

**KFH TIER 1 SUKUK LIMITED  
AS TRUSTEE**

**KUWAIT FINANCE HOUSE K.S.C.P.  
AS BANK**

**AND**

**CITIBANK, N.A., LONDON BRANCH**

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**DECLARATION OF TRUST  
CONSTITUTING  
U.S.\$750,000,000 TIER 1 CAPITAL CERTIFICATES  
ISSUED BY KFH TIER 1 SUKUK LIMITED**

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**THIS DECLARATION OF TRUST** is dated 30 June 2021 and made as a deed

**BETWEEN:**

- (1) **KFH TIER 1 SUKUK LIMITED** (in its capacity as issuer and in its capacity as trustee, as applicable, the "**Trustee**");
- (2) **KUWAIT FINANCE HOUSE K.S.C.P.** (the "**Bank**"); and
- (3) **CITIBANK, N.A., LONDON BRANCH** in its capacity as: (a) donee of the powers set out in Clause 6 (*Powers vested in the Delegate*) of this Declaration of Trust; and (b) as delegate of the Trustee pursuant to Clause 7 (*Delegation of Authority to the Delegate*) of this Declaration of Trust, in each case, in relation to the trusts created by these presents of which the Trustee is the trustee (the "**Delegate**", which expression shall include any co-delegate, any replacement Delegate and any successor thereto).

**WHEREAS:**

- (A) The Trustee has authorised the issue of its U.S.\$750,000,000 tier 1 capital certificates (the "**Certificates**", which expression shall, if the context so admits, include the Global Certificate to be initially delivered in respect of the Certificates) constituted by this Declaration of Trust (the "**Declaration of Trust**").
- (B) The Trustee proposes to contribute the sums settled upon the trust created by this Declaration of Trust to the Mudareb in accordance with the Mudaraba Agreement as authorised and directed by the Certificateholders in the Conditions. The Trust Assets include all of the Trustee's rights, title, interest, benefit and entitlements, present and future, in, to and under the assets from time to time constituting the Mudaraba Assets.
- (C) The Trustee agrees to hold the Trust Assets upon trust absolutely for and on behalf of the Certificateholders as beneficiaries in accordance with the provisions of this Declaration of Trust and the Certificates will each represent an undivided ownership interest in the Trust Assets.
- (D) The Trustee intends to confer certain powers and to delegate certain other powers, duties, authorisations, discretions and rights to the Delegate as provided in this Declaration of Trust.
- (E) The Trustee and the Trustee Administrator have entered into an agreement (the "**Corporate Services Agreement**") pursuant to which the Trustee Administrator will provide certain corporate services to the Trustee.

**NOW THIS DECLARATION OF TRUST** witnesses and it is agreed and declared as follows:

## 1. **DEFINITIONS AND INTERPRETATION**

- 1.1 In this Declaration of Trust, capitalised terms and expressions which are not defined herein shall have the meanings assigned to them in the Conditions. In addition, in this Declaration of Trust:

"**Accountholder**" means each person (other than another clearing system) who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg as the

holder of a particular aggregate face amount of the Certificates (in which regard any certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the aggregate face amount of such Certificates standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error).

"**Agency Agreement**" means the agreement dated the date hereof between the Trustee, the Bank, the Delegate and the Agents.

"**Agents**" means the Registrar, the Principal Paying Agent, the other Paying Agents, the Calculation Agent and the Transfer Agents and "**Agent**" means any one of the Agents.

"**Appointee**" means any attorney, manager, agent, delegate, nominee, custodian or other person appointed by the Delegate under these presents.

"**Auditors**" means the independent auditors for the time being of the Trustee (if any) or, as the case may be, the Bank or, in the event of their being unable or unwilling promptly to carry out any action requested of them pursuant to the provisions of these presents, such other firm of accountants or such financial advisers as may be appointed by the Bank for the purposes of these presents.

"**Authorised Signatory**" means any person who: (a) is an Initial Authorised Person; or (b) has been notified by either the Trustee or the Bank in writing to the Delegate as being duly authorised to sign documents and to do other acts and things on behalf of the Trustee or the Bank, as the case may be, for the purposes of this Declaration of Trust.

"**Authority**" means any competent regulatory, prosecuting, Tax or governmental authority in any jurisdiction.

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

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended.

"**Common Depository**" means a depository common to Euroclear and Clearstream, Luxembourg.

"**Conditions**" means the Terms and Conditions in the form set out in Schedule 2 (*Terms and Conditions*) as the same may from time to time be modified in accordance with these presents. Any reference in these presents to a specified Condition or paragraph of a Condition shall be construed accordingly;

"**Corporate Services Agreement**" shall have the meaning given to it in Recital (E) above.

"**Definitive Certificate**" means a trust certificate in definitive registered form issued by the Trustee in accordance with the provisions of these presents in exchange for the Global Certificate, such trust certificate being in or substantially in the form set out in Part 2 of Schedule 1 (*Form of Definitive Certificate*) hereof.

"**Euroclear**" means Euroclear Bank SA/NV.

**"Extraordinary Resolution"** shall have the meaning given to it in paragraph 1.1 of Schedule 4 (*Provisions for Meetings of Certificateholders*) hereto.

**"FCA"** means the United Kingdom Financial Conduct Authority.

**"FSMA"** means the Financial Services and Markets Act 2000 of the United Kingdom.

**"Global Certificate"** means the trust certificate in global form issued by the Trustee in the form or substantially in the form set out in Part 1 of Schedule 1 (*Form of Global Certificate*) hereof.

**"Initial Authorised Person"** means (a) in respect of the Bank, any of the following acting singly: any person who holds the office of chairman or vice-chairman of the Bank from time to time; and (b) in respect of the Trustee, any of the following acting singly: any one director of the Trustee and/or any other person duly authorised to execute documentation relating to the Certificates on behalf of the Trustee.

**"Liability"** means any actual loss, damage, cost, charge, claim, demand, fee, expense, judgment, action, proceeding or other liability whatsoever (including, without limitation in respect of Taxes) (excluding the cost of funding and opportunity costs) and including any value added tax or similar tax charged or chargeable in respect thereof and legal or other fees and expenses on a full indemnity basis but not including any cost of funding and opportunity costs.

**"London Business Day"** means a day (other than a Saturday or Sunday) on which banks and foreign exchange markets are open for general business in London.

**"Mudaraba Agreement"** means the agreement dated the Issue Date between KFH Tier 1 Sukuk Limited and the Bank appointing the Bank as Mudareb (as defined therein the ("**Mudareb**")).

**"outstanding"** means all the Certificates issued other than:

- (a) those Certificates which have been redeemed in full and cancelled in accordance with the Conditions pursuant to these presents;
- (b) those Certificates which have been purchased by or on behalf of the Bank or any of its Subsidiaries and cancelled in accordance with Conditions 10.2 (*Purchase*) and 10.3 (*Cancellation*);
- (c) those Certificates in respect of which the final date for redemption in accordance with the Conditions has occurred and the redemption moneys (including all profit payable thereon) have been duly paid to the Delegate or to the Principal Paying Agent, as applicable, in the manner provided in the Agency Agreement (and, where appropriate, notice to that effect has been given to the Certificateholders in accordance with Condition 17 (*Notices*)) and remain available for payment against presentation of the relevant Certificates;
- (d) those Certificates in respect of which claims have become prescribed under Condition 14 (*Prescription*);

- (e) those mutilated or defaced Certificates which have been surrendered and cancelled and in respect of which replacements have been issued pursuant to Condition 16 (*Replacement of Certificates*);
- (f) (for the purpose only of ascertaining the aggregate outstanding face amount of the Certificates and without prejudice to the status for any other purpose of the Certificates) those Certificates which are alleged to have been lost, stolen or destroyed and in respect of which replacements have been issued pursuant to Condition 16 (*Replacement of Certificates*); and
- (g) the Global Certificate to the extent that it shall have been exchanged for Definitive Certificates pursuant to its provisions, the provisions of these presents and the Agency Agreement,

**provided that** for each of the following purposes, namely:

- (i) the right to attend and vote at any meeting of the Certificateholders, or participate in or otherwise vote in respect of any Written Resolution and any direction or request by the holders of the Certificates;
- (ii) the determination of how many and which Certificates are for the time being outstanding for the purposes of Clauses 15 (*Provisions Applicable to the Trustee and the Delegate*) and 17 (*Enforcement of Rights*) of, and Schedule 4 (*Provisions for Meetings of Certificateholders*) to, this Declaration of Trust and Conditions 12 (*Dissolution Events and Winding-up*) and 18 (*Meetings of Certificateholders, Modification, Waiver, Authorisation and Determination*);
- (iii) any discretion, power or authority (whether contained in these presents or vested by operation of law) which the Trustee or the Delegate (as the case may be) is required, expressly or impliedly, to exercise in or by reference to the interests of the Certificateholders; and
- (iv) the determination by the Delegate whether any event, circumstance, matter or thing is, in its opinion, materially prejudicial to the interests of the Certificateholders,

those Certificates (if any) which are for the time being held by or on behalf of or for the benefit of the Trustee, the Bank or any subsidiary of the Bank, in each case as beneficial owner, shall (unless and until ceasing to be so held) be deemed not to remain outstanding;

**"Potential Dissolution Event"** means an event which, with the giving of notice, lapse of time, determination of materiality or fulfilment of any other applicable condition (or any combination of the foregoing), would constitute a Dissolution Event.

**"Prospectus"** means the prospectus dated 28 June 2021 prepared by each of the Trustee and the Bank in connection with the Certificates, which expression includes any replacement Prospectus prepared.

**"Receiver"** means any receiver, manager or administrative receiver or any other analogous officer appointed in respect of the Trustee and/or the Trust Assets by the Delegate in accordance with this Declaration of Trust.

**"Registered Office Terms"** means MaplesFS Limited's standard terms and conditions for the provision of registered office services pursuant to which registered office services are provided to the Trustee.

**"Relevant Powers"** has the meaning given to it in Clause 7.1 (*Delegation of Authority to the Delegate*).

**"Specified Office"** has the meaning given to it in the Agency Agreement.

**"Taxes"** means any present or future taxes, duties, assessments or governmental charges of whatsoever nature imposed, levied, collected, withheld or on behalf of any Authority having the power to tax.

**"these presents"** means this Declaration of Trust and the Schedules hereto, the Certificates and the Conditions, all as from time to time supplemented and/or modified in accordance with the provisions herein or therein contained.

**"Transaction Account"** means the non-interest bearing U.S.\$ denominated account held with Citibank, N.A., London Branch in London in the name of the Trustee (or such other Transaction Account as is opened with the Principal Paying Agent in the name of any Substituted Trustee).

**"Trust"** means the trust declared pursuant to Clause 2 (*Declaration of Trust*).

**"Trust Corporation"** means a corporation entitled by the rules made under the Public Trustee Act 1906 of Great Britain or entitled pursuant to any other comparable legislation applicable to a trustee in any other jurisdiction to carry out the functions of a custodian trustee.

**"Trustee Acts"** means the Trustee Act 1925 and the Trustee Act 2000 of the United Kingdom.

**"Trustee Administrator"** means MaplesFS Limited in its capacity as corporate administrator of the Trustee.

1.2 In this Declaration of Trust, unless the contrary intention appears, a reference to:

- (a) an amendment includes a supplement, restatement or novation and "amended" is to be construed accordingly;
- (b) a person includes (i) any individual, company, unincorporated association, government, state agency, international organisation or other entity and (ii) its successors and assigns;
- (c) a Clause, a Subclause, a paragraph or a Schedule is a reference to a clause, subclause or paragraph of, or a schedule to, this Declaration of Trust; and



- (d) a document or any provision of a document is a reference to that document or provision as amended from time to time.
- 1.3 The headings in this Declaration of Trust do not affect its interpretation.
- 1.4 In this Declaration of Trust, words denoting:
- (a) the singular shall include the plural and *vice versa*;
  - (b) one gender only shall include the other gender; and
  - (c) persons only shall include firms and corporations and *vice versa*.
- 1.5 All references in these presents or in the Agency Agreement involving compliance by the Trustee or the Delegate with a test of reasonableness shall, where applicable, be deemed to include a reference to a requirement that such reasonableness shall be determined by reference to the interests of the Certificateholders as a class and in the event of any conflict between such interests and the interests of any other person, the former shall prevail as being paramount.
- 1.6 All references in these presents to any action, remedy or method of proceeding for the enforcement of the rights of creditors shall be deemed to include, in respect of any jurisdiction other than England, references to such action, remedy or method of proceeding for the enforcement of the rights of creditors available or appropriate in such jurisdiction as shall most nearly approximate to such action, remedy or method of proceeding described or referred to in these presents.
- 1.7 All references in these presents to any statute or any provision of any statute shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under any such modification or re-enactment.
- 1.8 Unless the context otherwise requires words or expressions used in these presents shall bear the same meanings as in the Companies Act 2006 of the United Kingdom of Great Britain and Northern Ireland.
- 1.9 All references in these presents to any moneys payable by the Trustee under these presents shall, unless the context otherwise requires, be construed so that such money shall be payable in accordance with Condition 9 (*Payments*) *mutatis mutandis*.
- 1.10 All references in these presents to costs or charges or expenses shall include any value added tax or similar tax charged or chargeable in respect thereof.
- 1.11 All references to Certificates which are to have a "listing" or to be "listed" on the London Stock Exchange shall be construed to mean that such Certificates have been admitted to the official list of the FCA and admitted to trading on the London Stock Exchange's Main Market.
- 1.12 Any reference to a "successor" of any party or to any person shall be construed so as to include an assignee or successor in title of such party and any person who under the laws of the jurisdiction of incorporation or domicile of such party has assumed the

rights and obligations of such party under any Transaction Document or to which, under such laws, such rights and obligations have been transferred.

- 1.13 All references in these presents to Euroclear and/or Clearstream, Luxembourg shall, wherever the context so admits, be deemed to include references to any additional or alternative clearing system in which the Certificates are from time to time accepted for clearance.
- 1.14 References in this Declaration of Trust to "approval not to be unreasonably withheld or delayed" or like references mean, that in determining whether to give such consent, the Delegate shall have due regard to the interests of the Certificateholders and any determination as to whether or not its consent is unreasonably withheld or delayed shall be made on that basis.
- 1.15 The Schedules form part of this Declaration of Trust and shall have effect accordingly.

## 2. **DECLARATION OF TRUST**

The Trustee hereby declares that it will:

- (a) with effect from the execution of this Declaration of Trust, hold the Trust Assets on trust absolutely for the Certificateholders *pro rata* according to the face amount of Certificates held by each Certificateholder, in accordance with these presents and the Conditions;
- (b) in its capacity as Trustee, exercise on behalf of and for the benefit of the Certificateholders all of its rights under the Transaction Documents and the Conditions and appoint such delegates and agents as it deems necessary in respect of the Certificates (including pursuant to the Agency Agreement);
- (c) exercise its rights under the Transaction Documents and the Conditions upon receipt of a Dissolution Notice from the Delegate and distribute the proceeds of any enforcement of the Trust Assets in accordance with these presents and the Conditions;
- (d) comply with and perform its obligations, or cause such obligations to be complied with and performed on its behalf, in accordance with the terms of the Conditions and the Transaction Documents and observe all the provisions of the Transaction Documents which are expressed to be binding on it and, in particular but without limitation, maintain proper books of account in respect of the Trust and, as far as permitted by law, allow the Delegate (where applicable) and any other person appointed by the Delegate free access to such books of account at all times during normal working hours; and
- (e) act as trustee in respect of the Trust Assets, distribute the income from the Trust Assets and perform its duties in accordance with the provisions of these presents and the Conditions.

## 3. **FORM, ISSUE AND STATUS OF CERTIFICATES**

- 3.1 The Certificates represent undivided ownership interests in the Trust Assets and are limited recourse obligations of the Trustee. The Certificates rank *pari passu*, without

any preference or priority, with all other Certificates. The rights and claims of the Trustee and the Certificateholders in respect of the Relevant Obligations are subordinated as described in the Conditions.

- 3.2 For the avoidance of doubt, nothing in this Declaration of Trust or in the Conditions shall affect or prejudice the payment of the costs, charges, expenses, liabilities or remuneration of the Delegate or any other amounts payable to the Delegate under Clause 12 (*Remuneration and Indemnification of the Trustee and the Delegate*) or the rights and remedies of the Delegate in respect thereof, all of which shall accordingly remain unsubordinated.
- 3.3 The Certificates shall, on issue, be represented by the Global Certificate which the Trustee shall issue to a depositary common to both Euroclear and Clearstream, Luxembourg on terms that such depositary shall hold the same for the Accountholders. Interests in the Global Certificate shall be transferable only in accordance with the rules and procedures for the time being of Euroclear and Clearstream, Luxembourg.
- 3.4 The Global Certificate shall be printed or typed in the form or substantially in the form set out in Part 1 of Schedule 1 (*Form of Global Certificate*). The Global Certificate shall be signed by a director of the Trustee or a person duly authorised by the Trustee on behalf of the Trustee and shall be authenticated by or on behalf of the Registrar. The Global Certificate so signed and authenticated shall represent a binding and valid obligation of the Trustee. Upon the issue of the Global Certificate, the Certificates shall become constituted by these presents without further formality.
- 3.5 The Trustee shall only issue Definitive Certificates in exchange for the Global Certificate in exceptional circumstances and in accordance with the provisions thereof.
- 3.6 Any Definitive Certificates, if issued, shall be issued in the form or substantially in the form set out in Part 2 of Schedule 1 (*Form of Definitive Certificate*). A single Definitive Certificate will be issued to each Certificateholder in respect of its registered holding of Certificates and each Definitive Certificate will be numbered serially with an identifying number which will be recorded on the relevant Definitive Certificate and in the Register. Title to the Definitive Certificates shall pass upon the registration of transfers in respect thereof in accordance with the provisions of these presents.
- 3.7 Any Definitive Certificates, if issued, shall be signed by a director of the Trustee or a person duly authorised by the Trustee on behalf of the Trustee and shall be authenticated by or on behalf of the Registrar. The Definitive Certificates so signed shall represent binding and valid obligations of the Trustee.
- 3.8 For the purposes of Clauses 3.4 and 3.7, the Trustee may use the facsimile signature of any person who at the date such signature is affixed is a director of the Trustee or is a person duly authorised by the Trustee on behalf of the Trustee, notwithstanding that at the time of issue of the Global Certificate or the relevant Definitive Certificate, as the case may be, that person may have ceased for any reason to be so authorised or to be the holder of such office.
- 3.9 Title to the Certificates shall pass upon registration of transfer in respect thereof in accordance with the provisions of this Declaration of Trust.

