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**MASTER AGENCY TERMS**

**for**

**GPF METALS PLC**

**GPF Physical Metal ETC Securities Programme**

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## Introduction

- (A) These Master Agency Terms have been prepared by GPF Metals plc (the “**Issuer**”), to be used for Series issued by the Issuer under its GPF Physical Metal ETC Securities Programme (the “**Programme**”).
- (B) Each Series will be constituted by a separate Trust Deed (as defined below) pursuant to an Issue Deed (as defined below) and secured by separate Security Documents.
- (C) Upon the execution of the relevant Issue Deed relating to a Series by or on behalf of the persons party thereto in the capacities of (i) Issuer and (ii) Agent and (iii) Administrator and (iv) Trustee and (v) Security Trustee, such persons shall be deemed to have entered into an agency agreement in respect of such Series. The “**relevant Agency Agreement**” shall mean the agency agreement entered into by such parties by the execution of the relevant Issue Deed in the form of these Master Agency Terms (as amended and/or supplemented by the Issue Deed) and as such Agency Agreement may be amended, supplemented, novated or replaced from time to time”.

## 1 Interpretation

### 1.1 Definitions

Capitalised terms used in these Master Agency Terms but not otherwise defined shall have the meanings given to them in either the relevant Trust Deed or the relevant Conditions and the following terms shall have the following meanings:

“**Agent**” means, for the purposes of the relevant Agency Agreement only, the Principal Paying Agent, the Registrar and the Transfer Agent(s) appointed in respect of the relevant Series as specified in the relevant Issue Deed.

“**Authorised Person**” has the meaning given to it in Clause 14.10 (*List of Authorised Persons*).

“**Authority**” means any competent regulatory, prosecuting, tax or governmental authority in any jurisdiction.

“**Code**” means the U.S. Internal Revenue Code of 1986.

“**Common Service Provider**” means, in relation to a Series where the relevant Global Registered Security is held under the NSS, the common service provider for Euroclear and Clearstream, Luxembourg appointed in respect of such ETC Securities.

“**Conditions**” means the terms and conditions of the relevant Series comprising the master terms and conditions specified in the Issue Deed relating to the relevant Series as supplemented and/or varied or completed, as applicable, by the relevant Final Terms and the provisions of any Global Registered Security.

“**ETC Securities Regulations**” means the regulation referred to in Clause 10 (*Regulations Concerning ETC Securities*).

“**FATCA**” means (i) sections 1471 to 1474 of the Code; (ii) any similar or successor legislation to sections 1471 to 1474 of the Code; (iii) any agreement described in section 1471(b) of the Code; (iv) any regulations or guidance pursuant to any of the foregoing; (v) any official interpretations of any of the foregoing; (vi) any intergovernmental agreement to facilitate the implementation of any of the foregoing (an “**IGA**”); or (vii) any law implementing an IGA.

**“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, any regulations or agreements thereunder, any official interpretations thereof, or any law implementing an intergovernmental approach thereto.

**“Information Reporting Regime”** means (i) the common standard on reporting and due diligence for financial account information developed by the Organisation for Economic Co-operation and Development, bilateral and multilateral competent authority agreements, and treaties facilitating the implementation thereof, and any law implementing any such common standard, competent authority agreement, intergovernmental agreement, or treaty, (ii) Council Directive 2011/16/EU on administrative cooperation in the field of taxation and any law implementing such Council Directive and (iii) FATCA.

**“Instructions”** means any and all instructions (including directions, notices and consents) from an Authorised Person of the Issuer (prior to the enforcement of the Security in respect of the Series) or the Security Trustee (following the enforcement of the Security in respect of the Series) effected through any electronic medium or system or manually as provided in the relevant Agency Agreement.

**“Irish Law Security Trust Deed”** means, in respect of a Series, the Irish law security trust deed entered into as a deed in the form of the Master Irish Law Security Trust Terms dated on or about the Series Issue Date created by entry into of the Issue Deed for the first Tranche of such Series by the Issuer, the Security Trustee, the Administrator and any other parties specified in such Issue Deed as being a party to such Irish Law Security Trust Deed, as amended and/or supplemented by the Issue Deed and as such Irish Law Security Trust Deed is amended, supplemented, novated or replaced from time to time.

**“Issue Deed”** means, in respect of a Series, the issue deed made between, amongst others, the Issuer, the Trustee, the Security Trustee and any other parties specified therein and which constitutes such Series (as amended, supplemented, novated or replaced from time to time) and which will be entered into at the time of the first Tranche of ETC Securities for that Series and which will apply, without further action and without the need for re-execution or execution of a new Issue Deed, to any further Tranches of that Series.

**“Master Agency Terms”** means, in respect of a Series, the master agency terms relating to the Programme specified in the Issue Deed relating to such Series, as amended, supplemented, novated or replaced from time to time in respect of that Series, whether in the Issue Deed or otherwise in accordance with the Conditions;

**“Master Irish Law Security Trust Terms”** means, in respect of a Series, the master Irish law security trust terms relating to the Programme specified in the relevant Issue Deed in relation to such Series, as amended, supplemented, novated or replaced from time to time in respect of that Series, whether in the Issue Deed or otherwise in accordance with the Conditions.

**“Master Trust Terms”** means, in respect of a Series, the master trust terms relating to the Programme specified in the Issue Deed in relation to such Series, as amended, supplemented, novated or replaced from time to time in respect of that Series, whether in the Issue Deed or otherwise in accordance with the Conditions.

**“Register”** means the register referred to in Clause 9 (*Additional Duties of the Registrar*).

**“relevant Series”** means the Series constituted by the relevant Trust Deed as identified in the relevant Issue Deed incorporating these Master Agency Terms and shall include each Tranche

of ETC Securities which are to be consolidated to form a single series with the ETC Securities of such Series with effect from the Issue Date of such Tranche.

**"Taxes"** means all taxes, levies, imposts, charges, assessments, deductions, withholdings and related liabilities, including additions to tax, penalties and interest imposed on or in respect of: the transactions effected under the relevant Agency Agreement (including stamp duties or financial transaction taxes) or the Issuer (including its customers).

**"Trust Deed"** means, in respect of a Series, the trust deed entered into as a deed in the form of the Master Trust Terms dated on or about the Series Issue Date created by entry into of the Issue Deed for the first Tranche of such Series by the Issuer, the Trustee, the Administrator and any other parties specified in such Issue Deed as being a party to such Trust Deed, as amended and/or supplemented by such Issue Deed and as such Trust Deed is amended, supplemented, novated or replaced from time to time

**"United States"** or **"U.S."** means the United States of America.

## 1.2 Construction of certain references

References to:

- 1.2.1 costs, charges, remuneration or expenses include any value added, turnover or similar tax charged in respect thereof;
- 1.2.2 an action, remedy or method of judicial proceedings for the enforcement of creditors' rights include references to the action, remedy or method of judicial proceedings in jurisdictions other than Ireland as shall most nearly approximate thereto;
- 1.2.3 any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof, or any statutory instrument, order or regulation made thereunder or under such modification or re-enactment;
- 1.2.4 Clauses and Schedules shall be construed as references to, respectively, the Clauses and Schedules to these Master Agency Terms;
- 1.2.5 the Issuer, any Transaction Party and any other person include its successors in title, permitted assigns and permitted transferees; and
- 1.2.6 **"ETC Securities"** are, unless the context otherwise requires, to the ETC Securities of the relevant Series for the time being outstanding and include any replacement ETC Securities issued pursuant to the Conditions only and not to all ETC Securities that may be issued under the Programme.

## 1.3 Headings

Headings shall be ignored in construing these Master Agency Terms.

## 1.4 Contracts

References in these Master Agency Terms to these Master Agency Terms or any other document are to these Master Agency Terms or those documents as amended, supplemented or replaced from time to time and include any document which amends, supplements or replaces them.

## 1.5 **Schedules**

The Schedules are part of these Master Agency Terms and have effect accordingly.

## 1.6 **Variations**

All references in these Master Agency Terms to an agreement, instrument or other document shall be construed as a reference to that agreement, instrument or document as the same may be amended, modified, varied or supplemented from time to time in accordance with its terms.

## 1.7 **Alternative Clearing System**

References in these Master Agency Terms to the Clearing Systems shall, wherever the context so permits, be deemed to include reference to any additional or alternative clearing system approved by the Issuer, the Trustee and the Principal Paying Agent. In the case of Global Registered Securities held under the NSS, such alternative clearing system must also be authorised to hold such ETC Securities as eligible collateral for Eurosystem monetary policy and intra-day credit operations.

## 2 **Appointment and Duties**

### 2.1 **Principal Paying Agent**

In relation to the relevant Series, the Issuer appoints the person executing the Issue Deed for the purposes of entering into the relevant Agency Agreement and for the purposes of constituting such Series in the capacity of Principal Paying Agent at its specified office as (i) Principal Paying Agent and (ii) Paying Agent in accordance with the Conditions and the provisions of the relevant Agency Agreement.

