



## **PCS Risk Transfer Terms and Conditions 2017**

The Applicant acknowledges and agrees to the terms and conditions set out below.

### **Definitions**

**"Appeal Procedures"** means the procedures set out as an appendix to the Risk Transfer Label Procedures and dealing with any appeal against the refusal by PCS to award a Risk Transfer Label.

**"Applicant"** means the person so named in the relevant Application.

**"Application"** means an application to PCS for the award of a Risk Transfer Label, which seeks to incorporate these terms and conditions.

**"Application Documentation"** means the Completed Checklist, the Protection Buyer Certificate, the draft transaction documentation provided by or on behalf of the Applicant for the purposes of demonstrating the adherence by the Risk Transfer Instrument to any PCS Risk Transfer Eligibility Criteria.

**"Checklist"** refers to the Eligibility Criteria checklist in force as of the date of the relevant Application and relevant, in accordance with the Label Procedures for a Risk Transfer the subject of such Application.

**"Completed Checklist"** means the Checklist as completed by or on behalf of the Applicant but without any comments from the Screening Partner.

**"Confidential Information"** means any information provided by or on behalf of the Applicant to PCS or the Screening Partner during the process to acquire a Risk Transfer Label other than:

- (a) Information which was lawfully in the possession of PCS or the Screening Partner prior to its receipt pursuant to the relevant Application, provided that the source of such information, insofar as it was known to the recipient, was not prohibited from disclosing the information to the recipient by a contractual, legal or fiduciary obligation to the Applicant;
- (b) Information which is lawfully obtained by PCS or the Screening Partner from a source other than the Applicant or any of its representatives, provided that such source, insofar as it is known to the recipient, is not prohibited from transmitting the information to the recipient by a contractual, legal or fiduciary obligation to the Applicant; and
- (c) Information which is or becomes generally available to the public other than as a direct or indirect result of a breach of these terms by PCS or the Screening Partner.



**"Fees"** means the fees payable to PCS following an application for the Risk Transfer Label as set out on the date of the relevant Application in the PCS Procedures Manual.

**"PCS"** means Prime Collateralised Securities (PCS) UK Limited, a private limited company established in the UK, with registration number 8008729 and registered office at 40 Gracechurch Street, London, EC3V 0BT.

**"PCS Logo"** means the stylised PCS lettering used either alone or as part of the Label, in the same or substantially same form as it is used on the PCS Risk Transfer Label.

**"PCS Risk Transfer Eligibility Criteria"** means the criteria so entitled that appear on the PCS Website as of the date of the Application.

**"PCS Risk Transfer Label"** means the PCS Risk Transfer label awarded by PCS to qualifying transactions and the subject of an Application.

**"PCS Risk Transfer Procedures Manual"** means the document setting out the procedures for the award of a Risk Transfer Label and associated information and standard forms and so entitled on the PCS Website.

**"PCS Website"** means [www.pcsmarket.org](http://www.pcsmarket.org).

**"Protection Buyer"** means the entity which has transferred credit risk relating to the Underlying Assets pursuant to a Risk Transfer and to which any protection payments under the transaction fall to be made (whether directly or through an SPE).

**"Protection Buyer Certificate"** means a certificate provided by the Applicant setting out certain facts relating to the transaction to demonstrate that it meets certain PCS Risk Transfer Eligibility Criteria, as anticipated by the Risk Transfer Label Procedures.

**"Risk Transfer Documents"** means the documents relating to the transaction for which a PCS Risk Transfer Label is sought.

**"Risk Transfer Instrument"** means a financial instrument (whether a security, a credit default swap or other type of agreement) purporting to transfer financial risk on specified assets and for which a PCS Risk Transfer Label has been sought.

**"Risk Transfer Label Procedures"** means the procedures for obtaining a PCS Risk Transfer Label as set out in the PCS Risk Transfer Procedures Manual in force as of the date of the relevant Application.