4. **ENTITLEMENT TO TREAT REGISTERED CERTIFICATEHOLDER AS ABSOLUTE OWNER**

Save as otherwise provided in the Global Certificate and the definition of "Certificateholders", the Trustee and/or the Delegate may (to the fullest extent permitted by applicable laws) deem and treat those persons in whose names any outstanding Certificates are for the time being registered (as set out in the Register) as the holder of any Certificate or of a particular face amount of Certificates, for all purposes (whether or not such Certificate or face amount shall be overdue and notwithstanding any notice of ownership thereof or of any trust or other interest with regard thereto, and any notice of loss or theft or any writing thereon), and the Trustee and/or the Delegate shall not be affected by any notice to the contrary. All payments made to such holder shall be valid and, to the extent of the sums so paid, effective to satisfy and discharge the liability for moneys payable in respect of such Certificate or face amount.

5. **APPOINTMENT OF AGENTS**

The Trustee has initially appointed the persons named as Registrar, Calculation Agent, Transfer Agent and Principal Paying Agent in the Agency Agreement as its agents, each acting through its Specified Office set out therein. The Trustee reserves the right, at any time, but in accordance with the Agency Agreement, to vary or terminate the appointment of any Agent and to appoint replacement or additional Agents **provided that** it will at all times maintain any Agent required by the Conditions to be maintained. Notice of any termination or appointment of Agents and of any changes in their respective Specified Offices will be given to Certificateholders and the Delegate promptly by the Trustee (or the Bank on its behalf) in accordance with Condition 17 (*Notices*).

6. **POWERS VESTED IN THE DELEGATE**

6.1 In addition to any Relevant Powers delegated to the Delegate in accordance with Clause 7.1 (*Delegation of Authority to the Delegate*), the Delegate shall have the express rights and powers as set out below effective from the date of these presents:

- (a) *Meetings of Certificateholders*: the power to convene and conduct meetings of Certificateholders as required pursuant to Schedule 4 (*Provisions for Meetings of Certificateholders*) in its discretion or at the request of the Certificateholders, the Trustee and/or the Bank, and to act upon the instructions of Certificateholders in accordance with any resolution, decision or Extraordinary Resolution of Certificateholders, as more particularly described in Schedule 4 (*Provisions for Meetings of Certificateholders*);
- (b) *Dissolution events and winding-up*: the powers set out in Condition 12.1 (*Bank Events*), Condition 12.2 (*Trustee Events*) and Condition 12.3 (*Winding-up, dissolution or liquidation*);
- (c) *Taxation*: the power to determine that any undertaking or covenant given to the Delegate pursuant to Clause 10.1(n) (*Undertakings*) is satisfactory, acting in the interests of the Certificateholders;

- (d) *Co-delegate*: the right to retire upon giving notice and the power to appoint a co-delegate in accordance with Clause 21.2 (*Appointment, Removal or Retirement of Delegate*); and
- (e) *Application of Moneys*: the right to pay, or cause to be paid, amounts from the proceeds from the Trust Assets in accordance with Clause 14 (*Application of Moneys*).

## 6.2 Variation and Amendments

- (a) The Trustee shall (but only upon the instructions of the Bank (acting in its sole discretion)), vary the terms of the Mudaraba Agreement and the Certificates such that the Certificates remain or become, as the case may be, Qualifying Tier 1 Instruments, in each case without any requirement for consent or approval of the Certificateholders, subject to and in accordance with Conditions 10.1(c) (*Redemption or Variation due to Taxation*) and 10.1(d) (*Redemption or Variation for Capital Event*), **provided that** such modifications or any document giving effect to such modifications do not impose, in the Delegate's sole opinion, more onerous obligations or duties upon it or expose it to liabilities or reduce its protections and that such modifications or any document giving effect to such modifications are approved by the Trustee and the Delegate (who shall be obliged to approve the same if the requirements set out in the Conditions are satisfied), and in each case, without the consent or approval of the Certificateholders.
- (b) The Conditions, these presents, any other Transaction Document and the Trustee's memorandum and articles of association may only be amended by the Trustee with the consent of the Delegate and the Delegate may agree, without the consent or approval of the Certificateholders, to any modification of the Conditions, these presents, any other Transaction Document or the Trustee's memorandum and articles of association if, in the sole opinion of the Delegate such modification is:
  - (i) of a formal, minor or technical nature; or
  - (ii) made to correct a manifest error; or
  - (iii) not materially prejudicial to the interests of the holders of the Certificates then outstanding and is other than in respect of a Reserved Matter (as defined in Schedule 4 (*Provisions for Meetings of Certificateholders*)).
- (c) Any such variation or modification pursuant to this Clause 6.2 (*Variation and Amendments*) may be made on such terms and subject to such conditions (if any) as the Delegate may determine, shall be binding upon the Certificateholders and shall as soon as practicable thereafter be notified by the Trustee to the Certificateholders in accordance with Condition 17 (*Notices*).

### 6.3 Waiver, Authorisation and Determination

The Delegate may, without the consent or approval of the Certificateholders and without prejudice to its rights in respect of any subsequent breach, from time to time and at any time:

- (a) agree to waive or to authorise any breach or proposed breach of, the Conditions, any of the provisions of these presents or any other Transaction Document; or
- (b) determine that any Dissolution Event or any Potential Dissolution Event shall not be treated as such,

**provided that** such waiver, authorisation or determination is:

- (i) in the sole opinion of the Delegate not materially prejudicial to the interests of the Certificateholders;
- (ii) other than in respect of a Reserved Matter; and
- (iii) not in contravention of any express direction by Extraordinary Resolution or request in writing by the holders of at least 25 per cent. of the outstanding aggregate face amount of the Certificates. No such direction or request will affect a previous waiver, authorisation or determination.

Any such waiver, authorisation or determination shall be binding on the Certificateholders and shall be notified by the Trustee to the Certificateholders in accordance with Condition 17 (*Notices*) as soon as practicable thereafter.

### 6.4 Agents

At any time after a Dissolution Event or a Potential Dissolution Event shall have occurred, or the Certificates shall have otherwise become due and payable or the Delegate shall have received any money which it proposes to pay under Clause 14 (*Application of Moneys*), the Delegate may:

- (a) by notice in writing to the Trustee, the Bank and each Agent require each Agent or any Agent so specified in such notice pursuant to the Agency Agreement until notified by the Delegate to the contrary, so far as permitted by applicable law, to act thereafter as an agent of the Delegate *mutatis mutandis* on the terms provided in the Agency Agreement (with such consequential amendments as the Delegate may deem reasonably necessary, **provided that** such consequential amendments do not impose any additional obligations or liabilities on the Bank, and except that the Delegate's liability under any provisions thereof for the indemnification, remuneration and payment of out-of-pocket expenses of each Agent shall be limited to the amounts for the time being held on trust under the Declaration of Trust and available to the Delegate for such purpose) and thereafter:
  - (i) to hold all Certificates and all moneys, documents and records held by them in respect of the Certificates to the order of the Delegate; and/or

- (ii) to deliver all Certificates and all moneys, documents and records held by them in respect of the Certificates to the Delegate or as the Delegate shall direct in such notice, **provided that** such notice shall be deemed not to apply to any documents or records which the relevant Agent is obliged not to release by any applicable law or regulation; and/or
- (b) by notice in writing to the Trustee and the Bank require them to make all subsequent payments in respect of the Certificates to or to the order of the Delegate and not to the Principal Paying Agent with effect from the issue of any such notice to the Trustee and the Bank and until such notice is withdrawn and from the date of such notice the proviso to Clause 10.1(i) (*Undertakings*) shall cease to apply.

## 6.5 General

The Delegate shall have the powers set out in Clause 15 (*Provisions Applicable to the Trustee and the Delegate*) and shall also have such other authorities, discretions, rights and powers conferred on the Delegate as expressly specified in these presents and in the other Transaction Documents.

## 6.6 Benefit of the Vesting

It is hereby declared that the duties, authorities, discretions, rights and powers conferred on the Delegate in this Clause 6 (*Powers Vested in the Delegate*) shall be exercised by the Delegate in the interests of the Certificateholders, subject to the terms of these presents.

## 7. DELEGATION OF AUTHORITY TO THE DELEGATE

- 7.1 In accordance with the powers reserved to it under the Trustee Acts and sub-clause 15.3(b)(xi) (*Provisions Applicable to the Trustee and the Delegate*), the Trustee irrevocably and unconditionally appoints the Delegate to be its delegate and attorney and in its name, on its behalf and as its act and deed, to execute, deliver and perfect all documents, and to exercise all of the present and future powers (including the power to sub-delegate), trusts, rights, authorities (including but not limited to the authority to request directions from any Certificateholders and the power to make any determinations to be made under the Transaction Documents) and discretions vested in the Trustee by these presents, that the Delegate may consider to be necessary or desirable in order to, upon the occurrence of a Dissolution Event or a Potential Dissolution Event, and subject to its being indemnified and/or secured and/or pre-funded to its satisfaction, exercise all of the rights and have all of the protections of the Trustee under the Mudaraba Agreement and any of the other Transaction Documents, take such other steps as the Delegate may consider necessary to recover amounts due to Certificateholders and make such distributions from the Trust Assets as the Trustee is bound to make in accordance with these presents and the Conditions (together the "Delegation" of the "Relevant Powers"). The Delegation made hereunder shall become effective from the date of this Declaration of Trust, **provided that** (a) no obligations, duties, liabilities or covenants of the Trustee pursuant to these presents or any other Transaction Document shall be imposed on the Delegate by virtue of this Delegation; (b) in no circumstances will such Delegation of the Relevant Powers result in the Delegate holding on trust the Trust Assets and (c) such Delegation of the Relevant

Powers shall not include any duty, power, trust, right, authority or discretion to dissolve the trusts constituted by these presents following the occurrence of a Dissolution Event or a Potential Dissolution Event or to determine the remuneration of the Delegate. The Trustee shall ratify and confirm all things done and all documents executed by the Delegate in the exercise of all or any of the Relevant Powers.

- 7.2 The Delegate accepts its appointment pursuant to Clause 7.1 (*Delegation of Authority to the Delegate*) above as delegate of the Trustee and agrees to comply with the terms of these presents and the other Transaction Documents to which it is a party. Subject to the terms of this Declaration of Trust, the Delegate further agrees to perform the duties specified for it as delegate of the Trustee in the Conditions.
- 7.3 In relation to the exercise by the Delegate of any Relevant Powers, the Trustee hereby grants to the Delegate rights and powers on the same terms as set out:
- (a) in the provisions in Clause 15.3 (*Provisions Applicable to the Trustee and the Delegate*); or
  - (b) in any provision in favour of the Trustee contained in the relevant Transaction Documents as if, as between the Trustee and the Delegate, any reference in such Clause or provisions to the Trustee were to the Delegate.
- 7.4 The appointment of a delegate by the Trustee pursuant to Clause 7.1 is intended to be in the interests of the Certificateholders and does not affect the Trustee's continuing role and obligations as trustee of the Trust.

## 8. THE DELEGATE

- 8.1 Neither the Delegate nor any director or officer of the Delegate nor any holding, affiliated or associated company of the Delegate (or any of such company's directors or officers) shall be precluded from underwriting the Certificates, or from purchasing or otherwise acquiring, holding, dealing in or disposing of any notes, bonds, debentures, shares, certificates or securities whatsoever or from being interested in any contract or transaction or from entering into transactions in the ordinary course of business with any other party or from accepting and holding the office of trustee, delegate or administrator for the holders of any other securities or from acting on, or as depositary or agent for, any committee or body of holders of any securities of any person, in each such case with the same rights as they would have had if the Delegate were not acting as Delegate and neither the Delegate nor any director or officer of the Delegate nor any holding, affiliated or associated company of the Delegate (or any of such company's directors or officers) shall be liable to Certificateholders for any profit made by it or them thereby or in connection therewith.
- 8.2 Each of the Trustee and the Bank agrees that it will not object to the exercise by the Delegate of any of the Relevant Powers delegated by the Trustee to the Delegate in Clause 7.1 (*Delegation of Authority to the Delegate*) while such Delegation remains in effect and the Trustee hereby irrevocably and unconditionally undertakes that to the extent necessary to facilitate the exercise by the Delegate of its powers (whether prior to the occurrence of a Dissolution Event or Potential Dissolution Event or otherwise), the Trustee will act in accordance with all directions and instructions given to it by the Delegate for such purpose, **provided that** any such directions and instructions do not



require the Trustee to do anything which may be illegal or contrary to any applicable law or regulation.

## 9. DUTIES OF THE TRUSTEE AND THE DELEGATE

- 9.1 Each of the Trustee and the Delegate shall be subject to such duties and only such duties as are specifically set forth in these presents and in the Transaction Documents to which it is a party, **provided that**, in the case of the Delegate, it is only subject to such duties with which it expressly agrees to comply as Delegate and no duties of the Trustee in its capacity as trustee or as issuer of the Certificates shall be imposed on the Delegate by virtue of Clause 6 (*Powers Vested in the Delegate*) or the Delegation, and no implied duties, covenants or obligations shall be read into this Declaration of Trust in respect of the Trustee or the Delegate.
- 9.2 The Trustee undertakes to cause all income from the Trust Assets to be distributed, and all payments in respect of the Certificates to be made, in accordance with the Conditions, these presents and the Agency Agreement.
- 9.3 The Trustee undertakes that, following it having actual knowledge or express notice of the occurrence of a Dissolution Event it shall (i) promptly notify the Delegate and the Certificateholders of the occurrence of such Dissolution Event; and (ii) upon receipt of a Dissolution Notice, subject to sub-clause 15.3(b)(xxv), take all such actions, steps or proceedings as are necessary to exercise its rights under, and to enforce the obligations of the Bank pursuant to the Mudaraba Agreement and any other Transaction Document to which the Bank is a party.