### 2.2 **Registrar**

In relation to the relevant Series, the Issuer appoints the person executing the Issue Deed for the purposes of entering into the relevant Agency Agreement and for the purposes of constituting such Series in the capacity of Registrar at its specified offices as Registrar in accordance with the Conditions and the provisions of the relevant Agency Agreement.

### 2.3 **Transfer Agent(s)**

In relation to the relevant Series, the Issuer appoints the person executing the Issue Deed for the purposes of entering into the relevant Agency Agreement and for the purposes of constituting such Series in the capacity of Transfer Agent at its specified offices as Transfer Agent in accordance with the Conditions and the provisions of the relevant Agency Agreement.

### 2.4 **Agents' duties**

The obligations of each of the Agents are several and not joint. Each Agent shall be obliged to perform only such duties as are specifically set out in the relevant Agency Agreement, the Conditions and any other Transaction Document to which it is a party and any duties necessarily incidental to them (including, without limitation, the duties and obligations in Schedule 2 (*Obligations regarding ETC Securities held under the NSS*) in the case of the Principal Paying Agent where the relevant ETC Securities of a Series are held under the NSS. No implied duties or obligations shall be read into any such documents. No Agent shall be obliged to perform

additional duties set out in any Final Terms and thereby incorporated into the Conditions unless it shall have previously agreed to perform such duties. If the Conditions are amended on or after a date on which any Agent accepts any appointment in a way that affects the duties expressed to be performed by such Agent, it shall not be obliged to perform such duties as so amended unless it has first approved the relevant amendment. No Agent shall be under any obligation to take any action under any Agency Agreement that it expects, and has so notified the Issuer in writing, will result in any expense to or liability of such Agent, the payment of which is not, in its opinion, assured to it within a reasonable time. In the case of any Global Registered Securities which are held under the NSS, each of the Agents (other than the Registrar) agrees that if any information required by the Registrar to perform the duties set out in Schedule 2 (*Obligations regarding ETC Securities held under the NSS*) becomes known to it, it will promptly provide such information to the Registrar. In acting under the relevant Agency Agreement and in connection with the ETC Securities, each Agent shall act solely as an agent of the Issuer (and, in the circumstances referred to in Clause 2.6 (*Payment to the Principal Paying Agent*), the Security Trustee and will not assume any obligations towards or fiduciary duty or any relationship of agency or trust for or with any of the owners or holders of the ETC Securities or any person other than the Issuer and the Security Trustee.

## 2.5 **Number of ETC Securities Outstanding**

On each Scheduled Valuation Day, the Registrar shall determine the number of ETC Securities outstanding and notify such determinations to the Issuer and all other Transaction Parties (other than the Authorised Participant(s)) by the time which shall be separately agreed between the parties from time to time. Any failure to make the entries in the records of the Clearing Systems shall not affect such discharge.

## 2.6 **Agents to act for Security Trustee**

At any time after the Security relating to the relevant Series has become enforceable, the Security Trustee may, so far as permitted by applicable law and by notice in writing to the Issuer and the Principal Paying Agent, the Registrar and the Transfer Agent(s), require the Principal Paying Agent, the Registrar and the Transfer Agent(s) (until notified by the Security Trustee to the contrary) to:

- 2.6.1 act as agent or agents of the Security Trustee under the provisions of the relevant Irish Law Security Trust Deed and the relevant Series *mutatis mutandis* on the terms of the relevant Agency Agreement (with consequential amendments as necessary and except that the Security Trustee's liability under the relevant Agency Agreement for the indemnification, remuneration and all other expenses of the Principal Paying Agent, the Registrar and the Transfer Agent(s) (if any) will be limited to the amounts for the time being held by the Security Trustee in respect of the relevant Series on the terms of the relevant Irish Law Security Trust Deed and which are available (after application in accordance with the relevant order of priority set out in the Conditions and the relevant Irish Law Security Trust Deed) to discharge such liability) and thereafter to hold all Certificates of such Series and all moneys, documents and records held by them in respect of ETC Securities and all ETC Securities in respect of such Series to the order of the Security Trustee; or
- 2.6.2 deliver all Certificates of such Series and all moneys, assets, documents and records held by them in respect of the relevant Series and all ETC Securities in respect of such

Series to or to the order of the Security Trustee or as the Security Trustee directs in such notice.

## **2.7 Notices of change of Trustee or Security Trustee**

The Issuer shall forthwith give notice to each of the Agents of any change in the person or persons comprising the Trustee or the Security Trustee.

## **2.8 Common Safekeeper**

In relation to each Series where the relevant Global Registered Security is held under the NSS, the Issuer hereby authorises and instructs the Principal Paying Agent to elect either of Euroclear or Clearstream, Luxembourg as Common Safekeeper. From time to time, the Issuer and the Agent may agree to vary this election. 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 in relation to any such issue and agrees that no liability shall attach to the Principal Paying Agent in respect of any such election made by it.

## **2.9 Acknowledgement**

Each of the parties hereto hereby consents to and acknowledges the provisions regarding the Security granted by the Issuer in respect of its rights under the relevant Agency Agreement and the other Transaction Documents set out in Clause 3 (*Security and Secured Property*) of the Irish Law Security Trust Deed.

## **3 Issue of ETC Securities**

### **3.1 Preconditions to Issue**

The Issuer shall not agree to any Issue Date unless it is a Business Day. No later than three Business Days before the relevant Series Issue Date if the ETC Securities are intended to be cleared through a Clearing System other than (i) Euroclear or (ii) Clearstream, Luxembourg, the Issuer shall inform the Principal Paying Agent of its wish to issue such ETC Securities and shall agree with the Principal Paying Agent the procedure for issuing such ETC Securities, which agreement shall cover the time, date and place for the delivery (if any) of the relevant Global Registered Security by the Principal Paying Agent, whether such delivery (if any) is to be free of payment or against payment, an appropriate method for determining non-U.S. beneficial ownership of such ETC Securities in accordance with applicable U.S. law and the method by which the Principal Paying Agent is to receive any payment, and hold any moneys, on behalf of the Issuer.

### **3.2 Notification**

The Issuer shall, in respect of each Tranche of ETC Securities of the relevant Series, notify and/or confirm and/or procure that the Administrator notifies and/or confirms to the Principal Paying Agent by fax or in writing or by electronic secure mail if so agreed between the Issuer and the Principal Paying Agent:

3.2.1 with respect to the issue of ETC Securities on the Series Issue Date and any Subscription Order, the Issue Price per ETC Security and the Subscription Settlement Amount;



- 3.2.2 with respect to Buy-Back Orders, the Buy-Back Settlement Amount; and
- 3.2.3 such other information as the Principal Paying Agent requires for it to carry out its functions as contemplated by this Clause.

### 3.3 Issue of ETC Securities

Upon receipt by the Principal Paying Agent of the information and Instructions enabling it to do so, the Principal Paying Agent shall notify the Registrar of all relevant information, whereupon the Registrar shall complete one or more Certificates in an aggregate nominal amount equal to that of the Tranche to be issued (unless the Principal Paying Agent is to do so in its capacity as, or as agent for, the Registrar), authenticate each Certificate (or cause its agent on its behalf to do so) and deliver them to the Principal Paying Agent not later than the time specified by the Principal Paying Agent (which shall be no earlier than one Business Day after receipt by the Registrar of such Instructions).

### 3.4 Delivery of Certificates

Following receipt of any Certificate the Principal Paying Agent shall (in the case of any unauthenticated Certificate, after first authenticating it as, or as agent for, the Registrar) deliver it:

3.4.1 if the relevant Series is to be cleared through a Clearing System, on the Series Issue Date:

- (a) save in the case of a Global Registered Security which is to be held under the NSS, to the Common Depository or to such Clearing System or other depository for a Clearing System as shall have been agreed between the Issuer and the Principal Paying Agent; and
- (b) in the case of a Global Registered Security which is held under the NSS, to the Common Safekeeper together with instructions to the Common Safekeeper to effectuate the same,

together with instructions to the clearing systems to whom (or to whose depository or Common Safekeeper) such Global Registered Security has been delivered to credit the underlying ETC Securities represented by such Global Registered Security to the securities account(s) at such clearing systems as have been notified to the Principal Paying Agent by the Issuer on a delivery against payment basis or, if notified to the Principal Paying Agent by the Issuer, on a delivery free of payment basis; or

3.4.2 otherwise, at such time, on such date, to such person and in such place as may have been agreed between the Issuer and the Principal Paying Agent.

Where the Principal Paying Agent or Registrar delivers any authenticated Global Registered Security to the Common Safekeeper for effectuation using electronic means, it is authorised and instructed to destroy the Global Registered Security retained by it following its receipt of confirmation from the Common Safekeeper that the relevant Global Registered Security has been effectuated. The Principal Paying Agent shall immediately notify the Registrar if for any reason a Certificate is not delivered in accordance with the Issuer's Instructions. Failing any such notification, the Registrar shall cause an appropriate entry to be made in the Register to

reflect the issue of the ETC Security to the person(s) whose name(s) and address(es) appear(s) on each such Certificate on the Issue Date (if any).

