legislation in order to reduce or eliminate any liability of the Issuer (or, as the case may be, the Trustee) to taxation by virtue of any of the actions permitted under the terms of this Agreement (such action to include the filing of all necessary claims and the provision of all necessary information and documentation to the relevant taxation authorities for the purpose of such claim).

(b) **Claim under Double Tax Treaty or Local Tax Regulations**

Without prejudice to the generality of clause 25.8(a) (*Withholding Tax*) above, the Issuer agrees that in the event that payments on a Debt Investment become subject to withholding tax or increased withholding rates and, in either case, the relevant Obligor is not required to gross-up in respect of such tax, then the Issuer will promptly complete, sign and authorise all such forms required and take all other such reasonable action as may be necessary in order to reduce or eliminate any such withholding tax or increase therein.

(c) **Assistance in Relation to Tax Claims**

The Custodian, at the request of the Issuer or an agent on behalf of the Issuer, will provide assistance from time to time in relation to any tax claims or issues relating to the Debt Investments, for so long as such assistance is within its capacity, authority, knowledge and duties (as specified in the Note Transaction Documents) as Custodian, and each shall have no responsibility or liability with regard to the Issuer's tax position or status in any jurisdiction.

26. **RELEASE OF SECURITY**

The parties to this Agreement acknowledge that security over the Collateral will be released pursuant to, and in accordance with, the terms of clause 5.5 (*Release of Security Pursuant to Issuer Orders*) of the Trust Deed.

27. **PORTFOLIO PROFILE TESTS**

The Collateral Administrator shall measure the Portfolio Profile Tests at the end of the Investment Period and shall record such calculations in the Monthly Report immediately succeeding the end of the Investment Period. Notwithstanding the foregoing, the failure of the Portfolio to meet the requirements of the Portfolio Profile Tests at any time shall not prevent any obligation which would otherwise be a Debt Investment from being a Debt Investment.

E. **GENERAL**

28. **DELEGATION**

28.1 **Delegation by the Investment Manager**

The Investment Manager may perform any and all of its duties and exercise its rights and powers by or through any one or more agents, including any of its Affiliates, selected by the Investment Manager in accordance with the standard of care to which it is subject under this Agreement, subject to (i) the Investment Manager ensuring that any such agent is subject to no less a standard of care, (ii) the Investment Manager complying with its standard of care in the selection of its delegates or agents, (iii) the agreement of any such agent or delegate to be bound by clause 35 (*Limited Recourse and Non-Petition*) as if it were a party to this Agreement, (iv) where necessary, such agent or delegate having the regulatory capacity as a matter of UK law, Luxembourg law or any other applicable law, to render such delegated services in accordance with this Agreement, and (v) would not cause the Issuer to be liable for any additional tax (including any withholding tax or VAT on any payments or supplies under this Agreement or any Note Transaction Document).

Subject to clause 8.1(a) (*Methods of Dealing in Debt Investments*) above, any delegation by the Investment Manager to any agent of the performance of the duties of the Investment Manager through such agent shall not in any way relieve the Investment Manager from its obligations under this Agreement for which it shall continue to be liable as if and to the extent that it would have been had no such delegation been made and

any failure by such agent to perform the services expressed to be performed by the Investment Manager hereunder shall be treated as a breach of this Agreement by the Investment Manager.

Neither the Issuer nor the Trustee shall have any liability for any costs, charges or expenses payable to or incurred by any such agent or arising from the entering into, the continuance or the termination of any arrangements between the Investment Manager and such agent, except (in the case of the Issuer) such costs, charges and expenses which are reimbursable by the Issuer pursuant hereto and which, had they been incurred directly by the Investment Manager, would be reimbursable to it hereunder.

## 28.2 **Delegation by the Collateral Administrator**

The Collateral Administrator may perform any and all of its duties and exercise its rights and powers by or through any one or more agents, including any of its Affiliates, selected by the Collateral Administrator in consultation with the Investment Manager in accordance with the standard of care to which it is subject under this Agreement, subject to (i) the Collateral Administrator ensuring that any such agent is subject to no less a standard of care, (ii) the Collateral Administrator complying with its standard of care in the selection of its delegates or agents, (iii) the agreement of any such agent or delegate to be bound by clause 35 (*Limited Recourse and Non-Petition*) as if it were a party to this Agreement, (iv) where necessary, such agent or delegate having the regulatory capacity as a matter of UK law, Luxembourg law or any other applicable law, to render such delegated services in accordance with this Agreement, and (v) such appointment not causing the Issuer to be liable for any additional tax (including any withholding tax or VAT on any payments or supplies under this Agreement or any Note Transaction Document).

Any delegation by the Collateral Administrator to any agent of the performance of the duties of the Collateral Administrator through such agent shall not in any way relieve the Collateral Administrator from its obligations under this Agreement for which it shall continue to be liable as if and to the extent that it would have been had no such delegation been made and any failure by such agent to perform the services expressed to be performed by the Collateral Administrator hereunder shall be treated as a breach of this Agreement by the Collateral Administrator.

Neither the Issuer nor the Trustee shall have any liability for any costs, charges or expenses payable to or incurred by any such agent or arising from the entering into, the continuance or the termination of any arrangements between the Collateral Administrator and such agent, except (in the case of the Issuer) such costs, charges and expenses which are reimbursable by the Issuer pursuant hereto and which, had they been incurred directly by the Collateral Administrator, would be reimbursable to it hereunder.

## 29. **ASSIGNMENTS**

### 29.1 **Assignment by the Investment Manager or the Collateral Administrator**

Without prejudice to the provisions of clause 22 (*Change of the Collateral Administrator*) neither the Investment Manager nor the Collateral Administrator may assign or transfer any of its rights or obligations under this Agreement (or any interest in this Agreement, by operation of law or otherwise) unless:

- (a) such assignment or transfer is consented to in writing by the Issuer and by the Noteholders acting as a single class by Extraordinary Resolution;
- (b) in respect of the Investment Manager, such assignee or transferee is an Eligible Successor which satisfies the Substitute Criteria;
- (c) in respect of the Investment Manager, where it is assigning, transferring or novating this Agreement to any of its Affiliates, it has given the Issuer notice which

specifies a date at least one week after the date of the notice upon which such assignment, transfer or novation, as appropriate, shall become effective;

- (d) such assignment or transfer will not result in a material adverse tax event;
- (e) any such assignment or transfer will bind the transferee in the same manner as the Investment Manager or the Collateral Administrator, as applicable, is bound; and
- (f) the transferee has obtained all regulatory approvals required by applicable laws,

provided that, in the case of the Investment Manager, subject to the Substitute Criteria, any corporation, partnership or limited liability company into which the Investment Manager may be merged or converted or with which it may be consolidated or which results from any merger, conversion or consolidation to which the Investment Manager may be a party or which succeeds to all or substantially all of the investment management and advisory business or the portfolio servicing business of the Investment Manager will be the successor to the Investment Manager without any further action by the Investment Manager.