## 10. UNDERTAKINGS

- 10.1 The Trustee and, in the case of Clauses 10.1(b) to 10.1(f) (inclusive), Clause 10.1(j), Clauses 10.1(l) to 10.1(n) (inclusive), Clause 10.1(t) and Clause 10.1(u), the Bank, each hereby undertakes to and for the benefit of Certificateholders and the Delegate that for so long as any Certificate is outstanding it will:
- (a) comply with and perform and observe all the provisions of the Transaction Documents to which it is a party which are expressed to be binding on it and agrees that the Delegate shall be entitled to enforce all of the obligations of the Trustee under the Transaction Documents to which it is a party as if the same were set out in these presents;
  - (b) to the extent that it prepares accounts, it shall keep proper books of account as may be necessary to comply with all applicable laws and upon the occurrence of a Dissolution Event or Potential Dissolution Event allow the Delegate and any person appointed by the Delegate to whom the Trustee or the Bank (as the case may be) shall have no reasonable objection, free access to such books of account at all reasonable times during normal business hours and subject at any time to the priority of access to such books of account by the Auditors or any governmental or regulatory body;
  - (c) to the extent the same are prepared by it, send to the Delegate (in addition to any copies to which it may be entitled as a holder of any securities of the Trustee) a copy in English of every balance sheet, income statement, report, circular and

notice of general meeting and every other document issued or sent to its shareholders together with any of the foregoing, and every document issued or sent to holders of securities other than its shareholders (including the Certificateholders) as soon as practicable after the issue or publication thereof;

- (d) send to the Delegate: (i) within 14 days of any request by the Delegate therefor and (ii) (without the necessity for any such demand) as soon as reasonably practicable after the publication of its audited accounts in respect of each financial period commencing with the financial period ending 31 December 2021 and in any event not later than 180 days after the end of each such financial period (or, if no such accounts are prepared, annually on the anniversary of this Declaration of Trust), a certificate (in the form set out in Schedule 5 (*Form of Director's/Authorised Signatories' Certificate*)) of the Bank or the Trustee (as the case may be) signed by an Authorised Signatory of the Trustee or the Bank, as the case may be, that, as at a date (the "**Certification Date**") not more than seven days before the date of the certificate, to the best of its knowledge and belief (having made all reasonable enquiries), no Non-Viability Event, Dissolution Event, Potential Dissolution Event, Non-Payment Event, Non-Payment Election, Tax Event or Capital Event or breach of this Declaration of Trust, the Agency Agreement or any of the other Transaction Documents has occurred since the Certification Date of the last such certificate or (if none) the date of this Declaration of Trust or, if such an event had occurred, giving details of it;
- (e) so far as permitted by applicable law, at all times execute all such further documents, provide such information and do such further acts and things as may be necessary at any time or times in the opinion of the Delegate for the purpose of discharging its functions under, or giving effect to, these presents;
- (f) use all reasonable endeavours to maintain the listing and/or quotation of the Certificates on the London Stock Exchange or, (i) if it is unable to do so having used all reasonable endeavours; or (ii) if the maintenance of such listing is impracticable or unduly onerous; or (iii) the Delegate is of the opinion that to do so would not be materially prejudicial to the interests of the Certificateholders, use (subject as aforesaid) all reasonable endeavours to obtain and maintain a quotation or listing of the Certificates on another stock exchange or exchanges or securities market or markets as the Trustee and the Bank may (with the prior written approval of the Delegate) decide and shall also, upon obtaining a quotation or listing of the Certificates on such other stock exchange or exchanges or securities market or markets, enter into a deed supplemental to this Declaration of Trust to effect such consequential amendments to these presents as the Delegate may require or as shall be required to comply with the requirements of any such stock exchange or securities market;
- (g) at all times maintain a Principal Paying Agent, Registrar, Calculation Agent, Transfer Agent and such other agents as may be required under the Conditions and procure that the Principal Paying Agent makes available for inspection and/or collection by Certificateholders at its Specified Office copies of the documents required by the Prospectus to be made available;

- (h) comply with the provisions of Condition 6 (*Covenants*) as if they were set out in this Clause 10.1 and that it will not take any action other than an action which is specifically contemplated by one or more Transaction Documents or the Conditions (an "**Authorised Action**") or which is necessary to give effect to an Authorised Action without the prior consent of the Delegate;
- (i) on the Business Day prior to (i) each Periodic Distribution Date or (ii) any other date on which (a) a Dissolution Distribution Amount or (b) a Periodic Distribution Amount may become due and payable under the Conditions, unconditionally pay or procure to be paid to or to the order of the Delegate in U.S. dollars in same day funds, the Periodic Distribution Amount or, as the case may be, the Dissolution Distribution Amount payable on that date, **provided that** every payment of the due and unpaid Periodic Distribution Amount or Dissolution Distribution Amount in respect of the Certificates made to or to the account of the Principal Paying Agent in the manner provided in the Agency Agreement shall be in satisfaction *pro tanto* of the relative covenant by the Trustee in this Clause 10.1(i) except to the extent that there is default in the subsequent payment thereof to the Certificateholders in accordance with the Conditions;
- (j) in order to enable the Delegate to ascertain the amount of Certificates for the time being outstanding for any of the purposes referred to in the proviso to the definition of "outstanding" in Clause 1 (*Definitions and Interpretation*), deliver to the Delegate forthwith upon being so requested in writing by the Delegate a certificate in writing signed by an Authorised Signatory of the Trustee (or, as the case may be, the Bank) setting out the total number and aggregate outstanding face amount of Certificates which:
  - (i) are at the date of such certificate held by, for the benefit of, or on behalf of, the Trustee (or the Bank and/or any subsidiary of the Bank), in each case as beneficial owner; and
  - (ii) (in the case of the Bank) up to and including the date of such certificate, have been purchased by the Bank or any of its subsidiaries and cancelled;
- (k) cause the Register to be kept outside the United Kingdom by the Registrar and procure that, as soon as practicable after the Issue Date, the Register is duly made up in respect of the subscribers of the Certificates and that in the event any Definitive Certificates are required to be issued such Definitive Certificates will be dispatched to their registered holders promptly upon issue;
- (l) forthwith give notice in writing to the Delegate and the Certificateholders upon the occurrence of a Non-Viability Event, a Dissolution Event, a Potential Dissolution Event, a Non-Payment Event, a Non-Payment Election, a Tax Event or a Capital Event (of which, in respect of the Trustee only, it has actual knowledge or express notice) and, without waiting for the Delegate to take any further action, will ensure that Certificateholders are notified as soon as practicable in accordance with Condition 17 (*Notices*);
- (m) send to the Delegate, not less than three London Business Days (or such shorter period as the Delegate may agree at the relevant time) prior to the date on which

any such notice is to be given, the form of every notice to be given by it to the Certificateholders in accordance with Condition 17 (*Notices*) and obtain the prior written approval of the Delegate (such approval not to be unreasonably withheld or delayed) to, and promptly give to the Delegate a copy of, the final form of every notice to be given by it to the Certificateholders in accordance with Condition 17 (*Notices*) (such approval, unless so expressed, shall not constitute approval for the purposes of Section 21 of the FSMA of a communication within the meaning of Section 21 of the FSMA);

- (n) if payments in respect of the Certificates by the Trustee shall become subject generally to the taxing jurisdiction of any territory or any political sub-division or any authority therein or thereof having power to tax other than or in addition to the Relevant Jurisdiction or any such political sub-division or any such authority therein or thereof, promptly upon having actual knowledge or receiving express notice thereof, notify the Delegate of such event and (unless the Delegate otherwise agrees) enter as soon as reasonably practicable into a deed supplemental to this Declaration of Trust, giving to the Delegate an undertaking or covenant in form and manner satisfactory to the Delegate in terms corresponding to the terms of Condition 13 (*Taxation*) with the substitution for (or, as the case may be, the addition to) the references therein to the Relevant Jurisdiction of references to that other or additional territory or any political sub-division or any authority therein or thereof having power to tax to whose taxing jurisdiction such payments shall have become subject as aforesaid, such deed supplemental to this Declaration of Trust also to modify Condition 10.1(c) (*Redemption or Variation due to Taxation*) and/or the definition of "Relevant Jurisdiction" in Condition 1 (*Interpretation*) so that such Conditions shall make reference to the other or additional territory, any political sub-division and any authority therein or thereof having power to tax;
- (o) forthwith give notice to the Certificateholders of any unconditional payment to the Principal Paying Agent or the Delegate of any sum due in respect of the Certificates made after the due date for such payment;
- (p) upon receipt of a Dissolution Notice, (subject to it being indemnified and/or secured and/or pre-funded to its satisfaction) take all such actions, steps or proceedings as are necessary to exercise its rights under, and to enforce the obligations of the Bank pursuant to the Mudaraba Agreement and any other Transaction Document;
- (q) not exercise, claim or plead any right of set-off, counterclaim, abatement or other similar remedy in respect of any amount owed to it by the Bank arising under or in connection with this Declaration of Trust or any other Transaction Document and the Trustee hereby waives all such rights of set-off, counterclaim, abatement or other similar remedy to the fullest extent permitted by applicable law;
- (r) comply with and perform all its obligations under the Agency Agreement and use its best endeavours to procure that the Agents comply with and perform all their respective obligations thereunder and any notice given by the Delegate pursuant to Clause 6.4(a) (*Agents*) and not make any amendment or modification to the Agency Agreement without the prior written approval of the

Delegate and use all reasonable endeavours to make such amendments to the Agency Agreement as the Delegate and the Bank together may require;

- (s) use all reasonable endeavours to procure that Euroclear and/or Clearstream, Luxembourg (as the case may be) issue(s) any record, certificate or other document requested by the Delegate or otherwise as soon as practicable after such request;
- (t) upon the execution hereof and thereafter forthwith upon any change of the same, deliver to the Delegate (with a copy to the Principal Paying Agent) a list of the persons duly authorised to sign documents and do other acts and things on its behalf for the purposes of this Declaration of Trust, together with the specimen signatures of the same; and
- (u) so far as permitted by applicable law, give or procure to be given to the Delegate such certificates, information and evidence as it shall reasonably require and in such form as it shall reasonably require, including without limitation the procurement by the Trustee or the Bank, as the case may be, of all such certificates called for by the Delegate pursuant to sub-clause 15.3(b)(iii) (*Provisions Applicable to the Trustee and the Delegate*), for the purpose of the discharge or exercise of the duties, trusts, powers, authorities and discretions vested in it under these presents or by operation of law.

10.2 The Delegate shall hold the benefit of the covenants in Clause 10.1 upon trust for itself and the Certificateholders according to its and their respective interests.

## 11. ADDITIONAL UNDERTAKINGS OF THE BANK

11.1 The Bank undertakes that for as long as any Certificate is outstanding it will:

- (a) comply with and perform and observe all the provisions of the Conditions and the Transaction Documents which are expressed to be binding on it and agrees that the Trustee or the Delegate shall be entitled to enforce the obligations of the Bank under the Transaction Documents to which it is a party as if the same were set out and contained in these presents;
- (b) so far as permitted by applicable law, give each of the Trustee and the Delegate such information as either reasonably requires to perform its functions herein or in accordance with any other Transaction Document;
- (c) at all times keep proper books of account in relation to its obligations under all Transaction Documents to which it is a party and, so far as permitted by applicable law, allow the Delegate and any other person appointed by the Delegate free access to such books of account at all times during normal working hours and shall provide copies of such records upon request to the Trustee or the Delegate;
- (d) if the Trustee fails to comply with any obligation to pay Additional Amounts pursuant to Condition 13 (*Taxation*), unconditionally and irrevocably (irrespective of the payment of any fee), as a continuing obligation, pay to the Delegate (for the benefit of the Certificateholders) such additional amounts as

shall be necessary in order that the aggregate net amounts received by the Certificateholders and the Delegate for the benefit of the Certificateholders after all withholding or deductions shall equal the amounts that would have been receivable in the absence of any the deduction or withholding to which this Clause 11.1(d) applies. For the avoidance of doubt, any payment by the Bank pursuant to this Clause 11.1 shall discharge *pro tanto* the Trustee's obligation to pay additional amounts pursuant to Condition 13 (*Taxation*);

- (e) forthwith give notice to the Trustee and the Delegate (including the reasons therefor and upon request a report on its financial condition) of (a) any material deterioration of its operating condition or fact relating thereto which may interfere with the performance of its duties under any Transaction Document to which it is a party or (b) any litigation proceedings or claims calling into question the Trustee's rights to any of the Trust Assets; and
- (f) prior to making any modification or amendment or supplement to these presents, procure, at the request of the Delegate, the delivery of legal opinions(s) as to English and any other relevant law, addressed to the Delegate, dated the date of such modification or amendment or supplement, as the case may be, and in a form acceptable to the Delegate from legal advisers acceptable to the Delegate.

11.2 The Trustee shall hold the benefit of the covenants in Clause 11.1 upon trust for itself and the Certificateholders according to its and their respective interests.

## 12. **REMUNERATION AND INDEMNIFICATION OF THE TRUSTEE AND THE DELEGATE**

12.1 The Trustee shall not receive any remuneration for acting as trustee hereunder but shall be entitled to be reimbursed by the Bank for all properly incurred Liabilities arising in connection with these presents or any other Transaction Document (including properly incurred fees and disbursements of legal counsel or other third party advisers appointed by or on behalf of the Trustee including, without limitation, all fees, expenses and other amounts payable by the Trustee pursuant to the Corporate Services Agreement, the Registered Office Terms and/or the orderly winding-up of the Trustee following the dissolution of the Trust) which the Trustee incurs or is subject to in consequence of:

- (a) making the responsibility statement in the Prospectus, except to the extent that the Liability relates to information given by the Trustee with respect to itself; or
- (b) entering into and performing its duties and obligations under these presents and any agreements relating to the Certificates, and/or the orderly winding up of the Trustee following the redemption in full of all of the Certificates,

and the Bank covenants to indemnify in full, on an after tax basis, on demand the Trustee for any amount necessary to pay such Liabilities that would otherwise reduce distributions to Certificateholders in the absence of such indemnity.

12.2 Each of the Bank and the Trustee jointly and severally covenants to pay to the Delegate remuneration for its services as delegate as from the date of this Declaration of Trust, such remuneration to be at such rate as may from time to time be agreed between the Bank and the Delegate. Such remuneration shall accrue from day to day from the date

of these presents and be payable (in priority to payments to Certificateholders) up to and including the date when the Delegate ceases to act hereunder.

- 12.3 If any Dissolution Event or Potential Dissolution Event shall have occurred in respect of the Bank, the Bank shall pay the Delegate additional remuneration calculated at the Delegate's standard hourly rates in force from time to time. If (i) a Dissolution Event in respect of the Trustee, a Potential Dissolution Event in respect of the Trustee, a Non-Viability Event, Non-Payment Event, Non-Payment Election, Tax Event or Capital Event shall have occurred or (ii) in any other case, the Delegate considers it expedient or necessary or being requested by the Trustee or the Bank to undertake duties which the Delegate and the Bank agree to be of an exceptional nature or otherwise outside the scope of the normal duties of the Delegate under these presents, the Bank shall pay to the Delegate such additional remuneration as shall be agreed between them (which may be calculated by reference to the Delegate's standard hourly rate in force from time to time).
- 12.4 The Bank shall, in addition, pay to the Delegate an amount equal to the amount of any value added tax or any other tax chargeable (excluding any income tax) in respect of its remuneration under these presents.
- 12.5 In the event of the Delegate and the Bank failing to agree (in a case to which Clause 12.3 above applies) upon whether such duties shall be of an exceptional nature or otherwise outside the scope of the normal duties of the Delegate under these presents, or upon such additional remuneration, such matters shall be determined by a person (acting as an expert and not as an arbitrator) selected by the Delegate and approved by the Bank or, failing such approval, nominated (on the application of the Delegate) by the President for the time being of The Law Society of England and Wales (the expenses involved in such nomination and the fees of such person being payable by the Bank) and the determination of any such person shall be final and binding upon the Trustee, the Delegate and the Bank.
- 12.6 Without prejudice to the right of indemnity by law given to trustees, each of the Trustee and the Bank shall indemnify the Delegate and every Appointee or Receiver and keep them indemnified against all Liabilities properly incurred to which any of them may be or become subject or which may be properly incurred by any of them in the preparation and execution or purported execution of any of their trusts, powers, authorities and discretions under these presents or its functions under any such appointment or in respect of any other matter or thing done or omitted in any way relating to these presents or any such appointment (including all Liabilities incurred in disputing or defending any of the foregoing), excluding any Liability incurred by any such person arising from the gross negligence, wilful default or fraud of that person.
- 12.7 The Trustee and the Bank shall also pay or discharge all Liabilities properly incurred by the Delegate in relation to the preparation and execution of, the exercise of its powers and the performance of its duties under, and in any other manner relating to, these presents or any other Transaction Document, including but not limited to properly incurred travelling expenses and any stamp, issue, registration, documentary and other taxes or duties paid or payable by the Delegate (excluding any income tax payable on any remuneration of the Delegate) in connection with any action taken or contemplated by or on behalf of the Delegate for enforcing these presents.

- 12.8 Where any amount which would otherwise be payable by the Trustee or the Bank under Clause 12.6 or Clause 12.7 has instead been paid by any person or persons other than the Trustee or the Bank (each, an "Indemnifying Party"), the Trustee, failing which the Bank, shall pay to the Delegate an equal amount for the purpose of enabling the Delegate to reimburse the Indemnifying Parties.
- 12.9 All amounts payable pursuant to Clause 12.6 and 12.7 shall be payable by the Bank on the date specified in a demand by the Delegate.
- 12.10 The Bank undertakes to the Trustee and the Delegate that, if any amount payable by the Bank to the Trustee or the Delegate pursuant to any Transaction Document is not recoverable from the Bank for any reason whatsoever (including, without limitation, by reason of any Certificate or Transaction Document or any provision thereof being or becoming void, unenforceable or otherwise invalid under any applicable law) or the Trustee, the Delegate or any Certificateholder suffers any Liability (which must be evidenced to the Bank by the production of receipts) as a result of the Trustee's holding of the Trust Assets, which Liability is not recoverable under the Transaction Documents, then (notwithstanding that the same may have been known to the Trustee or the Delegate) the Bank will, as a sole, original and independent obligor, forthwith upon demand by the Delegate or the Trustee pay such sum by way of a full indemnity in the manner and currency as is provided for in the relevant Transaction Document and indemnify the Trustee, the Delegate or any Certificateholder against all Liabilities to which it may be subject or which it may properly incur under or in respect of the Transaction Documents. This indemnity constitutes a separate and independent obligation from the other obligations of the Bank under this Declaration of Trust and shall give rise to a separate and independent cause of action.
- 12.11 The Bank hereby undertakes to the Delegate and the Trustee that all moneys payable by it to the Delegate or the Trustee under this Clause 12 shall be made without set-off or counterclaim and without any deduction or withholding unless the deduction or withholding is required by law, in which event the Bank will pay such additional amounts so that the net amounts received by the Delegate or the Trustee, as the case may be, shall equal the amounts which would have been receivable in the absence of any such deduction or withholding.
- 12.12 Unless otherwise specifically stated in any discharge of these presents the provisions of this Clause 12 shall continue in full force and effect in relation to the period during which the Delegate was delegate of these presents notwithstanding such discharge and notwithstanding the removal or resignation of the Delegate from that role.
- 12.13 If, under any applicable law and whether pursuant to a judgment being made or registered against the Trustee or the Bank or for any other reason, any payment under these presents is made in a currency (the "other currency") other than that in which the relevant payment is expressed to be due (the "required currency") under these presents, then, to the extent that the payment (when converted into the required currency at the spot rate of exchange on the date of payment or, if it is not practicable for the Delegate to purchase the required currency with the other currency on the date of payment, at the spot rate of exchange as soon thereafter as it is practicable for it to do so) actually received by the Delegate falls short of the amount due under the terms of these presents, each of the Trustee and the Bank, as applicable, undertakes that it shall, as a separate and independent obligation, indemnify and hold harmless the Delegate against the



amount of such shortfall. For the purpose of this Clause 12.13, "**spot rate of exchange**" means the spot rate at which the Delegate is able, on any international foreign exchange market on the relevant date, to purchase the required currency with the other currency and shall take into account any reasonable costs of exchange.

