

**EXECUTION VERSION**

**AGENCY AGREEMENT**

**DATED 16 NOVEMBER 2017**

**Between**

**VIVAT N.V.**

**and**

**DEUTSCHE BANK AG, LONDON BRANCH**

**Issue of USD 575,000,000 6.250 per cent. Fixed to Fixed Rate Undated Subordinated Notes**

**ALLEN & OVERY**

**ALLEN & OVERY LLP**

**AMSTERDAM**

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**THIS AGREEMENT** is made on 16 November 2017

**BETWEEN:**

- (1) **VIVAT N.V.**, a public limited liability company (*naamloze vennootschap*) incorporated under the laws of The Netherlands whose registered office is at Burgemeester Rijnderslaan 7, 1185 MD Amstelveen, The Netherlands (the **Issuer**); and
- (2) **Deutsche Bank AG, London Branch** (the **Fiscal Agent** and the **Calculation Agent**).

**WHEREAS:**

- (1) The Issuer proposes to issue USD 575,000,000 6.25 per cent. Fixed to Fixed Rate Undated Subordinated Notes (the **Notes**) which expression shall include, unless the context otherwise requires, any further Notes issued pursuant to Condition 12 and forming a single series with the Notes.
- (A) The Notes will be issued in bearer form and in denominations of USD 200,000 and integral multiples of USD 1,000 in excess thereof, up to (and including) USD 399,000. The Notes will initially be in the form of a temporary global Note (the **Temporary Global Note**), interests in which will be exchangeable for interests in a permanent global Note (the **Permanent Global Note** and together with the Temporary Global Note, the **Global Notes** and each a **Global Note**) in the circumstances specified in the Temporary Global Note. The Permanent Global Note will in turn be exchangeable for Notes in definitive form (**Definitive Notes**), with interest coupons (**Coupons**), and talons for further Coupons (**Talons**) attached, only in certain limited circumstances specified in the Permanent Global Note.

**1. INTERPRETATION**

- 1.1 Terms defined in the offering memorandum relating to the Notes dated 14 November 2017 (the **Offering Memorandum**) have the same meanings in this Agreement except where otherwise defined in this Agreement. In addition:

**Agents** means and includes each Paying Agent and Calculation Agent from time to time appointed to exercise the powers and undertake the duties conferred and imposed upon it by this Agreement and notified to the Noteholders under Clause 20;

**Conditions** means the Terms and Conditions of the Notes as set out in Schedule 2 hereto and **Condition** means a clause of those terms and conditions;

**Clearstream, Luxembourg** means Clearstream Banking, S.A.;

**Euroclear** means Euroclear Bank SA/NV;

**FATCA Withholding** means any withholding or deduction required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code (or any regulations thereunder or official interpretations thereof) or an intergovernmental agreement between the United States and another jurisdiction facilitating the implementation thereof (or any law implementing such an intergovernmental agreement);

**outstanding** means in relation to the Notes all the Notes issued other than:

- (a) those Notes which have been redeemed and cancelled pursuant to Condition 4 or otherwise pursuant to the Conditions;
- (b) those Notes in respect of which the date for redemption under the Conditions has occurred and the redemption moneys wherefore (including all interest payable thereon) have been duly paid to the Fiscal Agent in the manner provided in Clause 4 and 5 (and, where appropriate, notice to that effect has been given to the Noteholders under Condition 10) and remain available for payment of the relevant Notes and/or Coupons;
- (c) those Notes which have been purchased and cancelled under Condition 4;
- (d) those Notes which or in respect of which claims for payment have become void under Condition 5 and 7;
- (e) those mutilated or defaced Notes which have been surrendered and in respect of which replacements have been issued pursuant to Condition 11;
- (f) (for the purpose only of ascertaining the principal amount of the Notes outstanding and without prejudice to the status for any other purpose of the relevant Notes) those Notes which are alleged to have been lost, stolen or destroyed and in respect of which replacements have been issued pursuant to Condition 11; and
- (g) the Temporary Global Note to the extent that it has been duly exchanged for the Permanent Global Note and the Permanent Global Note to the extent that it has been exchanged for the Definitive Notes in each case pursuant to their respective provisions,

provided that for each of the following purposes, namely:

- (i) the right to attend and vote at any meeting of the Noteholders; and
- (ii) the determination of how many and which Notes are for the time being outstanding for the purposes of paragraphs 3, 4, 5, 6 and 7 of 0,

those Notes (if any) which are for the time being held by any person (including but not limited to, the Issuer) for the benefit of the Issuer shall (unless and until ceasing to be so held) be deemed not to remain outstanding;

**Paying Agents** means the Fiscal Agent and any additional paying agents or agent appointed hereunder;

**Sanctions** means any sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (**OFAC**), the U.S. State Department, any other agency of the US government, the United Nations, the European Union or Her Majesty's Treasury or any applicable equivalent sanctions authority;

**specified office** means the offices specified in Clause 22 or any other specified offices as may from time to time be duly notified pursuant to Clause 22; and

**Subsidiary** means a subsidiary of the Issuer within the meaning of Section 2:24a of the Dutch Civil Code.

- 1.2 (a) In this Agreement, unless the contrary intention appears, a reference to:

- (i) an **amendment** includes a supplement, restatement or novation and **amended** is to be construed accordingly;
  - (ii) a **person** includes any individual, company, unincorporated association, government, state agency, international organisation or other entity, and in all cases includes its successors and assigns;
  - (iii) the **records** of Euroclear and Clearstream, Luxembourg shall be the records that each of Euroclear and Clearstream, Luxembourg holds for its customers which reflect the amount of such customer's interest in the Notes;
  - (iv) a provision of a law is a reference to that provision as extended, amended or re-enacted;
  - (v) a clause or schedule is a reference to a clause of, or a schedule to, this Agreement;
  - (vi) a document is a reference to that document as amended from time to time; and
  - (vii) a time of day is a reference to Amsterdam time;
- (b) The headings in this Agreement do not affect its interpretation;
  - (c) All references in this Agreement to costs or charges or expenses shall include any value added tax or similar tax charged or chargeable in respect thereof; and
  - (d) All references in this Agreement to Notes shall, unless the context otherwise requires, include any Global Note representing the Notes.

## **2. APPOINTMENT AND DUTIES**

2.1 The Issuer hereby appoints:

- (a) the Fiscal Agent as its agent in respect of the Notes and in accordance with the Conditions at its specified office referred to in the Conditions and the Fiscal Agent hereby agrees to such appointment. The Fiscal Agent shall perform the duties required of it by the Conditions and this Agreement; and
- (b) Deutsche Bank AG, London Branch as the Calculation Agent in respect of the Notes, on the terms of this Agreement, and the Calculation Agent hereby agrees to such appointment. The Calculation Agent shall perform the duties required of it by the Conditions and this Agreement, in each case acting at its specified office.

2.2 Without prejudice to the generality of Clause 2.1(a), the Fiscal Agent undertakes to the Issuer that it will, in connection with the issue of the Notes, perform the duties which are stated to be performed by it in Schedule 3. Each of the Paying Agents, if any, (other than the Fiscal Agent) agrees that if any information that is required by the Fiscal Agent to perform the duties set out in Schedule 3 becomes known to it, it will promptly provide such information to the Fiscal Agent.

2.3 The Issuer hereby authorises and instructs the Fiscal Agent to elect Deutsche Bank AG, London Branch as common safekeeper. The Issuer acknowledges that any such election is subject to the right of Euroclear and Clearstream, Luxembourg to jointly determine that the

other shall act as common safekeeper and agrees that no liability shall attach to the Fiscal Agent in respect of any such election made by it.

- 2.4 The obligations and duties of the Agents under this Agreement shall be several and not joint. For the avoidance of doubt, article 7:407 of the Dutch Civil Code shall not apply.

### **3. AUTHENTICATION, EFFECTUATION AND DELIVERY OF NOTES**

- 3.1 The Issuer undertakes that the Temporary Global Note (duly executed on behalf of the Issuer) will be available to be exchanged for interests in the Permanent Global Note in accordance with the terms of the Temporary Global Note.
- 3.2 If a Permanent Global Note is to be exchanged in accordance with its terms for Definitive Notes, the Issuer undertakes that it will deliver to, or to the order of, the Fiscal Agent, as soon as reasonable practicable and in any event not later than 15 calendar days before the relevant exchange is due to take place, Definitive Notes (with Coupons and Talons attached) in an aggregate principal amount of USD 575,000,000 or such lesser amount as is the principal amount of Notes represented by the Permanent Global Note. Each Definitive Note and Coupon so delivered shall be duly executed on behalf of the Issuer.
- 3.3 The Issuer authorises and instructs the Fiscal Agent to (i) authenticate the Global Notes and any Definitive Notes delivered pursuant to subclause 3.1, (ii) transmit such Global Notes electronically to the common safekeeper and to give effectuation instructions in respect of the Global Notes following its authentication thereof and (iii) instruct Euroclear and Clearstream, Luxembourg to make the appropriate entries in their records to reflect the initial outstanding aggregate principal amount of the Notes. The Issuer further authorises and instructs the Fiscal Agent to destroy each Global Note retained by it following its receipt of confirmation from the common safekeeper that the relevant Global Note has been effectuated.
- 3.4 The Issuer authorises and instructs the Fiscal Agent to (i) cause interests in the Temporary Global Note to be exchanged for interests in the Permanent Global Note and interests in a Permanent Global Note to be exchanged for Definitive Notes in accordance with their respective terms and (ii) instruct Euroclear and Clearstream, Luxembourg to make appropriate entries in their records to reflect such exchanges. Following the exchange of the last interest in a Permanent Global Note, the Fiscal Agent shall cause the Permanent Global Note to be cancelled or destroyed.
- 3.5 The Fiscal Agent shall cause all Notes delivered to and held by it under this Agreement to be maintained in safe custody and shall ensure that interests in the Temporary Global Note are only exchanged for interests in the Permanent Global Note in accordance with the terms of the Temporary Global Note and this Agreement and that the Definitive Notes are issued only in accordance with the terms of a Global Note and this Agreement.
- 3.6 So long as any of the Notes is outstanding, the Fiscal Agent shall, within seven calendar days of any request by the Issuer, certify to the Issuer the number of Definitive Notes held by it, if any, under this Agreement.
- 3.7 The Issuer will ensure that proceeds raised in connection with the issue of the Notes will not directly or indirectly be lent, contributed or otherwise made available to any person or entity (whether or not related to the Issuer) for the purpose of financing the activities of any person or entity or for the benefit of any country currently the subject of any Sanctions or in any other manner that will result in a violation by any person of Sanctions.

- 3.8 Neither the Issuer, any of the Issuer's subsidiaries nor, to the best of the knowledge of the Issuer, after due and careful enquiry, any director, officer, agent, employee or other person acting on behalf of the Issuer or any of its subsidiaries are (i) currently the subject of any Sanctions or (ii) have any business or financial dealings with any person on OFAC's Specially Designated Nationals and Blocked Persons List or equivalent list relating to Sanctions, (iii) owned 50% or more by or otherwise controlled by, or acting on behalf of, one or more persons that are the subject of any Sanctions (iv) located organised or resident in a country or territory that is subject to Sanctions, nor (v) conducting business with any person, entity or country which is the subject of any Sanctions.

The representations included under Clause 3.7 and 3.8 above shall not be made to Deutsche Bank AG, London Branch in so far as it would result in a violation of, or conflict with, Section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*) or any similar applicable anti-boycott law or regulation.

#### **4. PAYMENT TO THE FISCAL AGENT**

- 4.1 The Issuer shall, not later than 10.00 a.m. on each date on which any payment of principal and/or interest in respect of any of the Notes becomes due under the Conditions, transfer to an account specified sufficiently in advance by the Fiscal Agent such amount of U.S. dollars as shall be sufficient for the purposes of the payment of principal and/or interest in immediately available funds.
- 4.2 The Issuer shall ensure that, not later than the second Luxembourg Business Day immediately preceding the date on which any payment is to be made to the Fiscal Agent pursuant to subclause 4.1, the Fiscal Agent shall receive a copy of an irrevocable payment instruction to the bank through which the payment is to be made. For the purposes of this subclause 4.2, **Luxembourg Business Day** means a day on which banks are open for business in Luxembourg.
- 4.3 If, the Issuer determines in its sole discretion that it will be required to withhold or deduct any FATCA Withholding in connection with any payment due on any Notes, then the Issuer will be entitled to re-direct or reorganise any such payment in any way that it sees fit in order that the payment may be made without FATCA Withholding provided that any such re-direction or reorganisation of any payment is made through a recognised institution of international standing and such payment is otherwise made in accordance with this Agreement.

#### **5. NOTIFICATION OF NON-PAYMENT BY THE ISSUER**

The Fiscal Agent shall notify each of the other Paying Agents, if any, forthwith:

- (a) if it has not by the relevant date specified in subclause 4.1 received unconditionally the full amount in U.S. dollars required for the payment; and
- (b) if it receives unconditionally the full amount of any sum due in respect of the Notes or Coupons after such date.

The Fiscal Agent shall, at the expense of the Issuer, forthwith upon receipt of any amount as described in subparagraph (b), cause notice of that receipt to be published under Condition 10.

## **6. DUTIES OF THE PAYING AGENTS**

- 6.1 Subject to the payments to the Fiscal Agent provided for by Clause 4 being duly made and the Fiscal Agent having been able to identify or confirm receipt of such funds, the Paying Agents, if any, shall act as paying agents of the Issuer in respect of the Notes and pay or cause to be paid on behalf of the Issuer, on each date on which any payment becomes due and payable, the amounts of principal and/or interest then payable under the Conditions and this Agreement. If any payment provided for by Clause 4 is made late but otherwise in accordance with the terms of this Agreement the Paying Agents, if any, shall nevertheless act as paying agents following receipt by them of payment.
- 6.2 If the Issuer defaults in respect of any payment, unless and until the full amount of the payment has been made under the terms of this Agreement (except as to the time of making the same) or other arrangements satisfactory to the Fiscal Agent have been made, neither the Fiscal Agent nor any of the other Paying Agents, if any, shall be bound to act as paying agents.
- 6.3 Without prejudice to subclauses 6.1 and 6.2, if the Fiscal Agent pays any amounts to the Noteholders (or holders of Coupons) or to any other Paying Agent at a time when it has not received payment in full in respect of the Notes in accordance with subclause 4.1 (the excess of the amounts so paid over the amounts so received being the **Shortfall**), the Issuer will, in addition to paying amounts due under subclause 4.1, pay to the Fiscal Agent on demand interest (at a rate which represents the Fiscal Agent's reasonable and substantiated cost of funding the Shortfall) on the Shortfall (or the unreimbursed portion thereof) until the receipt in full by the Fiscal Agent of the Shortfall.
- 6.4 Whilst any Notes are represented by a Global Note, all payments due in respect of the Notes shall be made to, or to the order of, the holder of the Global Note, subject to and in accordance with the provisions of the Global Note. On the occasion of each payment, the Fiscal Agent shall instruct Euroclear and Clearstream, Luxembourg to make the appropriate entries in their records to reflect such payment.
- 6.5 If on presentation for endorsement of a Note or presentation of a Coupon the amount payable in respect of the Note or Coupon is not paid in full (otherwise than as a result of withholding or deduction for or on account of any taxes as permitted by the Conditions) the Paying Agent to whom the Note or Coupon is presented shall procure that the Note or Coupon is enfaced with a memorandum of the amount paid and the date of payment.

## **7. REIMBURSEMENT OF THE PAYING AGENTS**

The Fiscal Agent shall charge the account referred to in Clause 4 for all payments made by it under this Agreement and will credit or transfer to the respective accounts of the other Paying Agents, if any, the amount of all payments made by them under the Conditions immediately upon notification from them, subject in each case to any applicable laws or regulations.

## **8. NOTICE OF ANY WITHHOLDING OR DEDUCTION**

If the Issuer is, in respect of any payment in respect of the Notes, compelled to withhold or deduct any amount for or on account of any taxes as contemplated by Condition 6, the Issuer shall give notice to the Fiscal Agent as soon as it becomes aware of the requirement to make the withholding or deduction and shall give to the Fiscal Agent such information as the Fiscal Agent shall require to enable it to comply with the requirement.



## **9. DUTIES OF THE FISCAL AGENT IN CONNECTION WITH REDEMPTION**

- 9.1 If the Issuer intends to redeem, pursuant to Condition 4, all of the Notes for the time being outstanding it shall give not more than 45 nor less than 30 days' prior notice of its intention to the Fiscal Agent and the Calculation Agent, if required, stating the date on which such Notes are to be redeemed, and the Fiscal Agent shall so advise any other Paying Agent, if any.
- 9.2 The Fiscal Agent shall instruct Euroclear and Clearstream, Luxembourg to make appropriate entries in their records in respect of all Notes redeemed by the Issuer to reflect such redemptions.