Any purported assignment that is not in compliance with this clause 29.1 will be void. Any assignment carried out in accordance with this clause 29.1 will bind the transferee in the same manner as the Investment Manager or the Collateral Administrator, as applicable, is bound. In addition, in the case of any assignment of all rights and obligations hereunder, the transferee will execute and deliver to the Issuer and the Trustee a counterpart of this Agreement naming such transferee as Investment Manager or the Collateral Administrator, as applicable. Upon the execution and delivery of such a counterpart by the transferee, the Investment Manager or the Collateral Administrator, as applicable, will be released from further obligations pursuant to this Agreement, except with respect to its obligations arising under clause 10 (*Limits of Investment Manager Responsibility; Indemnities*) or clause 21 (*Limits on Responsibility of the Collateral Administrator*), as applicable, prior to such assignment.

## 29.2 **Assignment by the Issuer**

This Agreement (or any part thereof) shall not be assigned or transferred by the Issuer without the prior written consent of the Investment Manager, the Collateral Administrator and the Trustee, except in the case of assignment or transfer by the Issuer (a) to an entity which is a successor to the Issuer permitted under the Note Trust Deeds, in which case such successor organisation shall be bound hereunder and by the terms of said assignment in the same manner as the Issuer is bound thereunder or (b) by way of security to the Trustee as contemplated by clause 10 (*Security*) of the Trust Deed. In the event of any assignment or transfer by the Issuer, the Issuer shall use its best efforts to cause its successor to execute and deliver to the Investment Manager such documents as the Investment Manager, the Collateral Administrator and the Trustee shall consider reasonably necessary to effect fully such assignments.

## 30. **SET-OFF**

No party to this Agreement shall be entitled to exercise or claim any right of set-off, combination or lien in respect of any obligation owed to it by the Issuer or take from the Issuer any security interest or guarantee or other assurance therefor or take or do or omit to take or do any act or thing to prejudice or impair in any way the security and subordination contemplated by the Note Conditions or the Note Transaction Documents (unless expressly provided for under the terms thereof).

## 31. **ENGLISH LANGUAGE**

Each communication and document made or delivered by one party to another pursuant to this Agreement shall be in the English language or accompanied by a translation



thereof into English certified (by an officer of the person making or delivering the same) as being a true and accurate translation thereof.

**32. MISCELLANEOUS**

**32.1 Benefit of the Agreement**

Each of the Investment Manager and the Collateral Administrator agrees that its obligations hereunder will be enforceable at the instance of the Issuer or, upon and after enforcement of the security granted to the Trustee by the Issuer over its rights and benefits hereunder, the Trustee on behalf of the Secured Parties.

This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns as provided in this Agreement.

**32.2 Entire Agreement**

This Agreement constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof.

**32.3 No Modifications or Amendments**

This Agreement may not be modified or amended other than (i) by an agreement in writing executed by the parties hereto, (ii) subject to and in accordance with the terms of the Note Trust Deeds and (iii) with the consent of the Noteholders that would be sufficient to meet the Noteholder consent requirements for such modification or amendment if it was made pursuant to the Note Trust Deeds which, for the avoidance of doubt, includes the ability of the Trustee to agree, subject to satisfaction of certain conditions, without the consent of the Noteholders to any modification which is (A) of a formal, minor or technical nature or is made to correct a manifest error or (B) required to be made that is, in the determination of the Trustee, not materially prejudicial to the interests of the Noteholders and any waiver or authorisation of any breach or proposed breach, of any of the provisions of this Agreement which is, in the determination of the Trustee, not materially prejudicial to the interests of the Noteholders.

**32.4 Consent to Assignment by way of Security**

Each of the Investment Manager and the Collateral Administrator hereby consents to and acknowledges the provisions regarding assignment of the Issuer's rights under this Agreement set out in clause 10.1 (*Charge and Assignment*) of the Trust Deed.

**32.5 Conflict with Note Trust Deeds**

In the event that this Agreement requires any action to be taken with respect to any matter and the Note Trust Deeds (including the Note Conditions) requires that a different action be taken with respect to such matter, and such actions are mutually exclusive, the provisions of the Trust Deed (including the Note Conditions) in respect thereof will prevail.

**32.6 Priorities of Payments**

Each of the Investment Manager and the Collateral Administrator agrees that the payment of all amounts to which it is entitled pursuant to this Agreement and the Note Trust Deeds will be made only in accordance with the Priorities of Payments or other relevant provisions of the Note Trust Deeds (including the Note Conditions).

### 32.7 **Survival of Representations, Warranties and Indemnities**

Each representation and warranty made or deemed to be made in this Agreement or pursuant hereto, and each indemnity provided for by this Agreement, will survive the termination of this Agreement.

### 32.8 **Remedies Cumulative**

Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided at law or in equity.

### 32.9 **Severability**

In case any provision in this Agreement is deemed invalid, illegal or unenforceable as written, such provision will be construed in the manner most closely resembling the apparent intent of the parties with respect to such provision so as to be valid, legal and enforceable; provided that if there is no basis for such a construction, such provision will be ineffective only to the extent of such invalidity, illegality or unenforceability and, unless the ineffectiveness of such provision substantially impairs the basis of the bargain for one or more of the parties to this Agreement, the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired.

### 32.10 **No Waiver of Rights**

A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

### 32.11 **Complaints Procedure**

All formal complaints regarding the Investment Manager should in the first instance be made in writing to the compliance officer of the Investment Manager at the address set in this Agreement.

### 32.12 **Compensation**

A statement is available from the Investment Manager describing the Issuer's rights to compensation, if and in the event that the Investment Manager is unable to meet its liabilities.

### 32.13 **Third Party Rights**

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999.

## 33. **NOTICES**

### 33.1 **Contact Details**

Any notice or demand to the Investment Manager, the Issuer, the Trustee, the Collateral Administrator, the Account Bank or the Custodian to be given, made or served for any purposes under this Agreement shall be given, made or served by sending the same by pre-paid post (first class if within the United Kingdom, first class airmail if outside the United Kingdom) or facsimile transmission or by delivering it by hand to the contact details set forth below or to such other address or facsimile number as shall have been notified (in accordance with this clause 33 (*Notices*) to the other parties to this Agreement and any notice or demand sent by post as described above shall be deemed to have been

given, made or served three days in the case of post within the United Kingdom, or seven days in the case of post outside of the United Kingdom after despatch and any notice or demand sent by facsimile transmission as described above shall be deemed to have been given, made or served 24 hours after the time of despatch provided that in the case of a notice or demand given by facsimile transmission such notice or demand shall forthwith be confirmed by post. The failure of the addressee to receive such confirmation shall not invalidate the relevant notice or demand given by facsimile transmission.

