

DRAFT

Dated [●] 2020

**ENEL – Società per Azioni**  
**and**  
**BNY Mellon Corporate Trustee Services Limited**

**SUPPLEMENTAL TRUST DEED**

effecting the changes to the Conditions of the  
€750,019,000 Perpetual 5.5 Year Non-Call Capital Securities (formerly the €750,019,000 5.5 Year Non-  
Call Capital Securities due 2078)

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**THIS SUPPLEMENTAL TRUST DEED** is made in London on [●] 2020

BETWEEN

- (1) **ENEL – Società per Azioni**, a company incorporated with limited liability under the laws of the Republic of Italy, whose registered office is at Viale Regina Margherita 137, 00198 Rome, Italy (the “**Issuer**”); and
- (2) **BNY Mellon Corporate Trustee Services Limited**, a company incorporated under the laws of England, whose registered office is at One Canada Square, London E14 5AL (the “**Trustee**”, which expression shall, wherever the context so admits, include such company and all other persons or companies for the time being the trustee or trustees of this Supplemental Trust Deed) as trustee for the Securityholders and Couponholders (each as defined in the Trust Deed)..

RECITALS

- (A) On 24 May 2018, the Issuer issued the €750,019,000 Perpetual 5.5 Year Non-Call Capital Securities (formerly the €750,019,000 5.5 Year Non-Call Capital Securities due 2078) (the “**Securities**”).
- (B) This Supplemental Trust Deed is supplemental to the trust deed dated 24 May 2018 (as modified and/or amended and restated and/or supplemented from time to time) made between the Issuer and the Trustee constituting the Securities (the “**Original Trust Deed**”).
- (C) On [●] [●] 2020, a meeting of the holders of the Securities approved certain amendments to the Conditions of the Securities (the “**2020 Amendments Resolution**”) and to amend accordingly – *inter alia* – the Original Trust Deed.
- (D) On [●] [●] 2020, the 2020 Amendment Resolution has been duly registered with the Companies Register of Rome.
- (E) Therefore, this Supplemental Trust Deed is being entered into in order for such amendments to the Conditions of the Securities to take effect. The Trustee is entering into this Supplemental Trust Deed in accordance with the instructions of the holders of the Securities given pursuant to the 2020 Amendments Resolution.
- (F) The Trustee has agreed to act as trustee of this Supplemental Trust Deed on the following terms and conditions.

**NOW THIS DEED WITNESSES AND IT IS HEREBY DECLARED** as follows:

## **1 INTERPRETATION**

### **1.1 Definitions**

Words and expressions used herein and not defined in the main body of this Supplemental Trust Deed shall when used in this Supplemental Trust Deed have the same meanings as are given to them in the Original Trust Deed.

The term “**New Conditions**” means, in relation to the Securities, the terms and conditions set out in the Original Trust Deed as amended to the date of this Deed including the amendments set out in Schedule 1 of this Supplemental Trust Deed, as may from time to time be modified in accordance with the provisions of the Original Trust Deed, as amended and supplemented by this Supplemental Trust Deed.

References in the Original Trust Deed to the “**Conditions**” in respect of the Securities shall be deemed to refer to the New Conditions as defined in this Supplemental Trust Deed.

## 1.2 Headings

The headings and sub-headings are for ease of reference only and shall not affect the construction of this Supplemental Trust Deed.

## 2 INCORPORATION OF ORIGINAL TRUST DEED AND CONTINUATION OF ORIGINAL TRUST DEED

### 2.1 Incorporation of Original Trust Deed

This Supplemental Trust Deed shall be read as one with the Original Trust Deed so that all references therein and in this Supplemental Trust Deed to “this Deed”, “these presents”, “this Trust Deed” or “the Trust Deed” shall be deemed to refer to the Original Trust Deed as amended and supplemented by this Supplemental Trust Deed.

### 2.2 Continuation of Original Trust Deed

Save as amended and supplemented for the purposes of amending the Conditions of the Securities by this Supplemental Trust Deed, the provisions of the Original Trust Deed shall continue in full force and effect.

### 2.3 Securityholders’ rights and remedies

Nothing in this Supplemental Trust Deed shall constitute or be construed as a waiver or release of any other right or remedy of any of the Trustee, the Securityholders or the Issuer under the Original Trust Deed or the Securities, nor otherwise prejudice any right or remedy of any of the Trustee, any Securityholder or the Issuer under the Original Trust Deed or the Securities.

## 3 MODIFICATION OF THE ORIGINAL TRUST DEED

The Original Trust Deed is hereby modified as follows:

3.1 Any reference to “€750,019,000 5.5 Year Non-Call Capital Securities due 2078” in the Original Trust Deed is hereby deleted and replaced by reference to “€750,019,000 Perpetual 5.5 Year Non-Call Capital Securities”.

3.2 The definition of “**Event of Default**” of the Original Trust Deed is hereby deleted in its entirety.

3.3 The first paragraph of Clause 2.2 of the Original Trust Deed shall be amended as follows, where the text set out below in blue (“*blue text*”) shall be considered as being added and the text in red strikethrough below (“~~red strikethrough text~~”) shall be considered as being deleted:

*“The Issuer covenants with the Trustee that it will, in accordance with these presents, on the due date fixed for ~~the final maturity~~ redemption of the Securities provided for in the Conditions, or on such earlier date as the same or any part thereof may become due and repayable thereunder, pay or procure to be paid unconditionally to or to the order of the Trustee in euro in immediately available funds the principal amount of the Securities repayable on that date together with any applicable premium and shall in the meantime and until such date (both before and after any judgment or other order of a court of competent jurisdiction) pay or procure to be paid unconditionally to or to the order of the Trustee as*

*aforsaid interest (which shall accrue from day to day) on the principal amount of the Securities at rates calculated from time to time in accordance with Condition 4 (Interest and Interest Deferral) and on the dates provided for in the Conditions PROVIDED THAT:"*

- 3.4 The first paragraph of Clause 2.3 ("**Trustee's Requirements Regarding Paying Agents**") of the Original Trust Deed shall be amended as follows, where the text set out below in blue ("*blue text*") shall be considered as being added and the text in red strikethrough below ("*red strikethrough text*") shall be considered as being deleted:

*"At any time after an event which results in the occurrence of a Liquidation Event Date~~Event of Default shall have occurred~~ or if there is failure to make payment of any amount in respect of any Security when due or the Trustee shall have received any money which it proposes to pay under clause **Errore. L'origine riferimento non è stata trovata.** to the Securityholders and/or Couponholders, the Trustee may:"*

- 3.5 Paragraph (d) of Clause 13 ("**Covenants by the Issuer**") of the Original Trust Deed shall be amended as follows, where the text set out below in blue ("*blue text*") shall be considered as being added and the text in red strikethrough below ("*red strikethrough text*") shall be considered as being deleted:

*"at all times keep proper books of account and, if there is failure to make payment of any amount in respect of any Security when due following the occurrence of an event which results in the occurrence of a Liquidation Event Date~~Event of Default~~, allow the Trustee and any person appointed by the Trustee to whom the Issuer shall have no reasonable objection, free access to such books of account at all reasonable times during normal business hours;"*

- 3.6 Paragraph (f) of Clause 13 ("**Covenants by the Issuer**") of the Original Trust Deed shall be amended as follows, where the text set out below in blue ("*blue text*") shall be considered as being added and the text in red strikethrough below ("*red strikethrough text*") shall be considered as being deleted:

*"immediately after becoming aware thereof, give notice in writing to the Trustee of the occurrence of any ~~Event of Default or the~~ breach of any ~~other~~ provision of these presents and of the occurrence of any Accounting Event, Mandatory Arrears of Interest Settlement Event, Rating Methodology Event, Substantial Repurchase Event, Withholding Tax Event, ~~or~~ Tax Deductibility Event or an event which results in the occurrence of a Liquidation Event Date".*

- 3.7 Paragraph (g) of Clause 13 ("**Covenants by the Issuer**") of the Original Trust Deed shall be amended as follows, where the text set out below in blue ("*blue text*") shall be considered as being added and the text in red strikethrough below ("*red strikethrough text*") shall be considered as being deleted:

*"give to the Trustee (i) within seven days after demand by the Trustee therefor and (ii) (without the necessity for any such demand) promptly after the publication of its audited accounts in respect of each financial year commencing with the financial year ending 31 December 2017 and in any event not later than 180 days after the end of each such financial year a certificate in or substantially in the form set out in Schedule 4 signed by two duly authorised representatives to the effect that, as at a date not more than seven days before delivering such certificate (the "certification date"), there did not exist and had not existed or happened since the certification date of the previous certificate (or in the case of the first such certificate the date hereof) any ~~Event of Default~~, breach of any ~~other~~ provision of these*

presents, Accounting Event, Mandatory Arrears of Interest Settlement Event, Rating Methodology Event, Substantial Repurchase Event, Withholding Tax Event, ~~or~~ Tax Deductibility Event or an event which results in the occurrence of a Liquidation Event Date (or if such exists or existed specifying the same and what action it proposes to take in connection therewith) and that during the period from and including the certification date of the last such certificate (or in the case of the first such certificate the date hereof) to and including the certification date of such certificate the Issuer has complied in all respects with all its obligations contained in these presents or (if such is not the case) specifying the respects in which it has not complied and what action it proposes to take in connection therewith;”.

- 3.8** Clause 14.2 (“**Remuneration and Indemnification of Trustee**”) of the Original Trust Deed shall be amended as follows, where the text set out below in blue (“blue text”) shall be considered as being added and the text in red strikethrough below (“~~red strikethrough text~~”) shall be considered as being deleted:

*“In the event of the occurrence of a ~~n-Event of Default~~, breach of any ~~other~~ provision of these presents, Accounting Event, Rating Methodology Event, Withholding Tax Event, ~~or~~ Tax Deductibility Event, the Issuer hereby agrees that the Trustee shall be entitled to be paid additional remuneration calculated at its normal hourly rates in force from time to time. In any other case, if the Trustee considers it expedient or necessary or is requested by the Issuer to undertake duties which the Trustee and the Issuer agree to be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee under these presents the Issuer shall pay to the Trustee such additional remuneration as shall be agreed between them (and which will be calculated by reference to the Trustee’s normal hourly rates from time to time).”.*

- 3.9** Paragraph (f) of Clause 15 (“**Supplement to Trustee Acts**”) of the Original Trust Deed shall be amended as follows, where the text set out below in blue (“blue text”) shall be considered as being added and the text in red strikethrough below (“~~red strikethrough text~~”) shall be considered as being deleted:

*“The Trustee shall not be bound to give notice to any person of the execution of any documents comprised or referred to in these presents or to take any steps to ascertain whether any ~~Event of Default~~, breach or any ~~other~~ provision of these presents, Accounting Event, Mandatory Arrears of Interest Settlement Event, Rating Methodology Event, Substantial Repurchase Event, Withholding Tax Event, ~~or~~ Tax Deductibility Event or an event which results in the occurrence of a Liquidation Event Date has occurred and, until it shall have actual knowledge or express notice pursuant to these presents to the contrary, the Trustee shall be entitled to assume that no ~~Event of Default~~, breach of any ~~other~~ provision of these presents, Accounting Event, Mandatory Arrears of Interest Settlement Event, Rating Methodology Event, Substantial Repurchase Event, Withholding Tax Event, ~~or~~ Tax Deductibility Event or an event which results in the occurrence of a Liquidation Event Date has occurred and that the Issuer is at all times observing and performing all its obligations under these presents.”.*

- 3.10** Paragraph 18.1 (“**Waiver, Authorisation and Determination**”) of the Original Trust Deed shall be amended as follows, where the text set out below in red strikethrough (“~~red strikethrough text~~”) shall be considered as being deleted:

*“The Trustee may without the consent or sanction of the Securityholders and without prejudice to its rights in respect of any subsequent breach ~~or Event of Default~~ from time to*

time and at any time, but only if and in so far as in its opinion the interests of the Securityholders shall not be materially prejudiced thereby, waive or authorise any breach or proposed breach by the Issuer of any of the covenants or provisions contained in these presents ~~or determine that any Event of Default shall not be treated as such for the purposes of these presents~~ PROVIDED ALWAYS THAT any duly documented cost and expense properly incurred by the Trustee in relation to any proposed modification should be included in the Trustee's fees and expenses, and the Trustee shall not exercise any powers conferred on it by this clause in contravention of any express direction given by Extraordinary Resolution or by a request under Condition 10.3 (Enforcement by the Trustee) to the Trustee but so that no such direction or request shall affect any waiver, authorisation or determination previously given or made. Any such waiver, authorisation or determination may be given or made on such terms and subject to such conditions (if any) as the Trustee may determine, shall be binding on the Securityholders and the Couponholders and, if, but only if, the Trustee shall so require, shall be notified by the Issuer to the Securityholders in accordance with Condition 12 (Notices) as soon as practicable thereafter.”.