### 3.5 **Clearing Systems**

In delivering any Global Registered Security in respect of the relevant Series in accordance with Clause 3.4.1, the Principal Paying Agent shall give instructions to the Clearing System to hold the ETC Securities represented by it to the order of the Principal Paying Agent pending transfer to the securities account(s) referred to in Clause 3.4.1. Upon receipt of confirmation from the Administrator that the relevant Metal, or in the case of Base Metals, the Bill of Lading, failing which, LME Warrants, for the relevant Series of ETC Securities has been received by the Custodian the Principal Paying Agent shall instruct the Clearing Systems to transfer the relevant ETC Securities to the securities account(s) referred to in Clause 3.4.1. For so long as any such ETC Securities continue to be held to the order of the Principal Paying Agent, the Principal Paying Agent shall hold such ETC Securities to the order of the Issuer.

Notwithstanding anything to the contrary in the relevant Authorised Participant Agreement, the settlement of all further issuances of ETC Securities of the relevant Series of ETC Securities shall be made on a free-of-payment basis and the ETC Securities shall only be delivered to the Authorised Participant following confirmation by the Custodian to the Issuer and the Administrator that the relevant Metal has been received in the Allocated Account for the relevant Series of ETC Securities. Upon receipt of such confirmation by the Custodian, the Administrator will notify the Principal Paying Agent who will arrange for the relevant ETC Securities to be transferred to the security account of the relevant Authorised Participant.

### 3.6 **Signing of ETC Securities**

Subject to Clause 3.12 (*Further Issues*), the Certificates shall be signed manually, in facsimile or via other electronic means on behalf of the Issuer by a duly authorised signatory of the Issuer. The Issuer shall promptly notify the Principal Paying Agent of any change in the names of the person or persons whose signature is to be used on any ETC Security and shall, if necessary, provide new master Certificates reflecting such changes. The Issuer may however adopt and use the signature of any person who at the date of signing an ETC Security is a duly authorised signatory of the Issuer even if, before the ETC Security is issued, he ceases for whatever reason to hold such office and the ETC Securities issued in such circumstances shall nevertheless represent valid and binding obligations of the Issuer. Certificates shall be printed in accordance with all applicable legal and stock exchange requirements.

### 3.7 **Details of ETC Securities delivered**

As soon as practicable after delivering any Global Registered Security, the Principal Paying Agent or the Registrar (as the case may be) shall supply to the Issuer, the Trustee and the other Agents, all relevant details of the ETC Securities delivered in such format as it shall from time to time agree with the Issuer.

### 3.8 **Cancellation**

If any ETC Security in respect of which information has been supplied under Clause 3.2 (*Payment to the Principal Paying Agent*) is not to be issued on a given Issue Date, the Issuer shall immediately (and, in any event, prior to the Issue Date) notify the Principal Paying Agent and the Registrar. Upon receipt of such notice, neither the Principal Paying Agent nor the

Registrar shall thereafter issue or release the relevant ETC Securities but shall cancel and, unless otherwise instructed by the Issuer, destroy them.

### **3.9 Notice to Relevant Stock Exchange**

If the ETC Securities of the relevant Series are to be listed on a Relevant Stock Exchange, the Principal Paying Agent shall forward a copy of the Base Prospectus and the relevant Final Terms relating to the relevant Series to the Relevant Stock Exchange(s) not later than the day prior to the date such listing takes effect.

### **3.10 Operating Procedures Memorandum**

The Issuer shall furnish a copy of any operating procedures memorandum and guidelines relating to the issue, repurchase and redemption of ETC Securities from time to time in effect to each Agent.

### **3.11 Authorised Representatives**

On or prior to the execution of the relevant Issue Deed the Issuer and each Agent in respect of the relevant Series shall provide to each party to the relevant Agency Agreement a certificate of incumbency or power of attorney certifying the names, titles and specimen signatures of the persons authorised on its behalf to execute the relevant Issue Deed, the ETC Securities and to otherwise give instructions and notices in relation to the relevant Series, the relevant Agency Agreement and the other Transaction Documents and to take any other action in relation to the relevant Agency Agreement and the other Transaction Documents (including evidence satisfactory to such parties as to the authority of the persons authorising such persons) and shall as soon as reasonably practicable notify the parties to the relevant Agency Agreement if any person so listed ceases to be so authorised.

### **3.12 Further Issues**

Notwithstanding anything to the contrary elsewhere in the relevant Agency Agreement, following a Global Registered Security being produced in respect of the first Tranche of a Series of ETC Securities, instead of producing a new Global Registered Security for any subsequent Tranche of such Series, the Principal Paying Agent may annotate the existing Global Registered Security so as to reflect the increase of ETC Securities of such Series.

## **4 Payment**

### **4.1 Payment to the Principal Paying Agent**

The Issuer shall, or shall procure that its delegates or agents, by 10am on the Business Day prior to the date on which any payment in respect of the ETC Securities becomes due, transfer to an account specified by the Paying Agent in full in immediately available funds such amount as may be required for the purposes of such payment. In this Clause 4.1 (*Payment to the Principal Paying Agent*), the date on which a payment in respect of the ETC Securities becomes due means the first date on which the holder of an ETC Security could claim the relevant payment by transfer to an account under the Conditions, but disregarding the necessity for it to be a Business Day in any particular place of presentation.

### **4.2 Pre-advice of Payment**

The Issuer shall procure that the bank through which the payment to the Principal Paying Agent required by Clause 4.1 (*Payment to the Principal Paying Agent*) is to be made shall irrevocably confirm to the Principal Paying Agent by fax or authenticated SWIFT message on the second Business Day before the due date for any such payment that it will make such payment (or by such time and/or on such date as may be specified for this purpose in the relevant Issue Deed or as otherwise agreed by the parties to the relevant Agency Agreement).

#### **4.3 Payment by Agents**

Subject as provided in Clause 4.6 (*Suspension and resumption of Payment by Agents*), each of the Registrar and the Transfer Agent(s), in the case of the final payment in respect of any Series of ETC Securities, and the Registrar (or the Principal Paying Agent on behalf of the Registrar), in the case of all other payments in respect of the ETC Securities shall, subject to and in accordance with the Conditions, pay or cause to be paid on behalf of the Issuer on and after each due date therefor the amounts due in respect of the ETC Securities and shall be entitled to claim any amounts so paid from the Principal Paying Agent, provided that no Agent shall be required to make payment until such time as it has received funds and has been able to identify or confirm receipt of funds.

#### **4.4 Notification of non-payment**

The Principal Paying Agent shall forthwith notify by fax or electronic mail each of the other Agents, the Issuer and the Trustee if it has not received the amount referred to in Clause 4.1 (*Payment to the Principal Paying Agent*) by the time specified for its receipt, unless it is satisfied that it will receive such amount.

#### **4.5 Payment after failure to pre-advise or late payment**

The Principal Paying Agent shall forthwith notify by email each of the other Agents, the Issuer and each other Transaction Party, and, if requested by the Trustee, the ETC Holders if at any time following the giving of a notice by the Principal Paying Agent under Clauses 4.2 (*Pre-advise of Payment*) or 4.4 (*Notification of non-payment*) either any payment provided for in Clause 4.1 (*Payment to the Principal Paying Agent*) is made on or after its due date but otherwise in accordance with the relevant Agency Agreement or the Principal Paying Agent is satisfied that it will receive such payment.

#### **4.6 Suspension and resumption of Payment by Agents**

Upon receipt of a notice from the Principal Paying Agent under Clause 4.4 (*Notification of non-payment*), each Agent shall cease making payments in accordance with Clause 4.3 (*Payment by Agents*) as soon as is reasonably practicable. Upon receipt of a notice from the Principal Paying Agent under Clause 4.5 (*Payment after failure to pre-advise or late payment*), each Agent shall make, or shall recommence making, payments in accordance with Clause 4.3 (*Payment by Agents*). For the avoidance of doubt, unless and until the full amount of any payment has been made to the Principal Paying Agent in accordance with Clause 4.1 (*Payment to the Principal Paying Agent*) or unless and until the Principal Paying Agent is satisfied that such payment will be made, neither it nor any of the Agents shall be bound to make payments in respect of the relevant Series as aforesaid.

#### **4.7 Method of Payment to Principal Paying Agent**

All sums payable to the Principal Paying Agent hereunder shall be paid in the currency in which such sums are denominated and in immediately available or same day funds to such account(s) with such bank(s) as the Principal Paying Agent may from time to time notify to the Issuer and the Trustee. The Principal Paying Agent shall not be required to segregate moneys except as required by law.

#### **4.8 Moneys held by Principal Paying Agent**

Subject as provided in Clause 14.9 (*Funds received subject to Security*), the Principal Paying Agent may deal with moneys paid to it under the relevant Agency Agreement in the same manner as other moneys paid to it as a banker by its customers except that (i) it may not exercise any lien, right of set-off or similar claim in respect of them and (ii) it shall not be liable to anyone for interest on any sums held by it under the relevant Agency Agreement. No moneys paid to an Agent are required to be segregated by it unless otherwise required by applicable law.