### **Contact Details**

**To the Issuer** Aviva Investors European Secondary Infrastructure Credit  
SV S.A.  
2, Boulevard Konrad Adenauer  
L-1115 Luxembourg

Attention: The Directors  
Facsimile: + 352 421 22 718

**To the Collateral Administrator and Custodian** Deutsche Bank AG, London Branch  
Winchester House  
1 Great Winchester Street  
London EC2N 2DB

Attention: TSS/SFS/Aviva  
Facsimile: 0207 545 3686

**To the Investment Manager** Aviva Investors Global Services Limited  
No. 1 Poultry  
London EC2R 8EJ

Attention: Company Secretary  
Facsimile: 02078097940

**To the Trustee** Deutsche Trustee Company Limited  
Winchester House  
1 Great Winchester Street  
London EC2N 2DB

Attention: The Managing Director (TSS)  
Facsimile: 0207 547 5919

### **33.2 Change of Details**

Any party may alter the address or facsimile number to which communications or copies are to be sent by giving notice of such change of address or facsimile number in conformity with the provisions of this clause 33 (*Notices*) for the giving of notice.

### **34. FURTHER ASSURANCE**

The Investment Manager, the Collateral Administrator and the Issuer shall take such other action, and furnish such certificates, opinions and other documents, as may be reasonably requested by the other parties hereto in order to effect the purposes of this Agreement and to facilitate compliance with applicable laws and regulations and the terms of this Agreement. The provisions of this clause 34 are in addition to the duties of the Investment Manager and the Collateral Administrator set forth in this Agreement.

Nothing in this Agreement shall impose any obligation or liability on the Issuer or the Trustee to assume or perform any of the obligations of the Investment Manager, the

Collateral Administrator, the Custodian or the Account Bank hereunder or render it liable for any thereof.

**35. LIMITED RECOURSE AND NON-PETITION**

35.1 The obligations of the Issuer to pay amounts due and payable in respect of the Notes and to the other Secured Parties at any time shall be limited to the proceeds available at such time to make such payment in accordance with the Priorities of Payments. If the net proceeds of realisation of the security constituted by the Trust Deed and the Euroclear Pledge Agreement, upon enforcement thereof in accordance with Condition 11 (*Enforcement*) and the provisions of the Trust Deed and the Euroclear Pledge Agreement, are less than the aggregate amount payable in such circumstances by the Issuer in respect of the Notes and to the other Secured Parties (such negative amount being referred to herein as a "**shortfall**"), the obligations of the Issuer in respect of the Notes and its obligations to the other Secured Parties in such circumstances will be limited to such net proceeds, which shall be applied in accordance with the Priorities of Payments. In such circumstances, the other assets of the Issuer will not be available for payment of such shortfall which shall be borne by the Noteholders, the Trustee and the other Secured Parties in accordance with the Priorities of Payments (applied in reverse order). The rights of the Secured Parties to receive any further amounts in respect of such obligations shall be extinguished and neither the Noteholders or any other Secured Party may take any further action to recover such amounts. Only the Trustee may pursue the remedies available under applicable law, under the Trust Deed and under the Euroclear Pledge Agreement to enforce the rights of a Secured Party against the Issuer, as further detailed in Condition 11.3 (*Only the Trustee to Act*). None of the Noteholders, the Trustee or the other Secured Parties (nor any other person acting on behalf of any of them) shall be entitled at any time to institute against the Issuer, its officers or directors, or join in any institution against the Issuer, its officers or directors, of, any bankruptcy (*faillite*), liquidation, reprieve from payment (*sursis de paiement*), controlled management (*gestion contrôlée*), composition with creditors (*concordat préventif de faillite*), suspension of payments, reorganisation, arrangement, insolvency, winding-up or liquidation proceedings or for the appointment of a liquidator, administrator or similar official, or other proceedings under any applicable bankruptcy or similar law in connection with any obligations of the Issuer relating to the Notes, the Note Trust Deeds or otherwise owed to the Secured Parties, save for lodging a claim in the liquidation of the Issuer which is initiated by another party or taking proceedings to obtain a declaration or judgment as to the obligations of the Issuer.

35.2 None of the Trustee, the directors of the Issuer, the Principal Paying Agent, the Registrar, the Collateral Administrator or the Investment Manager has any obligation to the Noteholders for payment of any amount by the Issuer in respect of the Notes. The Notes are corporate obligations of the Issuer only and none of the Trustee, the directors of the Issuer, the Principal Paying Agent, the Registrar, the Collateral Administrator or the Investment Manager has any liability to the Noteholders for the obligations of the Issuer in respect of the Notes accordingly. For the avoidance of doubt, this clause 35.2 shall not be construed so as to (A) limit the liability or obligations that any of the Trustee, the Issuer, the Principal Paying Agent, the Registrar, the Collateral Administrator, the Investment Manager or any other party may have or has pursuant to the Note Transaction Documents and the Notes or (B) limit or qualify the rights of any Noteholder (or any beneficial owner in respect of the Notes) in its capacity as such.

**36. GOVERNING LAW AND JURISDICTION**

**36.1 Governing Law**

This Agreement (and any non-contractual obligations, dispute, controversy proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) shall be governed by and construed in accordance with English law.

### 36.2 **Jurisdiction**

- (a) Subject to clause 36.2(b) below, the parties irrevocably agree that the courts of England are to have exclusive jurisdiction for the purpose of hearing and determining any suit, action or proceedings and/or to settle any disputes arising out of or in connection with this Agreement or its formation (including disputes relating to any non-contractual obligations arising out of or in connection therewith) (respectively, "**Proceedings**" and "**Disputes**") and accordingly irrevocably submit to the jurisdiction of such courts.
- (b) Nothing in this clause 36.2 (*Jurisdiction*) shall (or shall be construed so as to) limit the right of any party to take Proceedings against the Issuer in any other country in which the Issuer has assets or in any other court of competent jurisdiction nor shall the taking of any Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

### 36.3 **Appropriate Forum**

The Issuer irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any Proceedings and to settle any Disputes and agrees not to claim the courts of England are not a convenient or appropriate forum for any such Proceedings or Disputes.