## **10. RECEIPT AND PUBLICATION OF NOTICES**

- 10.1 On behalf of and at the request and expense of the Issuer, the Fiscal Agent shall cause to be published all notices required to be given by the Issuer under the Conditions.
- 10.2 While all the Notes are represented by a Global Note and such Global Note is deposited with a common safekeeper on behalf of Euroclear and/or Clearstream, Luxembourg, any obligation the Issuer (and the Fiscal Agent on its behalf) may have to publish a notice to Noteholders shall have been met upon delivery of the notice to the Euroclear and/or Clearstream.
- 10.3 Forthwith upon receipt by the Fiscal Agent of a notice from any Noteholder, the Fiscal Agent shall forward a copy thereof to the Issuer.

## **11. CANCELLATION OF NOTES AND COUPONS**

- 11.1 All Notes which are surrendered in connection with purchase by the Issuer, (together with all unmatured Coupons attached to or delivered with the Notes) and all Coupons which are paid shall be cancelled by the Paying Agent to which they are surrendered. Each of the Paying Agents shall give to the Fiscal Agent details of all payments made by it and shall deliver all cancelled Notes and Coupons to the Fiscal Agent (or as the Fiscal Agent may specify). If the Issuer or any Subsidiary of the Issuer purchases any Notes which are to be cancelled after such purchase, the Issuer shall forthwith cancel them or procure their cancellation through the Fiscal Agent.
- 11.2 The Fiscal Agent or its authorised agent shall (unless otherwise instructed by the Issuer in writing and save as provided in subclause 13.1) destroy all cancelled Notes and Coupons and furnish the Issuer with a certificate of destruction containing written particulars of the serial numbers of the Notes and the number by maturity date of Coupons so destroyed.

## **12. ISSUE OF REPLACEMENT NOTES AND COUPONS**

- 12.1 The Issuer shall cause a sufficient quantity of additional forms of Notes and Coupons to be available, upon request, to the Fiscal Agent at its specified office for the purpose of issuing replacement Notes or Coupons as provided below.
- 12.2 The Fiscal Agent shall, subject to and in accordance with Condition 11 and the following provisions of this Clause, cause to be authenticated (in the case only of replacement Notes) and delivered any replacement Notes or Coupons which the Issuer may determine to issue in place of Notes or Coupons which have been lost, stolen, mutilated, defaced or destroyed.
- 12.3 In the case of a mutilated or defaced Note, the Fiscal Agent shall ensure that (unless otherwise covered by such indemnity as the Issuer may require) any replacement Note only has attached

to it Coupons corresponding to those attached to the mutilated or defaced Note which is presented for replacement.

- 12.4 The Fiscal Agent shall obtain verification, in the case of an allegedly lost, stolen or destroyed Note or Coupon in respect of which the serial number is known, that the Note or Coupon has not previously been redeemed or paid. The Fiscal Agent shall not issue a replacement Note or Coupon unless and until the applicant has:
- (a) paid such expenses and costs as may be incurred in connection with the replacement;
  - (b) furnished it with such evidence and indemnity as the Issuer may reasonably require; and
  - (c) in the case of a mutilated or defaced Note or Coupon, surrendered it to the Fiscal Agent.
- 12.5 The Fiscal Agent shall cancel mutilated or defaced Notes or Coupons in respect of which replacement Notes or Coupons have been issued pursuant to this Clause. The Fiscal Agent shall furnish the Issuer with a certificate stating the serial numbers of the Notes or Coupons received by it and cancelled pursuant to this Clause and shall, unless otherwise requested by the Issuer, destroy all those Notes and Coupons and furnish the Issuer with a destruction certificate containing the information specified in subclause 11.2.
- 12.6 The Fiscal Agent shall, on issuing any replacement Note or Coupon, forthwith inform the Issuer and the other Paying Agents of the serial number of the replacement Note or Coupon issued and (if known) of the serial number of the Note or Coupon in place of which the replacement Note or Coupon has been issued. Whenever replacement Coupons are issued under this Clause, the Fiscal Agent shall also notify the other Paying Agents, if any, of the maturity dates of the lost, stolen, mutilated, defaced or destroyed Coupons and of the replacement Coupons issued.
- 12.7 Whenever a Note or Coupon for which a replacement Note or Coupon has been issued and the serial number of which is known is presented to a Paying Agent for payment, the relevant Paying Agent shall immediately send notice to the Issuer and the Fiscal Agent.

### **13. RECORDS AND CERTIFICATES**

- 13.1 The Fiscal Agent shall (a) keep a full and complete record of all Notes and Coupons (other than serial numbers of Coupons) and of their redemption, cancellation or payment (as the case may be) and of all replacement Notes or Coupons issued in substitution for lost, stolen, mutilated, defaced or destroyed Notes or Coupons and (b) in respect of the Coupons of each maturity, retain until the expiry of five years from the relevant date in respect of the Coupons either all paid Coupons of that maturity or a list of the serial numbers of Coupons of that maturity still remaining unpaid. The Fiscal Agent shall at all reasonable times make the records and Coupons (if any) available to the Issuer.
- 13.2 The Fiscal Agent shall (i) instruct Euroclear and Clearstream, Luxembourg to make appropriate entries in their records to reflect all cancellations of Notes represented by a Global Note in accordance with Clause 13.1 above and (ii) give to the Issuer, as soon as possible and in any event within four months after the date of redemption, purchase, payment or replacement of a Note or Coupon (as the case may be), a certificate stating (a) the aggregate nominal amount of Notes which have been redeemed and the aggregate amount in respect of Coupons which have been paid, (b) the serial numbers of those Definitive Notes, if any; (c) the total number of each denomination by maturity date of those Coupons, (d) the

aggregate nominal amounts of Notes (if any) which have been purchased by or on behalf of the Issuer or any of its Subsidiaries and cancelled (subject to delivery of the Notes to the Fiscal Agent) and the serial numbers of such Definitive Notes and the total number of each denomination by maturity date of the Coupons attached to or surrendered with the purchased Notes, (e) the aggregate nominal amounts of Notes and the aggregate amounts in respect of Coupons which have been surrendered and replaced and the serial numbers of those Definitive Notes and the total number of each denomination by maturity date of those Coupons surrendered therewith and (f) the total number of each denomination by maturity date of unmaturing Coupons missing from Notes which have been redeemed or surrendered and replaced and the serial numbers of the Notes in definitive form to which the missing unmaturing Coupons appertain.

- 13.3 The Fiscal Agent shall only be required to comply with its obligations under this Clause 13 in respect of Notes surrendered for cancellation following a purchase of the same by the Issuer or by any of its Subsidiaries to the extent that it has been informed by the Issuer of such purchases in accordance with Clause 11.1 above.

#### **14. COPIES OF THIS AGREEMENT AVAILABLE FOR INSPECTION**

The Paying Agents shall hold copies of this Agreement and any other documents expressed to be held by them in the Offering Memorandum available for inspection. For this purpose, the Issuer shall furnish the Paying Agents with sufficient copies of such document.

#### **15. COMMISSIONS AND EXPENSES**

- 15.1 The Issuer shall pay to the Fiscal Agent such commissions in respect of the services of the Paying Agents under this Agreement as shall be agreed between the Issuer and the Fiscal Agent. The Issuer shall not be concerned with the apportionment of payment among the Paying Agents.
- 15.2 The Issuer shall also pay to the Fiscal Agent an amount equal to any value added tax which may be payable in respect of the commissions together with all reasonable expenses incurred by the Paying Agents in connection with their services under this Agreement.
- 15.3 The Fiscal Agent shall arrange for payment of the commissions due to the other Paying Agents, if any, and arrange for the reimbursement of their expenses promptly after receipt of the relevant moneys from the Issuer.
- 15.4 At the request of the Fiscal Agent, the parties to this Agreement may from time to time during the continuance of this Agreement review the commissions agreed initially pursuant to subclause 15.1 with a view to determining whether the parties can mutually agree upon any changes to the commissions.

#### **16. INDEMNITY**

- 16.1 The Issuer undertakes to indemnify each of the Agents against all losses, liabilities, costs, claims, actions, damages, expenses or demands which any of them may incur or which may be made against any of them as a result of or in connection with the appointment of or the exercise of the powers and duties by any Agent under this Agreement except as may result from its own wilful default, negligence, bad faith or fraud or that of its directors, officers or employees or any of them.
- 16.2 Each of the Agents undertakes to severally indemnify the Issuer against all losses, liabilities, costs, claims, actions, damages, expenses or demands which the Issuer may incur or which

may be made against the Issuer as a result of wilful default, negligence, bad faith or fraud of any of the Agents or that of the directors, officers or employees of any of the Agents.

16.3 The indemnities set out above shall survive any termination of this Agreement.

16.4 Notwithstanding the foregoing, under no circumstances will the Fiscal Agent and Calculation Agent be liable to the Issuer, nor will the Issuer be liable to the Fiscal Agent and Calculation Agent and nor will any Agent or Issuer be liable to any other party to this Agreement for any special, punitive, consequential or indirect loss or damage whatsoever (being including, without limitation, loss of business, goodwill, opportunity or profit) whether or not foreseeable, even if advised of the possibility of such loss or damage.

## **17. REPAYMENT BY FISCAL AGENT**

Sums paid by or by arrangement with the Issuer to the Fiscal Agent pursuant to the terms of this Agreement shall not be required to be repaid to the Issuer unless and until any Note or Coupon matures or any Note or Coupon or claim for payment in relation to the Notes becomes void under the provisions of Condition 5 and 7 but in that event the Fiscal Agent shall forthwith repay to the Issuer sums equivalent to the amounts which would otherwise have been payable in respect of the relevant Note or Coupon.

## **18. CONDITIONS OF APPOINTMENT**

18.1 Subject as provided in subclause 18.3, the Fiscal Agent shall be entitled to deal with money paid to it by the Issuer for the purposes of this Agreement in the same manner as other money paid to a banker by its customers and shall not be liable to account to the Issuer for any interest or other amounts in respect of the money other than pursuant to Clause 17. No money held by any Paying Agent needs to be segregated except as required by law.

18.2 In acting under this Agreement and in connection with the Notes and the Coupons the Agents shall act solely as agents of the Issuer and will not assume any obligations towards or relationship of agency or trust for or with any of the owners or Noteholders.

18.3 No Paying Agent shall exercise any right of set-off, lien or similar claim against the Issuer or any Noteholders in respect of any moneys payable to or by it under the terms of this Agreement.

18.4 Except as otherwise permitted in the Conditions, as ordered by a court of competent jurisdiction, as required by law or otherwise instructed by the Issuer, each of the Paying Agents shall be entitled to treat the bearer of any Note or Coupon as the absolute owner for all purposes (whether or not the Note or Coupon shall be overdue and notwithstanding any notice of ownership or other writing on the Note or Coupon or any notice of previous loss or theft of the Note or Coupon).

18.5 The Agents shall be obliged to perform such duties and only such duties as are set out in this Agreement and the Notes and no implied duties or obligations shall be read into this Agreement or the Notes against the Agents other than the duty to act honestly and in good faith and to exercise the diligence of a reasonably prudent agent in comparable circumstances.

18.6 The Fiscal Agent and the Calculation Agent, at the expense of the Issuer, provided such expenses are properly incurred, may consult with legal and other professional advisers and the opinion of the advisers shall be full and complete protection in respect of action taken, omitted or suffered under this Agreement in good faith and in accordance with the opinion of the advisers.

- 18.7 Each of the Agents shall be protected and shall incur no liability for or in respect of action taken, omitted or suffered in reliance upon any instruction, request or order from the Issuer or any document which it reasonably believes to be genuine and to have been delivered by the proper party or parties or upon written instructions from the Issuer. Each of the Agents is entitled to do nothing, without liability, if conflicting, unclear or equivocal instructions are received or in order to comply with any applicable law.
- 18.8 Any of the Agents, their officers, directors or employees may become the owner of, or acquire any interest in, Notes or Coupons with the same rights (but without prejudice to any limitations which might apply in any other capacity) that it or he/she would have if the Agent concerned was not appointed under this Agreement, and may engage or be interested (subject as aforesaid) in any financial or other transaction with the Issuer, and may act on, or as depository, trustee or agent for, any committee or body of holders of Notes or Coupons or other obligations of the Issuer, as freely as if the relevant Agent was not appointed under this Agreement.
- 18.9 The Fiscal Agent shall not be under any obligation to take any action under this Agreement which it reasonably expects will result in any expense or liability accruing to it, the payment of which within a reasonable time is not, in its opinion, assured to it.
- 18.10 No Paying Agent shall be responsible to anyone with respect to the validity of this Agreement or the Notes or Coupons or for any act or omission by it in connection with this Agreement or any Note or Coupon except for its own negligence, wilful default, bad faith or fraud, including that of its officers and employees.
- 18.11 No Paying Agent shall have any duty or responsibility in the case of any default by the Issuer in the performance of its obligations under the Conditions.
- 18.12 The Issuer shall provide the Paying Agent with a copy of the list of the authorised signatories and shall notify the Paying Agent in writing if any of such persons ceases to be an authorised signatory or if any additional person becomes an authorised signatory and, unless and until notified of any such change, the Paying Agent shall be entitled to rely upon any notice, communication or other document by an authorised signatory.
- 18.13 Notwithstanding anything else contained herein, the Fiscal Agent may refrain without liability from taking any action that it is required to take under the terms of this Agreement that, would or might, in its reasonable opinion (having consulted with legal counsel to the extent practicable and/or permissible), would be contrary to any law of any state or jurisdiction (including but not limited to the United States of America or any jurisdiction forming a part of it, and the EU or any Member State of the EU) or any directive or regulation of any agency of any such state or jurisdiction or which would or might otherwise render it liable to any person and may without liability take any action or refrain from taking any such action that, in its reasonable opinion (having consulted with legal counsel to the extent practicable and/or permissible) is necessary to comply with any such law, directive or regulation.
- 18.14 Whenever, in the performance of its duties under this Agreement, a Paying Agent shall deem it desirable that any matter be established by the Issuer prior to taking or suffering any action under this Agreement, the matter may be deemed to be conclusively established by a certificate signed by the Issuer and delivered to the Paying Agent and the certificate shall be a full authorisation to the Paying Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon the certificate.

## **19. COMMUNICATION WITH PAYING AGENTS**

A copy of all communications relating to the subject matter of this Agreement between the Issuer and any of the Paying Agents other than the Fiscal Agent shall be sent to the Fiscal Agent.

## **20. TERMINATION OF APPOINTMENT**

20.1 The Issuer may terminate the appointment of any Agent at any time and/or appoint additional or other Agents by giving to the Agent whose appointment is concerned and, where appropriate, the Fiscal Agent at least 30 days' prior written notice to that effect, provided that, so long as any of the Notes is outstanding:

- (a) in the case of a Paying Agent or the Calculation Agent, the notice shall not expire less than 30 days before any due date for the payment of interest; and
- (b) notice shall be given under Condition 10 at least 30 days before the removal or appointment of a Paying Agent.

20.2 Notwithstanding the provisions of subclause 20.1, if at any time:

- (a) an Agent becomes, in the reasonable opinion of the Issuer, incapable of acting, or no longer able to meet its obligations under this Agreement, or becomes insolvent or incapable of meeting its payment obligations to any party, or is declared bankrupt or insolvent, or files a voluntary petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of an administrator, liquidator or administrative or other receiver of all or any substantial part of its property, or if an administrator, liquidator or administrative or other receiver of it or of all or a substantial part of its property is appointed, or it admits in writing its inability to pay or meet its debts as they may mature or suspends payment of its debts, or if there is an order of any court approving any petition filed by or against it under the provisions of any applicable bankruptcy or insolvency law or if a public officer takes charge or control of the Agent or of its property or affairs for the purpose of rehabilitation, administration or liquidation or a rating agency has given notice of a downgrade of the Agent, or a rating agency has made a public announcement of any intended or potential downgrading of the Agent; or
- (b) in the case of the Calculation Agent, it fails to determine the Reset Rate and Interest Amount in respect of any Interest Payment Date as provided in the Conditions and this Agreement,

the Issuer may forthwith without notice terminate the appointment of the Agent, in which event (save with respect to the termination of the appointment of the Calculation Agent) notice shall be given to the Noteholders under Condition 10 as soon as is practicable.

20.3 The termination of the appointment of an Agent under this Agreement shall not entitle the Agent to any amount by way of compensation but shall be without prejudice to any amount then accrued due.

20.4 All or any of the Agents may resign their respective appointments under this Agreement at any time by giving to the Issuer and, where appropriate, the Fiscal Agent at least 90 days' prior written notice to that effect provided that, so long as any of the Notes is outstanding, the notice shall not, in the case of a Paying Agent or the Calculation Agent (as applicable), expire less than 45 days before any due date for the payment of interest. For the avoidance of doubt,

Article 7:408(2) of the Dutch Civil Code shall not apply. Following receipt of a notice of resignation from a Paying Agent, notice thereof shall promptly and in any event not less than 30 calendar days before the resignation takes effect, be given to the Noteholders under Condition 10. If the Fiscal Agent shall resign or be removed pursuant to subclauses 20.1 or 20.2 above or in accordance with this subclause 20.4, the Issuer shall promptly and in any event within 30 days appoint a successor (being a leading bank). If the Issuer fails to appoint a successor within such period, the Fiscal Agent may select a leading bank to act as Fiscal Agent hereunder and the Issuer shall appoint that bank as the successor Fiscal Agent.