**"Screening Partner"** means the third party organisation to be appointed by PCS to assess the compliance of the Risk Transfer Instrument with the PCS Risk Transfer Eligibility Criteria.

**"Value Added Tax"** means (a) any tax imposed in compliance with the Council Directive 2006/112/EC of 28 November 2006 on the common system of Value Added Tax; and (b) any other tax of a similar fiscal nature, whether imposed in a Member State of the European Union in substitution for or in addition to such tax, or imposed elsewhere;

### **Application Terms and Conditions**

1. The Applicant confirms that, to the best of its knowledge, the information contained in the Application Documentation, at the time the relevant document was submitted will be accurate, up to date, not misleading and will not amount to a misrepresentation.
2. The Applicant acknowledges that it has read and agrees fully to comply with the PCS Risk Transfer Label Procedures.
3. The Applicant agrees, for so long as the Risk Transfer Instrument continues to have the PCS Risk Transfer Label, to notify PCS promptly if it becomes aware that any information provided in the Application Documentation or any other information provided to PCS or the Screening Partner for the purposes of obtaining the PCS Risk Transfer Label was, when made, false, inaccurate, incomplete or misleading.
4. The Applicant confirms that all the information contained in the Application Documents and any other information provided to the PCS or the Screening Partner by the Applicant can be provided to them without violating any laws or regulations applicable to the Applicant and that the provision of such information does not breach any duty of confidentiality binding on the Applicant, whether contractual or otherwise.
5. PCS undertakes that all Confidential Information will be held and treated by it and the Screening Partner in strict confidence and will be protected with security measures and a degree of care that would apply to its own confidential information. PCS further agree that the Confidential Information will not, except as hereinafter provided, without the prior written consent of the Applicant, be disclosed by PCS or the Screening Partner, in any manner whatsoever, in whole or in part, and will not be used by PCS or the Screening Partner, for any purpose whatsoever other than for the purpose of evaluating the Risk Transfer Instrument for the award of the PCS Risk Transfer Label (the **"Permitted Purpose"**). Moreover, PCS agrees to disclose Confidential Information only to those persons who are required in the course of their duties to receive and consider the same for the Permitted Purpose. It is also acknowledged and understood that the Screening Partner has been informed of the Confidential Information and has agreed to keep such information confidential.

6. Notwithstanding clause 5, in the event that PCS is requested or required (pursuant to any law or regulation, or any court of competent jurisdiction, or any competent judicial, governmental, supervisory or regulatory organisation or body with whose rules PCS is required to comply) to disclose any Confidential Information, PCS agrees that it shall (to the extent legally permissible) provide the applicant with prompt notice in writing of the existence, terms and circumstances of any such request or requirement so that the Applicant may seek an appropriate protective order or take other appropriate action and, if possible, before complying with any such requirement, PCS shall notify the Applicant in writing of the same and of the action which is proposed to be taken in response thereto. In such event, PCS shall take full account of any reasonable representations made by the Applicant, whether concerning resistance to the requirement or the form, manner or extent of disclosure, and if a protective order has not been obtained, PCS shall only disclose Confidential Information to the extent that PCS has been advised by written opinion of its legal advisors that PCS is so legally compelled to disclose, and PCS will exercise its best efforts to obtain an order or reasonable assurance that confidential treatment will be accorded to the Confidential Information. PCS further agrees to notify the Applicant immediately, to the extent legally permissible, upon discovery, of the full circumstances of any unauthorised use or disclosure of Confidential Information, or any other breach of this agreement by PCS or the Screening Partner, and to cooperate with the Applicant in every reasonable way to prevent further unauthorised use.
7. Notwithstanding clause 5, if the Applicant has ticked the box entitled 'Public' in the Application, the Applicant agrees that, if the transaction is awarded the PCS Risk Transfer Label, PCS is authorised to publish, on its website and in any other lawful manner, the Protection Buyer Certificate, the Completed Checklist, the public prospectus (if any) and/or such of the Risk Transfer Documents as the Applicant has agreed in writing with PCS that PCS may publish under this clause 7, (and in the case of a prospectus, that it will obtain the consent to such publication from the issuer).
8. Notwithstanding clause 5, if the Applicant ticks the box entitled 'Limited Info Only', the Applicant agrees that, if the transaction is awarded the PCS Risk Transfer Label, PCS is authorised to disclose that a Risk Transfer Instrument has been awarded such label, indicating only those of the following items that the Applicant has indicated to PCS in the Application may be disclosed:
  - a) the size of the overall pool on which credit protection was acquired;
  - b) the size of the credit protection;
  - c) the Protection Buyer's name;
  - d) the transaction name;
  - e) the Applicant's country;
  - f) the currency of the Risk Transfer Instrument; and
  - g) the asset class to which the securitised assets belonged.