### 13. **INVESTMENT**

Save as expressly provided by any Transaction Document, and subject to further instructions of the Certificateholders, the Delegate shall have no powers of investment with respect to the Trust Assets and (to the extent permitted by applicable law) the Trustee Act 2000 shall not, nor shall any other provision relating to trustee powers of investment implied by statute or by general law, apply to the Delegate.

### 14. **APPLICATION OF MONEYS**

14.1 Subject to the terms of the Transaction Documents, each of the Trustee and the Delegate hereby undertakes that to the extent that it receives any amounts payable under any Transaction Document in respect of Periodic Distribution Amounts or Dissolution Distribution Amounts or any amounts in respect of the Trust Assets, it shall pay such amounts into the Transaction Account for payment subject to and in accordance with the order of priority set out in Condition 5.3 (*The Trust*) to the relevant Certificateholders on the relevant Periodic Distribution Date or date fixed for payment of the Dissolution Distribution Amount in accordance with the conditions as the case may be.

14.2 The Trustee hereby undertakes that it will cause the Principal Paying Agent to apply the monies standing to the credit of the Transaction Account from time to time in the manner set out in Condition 5.3 (*The Trust*).

14.3 Without prejudice to this Clause 14, if the Trustee or the Delegate holds any moneys which represent any amounts owed in respect of Certificates which have become void or in respect of which claims have been prescribed under Condition 14 (*Prescription*), such monies shall be contributed to the Trust Assets and the Trustee will hold such moneys on the terms of the Trust.

14.4 Subject to Clauses 14.1 to 14.3 above, the Delegate shall not be bound to use its own funds to pay, and shall not have any liability to Certificateholders in respect of any payment or delivery which should have been made by the Trustee (or any Agent on its behalf) but is not so made.

### 15. **PROVISIONS APPLICABLE TO THE TRUSTEE AND THE DELEGATE**

15.1 Section 1 of the Trustee Act 2000 shall not apply to the duties of the Trustee or the Delegate in relation to the trusts constituted by these presents. Where there are any inconsistencies between the Trustee Acts and the provisions of these presents, the provisions of these presents shall, to the extent allowed by law, prevail and, in the case of any such inconsistency with the Trustee Act 2000, the provisions of these presents shall constitute a restriction or exclusion for the purposes of that Act.

15.2 The Trustee and the Delegate shall have all the powers conferred upon trustees by the Trustee Acts as supplemented by Clause 15.3 below.

15.3 In relation to:

- (a) duties of the Trustee under the Trust; and
- (b) the powers and discretions vested in the Delegate pursuant to Clause 6 (*Powers Vested in the Delegate*) or delegated to the Delegate pursuant to Clause 7 (*Delegation of Authority to the Delegate*), as appropriate in respect of their respective capacities:
  - (i) each of the Delegate and the Trustee may in relation to these presents consult with, act and/or rely on the opinion, report, evaluation, advice of or a certificate, or any information (whether addressed to the Delegate or the Trustee or not) obtained from any lawyer, valuer, banker, broker, accountant (including the Auditors) surveyor, auctioneer, tax adviser, rating agency, insolvency official or other expert appointed by the Bank, the Trustee, the Delegate or an Agent or otherwise, and shall not be responsible for any Liability (howsoever incurred and of any description) occasioned by so acting and/or relying (or refraining from so acting or relying) notwithstanding that such advice, opinion, report, certificate or information may contain a cap or other limitation (monetary or otherwise) on liability of any party;
  - (ii) any such opinion, advice, report, certificate or information referred to in Clause 15.3(b)(i) above, may be sent or obtained by letter, facsimile device or electronic mail and the Delegate and the Trustee shall not be liable for acting in good faith on any opinion, report, advice, certificate or information purporting to be conveyed by such means even if it contains some error or is not authentic;
  - (iii) the Delegate may call for and shall be at liberty to accept as sufficient evidence of any fact or matter or the expediency of any transaction or thing a certificate, declaration or document signed by one Authorised Signatory of the Trustee or the Bank, as the case may be, and the Delegate shall not be bound in any such case to call for further evidence or be responsible for any Liability (howsoever incurred and of any description) that may be occasioned by it or any other person acting on such certificate, declaration or document whether or not such certificate, declaration or document is addressed to the Delegate;
  - (iv) the Delegate and the Trustee shall each be at liberty to hold these presents and any other documents relating to these presents or the Trust Assets and to deposit them in any part of the world with any banker or banking company or company whose business includes undertaking the safe custody of documents or with any lawyer or firm of lawyers considered by the Trustee or the Delegate, as the case may be, to be of good repute and the Delegate and the Trustee shall not be responsible for, or be required to insure against, any liability (howsoever incurred and of any description) incurred in connection with any such holding or deposit and each of them may pay all sums required to be paid on account of or in respect of any such deposit;

- (v) neither the Trustee nor the Delegate shall be bound to give notice to any person of the execution of any documents comprised or referred to in these presents, to take any steps to ascertain whether any Non-Viability Event, Dissolution Event, Potential Dissolution Event, Non-Payment Event, Non-Payment Election, Tax Event or Capital Event has happened or will happen or to monitor or supervise the performance of the Trustee or any of the other parties to the Transaction Documents or under the Certificates or any other agreement or documents relating to the transactions herein or therein constructed and, until the Delegate's Agency & Trust function shall have actual knowledge or the Delegate shall have express written notice pursuant to these presents to the contrary, each of the Trustee and the Delegate shall be entitled to assume that no Non-Viability Event, Dissolution Event, Potential Dissolution Event, Non-Payment Event, Non-Payment Election, Tax Event or Capital Event has happened and that the parties to the Transaction Documents are observing and performing all their respective obligations under the Transaction Documents and no event has happened as a consequence of which any of the Certificates may become redeemable;
- (vi) the Delegate may determine whether or not a Dissolution Event or Potential Dissolution Event has occurred. Any such determination shall be conclusive and binding on the Delegate, the Trustee, the Bank and the Certificateholders;
- (vii) where it is necessary or desirable for any purpose in connection with these presents to convert any sum from one currency to another, it shall (unless otherwise provided by these presents, the other Transaction Documents or required by law) be converted at such rate or rates, in accordance with such method and at the spot rate at which the Delegate is able on the London foreign exchange market on the relevant date to purchase the required currency with the other currency and shall take into account any premium and other reasonable costs of exchange and any rate, method and date so determined shall be binding on the Delegate, Trustee, the Bank and the Certificateholders save in the case of manifest error;
- (viii) the Delegate, as between itself, the Trustee and the Certificateholders, may determine all questions and doubts arising in relation to any of the provisions of these presents and every such determination, whether made upon a question actually raised or implied in the acts or proceedings of the Delegate, shall be conclusive and shall bind the Delegate, the Trustee and the Certificateholders;
- (ix) in connection with the exercise by it of any of its powers, trusts, authorities and discretions under these presents (including, without limitation, any modification, waiver, authorisation or determination), each of the Delegate and the Trustee shall have regard to the general interests of the Certificateholders as a class and shall not have regard to any interest arising from circumstances particular to individual Certificateholders (whatever their number) and, in particular, but without limitation, shall not have regard to the consequences of such

exercise for individual Certificateholders (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 sub-division thereof or taxing jurisdiction and the Delegate shall not be entitled to require, nor shall any Certificateholder be entitled to claim from the Trustee, the Delegate, the Bank or any other person any indemnification or payment in respect of any tax consequence of any such exercise upon individual Certificateholders (except, in the case of the Trustee and the Bank to the extent already provided for in Condition 13 (*Taxation*));

- (x) any trustee or delegate of these presents being a lawyer, banker, broker or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional and other charges for business transacted and acts done by them or any partner of them or by their firm in connection with these presents and also their proper charges in addition to disbursements for all other work and business done and all time spent by them or their partner or firm on matters arising in connection with these presents including matters which might or should have been attended to in person by a trustee not being a banker, lawyer, broker or other professional person;
- (xi) each of the Delegate and the Trustee may, whenever it thinks fit in the execution and exercise of all or any of the trusts, powers, rights, authorities and discretions vested in it by these presents, act by responsible officers or a responsible officer for the time being of the Delegate or the Trustee and may also whenever it thinks fit, delegate (but in the case of the Trustee, only to the Delegate) or sub-delegate (in the case of the Delegate) by power of attorney or otherwise to any person or fluctuating body of persons (whether being a joint trustee of these presents or not) all or any of its powers, trusts, rights, authorities and discretions under these presents. Such delegation may be made upon such terms (including power to sub-delegate) and subject to such conditions and regulations as the Trustee or the Delegate, as the case may be, may in the interests of the Certificateholders think fit and, **provided that** the Trustee and the Delegate shall have exercised reasonable care in the selection of such delegate or sub-delegate, neither the Trustee nor the Delegate shall be under any obligation to the Certificateholders to monitor or supervise the proceedings or acts of any such delegate or sub-delegate or be in any way responsible for any Liability (howsoever incurred and of any description) incurred by reason of any misconduct, omission or default on the part of any such delegate or sub-delegate;
- (xii) each of the Delegate and the Trustee may, in the conduct of its duties and powers in relation to the trusts of these presents, instead of acting personally employ and pay any duly qualified agent (whether being a lawyer or other professional person) to transact or conduct, or concur in transacting or conducting, any business and to do, or concur in doing, all acts required to be done in connection with these presents (including

the receipt and payment of money) and, **provided that** the Delegate or the Trustee shall have exercised reasonable care in the selection of such agent, neither the Delegate nor the Trustee shall be responsible for any Liability (howsoever incurred and of any description) incurred by reason of any misconduct, omission or default on the part of any such agent or be bound to monitor or supervise the proceedings or acts of any such agent;

- (xiii) neither the Delegate nor the Trustee shall have responsibility with regard to the Trust Assets other than as expressly set out in these presents and (without prejudice to the generality of the foregoing) neither of them makes any representation or assumes any responsibility for the validity, adequacy or enforceability of any Trust Assets and neither the Trustee nor the Delegate shall under any circumstances have any Liability to the Certificateholders in respect of any payment or delivery which should have been made by it but is not so made or be obliged to account to the Certificateholders for any amount on any sum or assets which should have been paid or delivered by it;
- (xiv) the Delegate shall not be responsible for the acts or omissions of any Agent;
- (xv) neither the Delegate nor the Trustee shall incur any liability to the Certificateholders if, by reason of any provision of any present or future law or regulation of any other country or of any relevant governmental authority, or by reason of the interpretation or application of any present or future law or regulation or any change therein, or by reason of any other circumstance beyond its control, it shall be prevented or forbidden from doing or performing any act or thing which the terms of these presents provide shall be done or performed; nor shall the Delegate or the Trustee incur any liability by reason of any non-performance or delay, caused as aforesaid, in performance of any act or thing which the terms of these presents provide shall or may be done or performed, or by reason of any exercise of, or failure to exercise, any power or discretion provided for in these presents;
- (xvi) the Delegate shall not be responsible for the receipt or application of the proceeds of the issue of the Certificates by the Trustee, the exchange of the Global Certificate for Definitive Certificates, or the delivery of the Global Certificate or Definitive Certificates to the person(s) entitled to it or them;
- (xvii) neither the Delegate nor the Trustee shall be liable to any person by reason of having acted upon any Extraordinary Resolution (whether passed at a meeting of Certificateholders by Written Resolution) or other resolution purporting to have been passed at any meeting of Certificateholders in respect whereof minutes have been made and signed or any direction or request of Certificateholders even though subsequent to its acting it may be found that there was some defect in the constitution of the meeting or the passing of the resolution or (in the case of a Written Resolution) that the requisite number of

Certificateholders had not signed the Extraordinary Resolution or (in the case of a direction or request) that it was not signed in the appropriate manner and/or by the requisite number of Certificateholders or that for any reason the resolution, direction or request was not valid or binding upon such Certificateholders;

- (xviii) neither the Delegate nor the Trustee shall be liable to any person by reason of having accepted as valid or not having rejected any Certificate purporting to be such and subsequently found to be forged or not authentic;
- (xix) any consent, approval, authorisation or waiver given by the Delegate or the Trustee for the purposes of these presents, the Certificates and the other Transaction Documents may be given on such terms and subject to such conditions (if any) as the Delegate or the Trustee thinks fit and, notwithstanding anything to the contrary in these presents, may be given retrospectively. The Delegate may give any consent or approval, exercise any power, authority or discretion or take any similar action (whether or not such consent, approval, power, authority, discretion or action is specifically referred to in these presents) if it is satisfied that the interests of the Certificateholders will not be materially prejudiced thereby. For the avoidance of doubt, the Delegate shall not have any duty to the Certificateholders in relation to such matters other than that which is contained in the preceding sentence;
- (xx) the Delegate shall not (unless and to the extent required to do so by law or ordered so to do by a court of competent jurisdiction) be required to disclose to any Certificateholder confidential information or other information made available to the Delegate by the Trustee or the Bank in connection with these presents and no Certificateholder shall be entitled to take any action to obtain from the Delegate or the Trustee any such information;
- (xxi) each of the Delegate and the Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to the Trust Assets as the Delegate or the Trustee may determine, including for the purpose of depositing with a custodian these presents, any other Transaction Document or any document relating to the trusts constituted by these presents and, **provided that** the Delegate or the Trustee (as the case may be) shall have exercised reasonable care in the selection of such custodian or nominee, neither the Delegate nor the Trustee shall be responsible for any Liability incurred by reason of the misconduct, omission or default on the part of any such person appointed by it hereunder or be bound to monitor or supervise the proceedings or acts of such person;
- (xxii) neither the Trustee nor the Delegate shall be responsible for the execution, delivery, legality, effectiveness, adequacy, genuineness, validity, performance, enforceability or admissibility in evidence of these presents, any other Transaction Document or any other document relating or expressed to be supplemental thereto and shall not be liable

for any failure to obtain any licence, consent or other authority for the execution, delivery, legality, effectiveness, adequacy, genuineness, validity, performance, enforceability or admissibility in evidence of these presents or any other document relating or expressed to be supplemental thereto;

- (xxiii) neither the Delegate nor the Trustee shall be responsible to any person for failing to request, require or receive any legal opinion relating to the Certificates or for checking or commenting upon the content of any such legal opinion and shall not be responsible for any liability incurred thereby;
- (xxiv) subject to the requirements, if any, of any stock exchange or any other relevant regulatory authority on which the Certificates are for the time being, or which they have for the time being been, admitted to listing or trading, any corporation into which the Delegate shall be merged or with which it shall be consolidated or any company resulting from any such merger or consolidation or any corporation succeeding to all or substantially all of the corporate trust business of the Delegate shall be a party hereto and shall be the Delegate under these presents without executing or filing any paper or document or any further act on the part of the parties thereto;
- (xxv) notwithstanding any other provision of these presents or any other Transaction Document, neither the Delegate nor the Trustee shall be bound to take any action, step or proceeding in connection with these presents or the other Transaction Documents or any obligations arising pursuant thereto, including, without prejudice to the generality of the foregoing, forming any opinion or employing any financial adviser or acting at the request or direction of the Certificateholders or otherwise under any provisions of these presents until it has been indemnified and/or secured and/or pre-funded to its satisfaction against any Liabilities (howsoever incurred and of any description) to which it may render itself liable or which it may incur by so doing;
- (xxvi) when determining whether an indemnity or any security or pre-funding is satisfactory to it, each of the Trustee and the Delegate shall be entitled to evaluate its risk in any given circumstance by considering the worst-case scenario and, for this purpose, it may take into account, without limitation, the potential costs of defending or commencing proceedings in England, the Cayman Islands, the State of Kuwait or elsewhere and the risk, however remote, of any award of damages against it in England, the State of Kuwait or elsewhere;
- (xxvii) the Delegate shall be under no obligation to monitor, investigate or supervise the functions of any other person under these presents or any Transaction Document and shall be entitled, in the absence of the Delegate's Agency & Trust function having actual knowledge of a breach of obligation, to assume that each such person is properly performing and complying with its obligations and shall have no liability to any person for any loss arising from any breach by any such person;