- 20.5 Notwithstanding the provisions of subclauses 20.1, 20.2 and 20.4, so long as any of the Notes is outstanding, the termination of the appointment of an Agent (whether by the Issuer or by the resignation of a Paying Agent or the Calculation Agent (as applicable)) shall not be effective unless upon the expiry of the relevant notice there is:
- (a) a Fiscal Agent;
  - (b) a Calculation Agent;
  - (c) to the extent relevant, as long as the Notes are admitted to listing and trading on any other stock exchange or regulated securities market and the rules of such exchange or securities market so require, a Paying Agent having a specified office in such location as the rules of such exchange or securities market may require; and
  - (d) a Paying Agent in a Member State of the European Union.
- 20.6 Any successor Agent shall execute and deliver to its predecessor, the Issuer and, where appropriate, the Fiscal Agent an instrument accepting the appointment under this Agreement, and the successor Agent, without any further act, deed or conveyance, shall become vested with all the authority, rights, powers, trusts, immunities, duties and obligations of the predecessor with like effect as if originally named as an Agent.
- 20.7 If the appointment of a Paying Agent under this Agreement is terminated (whether by the Issuer or by the resignation of the Paying Agent), the Paying Agent shall on the date on which the termination takes effect deliver to its successor Paying Agent (or, if none, the Fiscal Agent) all Notes and Coupons surrendered to it but not yet destroyed and all records concerning the Notes and Coupons maintained by it (except such documents and records as it is obliged by law or regulation to retain or not to release) and pay to its successor Paying Agent (or, if none, to the Fiscal Agent) the amounts (if any) held by it in respect of Notes or Coupons which have become due and payable but which have not been presented for payment, but shall have no other duties or responsibilities under this Agreement.
- 20.8 If the Fiscal Agent or any of the other Paying Agents shall change its specified office, it shall give to the Issuer and, where appropriate, the Fiscal Agent not less than 45 days' prior written notice to that effect giving the address of the new specified office. As soon as practicable thereafter and in any event at least 30 days before the change, the Fiscal Agent shall give to the Noteholders on behalf of and at the expense of the Issuer notice of the change and the address of the new specified office under Condition 10.
- 20.9 A corporation into which any Agent for the time being may be merged or converted or a corporation with which the Agent may be consolidated or a corporation resulting from a merger, conversion or consolidation to which the Agent shall be a party shall, to the extent permitted by applicable law, be the successor Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties to this

Agreement. Notice of any merger, conversion or consolidation shall forthwith be given to the Issuer and, where appropriate, the Fiscal Agent.

## 21. MEETINGS OF NOTEHOLDERS

21.1 The provisions of 0 shall apply to meetings of the Noteholders and shall have effect in the same manner as if set out in this Agreement provided that, so long as any of the Notes are represented by a Global Note, the expression **Noteholders** shall include the persons for the time being shown in the records of Euroclear and/or Clearstream, Luxembourg, as the holders of a particular nominal amount of such Notes (each an **Accountholder**) (in which regard a certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the nominal amount of such Notes standing to the account of any person shall be conclusive and binding for all purposes in the absence of wilful default, bad faith or manifest error) other than with respect to the payment of principal and interest on such Notes, the right to which shall be vested as against the Issuer solely in the bearer of each Global Note in accordance with and subject to its terms.

21.2 Without prejudice to subclause 21.1, each of the Paying Agents shall, on the request of any Noteholder, issue voting certificates and block voting instructions (as defined in 0) together, if so required by the Issuer, with reasonable proof satisfactory to the Issuer of their due execution on behalf of the Paying Agent under the provisions of 0 and shall forthwith give notice to the Issuer under 0 of any revocation or amendment of a voting certificate or block voting instruction. Each Paying Agent shall keep a full and complete record of all voting certificates and block voting instructions issued by it and shall, not less than 24 hours before the time appointed for holding any meeting or adjourned meeting, deposit at such place as the Fiscal Agent shall designate or approve, full particulars of all voting certificates and block voting instructions issued by it in respect of any meeting or adjourned meeting.

## 22. COMMUNICATIONS

### 22.1 Notices

Any notice required to be given under this Agreement to any of the parties shall be in English and shall be delivered in person, sent by pre-paid post (first class if inland, first class airmail if overseas) or by facsimile addressed to:

(a) in the case of the Issuer, to it at:

VIVAT N.V.  
Burgemeester Rijnderslaan 7  
1185 MD Amstelveen  
The Netherlands

Attention: Balance Sheet Management  
E-mail address: [Boaz.Magid@vivat.nl](mailto:Boaz.Magid@vivat.nl)  
[Michiel.Kok@vivat.nl](mailto:Michiel.Kok@vivat.nl)

(b) in the case of the Fiscal Agent and the Calculation Agent, to it at:

Winchester House  
1 Great Winchester Street  
London EC2N 2DB  
United Kingdom

Fax: +44 207 547 6149



Attention: Debt and Agency Services  
E-mail address: [tss-gds.eur@db.com](mailto:tss-gds.eur@db.com)

or such other address of which notice in writing has been given to the other parties to this Agreement under the provisions of this Clause.

Any such notice shall take effect, if delivered in person, at the time of delivery, if sent by post, three days in the case of inland post or seven days in the case of overseas post after despatch, and, in the case of facsimile, when despatched. Communications not by letter shall be confirmed by letter but failure to send or receive the letter of confirmation shall not invalidate the original communication.

## **23. AMENDMENTS**

This Agreement may be amended in writing by all of the parties, without the consent of any Noteholder, either:

- (a) for the purpose of curing any ambiguity or of curing, correcting or supplementing any manifest or proven error or any other defective provision contained in this Agreement; or
- (b) in any other manner which the parties may mutually deem necessary or desirable and which shall not be inconsistent with the Conditions and shall not be materially prejudicial to the interests of the Noteholders.

## **24. TAXES AND STAMP DUTIES**

The Issuer agrees to pay any and all stamp and other documentary taxes or duties which may be payable in connection with the execution, delivery, performance and enforcement of this Agreement by an Agent.

## **25. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which when taken together shall constitute a single Agreement.

## **26. GOVERNING LAW AND JURISDICTION**

- 26.1 This Agreement, including Clause 26.2 and any non-contractual obligations arising from or connected herewith, shall be governed by and construed in accordance with the laws of the Netherlands.
- 26.2 The Issuer irrevocably agrees for the benefit of the Agents that any disputes arising out of or in connection with this Agreement (including any non-contractual obligations arising from or connected herewith) shall be submitted to the non-exclusive jurisdiction of the competent court in Amsterdam, provided that this submission to the jurisdiction of the Amsterdam court shall not limit the right of the relevant Agent to institute proceedings against the Issuer in any other court of competent jurisdiction nor shall the instituting of proceedings against the Issuer in any one or more jurisdictions preclude the instituting of proceedings by the relevant Agent in any other jurisdiction, whether concurrently or not.

**THIS AGREEMENT** has been entered into on the date stated at the beginning.

**SIGNATORIES**

**VIVAT N.V.**  
as Issuer

By:

By:

**DEUTSCHE BANK AG, LONDON BRANCH**  
as Fiscal Agent and Calculation Agent

By:

By:

## SCHEDULE 1

### FORMS OF THE GLOBAL NOTES

#### PART 1

ISIN: XS1717202490

## VIVAT N.V.

### TEMPORARY GLOBAL NOTE

#### USD 575,000,000 6.250 per cent. Fixed to Fixed Rate Undated Subordinated Notes

This Temporary Global Note is issued in respect of the USD 575,000,000 6.250 per cent. Fixed to Fixed Rate Undated Subordinated Notes (the **Notes**) of VIVAT N.V. (the **Issuer**). The Notes are issued subject to and with the benefit of an Agency Agreement (the **Agency Agreement**) dated 16 November 2017, between the Issuer and Deutsche Bank AG, London Branch as Fiscal Agent (in such capacity, the **Fiscal Agent**) and as Calculation Agent and the Conditions of the Notes set out in Schedule 2 to the Agency Agreement.

Any reference herein to the **Conditions** is to the Terms and Conditions of the Notes set out in Schedule 2 (*Terms and Conditions of the Notes*) to the Agency Agreement, and any reference to a numbered **Condition** is to the correspondingly numbered provision thereof. Words and expressions defined in the Conditions shall have the same meanings when used in this Temporary Global Note.

#### 1. Promise to Pay

The Issuer, for value received, promises to pay to the bearer of this Temporary Global Note the principal sum of

USD 575,000,000

**(five hundred and seventy five million United States Dollars)**

on the date or dates as the same may become payable in accordance with the Conditions, and to pay interest on each such Note on the dates and in the manner specified in the Conditions, together with any additional amounts payable in accordance with the Conditions, all subject to and in accordance with the Conditions; *provided, however, that* such interest shall be payable only:

- 1.1 *Before the Exchange Date*: in the case of interest falling due before the Exchange Date (as defined below), to the extent that a certificate or certificates of non-US beneficial ownership in the form required by the Fiscal Agent, issued by Euroclear Bank S.A./N.V. (**Euroclear**) and/or Clearstream Banking, société anonyme, Luxembourg (**Clearstream, Luxembourg** and, together with Euroclear, the **relevant Clearing Systems**) dated not earlier than the date on which such interest falls due is delivered to the Fiscal Agent; or
- 1.2 *Failure to exchange*: in the case of interest falling due at any time, to the extent that the Issuer has failed to procure the exchange for a permanent global Note of that portion of this Temporary Global Note in respect of which such interest has accrued.

The principal amount of Notes represented by this Temporary Global Note shall be the aggregate amount from time to time entered in the records of the relevant Clearing Systems. The records of the relevant Clearing Systems (which expression in this Temporary Global Note means the records that each relevant Clearing System holds for its customers which reflect the amount of such customer's

interest in the Notes) shall be conclusive evidence of the principal amount of Notes represented by this Temporary Global Note and, for these purposes, a statement issued by a relevant Clearing System (which statement shall be made available to the bearer upon request) stating the nominal amount of Notes represented by this Temporary Global Note at any time shall be conclusive evidence of the records of the relevant Clearing System at that time.

## **2. Exchange for Permanent Global Note and Purchases**

On or after the day following the expiry of 40 days after the date of issue of this Temporary Global Note (the **Exchange Date**), the Issuer shall procure (in the case of first exchange) the delivery of a permanent global Note (the **Permanent Global Note**) in substantially the form set out in Part 2 of Schedule 1 (*Form of Permanent Global Note*) to the Agency Agreement to the bearer of this Temporary Global Note or (in the case of any subsequent exchange) an increase in the principal amount of the Permanent Global Note in accordance with its terms against:

- 2.1 *Presentation and surrender*: presentation and (in the case of final exchange) presentation and surrender of this Temporary Global Note to or to the order of the Fiscal Agent; and
- 2.2 *Certification*: receipt by the Fiscal Agent of a certificate or certificates of non-US beneficial ownership in the form required by it, issued by Euroclear and/or Clearstream, Luxembourg dated not earlier than the Exchange Date.

The principal amount of Notes represented by the Permanent Global Note shall be equal to the aggregate of the principal amounts specified in the certificates issued by Euroclear and/or Clearstream, Luxembourg and received by the Fiscal Agent; provided, however, that in no circumstances shall the principal amount of Notes represented by the Permanent Global Note exceed the initial principal amount of Notes represented by this Temporary Global Note.

## **3. Delivery of Permanent Global Note**

Whenever any interest in this Temporary Global Note is to be exchanged for an interest in a Permanent Global Note, the Issuer shall procure (in the case of first exchange) the prompt delivery (free of charge to the bearer) of such Permanent Global Note, duly authenticated, to the bearer of this Temporary Global Note or (in the case of any subsequent exchange) an increase in the principal amount of Notes represented by such Permanent Global Note in accordance with its terms, in each case in an aggregate principal amount equal to the aggregate of the principal amounts specified in the certificates issued by Euroclear and/or Clearstream, Luxembourg and/or any other relevant clearing system and received by the Fiscal Agent against presentation and (in the case of final exchange) surrender of this Temporary Global Note to or to the order of the Fiscal Agent within 7 days of the bearer requesting such exchange.

## **4. Failure to deliver Permanent Global Note or to repay**

If:

- 4.1 *Permanent Global Note*: the Permanent Global Note has not been delivered or the principal amount thereof increased in accordance with paragraph 3 (*Delivery of Permanent Global Note*) above by 5.00 p.m. (Luxembourg time) on the seventh day after the bearer has requested exchange of an interest in this Temporary Global Note for an interest in a Permanent Global Note; or
- 4.2 *Payment default*: this Temporary Global Note (or any part hereof) has become due and payable in accordance with the Conditions or the date for redemption of this Temporary Global Note has occurred and, in either case, payment in full of the amount of principal

falling due with all accrued interest and other accrued amounts thereon has not been made to the bearer in accordance with the terms of this Temporary Global Note on the due date for payment,

then, unless within the period of 15 days commencing on the relevant due date payment in full of the amount due in respect of this Temporary Global Note is received by the bearer in accordance with the foregoing, at 8.00 p.m. (Luxembourg time) on such 15th day (the **Relevant Time**), each Relevant Account Holder (which, for the purpose hereof shall be deemed to be the Noteholder as referred to in the Conditions) shall automatically acquire (save as provided below), without the need for any further action on behalf of any person, against the Issuer all those rights (**Direct Rights**) which such Relevant Account Holder would have had if immediately before the Relevant Time it held and owned duly executed and authenticated Notes in definitive form (**Definitive Notes**) and (if applicable) Coupons, Coupon sheets, and/or Talons in respect of each underlying Note represented by such Global Note which such Relevant Account Holder has credited to its securities account with the relevant Clearing System at the Relevant Time, including, without limitation, the right to receive all payments due at any time in respect of such Definitive Notes other than payments corresponding to any already made under this Temporary Global Note. No further action shall be required on the part of any person in order for Direct Rights to be acquired as contemplated hereinbefore and for each Relevant Account Holder to have the benefit of, and to enforce, rights corresponding to all the provisions of the terms and conditions of the relevant Definitive Notes as if they had been specifically incorporated in this Temporary Global Note other than the right to receive payments corresponding to any already made under this Temporary Global Note. The Issuer's obligation pursuant to this paragraph shall be a separate and independent obligation by reference to each relevant underlying Note and the Issuer agrees that a Relevant Account Holder may assign its rights hereunder in whole or in part.

The records of the relevant Clearing System shall be conclusive evidence of the identity of the Relevant Account Holder(s) and the number of Notes to which each Relevant Account Holder is entitled on the date on which such payment first becomes due (except that, if the full amount of the moneys payable has not been duly received by the Fiscal Agent on or prior to such due date, the date on which the full amount of such moneys having been so received) (the **Relevant Date**) and, accordingly, of the identity of the creditors of the Direct Rights of each creditor. For this purpose, a statement issued by the relevant Clearing System stating:

- (a) the name of the Relevant Account Holder;
- (b) the number of Notes as credited to the securities account of the Relevant Account Holder at the Relevant Date; and
- (c) any amount paid on by the relevant Clearing System to the Relevant Account Holder in respect of each Note,

shall be conclusive evidence of the Relevant Account Holder's entitlement on the relevant Clearing System's records at the Relevant Date.

Each Relevant Account Holder shall - where applicable - have the right to assign Direct Rights recorded in his name to a third party, including the legal person who or which has an interest in this Temporary Global Note. Such legal person shall be obliged to accept the assignment, as a result of which the legal person in question will acquire a direct claim against the Issuer.

All payments made by the Issuer under the Direct Rights to a Relevant Account Holder or to the person(s) to which any of the Direct Rights shall have been legally assigned shall be deemed to be a payment to the holder of interests in this Temporary Global Note and to that extent shall operate as full and final discharge of the Issuer against both the holder of this Temporary Global Note and the Relevant Account Holders.

To the extent required, the rights of the Relevant Holders hereunder will come into existence at the time that the relevant entry is made with the relevant Clearing System and the Relevant Account Holder has become aware of this stipulation of rights in its favour and has not immediately rejected the same.

**Relevant Account Holder** means any account holder with the relevant Clearing System which has underlying Notes credited to its securities account from time to time.

## **5. Writing down**

On each occasion on which:

- 5.1 *Permanent Global Note*: the Permanent Global Note is delivered or the principal amount of Notes represented thereby is increased in accordance with its terms in exchange for a further portion of this Temporary Global Note; or
- 5.2 *Cancellation*: Notes represented by this Temporary Global Note are to be cancelled in accordance with Condition 4 (*Redemption and Purchase*),

the Issuer shall procure that details of the exchange or cancellation shall be entered *pro rata* in the records of Euroclear and Clearstream, Luxembourg.