- 3.11** Paragraph 7 of Schedule 3 (*Provisions for Meetings of Securityholders*) of the Original Trust Deed shall be amended as follows, where the text set out below in blue (“*blue text*”) shall be considered as being added and the text in red strikethrough below (“~~*red strikethrough text*~~”) shall be considered as being deleted:

“7 *The constitution of meetings and the validity of resolutions thereof shall be governed pursuant to the provision of Italian laws (including, without limitation, Legislative Decree No. 58 of 24 February 1998) and the Issuer's by-laws in force from time to time. Italian law currently provides that (subject as provided below) at any such meeting, (i) in the case of a Single Call Meeting, one or more persons present holding Securities in definitive form or voting certificates or being proxies and holding or representing in the aggregate at least one-fifth of the nominal amount of the Securities for the time being outstanding or such other majority as may be provided for in the Issuer's by-laws, or (ii) in case of a Multiple Call Meeting (a) in the case of a First Call meeting, one or more persons present holding Securities in definitive form or voting certificates or being proxies and holding or representing in the aggregate not less than one-half of the aggregate nominal amount of the Securities for the time being outstanding or such other majority as may be provided for in the Issuer's by-laws, (b) in the case of a Second Call meeting, one or more persons present holding Securities in definitive form or voting certificates or being proxies and holding or representing in the aggregate more than one-third of the aggregate nominal amount of the Securities for the time being outstanding or such other majority as may be provided for in the Issuer's by-laws, (c) in the case of a Third Call meeting, or any subsequent meeting following a further adjournment, one or more persons present holding Securities in definitive form or voting certificates or being proxies and holding or representing in the aggregate at least one-fifth of the aggregate nominal amount of the Securities for the time being outstanding or such other majority as may be provided for in the Issuer's by-laws, shall form a quorum for the transaction of business and no business shall be transacted at any meeting unless the requisite quorum is present at the commencement of the relevant business. The majority required at any such meeting under (i) and (ii) above (including any adjourned meetings, if applicable) for passing an Extraordinary Resolution shall (subject as provided below) be (upon a show of hands) at least two-thirds of the aggregate nominal amount of Securities represented at the Meeting and*

(on a poll) at least two-thirds of the votes entitled to be cast on that poll, provided that at any meeting the business of which includes a modification to the Conditions of the Securities as provided under Article 2415, paragraph 1, item 2 of the Italian Civil Code (including, for the avoidance of doubt, (a) any reduction or cancellation of the amount payable or, where applicable, modification of the method of calculating the amount payable or modification of the date ~~of maturity or fixed for~~ redemption or any date for payment of interest or, where applicable, of the method of calculating the date of payment in respect of any principal or interest in respect of the Securities or change the subordination provisions of the Securities, and (b) any alteration of the currency in which payments under the Securities and Coupons are to be made or the denomination of the Securities), the majority required to pass the requisite Extraordinary Resolution shall be the higher of (i) one or more persons present holding Securities in definitive form or voting certificates or being proxies and holding or representing in the aggregate not less than one-half of the aggregate nominal amount of the Securities for the time being outstanding and (ii) one or more persons present holding Securities in definitive form or voting certificates or being proxies and holding or representing in the aggregate not less than two thirds of the Securities represented at the meeting pursuant to paragraph 3 of Article 2415 of the Italian Civil Code, provided that the Issuer's by-laws may in each case (to the extent permitted under applicable Italian law) provide for higher majorities.

The expression “**Extraordinary Resolution**” when used in these presents means a resolution passed at a meeting of the Securityholders duly convened in accordance with this Schedule and applicable provisions of Italian law.”

- 3.12 Paragraph (a) of Schedule 4 (“**Form of Duly Authorised Representatives' Certificate**”) of the Original Trust Deed shall be amended as follows, where the text set out below in blue (“blue text”) shall be considered as being added and the text in red strikethrough below (“~~red strikethrough text~~”) shall be considered as being deleted:

“as at [●]<sup>1</sup>, no event which results in the occurrence of a Liquidation Event Date~~Event of Default~~, breach of any other provision of the Trust Deed, Accounting Event, Mandatory Arrears of Interest Settlement Event, Rating Methodology Event, Substantial Repurchase Event, Withholding Tax Event or Tax Deductibility Event existed [other than [ ]]<sup>2</sup> ~~and no Event of Default had existed or happened at any time since [ ]<sup>3</sup> [the certification date (as defined in the Trust Deed) of the last certificate delivered under Clause 13(g)]<sup>4</sup> [other than [ ]]<sup>4</sup>~~;

<sup>1</sup> Specify a date not more than 7 days before the date of delivery of the certificate.

<sup>2</sup> If any ~~Event of Default~~, breach of any other provision of the Trust Deed, Accounting Event, Mandatory Arrears of Interest Settlement Event, Rating Methodology Event, Substantial Repurchase Event, Withholding Tax Event or Tax Deductibility Event did exist, give details; otherwise delete

<sup>3</sup> ~~Insert date of Trust Deed in respect of the first certificate delivered under Clause 13(g), otherwise delete.~~

<sup>4</sup> ~~Include unless the certificate is the first certificate delivered under Clause 13(g), in which case delete~~

<sup>5</sup> ~~If any Event of Default, breach of any other provision of the Trust Deed, Accounting Event, Mandatory Arrears of Interest Settlement Event, Rating Methodology Event, Substantial Repurchase Event, Withholding Tax Event or Tax Deductibility Event did exist or had happened give details; otherwise delete.”.~~

## 4 MODIFICATION OF THE CONDITIONS

The parties hereto hereby agree that for the purpose of the Securities, with effect on and from the date of this Supplemental Trust Deed, the Conditions shall be amended in the



manner described in Schedule 1 of this Supplemental Trust Deed, which reflect the New Conditions as amended and approved by the Extraordinary Resolutions.

## **5 FURTHER ASSURANCE**

The Issuer shall at its own expense, do all such acts and things necessary or desirable to give effect to the modifications effected or to be effected pursuant to this Supplemental Trust Deed or the New Conditions.

## **6 EXPENSES**

The Issuer will reimburse in full and on demand the Trustee for all fees, costs and expenses properly incurred by it in connection with the negotiation, preparation and execution of this Supplemental Trust Deed, the passing of the 2020 Amendments Resolution and any related documentation. Clause 14 of the Original Trust Deed shall be incorporated into this Supplemental Trust Deed and applies *mutatis mutandis* to any actions of the Trustee pursuant to or in connection with this Supplemental Trust Deed, the Supplemental Agency Agreement (including, without limitation, their execution) or the Extraordinary Resolution.

## **7 LEGAL OPINIONS**

The Issuer covenants with the Trustee that it shall procure the delivery to the Trustee on the date hereof of the following documents in a form and with a substance satisfactory to the Trustee:

- 7.1** a legal opinion addressed to the Trustee in such form and with such content as the Trustee may reasonably require, from Chiomenti, legal advisers to the Issuer, as to the laws of Italy dated the date of this Supplemental Trust Deed;
- 7.2** an Italian tax opinion addressed to the Trustee in such form and with such content as the Trustee may reasonably require, from Chiomenti, Italian tax advisers to the Issuer, dated the date of this Supplemental Trust Deed;
- 7.3** a legal opinion addressed to the Trustee in such form and with such content as the Solicitation Agents may reasonably require, from Studio Legale Associato in association with Linklaters LLP, legal advisers to the Trustee, as to the laws of England dated the date of this Supplemental Trust Deed; and
- 7.4** an Italian tax opinion addressed to the Trustee in such form and with such content as the Trustee may reasonably require, from Studio Legale Associato in association with Linklaters LLP, Italian tax advisers to the Trustee, dated the date of this Supplemental Trust Deed.

## **8 LAW AND JURISDICTION**

### **8.1 Governing law**

This Supplemental Trust Deed and any non-contractual obligations arising out of or in connection with it (other than the subordination provisions set out in Conditions 3.1 and 3.2 and Schedule 3 of the Original Trust Deed which is governed by and shall be construed in accordance with Italian law) are governed by, and shall be construed in accordance with, English law.

### **8.2 Submission to jurisdiction**

The Parties agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Supplemental Trust Deed (including a dispute relating to any non-contractual obligations arising out of or in connection with t this Supplemental Trust Deed) (the “**Proceedings**”) and accordingly submit to the exclusive jurisdiction of the English courts. The Parties waive any objection to the courts of England on the grounds that they are an inconvenient or inappropriate forum.

The Issuer irrevocably and unconditionally appoints Law Debenture Corporate Services Limited at its registered office at 100 Wood Street, London EC2V 7EX and in the event of its ceasing so to act will appoint such other person as the Trustee may approve and as the Issuer may nominate in writing to the Trustee for the purpose to accept service of process on its behalf in England in respect of any Proceedings. The Issuer:

- (a) agrees to procure that, so long as any of the Securities remains liable to prescription, there shall be in force an appointment of such a person approved by the Trustee with an office in London with authority to accept service as aforesaid;
- (b) agrees that failure by any such person to give notice of such service of process to the Issuer shall not impair the validity of such service or of any judgment based thereon;
- (c) consents to the service of process in respect of any Proceedings by the airmailing of copies, postage prepaid, to the Issuer in accordance with clause **Errore. L'origine riferimento non è stata trovata.** of the Original Trust Deed; and
- (d) agrees that nothing in these presents shall affect the right to serve process in any other manner permitted by law.

## **9 SEVERABILITY**

In case any provision in or obligation under this Supplemental Trust Deed shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

## **10 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person shall have any right to enforce any provision of this Supplemental Trust Deed under the Contracts (Rights of Third Parties) Act 1999.

## **11 COUNTERPARTS**

This Supplemental Trust Deed may be executed in any number of counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF this Supplemental Trust Deed has been executed as a deed by the parties hereto and is intended to be and is hereby delivered on the date first before written.