- (xxviii) the Delegate shall not have any obligation to monitor or investigate the compliance with any covenants;
- (xxix) the Delegate shall not incur any liability to the Trustee, the Bank, the Certificateholders or any other person in connection with any approval given by it pursuant to Clause 10.1(m) (*Undertakings*) to any notice to be given to Certificateholders by the Trustee and the Delegate shall not be deemed to have represented, warranted, verified or confirmed that the contents of any such notice are true, accurate or complete in any respects or that it may be lawfully issued or received in any jurisdiction;
- (xxx) notwithstanding anything contained in these presents, to the extent required by any applicable law, if the Delegate is or will be required to make any deduction or withholding from any distribution or payment made by it under these presents or if the Delegate is or will be otherwise charged to, or may become liable to, Tax (other than in connection with its remuneration as provided for herein) as a consequence of performing its duties under these presents or the other Transaction Documents (whether as principal, agent or otherwise, and whether by reason of any assessment, prospective assessment or other imposition of liability to taxation of whatsoever nature and whensoever made upon the Delegate, and whether in connection with or arising from any sums received or distributed by it or to which it may be entitled under these presents (other than in connection with its remuneration as provided for herein) or any investments or deposits from time to time representing the same, including any income or gains arising therefrom or any action of the Delegate in connection with the trusts of these presents (other than the remuneration herein specified) or otherwise), then the Delegate shall be entitled to make such deduction or withholding or (as the case may be) to retain out of sums received by it an amount sufficient to discharge any liability to Tax which relates to sums so received or distributed or to discharge any such other liability of the Delegate to Tax from the funds held by the Delegate on the Trust;
- (xxxi) no Delegate and no director or officer of any corporation being a Delegate hereof shall by reason of any fiduciary position of such Delegate or otherwise be in any way precluded from making any contracts or entering into any transactions in the ordinary course of business with the Trustee or any other party to a Transaction Document or any person or body corporate directly or indirectly associated with the Trustee or such other party, or from accepting the trusteeship of or as delegate in relation to the issuance of any other debenture stock, debentures or securities of the Trustee or such other party or any person or body corporate directly or indirectly associated with the Trustee or such other party. Neither the Delegate nor any director or officer of any corporation being a Delegate shall be accountable to the Certificateholders, the Trustee or any other party to the Transaction Documents or any person or body corporate directly or indirectly associated with the Trustee or any such other person for any profit, fees, commissions, cost of funds, discounts or share of brokerage earned,



arising or resulting from any such contracts or transactions and the Delegate and any such director or officer shall also be at liberty to retain the same for its or their own benefit;

- (xxxii) each Certificateholder shall be solely responsible for making its own independent appraisal of, and investigation into, the financial condition, creditworthiness, affairs, status and nature of the Trustee and the Bank and the Delegate shall not at any time have any responsibility for any such appraisal or investigation and no Certificateholder shall rely on the Delegate in respect thereof;
- (xxxiii) no provision of these presents shall require the Delegate or the Trustee to do anything which would or may in its reasonable opinion:
  - (A) notwithstanding anything else herein contained, be contrary to any applicable law of any state or jurisdiction (including, without limitation, the European Union, the United States or any jurisdiction forming a part of it, and England and Wales) or any directive or regulation of any agency of such state or jurisdiction and may, without liability, do anything which is necessary to comply with any such law, directive or regulation;
  - (B) render it liable to any person; or
  - (C) cause it to expend or risk its own funds or otherwise incur any liability (howsoever incurred and of any description) in the performance of any of its duties or in the exercise of any of its rights, powers or discretions hereunder, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against or security for such risk or Liability (howsoever incurred and of any description) is not assured to it;
- (xxxiv) unless notified to the contrary, the Delegate shall be entitled to assume without enquiry (other than requesting a certificate pursuant to Clause 10.1(j) (*Undertakings*)) that no Certificates are held by, for the benefit of, or on behalf of, the Trustee, the Bank or any subsidiary of the Bank;
- (xxxv) neither the Delegate nor the Trustee shall be liable either to the Trustee or to any Certificateholder by reason of having accepted as valid or not having rejected any entry on the Register later found to be forged or not authentic and the Delegate and the Trustee can assume for all purposes in relation hereto that any entry on the Register is correct;
- (xxxvi) the Delegate shall have no responsibility whatsoever to the Trustee, the Bank or any Certificateholder or any other person for the maintenance of or failure to maintain any rating of any of the Certificates by any rating agency;
- (xxxvii) any advice, opinion, certificate or report of the Auditors or insolvency officials (as applicable) of the Trustee, the Bank or any other person

called for by or provided to the Delegate (whether or not addressed to the Delegate) in accordance with or for the purposes of these presents or the other Transaction Documents may be relied upon by the Delegate as sufficient evidence of the facts stated therein notwithstanding that such advice, opinion, certificate or report and/or any engagement letter or other document entered into by the Delegate in connection therewith contains a monetary or other limit on the liability of the Auditors of the Trustee, the Bank or such other person in respect thereof and notwithstanding that the scope and/or basis of such advice, opinion, certificate or report may be limited by an engagement or similar letter or by the terms of the certificate or report itself and the Delegate shall not in any case be required to call for further evidence or be responsible for any liability or inconvenience that may be occasioned by its failure to do so;

- (xxxviii) the Delegate shall not be responsible for, or for investigating any matter which is the subject of, any recital, statement, representation, warranty or covenant of any person contained in these presents or any other agreement or document relating to the transactions contemplated in these presents or under such other agreement or document or for the execution, legality, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence thereof;
- (xxxix) the Delegate shall not be liable or responsible for any liabilities (howsoever incurred and of any description) or inconvenience which may result from anything done or omitted to be done by it in accordance with the provisions of these presents;
- (xl) each of the Delegate and the Trustee may call for any certificate or other document to be issued by Euroclear or Clearstream, Luxembourg as to the outstanding face amount of Certificates represented by the Global Certificate standing to the account of any person. Any such certificate or other document shall be conclusive and binding for all purposes. Any such certificate or other document may comprise any form of statements or print outs of electronic records provided by the relevant clearing system (including Euroclear's EUCLID or Clearstream, Luxembourg's Creation Online systems) in accordance with its usual procedures and in which the holder of a particular outstanding face amount of Certificates is clearly identified together with the amount of such holding. The Delegate shall not be liable to any person by reason of having accepted as valid or not having rejected any certificate or other document to such effect purporting to be issued by Euroclear or Clearstream, Luxembourg and subsequently found to be forged or not authentic;
- (xli) neither the Trustee nor the Delegate makes any representation and assumes no responsibility for the *Shari'a* compliance of the Certificates or the Transaction Documents and shall not under any circumstances have any liability to the Certificateholders in respect thereof;
- (xlii) without prejudice to Clause 16, the Delegate shall not be liable for any error of judgement made in good faith by any officer or employee of the

Delegate assigned by the Delegate to administer its corporate trust matters;

- (xliii) the Delegate shall have no responsibility whatsoever to the Trustee, the Bank or any Certificateholder or any other person for the maintenance of or failure to maintain their listing of the Certificates on any stock exchange on which such Certificates have been admitted to listing, trading and/or quotation;
- (xliv) the Delegate has no obligation to assume the role or responsibility of the Mudareb or to appoint a successor Mudareb;
- (xlv) it is a term of the trusts created by these presents, that, except where expressly provided otherwise in the Transaction Documents, the Delegate receives any information provided to it under to the terms of the Transaction Documents for information purposes only and the Delegate will not and is not expected routinely to review or monitor such information;
- (xlvi) the Delegate may determine whether or not:
  - (A) a Bank Event, Dissolution Event, Potential Dissolution Event or any other default in the performance by the Trustee or the Bank of any obligation under the provisions of these presents or contained in the Certificates or any other Transaction Document has occurred; and
  - (B) any matter constitutes a Reserved Matter, and any such determination shall be conclusive and binding upon the Trustee, the Bank and the Certificateholders;
- (xlvii) each of the Trustee and the Delegate may do anything which is, in its opinion, necessary to comply with any applicable law, directive or regulation;
- (xlviii) the Trustee and the Delegate may accept without investigation, requisition or objection any right and title to any of the Trust Assets and neither the Trustee nor the Delegate shall be bound or concerned to examine or enquire into or be liable for any defect or failure in the right or title over any of the Trust Assets whether such defect or failure was known to the Trustee or the Delegate or might have been discovered upon examination or enquiry and whether capable of remedy or not;
- (xlix) without prejudice to the provisions of any Transaction Document relating to insurance, the Delegate shall not be under any obligation to insure any of the Trust Assets or any deeds or documents of title or other evidence in respect of the Trust Assets or to require any other person to maintain any such insurance or monitor the adequacy of any such insurance and shall not be responsible for any liability which may be suffered by any person as a result of the lack of or inadequacy of any such insurance;

- (l) until a Dissolution Event has occurred, the moneys standing to the credit of the Transaction Account shall be dealt with in accordance with the provisions of the Transaction Documents and the Delegate shall not, whether prior to or following the occurrence of a Dissolution Event, be responsible in such circumstances or at any other time for any liability suffered by any person, whether by reason of depreciation in value or by fluctuation in exchange rates or otherwise;
- (li) the Delegate will not, in any event, be liable for any decline in the value nor any loss realised upon any sale or other disposition pursuant to these presents of any of the Trust Assets. In particular and without limitation, the Delegate shall not be liable for any such decline or loss directly or indirectly arising from its acting or failing to act as a consequence of an opinion reached by it in good faith based on advice received by it in accordance with these presents;
- (lii) the Delegate shall have no responsibility whatsoever to the Trustee, the Bank, the Certificateholders or any other Person as regards any deficiency which might arise because the Delegate is subject to any Tax (excluding any income tax payable on any remuneration of the Delegate) in respect of all or any of the Trust Assets, the income therefrom or the proceeds thereof. If the Delegate's Agency & Trust function has actual knowledge that any such deficiency has arisen, it will promptly notify each of the Trustee and the Bank in writing of the same;
- (liii) the Delegate shall not be responsible for any consolidation, amalgamation, merger, reconstruction or scheme of the Trustee or the Bank or any sale or transfer of all or substantially all of the assets of the Trustee or the Bank or the form or substance of any plan relating thereto or the consequences thereof for any Certificateholder. The Delegate shall be entitled to require from the Trustee and the Bank such opinions, consents, documents and other matters at the expense of the Trustee or the Bank in connection with the foregoing as it may consider appropriate and may rely on such consents, opinions and documents without liability to any person;
- (liv) in order to comply with applicable tax laws (inclusive of any current and future laws, rules, regulations, intergovernmental agreements and interpretations thereof promulgated by competent authorities) related to the Transaction Documents in effect from time to time ("**Applicable Law**") that a foreign financial institution, issuer, trustee, paying agent or other party is or has agreed to be subject to, each of the Trustee and the Bank agrees:
  - (A) to provide to the Delegate sufficient information about the parties and/or transactions (including any modification to the terms of such transactions) so that the Delegate can determine whether it has tax related obligations under Applicable Law; and

- (B) that the Delegate shall be entitled to make any withholding or deduction from payments to comply with Applicable Law for which the Delegate shall not have any liability;
- (lv) each of the Trustee and the Delegate shall be entitled to require that any indemnity or security given to it by the Certificateholders or any of them be given on a joint and several basis and be supported by evidence satisfactory to it as to the financial standing and creditworthiness of each counterparty and/or as to the value of the security and an opinion as to the capacity, power and authority of each counterparty and/or the validity and effectiveness of the security;
- (lvi) the Delegate shall not be responsible for monitoring whether any notices to Certificateholders are given in compliance with the requirements of the FCA and the London Stock Exchange or with any other legal or regulatory requirements;
- (lvii) the Delegate shall be entitled to request and rely upon information, reports, confirmations or affirmations provided privately or issued publicly by any rating agency whether or not addressed to the Delegate;
- (lviii) proof that as regards any specified Certificate the Trustee has made default in paying any amount due in respect of such Certificate shall (unless the contrary be proved) be sufficient evidence that it has made the same default as regards all other Certificates in respect of which the relevant amount is due and payable;
- (lix) without prejudice to Clause 14 (*Application of Moneys*), the Delegate shall not be liable for any error of judgement made in good faith by any officer or employee of the Delegate assigned by the Delegate to administer its corporate trust matters;
- (lx) the Delegate shall be entitled to assume, without further investigation or inquiry, for the purpose of exercising or performing any right, power, trust, authority, duty or discretion under or in relation to the Declaration of Trust or any other Transaction Document (including, without limitation, any consent, approval, modification, waiver, authorisation or determination), that such exercise will not be materially prejudicial to the interests of the Certificateholders if each of the rating agencies then rating the outstanding Certificates has confirmed in writing (whether or not such confirmation is addressed to, or provides that it may be relied upon by, the Delegate and irrespective of the method by which such confirmation is conveyed) that the then current rating by it of the outstanding Certificates would not be adversely affected or withdrawn in connection therewith;
- (lxi) save as expressly otherwise provided in these presents, the Delegate shall have absolute and uncontrolled discretion as to the exercise or non-exercise of its rights, functions, powers, authorities and discretions under these presents, the other Transaction Documents or by operation of law (the exercise or non-exercise of which as between the Delegate,

the Trustee, the Bank and the Certificateholders shall be conclusive and binding on the Trustee, the Bank and the Certificateholders) and shall not be responsible for any liability (howsoever incurred and of any description) which may result from the exercise or non-exercise of such discretion and, in particular, the Delegate shall not be bound to act at the request or direction of the Trustee, the Bank or the Certificateholders or otherwise under any provision of these presents or to take at such request or direction or otherwise any other action, step or proceeding under any provision of these presents, unless it shall first be indemnified and/or secured and/or prefunded to its satisfaction; and

- (lxii) notwithstanding anything in any Transaction Document to the contrary, the Delegate shall not do, or be authorised or required to do, anything which might constitute a regulated activity for the purpose of the FSMA, unless it is authorised under the FSMA to do so. The Delegate shall have the discretion at any time to (i) delegate any of the functions which fall to be performed by an authorised person under the FSMA to any other agent or person which also has the necessary authorisations and licences, and (ii) apply for authorisation under the FSMA and perform any or all such functions itself if, in its absolute discretion, it considers it necessary, desirable or appropriate to do so.

## 16. PROTECTION OF TRUSTEE OR DELEGATE

- 16.1 Nothing in these presents shall in any case in which the Trustee or the Delegate has failed to show the degree of care and diligence required of it as trustee (or as delegate of the Trustee (as applicable)) having regard to the provisions of these presents conferring on it any trusts, powers, authorities or discretions exempt the Trustee or the Delegate from or indemnify it against any liability which by virtue of any rule of law would otherwise attach to it in respect of any gross negligence, wilful default or fraud which it may be guilty in relation to its duties under these presents. Notwithstanding the foregoing, under no circumstances will the Delegate be liable for any special, consequential or indirect loss of any kind whatsoever, or for any loss of business, goodwill, opportunity or profit, in each case, whether or not foreseeable, even if it had been advised of the possibility of such loss or damage and regardless of whether the claim for the loss or damage is made in negligence, breach of contract, duty or otherwise.
- 16.2 Any liability of the Delegate arising under these presents and/or the Transaction Documents shall be limited to the amount of actual loss suffered (such loss shall be determined as at the date of default of the Delegate or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Delegate at the time of entering into these presents and/or the Transaction Documents, or at the time of accepting any relevant instructions, which increase the amount of the loss.

## 17. ENFORCEMENT OF RIGHTS

- 17.1 Upon the occurrence of a Bank Event and the delivery of a Dissolution Notice by the Delegate to the Trustee, to the extent that the amounts payable in respect of the Certificates have not been paid in full pursuant to Condition 12.1 (*Bank Events*), the Delegate may at its discretion (acting on behalf of Certificateholders) or shall, if so

requested in writing by the Certificateholders holding at least one-fifth of the then aggregate face amount of the Certificates outstanding or on the requisition of an Extraordinary Resolution, in each case subject to Condition 12.3(e) (*Realisation of Trust Assets*), take one or more of the following steps:

- (a) institute any steps, actions or proceedings for the winding-up of the Bank; and/or
- (b) prove in the winding-up of the Bank; and/or
- (c) institute any steps, actions or proceedings for the bankruptcy of the Bank; and/or
- (d) claim in the liquidation of the Bank; and/or
- (e) take such other steps, actions or proceedings which, under the laws of the State of Kuwait, have an analogous effect to the actions referred to (a) to (d) above,

in each case for (subject to the provisos contained in Condition 12.3(a) (*Proceedings for Winding-up*)), all amounts of Mudaraba Capital, Rab-al-Maal Mudaraba Profit, Rab-al-Maal Final Mudaraba Profit and/or other amounts due to the Trustee on termination of the Mudaraba Agreement in accordance with its terms and the terms of the other Transaction Documents).

- 17.2 Without prejudice to Conditions 12.1 (*Bank Events*), 12.3 (*Winding-up, dissolution or liquidation*) and the provisions of this Clause 17, the Trustee (or the Delegate) may at its discretion and the Delegate shall if so requested in writing by the Certificateholders holding at least one-fifth of the then aggregate face amount of the Certificates outstanding or on the requisition of an Extraordinary Resolution and without further notice (subject in each case to Condition 12.3(e)(i) (*Realisation of Trust Assets*)) institute such steps, actions or proceedings against the Bank and/or the Trustee, as it may think fit to enforce any term or condition binding on the Bank or the Trustee (as the case may be) under the Certificates and the Transaction Documents (other than any payment obligation of the Bank under or arising from the Transaction Documents, including, without limitation, payment of any principal or premium or satisfaction of any payments in respect of the Transaction Documents, including any damages awarded for breach of any obligations) including, without limitation, any failure by the Bank to procure the substitution of the Trustee in the circumstances described in Condition 12.2 (*Trustee Events*). However, in no event shall the Bank, by virtue of the institution of any such steps, actions or proceedings, be obliged to pay any sum or sums, in cash or otherwise, sooner than the same would otherwise have been payable by it in accordance with the Transaction Documents. Nothing in this Clause 17.2, however, shall prevent the Trustee (or the Delegate) from taking such steps, actions or proceedings as described in Clause 17.1 and Condition 12.3(a) (*Proceedings for Winding-up*) in respect of any payment obligations of the Bank arising from the Mudaraba Agreement or any other Transaction Document (including any damages awarded for breach of any obligations).
- 17.3 No Certificateholder shall be entitled to proceed directly against the Trustee and/or the Bank or to take the actions, steps or proceedings referred to in Conditions 12.3(a) (*Proceedings for Winding-up*) and 12.3(b) (*Enforcement*) or provide instructions (not otherwise permitted by these presents) to the Delegate to proceed against the Trustee

and/or the Bank under any Transaction Documents unless (a) the Trustee or the Delegate, as the case may be, having become so bound to proceed, fails to do so within a reasonable period and such failure is continuing and (b) the relevant Certificateholder (or such Certificateholder together with the other Certificateholders who propose to proceed directly against any of the Trustee or the Bank, as the case may be) holds at least one-fifth of the then outstanding aggregate face amount of the Certificates, in which case the Certificateholders shall have only such rights against the Trustee and/or the Bank as those which the Trustee or the Delegate (as the case may be) is entitled to exercise as set out in Condition 12.1 (*Bank Events*) and Condition 12.3 (*Winding-up, dissolution or liquidation*).