## **6. Payments**

Payments due in respect of Notes for the time being represented by this Temporary Global Note shall be made to the bearer of this Temporary Global Note only upon presentation by Euroclear or, as the case may be, Clearstream, Luxembourg to the Fiscal Agent at its specified office of a certificate to the effect that it has received from or in respect of a person entitled to a particular principal amount of the Notes (as shown on its records) a certificate of non-US beneficial ownership in the form required by it. Each payment so made will discharge the Issuer's obligations in respect thereof.

The bearer of this Temporary Global Note will not be entitled to receive any payment of interest due on or after the Exchange Date unless, upon due certification, exchange of this Temporary Global Note is improperly withheld or refused.

Upon any payment in respect of the Notes represented by this Temporary Global Note, the Issuer shall procure that the amount so paid shall be entered *pro rata* in the records of the relevant Clearing Systems. In the case of any payment of principal Amounts the Issuer shall procure that the amount so paid shall be entered *pro rata* in the records of the relevant Clearing Systems and, upon such entry being made, the principal amount of the Notes recorded in the records of the relevant Clearing Systems and represented by this Temporary Global Note shall be reduced by the amount so paid. Any failure to make such entries shall not affect the discharge referred to in the first paragraph above.

The Issuer's obligation to pay principal and interest on this Temporary Global Note is discharged once it has paid the Paying Agent and/or Euroclear and Clearstream, Luxembourg (as bearers of the Notes), and the Issuer has therefore no responsibility for any withholding or deduction on payments made thereafter through or by the Paying Agent, Euroclear and Clearstream, Luxembourg, custodians or intermediaries.

## **7. Conditions apply**

Until this Temporary Global Note has been exchanged as provided herein or cancelled in accordance with the Agency Agreement, the bearer of this Temporary Global Note shall be subject to the Conditions and, subject as otherwise provided herein, shall be entitled to the same rights and benefits

under the Conditions as if the bearer were the holder of Definitive Notes and any related Coupons in the denomination of USD 1,000 and in an aggregate principal amount equal to the principal amount of the Notes represented by this Temporary Global Note.

## **8. Notices**

Notwithstanding Condition 10 (*Notices*), while all the Notes are represented by this Temporary Global Note (or by this Temporary Global Note and the Permanent Global Note) and this Temporary Global Note is (or this Temporary Global Note and the Permanent Global Note are) deposited with a common safekeeper on behalf of Euroclear and/or Clearstream, Luxembourg, notices to Noteholders may be given by delivery of the relevant notice to Euroclear and Clearstream, Luxembourg and, in any case, such notices shall be deemed to have been given to the Noteholders in accordance with the Condition 10 (*Notices*) on the date of delivery to Euroclear and Clearstream, Luxembourg.

## **9. Prescription**

Claims in respect of principal and interest in respect of this Temporary Global Note will become void unless it is presented for payment within a period of five years from the due date for payment thereof.

## **10. Meetings**

The holder hereof shall (unless this Temporary Global Note represents only one Note) be treated as two persons for the purposes of any quorum requirements of a meeting of Noteholders and, at any such meeting, as having one vote in respect of each USD 1,000 in principal amount of Notes.

## **11. Authentication and Effectuation**

This Temporary Global Note shall not become valid or enforceable for any purpose unless and until it has been authenticated by or on behalf of the Fiscal Agent and effectuated by the entity appointed as common safe-keeper by the relevant Clearing Systems.

## **12. Governing Law**

This Temporary Global Note is governed by, and shall be construed in accordance with, the laws of The Netherlands.

**IN WITNESS** whereof this Temporary Global Note has been executed on behalf of the Issuer.

**VIVAT N.V.**

By:

By:

Issued in Amsterdam as of 16 November 2017.

This Temporary Global Note is authenticated without recourse, warranty or liability by or on behalf of the Fiscal Agent, Deutsche Bank AG, London Branch  
**Deutsche Bank AG, London Branch**

By:

## **CERTIFICATE OF EFFECTUATION**

Effectuated without recourse,  
warranty or liability by

**Deutsche Bank AG, London Branch**  
as common safe-keeper

By:



## PART 2

ISIN: XS1717202490

ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE INTERNAL REVENUE CODE.

## VIVAT N.V.

### PERMANENT GLOBAL NOTE

#### USD 575,000,000 6.250 per cent. Fixed to Fixed Rate Undated Subordinated Notes

This Permanent Global Note is issued in respect of the USD 575,000,000 6.250 per cent. Fixed to Fixed Rate Undated Subordinated Notes (the **Notes**) of VIVAT N.V. (the **Issuer**). The Notes are issued subject to and with the benefit of an Agency Agreement (the **Agency Agreement**) dated 16 November 2017, between the Issuer and Deutsche Bank AG, London Branch as Fiscal Agent (in such capacity, the **Fiscal Agent**) and as Calculation Agent and the Conditions of the Notes set out in of Schedule 2 to the Agency Agreement.

Any reference herein to the **Conditions** is to the Terms and Conditions of the Notes set out in Schedule 2 (*Terms and Conditions of the Notes*) to the Agency Agreement, and any reference to a numbered **Condition** is to the correspondingly numbered provision thereof. Words and expressions defined in the Conditions shall have the same meanings when used in this Permanent Global Note.

#### 1. Promise to Pay

The Issuer, for value received, promises to pay to the bearer of this Permanent Global Note, in respect of each Note represented by this Permanent Global Note, its principal amount on the date or dates as the same may become payable in accordance with the Conditions, and to pay interest on each such Note on the dates and in the manner specified in the Conditions, together with any additional amounts payable in accordance with the Conditions, all subject to and in accordance with the Conditions.

The principal amount of Notes represented by this Permanent Global Note shall be the aggregate amount from time to time entered in the records of the Euroclear Bank S.A./N.V. (**Euroclear**) and Clearstream Banking, société anonyme, Luxembourg (**Clearstream, Luxembourg** and, together with Euroclear, the **relevant Clearing Systems**). The records of the relevant Clearing Systems (which expression in this Permanent Global Note means the records that each relevant Clearing System holds for its customers which reflect the amount of such customer's interest in the Notes) shall be conclusive evidence of the principal amount of Notes represented by this Permanent Global Note and, for these purposes, a statement issued by a relevant Clearing System (which statement shall be made available to the bearer upon request) stating the nominal amount of Notes represented by this Permanent Global Note at any time shall be conclusive evidence of the records of the relevant Clearing System at that time.

#### 2. Exchange of Interests in the Temporary Global Note for Interests in this Permanent Global Note

Upon any exchange of an interest recorded in the records of the relevant Clearing Systems in the Temporary Global Note representing the Notes for an interest recorded in the records of the relevant

Clearing Systems in this Permanent Global Note, the Issuer shall procure that details of such exchange shall be entered *pro rata* in the records of the relevant Clearing System.

### 3. Exchange for Definitive Notes and Purchases

This Permanent Global Note will become exchangeable, in whole but not in part only and at the request of the bearer of this Permanent Global Note, for Notes in definitive form (**Definitive Notes**) in substantially the form set out in Part 3 of Schedule 1 (*Form of Definitive Note, Coupon and Talon*) to the Agency Agreement if either of the following events occurs:

- 3.1 *Closure of clearing systems*: Euroclear or Clearstream, Luxembourg is closed for business for a continuous period of 14 days (other than by reason of holidays, statutory or otherwise) or announces an intention permanently to cease business or does in fact do so and no alternative clearing system is available; or
- 3.2 *Enforcement event*: an enforcement event (as set out in Condition 8 (*Enforcement Events*)) has occurred and is continuing; or
- 3.3 *Payment of additional amounts*: the Issuer has or will become obliged to pay additional amounts as provided for or referred to in Condition 6 (*Taxation*) which would not be required were the Notes represented in definitive form.

### 4. Delivery of Definitive Notes

Whenever this Permanent Global Note is to be exchanged for Definitive Notes, the Issuer shall procure the prompt delivery (free of charge to the bearer) of such Definitive Notes, duly authenticated and with Coupons and Talons attached, in an aggregate principal amount equal to the principal amount of Notes represented by this Permanent Global Note to the bearer of this Permanent Global Note against the surrender of this Permanent Global Note to or to the order of the Fiscal Agent within 30 days of the bearer requesting such exchange.

### 5. Failure to deliver Definitive Securities or to repay

If:

- 5.1 *Failure to deliver Definitive Notes*: Definitive Notes have not been delivered in accordance with paragraph 4 (*Delivery of Definitive Notes*) above by 5.00 p.m. (Luxembourg time) on the 30th day after the bearer has requested exchange of this Permanent Global Note for Definitive Notes; or
- 5.2 *Payment default*: this Permanent Global Note (or any part hereof) has become due and payable in accordance with the Conditions or the date for redemption of this Permanent Global Note has occurred and, in either case, payment in full of the amount of principal falling due with all accrued interest and other accrued amounts thereon has not been made to the bearer in accordance with the terms of this Permanent Global Note on the due date for payment,

then, unless within the period of 15 days commencing on the relevant due date payment in full of the amount due in respect of this Permanent Global Note is received by the bearer in accordance with the foregoing, at 8.00 p.m. (Luxembourg time) on such 15th day (the **Relevant Time**), each Relevant Account Holder shall automatically acquire (save as provided below), without the need for any further action on behalf of any person, against the Issuer all those rights (**Direct Rights**) which such Relevant Account Holder would have had if at the Relevant Time it held and owned duly executed and authenticated Definitive Notes and (if applicable) Coupons, Coupon sheets and/or Talons in respect of

each underlying Note represented by such Global Note which such Relevant Account Holder has credited to its securities account with the relevant Clearing System at the Relevant Time (which for the purpose hereof, shall be deemed to be the Noteholder, as referred to in the Conditions including, without limitation, the right to receive all payments due at any time in respect of such Definitive Notes other than payments corresponding to any already made under this Permanent Global Note. No further action shall be required on the part of any person in order for Direct Rights to be acquired as contemplated hereinbefore and for each Relevant Account Holder to have the benefit of, and to enforce, rights corresponding to all the provisions of the terms and conditions of the relevant Definitive Notes as if they had been specifically incorporated in this Permanent Global Note other than the right to receive payments corresponding to any already made under this Permanent Global Note. The Issuer's obligation pursuant to this paragraph shall be a separate and independent obligation by reference to each relevant underlying Note and the Issuer agrees that a Relevant Account Holder may assign its rights hereunder in whole or in part.

The records of the relevant Clearing System shall be conclusive evidence of the identity of the Relevant Account Holder(s) and the number of Notes to which each Relevant Account Holder is entitled at the date on which such payment first becomes due (except that, if the full amount of the moneys payable has not been duly received by the Agent on or prior to such due date, the date on which the full amount of such moneys having been so received) (the **Relevant Date**) and, accordingly, of the identity of the creditors of the Direct Rights of each creditor. For this purpose, a statement issued by the relevant Clearing System stating:

- (a) the name of the Relevant Account Holder;
- (b) the number of Notes as credited to the securities account of the Relevant Account Holder at the Relevant Date; and
- (c) any amount paid on by the relevant Clearing System to the Relevant Account Holder in respect of each Note,

shall be conclusive evidence of the Relevant Account Holder's entitlement on the relevant Clearing System's records at the Relevant Date.

Each Relevant Account Holder shall - where applicable - have the right to assign Direct Rights recorded in his name to a third party, including the legal person who or which has an interest in this Permanent Global Note. Such legal person shall be obliged to accept the assignment, as a result of which the legal person in question will acquire a direct claim against the Issuer.

All payments made by the Issuer under the Direct Rights to a Relevant Account Holder or to the person(s) to which any of the Direct Rights shall have been legally assigned shall be deemed to be a payment to the holder of interests in this Permanent Global Note and to that extent shall operate as full and final discharge of the Issuer against both the holder of this Permanent Global Note and the Relevant Account Holders.

To the extent required, the rights of the Relevant Holders hereunder will come into existence at the time that the relevant entry is made with the relevant Clearing System and the Relevant Account Holder has become aware of this stipulation of rights in its favour and has not immediately rejected the same.

**Relevant Account Holder** means any account holder with the relevant Clearing System which has underlying Notes credited to its securities account from time to time.

## **6. Writing down**

On each occasion on which:

- 6.1 *Payment of principal:* a payment of principal is made in respect of this Permanent Global Note;
- 6.2 *Definitive Notes:* Definitive Notes are delivered; or
- 6.3 *Cancellation:* Notes represented by this Permanent Global Note are to be cancelled in accordance with Condition 4 (*Redemption and Purchase*),

the Issuer shall procure that details of the exchange or cancellation shall be entered *pro rata* in the records of Euroclear and Clearstream, Luxembourg.

## **7. Writing up**

### **7.1 Initial Exchange**

If this Permanent Global Note was originally issued in exchange for part only of a temporary global Note representing the Notes, then all references in this Permanent Global Note to the principal amount of Notes represented by this Permanent Global Note shall be construed as references to the principal amount of Notes represented by the part of the temporary global Note in exchange for which this Permanent Global Note was originally issued which the Issuer shall procure is entered by the relevant Clearing Systems in their records.

### **7.2 Subsequent Exchange**

If at any subsequent time any further portion of such temporary global Note is exchanged for an interest in this Permanent Global Note, the principal amount of Notes represented by this Permanent Global Note shall be increased by the amount of such further portion, and the Issuer shall procure that the principal amount of Notes represented by this Permanent Global Note (which shall be the previous principal amount of Notes represented by this Permanent Global Note plus the amount of such further portion) is entered by the relevant Clearing Systems in their records.

## **8. Payments**

Payments due in respect of Notes for the time being represented by this Permanent Global Note shall be made to the bearer of this Permanent Global Note and each payment so made will discharge the Issuer's obligations in respect thereof.

Upon any payment in respect of the Notes represented by this Permanent Global Note, the Issuer shall procure that the amount so paid shall be entered *pro rata* in the records of the relevant Clearing Systems. In the case of any payment of principal, the Issuer shall procure that the amount so paid shall be entered *pro rata* in the records of the relevant Clearing Systems and, upon any such entry being made, the principal amount of the Notes recorded in the records of the relevant Clearing Systems and represented by this permanent Global Note shall be reduced by the amount so paid. Any failure to make such entries shall not affect the discharge referred to in the previous paragraph.

The Issuer's obligation to pay principal and interest on this Permanent Global Note is discharged once it has paid the Paying Agent and/or Euroclear and Clearstream, Luxembourg (as bearers of the Notes), and the Issuer has therefore no responsibility for any withholding or deduction on payments made thereafter through or by the Paying Agent, Euroclear and Clearstream, Luxembourg, custodians or intermediaries.

## **9. Conditions apply**

Until this Permanent Global Note has been exchanged as provided herein or cancelled in accordance with the Agency Agreement, the bearer of this Permanent Global Note shall be subject to the Conditions and, subject as otherwise provided herein, shall be entitled to the same rights and benefits under the Conditions as if the bearer were the holder of Definitive Notes and any related Coupons and Talons in the denomination of USD 1,000 and in an aggregate principal amount equal to the principal amount of Notes represented by this Permanent Global Note.

## **10. Notices**

Notwithstanding Condition 10 (*Notices*), while all the Notes are represented by this Permanent Global Note (or by this Permanent Global Note and a temporary Global Note) and this Permanent Global Note is (or this Permanent Global Note and a temporary global Note are) deposited with a common safekeeper on behalf of Euroclear and/or Clearstream, Luxembourg, notices to Noteholders may be given by delivery of the relevant notice to Euroclear and Clearstream, Luxembourg and, in any case, such notices shall be deemed to have been given to the Noteholders in accordance with the Condition 10 (*Notices*) on the date of delivery to Euroclear and Clearstream, Luxembourg.

## **11. Prescription**

Claims in respect of principal and interest in respect of this Permanent Global Note will become void unless it is presented for payment within a period of five years from the due date for payment thereof.

## **12. Meetings**

The holder hereof shall (unless this Permanent Global Note represents only one Note) be treated as two persons for the purposes of any quorum requirements of a meeting of Noteholders and, at any such meeting, as having one vote in respect of each USD 1,000 in principal amount of Notes.

## **13. Authentication and Effectuation**

This Permanent Global Note shall not become valid or enforceable for any purpose unless and until it has been authenticated by or on behalf of the Fiscal Agent and effectuated by the entity appointed as common safekeeper by the relevant Clearing Systems.

## **14. Governing Law**

This Permanent Global Note is governed by, and shall be construed in accordance with, the laws of The Netherlands.

**IN WITNESS** whereof this Permanent Global Note has been executed on behalf of the Issuer.

**VIVAT N.V.**

By:

By:

Issued in Amsterdam as of 16 November 2017.

This Permanent Global Note is authenticated without recourse, warranty or liability by or on behalf of the Fiscal Agent, Deutsche Bank AG, London Branch

**Deutsche Bank AG, London Branch**

By:

**CERTIFICATE OF EFFECTUATION**

Effectuated without recourse,  
warranty or liability by

**Deutsche Bank AG, London Branch**

as common safe-keeper

By:

**PART 3**

**FORM OF DEFINITIVE NOTE, COUPON AND TALON**

[On the face of the Definitive Note:]

**USD [denomination]**

**ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE INTERNAL REVENUE CODE.**

**VIVAT N.V.**

**USD [●] Fixed to Fixed Rate Undated Subordinated Notes**

This Note is one of a series of Notes (the **Notes**) in the denomination[s] of USD[denomination] [and USD[denomination]] and in the aggregate principal amount of USD [●] issued by VIVAT N.V. (the **Issuer**).