**Schedule 1**  
**Amended Conditions of the Securities**

## TERMS AND CONDITIONS OF THE NC2023 SECURITIES

*The following is the text of the Terms and Conditions of the NC2023 Securities which (subject to modification) will be endorsed on each NC2023 Security in definitive form (if issued).*

*Text set out within the Terms and Conditions of the NC2023 Securities in italics is provided for information only and does not form part of the Terms and Conditions of the NC2023 Securities.*

The €750,019,000 [Perpetual](#) 5.5 Year Non-Call Capital Securities ~~due 24 November 2078~~ (the “**Securities**”, which expression shall in these Conditions, unless the context otherwise requires, include any further securities issued pursuant to Condition 15 and forming a single series with the Securities) of Enel S.p.A. (the “**Issuer**”) are constituted by a Trust Deed dated 24 May 2018 (the “**Trust Deed**”) made between the Issuer and BNY Mellon Corporate Trustee Services Limited (the “**Trustee**”, which expression shall include its successor(s)) as trustee for the holders of the Securities (the “**Securityholders**”) and the holders of the interest coupons appertaining to the Securities (the “**Couponholders**” and the “**Coupons**” respectively, which expressions shall, unless the context otherwise requires, include the talons for further interest coupons (the “**Talons**”) and the holders of the Talons).

The statements in these Conditions include summaries of, and are subject to, the detailed provisions of and definitions in the Trust Deed. Copies of the Trust Deed and the Agency Agreement dated 24 May 2018 (the “**Agency Agreement**”) made between the Issuer, The Bank of New York Mellon, London Branch, as principal paying agent (the “**Principal Paying Agent**”) and agent bank (the “**Agent Bank**”) (which shall be responsible for making certain determinations, as described in these Terms and Conditions) and the Trustee are available for inspection during normal business hours by the Securityholders and the Couponholders at the registered office for the time being of the Trustee, being at the date of issue of the Securities at One Canada Square, London E14 5AL, and at the specified office of each of the Paying Agents. The Securityholders and the Couponholders are entitled to the benefit of, are bound by, and are deemed to have notice of, all the provisions of the Trust Deed and the provisions of the Agency Agreement applicable to them.

### **1 Form, Denomination and Title**

#### **1.1 Form and Denomination**

The Securities are in bearer form, serially numbered, in the denominations of €100,000 and integral multiples of €1,000 in excess thereof, up to and including €199,000, with Coupons and one Talon attached on issue.

#### **1.2 Title**

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

#### **1.3 Holder Absolute Owner**

The Issuer, any Paying Agent and the Trustee may (to the fullest extent permitted by applicable laws) deem and treat the bearer of any Security or Coupon as the absolute owner for all purposes (whether or not the Security or Coupon shall be overdue and notwithstanding any notice of ownership or writing on the Security or Coupon or any notice of previous loss or theft of the Security or Coupon or of any trust or interest therein) and shall not be required to obtain any proof thereof or as to the identity of such bearer.

## 2 Definitions and Interpretation

As used in these Conditions:

An “**Accounting Event**” shall occur if as a result of a change in the accounting practices or principles applicable to the Issuer, which currently are the international accounting standards (International Accounting Standards — IAS and International Financial Reporting Standards — IFRS) issued by the International Accounting Standards Board (IASB), the interpretations of the International Financial Reporting Interpretations Committee (IFRIC) and the Standing Interpretations Committee (SIC), adopted by the European Union pursuant to Regulation (EC) 1606/2002 (“IFRS”), or any other accounting standards that may replace IFRS which becomes effective after the ~~Issue~~ Consent Date (the “Change”), the obligations of the Issuer in respect of the Securities ~~following the official adoption of such Change, which may fall before the date on which the Change will come into effect,~~ can no longer be recorded as a ~~“financial liability”~~ equity” (strumento di capitale), in accordance with accounting practices or principles applicable to the Issuer at the time of the next Financial Statements, and a recognised accountancy firm of international standing, acting upon instructions of the Issuer, has delivered an opinion, letter or report addressed to the Issuer to that effect, and the Issuer cannot avoid the foregoing by taking reasonable measures available to it.

“**Accrual Period**” has the meaning given to it in Condition 4.1(c).

“**Additional Amounts**” has the meaning given to it in Condition 8.1.

“**Arrears of Interest**” has the meaning given to it in Condition 4.2(a).

“**Business Day**” means a day which is both 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 London and Milan and a TARGET2 Settlement Day.

“**Calculation Amount**” has the meaning given to it in Condition 4.1(c).

“**Call Date**” has the meaning given to it in Condition 6.2.

“**Code**” has the meaning given to it in Condition 8.1.

“**Consent Date**” means [●] 2020.

“**Decree No. 239**” means Italian Legislative Decree No. 239 of 1 April 1996, as amended.

“**Deferral Notice**” has the meaning given to it in Condition 4.2(a).

“**Deferred Interest Payment**” has the meaning given to it in Condition 4.2(a).

“**Determination Period**” has the meaning given to it in Condition 4.1(c).

“**Early Redemption Date**” means the date of redemption of the Securities pursuant to Conditions 6.3 to 6.7.

“**Early Redemption Price**” will be the amount determined by the Agent Bank on the Redemption Calculation Date as follows:

- (A) in the case of a Withholding Tax Event or a Substantial Repurchase Event at any time, 100 per cent. of the principal amount of the Securities then outstanding; or
- (B) in the case of an Accounting Event, a Rating Methodology Event or a Tax Deductibility Event, either:

- (i) 101 per cent. of the principal amount of the Securities then outstanding if the Early Redemption Date falls prior to 24 August 2023 (being the date falling three months prior to the First Reset Date); or
- (ii) 100 per cent. of the principal amount of the Securities then outstanding if the Early Redemption Date falls on or after 24 August 2023 (being the date falling three months prior to the First Reset Date),

and in each case together with any accrued interest to, but excluding, the relevant Early Redemption Date and any outstanding Arrears of Interest.

“**equity credit**” shall include such other nomenclature as any Rating Agency may use from time to time to describe the degree to which an instrument exhibits the characteristics of an ordinary share.

“**EUR 5 year Swap Rate**” has the meaning given to it in Condition 4.1(b).

“**EUR 5 year Swap Rate Quotation**” means, in relation to any Reset Period, the arithmetic mean of the bid and offered rates for the annual fixed leg (calculated on a 30/360 day count basis) of a fixed-for-floating euro interest rate swap which (i) has a term of 5 years commencing on the relevant Reset Interest Determination Date, (ii) is in an amount that is representative of a single transaction in the relevant market at the relevant time with an acknowledged dealer of good credit in the swap market, and (iii) has a floating leg based on the 6-month EURIBOR rate (calculated on an Actual/360 day count basis) or, if the 6-month EURIBOR rate is no longer being calculated or administered as at the relevant Reset Interest Determination Date, any alternative rate which has replaced the Euro Interbank Offered Rate (EURIBOR) in customary market usage for the purposes of determining floating rates of interest in respect of euro-denominated securities, as notified by the Issuer to the Agent Bank, and promptly thereafter by the Issuer to the Securityholders in accordance with Condition 12 (*Notices*), provided however that if there is no clear market consensus as to whether any rate has replaced EURIBOR in customary market usage, the Issuer will appoint, in its sole discretion and at its own expense, an independent financial institution of international repute or other independent financial adviser experienced in the international capital markets (the “**IFA**”) to determine an appropriate alternative rate, and the decision of the IFA will be binding on the Issuer, the Agent Bank and the Securityholders;

“**EUR Reset Reference Bank Rate**” means the percentage rate determined by the Agent Bank on the basis of the EUR 5 year Swap Rate Quotations provided by the EUR Reset Reference Banks to the Issuer and notified to the Agent Bank at approximately 11:00 a.m. (CET) on the relevant Reset Interest Determination Date.

“**EUR Reset Reference Banks**” means five major banks in the Euro-zone interbank market selected by the Issuer.

“**EUR Reset Screen Page**” means the Thomson Reuters screen “ICESWAP2” (or such other page as may replace it on Thomson Reuters or, as the case may be, on such other information service that may replace Reuters providing or sponsoring the information appearing there for the purpose of displaying rates comparable to the EUR 5 Year Swap Rate).

“**EURIBOR**” means the Euro-zone interbank offered rate.

“**Euronext Dublin**” means the Irish Stock Exchange plc trading as Euronext Dublin.

~~“**Event of Default**” has the meaning given to it in Condition 10.1.~~

“**Exchanged Securities**” has the meaning given to it in Condition 7.1.

“**FATCA Withholding**” has the meaning given to it in Condition 8.1.

“**Financial Statements**” means either of:

- (A) audited annual consolidated financial statements of the Issuer; or
- (B) unaudited condensed consolidated half-year financial statements of the Issuer which are subject to a formal “review” from an independent auditor,

in each case prepared in accordance with IFRS or any successor accounting standards applicable to the Issuer.

“**First Reset Date**” means 24 November 2023.

“**Fitch**” means Fitch Ratings Limited.

“**Group**” means the Issuer and its Subsidiaries from time to time.

“**Interest Payment Date**” means 24 November in each year.

“**Interest Period**” means the period from (and including) the Issue Date to (but excluding) the first Interest Payment Date and each successive period from (and including) an Interest Payment Date to (but excluding) the next succeeding Interest Payment Date, ~~ending on the Maturity Date~~ date fixed for redemption.

“**Insolvency Proceedings**” means any insolvency proceedings (*procedura concorsuale*) or proceedings equivalent or analogous thereto under the laws of any applicable jurisdiction, including, but not limited to, bankruptcy (*fallimento*), composition with creditors (*concordato preventivo*) (including pre concordato pursuant to Article 161(6) of the Italian Bankruptcy Law), forced administrative liquidation (*liquidazione coatta amministrativa*), extraordinary administration (*amministrazione straordinaria*) and extraordinary administration of large companies in insolvency (*amministrazione straordinaria delle grandi imprese in stato di insolvenza*), debt restructuring agreements (*accordo di ristrutturazione*) pursuant to Article 182-bis of the Italian Bankruptcy Law (including the procedure described under Article 182-bis(6) of the Italian Bankruptcy Law), and Articles 57 ff. of the Italian Bankruptcy Law Reform, reorganisation plans pursuant to Article 67(3)(d) of the Italian Bankruptcy Law and Article 56 of the Italian Bankruptcy Law Reform, judicial liquidation pursuant to articles 121 ff. of the Italian Bankruptcy Law Reform, the undertaking of any court approved restructuring with creditors or the making of any application (or filing of documents with a court) for the appointment of an administrator or other receiver (*curatore*), manager administrator (*commissario straordinario o liquidatore*) or other similar official under any applicable law.

“**Issue Date**” means 24 May 2018.

“**Italian Bankruptcy Law**” means Royal Decree No. 267 of 1942, as amended from time to time, including pursuant to the Italian Bankruptcy Law Reform.

“**Italian Bankruptcy Law Reform**” means the crisis and insolvency code set out under the Legislative Decree No. 14 of 2019, as amended from time to time.

“**Junior Securities**” means:

- (A) the ordinary shares (*azioni ordinarie*) of the Issuer;
- (B) any other class of the Issuer’s share capital (including savings shares (*azioni di risparmio*) and preferred shares (*azioni privilegiate*)); and
- (C)

- (i) any securities of the Issuer (including *strumenti finanziari* issued under Article 2346 of the Italian Civil Code); and
- (ii) any securities issued by a company other than the Issuer which have the benefit of a guarantee or similar instrument from the Issuer,

which securities (in the case of (C)(i)) or guarantee or similar instrument (in the case of (C)(ii)) rank or are expressed to rank *pari passu* with the claims described under (A) and (B) above and/or junior to the Securities.

“Liquidation Event Date” has the meaning given to it in Condition 6.1.