### 36.4 **Appointment of Agent for Service of Process**

The Issuer hereby appoints Aviva Investors Global Services Limited to receive service of process on its behalf as its authorised agent for service of process in England. If for any reason such agent shall cease to be such agent for service of process, the Issuer shall forthwith appoint a new agent for service of process in England and deliver to the Trustee, the Investment Manager and the Custodian a copy of the new agent's acceptance of appointment within 15 days, failing which the Trustee shall be entitled to appoint such a new agent for service of process by written notice to the Issuer. Nothing in this Agreement shall affect the right to serve process in any other manner permitted by law.

### 37. **COUNTERPARTS**

This Agreement and any amendment or supplement hereto may be executed and delivered in any number of counterparts, all of which, taken together, shall constitute one and the same agreement and any party to this Agreement or any amendment or supplement hereto may enter into the same by executing and delivering a counterpart.

**IN WITNESS** of which this Agreement has been executed as a deed on the date written at the beginning hereof.

## SCHEDULE 1

### Eligibility Criteria

Each Debt Investment shall, as at the time of the Issuer entering into a binding commitment to acquire such obligation, be required to satisfy each of the Eligibility Criteria set out below (collectively, the "**Eligibility Criteria**"):

- (a) it is a Debt Investment denominated in Euros;
- (b) it is issued or incurred by a special purpose project company or corporate entity (directly or indirectly) engaged primarily in the provision or ownership of essential infrastructure assets operating in one of the Eligible Sectors or it is an assignment, novation or sub-participation of a Debt Investment issued or incurred by a special purpose project company or corporate entity (directly or indirectly) engaged primarily in the provision or ownership of essential infrastructure assets operating in one of the Eligible Sectors;
- (c) it is capable of being sold, novated or assigned to the Issuer without any breach of applicable selling or transfer restrictions or of any legal or contractual provisions and all rights in relation thereto and the security (or the commercial benefit thereof) in relation therewith can be transferred to the Issuer and all necessary actions or conditions have been or, unless, if some of such actions or conditions are not satisfied at the time the commitment to acquire such obligation is entered into, such actions or conditions are a condition precedent to transfer under such commitment to acquire, will have been, carried out in order for the above mentioned sale, novation or assignment to be perfected;
- (d) it is not a Debt Investment where the Obligor is undertaking a significant construction programme (and where the repayment of the loan is directly dependent on the completion of such significant construction programme) in sectors which are not Eligible Construction Risk Sectors;
- (e) it is not a Debt Investment where the Obligor is undertaking a significant construction programme (and where the repayment of the loan is directly dependent on the completion of such significant construction programme) unless the Investment Manager has obtained a technical report issued in the previous 6 months confirming either (i) that such programme is substantially on time and on budget or (ii) that any expected delay and/or cost overrun is not expected to result in a default under the Debt Investment's finance documentation or to significantly impact the Obligor's ability to comply with its payment obligations under such documentation;
- (f) if it is a Participation, it is a Participation where (i) the Selling Institution's Long Term Rating is A by S&P, A2 by Moody's or A by Fitch and (ii) the Issuer has retained voting rights in respect of any amendments, consents or waivers required in respect of any amendments to the underlying documentation;
- (g) the Obligor is not significantly dependent for the repayment of the loan on the price of a commodity (such as power, gas or oil). In particular, with regards to renewable assets, the revenue to the Obligor will be substantially backed by either feed-in tariffs or off-take contracts;
- (h) the Obligor is not significantly dependent for the repayment of the loan on the volume of traffic or patronage unless such Obligor has an operating track record on a substantial portion of the assets;
- (i) upon acquisition by the Issuer of a Debt Investment forming part of the Portfolio, both (i) the Debt Investment is capable of being, and will be, the subject of a first

fixed charge or first priority security interest or other arrangement having similar commercial effect in favour of the Trustee for the benefit of the Secured Parties pursuant to the Trust Deed (or any deed or document supplemental thereto) and (ii) (subject to (i) above) following notification by the Issuer (or the Investment Manager on behalf of the Issuer) to the Trustee that any such Debt Investment is a bond that is not held through Euroclear, the Issuer shall have taken such action as the Trustee may require to create and perfect such security interest;

- (j) it has a Stated Maturity that is not later than the Maturity Date of the Notes, provided that if it has a Stated Maturity falling after 15 October 2039, (i) it, when considered in aggregate with other Debt Investments in the Portfolio with a Stated Maturity falling after 15 October 2039, does not exceed 20 per cent. of the aggregate Note Commitments of all Noteholders and (ii) based on scheduled repayments as provided under the terms of such Debt Investment, its expected outstanding principal balance as of 15 October 2039, when considered in aggregate with the expected outstanding principal balance as of 15 October 2039 of other Debt Investments in the Portfolio with a Stated Maturity falling after 15 October 2039 and based on scheduled repayments as provided under the terms of such other Debt Investments, will not exceed 5 per cent. of the aggregate Note Commitment of all Noteholders;
- (k) the majority of the Obligors' revenues shall be directly or indirectly derived from persons or entities based in EEA and/or the EFTA member countries with a Long Term Rating equal to or higher than the Minimum Long Term Rating;
- (l) it, when considered in aggregate with other Debt Investments in the Portfolio invested in obligations of the same Obligor, does not exceed ~~10 per cent. of the aggregate Note Commitment of all Noteholders~~ €50,000,000;
- (m) it, when considered in aggregate with other Debt Investments in the Portfolio where Obligors continue to undertake a significant construction programme (and where the repayment of the loan is directly dependent on the completion of such significant construction programme), does not exceed 25 per cent. of the aggregate Note Commitment of all Noteholders; and
- (n) if it is a Delayed Draw Debt Investment or a Revolving Debt Investment, (i) in respect of any Specified Delayed Draw Debt Investment or Specified Revolving Debt Investment only, it, when considered with other Specified Delayed Draw Debt Investments and Specified Revolving Debt Investments in the Portfolio, does not exceed 10 per cent. of the aggregate Note Commitment of all Noteholders and (ii) it shall rank at least *pari passu* with the Obligor's other loan or debt obligations (except for obligations that are mandatorily preferred by laws of general application to companies).

For the purposes of this paragraph (n) only, "Specified Delayed Draw Debt Investment" means any Delayed Draw Debt Investment that permits drawdowns to be made thereunder at any time after two years following the end of the Investment Period; and "Specified Revolving Debt Investment" means any Revolving Debt Investment that permits drawdowns to be made thereunder at any time after two years following the end of the Investment Period.

In addition, the Debt Investments shall also comply at all times with paragraph (l) of the Eligibility Criteria.