The Issuer, for value received, promises to pay to the bearer the principal sum of

**USD [●]  
([●])**

on the date or dates as the same may become payable in accordance with the conditions endorsed hereon (the **Conditions**), and to pay interest on such principal sum on the dates and at the rates specified in the Conditions, together with any additional amounts payable in accordance with the Conditions, all subject to and in accordance with the Conditions.

Interest and, if applicable, other amounts are payable on the above principal sum at rates determined in accordance with the Conditions in arrear on the Interest Payment Dates (as defined in the Conditions) specified in and all subject to and in accordance with the Conditions.

This Note and the interest coupons and talons relating hereto shall not be valid for any purpose until this Note has been authenticated for and on behalf of Deutsche Bank AG, London Branch as fiscal agent.

**AS WITNESS** the facsimile signature of a duly authorised person on behalf of the Issuer.

**VIVAT N.V.**

By:.....  
[manual or facsimile signature]  
(duly authorised)

By:.....  
[manual or facsimile signature]  
(duly authorised)

**ISSUED** on [●]  
**AUTHENTICATED** for and on behalf of  
[●] as agent without  
recourse, warranty or liability

By:.....  
[manual signature]  
(duly authorised)

*[On the reverse of the Definitive Note:]*

## **CONDITIONS**

[INSERT]

*[At the foot of the Conditions:]*

### **Fiscal Agent and Calculation Agent**

#### **Deutsche Bank AG, London Branch**

Winchester House  
1 Great Winchester Street  
London EC2N 2DB  
United Kingdom



**Form of Coupon**

*[On the face of the Coupon:]*

**ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE INTERNAL REVENUE CODE.**

**VIVAT N.V.**

**USD[●]**

**Fixed to Fixed Rate Undated Subordinated Notes**

This Coupon relates to a Note in the denomination of USD [*amount*].

Coupon for the amount of interest due on the Interest Payment Date [on/falling in] [*date/month and year*].

Such Note is payable, subject to the terms and conditions (the **Conditions**) endorsed on the Note to which this Coupon relates (which are binding on the holder of this Coupon whether or not it is for the time being attached to such Bond), against presentation and surrender of this Coupon at the specified office for the time being of any of the agents shown on the reverse of this Coupon (or any successor or additional agents appointed from time to time in accordance with the Conditions).

The Note to which this Coupon relates may, in certain circumstances specified in the Conditions, fall due for redemption before the maturity date of this Coupon. In such event, this Coupon shall become void and no payment will be made in respect hereof.

*[On the reverse of the Coupon:]*

**Fiscal Agent and Calculation Agent**

**Deutsche Bank AG, London Branch**

Winchester House  
1 Great Winchester Street  
London EC2N 2DB  
United Kingdom

**Form of Talon**

*[On the face of the Talon:]*

**ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE INTERNAL REVENUE CODE.**

**VIVAT N.V.**

**USD [●]**

**Fixed to Fixed Rate Undated Subordinated Notes**

Talon for further Coupons.

On or after the maturity date of the final Coupon which is (or was at the time of issue) part of the Coupon sheet to which this Talon is (or was at the time of issue) attached, this Talon may be exchanged at the specified office for the time being of the agent shown on the reverse of this Talon (or any successor agent appointed from time to time in accordance with the terms and conditions (the **Conditions**) of the Notes to which this Talon relates) for a further Coupon sheet (including a further Talon but excluding any Coupons in respect of which claims have already become void pursuant to the Conditions).

The Note to which this Talon relates may, in certain circumstances specified in the Conditions, fall due for redemption before the maturity date of such final Coupon. In such event, this Talon shall become void and no Coupon will be delivered in respect hereof.

*[On the reverse of the Talon:]*

**Fiscal Agent and Calculation Agent**

**Deutsche Bank AG, London Branch**

Winchester House  
1 Great Winchester Street  
London EC2N 2DB  
United Kingdom

**SCHEDULE 2**  
**TERMS AND CONDITIONS OF THE NOTES**

## TERMS AND CONDITIONS OF THE NOTES

*The following is the text of the Conditions of the Notes which (subject to modification) will be endorsed on each Note in definitive form (if issued):*

The USD 575,000,000 Fixed to Fixed Rate Undated Subordinated Notes (the **Notes**) of VIVAT N.V. (the **Issuer**) are issued subject to and have the benefit of an agency agreement dated 16 November 2017 (such agreement as amended and/or supplemented and/or restated from time to time, the **Agency Agreement**) made between the Issuer and Deutsche Bank AG, London Branch as fiscal agent and paying agent (the **Fiscal Agent**) and as calculation agent (the **Calculation Agent**) and the other initial paying agents named in the Agency Agreement (together with the Fiscal Agent, the **Paying Agents**).

The statements in these terms and conditions (the **Conditions**) include summaries of, and are subject to, the detailed provisions of and definitions in the Agency Agreement. Copies of the Agency Agreement are available for inspection during normal business hours by the holders of the Notes (the **Noteholders**) and the holders of the interest coupons appertaining to the Notes (the **Couponholders** and the **Coupons** respectively) at the specified office of each of the Paying Agents. The Noteholders and the Couponholders are entitled to the benefit of, are bound by, and are deemed to have notice of, all the provisions of the Agency Agreement applicable to them. References in these Conditions to the Fiscal Agent and the Paying Agents shall include any successor appointed under the Agency Agreement.

References in these Conditions to **US\$, US dollar, USD** or **\$** are references to the lawful currency of the United States.

These Conditions may only be amended if the Issuer has obtained Prior Approval of the Relevant Supervisory Authority (as defined herein) and of the Noteholders and the Couponholders in accordance with the provisions for meetings of Noteholders scheduled to the Agency Agreement.

### 1. FORM, DENOMINATION AND TITLE

#### 1.1 Form and Denomination

The Notes are in bearer form, serially numbered, in the denomination of USD 200,000 and integral multiples of USD 1,000 in excess thereof, up to and including USD 399,000 each with Coupons attached on issue.

#### 1.2 Title

Title to the Notes and to the Coupons will pass by delivery.

#### 1.3 Holder Absolute Owner

The Issuer and any Paying Agent may (to the fullest extent permitted by applicable laws) deem and treat the bearer of any Note or Coupon as the absolute owner for all purposes (whether or not the Note or Coupon shall be overdue and notwithstanding any notice of ownership or writing on the Note or Coupon or any notice of previous loss or theft of the Note or Coupon).

### 2. STATUS OF THE NOTES

The Notes and the Coupons rank *pari passu* and without any preference among themselves and constitute direct, unconditional, unsecured and subordinated obligations of the Issuer, ranking (a) junior to the claims of all Senior Creditors of the Issuer, (b) *pari passu* with any Parity Obligations and (c) in priority to claims in respect of any Junior Obligations.

In the event of the insolvency (bankruptcy (*faillissement*) or moratorium (*surseance van betaling* or *noodregeling*, as applicable)) or dissolution (*ontbinding*) or liquidation (*vereffening*) of the Issuer the payment obligations of the Issuer under the Notes shall rank in right of payment after the claims of all Senior Creditors of the Issuer and payment to Noteholders or Couponholders may only be made and any set-off by Noteholders or Couponholders shall be excluded until all obligations of the Issuer in respect of such Senior Creditors have been satisfied, but, as the case may be, *pari passu* with claims in respect of Parity Obligations and in priority to claims in respect of any Junior Obligations.

**Junior Obligations** means any present and future security or obligation (including any classes of share capital of the Issuer) which counts on issue as Tier 1 Capital of the Issuer and any other securities or obligations of the Issuer that rank or are expressed to rank junior to Parity Obligations or rank equally and rateably with Tier 1 Capital of the Issuer.

**Parity Obligations** means any present and future, dated or undated subordinated security or obligation of the Issuer that ranks or is expressed to rank equally and rateably with the Notes.

**Relevant Supervisory Authority** means any regulator or other authority from time to time having primary supervisory authority with respect to prudential matters in relation to the Issuer. As at the Issue Date, the Relevant Supervisory Authority is the Dutch Central Bank (*De Nederlandsche Bank N.V.* or DNB).

**Senior Creditors** means present and future creditors of the Issuer (a) who are unsubordinated creditors of the Issuer or (b) whose claims are, or are expressed to be, subordinated (whether only in the event of the winding-up (*faillissement of vereffening na ontbinding*) of the Issuer or otherwise) to the claims of unsubordinated creditors of the Issuer, other than those whose claims are, or are expressed to rank, *pari passu* with, or junior to, the claims of the Noteholders.

**Tier 1 Capital** has the meaning given in the Solvency II Directive or Applicable Regulations (in each case as defined in Condition 3.7), as interpreted by the Relevant Supervisory Authority from time to time.

### 3. INTEREST

#### 3.1 General

Subject to Condition 3.7, the Notes shall bear interest on their principal amount from (and including) the Issue Date, to (but excluding) the First Call Date, at a fixed rate of 6.250 per cent. per annum (the **Initial Interest Rate**), payable semi-annually in arrear on 16 May and 16 November in each year (each an **Interest Payment Date**), commencing on 16 May 2018 until (and including) the First Call Date.

In respect of each successive five-year period from (and including) the First Call Date, (each a **Relevant Five-Year Period**), subject to Condition 3.7, the Notes shall bear interest on their principal amount at a reset rate per annum as is equal to the sum of the Relevant Five-Year Reset Rate plus (i) in respect of the first Relevant Five-Year Period a margin of 4.174 per cent. and (ii) in respect of each Relevant Five-Year Period after the first Relevant Five-Year Period a margin of 5.174 per cent., as determined by the Calculation Agent on each Reset Rate Determination Date (the **Reset Rate**), payable semi-annually in arrear on each Interest Payment Date, commencing on 16 May 2023.

For the purpose hereof:

**Business Day** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in New York City and Amsterdam.

**First Call Date** means the Interest Payment Date falling on 16 November 2022.

**Issue Date** means 16 November 2017.

**Rate of Interest** means the Initial Interest Rate or the Reset Rate.

**Relevant Five-Year Reset Rate** means the mid swap rate for US dollar swap transactions with a maturity of five years displayed on Bloomberg page "ISDAFIX1" (or such other page as may replace that page on Bloomberg, or such other service as may be nominated by the person providing or sponsoring the information appearing there for the purposes of displaying comparable rates) at or around 11.00 a.m. (Central European Time) on the Reset Rate Determination Date. If such mid swap rate does not appear on that page, the Relevant Five-Year Reset Rate shall instead be equal to the arithmetic mean (expressed as a percentage and rounded, if necessary, to the nearest 0.0001 per cent. (0.00005 per cent. being rounded upwards)) of the quotations provided by the principal office of each of four major banks in the US dollar swap market, as selected by the Issuer in its discretion and notified to the Calculation Agents, of the rates at which swaps in US dollar are offered by it at approximately 11.00 a.m. (Central European Time) on the Reset Rate Determination Date to participants in the US dollar swap market for a five-year period such arithmetic mean to be determined by the Calculation Agent. If the Relevant Five-Year Reset Rate is still not determined on the Reset Rate Determination Date in accordance with the foregoing procedures, the Relevant Five-Year Reset Rate shall be (i) in the case of the Relevant Five-Year Period commencing the First Call Date, 2.076 per cent. per annum or (ii) in the case of each Relevant Five-Year Period other than the Relevant Five-Year Period commencing on the First Call Date, the Relevant Five-Year Reset Rate in respect of the immediately preceding Relevant Five-Year Period.

**Reset Rate Determination Date** means, in respect of the first Relevant Five-Year Period, the second Business Day prior to the First Call Date and, in respect of each Relevant Five-Year Period thereafter, the second Business Day prior to the first day of each such Relevant Five-Year Period.

### 3.2 **Interest Accrual**

The Notes will cease to bear interest from and including the date for redemption (if any) unless payment of the principal in respect of the Notes is improperly withheld or refused on such date or unless default is otherwise made in respect of the payment. In such event, the Notes will continue to bear interest at the relevant Rate of Interest as specified in this Condition 3 on their remaining unpaid amount until whichever is the earlier of:

- (i) the date on which all amounts due in respect of such Note have been paid; and
- (ii) five days after the date on which the full amount of the moneys payable in respect of such Notes has been received by the Fiscal Agent and notice to that effect has been given to the Noteholders in accordance with Condition 10.

### 3.3 **Interest Amount**

The amount of interest payable on each Note on each Interest Payment Date (the **Interest Amount**) will be the product of the principal amount of such Note and the relevant Rate of Interest, multiplied by the Day Count Fraction and rounding the resulting figure, if necessary, to the nearest cent (half a cent being rounded upwards).

**Accrual Period** means the period from and including an Interest Payment Date (or the Issue Date as the case may be) to but excluding the next Interest Payment Date.

**Day Count Fraction** means (i) in respect of an Interest Amount payable on a scheduled Interest Payment Date, 0.5; and (ii) in respect of an Interest Amount payable other than on a scheduled Interest Payment Date, the number of days in the relevant period from and including the date from which interest begins to accrue to but excluding the date on which it falls due (being calculated on the basis of a year of 360 days with 12 30-day months), divided by 360.

### 3.4 **Publication of Reset Rate and Interest Amount**

The Calculation Agent shall cause the Reset Rate and the Interest Amount for each Relevant Five-Year Period to be notified to the Issuer, the Fiscal Agent (if different from the Calculation Agent) and each other Paying Agent (if any), to any stock exchange on which the Notes are at the relevant time listed and to the Noteholders as soon as possible after their determination, but in no event later than the commencement of the Relevant Five-Year Period, in the case of notification to such stock exchange of a Reset Rate and Interest Amount.

### 3.5 **Notifications, etc. to be final**

All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of this Condition 3 by the Calculation Agent will (in the absence of wilful default, bad faith or manifest error) be binding on the Issuer, the Calculation Agent, the Fiscal Agent and all Noteholders and Couponholders and (in the absence of wilful default, bad faith or manifest error) no liability to the Issuer, the Noteholders or the Couponholders shall attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions under this Condition.

### 3.6 **Calculation Agent**

The Agency Agreement provides that the Issuer may at any time terminate the appointment of the Calculation Agent and appoint a substitute Calculation Agent provided that so long as any of the Notes remain outstanding, there shall at all times be a Calculation Agent for the purposes of the Notes having a specified office in a major European city. In the event of the appointed office of any bank being unable or unwilling to continue to act as the Calculation Agent or failing duly to determine the Reset Rate and the Interest Amount for any Accrual Period, the Issuer shall appoint the European office of another leading bank engaged in the euro-zone or London interbank market to act in its place. The Calculation Agent may not resign its duties or be removed without a successor having been appointed. The Calculation Agent shall act as an independent expert and not as agent for the Issuer or the Noteholders.

Notice of any change of Calculation Agent or any change of specified office shall be given as soon as reasonably practicable to the Noteholders in accordance with Condition 10 and, so long as the Notes are listed on the Irish Stock Exchange, and if the rules applicable to such stock exchange so require, to such stock exchange.

### 3.7 **Interest Deferral**

#### *(i) Optional Interest Payment Dates*

On any Optional Interest Payment Date (as defined below), the Issuer may elect, by notice to (x) the Noteholders in accordance with Condition 10 and (y) the Fiscal Agent pursuant to subparagraph (iv) below, to defer payment of all (but not some only) of the interest accrued to that

date, and the Issuer shall not have any obligation to make such payment and any failure to pay shall not constitute a default by the Issuer for any purpose.

*(ii) Mandatory Interest Deferral Dates*

On any Mandatory Interest Deferral Date (as defined below), the Issuer will be obliged, by notice to (x) the Noteholders in accordance with Condition 10 and (y) the Fiscal Agent pursuant to sub-paragraph (iv) below, to defer payment of all (but not some only) of the interest accrued to that date, and the Issuer shall not have any obligation to make such payment and any failure to pay shall not constitute a default by the Issuer for any purpose.

*(iii) Arrears of Interest*

Any interest in respect of the Notes not paid on an Optional Interest Payment Date or a Mandatory Interest Deferral Date and deferred in accordance with Condition 3.7(i) or 3.7(ii), together with any other interest deferred on any previous Interest Payment Date, shall, so long as the same remains outstanding, constitute **Arrears of Interest**. Arrears of Interest may at the option of the Issuer, subject to the Prior Approval of the Relevant Supervisory Authority, be paid in whole or (in accordance with sub-paragraph (v) below) in part at any time upon the expiry of not less than 14 days' notice to such effect given by the Issuer to the Fiscal Agent and, in accordance with Condition 10, the Noteholders, but all Arrears of Interest in respect of all Notes for the time being outstanding shall become due in full on whichever is the earliest of:

- (A) the next Interest Payment Date which is not a Mandatory Interest Deferral Date on which a payment of interest is made; or
- (B) the next Interest Payment Date which is a Compulsory Interest Payment Date; or
- (C) the date fixed for any redemption or purchase of the Notes in accordance with Condition 4 or Condition 8; or
- (D) the date on which an order is made or a resolution is passed for the liquidation (as described in Condition 8) of the Issuer (other than a solvent winding-up solely for the purpose of a reconstruction or amalgamation or the substitution in place of the Issuer of a successor in business of the Issuer, the terms of which reconstruction, amalgamation or substitution (i) have previously been approved by an Extraordinary Resolution (as defined in the Agency Agreement) of the Noteholders and (ii) do not provide that the Notes shall thereby become payable),

provided that, for the avoidance of doubt, on the date on which such Arrears of Interest are paid pursuant to (A), (B) or (C) above no Mandatory Interest Deferral Event has occurred and is continuing.