#### **4.9 Partial Payments**

Upon making payment of only part of the amount payable in respect of any ETC Security or being informed of any such partial payment by a Transfer Agent, the Registrar shall make a note of the details of such payment in the Register.

#### **4.10 Payments by Principal Paying Agent**

Pursuant to the terms of the Trust Deed, prior to any enforcement of the Security, the Trustee hereby acknowledges and agrees that the following is automatically released from the Security without the need for any notice or other formalities: sums held by the Principal Paying Agent, the Registrar, the Account Bank, the Custodian and/or the Primary Sub-Custodian, as applicable, to the extent required for payment of any sum or delivery of any assets in respect of the ETC Securities and/or the other Transaction Documents which is due and payable to be duly made or due and deliverable to be duly made, as the case may be (which, for the avoidance of doubt, shall include, without limitation, amounts payable or assets deliverable in respect of principal, interest or default interest (if any) to holders of ETC Securities in accordance with the Conditions).

#### **4.11 Issuer notification to Principal Paying Agent, Trustee and Security Trustee**

The Issuer shall, promptly upon it becoming aware thereof, give notice to the Principal Paying Agent, Trustee and Security Trustee if, as contemplated by Condition 11(a) (*Payments Net of Taxes*), the Issuer is required by applicable law to make any payment of principal, premium or interest under the ETC Securities subject to any withholding or deduction for any taxes, duties, assessments or governmental charges of whatever nature.

#### **4.12 Reimbursement by Issuer**

If the Principal Paying Agent makes any payment in respect of the ETC Securities on or after the due date or becomes liable to make such payment, on the assumption that the corresponding payment by the Issuer has been or will be made, and no such payment is made by the Issuer, then the Issuer shall reimburse the Principal Paying Agent for the relevant amount and pay interest to the Principal Paying Agent on such amount from the date on which it made such payment until the date of reimbursement, at a rate equal to two (2) per cent. per annum

above the cost to the Principal Paying Agent of funding the amount paid out as certified by the Principal Paying Agent and expressed as a rate per annum (and calculated on the basis of actual number of days elapsed in a 360 day year). For the avoidance of doubt, the Principal Paying Agent will have no obligation whatsoever to make any payment unless and until it has been able to confirm receipt of funds from the Issuer to its satisfaction.

#### 4.13 **Taxation**

##### 4.13.1 **Agent right to withhold**

Notwithstanding any other provision of the relevant Agency Agreement, each Agent shall be entitled to make a deduction or withholding from any payment which it makes pursuant to the relevant Agency Agreement and/or under the ETC Securities for or on account of any Taxes, or other sums required by any applicable law to be withheld or deducted, if and only to the extent so required by applicable law, in which event such Agent shall make such payment after such deduction or withholding has been made and shall account to the relevant Authority within the time allowed for the amount so deducted or withheld or, at its option, shall reasonably promptly after making such payment return to the Issuer the amount so deducted or withheld, in which case, the Issuer shall so account to the relevant Authority for such amount, and no Agent shall have any obligation to pay any additional amounts in respect of any such deduction or withholding. For the avoidance of doubt, any withholding required by an Information Reporting Regime is a deduction or withholding which is deemed to be required by applicable law for the purposes of this Clause 4.13.1 (*Agent right to withhold*).

##### 4.13.2 **Notice of possible withholding under an Information Reporting Regime**

The Issuer shall promptly notify each Agent if it determines that any payment to be made by an Agent pursuant to the relevant Agency Agreement and/or under the ETC Securities is a payment which could be subject to withholding or deduction imposed pursuant to an Information Reporting Regime if such payment were made to a recipient that is generally unable to receive payments free from such withholding or deduction, and the extent to which the relevant payment is so treated, provided, however, that the Issuer's obligation under this Clause 4.13.2 (*Notice of possible withholding under an Information Reporting Regime*) shall apply only to the extent that such payments are so treated by virtue of characteristics of the Issuer, the ETC Securities, or both.

##### 4.13.3 **Right to redirect**

In the event that the Issuer determines in its sole discretion that any deduction or withholding for or on account of any Taxes will be required by applicable law in connection with any payment due to any of the Agents on any ETC Securities, then the Issuer will be entitled to redirect or reorganise any such payment in any way that it sees fit in order that the payment may be made without such deduction or withholding provided that any such redirected or reorganised payment is made through a recognised institution of international standing and otherwise made in accordance with the relevant Agency Agreement and the Conditions. The Issuer will promptly notify the Agents, the Trustee and the Security Trustee of any such redirection or reorganisation. For the avoidance of doubt, FATCA Withholding is a deduction or withholding which is deemed to be required by applicable law for the purposes of this Clause 4.13.3 (*Right to redirect*).

#### 4.13.4 **Mutual understanding regarding information reporting and collection obligations**

The Issuer and each Agent (the “**Providing Party**”) shall, within 10 Business Days of a written request by the Issuer or an Agent (the “**Requesting Party**”), supply to the Requesting Party such forms, documentation and other information relating to it, its operations or the ETC Securities, or any tax forms relating to the ETC Holders that are in the possession of the Providing Party or that are reasonably available to the Providing Party and that the Providing Party can obtain using reasonable efforts, as the Requesting Party reasonably requests for the purposes of the Requesting Party’s compliance with applicable law and the Providing Party shall notify the Requesting Party reasonably promptly if the Providing Party becomes aware that any of the forms, documentation or other information provided by it is (or becomes) inaccurate in any material respect; provided, however, that neither the Issuer nor any Agent shall be required to provide any forms, documentation or other information pursuant to this Clause 4.13.4 (*Mutual understanding regarding information reporting and collection obligations*) to the extent that:

- (a) any such form, documentation or other information (or the information required to be provided on such form or documentation) is not reasonably available to the Providing Party and cannot be obtained by the Providing Party using reasonable efforts; or
- (b) doing so would or might in the reasonable opinion of the Providing Party constitute a breach of any (a) applicable law, (b) fiduciary duty or (c) duty of confidentiality.

For the purposes of this Clause 4.13 (*Taxation*), “applicable law” shall be deemed to include (I) any rule or practice of any Authority by which the Issuer or any Agent is bound or with which it is accustomed to comply, (II) any agreement between any Authorities and (III) any agreement between any Authority and the Issuer or any Agent that is customarily entered into by institutions of a similar nature.

## 5 **Repayment**

If claims in respect of any ETC Security of the relevant Series become void or prescribed under the Conditions, the Principal Paying Agent shall forthwith repay to the Issuer the amount that would have been due on such ETC Security if it had been presented for payment before such claims became void or prescribed. Subject to Clause 14.9 (*Funds received subject to Security*), the Principal Paying Agent shall not be otherwise required or entitled to repay any sums received by it under the relevant Agency Agreement.

## 6 **Cancellation, Destruction, Records and Reporting Requirements**

### 6.1 **Cancellation**

All Certificates representing ETC Securities that are redeemed in full shall be cancelled forthwith by the Transfer Agent through which the ETC Securities are redeemed, paid or exchanged. Such Transfer Agent shall, as soon as practicable, send to the Registrar the details required by such person for the purposes of this Clause 6 (*Payment to the Principal Paying Agent*) and the cancelled Certificates.

## 6.2 **Cancellation by Issuer**

If the Issuer purchases any ETC Securities of the relevant Series that are to be cancelled in accordance with the Conditions, the Issuer shall forthwith cancel them or procure their cancellation, and inform the Registrar.

## 6.3 **Destruction**

Unless otherwise instructed by the Issuer, the Registrar (or its designated agent) shall destroy or procure the destruction of the cancelled ETC Securities in its possession and shall send the Issuer and the Trustee a certificate signed by a duly authorised officer giving the certificate numbers of such ETC Securities (or the Certificates representing them) in numerical sequence.

## 6.4 **Reporting requirements**

The Principal Paying Agent shall (on behalf of the Issuer) submit such reports or information as may be required from time to time in relation to the issue and purchase of the relevant Series by the Transaction Documents to which the Principal Paying Agent is a party, applicable law, regulations and guidelines promulgated by any governmental regulatory authority agreed between the Issuer and the Principal Paying Agent.

# 7 **Replacement ETC Securities**

## 7.1 **Replacement**

The Registrar (in such capacity the “**Replacement Agent**”) shall issue replacement ETC Securities in accordance with the Conditions, all applicable legal, regulatory and requirements of the Relevant Stock Exchange (if any) and the following provisions of this Clause 7 (*Replacement ETC Securities*).

## 7.2 **Cancellation**

The Replacement Agent shall cancel and, unless otherwise instructed by the Issuer, destroy any mutilated or defaced ETC Securities replaced by it and shall send the Issuer, the Trustee and the Principal Paying Agent a certificate giving the information specified in Clause 7.3 (*Notification*).

## 7.3 **Notification**

The Replacement Agent shall, on issuing a replacement ETC Security, forthwith inform the other Agents of its certificate number and of the certificate number of the one that it replaces.

## 7.4 **Presentation after replacement**

If an ETC Security that has been replaced is presented to an Agent for payment or exchange, that Agent shall forthwith inform the Registrar, which shall so inform the Issuer.