A “Mandatory Arrears of Interest Settlement Event” shall have occurred if:

- (A) a dividend (either interim or final) or any other distribution or payment was validly resolved on, declared, paid or made in respect of any Junior Securities, except where such dividend, distribution or payment was contractually required to be declared, paid or made under the terms of such Junior Securities; or
- (B) a dividend (either interim or final) or any other distribution or payment was validly resolved on, declared, paid or made in respect of any Parity Securities, except where such dividend, distribution or payment was contractually required to be declared, paid or made under the terms of such Parity Securities (including, without limitation, where any such payment occurs mandatorily at the maturity of such Parity Securities); or
- (C) the Issuer or any Subsidiary has repurchased, purchased, redeemed or otherwise acquired any Junior Securities, except where (x) such repurchase, purchase, redemption or acquisition was undertaken in connection with the satisfaction by the Issuer or any Subsidiary of its respective obligations under (i) any share buy-back programme existing at the Issue Date or (ii) any stock option plan or free share allocation plan reserved for directors, officers and/or employees of the Issuer or any associated hedging transaction or (y) such repurchase, purchase, redemption or acquisition is contractually required to be made under the terms of such Junior Securities; or
- (D) the Issuer or any Subsidiary has repurchased, purchased, redeemed or otherwise acquired any Parity Securities, except where (x) such repurchase, purchase, redemption or acquisition is contractually required to be made under the terms of such Parity Securities (including, without limitation, where any such payment occurs mandatorily at the maturity of such Parity Securities) or (y) such repurchase, purchase, redemption or acquisition is effected as a public tender offer or public exchange offer at a purchase price per security which is below its par value.

“Mandatory Settlement Date” means the earliest of:

- (A) the fifth Business Day following the date on which a Mandatory Arrears of Interest Settlement Event occurs;
- (B) following any Deferred Interest Payment, on the next scheduled Interest Payment Date on which the Issuer does not elect to defer all of the interest accrued in respect of the relevant Interest Period; and
- (C) the date on which the Securities are redeemed or repaid in accordance with Condition 6; ~~and~~ including at the Liquidation Event Date (unless otherwise required by mandatory provisions of applicable law).



~~(D) the date on which an order is made or a resolution is passed for the commencement of any Insolvency Proceedings in respect of the Issuer, or the date on which the Issuer takes any corporate action for the purposes of opening, or initiates or consents to, Insolvency Proceedings in respect of itself.~~

~~“Maturity Date” means 24 November 2078.~~

“Parity Securities” means:

- (A) any securities or other instruments issued by the Issuer which rank, or are expressed to rank, *pari passu* with the Issuer’s obligations under the Securities and includes the Issuer’s £500,000,000 Capital Securities due 2076 (ISIN: XS1014987355); the Issuer’s €1,000,000,000 Capital Securities due 2075 (ISIN: XS1014997073), the Issuer’s €1,250,000,000 Capital Securities due 2074 (ISIN: XS0954675129), the Issuer’s £400,000,000 Capital Securities due 2075 (ISIN: XS0954674825); the Issuer’s U.S.\$1,250,000,000 Capital Securities due 2073 (ISIN: X Securities IT0004961808 N Securities IT0004961816 — X Receipt US29265WAA62 N Receipt US29265WAB46) and the €750,000,000 8.5 Year Non-Call Capital Securities due 24 November 2081 (ISIN: XS1713463559); and
- (B) any securities or other instruments issued by a company other than the Issuer which have the benefit of a guarantee or similar instrument from the Issuer, which guarantee or similar instrument ranks or is expressed to rank *pari passu* with the Issuer’s obligations under the Securities.

“Prevailing Interest Rate” means the rate of interest payable on the Securities applicable from time to time pursuant to Condition 4.

“Rating Agency” means any of Moody’s Investors Service Limited, S&P, Fitch and any other rating agency substituted for any of them by the Issuer with the prior written approval of the Trustee and, in each case, any of their respective successors to the rating business thereof.

“Rating Agency Confirmation” means a written confirmation from a Rating Agency which has assigned ratings to the Issuer on a basis sponsored by the Issuer which is either received by the Issuer directly from the relevant Rating Agency or indirectly via publication by such Rating Agency.

A “Rating Methodology Event” shall be deemed to have occurred if the Issuer has received a Rating Agency Confirmation stating that, due to an amendment, clarification or change in the “equity credit” criteria of such Rating Agency, which amendment, clarification or change has occurred after the Issue Date (or if later, occurred after the date on which the Securities are assigned equity credit by a Rating Agency for the first time), the Securities are eligible for a level of equity credit that is lower than the level or equivalent level of equity credit assigned to the Securities by such Rating Agency on the Issue Date (or if “equity credit” is not assigned to the Securities by the relevant Rating Agency on the Issue Date, at the date on which “equity credit” is assigned by such Rating Agency for the first time).

“Redemption Calculation Date” means the fourth Business Day prior to the relevant Early Redemption Date.

“Relevant Date” means the date on which any payment first becomes due but, if the full amount payable has not been received by the Principal Paying Agent or the Trustee on or before the due date, it means the date on which, the full amount of the money having been so received, notice to that effect has been duly given to the Securityholders by the Issuer in accordance with Condition 12.

“Reset Date” means the First Reset Date and each date falling on the fifth anniversary thereafter.

“Reset Interest Determination Date” means, in respect of any Reset Period, the day falling two Business Days prior to the beginning of the relevant Reset Period.

“**Reset Period**” means each period from and including the First Reset Date to but excluding the next following Reset Date and thereafter from and including each Reset Date to but excluding the next following Reset Date.

“**S&P**” means S&P Global Ratings.

“**Subsidiary**” means any entity which is a subsidiary (*società controllata*) of the Issuer within the meaning of Article 2359 of the Italian Civil Code and Article 93 of Legislative Decree No. 58 of 24 February 1998, as amended.

A “**Substantial Repurchase Event**” shall be deemed to have occurred if, prior to the giving of the relevant notice of redemption, at least 80 per cent. of the aggregate principal amount of the Securities issued on the Issue Date has been purchased by or on behalf of the Issuer or a Subsidiary and has been cancelled.

“**TARGET2 Settlement Day**” means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System is open.

A “**Tax Deductibility Event**” shall be deemed to have occurred if, as a result of a Tax Law Change, payments of interest by the Issuer in respect of the Securities are no longer, or within 90 calendar days of the date of any opinion provided pursuant to Condition 6.4(b)(ii) will no longer be, deductible in whole or in part for Italian corporate income tax purposes, and the Issuer cannot avoid the foregoing by taking reasonable measures available to it. For the avoidance of doubt, a Tax Deductibility Event shall not occur if payments of interest by the Issuer in respect of the Securities are not deductible in whole or in part for Italian corporate income tax purposes solely as a result of general tax deductibility limits set forth by Article 96 of Italian Presidential Decree No. 917 of 22 December 1986, as amended as at (and on the basis of the general tax deductibility limits calculated in the manner applicable as at) the ~~Issue-Consent~~ Date.

“**Tax Jurisdiction**” means the Republic of Italy and/or such other taxing jurisdiction to which the Issuer becomes subject or any political subdivision or any authority thereof or therein having power to tax.

“**Tax Law Change**” means: (i) any amendment to, clarification of, or change in, the laws or treaties (or any regulations thereunder) of a Tax Jurisdiction affecting taxation; (ii) any governmental action or (iii) any amendment to, clarification of, or change in the official position or the interpretation of such governmental action that differs from the previously generally accepted position, in each case, by any legislative body, court, governmental authority or regulatory body, or which differs from any specific written statements made by any governmental authority or regulatory body regarding the anticipated tax treatment of the Securities, which amendment, clarification, change or governmental action is effective, on or after the ~~Issue-Consent~~ Date.

“**Taxes**” means any present or future taxes or duties, assessments or governmental charges of whatever nature.

“**Varied Securities**” has the meaning given to it in Condition 7.1.

A “**Withholding Tax Event**” shall be deemed to have occurred if, following the ~~Issue-Consent~~ Date:

- (A) as a result of a Tax Law Change, the Issuer has or will become obliged to pay Additional Amounts in respect of the Securities and such obligation cannot be avoided by the Issuer taking reasonable measures available to it; or
- (B) a person into which the Issuer is merged or to whom it has conveyed, transferred or leased all or substantially all of its assets and who has been substituted in place of the Issuer as principal debtor under the Securities is required to pay Additional Amounts in respect of the Securities and such

obligation cannot be avoided by such person taking reasonable measures available to it, unless the sole purpose of such a merger, conveyance, transfer or lease would be to permit the Issuer to redeem the Securities.

### **3 Status and Subordination**

#### **3.1 Status**

The Securities and the Coupons constitute direct, unsecured and subordinated obligations of the Issuer and rank and will at all times rank *pari passu* without any preference among themselves and with Parity Securities. The Securities constitute *obbligazioni* pursuant to Articles 2410 *et seq.* of the Italian Civil Code. The obligations of the Issuer in respect of the Securities and the Coupons are subordinated as described in Condition 3.2.

#### **3.2 Subordination**

The obligations of the Issuer to make payment in respect of principal and interest on the Securities and the Coupons, including its obligations in respect of any Arrears of Interest, will, in the event of the winding-up, insolvency, dissolution or liquidation of the Issuer, rank:

- (a) senior only to the Issuer's payment obligations in respect of any Junior Securities;
- (b) *pari passu* among themselves and with the Issuer's payment obligations in respect of any Parity Securities; and
- (c) junior to all other payment obligations of the Issuer, present and future, whether subordinated (including any claims pursuant to Article 2411, first paragraph, of the Italian Civil Code) or unsubordinated,

in each case except as otherwise required by mandatory provisions of applicable law.

Nothing in this Condition 3.2 shall affect or prejudice the payment of costs, charges, expenses, liabilities or remuneration of the Trustee or Agents or the rights and remedies of the Trustee or the Agents in respect thereof.

#### **3.3 No Set-off**

To the extent and in the manner permitted by applicable law, no Securityholder or Couponholder may exercise, claim or plead any right of set-off, counterclaim, compensation or retention in respect of any amount owed to it by the Issuer in respect of, or arising from, the Securities or the Coupons and each Securityholder and Couponholder will, by virtue of his holding of any Security or Coupon, be deemed to have waived all such rights of set-off, counterclaim, compensation or retention. The Issuer may not set off any claims it may have against the Securityholders against any of its obligations under the Securities or the Coupons.

### **4 Interest and Interest Deferral**

#### **4.1 Interest**

##### **(a) Interest Rates and Interest Payment Dates**

Unless previously redeemed or repurchased and cancelled in accordance with these Conditions and subject to the further provisions of this Condition 4, the Securities will bear interest on their principal amount as follows:

- (i) from (and including) the Issue Date to (but excluding) the First Reset Date, at the rate of 2.500 per cent. per annum, payable annually in arrear on each Interest Payment Date, except that the first payment of interest, to be made on 24 November 2018 (the "First

**Interest Payment Date**”), will be in respect of the period from and including 24 May 2018 to but excluding 24 November 2018; and

- (ii) from (and including) the First Reset Date to (but excluding) the ~~Maturity Date~~date fixed for redemption, at, in respect of each Reset Period, the relevant EUR 5 year Swap Rate plus:
  - (A) in respect of the Reset Period commencing on the First Reset Date to but excluding 24 November 2028, 2.096 per cent. per annum;
  - (B) in respect of the Reset Periods commencing on 24 November 2028, 24 November 2033 and 24 November 2038, 2.346 per cent. per annum; and
  - (C) in respect of any other Reset Period after 24 November 2038, 3.096 per cent. per annum;

all as determined by the Agent Bank for annual payment in arrear on each Interest Payment Date, commencing on 24 November 2018.