Without prejudice to the foregoing, any unpaid Arrears of Interest resulting from any deferral of interest on an Optional Interest Payment Date shall become due and payable by no later than the Interest Payment Date falling on or after the twentieth anniversary of such Optional Interest Payment Date in respect of which the Issuer elected to defer the relevant accrued interest, provided that the date on which such Arrears of Interest are paid no Mandatory Interest Deferral Event has occurred and is continuing.

For the avoidance of doubt, Arrears of Interest themselves shall not bear interest.



(iv) *Notice of Deferral*

The Issuer shall give notice not less than five (5) nor more than thirty (30) Business Days' prior to an Interest Payment Date to the Noteholders in accordance with Condition 10 and to the Fiscal Agent:

- (A) if that Interest Payment Date is an Optional Interest Payment Date in respect of which the Issuer elects to defer interest as provided in Condition 3.7(i); and
- (B) if that Interest Payment Date is a Mandatory Interest Deferral Date and specifying that interest will not be paid because (a) a Capital Adequacy Event has occurred and is continuing or would occur or (b) the Issuer is not or would not be Solvent, if payment of interest was made on the next Interest Payment Date, provided that if the Capital Adequacy Event occurs less than five (5) Business Days prior to an Interest Payment Date, the Issuer shall give notice of the interest deferral as soon as practicable following the occurrence of such event and before such Mandatory Interest Deferral Date.

So long as the Notes are listed on the Irish Stock Exchange and the rules of such stock exchange so require, notice of any such deferral shall also be given as soon as reasonably practicable to such stock exchange. If a Mandatory Interest Deferral Event occurs less than five (5) Business Days prior to Interest Payment Date, the Issuer shall give notice of such deferral to the Fiscal Agent and, in accordance with Condition 10, the Noteholders as soon as reasonably practicable following the occurrence of such event. Failure to give notice, however, shall not have any impact on the effectiveness of, or otherwise invalidate, any such deferral of payment of interest or give the Noteholders any rights as a result of such failure.

(v) *Partial Payment of Arrears of Interest*

If amounts in respect of Arrears of Interest are paid in part:

- (A) Arrears of Interest accrued for any period shall not be payable until full payment has been made of all Arrears of Interest that have accrued during any earlier period; and
- (B) the amount of Arrears of Interest payable in respect of any Note in respect of any period, shall be *pro rata* to the total amount of all unpaid Arrears of Interest accrued in respect of that period to the date of payment.

(vi) *Definitions*

In this Condition 3.7 and for the purposes of the Conditions:

**Applicable Regulations** means any legislation, rules or regulations (whether having the force of law or otherwise) applying to the Issuer or any Insurance Undertaking or Reinsurance Undertaking within the Group from time to time relating to the characteristics, features or criteria of own funds or capital resources and the requirement to retain capital resources in excess of a prescribed capital resources requirement and, for the avoidance of doubt and without limitation to the foregoing, includes any legislation, rules or regulations relating to such matters which are supplementary or extraneous to the obligations imposed by the Solvency II Directive.

**Assets** means the non-consolidated gross assets of the Issuer as shown by the then latest published balance sheet of the Issuer but adjusted for contingencies and for subsequent events and to such extent as the directors, or as the case may be, the administrator, receiver, liquidator, examiner or similar official may determine to be appropriate.

**Capital Adequacy Event** means that (i) the amount of eligible 'own fund-items' (or any equivalent terminology employed by the then applicable Applicable Regulations) of the Issuer on a consolidated basis to cover the Solvency Capital Requirement or the Minimum Capital Requirement is, or as a result of a payment would become, not sufficient to cover such Solvency Capital Requirement or Minimum Capital Requirement; or (ii) (if required or applicable in order for the Notes to qualify as regulatory capital of the Issuer on a consolidated basis under the Applicable Regulations from time to time) the Relevant Supervisory Authority has notified the Issuer that it has determined, in view of the financial and/or solvency condition of the Issuer on a consolidated basis, that in accordance with the Applicable Regulations at such time the Issuer must take specified action in relation to deferral of payments of principal and/or interest under the Notes.

**Compulsory Interest Payment Date** means each Interest Payment Date (i) in respect of which during the period of six months prior to and ending on such Interest Payment Date a Compulsory Interest Payment Event has occurred and (ii) which is not a Mandatory Interest Deferral Date.

**Compulsory Interest Payment Event** means (i) a declaration by the general meeting of shareholders of the Issuer, or a payment, of a dividend, distribution or coupon in any form on any Junior Obligations or (ii) the Issuer purchases or otherwise acquires any Junior Obligations (other than any Junior Obligations purchased or otherwise acquired by the Issuer (A) in the context of any equity derivative hedge structure or transaction, (B) under any hedging of stock options programme or any other compensation benefit programme, if any, (C) in connection with financial restructuring, mergers or acquisitions, split-offs, divestments or alike corporate transactions, or (D) in exchange for or funded out of the proceeds of a new issuance of capital of at least the same quality as such Junior Obligations), save in both cases (i) and (ii) above where the terms of such Junior Obligations do not enable the Issuer or relevant other person to defer, pass on or eliminate such dividend or other distribution or where a redemption is required to be effected under such terms.

**Group** means the Issuer and its direct and indirect subsidiaries.

**Insurance Undertaking** has the meaning given to such term in article 13 of the Solvency II Directive.

**Liabilities** means the non-consolidated gross liabilities of the Issuer as shown by the then latest published balance sheet of the Issuer, but adjusted for contingences and for subsequent events and to such extent as the directors, the auditors, or as the case may be, the administrator, receiver, liquidator, examiner or similar official may determine to be appropriate.

**Mandatory Interest Deferral Date** means each Interest Payment Date prior to which a Mandatory Interest Deferral Event has occurred and such Mandatory Interest Deferral Event is continuing on such Interest Payment Date.

**Mandatory Interest Deferral Event** means (i) a Capital Adequacy Event has occurred and such Capital Adequacy Event is continuing or (ii) the payment (in whole or in part) of interest would in itself cause a Capital Adequacy Event to occur or the Issuer determines that it is not, or as a result of the payment of such interest (in whole or in part) would not be, Solvent. Provided, however, that the occurrence of (i) or (ii) above will not constitute a Mandatory Interest Deferral Event if:

- (i) the Relevant Supervisory Authority has exceptionally waived the deferral of such interest payment and/or payment of Arrears of Interest;
- (ii) paying the interest payment and/or Arrears of Interest does not further weaken the solvency position of the Issuer as determined in accordance with the Applicable Regulations; and

- (iii) the Minimum Capital Requirement will be complied with immediately after the interest payment and/or payment of Arrears of Interest is made.

**Minimum Capital Requirement** means the minimum consolidated group Solvency Capital Requirement referred to in the Solvency II Directive or the Applicable Regulations from time to time.

**Optional Interest Payment Date** means any Interest Payment Date other than a Compulsory Interest Payment Date or a Mandatory Interest Deferral Date.

**Pari Passu Creditors** means the creditors in respect of any Parity Obligations.

**Prior Approval of the Relevant Supervisory Authority** means in respect of any proposed act on the part of the Issuer, the prior written approval or consent of, or notification to the Relevant Supervisory Authority, if such approval, notification or consent is required at the time under any Applicable Regulations or an official application or interpretation thereof.

**Reinsurance Undertaking** has the meaning given to such term in article 13 of the Solvency II Directive.

**Solvency II Directive** means Directive No 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) including, where applicable, the implementing measures thereunder, as the same may be amended from time to time.

**Solvency Capital Requirement** means the Solvency Capital Requirement of the Group referred to in, or any other capital requirement relating to the Issuer or the Group (other than the Minimum Capital Requirement) howsoever described in, the Solvency II Directive or the Applicable Regulations from time to time.

**Solvent** means the Issuer is (i) able to pay its debts to its Senior Creditors and Pari Passu Creditors as they fall due and (ii) its Assets exceed its Liabilities (other than its Liabilities under Junior Obligations).

**Tier 2 Capital** has the meaning given in the Solvency II Directive or Applicable Regulations, as interpreted by the Relevant Supervisory Authority from time to time.

#### **4. REDEMPTION AND PURCHASE**

The Notes may not be redeemed otherwise than in accordance with this Condition.

##### **4.1 No fixed maturity date**

The Notes are perpetual and have no fixed maturity or redemption date and may only be redeemed at the option of the Issuer in accordance with the provisions below.

##### **4.2 Optional Early Redemption as from First Call Date**

The Issuer may, subject to having given not more than 45 nor less than 30 days' prior notice to the Fiscal Agent and, in accordance with Condition 10, the Noteholders (which notice shall be irrevocable), redeem the Notes in whole, but not in part, at their principal amount, together with all interest accrued (including Arrears of Interest) to the date fixed for redemption on the First Call Date or on each fifth anniversary of the First Call Date.

#### 4.3 Optional Early Redemption for Taxation Reasons

- (1) If at any time, by reason of a change in any Dutch law or regulation, or any change in the official application or interpretation thereof, becoming effective on or after the Issue Date, the Issuer would, on the occasion of the next payment of principal or interest due in respect of the Notes, not be able to make such payment without having to pay Additional Amounts as specified in Condition 6 (a **Gross-Up Event**), the Issuer may, subject to having given not more than 45 nor less than 30 days' prior notice to the Fiscal Agent and, in accordance with Condition 10, the Noteholders (which notice shall be irrevocable), redeem the Notes in whole, but not in part, at any time at their principal amount, together with all interest accrued (including Arrears of Interest) to the date fixed for redemption, provided that the due date for redemption shall be no earlier than the latest practicable Interest Payment Date on which the Issuer could make payment of principal or interest without withholding for Dutch taxes.
- (2) If an opinion of a recognised law firm of international standing has been delivered to the Issuer and the Fiscal Agent, stating that by reason of a change in Dutch law or regulation, or any change in the official application or interpretation thereof, becoming effective on or after the Issue Date, payments of interest payable by the Issuer in respect of the Notes would no longer be deductible in whole or in part (a **Tax Deductibility Event** and together with a Gross-Up Event, a **Tax Event**), and that this cannot be avoided by the Issuer taking reasonable measures available to it at the time and that the Tax Deductibility Event does not arise as a result of a Coalition Agreement Deductibility Event, the Issuer may, subject to having given not more than 45 nor less than 30 days' prior notice to the Fiscal Agent and, in accordance with Condition 10, the Noteholders (which notice shall be irrevocable), redeem the Notes in whole, but not in part, at any time at their principal amount together with all interest accrued (including Arrears of Interest) to the date fixed for redemption, provided that redemption will not take place before the latest practicable date on which the Issuer could make such payment with the interest payable being tax deductible in the Netherlands.

For the purpose of this Condition 4.3, a **Coalition Agreement Deductibility Event** means a Tax Deductibility Event that arises solely by the implementation of thin capitalisation rules for banks and insurers on the terms as set out in item N147 on page 67 of the coalition agreement of the proposed Dutch Government (*Regeerakkoord*) 2017 – 2021 published on 10 October 2017.

#### 4.4 Exchange or Variation for Taxation Reasons

If at any time the Issuer determines that a Tax Event has occurred with respect to the Notes on or after the Issue Date, the Issuer may, instead of redeeming the Notes in accordance with Condition 4.3 above, on any Interest Payment Date, without the consent of the Noteholders, (i) exchange all but not some only of the Notes for new notes (the **Exchanged Notes**), or (ii) vary the terms of all but not some only of the Notes (the **Varied Notes**), so that in either case a Tax Event no longer exists. Any such exchange or variation following the occurrence of a Tax Event is subject to the following conditions:

- (i) the Issuer giving not less than 30 nor more than 45 days' notice to the Fiscal Agent and, in accordance with Condition 10, the Noteholders;
- (ii) the Prior Approval of the Relevant Supervisory Authority; and
- (iii) the Exchanged Notes or the Varied Notes qualify as Qualifying Securities;

As used herein, **Qualifying Securities** means securities (other than the Notes):

- (i) having terms (including terms providing for deferral of payment of interest and/or principal) that are not materially less favourable to an investor than the terms of the Notes (as reasonably determined by the Issuer in consultation with an independent investment bank, consulting firm or comparable expert of international standing on the subject and provided that a certification to such effect of the Issuer, represented by at least one member of the executive board (*raad van bestuur*) of the Issuer (the **Executive Board**), shall have been delivered to the Fiscal Agent prior to the issue of the relevant securities or them otherwise becoming obligations of the Issuer);
- (ii) issued by or otherwise being obligations of the Issuer or another member of the Group, being a special purpose vehicle (but excluding a Group Insurance Undertaking), with a guarantee by the Issuer, such that investors have the same material rights and claims as under the Notes (as reasonably determined by the Issuer, and provided that a certification to such effect of the Issuer, represented by at least one member of the Executive Board, shall have been delivered to the Fiscal Agent prior to the issue of the relevant securities or them otherwise becoming obligations of the Issuer);
- (iii) ranking at least equal to the Notes, provided that in the insolvency (bankruptcy (*faillissement*) or moratorium (*surseance van betaling* or *noodregeling*, as applicable)), dissolution (*ontbinding*) or liquidation (*vereffening*) of the relevant issuer, the payment obligations of such issuer shall rank in right of payment after unsubordinated and unsecured creditors of such issuer, but *pari passu* with all other subordinated obligations of such issuer save for those preferred by mandatory provisions of law and those that rank or are expressed by their terms to rank junior to such securities, and in priority to the claims of shareholders of such issuer, and featuring the same principal amount, interest rate (including applicable margins and step-up), interest payment dates and optional redemption dates as the Notes;
- (iv) containing terms which preserve the obligations (including the obligations arising from the exercise of any right) of the Issuer as to redemption of the Notes, including (without limitation) as to the timing of, and amounts payable on, such redemption;
- (v) which qualify as Tier 2 Capital of the Issuer or the Group;
- (vi) which do not contain any terms providing for loss absorption through principal write-down or conversion to shares;
- (vii) listed on a stock exchange in the European Economic Area, if the Notes were listed prior to such substitution or variation; and
- (viii) admitted to, and traded in, the same clearing system or clearing systems as the Notes were.

Any such exchange or variation shall be binding on the Noteholders and shall be notified to them in accordance with Condition 10 as soon as practicable thereafter.

In the case of Notes exchanged in accordance with this Condition 4.4, Arrears of Interest accrued on the Notes originally issued will be paid by the Issuer pursuant to the conditions of such exchanged Notes.

#### 4.5 **Optional Early Redemption for Regulatory Reasons**

If at any time the Issuer determines that a Regulatory Event has occurred with respect to the Notes on or after the Issue Date, the Issuer may, subject to having given not more than 45 nor less than 30 days' prior notice to Fiscal Agent and, in accordance with Condition 10, the Noteholders (which notice shall be irrevocable), redeem the Notes in whole, but not in part, at any time at their principal amount plus any accrued interest (including Arrears of Interest) to the date fixed for redemption.

For the purpose of this Condition 4.5 and Condition 4.6 below, **Regulatory Event** means that, on or after the Issue Date, (i) the Issuer and/or the Group is subject to regulatory supervision by the Relevant Supervisory Authority and (ii) as a result of any replacement of or change to the Applicable Regulations (or change to the interpretation thereof by any court, the Relevant Supervisory Authority or any other authority entitled to do so) at any time whilst any of the Notes are outstanding the full 100 per cent. of the proceeds of such Notes can no longer be treated as Tier 2 Capital of the Issuer or the Group, whether on a solo, group or consolidated basis (in each case, as applicable), except where such non-qualification is only as a result of any applicable limitation on the amount of such capital.

#### 4.6 **Exchange or Variation for Regulatory Reasons**

If at any time, the Issuer determines that a Regulatory Event has occurred with respect to the Notes, the Issuer may, instead of redeeming the Notes in accordance with Condition 4.5 above, on any Interest Payment Date, without the consent of the Noteholders, (i) exchange all but not some only of the Notes for Exchanged Notes, or (ii) vary the terms of all but not some only of the Notes, so that in either case the aggregate nominal amount of the Exchanged Notes or Varied Notes (as the case may be) is treated under the then Applicable Regulations as at least Tier 2 Capital of the Issuer or the Group. Any such exchange or variation is subject to the same conditions as in Condition 4.4 (with references to "Tax Event" read as references to "Regulatory Event") which shall apply *mutatis mutandis*.