- 17.4 Under no circumstances shall the Delegate or any Certificateholder have any right to cause the sale or other disposition of any of the Trust Assets (other than as expressly contemplated in the Transaction Documents) and the sole right of the Delegate and the Certificateholders against the Trustee and the Bank shall be to enforce their respective obligations under the Transaction Documents and the Certificates.
- 17.5 Neither the Trustee nor the Delegate shall be bound in any circumstances to take any action to enforce or to realise the Trust Assets or any of the actions, steps or proceedings referred to in the Conditions in respect of the Bank or, in the case of the Delegate only, the Trustee to enforce the terms of the Certificates or the Transaction Documents or give a Dissolution Notice (including without limitation, pursuant to Condition 12 (*Dissolution Events and Winding-up*)) unless (a) it shall have been requested to do so by an Extraordinary Resolution of the Certificateholders or in writing by the Certificateholders of at least one-fifth of the then aggregate face amount of the Certificates outstanding, and (b) it shall have been indemnified and/or secured and/or prefunded to its satisfaction, **provided that** the Delegate shall not be liable for the consequences of exercising its discretion or taking such actions and may do so without having regard to the effect of such action on individual Certificateholders.
- 17.6 Clauses 17.1 to 17.5 are subject to this Clause 17.6. After enforcing or realising the Trust Assets and distributing the net proceeds of the Trust Assets in accordance with the Declaration of Trust, the obligations of the Trustee and the Delegate in respect of the Certificates shall be satisfied and no Certificateholder may take any further steps against the Trustee, the Delegate or any other person to recover any further sums in respect of the Certificates and the right to receive any such sums remaining unpaid shall be extinguished. In particular, no Certificateholder shall be entitled in respect thereof to petition or to take any other steps for the winding-up of the Trustee.
- 17.7 Pursuant to the terms of the Transaction Documents, the Bank is obliged to make certain payments directly to the Trustee or the Delegate. Such payment obligations form part of the Trust Assets and the Trustee and/or the Delegate will, subject to Conditions 4.2 (*Subordination*) and 12.3 (*Winding-up, dissolution or liquidation*), have direct recourse against the Bank to recover such payments, notwithstanding any other provisions of this Clause 17 or Clause 24 (*Limited Recourse and Non-Petition*).

## 18. **SUBSTITUTION**

- 18.1 The Bank will, as soon as practicable following the occurrence of a Trustee Event, subject to such amendment of this Declaration of Trust and such other conditions as the Delegate may require and subject to the consent of the Financial Regulator, without the



consent of the Certificateholders, procure the substitution of any newly formed special purpose company in form substantially the same as that of the Trustee in place of the Trustee (the "Substituted Trustee") or of any previous substituted company, as issuer and trustee under these presents and the Certificates, **provided that**:

- (a) a deed is executed or undertaking given by the Substituted Trustee to the Delegate, in form and manner satisfactory to the Delegate, agreeing to be bound by this Declaration of Trust, the Certificates and the Transaction Documents (with consequential amendments as the Delegate may deem appropriate) as if the Substituted Trustee had been named in these presents, the Certificates and the other Transaction Documents as trustee and issuer in place of the Trustee;
- (b) if the Substituted Trustee is subject generally to the taxing jurisdiction of a territory or any authority of or in that territory with power to tax (the "**Substituted Territory**") other than the territory of the taxing jurisdiction to which (or to any such authority of or in which) the Trustee is subject generally (the "**Trustee's Territory**"), the Substituted Trustee shall give to the Delegate an undertaking satisfactory to the Delegate in terms corresponding to Condition 13 (*Taxation*) with the substitution for or the addition to the references in that Condition to the Trustee's Territory of references to the Substituted Territory or any political sub-division or authority thereof or therein having the power to tax whereupon this Declaration of Trust and the Certificates shall be read accordingly (and the Bank shall also be required to give to the Delegate an undertaking satisfactory to the Delegate in terms corresponding to the last paragraph of Condition 13 (*Taxation*), extending its obligations thereunder to the Substituted Territory);
- (c) two directors of the Substituted Trustee certify that it will be solvent immediately after such substitution (the Delegate need not have regard to the Substituted Trustee's financial condition, profits or prospects or compare them with those of the Trustee);
- (d) the Trustee, the Substituted Trustee and the Bank (i) execute such other deeds, documents and instruments (if any) as the Delegate may require in order that the substitution is fully effective and (ii) comply with such other requirements as the Delegate may direct in the interests of the Certificateholders; and
- (e) such substitution is not in the opinion of the Delegate materially prejudicial to the interests of the Certificateholders.

18.2 If the Trustee is substituted in accordance with Clause 18.1, the Substituted Trustee will open a new transaction account in its name with the Principal Paying Agent into which the Mudareb and the Bank will pay all amounts due to the Trustee under the Mudaraba Agreement from the date of substitution onwards, and references in this Declaration of Trust to the "Transaction Account" will be construed accordingly.

18.3 Subject to Condition 12.2 (*Trustee Events*), the Delegate may agree to the substitution of the Substituted Trustee without obtaining the consent or approval of the Certificateholders (it being acknowledged that each Certificateholder has by virtue of the last paragraph of the preamble to the Conditions authorised each Substituted Trustee to act as Rab-al-Maal pursuant to the Mudaraba Agreement on its behalf).

- 18.4 If the Bank fails to comply with the foregoing provisions of this Clause 18 within 60 days of the occurrence of the relevant Trustee Event, then Conditions 12.1 (*Bank Events*) and 12.3 (*Winding-up, dissolution or liquidation*) shall apply to the relevant Trustee Event as if it was a Bank Event.
- 18.5 The Substituted Trustee shall deliver or procure to be delivered to the Delegate one or more legal opinions in a form approved by the Delegate confirming that: (i) it has obtained all necessary governmental and regulatory approvals and consents necessary for its assumption of the duties and liabilities as Substituted Trustee; (ii) such approvals and consents are at the time of substitution in full force and effect; and (iii) any documents to which the Substituted Trustee is a party in accordance with Condition 12.2 (*Trustee Events*) constitute legal, valid and binding obligations of the Substituted Trustee, and the Delegate shall be entitled to rely on such legal opinions without liability to any person.

19. **TERMINATION**

Subject to contrary instructions of the Certificateholders, on the date on which the Certificates are paid in full and subject to all prior ranking claims having been paid in full in accordance with the order of priority described in Condition 5.3 (*The Trust*), all remaining Trust Assets not represented by cash shall be distributed to the Bank in accordance with Condition 5.3 (*The Trust*) and the Trust shall terminate.

20. **NO PARTNERSHIP**

Nothing in these presents shall be taken to constitute or create a partnership between any of the parties to this Declaration of Trust or to make a Certificateholder the agent of any other Certificateholder.

21. **APPOINTMENT, REMOVAL OR RETIREMENT OF DELEGATE**

- 21.1 The Certificateholders, through an Extraordinary Resolution, shall have power to remove the Delegate hereunder and appoint a replacement Delegate under these presents. The Delegate may retire at any time upon giving not less than three months' notice in writing to Certificateholders without assigning any reason and without being responsible for any costs occasioned by such retirement. The removal or retirement of any sole delegate shall not become effective until a successor delegate is appointed and such successor has confirmed its agreement to be bound by the provisions of these presents and all other related agreements to which the Delegate is a party in its capacity as delegate. If a replacement Delegate has not been duly appointed within three months of the date of such notice or Extraordinary Resolution, the Delegate may itself appoint a replacement delegate (being a Trust Corporation) and may retire.
- 21.2 The Delegate shall have power to appoint any person to act as co-delegate jointly with the Delegate, as the case may be:
- (a) if the Delegate considers such appointment to be in the interests of the Certificateholders;

- (b) for the purpose of conforming to any legal requirement, restriction or condition in any jurisdiction in which any particular act or acts is or are to be performed; or
- (c) for the purpose of obtaining a judgment in any jurisdiction or the enforcement in any jurisdiction of either a judgment already obtained or any of the provisions of these presents.

21.3 Any person so appointed shall (subject to the provisions of these presents) have such rights (including as to reasonable remuneration), powers, duties and obligations as shall be conferred or imposed by the instrument of appointment. The Delegate shall have power in like manner to remove any person so appointed. Such co-delegate shall have such trusts, powers, authorities and discretions (not exceeding those conferred on the Delegate by these presents) and such duties and obligations as shall be conferred or imposed by the instrument of appointment.

21.4 The powers conferred by these presents upon the Delegate shall be in addition to any powers which may from time to time be vested in it by general law or as Certificateholders.

## 22. **DELEGATE NOT PRECLUDED FROM ENTERING INTO CONTRACTS**

The directors or officers of a corporation acting as the Delegate hereunder may acquire, hold or dispose of any Certificates or other security (or any interest therein) of the Trustee or any other person, may enter into or be interested in any contract or transaction with any such person and may act on, or as depositary or agent for, any committee or body of holders of any securities of any such person, in each such case, with the same rights as they would have had if the Delegate were not acting as Delegate and need not account for any profit made thereby or in connection therewith.

## 23. **COMMUNICATIONS**

23.1 All notices or other communications under or in connection with these presents shall be given in writing or by facsimile or email in the English language. Any such notice will be deemed to be given as follows:

- (a) if in writing, when delivered at the relevant address;
- (b) if by facsimile, when a transmission report showing the successful transmission of the facsimile is received by the sender; and
- (c) if by email, when the relevant receipt of such communication being read is given or, where no read receipt is requested by the sender, at the time of sending, **provided that** no delivery failure notification is received by the sender within 24 hours of sending such communication.

23.2 However, a notice given in accordance with the above but received on a day which is not a business day or after 5:00 p.m. in the place of receipt will only be deemed to be given on the next business day.

23.3 The address, facsimile number and email address of each party for all notices under or in connection with this Declaration of Trust are:

Trustee: KFH Tier 1 Sukuk Limited  
c/o MaplesFS Limited  
PO Box 1093  
Boundary Hall  
Cricket Square  
Grand Cayman KY1-1102  
Cayman Islands

Fax: +1 345 945 7100 / +971 4511 4100  
Attention: The Directors  
Email: [cayman@maples.com](mailto:cayman@maples.com) / [dubai@maples.com](mailto:dubai@maples.com)

Delegate: Citibank, N.A., London Branch  
Citigroup Centre  
Canada Square  
Canary Wharf  
London E14 5LB  
United Kingdom

Fax: +44 20 7500 5857  
Attention: Agency & Trust  
Email: [menaissuerservices@citi.com](mailto:menaissuerservices@citi.com)

(with a copy, in the case of any notice to the Trustee or the Delegate, to the Bank)

The Bank: Kuwait Finance House K.S.C.P.  
Abdullah Al-Mubarak Street  
Al Mirqab Area  
Kuwait City  
P.O. Box 24989  
Safat 13110  
Kuwait City  
State of Kuwait

Fax: +965 2240 9414  
Attention: Ahmad Eissa Al-Sumait  
Email: [Ahmed.alsumait@kfh.com](mailto:Ahmed.alsumait@kfh.com)

or such other address or facsimile number or marked for the attention of such other person or department as may from time to time be notified by any party to the others by not less than five days' written notice. In this Clause 23 (*Communications*), "**business day**" in relation to any place means a day on which commercial banks are open for general business in that place.

23.4 The Delegate shall as soon as reasonably practicable send a copy to the Bank and (to the extent such has not been received from the Trustee) the Trustee of every notice, certificate, opinion, document, information or communication:

- (a) received by it pursuant to the terms of any Transaction Document from any party to a Transaction Document; and
- (b) given by it pursuant to the terms of any Transaction Document,

provided that the Delegate shall not be obliged to send to the Bank any such certificate, opinion, document, information or communication which the Delegate determines in its absolute discretion to be confidential.

23.5 The Delegate shall be protected and shall incur no liability for and in respect of any action taken, omitted or suffered in reliance upon any information, reports, certificates, instruction, request or order from the Trustee or the Bank, or any document which it reasonably believes to be genuine and to have been delivered, signed or sent by the proper party or parties.

23.6 The parties acknowledge that the internet, fax or other types of electronic communications cannot guarantee the integrity and safety of the transferred data or the delay in which such data will be processed. The Delegate shall not therefore be liable for any operational incident and its consequences arising from the use of internet, fax or other types of electronic communications. The Delegate shall have no duty or obligation to verify or confirm that the person who sent instructions or directions is, in fact, a person authorised to give instructions on behalf of the Trustee or the Bank and shall have no liability for any losses incurred or sustained by the Trustee or the Bank as a result of such reliance upon or compliance with such instructions. Each of the Trustee and the Bank agree that the indemnity set out in Clause 12 (*Remuneration and Indemnification of the Trustee and the Delegate*) shall apply in respect of any loss suffered as a result of acting upon instructions and directions. The Delegate shall be entitled to request clarification of any instruction or direction received by it from the Trustee or the Bank and the Delegate shall refrain from acting unless and until those clarifications are received by it and shall have no liability for the consequence thereof.

## 24. **LIMITED RECOURSE AND NON-PETITION**

24.1 Each of the Bank, each Certificateholder and the Delegate agrees that notwithstanding anything to the contrary contained herein:

- (a) no payment of any amount whatsoever shall be made by the Trustee or any of its directors, officers, employees or agents on its behalf except to the extent funds are available therefor from the Trust Assets;
- (b) the Trustee may not deal with the Mudaraba Assets or realise or deal with its interest, rights, title, benefit and entitlement, present and future, in, to and under the Transaction Documents and the Trust Assets except in the manner expressly permitted by the Transaction Documents;
- (c) the proceeds of the Trust Assets are the sole source of payments on the Certificates. Payment by the Trustee of any Periodic Distribution Amount or

any amount required to redeem the Certificates is subject to receipt by the Trustee of the amounts expected to be received by it from the Mudareb in accordance with the provisions of the Mudaraba Agreement;

- (d) if the net proceeds of the realisation of, or enforcement with respect to, the Trust Assets are not sufficient to make all payments due hereunder, no recourse shall be had to any assets of the Trustee (other than the Trust Assets in the manner contemplated in the Transaction Documents) or of the Delegate or the Agents, or any of their respective affiliates in respect of any such shortfall, and no recourse shall be had, and no Certificateholder nor the Bank nor the Delegate will have any claim, for the payment of any amount due and owing hereunder or under any Transaction Document, whether for the payment of any fee, indemnity or other amount hereunder or any other obligation or claim arising out of or based upon the Transaction Documents, against the Trustee to the extent the Trust Assets have been exhausted (following which all obligations of the Trustee shall be extinguished) or the Delegate or the Agents;
- (e) it will not petition for, institute, or join with any other person in instituting proceedings for, the reorganisation, arrangement, liquidation, bankruptcy winding-up or receivership or other proceedings under any bankruptcy or similar law against the Trustee or any of its directors, officers, agents, shareholders or affiliates as a consequence of such shortfall or otherwise;
- (f) no recourse (whether by institution or enforcement of any legal proceedings or assessment or otherwise) in respect of any breaches of any duty, obligation or undertaking of the Trustee arising under or in connection with these presents by virtue of any customary law, statute or otherwise shall be had against any shareholder, officer, director or corporate services provider of the Trustee in their capacity as such. The obligations of the Trustee under the Conditions and the Transaction Documents are corporate or limited liability obligations of the Trustee and no personal liability shall attach to or be incurred by the shareholders, members, officers, agents, directors or corporate services provider of the Trustee (in each of their respective capacities as such), save in the case of their wilful default or actual fraud. References in this Declaration of Trust to wilful default or actual fraud mean a finding to such effect by a court of competent jurisdiction in relation to the conduct of the relevant party; and
- (g) it shall not be entitled to claim or exercise any right of set-off, counterclaim, abatement or other similar remedy which it might otherwise have, under the laws of any jurisdiction, in respect of any sums due under these presents. No collateral is or will be given for the payment obligations under these presents or any of the other Transaction Documents.

24.2 The provisions of this Clause 24 (*Limited Recourse and Non-Petition*) shall survive any termination of these presents or any other Transaction Document.