This clause shall not prevent PCS taking into account the transaction to which a label has been awarded in aggregate data regarding the number of PCS Risk Transfer Labels awarded or the aggregate amount of transactions for which such labels have been awarded (including by country and asset class).

9. Notwithstanding clause 5, if the Applicant can tick the box entitled 'Private' in the Application, the Applicant and PCS agree that, if the transaction is awarded the PCS Risk Transfer Label, PCS shall not be authorised to publish any information on the transaction other than the fact that a PCS Risk Transfer Label was awarded and the date on which the label was awarded. This clause shall not prevent PCS taking into account the transaction to which a label has been awarded in aggregate data regarding the number of PCS Risk Transfer Labels awarded or the aggregate amount of transactions for which such labels have been awarded (including by country and asset class).
10. PCS agrees that, if the PCS Risk Transfer Label is not awarded to the transaction, it shall not disclose that fact to any person unless required to do so by law or regulation or at the request of a regulatory organisation.
11. The Applicant acknowledges that neither PCS, nor the Screening Partners, nor any of their directors or employees shall have any liability for any losses suffered by the Applicant or any associated body arising from or in relation to the submission of this Application or from the award or refusal to award the PCS Risk Transfer Label or any subsequent decision to withdraw the PCS Risk Transfer Label (other than in respect of death or personal injury). The Applicant hereby waives any rights it may have against the PCS or the Screening Partner other than rights in respect of acts of fraud, willful breach of contract or gross negligence.
12. The Applicant agrees that it shall not state or imply, nor allow its agents to state or imply that the transaction was awarded the PCS Risk Transfer Label until PCS confirms in writing that the PCS Risk Transfer Label has been awarded to the transaction in accordance with the PCS Risk Transfer Label Procedures.
13. Notwithstanding clause 12, the Applicant, its agents and representatives may in marketing material, roadshows and presentations indicate that it is anticipated that the PCS Risk Transfer Label will be awarded to the transaction for so long as (i) such statements are made in compliance with all applicable laws and (ii) they have not received written notice from PCS that they may no longer do so.
14. The Applicant, its agents and representatives may not make any statements that results in PCS or the Screening Partner or any of their directors or employees being considered to be an "expert" for the purposes of the United States Securities Act of 1933 (as amended) and PCS will not accept "expert" liability under this or any other law or regulation.