In the case of Notes exchanged in accordance with this Condition 4.6, Arrears of Interest accrued on the Notes originally issued will be paid by the Issuer pursuant to the conditions of such Exchanged Notes.

#### 4.7 **Optional Early Redemption for Rating Reasons**

If at any time, the Issuer determines that a Rating Methodology Event has occurred with respect to the Notes, the Issuer may, subject to having given not more than 45 nor less than 30 days' prior notice to the Fiscal Agent and, in accordance with Condition 10, the Noteholders, redeem the Notes in whole, but not in part at any time, at their principal amount plus any accrued interest (including Arrears of Interest) to the date fixed for redemption.

For the purpose of this Condition 4.7 and Condition 4.8 below:

**Rating Methodology Event** will be deemed to occur upon a change in, or clarification to, the methodology of any Rating Agency (as defined below) (or in the interpretation by the relevant Rating Agency of such methodology) on or after the Issue Date as a result of which the equity content previously assigned by such Rating Agency to the Notes is, in the reasonable opinion of the Issuer, materially reduced when compared to the equity content assigned by such Rating Agency at or around the Issue Date.

**Rating Agency** means Fitch or any successor.

#### 4.8 Exchange or Variation for Rating Reasons

If at any time, the Issuer determines that a Rating Methodology Event has occurred with respect to the Notes, the Issuer may, instead of redeeming the Notes in accordance with Condition 4.7 above, on any Interest Payment Date, without the consent of the Noteholders, (i) exchange all but not some only of the Notes for Exchanged Notes, or (ii) vary the terms of all but not some only of the Notes, so that in either case the equity content assigned by the Rating Agency to the Exchanged Notes or Varied Notes (as the case may be) is at least the same as the equity content assigned to the Notes by such Rating Agency at or around the Issue Date. Any such exchange or variation is subject to the same conditions as in Condition 4.4 (with references to "Tax Event" read as references to "Rating Methodology Event") which shall apply *mutatis mutandis*.

In the case of Notes exchanged in accordance with this Condition 4.8, Arrears of Interest accrued on the Notes originally issued will be paid by the Issuer pursuant to the conditions of such Exchanged Notes.

#### 4.9 Optional Early Redemption for Accounting Reasons

If at any time, the Issuer determines that an Accounting Event has occurred with respect to the Notes, the Issuer may, subject to having given not more than 45 nor less than 30 days' prior notice to the Fiscal Agent and, in accordance with Condition 10, the Noteholders, redeem the Notes in whole, but not in part at any time, at their principal amount plus any accrued interest (including Arrears of Interest) to the date fixed for redemption.

For the purpose of this Condition 4.9:

An **Accounting Event** shall be deemed to occur if, as a result of a change in accounting principles or the application thereof which becomes effective on or after the Issue Date, but not otherwise, the obligations of the Issuer under the Notes must not or may no longer be recorded as "liabilities" in the next following audited annual financial statements of the Issuer, prepared in accordance with International Financial Reporting Standards (**IFRS**) or any other accounting standards that the Issuer applies in the preparation of its audited annual financial statements in accordance with Dutch company law (applicable accounting standards).

#### 4.10 Purchases

The Issuer or any of its affiliated entities may at any time, subject to the Prior Approval of the Relevant Supervisory Authority and subject to Condition 4.11, purchase Notes (provided that all unmatured Coupons appertaining to the Notes are purchased with the Notes) in the open market or otherwise at any price. Notes, together with all relative unmatured Coupons attached to the Notes or surrendered with the Notes, so purchased by the Issuer or any of its affiliated entities may be held, resold or surrendered for cancellation.

#### 4.11 Conditions to Redemption and/or Purchase

Subject to the Prior Approval of the Relevant Supervisory Authority, the Notes may only be redeemed or purchased pursuant to Conditions 4.2, 4.3, 4.5, 4.7, 4.9 and 4.10 if (i) the Issuer is in compliance with all Applicable Regulations, including but not limited to the situation that no Capital Adequacy Event has occurred and is continuing on the relevant redemption or purchase date, or such redemption or purchase would itself not cause a Capital Adequacy Event, (ii) the Issuer is Solvent prior to the relevant redemption or purchase date and as result of such redemption or purchase the Solvent position of the Issuer would not change and (iii) no Insolvent Insurer Liquidation has occurred and is continuing on the relevant redemption or purchase date. Non-compliance with any of these conditions by the Issuer establishes a **Mandatory Redemption**

**Deferral Event**, provided, however, that the non-compliance with (i) above will not constitute a Mandatory Redemption Deferral Event if:

- (i) the Relevant Supervisory Authority has exceptionally waived the deferral of such principal payment;
- (ii) the Notes are exchanged for or converted into another tier 1 or tier 2 basic own-fund of at least the same quality; and
- (iii) the Minimum Capital Requirement will be complied with immediately after the redemption or purchase is made.

In the case of a redemption or purchase pursuant to Condition 4.3, 4.5, 4.7, 4.9 or 4.10 that is within five years from the Issue Date, such redemption or purchase shall be in exchange for or funded out of the proceeds of a new issuance of capital of at least the same quality as the Notes, if required pursuant to the then Applicable Regulations.

For the purpose of this Condition 4.11:

**Group Insurance Undertaking** means an Insurance Undertaking or a Reinsurance Undertaking of the Group.

**Insolvent Insurer Liquidation** means a liquidation of any Group Insurance Undertaking that is not a Solvent Insurer Liquidation.

**Policyholder Claims** means claims of policyholders in a liquidation of a Group Insurance Undertaking to the extent that those claims relate to any debt to which the Group Insurance Undertaking is, or may become, liable to a policyholder pursuant to a contract of insurance.

**Solvent Insurer Liquidation** means a liquidation of any Group Insurance Undertaking where the Borrower has determined, acting reasonably, that all Policyholder Claims of such Group Insurance Undertaking will be met.

#### 4.12 **Deferral of Redemption Date**

The Issuer shall notify the Noteholders in accordance with Condition 10 and the Fiscal Agent no later than five (5) Business Days prior to any date set for redemption of the Notes under Condition 4.2, 4.3, 4.5, 4.7 or 4.9 if such redemption is to be deferred as a result of the occurrence of a Mandatory Redemption Deferral Event. If a Mandatory Redemption Deferral Event occurs less than five (5) Business Days prior to the date set for redemption, the Issuer shall give notice of such deferral to the Fiscal Agent and, in accordance with Condition 10, the Noteholders as soon as reasonably practicable following the occurrence of such event. Failure to give notice, however, shall not have any impact on the effectiveness of, or otherwise invalidate, any such deferral of payment of principal or give the Noteholders any rights as a result of such failure.

If redemption of the Notes does not occur on the date specified in the notice of redemption by the Issuer under Condition 4.2, 4.3, 4.5, 4.7 or 4.9 as contemplated by this Condition 4.12, the Issuer shall redeem such Notes at their principal amount together with any Arrears of Interest and any other accrued and unpaid interest, upon the earliest of:

- (i) the date falling ten (10) Business Days after the date the Mandatory Redemption Deferral Event has ceased (unless on such 10th Business Day a further Mandatory Redemption Deferral Event has occurred and is continuing, in which case the provisions of this Condition 4.12 will apply *mutatis mutandis* to determine the due date for redemption of the



Notes), subject to Prior Approval of the Relevant Supervisory Authority obtained after the Mandatory Redemption Deferral Event has ceased; or

- (ii) the date falling ten (10) Business Days after the Relevant Supervisory Authority has agreed to the repayment or redemption of the Notes; or
- (iii) the date on which the liquidation (as described in Condition 8) of the Issuer occurs.

## **5. PAYMENTS**

### **5.1 Method of Payment**

Save as provided in paragraph 5.2 below, payments of principal in respect of the Notes will be made against presentation and surrender (or, in the case of partial payment only, endorsement) of the Note and payments of interest due on an Interest Payment Date will be made against presentation and surrender (or, in the case of partial payment only, endorsement) of the relevant Coupon, in each case at the specified office of any of the Paying Agents outside the United States.

Payments will be made by credit or transfer to a US dollar account (or any other account to which US dollar may be credited or transferred) specified by the payee or, at the option of the payee, by US dollar cheque.

None of the Issuer, the Fiscal Agent, the Calculation Agent or the Paying Agents shall be liable to any Noteholder or other person for any commission, costs, losses or expenses in relation to, or resulting from, the credit or transfer of US dollar, or any currency conversion or rounding effect in connection with such payment being made in US dollar.

Each Note should be surrendered for redemption together with all matured Coupons relating to it, failing which the amount of any such missing matured Coupon (or, in the case of payment not being made in full, that proportion of the amount of such missing matured Coupon which the sum of principal so paid bears to the total principal amount due) will be deducted from the sum due for payment. Each amount of principal so deducted will be paid in the manner mentioned above against surrender of the relevant missing Coupon not later than 5 years after the Relevant Date (as defined in Condition 6) for the relevant payment of principal. Upon the due date for redemption of any Note, unmatured Coupons relating to such Note (whether or not attached) shall become void and no payment shall be made in respect of them. Where any Note is presented for redemption without all unmatured Coupons relating to it, redemption shall be made only against the provision of such indemnity as the Issuer may require.

Payments in respect of principal and interest on the Notes will, in all cases, be made subject to (i) any fiscal or other laws and regulations or orders of courts of competent jurisdiction applicable in respect of such payments to the Issuer or the relevant Paying Agent, but without prejudice to the provisions of Condition 6; and (ii) any withholding or deduction required pursuant to an agreement described in Section 1471(b) of the U.S. Internal Revenue Code of 1986 (the **Code**) or otherwise imposed pursuant to Sections 1471 through 1474 of the Code, any regulations or agreements thereunder, official interpretations thereof, or any law implementing an intergovernmental approach thereto.

The Issuer's obligation to pay principal and interest on the Notes is discharged once it has paid the Paying Agent, and the Issuer has therefore no responsibility for any withholding or deduction on payments made thereafter through or by the Paying Agent and custodians or intermediaries.

## 5.2 **Payments in New York City**

Payments of principal or interest may be made at the specified office of a Paying Agent in New York City if (i) the Issuer has appointed Paying Agents outside the United States with the reasonable expectation that such Paying Agents will be able to make payment of the full amount of principal and interest (if any) on the Notes in US dollars when due, (ii) payment of the full amount of such principal or interest (if any) at the offices of all such Paying Agents outside the United States is illegal or effectively precluded by exchange controls or other similar restrictions and (iii) payment is permitted by applicable United States law.

## 5.3 **Payments on Business Days**

If any due date for payment of principal, interest or other amounts in respect of any Note is not a Business Day, then the holder of such Note shall not be entitled to payment of the amount due until the next following Business Day and will not be entitled to any interest or other sums with respect to such postponed payment.

## 5.4 **Fiscal Agent, Paying Agents and Calculation Agent**

The names of the initial agents and their specified offices are set out below:

### **Fiscal Agent, Paying Agent and Calculation Agent**

#### **DEUTSCHE BANK AG, LONDON BRANCH**

Winchester House  
1 Great Winchester Street  
EC2N 2DB London  
United Kingdom

The Issuer reserves the right at any time to vary or terminate the appointment of the Fiscal Agent or a Paying Agent and/or appoint additional or other Paying Agents or approve any change in the office through which any such Paying Agent acts. Notice of any such change or any change of specified office shall promptly be given as soon as reasonably practicable to the Noteholders in accordance with Condition 10 and, so long as the Notes are listed on the Official List of the Irish Stock Exchange and if the rules of such stock exchange so require, to such stock exchange.

Any termination or appointment shall only take effect (other than in the case of insolvency, when it shall be of immediate effect) after not more than 45 nor less than 30 calendar days' notice thereof shall have been given to the Noteholders by the Issuer in accordance with Condition 10.

## 6. **TAXATION**

All payments in respect of the Notes shall be made free and clear of, and without withholding or deduction for or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or on behalf of the Netherlands or any political subdivision or any authority thereof or therein having power to tax unless such withholding or deduction is required by law.

If applicable law should require that payments of principal or interest made by the Issuer in respect of any Note be subject to deduction or withholding in respect of any present or future taxes or duties whatsoever levied by the Netherlands, the Issuer will, to the fullest extent then permitted by law, pay such additional amounts (**Additional Amounts**) as shall result in receipt by the

Noteholders and the Couponholders of such amounts as would have been received by them had no such withholding or deduction been required, except that no such Additional Amounts shall be payable with respect to any Note or, as the case may be, Coupons:

- (i) **Other connection:** to, or to a third party on behalf of, a Noteholder or Couponholder who is liable to such taxes, duties, assessments or governmental charges in respect of such Note or Coupon by reason of his having some connection with the Netherlands other than the mere holding of the Note or Coupon; or
- (ii) **Presentation more than thirty (30) days after the Relevant Date:** presented for payment more than thirty (30) days after the Relevant Date except to the extent that the Noteholder or Couponholder would have been entitled to such Additional Amounts on presenting it for payment on the last day of such period of thirty days; or
- (iii) **Payment by another Paying Agent:** presented for payment by or on behalf of a Noteholder or Couponholder who would be able to avoid such withholding or deduction by presenting the relevant Note or Coupon to another Paying Agent in a Member State of the EU.

As used in these Conditions, **Relevant Date** in respect of any Note or Coupon means the date on which payment in respect of it first becomes due and payable or (if any amount of the money payable is improperly withheld or refused) the date on which the full amount of monies payable on such date in respect of such Note is paid to the Fiscal Agent.

Any reference in these Conditions to principal and/or interest shall be deemed to include any Additional Amounts.

## 7. PRESCRIPTION

Claims against the Issuer for the payment of principal and interest in respect of the Notes and Coupons shall become prescribed five (5) years from the due date for payment thereof.

## 8. ENFORCEMENT EVENTS

There will be no events of default in respect of the Notes. However, each Note shall become immediately due and payable at its principal amount, together with accrued interest thereon, if any, to the date of payment and any Arrears of Interest in the case of the liquidation of the Issuer. Liquidation may occur as a result of the winding-up of the Issuer (*ontbinding en vereffening*), bankruptcy (*faillissement*) of the Issuer, the suspension of payments (*surseance van betaling*) being applied to the Issuer or emergency regulations (*noodregeling*) in either case if that constitutes a liquidation.

## 9. MEETINGS OF NOTEHOLDERS AND MODIFICATION

### (a) *Meetings of Noteholders*

The Agency Agreement contains provisions for convening meetings of the Noteholders to consider any matter affecting their interests, including the modification by Extraordinary Resolution (as defined in the Agency Agreement) of any of these Conditions or any of the provisions of the Agency Agreement. The quorum at any meeting for passing an Extraordinary Resolution will be one or more persons present holding or representing more than 50 per cent. in principal amount of the Notes for the time being outstanding, or at any adjourned meeting one or more persons present whatever the principal amount of the Notes held or represented by him or them, except that at any meeting the business of which includes, among other things, the modification of certain

of these Conditions the necessary quorum for passing an Extraordinary Resolution will be one or more persons present holding or representing not less than two-thirds, or at any adjourned meeting not less than one-third, of the principal amount of the Notes for the time being outstanding. An Extraordinary Resolution passed at any meeting of the Noteholders will be binding on all Noteholders, whether or not they are present at the meeting, and on all Couponholders.

(b) *Modification*

The Issuer shall only permit any modification of, or any waiver or authorisation of any breach or proposed breach of, or any failure to comply with, the Agency Agreement if to do so could not reasonably be expected to be prejudicial to the interests of the Noteholders.

The Agency Agreement or these Conditions may be amended by the Issuer and the Fiscal Agent, without the consent of any Paying Agent, Calculation Agent or Noteholder, for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective provision contained therein and which does not adversely affect the interests of the Noteholders.

## 10. NOTICES

(a) Notices to Noteholders will be valid if published in the English language in a leading newspaper having general circulation in the Netherlands (which is expected to be *Het Financieele Dagblad*). So long as the Notes are listed on the Official List of the Irish Stock Exchange and the rules of such stock market so require, notices shall also be published through a press release which will also be made available on the website of the Issuer ([www.vivat.nl](http://www.vivat.nl)) or the Irish Stock Exchange's website, [www.isedirect.ie](http://www.isedirect.ie).

(b) If any such publication is not practicable, notice shall be validly given if published in another leading daily English language newspaper with general circulation in Europe.

Any such notice shall be deemed to have been given on the date of such publication or, if published more than once or on different dates, on the date of the first publication. Couponholders will be deemed for all purposes to have notice of the contents of any notice given to the Noteholders in accordance with this Condition.

## 11. REPLACEMENT OF NOTES OR COUPONS

Should a Note or Coupon be lost, stolen, mutilated, defaced or destroyed, it may be replaced, subject to applicable law, at the specified office of the Fiscal Agent on payment by the claimant of the expenses incurred in connection therewith and on such terms as to evidence and indemnity and otherwise as the Issuer and/or the Fiscal Agent may reasonably require. All costs arising in connection therewith may be charged to the claimant. The mutilated or defaced Note or Coupon must be surrendered before replacements will be issued.