**(b) Determination of EUR 5 year Swap Rate**

- (i) For the purposes of these Conditions, the relevant “**EUR 5 year Swap Rate**”, in respect of a Reset Period, shall be the annual mid-swap rate as displayed on the EUR Reset Screen Page as at 11:00 a.m. (CET) on the relevant Reset Interest Determination Date.
- (ii) If the relevant EUR 5 year Swap Rate does not appear on the EUR Reset Screen Page on the relevant Reset Interest Determination Date, the Issuer shall request each of the EUR Reset Reference Banks to provide it with its EUR 5 year Swap Rate Quotation (such EUR 5 year Swap Rate Quotation to be notified by the Issuer to the Agent Bank) and the Agent Bank will determine the EUR 5 year Swap Rate as the EUR Reset Reference Bank Rate on the relevant Reset Interest Determination Date.
- (iii) If at least three quotations are provided by the EUR Reset Reference Banks, the EUR 5 year Swap Rate will be determined by the Agent Bank on the basis of the arithmetic mean of the quotations provided, eliminating the highest quotation (or, in the event of equality, one of the highest) and the lowest quotation (or, in the event of equality, one of the lowest).
- (iv) If only two quotations are provided, the EUR 5 year Swap Rate will be the arithmetic mean of the quotations provided.
- (v) If only one quotation is provided, the EUR Reset Reference Banks Rate will be the quotation provided.
- (vi) If no quotations are provided (including, without limitation, where the IFA is unable to determine an appropriate alternative rate for the purposes of the definition of EUR 5 year Swap Rate Quotation), the EUR Reset Reference Bank Rate for the relevant period will be equal to the last available EUR 5 year mid swap rate for euro swap transactions, expressed as an annual rate, on the EUR Reset Screen Page.

**(c) Calculation of Interest**

The interest payable on each Security on any Interest Payment Date shall be calculated per €1,000 in principal amount of the Securities (the “**Calculation Amount**”). The amount of interest payable per Calculation Amount for any period shall be equal to the product of the Prevailing Interest Rate for the Interest Period ending immediately prior to such Interest Payment Date, the Calculation Amount and the day-count fraction for the relevant period, rounding the resulting figure to the

nearest cent (half a cent being rounded upwards), save that the amount of interest payable on the First Interest Payment Date shall be €12.60 per Calculation Amount.

The day-count fraction will be calculated on the following basis:

- (a) if the Accrual Period is equal to or shorter than the Determination Period during which it falls, the day-count fraction will be the number of days in the Accrual Period divided by the product of (1) the number of days in such Determination Period and (2) the number of Determination Periods normally ending in any year; and
- (b) if the Accrual Period is longer than one Determination Period, the day-count fraction will be the sum of:
  - (i) the number of days in such Accrual Period falling in the Determination Period in which it begins divided by the product of (1) the number of days in such Determination Period and (2) the number of Determination Periods normally ending in any year; and
  - (ii) the number of days in such Accrual Period falling in the next Determination Period divided by the product of (a) the number of days in such Determination Period and (2) the number of Determination Periods normally ending in any year

where:

“**Accrual Period**” means the relevant period for which interest is to be calculated (from and including the first such day to but excluding the last); and

“**Determination Period**” means the period from and including 24 November in any year to but excluding the next 24 November.

#### 4.2 Interest Deferral

Subject to the provisions of the following paragraphs, on each Interest Payment Date, the Issuer shall pay interest on the Securities accrued to (but excluding) that date in respect of the Interest Period ending immediately prior to such Interest Payment Date.

##### (a) *Optional Interest Deferral*

The Issuer may, at its sole discretion, elect to defer in whole, but not in part, any payment of interest accrued on the Securities in respect of any Interest Period (a “**Deferred Interest Payment**”) by giving notice (a “**Deferral Notice**”) of such election to the Securityholders in accordance with Condition 12 and to the Trustee and the Principal Paying Agent at least five, but not more than 30, Business Days prior to the relevant Interest Payment Date. If the Issuer makes such an election, the Issuer shall have no obligation to make such payment and any such non-payment of interest shall not constitute a default of the Issuer or any other breach of obligations under the Securities or for any other purpose.

Any Deferred Interest Payment will be deferred and shall constitute “**Arrears of Interest**”. Any Arrears of Interest will remain outstanding until paid in full by the Issuer, but Arrears of Interest shall not itself bear interest.

##### (b) *Optional Settlement of Arrears of Interest*

The Issuer may pay outstanding Arrears of Interest (in whole but not in part) at any time upon giving not less than 10 and not more than 15 Business Days’ notice to the Securityholders in accordance with Condition 12 (which notice shall be irrevocable and will oblige the Issuer to pay

the relevant Arrears of Interest on the payment date specified in such notice) and to the Trustee and the Principal Paying Agent at least five, but not more than 30, Business Days prior to the relevant due date for payment.

**(c) *Mandatory Settlement of Arrears of Interest***

All (but not some only) of any outstanding Arrears of Interest from time to time in respect of all Securities for the time being outstanding shall become due and payable in full and shall be paid by the Issuer on the first occurring Mandatory Settlement Date.

Notice of the occurrence of any Mandatory Settlement Date shall be given to the Securityholders in accordance with Condition 12 and to the Trustee and the Principal Paying Agent at least five, but not more than 30, Business Days prior to the relevant due date for payment.

~~*If a Mandatory Settlement Date does not occur prior to the calendar day which is the fifth anniversary of the Interest Payment Date on which the relevant Deferred Interest Payment was first deferred, it is the intention, though not an obligation, of the Issuer to pay all outstanding Arrears of Interest (in whole but not in part) on the next following Interest Payment Date.*~~

**(d) *Notification of Mandatory Settlement Date***

Upon the occurrence of a Mandatory Settlement Date, the Issuer shall promptly deliver to the Trustee a certificate signed by two duly authorised representatives of the Issuer confirming the occurrence thereof upon which the Trustee may rely absolutely without liability to any person for so doing.

**4.3 *Accrual of Interest***

The Securities will cease to bear interest from (and including) the calendar day on which they are due for redemption. If the Issuer fails to redeem the Securities upon due presentation and surrender thereof when due, interest will continue to accrue as provided in the Trust Deed.

**5 *Payment and Exchanges of Talons***

*Provisions for payments in respect of Global Securities are set out under “Summary of Provisions Relating to the Securities while represented by the Global Securities” below.*

**5.1 *Payments in respect of Securities***

Payments of principal and interest in respect of each Security will be made against presentation and surrender (or, in the case of part payment only, endorsement) of the Security, except that payments of interest due on an Interest Payment Date will be made against presentation and surrender (or, in the case of part payment only, endorsement) of the relevant Coupon, in each case at the specified office outside the United States of any of the Paying Agents.

**5.2 *Method of Payment***

Payments will be made by credit or transfer to a euro account (or any other account to which euro may be credited or transferred) specified by the payee.

**5.3 *Missing Unmatured Coupons***

Upon the date on which any Security becomes due and repayable, all unmatured Coupons appertaining to the Security (whether or not attached) shall become void and no payment shall be made in respect of such Coupons.

#### **5.4 Payments subject to Applicable Laws**

Payments will be subject in all cases to any other applicable fiscal or other laws and regulations in the place of payment or other laws and regulations to which the Issuer or its agents agree to be subject and, save as provided in Condition 8 below, the Issuer will not be liable for any Taxes imposed or levied by such laws, regulations or agreements.

#### **5.5 Payment only on a Presentation Date**

A holder shall be entitled to present a Security or Coupon for payment only on a Presentation Date and shall not be entitled to any further interest or other payment if a Presentation Date is after the due date for payment of any amount in respect of any Security or Coupon.

“**Presentation Date**” means a day which (subject to Condition 9):

- (a) is or falls after the relevant due date for payment of any amount in respect of any Security or Coupon;
- (b) is 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 the place of the specified office of the Paying Agent at which the Security or Coupon is presented for payment; and
- (c) in the case of payment by credit or transfer to a euro account as referred to above, is a TARGET2 Settlement Day.

#### **5.6 Exchange of Talons**

On and after the Interest Payment Date on which the final Coupon comprised in any Coupon sheet matures, the Talon comprised in the Coupon sheet may be surrendered at the specified office of any Paying Agent in exchange for a further Coupon sheet (including any appropriate further Talon), subject to the provisions of Condition 9. Each Talon shall, for the purposes of these Conditions, be deemed to mature on the Interest Payment Date on which the final Coupon comprised in the relative Coupon sheet matures.

#### **5.7 Initial Paying Agents**

The names of the initial Paying Agents and their initial specified offices are set out at the end of these Conditions. The Issuer reserves the right, subject to the prior written approval of the Trustee, at any time to vary or terminate the appointment of any Paying Agent and to appoint additional or other Paying Agents provided that:

- (a) there will at all times be a Principal Paying Agent;
- (b) there will at all times be a Paying Agent in a jurisdiction within Europe, other than the jurisdiction in which the Issuer is incorporated; and
- (c) there will at all times be an Agent Bank.

Notice of any termination or appointment and of any changes in specified offices will be given to the Securityholders promptly by the Issuer in accordance with Condition 12.

## **6 Redemption and Purchase**

### **6.1 ~~Maturity~~ No fixed redemption**

Unless previously redeemed or purchased and cancelled as provided below, the Securities will become due and payable and will be redeemed on the date on which a winding up, dissolution or liquidation of the Issuer (otherwise than for the purpose of a solvent amalgamation, merger or reconstruction

under which the assets and liabilities of the Issuer are assumed by the entity resulting from such amalgamation, merger or reconstruction and such entity assumes the obligations of the Issuer in respect of the Securities in accordance with Condition 13.2) is instituted (the “Liquidation Event Date”), including in connection with any Insolvency Proceedings, in accordance with (i) any applicable legal provision, or any decision of any judicial or administrative authority, or (ii) any resolution passed at a shareholders’ meeting of the Issuer or (iii) any provision which is set out in the by-laws of the Issuer from time to time (including the maturity of the Issuer which, as of the Consent Date, is set in its by-laws at 31 December 2100). Upon having become due and payable according to the provisions above, the Securities will be redeemed at an amount equal to their principal amount, together with any outstanding interest accrued up to (but excluding) the Liquidation Event Date and any outstanding Arrears of Interest. ~~Unless previously redeemed or purchased and cancelled as provided below, the Issuer will redeem the Securities on the Maturity Date at their principal amount together with any interest accrued to (but excluding) the Maturity Date and any outstanding Arrears of Interest.~~

## **6.2 Optional Redemption**

The Issuer may redeem all of the Securities (but not some only) on any date during the period commencing on (and including) 24 August 2023 and ending on (and including) the First Reset Date or upon any Interest Payment Date thereafter (each such date, a “Call Date”), in each case at their principal amount together with any accrued interest up to (but excluding) the relevant Call Date and any outstanding Arrears of Interest, on giving not less than 30 and not more than 60 calendar days’ notice to the Securityholders in accordance with Condition 12.

## **6.3 Early Redemption following a Withholding Tax Event**

- (a) If a Withholding Tax Event occurs, the Issuer may redeem all (but not some only) of the Securities at any time at the applicable Early Redemption Price upon giving not less than 30 and not more than 60 calendar days’ notice to the Trustee and the Securityholders in accordance with Condition 12, provided that no such notice shall be given earlier than 90 days prior to the earliest date on which the Issuer would be obliged to pay such Additional Amounts were a payment in respect of the Securities then due.
- (b) Prior to giving a notice to the Securityholders pursuant to this Condition 6.3, the Issuer will deliver to the Trustee in a form and with content reasonably satisfactory to the Trustee:
  - (i) a certificate signed by two duly authorised representatives of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer to redeem the Securities in accordance with this Condition 6.3 have been satisfied; and
  - (ii) an opinion of independent legal or tax advisers, appointed by the Issuer at its own expense, of recognised standing in the jurisdiction of incorporation of the Issuer to the effect that the Issuer has or will become obliged to pay Additional Amounts as a result of (in the case of paragraph (A) of the definition of Withholding Tax Event) a Tax Law Change or (in the case of paragraph (B) of the definition of Withholding Tax Event) the relevant merger, conveyance, transfer or lease,

and the Trustee shall be entitled to accept and rely on the above certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent set out above and the facts set out therein in which event the same shall be conclusive and binding on the Securityholders and the Couponholders.