## 25. **COUNTERPARTS, SEVERABILITY AND TAXES**

25.1 This Declaration of Trust may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Declaration of Trust.

- 25.2 If any provision in or obligation under these presents shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations under these presents, or of such provision or obligation in any other jurisdiction, shall not be affected or impaired thereby.
- 25.3 The Bank will promptly, and before any charges or penalties become payable, pay any stamp, sales, excise and registration taxes and other Taxes payable in connection with (a) the execution and delivery of these presents, (b) the constitution and original issue of the Certificates and (c) any action taken by or on behalf of the Delegate or (where permitted under these presents so to do) any Certificateholder to enforce, or to resolve any doubt concerning, or for any other purpose in relation to these presents.

## 26. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Save as set out in Clause 12.13, a person who is not a party to these presents has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these presents, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## 27. **SHARI'A COMPLIANCE**

Each of KFH Tier 1 Sukuk Limited and Kuwait Finance House K.S.C.P. hereby agrees that it has accepted the *Shari'a* compliant nature of the Transaction Documents to which it is a party and, to the extent permitted by law, further agrees that:

- (a) it shall not claim that any of its obligations under the Transaction Documents to which it is a party (or any provision thereof) is *ultra vires* or not compliant with the principles of *Shari'a*;
- (b) it shall not take any steps or bring any proceedings in any forum to challenge the *Shari'a* compliance of the Transaction Documents to which it is a party; and
- (c) none of its obligations under the Transaction Documents to which it is a party shall in any way be diminished, abrogated, impaired, invalidated or otherwise adversely affected by any finding, declaration, pronouncement, order or judgment of any court, tribunal or other body that the Transaction Documents to which it is a party are not compliant with the principles of *Shari'a*.

## 28. **GOVERNING LAW AND JURISDICTION**

### 28.1 **Governing law**

These presents (including the remaining provisions of this Clause 28 (*Governing Law and Jurisdiction*)) and any non-contractual obligations arising out of or in connection with these presents are governed by, and shall be construed in accordance with, English law.

### 28.2 **Arbitration**

Any application for a declaration regarding the interpretation of these presents and/or the duties of the parties hereto, and any dispute, claim, difference or controversy arising out of, relating to or having any connection with these presents (including a dispute,

claim, difference or controversy as to their existence, validity, interpretation, performance, breach or termination or the consequences of their nullity and any dispute relating to any non-contractual obligations arising out of or in connection with these presents) (a "**Dispute**") shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the LCIA (the "**Rules**"), which Rules (as amended from time to time) are deemed to be incorporated by reference into this Clause 28.2. For these purposes:

- (a) the seat of arbitration shall be London, England;
- (b) there shall be three arbitrators, each of whom shall be disinterested in the arbitration and shall be an attorney experienced in international securities transactions. The parties to the Dispute shall each nominate one arbitrator and both arbitrators in turn shall appoint a further arbitrator who shall be the presiding arbitrator of the tribunal. In cases where there are multiple claimants and/or multiple respondents, the class of claimants jointly, and the class of respondents jointly, shall each nominate one arbitrator. If one party or both fails to nominate an arbitrator within the time limits specified by the Rules, such arbitrator(s) shall be appointed by the LCIA. If the party nominated arbitrators fail to nominate the third arbitrator within 15 days of the appointment of the second arbitrator, such arbitrator shall be appointed by the LCIA;
- (c) the language of the arbitration shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation; and
- (d) In accordance with Article 22.1 (viii) of the Rules, if, following an application by any party to the arbitration it appears to the tribunal that (i) the whole or part of a Dispute is inadmissible or manifestly without merit or (ii) the whole or part of a Dispute is manifestly outside the jurisdiction of the tribunal, the tribunal may after hearing the plaintiffs and the defendants, determine such claim(s) by a summary procedure if it considers that it is in the interests of justice to do so. In the event that a summary procedure is adopted, the tribunal shall proceed to determine such claim(s) as soon as reasonably practicable after giving the parties the opportunity to be heard. The tribunal may decide to determine in its award only certain claims advanced in the arbitration by the summary procedure, with any remaining claims being dealt with at the full hearing.

### 28.3 Confidentiality

- (a) Each party hereto agrees all awards in the arbitration together with all materials in the arbitration created for the purpose of the arbitration and all other documents or information produced in arbitration proceedings shall be confidential unless:
  - (i) disclosure is required by law or regulation, a court of competent jurisdiction or a competent judicial, governmental, supervisory or regulatory body or by the applicable rules or guidance of any stock exchange (including for so long as the Certificates are listed and traded on the London Stock Exchange, the rules of the London Stock Exchange);



- (ii) disclosure is to the directors, officers or senior employees of a member of the disclosing party's group or to a professional adviser or auditor of the disclosing party provided that the professional adviser or auditor agrees and undertakes to keep such information confidential;
- (iii) disclosure is to an entity who has provided a guarantee in respect of the Certificates, provided that the relevant entity agrees and undertakes to keep such information confidential;
- (iv) such information is already in the public domain, other than through a breach of this confidentiality clause;
- (v) disclosure is necessary for the purposes of the conduct of the arbitration proceedings or to protect or enforce a party's legitimate rights and is made on terms that strictly its confidentiality to be preserved, including that the recipient of any information agrees and undertakes to keep such information confidential;
- (vi) disclosure is, in the view of the Delegate, necessary for it to:
  - (A) seek instructions or indemnities in relation the arbitration proceedings; or
  - (B) comply with its obligations under these presents, including its obligations regarding providing information to the Certificateholders; or
  - (C) comply with its fiduciary duties or other duties arising from its position as Delegate, in each case provided that the recipient of any information agrees and undertakes to keep such information confidential; or
- (vii) the tribunal, upon application by a party, grants permission for the relevant information to be disclosed, provided that the recipient of any information agrees to keep such information confidential.

#### 28.4 Delegate

- (a) Where the Delegate acting for and on behalf of the Certificateholders is a party to an arbitration under these presents or the Certificates or is bound by an award relating thereto, each Certificateholder agrees to be bound by the award and the findings of facts and law made by the tribunal in that arbitration in the same way that it would be bound if it were a party to the arbitration and regardless of whether such Certificateholder received any information pertaining to the arbitration and its progress, including information on any award or decision of the tribunal in relation to the relevant arbitration proceedings pursuant to clause 28.1 above.
- (b) In the event that the Delegate is a party to an arbitration commenced under this clause 28 or has the right to be joined or refer Disputes to be determined in such arbitration, it may request that time limits be extended to enable it a reasonable time to seek instructions and indemnification from the Certificateholders. For

the avoidance of doubt, the Delegate is entitled to be indemnified for its fees and expenses and all liabilities incurred in respect of any arbitration under this clause 28 in accordance with clause 12 of this Declaration of Trust.

#### **28.5 Waiver of Immunity**

The Bank agrees that, to the extent that it may claim for itself or its assets or revenues immunity from jurisdiction, enforcement, prejudgment proceedings, injunctions and any other legal or arbitral proceedings and relief and to the extent that such immunity (whether or not claimed) may be attributed to it or any of its assets or revenues, it will not claim and hereby irrevocably and unconditionally waives such immunity in relation to any Disputes or proceedings relating to a Dispute ("**Proceedings**"). The Bank irrevocably and unconditionally consents to the giving of any relief or the issue of any process, including, without limitation, jurisdiction, enforcement, prejudgment proceedings and injunctions in connection with any Proceedings or Disputes.

#### **28.6 Appointment of Process Agent**

Each of the Trustee and the Bank appoints Maples and Calder at its registered office at 11<sup>th</sup> Floor, 200 Aldersgate Street, London, EC1A 4HD, United Kingdom as its agent for service of process and agrees that, in the event of Maples and Calder ceasing so to act or ceasing to be registered in England, it will appoint another person as its agent for service of process in England in respect of any Proceedings or Disputes and notify the Delegate and the Certificateholders of such appointment. Nothing in this Clause 28 shall affect the right to serve process in any other manner permitted by law.

#### **28.7 Waiver of Interest**

- (a) If any arbitration is commenced in relation to a Dispute and/or any Proceedings are brought by or on behalf of a party under these presents and/or the Transaction Documents, it will (i) not claim interest under, or in connection with, such arbitration and/or Proceedings; and (ii) to the fullest extent permitted by law, waive all and any entitlement it may have to interest awarded in its favour by an arbitrator as a result of such arbitration and/or a court as a result of such Proceedings.
- (b) For the avoidance of doubt, nothing in this Clause 28.7 shall be construed as a waiver of rights in respect of Mudaraba Profit, Final Mudaraba Profit, Rab-al-Maal Mudaraba Profit, Rab-al-Maal Final Mudaraba Profit, Periodic Distribution Amounts payable under the Certificates, Indemnity Payment (as defined in the Mudaraba Agreement), Outstanding Payments or profit of any kind howsoever described payable by the Bank or the Trustee pursuant to the Transaction Documents and/or these Conditions, howsoever such amounts may be described or re-characterised by any court or arbitral tribunal.

**IN WITNESS WHEREOF** this Declaration of Trust has been executed as a deed by the parties hereto on the day and year first above written.

**SCHEDULE 1  
FORMS OF CERTIFICATES**

**PART 1  
FORM OF GLOBAL CERTIFICATE**

**THIS CERTIFICATE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT), OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND ACCORDINGLY MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED OR DISPOSED OF WITHIN THE UNITED STATES EXCEPT PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT.**

**ISIN:** XS2338912665

**Common Code:** 233891266

**KFH TIER 1 SUKUK LIMITED**  
*(incorporated under the laws of the Cayman Islands)*

**GLOBAL CERTIFICATE**

**representing**

**U.S.\$750,000,000 TIER 1 CAPITAL CERTIFICATES**

This Certificate is a Global Certificate in respect of a duly authorised issue of U.S.\$750,000,000 Tier 1 Capital Certificates (the "**Certificates**") of KFHH Tier 1 Sukuk Limited in its capacity as trustee (the "**Trustee**"). The Certificates are constituted by a Declaration of Trust dated 30 June 2021 (the "**Declaration of Trust**") between the Trustee, Kuwait Finance House K.S.C.P. and Citibank, N.A., London Branch (the "**Delegate**"). References herein to the Conditions (or to any particular numbered Condition) shall be to the Conditions (or that particular one of them) set out in Schedule 2 (*Terms and Conditions*) to the Declaration of Trust. Words and expressions defined in the Conditions shall bear the same meanings when used in this Global Certificate. This Global Certificate is issued subject to, and with the benefit of, the Conditions and the Declaration of Trust. This Global Certificate certifies that

Citic Nominees Limited (the "**Registered Holder**") is, at the date hereof, registered as the holder of the Certificates represented by this Global Certificate.

The aggregate outstanding face amount from time to time of this Global Certificate shall be the amount shown by the latest entry duly made in the register (the "**Register**") maintained by Citigroup Global Markets Europe AG as registrar (the "**Registrar**") and shall initially be:

U.S.\$750,000,000 (SEVEN HUNDRED FIFTY MILLION UNITED STATES DOLLARS)

Subject as provided in this Global Certificate, this Global Certificate entitles the Registered Holder to claim on each Periodic Distribution Date, in accordance with the Conditions and the Declaration of Trust, the amounts payable under the Conditions in respect of the Certificates represented by this Global Certificate on each such date calculated and payable as provided in the Conditions and the Declaration of Trust together with any other sums as are payable under

the Conditions and the Declaration of Trust, upon presentation and, at dissolution, surrender of this Global Certificate at the specified office of the Registrar at Reuterweg 16, D60323 Frankfurt am Main, Germany or such other office as may be specified by the Registrar, all subject to and in accordance with the Conditions and the Declaration of Trust. Each payment will be made to, or to the order of, the person whose name is entered on the Register at the close of business on the record date which shall be on the Clearing System Business Day immediately prior to the date for payment, where Clearing System Business Day means Monday to Friday inclusive except 25 December and 1 January.

On any payment of a Periodic Distribution Amount being made in respect of any of the Certificates represented by this Global Certificate, details of such payment shall be entered by the Registrar in the Register.

This Global Certificate will be exchangeable in whole but not in part (free of charge to the holder) for Definitive Certificates only (a) if the Delegate has given notice in accordance with Condition 12.1 (*Bank Events*) that a Dissolution Event has occurred and is continuing or (b) if the Trustee has been notified that both Euroclear and Clearstream, Luxembourg have been closed for business for a continuous period of 14 days (other than by reason of legal holiday) or have announced an intention permanently to cease business or have in fact done so and no successor or alternative clearing system satisfactory to the Delegate is available (an "**Exchange Event**").

The Trustee will promptly give notice to the Certificateholders in accordance with Condition 17 (*Notices*) upon the occurrence of an Exchange Event. In the event of an occurrence of an Exchange Event, any of the Trustee, the Delegate or Euroclear and/or Clearstream, Luxembourg, as the case may be, acting on the instructions of any holder of an interest in this Global Certificate may give notice to the Registrar requesting exchange and, in the event of the occurrence of an Exchange Event as described in (b) above, the Trustee may also give notice to the Registrar requesting exchange. Any exchange shall occur no later than ten days after the date of receipt of the first relevant notice by the Registrar.

Exchanges will be made upon presentation of this Global Certificate at the office of the Registrar by the holder of it on any day (other than a Saturday or Sunday) on which banks are open for general business in Germany and the Trustee will, at the cost of the Trustee (but against such indemnity as the Registrar or any relevant Transfer Agent may require in respect of any tax or other duty of whatever nature which may be levied or imposed in connection with such exchange), cause sufficient Definitive Certificates to be executed and delivered to the Registrar for completion and dispatch to the relevant Certificateholders. The aggregate face amount of the Definitive Certificates issued upon an exchange of this Global Certificate will be equal to the aggregate outstanding face amount of this Global Certificate.

A person having an interest in this Global Certificate must provide the Registrar with a written order containing instructions and such other information as the Trustee and the Registrar may require to complete, execute and deliver such Definitive Certificates.

In the event that this Global Certificate has become due and repayable in accordance with the Conditions and payment in full of the amount due has not been made to the registered holder of this Global Certificate in accordance with the provisions set out above and in the Conditions, the holders of interests in the Global Certificate will not be entitled to proceed directly against, or provide instructions to, the Trustee or pursue any claim arising under the Trust Assets or the

Certificates to enforce the performance of any of the provisions of the Transaction Documents except as provided in the Conditions.

This Global Certificate is not a document of title. Entitlements are determined by entry in the Register and only the duly registered holder from time to time is entitled to payment in respect of this Global Certificate.

Upon the exchange of the whole of this Global Certificate for Definitive Certificates this Global Certificate shall be surrendered to or to the order of the Registrar and cancelled and, if the Registered Holder of this Global Certificate requests, returned to it together with any relevant Definitive Certificates. Cancellation of any Certificate represented by this Global Certificate will be effected by reduction in the aggregate face amount of the Certificates in the Register.

Until the entire outstanding face amount of this Global Certificate has been extinguished, the Registered Holder of this Global Certificate shall (subject as provided below) in all respects be entitled to the same benefits as the Definitive Certificates for the time being represented hereby and shall be entitled to the benefit of and be bound by the Declaration of Trust. Payments of all amounts payable under the Conditions in respect of the Certificates together with any other sums payable under the Conditions and the Declaration of Trust on the Certificates represented by this Global Certificate will be made to the Registered Holder against presentation and, if no further payment falls to be made in respect of the Certificates, surrender of this Global Certificate to or to the order of the Registrar or such other Agent as shall have been notified to the Registered Holder. Upon any payment of any amount payable under the Conditions on this Global Certificate the amount so paid shall be entered by the Registrar on the Register, which entry shall constitute *prima facie* evidence that the payment has been made.

All payments of any amounts payable and paid to the Registered Holder of this Global Certificate shall be valid and, to the extent of the sums so paid, effectual to satisfy and discharge the liability for the moneys payable hereon and on the relevant Definitive Certificates.

Each person (other than another clearing system) who is for the time being shown in the records of Euroclear or Clearstream, Luxembourg as to the holder of a particular aggregate face amount of the Certificates (in which regard any certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the outstanding face amount of such Certificates standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error) shall be treated as the holder of such aggregate face amount of such Certificates for all purposes other than with respect to any payments on the Certificates, for which purpose the Registered Holder of this Global Certificate shall be deemed to be the holder of such aggregate face amount of the Certificates in accordance with and subject to the terms of this Global Certificate and the terms of the Declaration of Trust.

For so long as all of the Certificates are represented by this Global Certificate and this Global Certificate is held on behalf of Euroclear and/or Clearstream, Luxembourg, notices to Certificateholders may be given by delivery of the relevant notice to Euroclear and/or Clearstream, Luxembourg (as the case may be) for communication to entitled holders in substitution for notification as required by Condition 17 (*Notices*) except that, so long as the Certificates are listed on any stock exchange, notices shall also be published in accordance with the rules of such exchange. Any such notice shall be deemed to have been given to the Certificateholders on the day on which such notice is delivered to Euroclear and/or Clearstream, Luxembourg (as the case may be).

Cancellation of any Certificate represented by this Global Certificate following its redemption by the Trustee shall be effected by reduction in the aggregate face amount of this Global Certificate in the Register and by the annotation of the appropriate schedule to the Global Certificate, subject to the rules and procedures of Euroclear and/or Clearstream, Luxembourg.

Whilst any Certificates held by a Certificateholder are represented by this Global Certificate, notices to be given by such Certificateholder may be given by such Certificateholder to the Principal Paying Agent through Euroclear and/or Clearstream, Luxembourg, as the case may be, in such a manner as the Principal Paying Agent and Euroclear and/or Clearstream, Luxembourg, as the case may be, may approve for this purpose.