## SCHEDULE 2

### Description of the Reports

#### MONTHLY REPORTS

The Collateral Administrator shall, no later than the 15th calendar day of each month following the First Purchase Date (and if such a day is not a Business Day, the immediately following Business Day) on behalf and at the expense of the Issuer and in consultation with and based on information provided by, the Investment Manager compile and make available to the Trustee, the Investment Manager, the Issuer, the Principal Paying Agent (where such reports will be available upon request), and the Noteholders a monthly report (the "**Monthly Report**"), which shall contain the following information with respect to the Portfolio determined by the Collateral Administrator in consultation with the Investment Manager. Each Monthly Report will be made available to the Noteholders, the Issuer, the Trustee, the Principal Paying Agent, the Registrar and the Investment Manager via the Collateral Administrator's secure investor reporting website currently located at <https://tss.sfs.db.com/investpublic>. It is not intended that such reports will be made available in any other format, save in certain limited circumstances with the Collateral Administrator's agreement. If, due to technical reasons, any Monthly Report is not made available via the Collateral Administrator's website, the Collateral Administrator shall use all reasonable efforts to deliver such Monthly Report by such other method as it may determine is necessary, including by registered post. The Collateral Administrator's website does not form part of the information provided for the purposes of this Prospectus and disclaimers may be posted with respect to the information posted thereon. Registration may be required for access to such website and persons wishing to access such website may be required to certify that they are the Noteholders or otherwise entitled to access such website. The Monthly Report will be prepared as of the last calendar day of the preceding month. For avoidance of doubt, there will be no Monthly Report in the month preceding the month in which a Payment Date Report is due.

#### **Portfolio**

- (a) The aggregate principal balance of the Debt Investments;
- (b) subject to any confidentiality obligations binding on the Issuer, in respect of each Debt Investment, the type of Debt Investment (and if it is a Participation, the name and rating of the Selling Institution), its outstanding amount, its Maturity, the Obligor's name, the Obligor's country of principal business including the rating of such Obligor's country, the Eligible Sector in which it operates and any publicly available credit rating by any Rating Agency (other than any confidential credit estimate);
- (c) subject to any confidentiality obligations binding on the Issuer, whether the Debt Investment is an investment where Obligors continue to undertake a significant construction programme (and where the repayment of the loan is directly dependent on the completion of such significant construction programme);
- (d) subject to any confidentiality obligations binding on the Issuer, the identity and principal balance of, respectively, any Debt Investments that were acquired or sold by the Investment Manager on behalf of the Issuer during the period from (and excluding) the date of the relevant Monthly Report) to (and including) the date of the next Monthly Report;
- (e) an aggregate breakdown of the Portfolio by country of principal business and by sector;
- (f) subject to any confidentiality obligations binding on the Issuer, the identity of each Debt Investment which defaulted since the date of determination of the last Monthly Report;
- (g) the list of Debt Investments which were upgraded or downgraded by any Rating Agency since the most recent Monthly Report and of which the Collateral Administrator or the Investment Manager has actual knowledge;



- (h) scheduled principal and interest proceeds balance which the Issuer expects to receive during the period from (and excluding) the date of the relevant Monthly Report) to (and including) the date of the next determination date.

### **Portfolio Profile Tests**

In respect of each Portfolio Profile Test to be calculated at the end of the Investment Period, a statement as to whether such test is satisfied, together with details of the result of the calculations required to be made in order to make such determination which details shall include the applicable numbers, levels and/or percentages resulting from such calculations.

### **Notes**

The Drawn Amount of the Notes and such amount as a percentage of the original Principal Amounts of the Notes as of the most recent Note Advance Date.

### **Accounts**

- (a) the Balances standing to the credit of each of the Accounts at the date of determination of the current Monthly Report or Payment Date Report, as applicable, including, in respect of the Expense Reserve Account, a summary of the credits and debits within that account; and
- (b) the Balances standing to the credit of each of the Accounts at the date of determination of the last Monthly Report or Payment Date Report as applicable.

For purposes of the above paragraphs, "**Balance**" means on any date, with respect to any cash or Eligible Investments standing to the credit of an Account, the aggregate of the:

- (a) current balance of cash, demand deposits, time deposits, government-guaranteed funds and other investment funds;
- (b) outstanding principal amount of interest-bearing corporate and government obligations and money market accounts and repurchase obligations; and
- (c) purchase price, up to an amount not exceeding the face amount, of non interest-bearing government and corporate obligations, commercial paper and certificates of deposit.

### **PAYMENT DATE REPORT**

The Collateral Administrator, on behalf, and at the expense, of the Issuer and in consultation with, and based on information provided by, the Investment Manager, shall render a report (the "**Payment Date Report**"), prepared and determined as of the Determination Date immediately preceding the relevant Payment Date, make available and provide such Payment Date Report to the Trustee, the Investment Manager, the Issuer, the Principal Paying Agent, the Registrar and the Noteholders not later than the second Business Day preceding the related Payment Date commencing on the first Payment Date after the First Purchase Date. Each Payment Date Report will be made available to the Noteholders, the Issuer, the Trustee, the Principal Paying Agent, the Registrar and the Investment Manager via the Collateral Administrator's secure investor reporting website currently located at <https://tss.sfs.db.com/investpublic>. It is not intended that such reports will be made available in any other format, save in certain limited circumstances with the Collateral Administrator's agreement. If, due to technical reasons, any Payment Date Report is not made available via the Collateral Administrator's website, the Collateral Administrator shall use all reasonable efforts to deliver such Payment Date Report by such other method as it may determine is necessary, including by registered post. The Collateral Administrator's website does not form part of the information provided for the purposes of this Prospectus and disclaimers may be posted with respect to the information posted thereon. Registration may be required for access to such website and persons wishing to access such website may be required to certify that they are Noteholders or otherwise entitled to access such website. The Collateral Administrator shall

provide the Investment Manager with a copy of any reports prepared by it. The Payment Date Report shall also be available upon request from the Principal Paying Agent and shall contain the following information subject in all cases to any confidentiality obligations binding on the Issuer:

***Portfolio***

The information required in any Monthly Report pursuant to "*Portfolio*" above.

***Portfolio Profile Tests***

In respect of each Portfolio Profile Test to be calculated at the end of the Investment Period, a statement as to whether such test is satisfied, together with details of the result of the calculations required to be made in order to make such determination which details shall include the applicable numbers, levels and/or percentages resulting from such calculations.

***Notes***

- (a) the Drawn Amount of the Notes and such amount as a percentage of the original Principal Amounts at the beginning of the Due Period and such amount as a percentage of the original Principal Amounts at the beginning of the Due Period after giving effect to the principal payments, if any, on the next Payment Date.
- (b) the interest payable in respect of Notes on the related Payment Date.