#### **6.4 Early Redemption following a Tax Deductibility Event**

- (a) If a Tax Deductibility Event occurs, the Issuer may redeem all (but not some only) of the Securities at any time at the applicable Early Redemption Price upon giving not less than 30 and not more than 60 calendar days' notice of redemption to the Trustee and the Securityholders in accordance with Condition 12.
- (b) Prior to giving a notice to the Securityholders pursuant to this Condition 6.4, the Issuer will deliver to the Trustee in a form and with content reasonably satisfactory to the Trustee:
  - (i) a certificate signed by two duly authorised representatives of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer to redeem the Securities in accordance with this Condition 6.4 have been satisfied; and
  - (ii) an opinion of an independent legal or tax adviser, appointed by the Issuer at its own expense, of recognised standing in the jurisdiction of incorporation of the Issuer to the effect that payments of interest by the Issuer in respect of the Securities are no longer, or within 90 calendar days of the date of that opinion will no longer be, deductible in whole or in part for Italian corporate income tax purposes as a result of a Tax Law Change,

and the Trustee shall be entitled to accept and rely on the above certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent set out above and the facts set out therein in which event the same shall be conclusive and binding on the Securityholders and the Couponholders.

#### **6.5 Early Redemption following a Rating Methodology Event**

- (a) If a Rating Methodology Event occurs, the Issuer may redeem all (but not some only) of the Securities at any time at the applicable Early Redemption Price upon giving not less than 30 and not more than 60 calendar days' notice of redemption to the Trustee and the Securityholders in accordance with Condition 12.
- (b) Prior to giving a notice to the Securityholders pursuant to this Condition 6.5, the Issuer will deliver to the Trustee in a form and with content reasonably satisfactory to the Trustee:
  - (i) a certificate signed by two duly authorised representatives of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer to redeem the Securities in accordance with this Condition 6.5 have been satisfied; and
  - (ii) a copy of the Rating Agency Confirmation relating to the applicable Rating Methodology Event unless the delivery of such Rating Agency Confirmation would constitute a breach of the terms on which such confirmation is delivered to the Issuer,

and the Trustee shall be entitled to accept and rely on the above certificate and, if applicable, copy of the Rating Agency Confirmation as sufficient evidence of the satisfaction of the conditions precedent set out above and the facts set out therein, in which event the same shall be conclusive and binding on the Securityholders and the Couponholders.

#### **6.6 Early Redemption upon the occurrence of an Accounting Event**

- (a) If an Accounting Event occurs, the Issuer may redeem all (but not some only) of the Securities at any time at the applicable Early Redemption Price upon giving not less than 30 and not more than 60 calendar days' notice of redemption to the Trustee and the Securityholders in accordance with Condition 12.

The Issuer may notify the redemption of the Securities as a result of the occurrence of an Accounting Event from (and including) the date on which the Change is officially adopted, which may fall before the date on which the Change will come into effect.

- (b) Prior to giving a notice to the Securityholders pursuant to this Condition 6.6, the Issuer will deliver to the Trustee in a form and with content reasonably satisfactory to the Trustee:
- (i) a certificate signed by two duly authorised representatives of the Issuer stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer to redeem the Securities in accordance with this Condition 6.6 have been satisfied; and
  - (ii) a copy of the opinion, letter or report of a recognised accountancy firm of international standing, appointed by the Issuer at its own expense, as set forth in the definition of “Accounting Event”,

and the Trustee shall be entitled to accept and rely on the above certificate and opinion, letter or report as sufficient evidence of the satisfaction of the conditions precedent set out above and the facts set out therein, in which event the same shall be conclusive and binding on the Securityholders and the Couponholders.

#### **6.7 Purchases and Substantial Repurchase Event**

The Issuer or any Subsidiary may at any time purchase Securities (provided that all unmatured Coupons appertaining to the Securities are purchased with the Securities) in any manner and at any price. Such Securities may be held, reissued, resold or, at the option of the Issuer, surrendered to any Paying Agent for cancellation.

If a Substantial Repurchase Event occurs, the Issuer may redeem all (but not some only) of the outstanding Securities at any time at the applicable Early Redemption Price, subject to the Issuer having given the Trustee and the Securityholders not less than 30 and not more than 60 calendar days’ notice in accordance with Condition 12.

#### **6.8 Cancellations**

All Securities which are redeemed or exchanged pursuant to Condition 7 (*Exchange or Variation upon a Withholding Tax Event, Tax Deductibility Event, Rating Methodology Event or Accounting Event and Preconditions to such Exchange or Variation*) will forthwith be cancelled, together with all unmatured Coupons attached to the Securities or surrendered with the Securities at the time of redemption. All Securities so cancelled and any Securities purchased and cancelled pursuant to Condition 6.7 above shall be forwarded to the Principal Paying Agent and accordingly may not be held, reissued or resold.

#### **6.9 Notices Final**

A notice of redemption given pursuant to any of Conditions 6.2, 6.3, 6.4, 6.5, 6.6 or 6.7 shall be irrevocable and upon the expiry of any such notice, the Issuer shall be bound to redeem the Securities in accordance with the terms of the relevant Condition.

*The following does not form a part of the terms of the Securities:*

*The Issuer intends (without thereby assuming a legal obligation) that it will redeem or repurchase the Securities only to the extent that the part of the aggregate principal amount of the Securities to be redeemed or repurchased which was assigned “equity credit” (or such similar nomenclature used by S&P from time to time) at the time of the issuance of the Securities does not exceed such part of the net proceeds received by the Issuer or any Subsidiary of the Issuer prior to the date of such redemption or repurchase from the sale or issuance of securities by the Issuer or such*

*Subsidiary to third party purchasers (other than group entities of the Issuer) which is assigned by S&P “equity credit” (or such similar nomenclature used by S&P from time to time) at the time of sale or issuance of such securities (but taking into account any changes in hybrid capital methodology or another relevant methodology or the interpretation thereof since the issuance of the Securities), unless:*

- (i) the rating assigned by S&P to the Issuer is at least “BBB+” (or such similar nomenclature then used by S&P) and the Issuer is of the view that such rating would not fall below this level as a result of such redemption or repurchase, or*
- (ii) in the case of a repurchase, such repurchase is of less than (a) 10 per cent. of the aggregate principal amount of the Securities originally issued in any period of 12 consecutive months or (b) 25 per cent. of the aggregate principal amount of the Securities originally issued in any period of 10 consecutive years, or*
- (iii) the Securities are redeemed pursuant to a Tax Deductibility Event or a Withholding Tax Event, or an Accounting Event or a Substantial Repurchase Event or a Rating Methodology Event which results from an amendment, clarification or change in the “equity credit” criteria by S&P; or*
- (iv) the Securities are not assigned an “equity credit” by S&P (or such similar nomenclature then used by S&P) at the time of such redemption or repurchase, or*
- (v) in the case of a repurchase, such repurchase relates to an aggregate principal amount of Securities which is less than or equal to the excess (if any) above the maximum aggregate principal amount of the Issuer’s hybrid capital to which S&P then assigns equity content under its prevailing methodology; or*
- (vi) such redemption or repurchase occurs on or after the Reset Date falling on 24 November 2043.*

## **7 Exchange or Variation upon a Withholding Tax Event, Tax Deductibility Event, Rating Methodology Event or Accounting Event and Preconditions to such Exchange or Variation**

**7.1** If the Issuer determines that a Withholding Tax Event, Tax Deductibility Event, Rating Methodology Event or an Accounting Event has occurred and is continuing, and has provided the Trustee with the relevant certificate and opinion, or in the case of Condition 6.5 only, the Rating Agency Confirmation, pursuant to Condition 6.3, 6.4, 6.5 or 6.6 (as applicable), then the Issuer may, subject to Condition 7.2 below (without any requirement for the consent or approval of the Securityholders or Couponholders), subject to its having satisfied the Trustee immediately prior to the giving of any notice referred to herein that the provisions of this Condition 7 have been complied with and having given not less than 30 nor more than 60 Business Days' notice to the Trustee, the Principal Paying Agent and, in accordance with Condition 12 (Notices), to the Securityholders (which notice shall be irrevocable), as an alternative to an early redemption of the Securities at any time:

- (i) exchange the Securities (the “**Exchanged Securities**”), or*
- (ii) vary the terms of the Securities (the “**Varied Securities**”),*

so that:

- (A) in the case of a Tax Deductibility Event, the Issuer is entitled to claim a deduction or a higher deduction (as the case may be) in respect of interest paid when computing its tax*

liabilities for Italian corporation income tax purposes as compared with the entitlement (in the case of the Issuer) after the occurrence of the relevant Tax Deductibility Event,

- (B) in the case of a Withholding Tax Event, in making any payments in respect of the Exchanged Securities or Varied Securities the Issuer is only required to pay lesser or no Additional Amounts in respect of the Exchanged Securities or Varied Securities,
- (C) in the case of an Accounting Event, the aggregate nominal amount of the Exchanged Securities or Varied Securities (as the case may be) will be recorded as a “financial liability” in accordance with accounting practices or principles applicable to the Issuer at the time of the next Financial Statements of the Issuer, or
- (D) in the case of a Rating Methodology Event, the aggregate nominal amount of the Exchanged Securities or Varied Securities (as the case may be) is assigned “equity credit” by the relevant Rating Agency that is equal to or greater than that which was assigned to the Securities on the Issue-Consent Date (or if “equity credit” is not assigned to the Securities by the relevant Rating Agency on the Issue-Consent Date, at the date on which “equity credit” is assigned by such Rating Agency for the first time),

and the Trustee shall, subject to the following provisions of this Condition 7, and subject to the receipt by it of the certificate by two duly authorised representatives of the Issuer referred to in Condition 7.2 below, agree to such exchange or variation.

Upon expiry of such notice, the Issuer shall either vary the terms of or, as the case may be, exchange the Securities in accordance with this Condition 7 and cancel such Exchanged Securities.

The Trustee shall (at the expense of the Issuer) enter into a supplemental trust deed and/or supplemental agency agreement with the Issuer (including indemnities satisfactory to the Trustee) solely in order to effect the exchange of the Securities, or the variation of the terms of the Securities, provided that the Trustee shall not be obliged to enter into such supplemental trust deed and/or supplemental agency agreement if the terms of the Exchanged Securities or the Varied Securities would impose, in the Trustee’s opinion, more onerous obligations upon it or expose it to liabilities or reduce its protections. If the Trustee does not enter into such supplemental trust deed and/or supplemental agency agreement (and the Trustee shall have no liability or responsibility to any person if it does not do so), the Issuer may redeem the Securities as provided in Condition 6 (Redemption and Purchase).