15. Subject to the Applicant having made an Application and having received written confirmation from PCS that PCS is reviewing such Application (and subject to not having received written notification that PCS had declined to award the PCS Risk Transfer Label sought in that Application) , PCS permits the Applicant to use the PCS Logo and Label solely for the purposes of promoting the transaction, including but not limited to promotions at any investor roadshow and in the transaction documentation. The Applicant acknowledges and agrees that it has no permission to use the PCS Logo and PCS Risk Transfer Label in any other manner and that it shall use the PCS Logo and PCS Risk Transfer Label in accordance with these terms and conditions. The Applicant acknowledges that PCS grants the rights detailed in this paragraph 15 subject to the terms of a licence agreement with a Belgian association and that as such, these rights may not be sub-licensed by the Applicant to a third party and shall expire upon the expiry or termination of PCS's licence agreement.
16. The Applicant acknowledges that PCS and the Screening Partner have received and will receive any information from the Applicant and any of its agents or representatives in good faith and in the belief that the information received is accurate, complete and up to date. The Applicant acknowledges that neither PCS nor the Screening Partner have verified or will verify the information and have no duty whatsoever to take any steps to ascertain the veracity, accuracy or completeness of any information provided by or on behalf of the Applicant.
17. The Applicant acknowledges that PCS shall rely on the veracity, accuracy and completeness of the information provided in the Application Documentation for the purposes of awarding the PCS Risk Transfer Label.
18. The Applicant acknowledges that the PCS Risk Transfer Label is not a recommendation to buy, sell or hold the securities; that it is not "investment advice" whether generally or as defined under Markets in Financial Instruments Directive (2004/39/EC); that it is not a "credit rating" whether generally or as defined under the Credit Rating Agency Regulation (1060/2009/EC) or Section 3(a) of the United States Securities Exchange Act of 1934 (as amended by the Credit Agency Reform Act of 2006); that by awarding the PCS Risk Transfer Label, PCS expresses no views about the creditworthiness of the transaction or their suitability for any existing or potential investor or as to whether there will be a ready, liquid market for the transaction. The Applicant agrees that it shall not make any statement, orally or in writing, that indicates or implies otherwise.
19. The Applicant acknowledges and accepts that the award of the PCS Risk Transfer Label is dependent on the PCS determining in accordance with the Risk Transfer Label Procedures that the Securities meet all the PCS Risk Transfer Eligibility Criteria.



20. If there is a disagreement about any refusal to award the PCS Risk Transfer Label to the transaction or about any aspect of the procedure in the award of the PCS Risk Transfer Label, the Applicant acknowledges that it has read the Appeal Procedures and agrees to be bound by such procedures. To the fullest extent applicable by law, the Applicant renounces any other recourse it may have against the refusal by PCS to award the PCS Risk Transfer Label to the transaction and acknowledges and accepts that it shall have no other form of redress against such refusal.
21. Nothing in these terms and conditions, or in any dealings between PCS and any other person shall prevent PCS from refusing, at any stage, to award the PCS Risk Transfer Label, or shall prevent PCS at any time after the award of the PCS Risk Transfer Label from withdrawing the PCS Risk Transfer Label if, in PCS's sole discretion: (i) the award of the PCS Risk Transfer Label was in error or (ii) the Protection Buyer of the relevant transaction is not complying with its ongoing obligations as per the PCS Risk Transfer Eligibility Criteria and Risk Transfer Procedures or (iii) award or maintenance of the PCS Risk Transfer Label would, for any reason, substantially endanger the reputation, standing or credibility of PCS or the PCS Risk Transfer Label.
22. The Applicant agrees that its obligations to pay the Fees shall arise from the moment a Completed Checklist is sent to the Screening Partner.
23. The Fees payable shall be increased by the Value Added Tax payable.
24. The Fees shall be paid within 30 days of the receipt of the relevant invoice from PCS in free and cleared funds in Euro or Sterling Account (as required) without set-off or counterclaim, to the UK accounts set out in the invoice.
25. These terms and conditions are governed by the laws of England and Wales and the Applicant submits to the exclusive jurisdiction of the English Courts.
26. The Applicant shall not have any recourse against, nor shall any personal liability attach, to any shareholder, officer, agent, employee or director of PCS in his capacity as such, by any proceedings or otherwise, in respect of any obligation, covenant, or agreement of the PCS contained in these terms and conditions.
27. Other than the PCS Employees and the Screening Partners, no other party shall have any right to enforce these terms and conditions under the Contracts (Rights of Third Parties) Act 1999. Notwithstanding anything in these terms and conditions, the consent of any person who is not a party is not required to rescind or vary this agreement at any time.