## 12. FURTHER ISSUES

The Issuer may from time to time without the consent of the Noteholders or Couponholders create and issue further notes, having terms and conditions the same as those of the Notes, or the same except for the amount of the first payment of interest, which may be consolidated and form a single series with the outstanding Notes.

### **13. GOVERNING LAW AND JURISDICTION**

The Agency Agreement, the Notes and the Coupons and any non-contractual obligations arising out of or in connection with the Agency Agreement, the Notes and the Coupons are governed by Dutch law.

The Courts of the Netherlands are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Agency Agreement, the Notes and the Coupons, and accordingly any legal action or proceedings arising out of or in connection with the Agency Agreement, the Notes and the Coupons may be brought in such courts.

## SCHEDULE 3

### PROVISIONS FOR MEETINGS OF NOTEHOLDERS

#### Interpretation

- 1 In this Schedule:
- 1.1 references to a meeting are to a meeting of Noteholders and include, unless the context otherwise requires, any adjournment;
- 1.2 “**Agent**” means a holder of a voting certificate or a proxy for a Noteholder;
- 1.3 “**Block Voting Instruction**” means an instruction issued in accordance with paragraphs 8 to 14;
- 1.4 “**Electronic Consent**” has the meaning set out in paragraph 30;
- 1.5 “**Extraordinary Resolution**” means a resolution passed (a) at a meeting duly convened and held in accordance with this Agreement by a majority of at least 75 per cent. of the votes cast (b) by a Written Resolution or (c) by Electronic Consent;
- 1.6 “**Voting Certificate**” means a certificate issued in accordance with paragraphs 5, 6, 7 and 14;
- 1.7 “**Written Resolution**” means a resolution in writing signed by the holders of not less than 90 per cent. in nominal amount of the Notes outstanding; and
- 1.8 references to persons representing a proportion of the Notes are to Noteholders or Agents holding or representing in the aggregate at least that proportion in principal amount of the Notes for the time being outstanding.

#### Powers of meetings

- 2 A meeting shall, subject to the Conditions and without prejudice to any powers conferred on other persons by this Agreement, have power by Extraordinary Resolution:
- 2.1 to sanction any proposal by the Issuer for any modification, abrogation, variation or compromise of, or arrangement in respect of, the rights of the Noteholders and/or the Couponholders against the Issuer, whether or not those rights arise under the Notes;
- 2.2 to sanction the exchange or substitution for the Notes of, or the conversion of the Notes into, shares, Notes or other obligations or securities of the Issuer, or any other entity
- 2.3 to assent to any modification of this Agreement, the Notes or the Coupons proposed by the Issuer or the Fiscal Agent;
- 2.4 to authorise anyone to concur in and do anything necessary to carry out and give effect to an Extraordinary Resolution;
- 2.5 to give any authority, direction or sanction required to be given by Extraordinary Resolution;
- 2.6 to appoint any persons (whether Noteholders or not) as a committee or committees to represent the Noteholders’ interests and to confer on them any powers or discretions which the Noteholders could themselves exercise by Extraordinary Resolution; and

**2.7** to approve the substitution of any entity for the Issuer (or any previous substitute) as principal debtor under this Agreement.

provided that the special quorum provisions in paragraph 19 shall apply to any Extraordinary Resolution (a “**special quorum resolution**”) for the purpose of sub-paragraph 2.2 or 2.7 or for the purpose of making a modification to this Agency Agreement or the Notes which would have the effect of :

- (i) modifying the dates on which interest is payable in respect of the Notes;
- (ii) reducing or cancelling the principal amount of, or interest on, or varying the method of calculating the rate of interest on, the Notes;
- (iii) changing the currency of payment of the Notes or the Coupons;
- (iv) modifying the provisions concerning the quorum required at any meeting of Noteholders or the majority required to pass an Extraordinary Resolution; or
- (vi) any amendment to this proviso.

### **Convening a meeting**

**3** The Issuer may at any time convene a meeting. If it receives a written request by Noteholders holding at least 10 per cent. in principal amount of the Notes for the time being outstanding and is indemnified to its satisfaction against all costs and expenses, the Issuer shall convene a meeting. Every meeting shall be held at a time and place approved by the Fiscal Agent.

**4** At least 21 days’ notice (exclusive of the day on which the notice is given and of the day of the meeting) shall be given to the Noteholders. A copy of the notice shall be given by the party convening the meeting to the other parties. The notice shall specify the day, time and place of meeting and the nature of the resolutions to be proposed and shall explain how Noteholders may appoint proxies or representatives, obtain Voting Certificates and use Block Voting Instructions and the details of the time limits applicable.

### **Arrangements for voting**

**5** If a holder of a Note wishes to obtain a Voting Certificate in respect of it for a meeting, he must deposit it for that purpose at least 48 hours before the time fixed for the meeting with a Paying Agent or to the order of a Paying Agent with a bank or other depositary nominated by the Paying Agent for the purpose. The Paying Agent shall then issue a Voting Certificate in respect of it.

**6** A Voting Certificate shall:

**6.1** be a document in the English language;

**6.2** be dated;

**6.3** specify the meeting concerned and the serial numbers of the Notes deposited; and

**6.4** entitle, and state that it entitles, its bearer to attend and vote at that meeting in respect of those Notes.

- 7 Once a Paying Agent has issued a Voting Certificate for a meeting in respect of a Note, it shall not release the Note until either:
- 7.1 the meeting has been concluded, or
  - 7.2 the Voting Certificate has been surrendered to the Paying Agent.
- 8 If a holder of a Note wishes the votes attributable to it to be included in a Block Voting Instruction for a meeting, then, at least 48 hours before the time fixed for the meeting, (i) he must deposit the Note for that purpose with a Paying Agent or to the order of a Paying Agent with a bank or other depository nominated by the Paying Agent for the purpose and (ii) he or a duly authorised person on his behalf must direct the Paying Agent how those votes are to be cast. The Paying Agent shall issue a Block Voting Instruction in respect of the votes attributable to all Notes so deposited.
- 9 A Block Voting Instruction shall:
- 9.1 be a document in the English language;
  - 9.2 be dated;
  - 9.3 specify the meeting concerned;
  - 9.4 list the total number and serial numbers of the Notes deposited, distinguishing with regard to each resolution between those voting for and those voting against it;
  - 9.5 certify that such list is in accordance with Notes deposited and directions received as provided in paragraphs 8, 11 and 14; and
  - 9.6 appoint a named person (a “**proxy**”) to vote at that meeting in respect of those Notes and in accordance with that list.
- A proxy need not be a Noteholder.
- 10 Once a Paying Agent has issued a Block Voting Instruction for a meeting in respect of the votes attributable to any Notes:
- 10.1 it shall not release the Notes, except as provided in paragraph 11, until the meeting has been concluded; and
  - 10.2 the directions to which it gives effect may not be revoked or altered during the 48 hours before the time fixed for the meeting.
- 11 If the receipt for a Note deposited with a Paying Agent in accordance with paragraph 8 is surrendered to the Paying Agent at least 48 hours before the time fixed for the meeting, the Paying Agent shall release the Note and exclude the votes attributable to it from the Block Voting Instruction.
- 12 Each Block Voting Instruction shall be deposited at least 24 hours before the time fixed for the meeting at the specified office of the Fiscal Agent or such other place as the Issuer shall designate or approve, and in default it shall not be valid unless the chairman of the meeting decides otherwise before the meeting proceeds to business. If the Issuer requires, a notarially certified copy of each Block Voting Instruction shall be produced by the proxy at the meeting



but the Issuer need not investigate or be concerned with the validity of the proxy's appointment.

- 13 A vote cast in accordance with a Block Voting Instruction shall be valid even if it or any of the Noteholders' instructions pursuant to which it was executed has previously been revoked or amended, unless written intimation of such revocation or amendment is received from the relevant Paying Agent by the Fiscal Agent at its specified office (or such other place as may have been specified by the Issuer for the purpose) or by the chairman of the meeting in each case at least 24 hours before the time fixed for the meeting.
- 14 No Note may be deposited with or to the order of a Paying Agent at the same time for the purposes of both paragraph 5 and paragraph 8 for the same meeting.

#### **Chairman**

- 15 The chairman of a meeting shall be such person as the Issuer may nominate in writing, but if no such nomination is made or if the person nominated is not present within 15 minutes after the time fixed for the meeting, the Noteholders or agents present shall choose one of their number to be chairman, failing which the Issuer may appoint a chairman.
- 16 The chairman may, but need not, be a Noteholder or agent. The chairman of an adjourned meeting need not be the same person as the chairman of the original meeting.

#### **Attendance**

- 17 The following may attend and speak at a meeting:
  - 17.1 Noteholders and Agents
  - 17.2 the chairman
  - 17.3 the Issuer and the Fiscal Agent (through their respective representatives) and their respective financial and legal advisers.

No one else may attend or speak.

#### **Quorum and Adjournment**

- 18 No business (except choosing a chairman) shall be transacted at a meeting unless a quorum is present at the commencement of business. If a quorum is not present within 15 minutes from the time initially fixed for the meeting, it shall, if convened on the requisition of Noteholders, be dissolved. In any other case, it shall be adjourned until such date, not less than 14 nor more than 42 days later, and at such time and place as the chairman may decide. If a quorum is not present within 15 minutes from the time fixed for a meeting so adjourned, the meeting shall be dissolved.
- 19 Two or more Noteholders or Agents present in person shall be a quorum:
  - 19.1 in the cases marked "No minimum proportion" in the table below, whatever the proportion of the total principal amount of the Notes which they represent
  - 19.2 in any other case, only if they represent the proportion of the total principal amount of the Notes shown by the table below.

Column 1	Column 2	Column 3
Purpose of meeting	Any meeting except one referred to in column 3	Meeting previously adjourned due to an absence of a required quorum
	Required proportion	Required proportion
To pass a special quorum resolution	> 66 2/3 per cent.	> 33 1/3 per cent.
To pass any other Extraordinary Resolution	> 50 per cent.	No minimum proportion
Any other purpose	> 10 per cent.	No minimum proportion

- 20** The chairman may with the consent of (and shall if directed by) a meeting, adjourn the meeting from time to time and from place to place. Only business which could have been transacted at the original meeting may be transacted at a meeting adjourned in accordance with this paragraph or paragraph 18.
- 21** At least 10 days' notice of a meeting adjourned through want of a quorum shall be given in the same manner as for an original meeting and that notice shall state the quorum required at the adjourned meeting. No notice need, however, otherwise be given of an adjourned meeting.

### **Voting**

- 22** Each question submitted to a meeting shall be decided by a show of hands unless a poll is (before, or on the declaration of the result of, the show of hands) demanded by the chairman, the Issuer or one or more persons representing 2 per cent. of the Notes.
- 23** Unless a poll is demanded, a declaration by the chairman that a resolution has or has not been passed shall be conclusive evidence of the fact without proof of the number or proportion of the votes cast in favour of or against it.
- 24** If a poll is demanded, it shall be taken in such manner and (subject as provided below) either at once or after such adjournment as the chairman directs. The result of the poll shall be deemed to be the resolution of the meeting at which it was demanded as at the date it was taken. A demand for a poll shall not prevent the meeting continuing for the transaction of business other than the question on which it has been demanded.
- 25** A poll demanded on the election of a chairman or on a question of adjournment shall be taken at once.
- 26** On a show of hands, every person who is present in person and who produces a Note or a Voting Certificate or is a proxy has one vote. On a poll, every such person has one vote for USD 1,000 in principal amount of Notes so produced or represented by the Voting Certificate so produced or for which he is a proxy or representative. Without prejudice to the obligations of proxies, a person entitled to more than one vote need not use them all or cast them all in the same way.

- 27 In case of equality of votes, the chairman shall both on a show of hands and on a poll have a casting vote in addition to any other votes which he may have.

### **Effect and Publication of an Extraordinary Resolution**

- 28 An Extraordinary Resolution shall be binding on all the Noteholders, whether or not present at the meeting, and on all the Couponholders and each of them shall be bound to give effect to it accordingly. The passing of such a resolution shall be conclusive evidence that the circumstances justify it being passed. The Issuer shall give notice of the passing of an Extraordinary Resolution to Noteholders within 14 days but failure to do so shall not invalidate the resolution.

### **Minutes**

- 29 The chairman shall procure that minutes shall be made of all resolutions and proceedings at every meeting and, if purporting to be signed by the chairman of that meeting or of the next succeeding meeting, shall be conclusive evidence of the matters in them. Until the contrary is proved, every meeting for which minutes have been so made and signed shall be deemed to have been duly convened and held and all resolutions passed or proceedings transacted at it to have been duly passed and transacted.

### **Written Resolution and Electronic Consent**

- 30 Subject to the following sentence, a 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 Noteholders.

For so long as the Notes are in the form of a Permanent Global Note for one or more of Euroclear, Clearstream, Luxembourg or another clearing system, then, in respect of any resolution proposed by the Issuer:

- (i) where the terms of the proposed resolution have been notified to the Noteholders through the relevant clearing system(s), the Issuer shall be entitled to rely upon approval of such resolution proposed by the Issuer given by way of electronic consents communicated through the electronic communications systems of the relevant clearing system(s) in accordance with their operating rules and procedures by or on behalf of the holders of not less than 90 per cent. in nominal amount of the Notes outstanding (“**Electronic Consent**”). The Issuer shall not be liable or responsible to anyone for such reliance; and
- (ii) where Electronic Consent is not being sought, for the purpose of determining whether a Written Resolution has been validly passed, the Issuer shall be entitled to rely on consent or instructions given in writing directly to the Issuer by accountholders in the clearing system with entitlements to such Permanent Global Note or, where the accountholders hold any such entitlement on behalf of another person, on written consent from or written instruction by the person for whom such entitlement is ultimately beneficially held, whether such beneficiary holds directly with the accountholder or via one or more intermediaries and provided that, in each case, the Issuer has obtained commercially reasonable evidence to ascertain the validity of such holding and has taken reasonable steps to ensure that such holding does not alter

following the giving of such consent or instruction and prior to the effecting of such amendment. Any resolution passed in such manner shall be binding on all Noteholders and Couponholders, even if the relevant consent or instruction proves to be defective. As used in this paragraph, “**commercially reasonable evidence**” includes any certificate or other document issued by Euroclear, Clearstream, Luxembourg or any other relevant clearing system, or issued by an accountholder of them or an intermediary in a holding chain, in relation to the holding of interests in the Notes. Any such certificate or other document shall, in the absence of manifest error, be conclusive and binding for all purposes. Any such certificate or other document may comprise any form of statement or print out of electronic records provided by the relevant clearing system (including Euroclear’s EUCLID or Clearstream, Luxembourg’s CreationOnline system) in accordance with its usual procedures and in which the accountholder of a particular principal or nominal amount of the Notes is clearly identified together with the amount of such holding. The Issuer shall not be liable to any person by reason of having accepted as valid or not having rejected any certificate or other document to such effect purporting to be issued by any such person and subsequently found to be forged or not authentic.

A Written Resolution and/or Electronic Consent shall take effect as an Extraordinary Resolution. A Written Resolution and/or Electronic Consent will be binding on all Noteholders and holders of Coupons, whether or not they participated in such Written Resolution and/or Electronic Consent.

## SCHEDULE 4

### ADDITIONAL DUTIES OF THE FISCAL AGENT

The Fiscal Agent will comply with the following provisions:

1. The Fiscal Agent will inform each of Euroclear and Clearstream, Luxembourg (the **ICSDs**), through the common service provider appointed by the ICSDs to service the Notes (the **CSP**), of the initial issue outstanding amount (**IOA**) for the Notes on or prior to the Closing Date.
2. If any event occurs that requires a mark-up or mark down of the records which an ICSD holds for its customers to reflect such customers' interest in the Notes, the Fiscal Agent will (to the extent known to it) promptly provide details of the amount of such mark up or mark down, together with a description of the event that requires it, to the ICSDs (through the CSP) to ensure that the IOA of the Notes remains at all times accurate.
3. The Fiscal Agent will at least monthly reconcile its record of the IOA of the Notes with information received from the ICSDs (through the CSP) with respect to the IOA maintained by the ICSDs for the Notes and will promptly inform the ICSDs (through the CSP) of any discrepancies.
4. The Fiscal Agent will promptly assist the ICSDs (through the CSP) in resolving any discrepancy identified in the IOA of the Notes.
5. The Fiscal Agent will promptly provide to the ICSDs (through the CSP) details of all amounts paid by it under the Notes.
6. The Fiscal Agent will (to the extent known to it) promptly provide to the ICSDs (through the CSP) notice of any changes to the Notes that will affect the amount of, or date for, any payment due under the Notes.
7. The Fiscal Agent will (to the extent known to it) promptly provide to the ICSDs (through the CSP) copies of all information that is given to the Noteholders.
8. The Fiscal Agent will promptly pass on to the Issuer all communications it receives from the ICSDs directly or through the CSP relating to the Notes.
9. The Fiscal Agent will (to the extent known to it) promptly notify the ICSDs (through the CSP) of any failure by the Issuer to make any payment or delivery due under the Notes when due.