***Payment Date Payments***

- (a) the amounts payable pursuant to the Interest Proceeds Priorities of Payments and the Principal Proceeds Priorities of Payments on the related Payment Date.
- (b) the Trustee Fees and Expenses and other Administrative Expenses payable on the related Payment Date on an itemised basis.

***Accounts***

- (a) the Balances standing to the credit of each of the Accounts at the date of determination of the current Monthly Report or Payment Date Report, as applicable, including, in respect of the Expense Reserve Account, a summary of the credits and debits within that account.
- (b) the Balances standing to the credit of each of the Accounts at the date of determination of the last Monthly Report or Payment Date Report as applicable.

For purposes of the above paragraphs, "**Balance**" means on any date, with respect to any cash or Eligible Investments standing to the credit of an Account, the aggregate of the:

- (a) current balance of cash, demand deposits, time deposits, government-guaranteed funds and other investment funds;
- (b) outstanding principal amount of interest-bearing corporate and government obligations and money market accounts and repurchase obligations; and
- (c) purchase price, up to an amount not exceeding the face amount, of non interest-bearing government and corporate obligations, commercial paper and certificates of deposit.

**QUARTERLY INVESTMENT MANAGEMENT REPORT**

The Investment Manager, on behalf of the Issuer, shall deliver a report (the "**Quarterly Investment Management Report**"), prepared and determined as of the Determination Date immediately preceding the relevant Payment Date comprising the following information (the provision of such detailed information being subject to any confidentiality obligations binding on the Issuer):

- (a) a brief description of each Obligor's activity;
- (b) the performance status of Debt Investments;
- (c) commentary on the construction progress for Debt Investments where the Obligor is undertaking significant construction activity;
- (d) compliance of the Obligors with their financial covenants;
- (e) outstanding waiver requests;
- (f) commentary on refinancing or repayments expected to fall in the next 12 months.

The Investment Manager shall deliver a copy of each Quarterly Investment Management Report to the Issuer, the Collateral Administrator, the Trustee and the Noteholders no later than the second Business Day preceding the related Payment Date.

### **MISCELLANEOUS**

Each Report shall state that it is for purposes of information only and that certain information in the Report is estimated, approximated or projected and that each Report is provided without any representations or warranties as to accuracy or completeness and that none of the Issuer, the Investment Manager, the Collateral Administrator and the Trustee will have any liabilities for estimates, approximations or projections contained therein.

Nothing in any of the foregoing shall oblige the Issuer, the Trustee, the Investment Manager or the Collateral Administrator to disclose, whether directly or indirectly, any information held under an obligation of confidentiality.

## SCHEDULE 3

### Issuer Tax Procedures

#### 1. GENERAL GUIDELINES

Measures to be taken by the Issuer:

- (a) the Issuer is and will remain incorporated in Luxembourg and will continue to maintain its registered office there;
- (b) the Issuer has and will continue to have its head office only in Luxembourg and will operate its business only from that head office (excluding for the avoidance of doubt any transactions or activities which are carried out on behalf of the Issuer by a third party pursuant to the Note Transaction Documents), and will at all times maintain its central management, the direction and control of its activities and businesses and its place of effective management (*principal établissement and siège statutaire*) only in Luxembourg;
- (c) the Issuer shall not open any office or branch or place of business outside Luxembourg;
- (d) all meetings of the board of directors of the Issuer will be held in Luxembourg;
- (e) the majority of directors will be resident in Luxembourg for tax purposes
- (f) each director of the Issuer has the appropriate qualifications and knowledge to act as a director of the Issuer and has the requisite expertise and experience to exercise a proper management and control function in relation to the business of the Issuer;
- (g) the board of directors of the Issuer will act independently in the exercise of their functions and will not merely "uncritically endorse" decisions concerning the management and control of the Issuer effectively already taken by a person in the UK or otherwise step aside, but rather will give due consideration to decisions and including the entering into of any agreements based on information available to them;
- (h) the board of directors of the Issuer will exercise its authority only from and within Luxembourg by taking all key decisions relating to the Issuer in Luxembourg, it being understood in this context that although the board of directors of the Issuer will supervise the activities of the Investment Manager, certain decisions have been delegated to the Investment Manager by the Issuer under this Agreement and the Investment Manager will itself have responsibilities for the taking of those decisions delegated to it by the Issuer under this Agreement;
- (i) the board of directors of the Issuer will, pursuant to this Agreement, set the overall requirements and limitations relating to the Portfolio which are required to be acted upon by the Investment Manager and the parameters within which the Investment Manager can exercise any discretionary powers given to it;
- (j) full minutes will be taken of all meetings of the board of directors of the Issuer in sufficient detail to provide evidence of substantive consideration of the issues before the board of directors of the Issuer and the decisions made;
- (k) the board of directors of the Issuer will meet at least quarterly (with additional meetings being held as appropriate to consider any recommendations made in accordance with clause 4.5(a) (*Actions for which the prior express approval of the Issuer is required*));

- (l) the board of directors of the Issuer have properly and fully considered the terms of the Note Transaction Documents and, in particular, the terms relating to the appointment and removal of the Investment Manager and the provisions relating to the Portfolio and the Notes contained therein, before resolving that the Issuer shall enter into such agreements;
- (m) the Issuer has and will maintain the share capital amount indicated in the articles of association of the Issuer over the minimum legally required share capital amount, which is €30,086.69;
- (n) Corporate files and documents such as bookkeeping, business contracts or financial documents will be issued, signed and kept at the registered office of the Issuer in Luxembourg; and
- (o) the Issuer will hold proper accounts, which should be kept at its registered office together with all corporate and legal documentation and contracts signed by the Issuer.

**EXECUTION PAGE**

**ISSUER**

**EXECUTED** as a deed and delivered by )  
the attorney on behalf of )  
**AVIVA INVESTORS EUROPEAN SECONDARY** )  
**INFRASTRUCTURE CREDIT SV S.A.** )

By:

Title:

**INVESTMENT MANAGER**

**EXECUTED** as a deed )  
and delivered by a duly appointed attorney of )  
**AVIVA INVESTORS GLOBAL SERVICES LIMITED** )

Name of Attorney:

In the presence of:

Signature of Witness

Name of Witness

**COLLATERAL ADMINISTRATOR**

**EXECUTED** as a deed )  
and delivered by two duly authorised signatories of )  
**DEUTSCHE BANK AG, LONDON BRANCH** )

Authorised Signatory

Authorised Signatory

**TRUSTEE**

**GIVEN UNDER THE COMMON SEAL of** )  
**DEUTSCHE TRUSTEE COMPANY LIMITED** )

Authorised Signatory

Authorised Signatory

**CUSTODIAN**

**EXECUTED** as a deed )  
and delivered by two duly authorised signatories of )  
**DEUTSCHE BANK AG, LONDON BRANCH** )

Authorised Signatory

**SIGNATORIES TO THE DEED OF AMENDMENT**

**Issuer**

**EXECUTED** as a deed )  
and delivered by the attorney on behalf of )  
**AVIVA INVESTORS EUROPEAN SECONDARY** )  
**INFRASTRUCTURE CREDIT SV S.A.** )