# 8 **Additional Duties of the Transfer Agent(s)**

The Transfer Agent to which a Certificate is presented for the transfer of ETC Securities represented by it shall forthwith notify the Registrar of (i) the name and address of the holder of the ETC Security(ies) appearing on such Certificate, (ii) the certificate number of such Certificate



and the nominal amount of the ETC Security(ies) represented by it, (iii) (in the case of a transfer of part only) the nominal amount of the ETC Security(ies) to be transferred, and (iv) the name and address of the transferee to be entered on the Register, and shall cancel such Certificate and forward it to the Registrar.

## 9 **Additional Duties of the Registrar**

The Registrar shall maintain a Register for each Series of ETC Securities in Luxembourg in accordance with the Conditions and the ETC Securities Regulations. The Register shall show the number of issued Certificates, their nominal amount, their date of issue and their certificate number (which shall be unique for each Certificate of a Series) and shall identify each ETC Security and record the name and address and payment details of its initial holder, all subsequent transfers and changes of ownership in respect of it, the names and addresses and payment details of its subsequent holders and the Certificate from time to time representing it. The Registrar shall within normal business hours in Luxembourg make the Register available to the Issuer, the Trustee, the Principal Paying Agent and the Transfer Agent(s) or any person authorised by any of them for inspection either electronically or otherwise and for the taking of copies and the Registrar shall deliver to such persons all such lists of holders of ETC Securities, either electronically or otherwise, their addresses and their holdings as they may request.

In relation to each Series of ETC Securities which is held under the NSS, the Registrar agrees to perform the additional duties set out in Schedule 2 (*Obligations regarding ETC Securities held under the NSS*).

## 10 **Regulations Concerning ETC Securities**

The Issuer may, subject to the Conditions, from time to time with the approval of the Trustee, the Principal Paying Agent, the Transfer Agent(s) and the Registrar, promulgate regulations concerning the carrying out of transactions relating to ETC Securities and the forms and evidence to be provided. All such transactions shall be made subject to the ETC Securities Regulations. The initial ETC Securities Regulations are set out in Schedule 1 (*Regulations concerning the Transfer and Registration of ETC Securities*) hereto.

## 11 **Documents and Forms**

### 11.1 **Principal Paying Agent**

The Issuer shall provide to the Principal Paying Agent in a sufficient quantity, for distribution among the relevant Agents as required by the relevant Agency Agreement or the Conditions:

11.1.1 all documents (including all notices) required under the relevant Series or by the Relevant Stock Exchange to be available for issue or inspection either electronically or otherwise during business hours (and the Transfer Agents shall make such documents available for collection or inspection either electronically or otherwise to the ETC Holders that are so entitled); and

11.1.2 forms of voting certificates, forms of proxy and block voting instructions, together with instructions as to how to complete, deal with and record the issue of such forms (and the Transfer Agents shall make such documents available to the relevant ETC Holders and carry out the other functions as required, in relation to electronic consent communications between Noteholders and the Clearing Systems).

## 11.2 Registrar

The Issuer shall provide the Registrar with enough blank Certificates (including Global Registered Securities) to meet the Transfer Agents' and the Registrar's anticipated requirements for Certificates upon the issue and transfer of each Series of ETC Securities and for the purpose of issuing replacement Certificates.

## 11.3 ETC Securities etc. held by Agents

Each Agent (i) acknowledges that all forms of ETC Securities delivered to and held by it pursuant to the relevant Agency Agreement shall be held by it in safekeeping only and it shall not be entitled to and shall not claim any lien or other security interest on such forms, (ii) shall only use such forms in accordance with the relevant Agency Agreement, (iii) shall maintain all such forms in safekeeping, (iv) shall take such security measures as may reasonably be necessary to prevent their theft, loss or destruction and (v) shall keep an inventory of all such forms and make it available to the Issuer, the Trustee and the other Agents at all reasonable times.

## 12 Fees and expenses

### 12.1 Fees

The Issuer shall pay to the Principal Paying Agent the fees and expenses in respect of the Agents' services as separately agreed with the Principal Paying Agent and the Issuer need not concern itself with their apportionment between the relevant Agents.

### 12.2 Costs

The Issuer shall also pay on demand all out-of-pocket expenses (including, without limitation, legal, fax and postage expenses) properly incurred by the Agents in connection with the duties and obligations performed by the Agents in accordance with the terms of the relevant Agency Agreement together with any applicable value added tax, sales, stamp, issue, registration, documentary or other taxes or duties.

## 13 Indemnity

### 13.1 Indemnity by the Issuer

Subject to the provisions of Clause 18 (*Limited Recourse and Non-Petition*), the Issuer shall indemnify each Agent against any loss, liability, cost, claim, action, demand or expense (including, but not limited to, all properly incurred costs, fees, charges and expenses paid or incurred in disputing or defending any of the foregoing) that it may incur or that may be made against it arising out of or in relation to or in connection with its appointment or the exercise of its functions, except such as may result from its own negligence, fraud or wilful default. Any Agent that effectively resigns its appointment pursuant to Clauses 15.2 (*Resignation*) and 15.3 (*Condition to resignation and termination*) shall still be permitted to make a claim under this Clause 13.1 (*Indemnity by the Issuer*) to the extent such claim relates to a loss, liability, cost, claim, action, demand or expense covered by this Clause 13.1 (*Indemnity by the Issuer*) that arose prior to such effective resignation.

### 13.2 Indemnity by the Agents

Each Agent shall severally indemnify the Issuer against any direct loss, liability, cost, claim, action, demand or expense (including, but not limited to, all properly incurred costs, charges and expenses paid or incurred in disputing or defending any of the foregoing) that the Issuer may incur or that may be made against it as a result of such Agent's negligence, fraud or wilful default. Any Agent that effectively resigns its appointment pursuant to Clauses 15.2 (*Resignation*) and 15.3 (*Condition to resignation and termination*) shall still be liable to the Issuer in respect of any claim the Issuer has under this Clause 13.2 (*Indemnity by the Agents*) to the extent such claim relates to a loss, liability, cost, claim, action, demand or expense covered by this Clause 13.2 (*Indemnity by the Agents*) that arose prior to such effective resignation.

### 13.3 **Survival of indemnity**

These indemnities shall survive the termination and expiry of the relevant Agency Agreement and/or the relevant Agents no longer being Agents under the relevant Agency Agreement.

## 14 **General**

### 14.1 **Agent liability to Issuer**

Each of the Agents will only be liable to the Issuer for direct losses, liabilities, costs, expenses and demands arising directly from the performance of its obligations under the relevant Agency Agreement suffered by or occasioned to the Issuer ("**Losses**") to the extent that such Agent has been negligent, fraudulent or in wilful default in respect of its obligations under the relevant Agency Agreement. For the avoidance of doubt, the failure of any of the Paying Agents to make a claim for payment on the Issuer, or to inform any other paying agent or Clearing System of a failure on the part of the Issuer to meet any such claim or to make a payment by the stipulated date, shall not be deemed to constitute negligence, fraud or wilful default on the part of such Paying Agent. The Agents shall not otherwise be liable or responsible for any losses, liabilities, costs, expenses or demands which may result from anything done or omitted to be done by it in connection with the relevant Agency Agreement.

### 14.2 **Indirect, consequential and punitive losses**

Under no circumstances shall any Agent be liable to, or be required to indemnify, the Issuer or any third party for (i) indirect, punitive, special or consequential losses or indirect, punitive or consequential damages of any kind whatsoever, including, but not limited to (ii) loss of business opportunity (iii) loss of goodwill or reputation or (iv) loss of profit, in each case to the extent any such losses arise in connection with the relevant Agency Agreement, notwithstanding that such losses were or may have been foreseeable or that such Agent was advised or was aware of the possibility of such losses and regardless of whether the claim to any such loss or damage under (i), (ii), (iii) or (iv) above is made in negligence, for breach of contract or otherwise.

### 14.3 **No agency or trust**

In acting under the relevant Agency Agreement the Agents shall have no obligation towards or relationship of agency or trust with the holder of any ETC Security of the relevant Series.

### 14.4 **Holder to be treated as owner**

Except as otherwise required by law, the Issuer and each Agent shall treat the holder of an ETC Security as its absolute owner as provided in the Conditions and shall not be liable for doing so.

#### 14.5 **No lien**

No Agent shall exercise any lien, right of set-off or similar claim against any holder of an ETC Security of the relevant Series in respect of moneys payable by it pursuant to the relevant Agency Agreement.

#### 14.6 **Taking of advice**

Each Agent may, at the expense of the Issuer, consult on any legal matter any legal or other professional advisers selected by it, who may be employees of or advisers to the Issuer, and it shall not be liable in respect of anything done, or omitted to be done, relating to that matter in accordance with the opinion of such adviser(s).

#### 14.7 **Reliance on documents etc.**

No Agent shall be liable in respect of anything done or suffered by it in reliance on an ETC Security or other document or information from any electronic or other source reasonably believed by it to be genuine and to have been signed or otherwise given or disseminated by the proper parties in each case received by it in connection with the performance of its duties under the relevant Agency Agreement.