**7.2** Any such exchange or variation shall be subject to the following conditions:

- (i) for as long as the Securities are listed on any stock exchange, the Issuer complying with the rules of the relevant stock exchange (or any other relevant authority) on which the Securities are for the time being admitted to trading, and (for so long as the rules of such exchange require) the publication of any appropriate supplement, listing particulars or offering circular in connection therewith, and the Exchanged Securities or Varied Securities continue to be admitted to trading on the same stock exchange as the Securities were admitted to trading immediately prior to the relevant exchange or variation;
- (ii) the Issuer paying any outstanding Arrears of Interest in full prior to such exchange or variation or providing for the accrual of an amount equal to the Arrears of Interest under the terms of the Exchanged Securities or the Varied Securities (as applicable);

- (iii) the Exchanged Securities or Varied Securities shall: (A) rank at least *pari passu* with the ranking of the Securities prior to the exchange or variation, and (B) benefit from the same interest rates and the same Interest Payment Dates, the same First Reset Date and early redemption rights (provided that the relevant exchange or variation may not itself trigger any early redemption right), a maturity date which shall not be longer than the maturity date of the Issuer as provided from time to time under the relevant by-laws, the same rights to accrued interest or Arrears of Interest and any other amounts payable under the Securities which, in each case, has accrued to the Securityholders and has not been paid, the same rights to principal and interest, and, if publicly rated by a Rating Agency which has provided a solicited rating at the invitation or with the consent of the Issuer, immediately prior to such exchange or variation, at least the same credit rating immediately after such exchange or variation by each such Rating Agency, as compared with the relevant solicited rating(s) immediately prior to such exchange or variation (as determined by the Issuer using reasonable measures available to it including discussions with the Rating Agencies to the extent practicable) (C) not contain terms providing for the mandatory deferral or cancellation of interest and (D) not contain terms providing for loss absorption through principal write-down or conversion to shares;
- (iv) the terms of the exchange or variation, in the sole opinion of the Issuer (acting reasonably) not being prejudicial to the interests of the investors in the Securities, including compliance with (iii) above, as certified to the Trustee by two duly authorised representatives of the Issuer, having consulted in good faith with an independent financial institution of international repute or an independent financial adviser experienced in the international capital markets, and any such certificate shall be final and binding on all parties;
- (v) the preconditions to exchange or variation set out in the Trust Deed having been satisfied, including the issue of legal opinions addressed to the Trustee (in form and substance satisfactory to the Trustee) (copies of which shall be made available to the Securityholders at the specified offices of the Trustee during usual office hours) from one or more international law firms of good reputation selected by the Issuer and confirming (x) that the Issuer has capacity to assume all rights, duties and obligations under the Exchanged Securities or Varied Securities (as the case may be) and has obtained all necessary corporate or governmental authorisation to assume all such rights and obligations and (y) the legality, validity and enforceability of the Exchanged Securities or Varied Securities;
- (vi) the delivery to the Trustee of a certificate signed by two duly authorised representatives of the Issuer certifying each of the points set out in paragraphs (i) to (v) above.

The Trustee may rely absolutely upon and shall be entitled to accept such certificates and any such opinions, as are referred to in this Condition 7, without any liability to any person for so doing and without any further inquiry as sufficient evidence of the satisfaction of the criteria set out in such paragraphs, in which event it shall be conclusive and binding on the Securityholders and the Couponholders.

## 8 Taxation

### 8.1 Payment without Withholding

All payments of principal and interest in respect of the Securities and Coupons by the Issuer will be made without withholding or deduction for or on account of any Taxes imposed or levied by or on behalf of any Tax Jurisdiction, unless such withholding or deduction of the Taxes is required

by law. In such event, the Issuer will pay such additional amounts (the “**Additional Amounts**”) as may be necessary in order that the net amounts received by the Securityholders and Couponholders after such withholding or deduction shall equal the respective amounts of principal and interest which would otherwise have been receivable in respect of the Securities or, as the case may be, Coupons in the absence of such withholding or deduction; except that no Additional Amounts shall be payable:

- (a) in respect of any Security or Coupon presented for payment
  - (i) in any Tax Jurisdiction; or
  - (ii) by or on behalf of a holder who is liable for such Taxes in respect of such Security or Coupon by reason of his having some connection with a Tax Jurisdiction other than the mere holding of such Security or Coupon; or
  - (iii) by or on behalf of a holder who would be able to avoid such withholding or deduction by making a declaration or any other statement including, but not limited to, a declaration of residence or non-residence, but fails to do so; or
  - (iv) more than 30 days after the Relevant Date except to the extent that the holder thereof would have been entitled to an Additional Amount on presenting the same for payment on such thirtieth day assuming that day to have been a Presentation Date (as defined in Condition 5); or
- (b) in relation to any payment or deduction on account of *imposta sostitutiva* pursuant to Decree No. 239 as amended and/or supplemented or, for the avoidance of doubt, Italian Legislative Decree No. 461 of 21 November 1997 as amended and supplemented and in all circumstances in which the procedures set forth in Decree No. 239 in order to benefit from a tax exemption have not been met or complied with; or
- ~~(c) — where such withholding or deduction is required to be made pursuant to Law Decree 30 September 1983, No. 512 converted into law with amendments by Law 25 November 1983, No. 649, as amended and supplemented; or~~
- (c) ~~(d)~~ in the event of payment by the Issuer to a non-Italian resident holder, to the extent that the holder is resident in a country which does not allow for a satisfactory exchange of information with the Italian authorities.

Notwithstanding anything to the contrary contained herein, the Issuer (and any other person making payments on behalf of the Issuer) shall be entitled to withhold and deduct any amounts required to be deducted or withheld pursuant to an agreement described in Section 1471(b) of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), or otherwise imposed pursuant to (i) Sections 1471 through 1474 of the Code, or (ii) any regulations thereunder or official interpretations thereof, or (iii) an intergovernmental agreement between the United States and another jurisdiction facilitating the implementation thereof, or (iv) any law implementing such an intergovernmental agreement (any such withholding or deduction, a “**FATCA Withholding**”), and no person shall be required to pay any additional amounts in respect of FATCA Withholding.

## **8.2 Additional Amounts**

Any reference in these Conditions to any amounts in respect of the Securities shall be deemed also to refer to any Additional Amounts which may be payable under this Condition or under any undertakings given in addition to, or in substitution for, this Condition pursuant to the Trust Deed.

## 9 Prescription

The Securities and Coupons (which for this purpose shall not include Talons) will become void unless presented for payment within periods of 10 years (in the case of principal) and 5 years (in the case of interest) from the Relevant Date in respect of the Securities or, as the case may be, the Coupons, subject to the provisions of Condition 5. There shall not be included in any Coupon sheet issued upon exchange of a Talon any Coupon which would be void upon issue under this Condition or Condition 5.

## 10 Enforcement on the Liquidation Event Date and No Events of Default ~~and Enforcement~~

### 10.1 No Events of Default

There are no events of default in relation to the Securities.

On the Liquidation Event Date, the Securities will become due and payable at an amount equal to their principal amount, together with any outstanding interest accrued up to (but excluding) the Liquidation Event Date and any outstanding Arrears of Interest.

On or following the Liquidation Event Date, no payments will be made in relation to the Junior Securities of the Issuer before all amounts due, but unpaid, on the Securities have been paid by the Issuer.

~~If any of the following events (each an “Event of Default”) occurs, then the Issuer shall, without notice from the Trustee, be deemed to be in default under the Trust Deed, the Securities and the Coupons and the Trustee at its sole discretion may (subject to its being indemnified and/or secured and/or prefunded to its satisfaction) and subject to Condition 10.3 (i) in the case of sub-paragraph (a) below, institute steps in order to obtain a judgment against the Issuer for any amounts due in respect of the Securities, including the institution of Insolvency Proceedings against the Issuer and (ii) in the case of each of sub-paragraphs (a) and (b) below, file a proof of claim and participate in any Insolvency Proceedings or proceedings for the liquidation, dissolution or winding up of the Issuer (in which Insolvency Proceedings, liquidation, dissolution or winding up the Securities shall immediately become due and payable at their principal amount together with any accrued but unpaid interest up to (but excluding) the date on which the Securities become so due and payable and any outstanding Arrears of Interest):~~

~~(a) — default is made by the Issuer in the payment of any interest which is due and payable in respect of the Securities and the default continues for a period of 30 days or more; or~~

~~(b) — a judgment is given for the voluntary or judicial winding up, dissolution or liquidation of the Issuer or restructuring of the Issuer’s liabilities pursuant to any Insolvency Proceedings or under any applicable bankruptcy or insolvency law or if the Issuer is liquidated for any other reason (otherwise than for the purpose of a solvent amalgamation, merger or reconstruction under which the assets and liabilities of the Issuer are assumed by the entity resulting from such amalgamation, merger or reconstruction and such entity assumes the obligations of the Issuer in respect of the Securities and an opinion of an independent legal adviser of recognised standing in the Republic of Italy has been delivered to the Trustee confirming the same prior to the effective date of such amalgamation, merger or reconstruction).~~

### ~~10.2 — Enforcement in respect of non-payment of principal~~

### 10.2 Enforcement on the Liquidation Event Date

~~If default is made by the Issuer in the payment of any principal which has become due and payable in respect of the Securities in accordance with these Conditions and the default continues for a period of~~

~~10 days or more.~~ On or following the Liquidation Event Date, the Trustee at its sole discretion and subject to Condition 10.3 may (subject to its being indemnified and/or secured and/or prefunded to its satisfaction), institute steps in order to obtain a judgment against the Issuer for any amounts due in respect of the Securities, including the institution of Insolvency Proceedings against the Issuer or the filing of a proof of claim and participation in any Insolvency Proceedings or proceedings for the liquidation, dissolution or winding-up of the Issuer (in which Insolvency Proceedings, liquidation, dissolution or winding-up the Securities shall immediately be due and payable at their principal amount together with any accrued but unpaid interest up to (but excluding) the date on which the Securities become so due and payable and any outstanding Arrears of Interest).

### **10.3 Enforcement by the Trustee**

- (a) Subject to sub-paragraph (b) below, the Trustee may at its discretion and without further notice, take such steps, actions or proceedings against the Issuer as it may think fit to enforce the provisions of the Trust Deed, the Securities and the Coupons, but in no event shall the Issuer, by virtue of the initiation of any such steps, actions or proceedings, be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.
- (b) The Trustee shall not be bound to take any action referred to in Conditions ~~10.1~~, 10.2 or 10.3(a) above or any other action or steps under or pursuant to the Trust Deed, the Securities or the Coupons unless (a) it has been so directed by an extraordinary resolution of the Securityholders or so requested in writing by the holders of at least one-quarter in principal amount of the Securities then outstanding and (b) it has been indemnified and/or secured and/or prefunded to its satisfaction.

### **10.4 Enforcement by the Securityholders**

No Securityholder or Couponholder shall be entitled to proceed directly against the Issuer or to institute any Insolvency Proceedings against the Issuer or to file a proof of claim and participate in any Insolvency Proceedings or institute proceedings for the liquidation, dissolution or winding-up of the Issuer unless the Trustee, having become bound so to proceed, fails so to do within a reasonable period and the failure shall be continuing, in which case the Securityholder or Couponholder shall have only such rights against the Issuer as those which the Trustee would have been entitled to exercise pursuant to this Condition 10.

### **10.5 Limitation on remedies**

No remedy against the Issuer, other than as referred to in this Condition 10, shall be available to the Trustee, the Securityholders and the Couponholders, whether for the recovery of amounts due in respect of the Securities or under the Trust Deed or in respect of any breach by the Issuer of any of its other obligations under or in respect of the Securities, the Coupons and the Trust Deed.

## **11 Replacement of Securities and Coupons**

Should any Security or Coupon be lost, stolen, mutilated, defaced or destroyed it may be replaced at the specified office of the Principal Paying Agent upon payment by the claimant of such costs and expenses as may be incurred in connection with the replacement and on such terms as to evidence and indemnity as the Issuer may reasonably require. Mutilated or defaced Securities or Coupons must be surrendered before replacements will be issued.