Authorised Signatory: )

Name:

Title:



**Trustee**

**GIVEN UNDER THE COMMON SEAL OF )  
DEUTSCHE TRUSTEE COMPANY LIMITED )**

Authorised Signatory: )

Authorised Signatory: )

**Principal Paying Agent, Account Bank, Note Agent, Custodian, Quotation Agent and Collateral Administrator**

**EXECUTED** as a deed )  
and delivered by two duly authorised signatories of )  
**DEUTSCHE BANK AG, LONDON BRANCH** )

Authorised Signatory: )

Authorised Signatory: )

**Registrar**

**EXECUTED** as a deed )  
and delivered by two duly authorised signatories of )  
**DEUTSCHE BANK LUXEMBOURG S.A.** )

Authorised Signatory: )

Authorised Signatory: )

**Investment Manager**

**EXECUTED** as a deed )  
and delivered by a duly appointed attorney of )  
**AVIVA INVESTORS GLOBAL SERVICES LIMITED** )

Name of Attorney:

In the presence of:

Signature of Witness

Name of Witness

## ANNEX 3

### Written Resolution (Amendments)

To: **Deutsche Trustee Company Limited**  
Winchester House  
1 Great Winchester Street  
London  
EC2N 2DB

Copy to: **Deutsche Bank AG, London Branch**  
Winchester House  
1 Great Winchester Street  
London  
EC2N 2DB

**Aviva Investors European Secondary Infrastructure Credit SV S.A.**  
2, Boulevard Konrad Adenauer  
L-1115  
Luxembourg

**Aviva Investors European Secondary Infrastructure Credit SV S.A.**  
*(a securitisation undertaking (organisme de titrisation) in the form of a public limited liability company (société anonyme) incorporated under the laws of Luxembourg having its registered office at 2, boulevard Konrad Adenauer, L-1115 Luxembourg and registered with the Luxembourg register of commerce and companies (R.C.S. Luxembourg) under number B 173.397)*

(the "Issuer")

**€450,000,000 Secured Revolving Profit Participating Notes due 2039**

(the "Notes")

We refer to the Notice to Noteholders regarding the Written Resolution (Amendments) in relation to the Notes, dated 20 July 2015 (the "**Notice**"). Capitalised terms used but not otherwise defined in this Written Resolution (Amendments) shall have the meaning given thereto in the Notice (including by way of incorporation).

We, the undersigned, confirm that we have not transferred any of our Notes. Accordingly, conditional upon your receipt of similar Written Resolutions (Amendments) from any other holders of the Notes who, together with our holding of Notes, hold more than 66 2/3 per cent. of the principal amount Outstanding of the Notes and concurrently with such other Written Resolution (Amendments), we hereby resolve by way of an Extraordinary Resolution that:

1. we hereby approve and sanction the amendment to the terms of each of the Conditions and the Investment Management Agreement to be effected by an amendment deed in, or substantially in, the form of the final Draft Amendment Deed annexed to the Notice (excluding, for the avoidance of doubt, the reference in the Draft Amendment Deed to the amendment of the definition of "Minimum Rating Requirement" in Condition 1.1 of each of the Conditions, which is subject to the approval by the requisite majority of the Noteholders of the Proposed Waiver and Consent) (the "**Final Amendment Deed**");
2. the Trustee is hereby authorised, requested and directed to execute the Final Amendment Deed;

3. the Trustee is hereby indemnified against any liability for which it may have become or may become responsible under the Trust Deed in respect of any act or omission in connection with this direction and Written Resolution (Amendments) or its implementation;
4. any and every modification, abrogation, variation, compromise of, or arrangement in respect of, the rights of the holders of Notes against the Issuer whether such rights shall arise under the Trust Deed, the Conditions or otherwise, necessary or appropriate to give effect to this Written Resolution (Amendments) is hereby approved and sanctioned;
5. the Trustee is hereby authorised, requested and directed to concur in and execute and do all such documents, acts and things as may be necessary (in the Trustee's sole discretion) to carry out and give effect to this Written Resolution (Amendments);
6. the Trustee is fully discharged and exonerated from all liability for which it may have become responsible to the Noteholders, or may become responsible under the Trust Deed, any Transaction Documents or the Notes in respect of any act or omission in connection with the Proposed Amendments, their implementation or any resolutions of the Noteholders given in relation thereto (including specifically any amendments agreed by the Trustee on the Noteholders' behalf to any of the Transaction Documents for the purpose of implementing this Written Resolution (Amendments));
7. the Trustee shall have no liability for acting upon this Extraordinary Resolution though it may be subsequently found that there is a defect in the passing of the Extraordinary Resolution or that for any reason this Extraordinary Resolution is not valid or binding on Noteholders;
8. we hereby irrevocably waive any claim that we may have against the Trustee which arises as a result of the Trustee following the direction in this Extraordinary Resolution;
9. we hereby confirm that we have formed our own view in relation to the action contemplated in respect of the Proposed Amendments without any reliance on the Trustee;
10. We hereby acknowledge and represent that, in connection with the entry into, and the confirming of the execution of, the Final Amendment Deed that:
  - (a) none of the parties to the Transaction Documents are acting as a fiduciary or financial or investment adviser for us;
  - (b) we are not relying (for purposes of making any investment decision or advice) upon any advice, counsel or representations (whether written or oral) of any of the parties to the Transaction Documents;
  - (c) none of the parties to the Transaction Documents have given (directly or indirectly through any other person) any assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (including legal, regulatory, tax, financial, accounting or otherwise) of the Transaction Documents;
  - (d) we have consulted with our own legal, regulatory, tax, business, investment, financial and accounting advisers to the extent deemed necessary, and have made our own investment decisions (including decisions regarding the suitability of any transaction pursuant to the documentation) based upon our own judgement and upon any advice from such advisers as deemed necessary and not upon any view expressed by the parties to the Transaction Documents;
  - (e) we are signing this direction and Written Resolution (Amendments) with a full understanding of all of the terms, conditions and risks hereof and thereof

(economic and otherwise), and we are capable of assuming and willing to assume (financially and otherwise) those risks; and

- (f) we are sophisticated investors familiar with transactions similar to our investment in the Notes and we are acting for our own account, and have made our own independent decisions in respect of the passing this Written Resolution (Amendments) and agreeing to the amendments to the Transaction Documents based upon our own judgement and upon advice from such advisers as we have deemed necessary.