#### 14.8 **Other relationships**

Any Agent and any other person, whether or not acting for itself, may acquire, hold or dispose of any ETC Security or other security (or any interest therein) of the Issuer or any other person, may enter into or be interested in any contract or transaction with any such person, and may act on, or as depositary, trustee or agent for, any committee or body of holders of securities of any such person, in each case with the same rights as it would have had if that Agent were not an Agent and need not account for any profit.

#### 14.9 **Funds received subject to Security**

All funds received from the Issuer in relation to the relevant Series and held by the Principal Paying Agent shall be subject to the Security created by or pursuant to the relevant Irish Law Security Trust Deed.

#### 14.10 **List of Authorised Persons**

The Issuer and, following the enforcement of the Security in respect of the relevant Series, the Security Trustee shall provide the Principal Paying Agent (for itself and for delivery to the Registrar, the Transfer Agent(s) and the Account Bank) with a copy of the certified list of persons authorised to take action on behalf of the Issuer, or following the enforcement of the Security in respect of the relevant Series, the Security Trustee, in connection with the relevant Agency Agreement ("**Authorised Persons**") and shall notify the Principal Paying Agent and each other Agent immediately in writing if any of such persons ceases to be so authorised or if any additional person becomes so authorised. Unless and until notified of any such change, each of the Agents shall be entitled to rely without any liability upon the certificate(s) delivered to them most recently, and all instructions given in accordance with such certificate(s) shall be binding upon the Issuer.

#### 14.11 **Agents entitled to assume performance**

No Agent shall have any responsibility to take any action or to do anything to find out if an Event of Default, an Early Redemption Event, a Disruption Event, a substitution of the Metal Reference Price Source or a resignation or termination of an Agent's appointment has occurred and until it receives express notice in writing to the contrary, each Agent may assume that no such event has occurred and that the Issuer and each Transaction Party is performing all its obligations under the Transaction Documents.

#### 14.12 **Action contrary to law**

Notwithstanding anything else herein contained, each Agent may refrain without liability from doing anything that would or might in its opinion be contrary to any law of any state or jurisdiction (including but not limited to Ireland, the United States of America or any jurisdiction forming a part of it and England & Wales) or any directive or regulation of any agency of any such state or jurisdiction and may without liability do anything which is, in its opinion, necessary to comply with any such law, directive or regulation.

#### 14.13 **Force Majeure**

Notwithstanding anything in the relevant Agency Agreement to the contrary, no Agent shall be responsible or liable for any delay or failure to perform under the relevant Agency Agreement or for any Losses resulting, in whole or in part, from or caused by any event beyond the reasonable control of such Agent or any Affiliate including without limitation: strikes, work stoppages, acts of war, epidemic, terrorism, acts of God, governmental actions, exchange or currency controls or restrictions, devaluations or fluctuations, interruption, loss or malfunction of utilities, communications or any computer (software or hardware) services, the application of any law or regulation in effect now or in the future, or any event in the country in which the relevant duties under the relevant Agency Agreement are performed, (including, but not limited to, nationalisation, expropriation or other governmental actions, regulation of the banking or securities industry, sanctions imposed at national or international level or market conditions) which may affect, limit, prohibit or prevent such performance in full or in part and in no event shall the Agent be obliged to substitute another currency for a currency whose transferability, convertibility or availability has been affected, limited, prohibited or prevented by such law, regulation or event.

#### 14.14 **Agents**

Any Agent may outsource, delegate and/or appoint agents, including its Affiliates, on such terms and conditions as it deems appropriate to perform its services hereunder. Provided that such Agent shall have exercised reasonable care in the selection and continued retention of any such agent, it shall not be in any way responsible for any liability incurred by reason of any misconduct or default on the part of any such agent or be bound to supervise or monitor the proceedings or acts of any such agent, provided that to the extent such Agent appoints an Affiliate agent under this Clause 14.13 (*Force Majeure*

Notwithstanding anything in the relevant Agency Agreement to the contrary, no Agent shall be responsible or liable for any delay or failure to perform under the relevant Agency Agreement or for any Losses resulting, in whole or in part, from or caused by any event beyond the reasonable control of such Agent or any Affiliate including without limitation: strikes, work stoppages, acts of war, epidemic, terrorism, acts of God, governmental actions, exchange or currency controls or restrictions, devaluations or fluctuations, interruption, loss or malfunction of utilities, communications or any computer (software or hardware) services, the application of any law or

regulation in effect now or in the future, or any event in the country in which the relevant duties under the relevant Agency Agreement are performed, (including, but not limited to, nationalisation, expropriation or other governmental actions, regulation of the banking or securities industry, sanctions imposed at national or international level or market conditions) which may affect, limit, prohibit or prevent such performance in full or in part and in no event shall the Agent be obliged to substitute another currency for a currency whose transferability, convertibility or availability has been affected, limited, prohibited or prevented by such law, regulation or event.

**Agents**), such Agent shall be liable for any Losses arising out of the fraud, negligence or wilful default of such Affiliate.

#### 14.15 **Information**

Each party shall provide promptly on request to any Agent such information as it shall reasonably require for the purpose of the discharge or exercise of its duties under the relevant Agency Agreement.

#### 14.16 **No obligation to monitor**

No Agent shall be under any obligation to monitor or supervise, enquire about or satisfy itself as to the functions or acts of any Transaction Party and shall be entitled to assume, in the absence of express notice in writing to the contrary, that each other Transaction Party is properly performing and complying with its obligations under the Transaction Documents to which it is party.

#### 14.17 **No obligation to expend monies**

No Agent shall be under any obligation to expend or risk its own funds, or to take any action under the relevant Agency Agreement, the Conditions or any other Transaction Document which it 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.

#### 14.18 **Reliance on Certificates**

Whenever in the performance of its duties under the relevant Agency Agreement or the Conditions, an Agent shall deem it desirable that any matter be established by the Issuer or any other Transaction Party prior to taking any action or refraining from any action or suffering any action under this Agency Agreement, the matter shall be deemed to be conclusively established by a certificate signed by two directors of the Issuer or, at any time during the enforcement of the Security by the Trustee, by an Authorised Person of the Trustee and delivered to the relevant Agent and the certificate shall be a full authorisation to such Agent for any action taken or not taken or suffered by it under the provisions of the relevant Agency Agreement in reliance upon the certificate.

#### 14.19 **No obligation to act on conflicting Instructions**

In the event that any Agent receives conflicting, unclear or equivocal Instructions, such Agent shall notify the Issuer as soon as possible, but be entitled not to take any action until such Instructions have been resolved or clarified to its satisfaction, and the relevant Agent shall not be or become liable in any way to any person for any failure to comply with any such conflicting, unclear or equivocal Instructions.

## 14.20 Sanctions

14.20.1 The Issuer covenants and represents that neither it nor any of its Affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the US Government, (including, without limitation, the Office of Foreign Assets Control of the US Department of the Treasury (“**OFAC**”) or the US Department of State), the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority (collectively “**Sanctions**”).

14.20.2 The Issuer covenants and represents that neither it nor any of its Affiliates, subsidiaries, directors or officers will use any repayments / reimbursements made pursuant to the relevant Agency Agreement, (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person.

14.20.3 Clauses 14.20.1 and 14.20.2 will not apply if and to the extent that they are or would be unenforceable by reason of breach of (i) any provision of Council Regulation (EC) No 2271/96 of 22 November 1996 (or any law or regulation implementing such Regulation in any member state of the EEA or the United Kingdom or (ii) any similar blocking or anti-boycott law. However, if the aforementioned Council Regulation purports to make compliance with any portion of this Clause 14.20 (*Sanctions*) unenforceable by the Issuer, the Issuer will nonetheless take such measures as may be necessary to ensure that the Issuer does not use the services in any manner which would cause the Agents to violate Sanctions applicable to the Agents.

## 15 Changes in Agents

### 15.1 Appointment and termination

In relation to the relevant Series, the Issuer may at any time with the prior written approval of the Trustee appoint additional Agents and/or vary or terminate the appointment of any Agent by giving to the Principal Paying Agent and that Agent at least 30 calendar days’ notice to that effect, which notice shall expire at least 15 calendar days before or after any due date for payment in respect of the ETC Securities of that Series. Upon the relevant Issue Deed relating to the relevant Series being executed by or on behalf of the Issuer and any person appointed as an Agent acceding to such Issue Deed, such person shall become a party to the relevant Agency Agreement as if originally named in it and shall act as such Agent in respect of that or those Series in respect of which it is appointed.

### 15.2 Resignation

In relation to the relevant Series, any Agent may resign its appointment at any time, without giving any reason and without being responsible for any losses or liabilities incurred in connection with such resignation by giving the Issuer, the Trustee and the Principal Paying Agent at least 30 calendar days’ notice to that effect, which notice shall expire at least 15 calendar days before or after any due date for payment in respect of that Series.