## **12 Notices**

All notices regarding the Securities will be deemed to be validly given (a) if published in a leading English language daily newspaper of general circulation in London and Ireland (it is expected that such



publication will be made in the *Financial Times* in London and the *Irish Times* in Ireland) and (b) if and for so long as the Securities are admitted to trading on, and listed on the Euronext Dublin, on the Euronext Dublin's website, www.ise.ie. The Issuer shall also ensure that notices are duly published in a manner which complies with the rules and regulations of any stock exchange (or any other relevant authority) on which the Securities are for the time being listed or by which they have been admitted to trading. Any such notice will be deemed to have been given on the date of the first publication. If publication as provided above is not practicable, notice will be given in such other manner, and shall be deemed to have been given on such date, as the Trustee may approve. Couponholders will be deemed for all purposes to have notice of the contents of any notices given to the Securityholders in accordance with this paragraph.

## **13 Meetings of Securityholders, Modification, Waiver, Authorisation, Determination and Substitution of the Issuer**

### **13.1 Meetings of Securityholders**

The Trust Deed contains provisions consistent with the laws, legislation, rules and regulations of the Republic of Italy (including without limitation Legislative Decree No. 58 of 24 February 1998, as amended) for convening meetings of the Securityholders to consider any matter affecting their interests, including any modifications of the Conditions or of any provisions of the Trust Deed.

According to the laws, legislation, rules and regulations of the Republic of Italy, such meetings will be validly held as a single call meeting or, if the Issuer's by-laws provide for multiple calls, as a multiple call meeting, if (i) in the case of a single call meeting, there are one or more persons present, being or representing Securityholders holding at least one-fifth of the aggregate nominal amount of the Securities, for the time being outstanding, or such a higher quorum as may be provided for in the Issuer's by-laws, or (ii) in the case of a multiple call meeting, (a) there are one or more persons present being or representing Securityholders holding not less than one-half of the aggregate nominal amount of the Securities, for the time being outstanding; (b) in case of an adjourned meeting, there are one or more persons present being or representing Securityholders holding more than one-third of the aggregate nominal amount of the Securities for the time being outstanding; and (c) in the case of any further adjourned meeting, there are one or more persons present being or representing Securityholders holding at least one-fifth of the aggregate nominal amount of the Securities for the time being outstanding, provided that the Issuer's by-laws may in each case (to the extent permitted under the applicable laws and regulations of the Republic of Italy) provide for a higher quorum.

The majority to pass a resolution at any meeting (including, where applicable, an adjourned meeting) will be at least two-thirds of the aggregate nominal amount of the outstanding Securities represented at the meeting; provided however that (A) certain proposals, as set out in Article 2415 of the Italian Civil Code (including, for the avoidance of doubt, (a) any modification of the method of calculating the amount payable or modification of the date ~~of maturity or fixed for~~ redemption or any date for payment of interest or, where applicable, of the method of calculating the date of payment in respect of any principal or interest in respect of the Securities or change of the subordination provisions of the Trust Deed and (b) any alteration of the currency in which payments under the Securities are to be made or the denomination of the Securities) may only be sanctioned by a resolution passed at a meeting of the Securityholders by the higher of (i) one or more persons holding or representing not less than one half of the aggregate nominal amount of the outstanding Securities, and (ii) one or more persons holding or representing not less than two thirds of the Securities represented at the meeting and (B) the Issuer's by-laws may in each case (to the extent permitted under applicable Italian law) provide for higher majorities.

Resolutions passed at any meeting of the Securityholders shall be binding on all Securityholders, whether or not they are present at the meeting, and on all Couponholders. In accordance with the Italian Civil Code, a *rappresentante comune*, being a joint representative of Securityholders, may be appointed in accordance with Article 2417 of the Italian Civil Code in order to represent the Securityholders' interest hereunder and to give execution to the resolutions of the meeting of the Securityholders.

### **13.2 Substitution of the Issuer**

- (a) The Trustee may, without the consent of the Securityholders or the Couponholders, agree with the Issuer to the substitution in place of the Issuer (or of any previous substitute under this Condition 13.2) as the principal debtor under the Securities, Coupons and the Trust Deed of another company, being any entity that will succeed to, or to which the Issuer (or those of any previous substitute under this Condition 13.2) will transfer, all or substantially all of its assets and business (or any previous substitute under this Condition 13.2) by operation of law, contract or otherwise, subject to (i) the Trustee being satisfied that such substitution does not result in the substituted issuer having an entitlement, as at the date on which such substitution becomes effective, to redeem the Securities pursuant to Conditions 6.3, 6.4, 6.5 or 6.6, and (ii) certain other conditions set out in the Trust Deed being satisfied.
- (b) The Issuer has covenanted in the Trust Deed that, for so long as the Securities remain outstanding, it will not consolidate or merge with another company or firm or sell or lease all or substantially all of its assets to another company unless (i) if the Issuer merges out of existence or sells or leases all or substantially all of its assets, the other company assumes all the then-existing obligations of the Issuer (including, without limitation, all obligations under the Securities and the Trust Deed), either by law or contractual arrangements and (ii) certain other conditions set out in the Trust Deed are complied with.
- (c) As long as the Securities are admitted to trading on the regulated market of Euronext Dublin and/or listed on the official list of Euronext Dublin, in the case of such a substitution, the Issuer will give notice of any substitution pursuant to Condition 13.2(a) above to Euronext Dublin and, as soon as reasonably practicable but in any event not later than 30 calendar days after the execution of such documents required by, and the compliance with such other requirements of, the Trust Deed in connection with the substitution, notice of such substitution will be given to the Securityholders by the Issuer in a form previously approved by the Trustee in accordance with Condition 12, in which event the substitution shall be conclusive and binding on the Securityholders and the Couponholders.

### **13.3 Waiver, authorisation, determination and exercise by the Trustee of discretions etc.**

The Trustee may agree, without the consent of the Securityholders or Couponholders, to any modification (except as mentioned in the Trust Deed) of, or to the waiver or authorisation of any breach or proposed breach of, any of the provisions of the Securities or the Trust Deed, ~~or determine, without any such consent as aforesaid, that any Event of Default shall not be treated as such,~~ where, in any such case, it is not, in the opinion of the Trustee, materially prejudicial to the interests of the Securityholders so to do or may agree, without any such consent as aforesaid, to any modification which is, in the opinion of the Trustee, of a formal, minor or technical nature or to correct an error which is manifest). Any such modification, waiver, authorisation or determination shall be binding on the Securityholders and the Couponholders and, unless the Trustee otherwise agrees, any such modification shall be notified to the Securityholders in accordance with Condition 12 as soon as practicable thereafter.

### **13.4 Trustee to have Regard to Interests of Securityholders as a Class**

In connection with the exercise by it of any of its trusts, powers, authorities and discretions (including, without limitation, any modification, waiver, authorisation, determination or substitution), the Trustee shall have regard to the general interests of the Securityholders as a class (but shall not have regard to any interests arising from circumstances particular to individual Securityholders or Couponholders whatever their number) and, in particular but without limitation, shall not have regard to the consequences of any such exercise for individual Securityholders or Couponholders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory or any political subdivision thereof and the Trustee shall not be entitled to require, nor shall any Securityholder or Couponholder be entitled to claim, from the Issuer, the Trustee or any other person any indemnification or payment in respect of any tax consequences of any such exercise upon individual Securityholders or Couponholders except to the extent already provided for in Condition 8 and/or any undertaking or covenant given in addition to, or in substitution for, Condition 8 pursuant to the Trust Deed.

## **14 Indemnification of the Trustee and its Contracting with the Issuer**

### **14.1 Indemnification of the Trustee**

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility, including provisions relieving it from taking action unless indemnified and/or secured and/or prefunded to its satisfaction.

### **14.2 Trustee Contracting with the Issuer**

The Trust Deed also contains provisions pursuant to which the Trustee is entitled, *inter alia*, (a) to enter into business transactions with the Issuer and/or any Subsidiary and to act as trustee for the holders of any other securities issued or guaranteed by, or relating to, the Issuer and/or any Subsidiary, (b) to exercise and enforce its rights, comply with its obligations and perform its duties under or in relation to any such transactions or, as the case may be, any such trusteeship without regard to the interests of, or consequences for, the Securityholders or Couponholders, and (c) to retain and not be liable to account for any profit made or any other amount or benefit received thereby or in connection therewith.

## **15 Further Issues**

The Issuer is at liberty from time to time without the consent of the Securityholders or Couponholders to create and issue further securities or bonds (whether in bearer or registered form) either (a) ranking *pari passu* in all respects (or in all respects save for the first payment of interest thereon) and so that the same shall be consolidated and form a single series with the outstanding securities or bonds of any series (including the Securities) constituted by the Trust Deed or any supplemental deed or (b) upon such terms as to ranking, interest, conversion, redemption and otherwise as the Issuer may determine at the time of the issue. Any further securities or bonds which are to form a single series with the outstanding securities or bonds of any series (including the Securities) constituted by the Trust Deed or any supplemental deed shall, and any other further securities or bonds may (with the consent of the Trustee), be constituted by a deed supplemental to the Trust Deed. The Trust Deed contains provisions for convening a single meeting of the Securityholders and the holders of securities or bonds of other series in certain circumstances where the Trustee so decides.

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

### **16.1 Governing Law**

The Trust Deed, the Securities and the Coupons and any non-contractual obligations arising out of or in connection with the Trust Deed, the Securities and the Coupons are governed by, and shall be construed in accordance with, English law, except for Conditions 3.1 and 3.2, which shall each be governed by Italian law. Condition 13.1 and the provisions of the Trust Deed concerning the meeting of Securityholders and the appointment of the *rappresentante comune* in respect of the Securities are subject to compliance with Italian law.

### **16.2 Jurisdiction of English Courts**

The Issuer has, in the Trust Deed, irrevocably agreed for the benefit of the Trustee, the Securityholders and the Couponholders that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Trust Deed, the Securities or the Coupons (including any disputes relating to any non-contractual obligations which may arise out of or in connection with the Trust Deed, the Securities or the Coupons) and accordingly has submitted to the exclusive jurisdiction of the English courts.

The Issuer has, in the Trust Deed, waived any objection to the courts of England on the grounds that they are an inconvenient or inappropriate forum.

### **16.3 Appointment of Process Agent**

The Issuer has, in the Trust Deed, irrevocably and unconditionally appointed Law Debenture Corporate Services Limited at its registered office at Fifth Floor, 100 Wood Street, London EC2V 7AN, United Kingdom as its agent for service of process and undertakes that, in the event of Law Debenture Corporate Services Limited ceasing so to act or ceasing to be registered in England, it will appoint another person approved by the Trustee as its agent for service of process in England in respect of any proceedings. Nothing herein shall affect the right to serve proceedings in any other manner permitted by law.

## **17 Rights of Third Parties**

No rights are conferred on any person under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Conditions or any other term of this Security, but this does not affect any right or remedy of any person which exists or is available apart from that Act.

**SIGNATURES**

**EXECUTED as a DEED by  
ENEL – Società per Azioni**

By:

Name:

Title:

**EXECUTED as a DEED by  
BNY MELLON CORPORATE TRUSTEE  
SERVICES LIMITED**

acting by two of its lawful Attorneys in  
the presence of:

\_\_\_\_\_  
Witness signature

Name:

Address:

Occupation:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Attorney

Address: One Canada Square, London  
E14 5AL