We, the undersigned, hereby represent, warrant and agree that we will not transfer any Notes (whether in whole or in part), at any time after the date hereof until the earlier of (i) the date that this Written Resolution (Amendments) has been passed and (b) the Voting Deadline or, if the Proposed Consent to Short Notice is not approved by the requisite majority of Noteholders, the Full Voting Deadline.

This Written Resolution (Amendments) shall be governed by and construed in accordance with English law.

.....

Signed for and on behalf of

[*Insert name of Noteholder*]

Date: 2015

## Annex 4

### Written Resolution (Minimum Rating Requirement)

To: **Deutsche Trustee Company Limited**  
Winchester House  
1 Great Winchester Street  
London  
EC2N 2DB

Copy to: **Deutsche Bank AG, London Branch**  
Winchester House  
1 Great Winchester Street  
London  
EC2N 2DB

**Aviva Investors European Secondary Infrastructure Credit SV S.A.**  
2, Boulevard Konrad Adenauer  
L-1115  
Luxembourg

**Aviva Investors European Secondary Infrastructure Credit SV S.A.**  
*(a securitisation undertaking (organisme de titrisation) in the form of a public limited liability company (société anonyme) incorporated under the laws of Luxembourg having its registered office at 2, boulevard Konrad Adenauer, L-1115 Luxembourg and registered with the Luxembourg register of commerce and companies (R.C.S. Luxembourg) under number B 173.397)*

(the "**Issuer**")

**€450,000,000 Secured Revolving Profit Participating Notes due 2039**

(the "**Notes**")

We refer to the Notice to Noteholders regarding the Written Resolution (Minimum Rating Requirement) in relation to the Notes, dated 20 July 2015 (the "**Notice**"). Capitalised terms used but not otherwise defined in this Written Resolution (Minimum Rating Requirement) shall have the meaning given thereto in the Notice (including by way of incorporation).

We, the undersigned, confirm that we have not transferred any of our Notes. Accordingly, conditional upon your receipt of similar Written Resolutions (Minimum Rating Requirement) from any other holders of the Notes who, together with our holding of Notes, hold more than 66 2/3 per cent. of the principal amount Outstanding of the Notes and concurrently with such other Written Resolution (Minimum Rating Requirement), we hereby resolve by way of an Extraordinary Resolution that:

1. we hereby approve and sanction the Proposed Waiver and Consent as set out in the Notice;
2. we hereby approve and sanction the amendment to the definition of "Minimum Rating Requirement" in Condition 1.1 of each of the Conditions to be effected by an amendment deed in, or substantially in, the form of the final Draft Amendment Deed annexed to the Notice (the "**Final Amendment Deed**");
3. the Trustee is hereby authorised, requested and directed to execute the Final Amendment Deed;



4. the Trustee is hereby indemnified against any liability for which it may have become or may become responsible under the Trust Deed in respect of any act or omission in connection with this direction and Written Resolution (Minimum Rating Requirement) or its implementation;
5. any and every modification, abrogation, variation, compromise of, or arrangement in respect of, the rights of the holders of Notes against the Issuer whether such rights shall arise under the Trust Deed, the Conditions or otherwise, necessary or appropriate to give effect to this Written Resolution (Minimum Rating Requirement) is hereby approved and sanctioned;
6. the Trustee is hereby authorised, requested and directed to concur in and execute and do all such documents, acts and things as may be necessary (in the Trustee's sole discretion) to carry out and give effect to this Written Resolution (Minimum Rating Requirement);
7. the Trustee is fully discharged and exonerated from all liability for which it may have become responsible to the Noteholders, or may become responsible under the Trust Deed, any Transaction Documents or the Notes in respect of any act or omission in connection with the Proposed Waiver and Consent, their implementation or any resolutions of the Noteholders given in relation thereto (including specifically any amendments agreed by the Trustee on the Noteholders' behalf to any of the Transaction Documents for the purpose of implementing this Written Resolution (Minimum Rating Requirement));
8. the Trustee shall have no liability for acting upon this Extraordinary Resolution though it may be subsequently found that there is a defect in the passing of the Extraordinary Resolution or that for any reason this Extraordinary Resolution is not valid or binding on Noteholders;
9. we hereby irrevocably waive any claim that we may have against the Trustee which arises as a result of the Trustee following the direction in this Extraordinary Resolution;
10. we hereby confirm that we have formed our own view in relation to the action contemplated in respect of the Proposed Waiver and Consent without any reliance on the Trustee;
11. We hereby acknowledge and represent that, in connection with the entry into, and the confirming of the execution of, the Final Amendment Deed that:
  - (g) none of the parties to the Transaction Documents are acting as a fiduciary or financial or investment adviser for us;
  - (h) we are not relying (for purposes of making any investment decision or advice) upon any advice, counsel or representations (whether written or oral) of any of the parties to the Transaction Documents;
  - (i) none of the parties to the Transaction Documents have given (directly or indirectly through any other person) any assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (including legal, regulatory, tax, financial, accounting or otherwise) of the Transaction Documents;
  - (j) we have consulted with our own legal, regulatory, tax, business, investment, financial and accounting advisers to the extent deemed necessary, and have made our own investment decisions (including decisions regarding the suitability of any transaction pursuant to the documentation) based upon our own judgement and upon any advice from such advisers as deemed necessary and not upon any view expressed by the parties to the Transaction Documents;

- (k) we are signing this direction and Written Resolution (Minimum Rating Requirement) with a full understanding of all of the terms, conditions and risks hereof and thereof (economic and otherwise), and we are capable of assuming and willing to assume (financially and otherwise) those risks; and
- (l) we are sophisticated investors familiar with transactions similar to our investment in the Notes and we are acting for our own account, and have made our own independent decisions in respect of the passing this Written Resolution (Minimum Rating Requirement) and agreeing to the amendments to the Transaction Documents based upon our own judgement and upon advice from such advisers as we have deemed necessary.

We, the undersigned, hereby represent, warrant and agree that we will not transfer any Notes (whether in whole or in part), at any time after the date hereof until the earlier of (i) the date that this Written Resolution (Minimum Rating Requirement) has been passed and (b) the Voting Deadline or, if the Proposed Consent to Short Notice is not approved by the requisite majority of Noteholders, the Full Voting Deadline.

This Written Resolution (Minimum Rating Requirement) shall be governed by and construed in accordance with English law.

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Signed for and on behalf of

*[Insert name of Noteholder]*

Date: 2015