### 15.3 Condition to resignation and termination

Without prejudice to Clause 15.5 (*Automatic termination*), no such resignation or termination of the appointment of an Agent pursuant to Clause 15.1 (*Appointment and termination*) shall, however, take effect until a replacement Agent (which in relation to the Principal Paying Agent shall be a bank or trust company) has been appointed and no resignation or termination of the appointment of a Paying Agent shall take effect if there would not then be Paying Agents as required by the Conditions or any Relevant Stock Exchange; provided that if the Issuer shall fail within a period of 15 calendar days of notice of resignation by any relevant Agent to appoint a successor to such Agent in circumstances where a successor for such Agent is required to be appointed pursuant to the Conditions of the relevant Series, the Agent that has given notice of resignation shall be entitled to select a leading international bank of recognised good standing and repute acceptable to the Issuer and the Trustee to act as successor Agent and the Issuer shall appoint that bank as the successor Agent. The Issuer undertakes to obtain the prior written approval of the Trustee (such approval to be given promptly and not to be unreasonably withheld) to any appointment or termination by it and to take appropriate steps to notify any such resignation, appointment or termination to the holders of the ETC Securities pursuant to Clause 15.8 (*Notices*).

#### **15.4 Change of office**

If an Agent changes the address of its specified office it shall give the Issuer and the Transaction Parties at least 60 calendar days' notice of the change, giving the new address and the date on which the change is to take effect.

#### **15.5 Automatic termination**

The appointment of any Agent shall forthwith terminate if (i) that Agent becomes incapable of acting, is dissolved (other than pursuant to a consolidation, amalgamation or merger), is adjudged bankrupt or insolvent, files a voluntary petition in bankruptcy, makes a general assignment, arrangement or composition with or for the benefit of its creditors, consents to the appointment of a receiver, an administrator, liquidator or other similar official of either the entity or all or substantially all its assets or admits in writing its inability to pay or meet its debts as they mature or suspends payment thereof, or if a resolution is passed or an order made for the winding-up, official management, liquidation or dissolution of such entity (other than pursuant to a consolidation, amalgamation or merger), a receiver, administrator, liquidator or other similar official of either the entity or all or substantially all its assets is appointed, a court order is entered approving a petition filed by or against it under applicable bankruptcy or insolvency law, or a public officer takes charge or control of the entity or its property or affairs for the purpose of liquidation.

#### **15.6 Delivery of records**

If the Principal Paying Agent or the Registrar resigns or its appointment is terminated, the Principal Paying Agent shall on the date on which the resignation or termination takes effect pay to the new Principal Paying Agent any amount held by it for payment in respect of the ETC Securities and the Principal Paying Agent or the Registrar (as the case may be) shall deliver to the new Principal Paying Agent or Registrar the records kept by it and all documents and forms held by it pursuant to the relevant Agency Agreement.



## 15.7 **Successor corporations**

A corporation into which an Agent is merged or converted or with which it is consolidated or that results from a merger, conversion or consolidation to which it is a party shall, to the extent permitted by applicable law, be the successor Agent under the relevant Agency Agreement without further formality. The Agent concerned shall forthwith notify such an event to the other parties to the relevant Agency Agreement.

## 15.8 **Notices**

The Issuer shall give ETC Holders and the Trustee at least 15 calendar days' notice of any proposed appointment, termination, resignation or change under Clauses 15.1 (*Appointment and termination*) to 15.4 (*Change of office*) of which it is aware and, as soon as reasonably practicable, notice of any succession under Clause 15.7 (*Successor corporations*) of which it is aware. The Issuer shall give ETC Holders and the Trustee, as soon as reasonably practicable, notice of any termination under Clause 15.5 (*Automatic termination*) of which it is aware.

## 16 **Communications**

### 16.1 **Method**

Each communication under the relevant Agency Agreement shall be made by fax, electronic communication or otherwise in writing. Each communication or document to be delivered to any party under the relevant Agency Agreement shall be sent to that party at the fax number, postal address or electronic address, and marked for the attention of the person (if any) from time to time designated by that party to each other party for the purpose of the relevant Agency Agreement. The initial fax number, postal address, electronic address and person so designated are set out in the relevant Issue Deed.

### 16.2 **Deemed receipt**

Any communication from any party to any other under the relevant Agency Agreement shall be effective (if by fax) when the relevant delivery receipt is received by the sender, (if by post) on the day it is delivered in the case of recorded delivery and three calendar days in the case of inland post or seven calendar days in the case of overseas post after despatch or, if earlier, when delivered and (if by electronic communication) when the relevant receipt of such communication being read is given or, where no read receipt is requested by the sender, at the time of sending, provided that no delivery failure notification is received by the sender within 24 hours of sending such communication; provided that any communication which is received (or deemed to take effect in accordance with the foregoing) outside business hours or on a non-business day in the place of receipt shall be deemed to take effect at the opening of business on the next following business day in such place. Any communication delivered to any party under the relevant Agency Agreement which is to be sent by fax or electronic communication will be written legal evidence. A copy of any communication to any of the other Agents shall be sent to the Principal Paying Agent at its designated postal address, electronic address or fax number, as appropriate, for the attention of the Principal Paying Agent's designated person.

## 17 **Notices**

### 17.1 **Publication**

On behalf of and at the request and expense of the Issuer, the Principal Paying Agent shall arrange for the publication of all notices to ETC Holders of the relevant Series to be given by the Issuer in accordance with the relevant Agency Agreement and the Conditions. Notices to ETC Holders shall be published in accordance with the Conditions and, unless the Trustee otherwise directs, shall only be published in a form which has been approved by the Trustee. For the avoidance of doubt, this Clause 17.1 (*Publication*) shall not extend to the publication of notices required to be given by the Issuer to a regulatory information service unless such notices are also required to be given by the Issuer under the relevant Agency Agreement and/or the Conditions.

#### **17.2 Publication by the Issuer**

Any notice to the ETC Holders published by the Issuer which is not published through the Principal Paying Agent shall be copied to the Principal Paying Agent prior to or contemporaneously with its publication.

#### **17.3 Notices from ETC Holders**

The Principal Paying Agent shall promptly forward to the Issuer any notice received by it from an ETC Holder.

#### **17.4 Copies to the Trustee**

The Issuer or, in the case of notices to be published by the Principal Paying Agent, the Principal Paying Agent on behalf of the Issuer shall promptly submit to the Trustee two copies of the form of every notice to be given to ETC Holders for approval and send to the Trustee two copies of every such notice once published.

#### **17.5 Notices to be in English**

Any notice delivered by the Issuer to an Agent must be in the English language or accompanied by a certified translation in English.

### **18 Limited Recourse and Non-Petition**

#### **18.1 General Limited Recourse**

Each party to the relevant Agency Agreement acknowledges and agrees that, in respect of the relevant Series, the Transaction Parties and the ETC Holders shall have recourse only to the Secured Property in respect of the ETC Securities, subject always to the Security, and not to any other assets of the Issuer. If, following realisation in full of the Secured Property (whether by way of liquidation or enforcement) and application of available cash sums as provided in Condition 5 (*Security and Application of Proceeds*), the Trust Deed and the Security Documents, as applicable, any outstanding claim against, or debt, liability or obligation of the Issuer in respect of the Secured Issuer Obligations or Other Issuer Obligations remains unpaid, then such outstanding claim, debt, liability or obligation shall be extinguished and no debt shall be owed by the Issuer in respect thereof.

#### **18.2 No recourse to any shareholder, officer, agent, employee or director of the Issuer**

None of the Transaction Parties, the ETC Holders or any other person acting on behalf of any of them shall be entitled to take any steps (i) at any time against any of the Issuer's officers,

shareholders, agents, employees, corporate service providers or directors or (ii) following extinguishment in accordance with this Clause 18 (*Limited Recourse and Non-Petition*), against the Issuer, in each case, to recover any further sum in respect of the extinguished claim, debt, liability or obligation and no debt shall be owed to any such persons by the Issuer in respect of such further sum. It being expressly agreed and understood that the ETC Securities and Transaction Documents are corporate obligations of the Issuer. Each party agrees, that no personal liability shall attach to or be incurred at any time by the shareholders, officers, agents, employees, corporate service providers or directors of the Issuer, or any of them, under or by reason of any of the obligations, covenants or agreements of the Issuer contained in the ETC Securities or any Transaction Document or implied therefrom, and any and all personal liability of every such shareholder, officer, agent, employee, corporate service provider or director for breaches by the Issuer of any such obligations, covenants or agreements, either at law or by statute or constitution, of every such shareholder, officer, agent, employee, corporate service provider or director is hereby deemed expressly waived by the Transaction Parties and the ETC Holders.

### 18.3 **Non-Petition**

None of the Transaction Parties, the ETC Holders or any person acting on behalf of any of them may at any time bring, institute, or join with any other person in bringing, instituting or joining any insolvency, administration, bankruptcy, winding-up, liquidation, examinership or any other similar proceedings (whether court-based or otherwise) in relation to the Issuer or any of its assets, and none of them shall have any claim arising with respect to the assets and/or property (i) attributable to any other securities issued by the Issuer (save for any further securities which form a single series with the ETC Securities) or (ii) not attributable to any particular Series, save for lodging a claim in the liquidation of the Issuer which is initiated by another non-Affiliated party or taking proceedings to obtain a declaration as to the obligations of the Issuer (provided such proceedings do not constitute insolvency or liquidation proceedings) and without limitation to the Security Trustee's right to enforce and/or realise the security constituted by the Security Documents (including by appointing a receiver or an administrative receiver but provided that such actions do not constitute insolvency or liquidation proceedings).

### 18.4 **Survival**

The provisions of this Clause 18 (*Limited Recourse and Non-Petition*) shall survive notwithstanding any redemption of the relevant Series or the termination or expiration of any Transaction Document.

### 18.5 **Enforcement**

Each Agent acknowledges and agrees that only the Security Trustee may enforce the Security over the Secured Property in accordance with, and subject to the terms of, the Security Documents.

## 19 **Governing Law and Submission to Jurisdiction**

### 19.1 **Governing law**

The relevant Agency Agreement, and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Ireland.

## 19.2 Jurisdiction

The courts of Ireland are to have non-exclusive jurisdiction to settle any disputes that may arise out of or in connection with the relevant Agency Agreement and accordingly any legal action or proceedings arising out of or in connection with the relevant Agency Agreement (“**Proceedings**”) may be brought in such courts. The parties hereto irrevocably submit to the jurisdiction of such courts and waive any objections to Proceedings in such courts on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. These submissions are for the benefit of each of the other parties to the relevant Agency Agreement and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in one or more jurisdictions preclude any of them from taking Proceedings in any other jurisdiction (whether concurrently or not).

## 19.3 Service of process

In respect of a Series, each of the Agents, the Trustee, the Security Trustee, the Custodian and the Metal Counterparties agree to appoint, on or around the Series Issue Date, a process agent as its agent to receive, for and on its behalf, service of process in any Proceedings in Ireland. The process agent in respect of each such party appointing a process agent shall either (i) be the party specified as its process agent for the Series in the Issue Deed for the first Tranche for such Series or (ii) if no such process agent is specified in such Issue Deed in respect of such party, be notified to the Trustee as soon as reasonably practicable following its appointment. Service of process on any such process agent shall be deemed valid service upon the party appointing such process agent, whether or not it is forwarded to and received by the appointing party. Each Transaction party appointing a process agent shall inform the Trustee in writing of any change in its process agent’s address within 28 calendar days of such change. If for any reason any such process agent ceases to be able to act as such or no longer has an address in Ireland, each party who has appointed such process agent irrevocably agrees to appoint a substitute process agent in Ireland and to deliver to the Trustee a copy of the substitute process agent’s written acceptance of that appointment, within 14 calendar days. Each party appointing a process agent irrevocably consents to any process in any Proceedings anywhere being served by mailing a copy by registered post to it in accordance with Clause 16 (*Communications*). However, nothing in this Clause 19.3 (***Error! Not a valid bookmark self-reference.***) shall affect the right to serve process in any other manner permitted by law.

## 20 **Better preservation of rights**

- 20.1 The Trustee executes the relevant Agency Agreement as note trustee in the exercise of the powers and authority conferred and vested in it under the relevant Trust Deed as trustee on behalf of the ETC Holders. It will exercise its powers and authority under the relevant Agency Agreement in the manner provided for in the relevant Trust Deed and, in so acting, the Trustee shall have the protection, immunities, rights, powers, authorisations, indemnities and benefits conferred on it under and by the relevant Trust Deed.
- 20.2 The Security Trustee executes the relevant Agency Agreement as security trustee in the exercise of the powers and authority conferred and vested in it under the relevant Irish Law Security Trust Deed as security trustee on behalf of the Secured Creditors. It will exercise its powers and authority under the relevant Agency Agreement in the manner provided for in the relevant Irish Law Security Trust Deed and, in so acting, the Security Trustee shall have the protections, immunities, rights, powers, authorisations, indemnities and benefits conferred on it under and by the relevant Irish Law Security Trust Deed.
- 20.3 Each of the Trustee and the Security Trustee has agreed to become a party to the relevant Agency Agreement for the better preservation and enforcement of its rights under such agreement and shall not assume any liabilities or obligations under such agreement unless such obligation or liability is expressly assumed by it thereunder.

## Schedule 1

### Regulations concerning the Transfer and Registration of ETC Securities

These provisions are applicable separately to each Series.

- 1** Each Certificate shall represent an integral number of ETC Securities.
- 2** Unless otherwise requested by them and agreed by the Issuer and save as provided in the Conditions, each ETC Holder of more than one ETC Security shall be entitled to receive only one Certificate in respect of his holding.
- 3** Unless otherwise requested by them and agreed by the Issuer and save as provided in the Conditions, the joint holders of one or more ETC Securities shall be entitled to receive only one Certificate in respect of their joint holding which shall, except where they otherwise direct, be delivered to the joint holder whose name appears first in the register of the holders of ETC Securities in respect of the joint holding. All references to “**holder**”, “**transferor**” and “**transferee**” shall include joint holders, transferors and transferees.
- 4** The executors or administrators of a deceased holder of ETC Securities (not being one of several joint holders) and, in the case of the death of one or more of joint holders, the survivor or survivors of such joint holders shall be the only persons recognised by the Issuer as having any title to such ETC Securities.
- 5** Any person becoming entitled to ETC Securities in consequence of the death or bankruptcy of the holder of such ETC Securities may, upon producing such evidence that he holds the position in respect of which he proposes to act under this paragraph or of his title as the Transfer Agent or the Registrar shall require (including legal opinions), be registered himself as the holder of such ETC Securities or, subject to the preceding paragraphs as to transfer, may transfer such ETC Securities. The Issuer, the Transfer Agent(s) and the Registrar may retain any amount payable upon the ETC Securities to which any person is so entitled until such person shall be so registered or shall duly transfer the ETC Securities.
- 6** Upon the initial presentation of a Certificate representing ETC Securities to be transferred or in respect of which an option is to be exercised or any other ETC Holders’ right to be demanded or exercised, the Transfer Agent or the Registrar to whom such ETC Security is presented shall request reasonable evidence as to the identity of the person (the “**Presentor**”) who has executed the form of transfer on the Certificate or other accompanying notice or documentation, as the case may be, if such signature does not conform to any list of duly authorised specimen signatures supplied by the registered holder. If the signature corresponds with the name of the registered holder, such evidence may take the form of a certifying signature by a notary public or a recognised bank. If the Presentor is not the registered holder or is not one of the persons included on any list of duly authorised persons supplied by the registered holder, the Transfer Agent or Registrar shall require evidence satisfactory to it (which may include legal opinions) of the authority of the Presentor to act on behalf of, or in substitution for, the registered holder in relation to such ETC Securities.

## Schedule 2

### Obligations regarding ETC Securities held under the NSS

In relation to each Series that is held under the NSS, the Principal Paying Agent will comply with the following provisions:

- 1** The Principal Paying Agent will inform each of Euroclear and Clearstream, Luxembourg through the Common Service Provider of the initial issue outstanding amount for the ETC Securities on or prior to the relevant Issue Date.
- 2** If any event occurs that requires a mark-up or mark-down of the records which either Euroclear or Clearstream, Luxembourg holds for its customers to reflect such customers' interest in the ETC Securities, the Principal Paying 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 Euroclear and Clearstream, Luxembourg (through the Common Service Provider) to ensure that the records of Euroclear and Clearstream, Luxembourg reflecting the issue outstanding amount of any ETC Securities held under the NSS remain(s) accurate at all times.
- 3** The Principal Paying Agent will at least monthly perform a reconciliation process with Euroclear and Clearstream, Luxembourg (through the Common Service Provider) with respect to the issue outstanding amount for the ETC Securities and will promptly inform Euroclear and Clearstream, Luxembourg (through the Common Service Provider) of any discrepancies.
- 4** The Principal Paying Agent will promptly assist Euroclear and Clearstream, Luxembourg (through the Common Service Provider) in resolving any discrepancy identified in the issue outstanding amount of any ETC Securities held under the NSS.
- 5** The Principal Paying Agent will promptly provide to Euroclear and Clearstream, Luxembourg (through the Common Service Provider) details of all amounts paid by it under the ETC Securities (or, where the ETC Securities provide for delivery of assets other than cash, of the assets so delivered).
- 6** The Principal Paying Agent will (to the extent known to it) promptly provide to Euroclear and Clearstream, Luxembourg (through the Common Service Provider) notice of any changes to the ETC Securities that will affect the amount of, or date for, any payment due under the ETC Securities.
- 7** The Principal Paying Agent will (to the extent known to it) promptly provide to Euroclear and Clearstream, Luxembourg (through the Common Service Provider) copies of all information that is given to the holders of the ETC Securities.
- 8** The Principal Paying Agent will promptly pass on to the Issuer all communications it receives from Euroclear and Clearstream, Luxembourg directly or through the Common Service Provider relating to the ETC Securities.
- 9** The Principal Paying Agent will (to the extent known to it) promptly notify Euroclear and Clearstream, Luxembourg (through the Common Service Provider) of any failure by the Issuer to make any payment due under the ETC Securities when due.