Claims against the Trustee in respect of the amounts payable under the Conditions in respect of the Certificates together with any other sums payable under the Conditions and the Declaration of Trust on the Certificates will be prescribed after ten years from the Relevant Date (as defined in the Conditions).

References herein to Euroclear and/or Clearstream, Luxembourg shall be deemed to include references to any other clearing system which has accepted the Certificates for clearance. Transfers of book-entry interests in the Certificates will be effected through the records of Euroclear and/or Clearstream, Luxembourg and their respective participants in accordance with the rules and procedures of Euroclear and/or Clearstream, Luxembourg and their respective direct and indirect participants.

The Registrar will not register title to the Certificates in a name other than that of a nominee for the Common Depository for a period of seven calendar days preceding the due date for any payment of any Periodic Distribution Amount or the Dissolution Distribution Amount in respect of the Certificates.

This Global Certificate and any non-contractual obligation arising out of or in connection with this Global Certificate are governed by, and shall be construed in accordance with, the laws of England.

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

The statements in the legend set out above are an integral part of the terms of this Global Certificate and, by acceptance of this Global Certificate, the Registered Holder agrees to be subject to and bound by the terms and provisions set out in the legend.

**IN WITNESS WHEREOF** the Trustee has caused this Global Certificate to be signed by a person duly authorised on its behalf.

**KFH TIER 1 SUKUK LIMITED**

By  
Authorised Signatory

30 June 2021

**Certificate of authentication**

This Global Certificate is duly authenticated without recourse, warranty or liability.

Duly authorised for and on behalf of

**CITIGROUP GLOBAL MARKETS EUROPE AG**  
as Registrar

.....



**FORM OF TRANSFER CERTIFICATE**

FOR VALUE RECEIVED the undersigned hereby sell(s), assign(s) and transfer(s) to

.....  
.....  
.....

*(Please print or type name and address (including postal code) of transferee)*

its *pro rata* undivided interest in the Trust Assets represented by U.S.\$ [AMOUNT] face amount of this Certificate and all rights hereunder, hereby irrevocably constituting and appointing [●] as attorney to transfer such face amount of this Certificate on the register maintained on behalf of KFH Tier 1 Sukuk Limited with full power of substitution.

Signature

Date: [●]

**N.B.:**

1. This form of transfer must be accompanied by such documents, evidence and information as may be required pursuant to the Conditions and must be executed under the hand of the transferor or, if the transferor is a corporation, either under its common seal or under the hand of two of its officers duly authorised in writing and, in such latter case, the document so authorising such officers must be delivered with this form of transfer.
2. The signature(s) on this form of transfer must correspond with the name(s) as it/they appear(s) on the face of this Certificate in every particular, without alteration or enlargement or any change whatsoever.

**PART 2**  
**FORM OF DEFINITIVE CERTIFICATE**

**THIS CERTIFICATE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT), OR WITH ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR OTHER JURISDICTION OF THE UNITED STATES AND ACCORDINGLY MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED OR DISPOSED OF WITHIN THE UNITED STATES EXCEPT PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT.**

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U.S.\$750,000,000

ISIN XS2338912665

[Serial No.]

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**KFH TIER 1 SUKUK LIMITED**

*(Incorporated under the laws of the Cayman Islands)*

**U.S.\$750,000,000 TIER 1 CAPITAL CERTIFICATES**

The issue of the Certificates was authorised by a resolution of the board of directors of KFHSukuk Tier 1 Limited in its capacity as trustee (the "**Trustee**") dated 6 May 2021.

This Certificate is constituted by a Declaration of Trust dated 30 June 2021 (the "**Declaration of Trust**") between the Trustee, the Bank and Citibank, N.A., London Branch (the "**Delegate**") and issued in the aggregate face amount of:

U.S.\$750,000,000 (SEVEN HUNDRED FIFTY MILLION UNITED STATES DOLLARS)

THIS IS TO CERTIFY that [●] is/are the registered holder(s) of this Certificate and is/are entitled to such Periodic Distribution Amounts as are payable by the Trustee on each Periodic Distribution Date (as defined in the Conditions endorsed hereon) in accordance with the Conditions (the "**Conditions**") and the Declaration of Trust together with any other sums as are payable under the Conditions and the Declaration of Trust, all subject to and in accordance with the Conditions and the Declaration of Trust.

**IN WITNESS WHEREOF** this Certificate has been executed on behalf of the Trustee.

**KFH TIER 1 SUKUK LIMITED**

By  
Authorised Signatory

Dated as of [●]

Issued in [London]

**Certificate of authentication**

This Certificate is duly authenticated without recourse, warranty or liability.

.....  
Duly authorised  
for and on behalf of

**CITIGROUP GLOBAL MARKETS EUROPE AG**  
as Registrar

.....

**FORM OF TRANSFER CERTIFICATE**

FOR VALUE RECEIVED the undersigned hereby sell(s), assign(s) and transfer(s) to

.....  
.....  
.....

*(Please print or type name and address (including postal code) of transferee)*

its *pro rata* undivided interest in the Trust Assets represented by U.S.\$ [AMOUNT] face amount of this Certificate and all rights hereunder, hereby irrevocably constituting and appointing [●] as attorney to transfer such face amount of this Certificate on the register maintained on behalf of KFH Tier 1 Sukuk Limited with full power of substitution.

Signature

Date: [●]

**N.B.:**

1. This form of transfer must be accompanied by such documents, evidence and information as may be required pursuant to the Conditions and must be executed under the hand of the transferor or, if the transferor is a corporation, either under its common seal or under the hand of two of its officers duly authorised in writing and, in such latter case, the document so authorising such officers must be delivered with this form of transfer.
2. The signature(s) on this form of transfer must correspond with the name(s) as it/they appear(s) on the face of this Certificate in every particular, without alteration or enlargement or any change whatsoever.

*(Reverse of Definitive Certificate)*

**Terms and Conditions of the Certificates**

(as set out in Schedule 2 of the Declaration of Trust)

## SCHEDULE 2 TERMS AND CONDITIONS

*The following (except for the text in italics) is the text of the Terms and Conditions of the Certificates which (subject to modification and except for the text in italics) will be endorsed on each Certificate in definitive form (if issued) and will, save as provided in "Global Certificate", apply to the Global Certificate:*

KFH Tier 1 Sukuk Limited (in its capacity as issuer and in its capacity as trustee, as applicable, the "**Trustee**", which expression shall where the context allows include the Delegate (as defined below) acting pursuant to the powers delegated to it by the Trustee pursuant to the Declaration of Trust (as defined below)) has issued Tier 1 Capital Certificates (the "**Certificates**") in an aggregate face amount of U.S.\$750,000,000. The Certificates are constituted by a declaration of trust (the "**Declaration of Trust**") dated 30 June 2021 (the "**Issue Date**") made between the Trustee, Kuwait Finance House K.S.C.P. (the "**Bank**") and Citibank, N.A., London Branch as the delegate of the Trustee (the "**Delegate**", which expression shall include all persons for the time being appointed as the delegate or delegates under the Declaration of Trust).

Payments relating to the Certificates will be made pursuant to an agency agreement dated the Issue Date (the "**Agency Agreement**") made between the Trustee, the Bank, the Delegate, Citibank, N.A., London Branch as principal paying agent (in such capacity, the "**Principal Paying Agent**" and together with any further or other paying agents appointed from time to time in respect of the Certificates, the "**Paying Agents**"), as transfer agent (in such capacity, the "**Transfer Agent**" and, together with the Registrar (as defined below) and any further or other transfer agents appointed from time to time in respect of the Certificates, the "**Transfer Agents**") and as calculation agent (the "**Calculation Agent**", which expression includes the Calculation Agent for the time being), and Citigroup Global Markets Europe AG as registrar (in such capacity, the "**Registrar**"). The Paying Agents, the Transfer Agents and the Calculation Agent are together referred to in these terms and conditions (the "**Conditions**") as the "**Agents**". References to the "Agents" or any of them shall include their successors.

These Conditions include summaries of, and are subject to, the detailed provisions of the Transaction Documents (as defined in Condition 1 (*Interpretation*)). Copies of the Transaction Documents are available for inspection and/or collection during normal business hours at the specified offices of the Principal Paying Agent. The Certificateholders are entitled to the benefit of, are bound by, and are deemed to have notice of, all the provisions of the Transaction Documents applicable to them.

Each initial Certificateholder, by its acquisition and holding of its interest in a Certificate, shall be deemed to authorise and direct the Trustee, on behalf of the Certificateholders: (i) to contribute the sums paid by it in respect of its Certificate(s) to the Mudareb (as defined in Condition 5 (*The Trust*)) in accordance with the Mudaraba Agreement (as defined in Condition 5 (*The Trust*)); (ii) to act as Rab-al-Maal (as defined in Condition 5 (*The Trust*)) pursuant to the Mudaraba Agreement on its behalf (which authorisation and direction shall also apply to its successors in title and any Substituted Trustee (as defined below)); and (iii) to enter into each Transaction Document, subject to the provisions of the Declaration of Trust and these Conditions.

## 1. Interpretation

Words and expressions defined in the Declaration of Trust and the Agency Agreement shall have the same meanings where used in these Conditions unless the context otherwise requires or unless otherwise stated and **provided that**, in the event of any inconsistency between any such document and these Conditions, these Conditions will prevail. In addition, in these Conditions the following expressions have the following meanings:

"**Additional Amounts**" has the meaning given to it in Condition 13 (*Taxation*);

"**Applicable Regulatory Capital Requirements**" means any requirements contained in the Capital Regulations for the maintenance of capital from time to time applicable to the Bank, including transitional rules and waivers granted in respect of the foregoing;

"**Authorised Denomination**" has the meaning given to that term in Condition 2.1 (*Form and Denomination*);

"**Authorised Signatory**" means any person who: (a) holds the office of Chairman or Vice-Chairman of the Bank from time to time, or (b) is duly authorised by the Bank to sign documents on its behalf;

"**Bank Event**" means any of the following events:

- (i) **Non-payment:** the Bank (acting in its capacity as Mudareb) fails to pay an amount which is equivalent to principal or profit (including Additional Amounts) due and payable by it pursuant to the Mudaraba Agreement and the failure continues for a period of (in the case of principal) seven Business Days or (in the case of profit) 14 Business Days (save in each case where such failure occurs solely as a result of the occurrence of a Non-Payment Election or a Non-Payment Event); or
- (ii) **Winding-up:** an order is made or an effective resolution is passed for the winding-up or dissolution or administration of the Bank or the Bank applies or petitions for a winding-up or administration order in respect of itself except, in each case, for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Delegate (acting in accordance with the Declaration of Trust and these Conditions) or by an Extraordinary Resolution of the Certificateholders; or
- (iii) **Analogous Event:** any event occurs which under the laws of the State of Kuwait has an analogous effect to any of the events referred to in paragraph (ii) above;

"**Basel III**" means the reforms to the international regulatory capital framework issued by the Basel Committee (including, but not limited to, the Basel III Documents) as part of a package of new capital and liquidity requirements intended to reinforce capital standards and to establish minimum liquidity standards for international credit institutions (including guidance on the eligibility criteria for tier 1 capital instruments and tier 2 capital instruments);

"**Basel III Documents**" means the Basel Committee document "*A global regulatory framework for more resilient banks and banking systems*" released by the Basel

Committee on 16 December 2010 and revised in June 2011 and the Annex contained in its document "*Basel Committee issues final elements of the reforms to raise the quality of regulatory capital*" on 13 January 2011;

"**Basel Committee**" means the Basel Committee on Banking Supervision;

"**Business Day**" means a day, other than a Friday, Saturday, Sunday or public holiday, on which registered banks settle payments and are open for general business (including dealings in foreign exchange and foreign currency deposits) in Kuwait, New York City and London;

"**Capital Event**" is deemed to have occurred if the Bank is notified in writing by the Financial Regulator to the effect that the outstanding face amount (or the amount that qualifies as regulatory capital, if some amount of the Certificates is held by the Bank or whose purchase is funded by the Bank) of the Certificates is excluded (in full or in part) from the consolidated Tier 1 Capital of the Bank (save where such non-qualification is only as a result of any applicable limitation on the amount of such capital);

"**Capital Event Profit Amount**" means, on the date of final constructive liquidation of the Mudaraba pursuant to subclause 7.3(c) of the Mudaraba Agreement, an amount equal to one per cent. of the Mudaraba Capital on such date;

"**Capital Event Redemption Amount**" in relation to a Certificate means 100 per cent. of its outstanding face amount together with any Outstanding Payments;

"**Capital Regulations**" means, at any time, the regulations, requirements, guidelines and policies relating to capital adequacy then in effect in the State of Kuwait, including those of the Financial Regulator, including, without limitation, the Instructions, and, in each case, as amended, supplemented or superseded from time to time;

"**Certificateholder**" means a person in whose name a Certificate is registered in the Register (or in the case of joint Certificateholders, the first named thereof) and the expressions holder and holder of Certificates and related expressions shall (where appropriate) be construed accordingly;

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended;

"**Common Equity Tier 1 Capital**" means capital of the Bank qualifying as, and approved by the Financial Regulator as, or capital which would, but for any applicable limitation on the amount of such capital, qualify as common equity tier 1 capital in accordance with the Capital Regulations;

"**Day-count Fraction**" means the actual number of days in the relevant period *divided by* 360 (the number of days to be calculated on the basis of a year of 360 days with 12 30-day months and, in the case of an incomplete month, the number of days elapsed of the Periodic Distribution Period in which the relevant period falls (including the first such day but excluding the last));

"**Dispute**" has the meaning given to it in Condition 21.2 (*Arbitration*);



**"Dissolution Distribution Amount"** means the Trustee Call Amount, the Capital Event Redemption Amount or the Tax Event Redemption Amount, as the case may be, or such other amount in the nature of a redemption amount as may be determined in accordance with these Conditions;

**"Dissolution Event"** means a Bank Event and/or a Trustee Event;

**"Dissolution Notice"** has the meaning given to it in Condition 12.1 (*Bank Events*);

**"Dissolution Request"** has the meaning given to it in Condition 12.1 (*Bank Events*);

**"Distributable Funds"** means the aggregate of the Bank's:

- (a) consolidated retained earnings and reserves after the transfer of any amounts to non-distributable reserves; and
- (b) profits (after the transfer of any amounts to non-distributable reserves, if applicable),

less any prior distribution of Rab-al-Maal Mudaraba Profit calculated and paid by reference to the most recent annual audited or (as the case may be) auditor reviewed consolidated financial statements of the Bank, and in the case of each of (a) and (b):

- (i) as set out in such audited consolidated financial statements or (as the case may be) auditor reviewed consolidated financial statements; and
- (ii) to the extent not restricted from distribution by applicable law,

subject as otherwise defined in the Capital Regulations from time to time;

**"London Stock Exchange"** means the London Stock Exchange plc;

**"Extraordinary Resolution"** has the meaning given to it in the Declaration of Trust;

**"Final Mudaraba Profit"** has the meaning given to it in the Mudaraba Agreement;

**"Financial Regulator"** means the Central Bank of the State of Kuwait and/or any successor entity having primary bank supervisory authority with respect to the Bank in the State of Kuwait;

**"First Call Date"** means the date falling six months prior to the First Reset Date;

**"First Mudaraba Profit Distribution Date"** means 30 December 2021;

**"First Reset Date"** means 30 December 2026;

**"General Mudaraba Pool"** has the meaning given to it in the Mudaraba Agreement;

**"H.15 (519)"** means the weekly statistical release designated as such, or any successor or replacement publication, published by the Board of Governors of the United States Federal Reserve System and **"most recent H.15 (519)"** means the H.15 (519) published closest in time but prior to the applicable U.S. Securities Determination Date. H.15

(519) may be currently obtained at the following website:  
<https://www.federalreserve.gov/releases/h15/>;

**"Initial Period"** means the period from (and including) the Issue Date to (but excluding) the First Reset Date;

**"Initial Periodic Distribution Rate"** has the meaning given to it in Condition 7.4(a) (*Periodic Distribution Rate*);

**"Instructions"** means the final instructions entitled "*Capital Adequacy Ratio Standard – Basel III – for Islamic banks*" issued by the Financial Regulator on 24 June 2014, as may be amended, supplemented or superseded from time to time;

**"Junior Obligations"** means all claims of the holders of Ordinary Shares and all payment obligations of the Bank in respect of its Common Equity Tier 1 Capital and any other subordinated payment obligations of the Bank which rank, or are expressed to rank, junior to the Relevant Obligations;

**"LCIA"** means the London Court of International Arbitration;

**"Margin"** means 2.629 per cent. per annum;

**"Mudaraba"** has the meaning given to it in Condition 5 (*The Trust*);

**"Mudaraba Agreement"** has the meaning given to it in Condition 5 (*The Trust*);

**"Mudaraba Assets"** has the meaning given to it in Condition 5 (*The Trust*);

**"Mudaraba Capital"** has the meaning given to it in Condition 5 (*The Trust*);

**"Mudaraba End Date"** means the date on which the Mudaraba ends, being the date on which the Certificates are redeemed in whole but not in part in accordance with these Conditions;

**"Mudaraba Profit"** has the meaning given to that term in the Mudaraba Agreement;

**"Mudaraba Profit Distribution Date"** means 30 June and 30 December in each year, starting on (and including) the First Mudaraba Profit Distribution Date;

**"Mudaraba Reserve"** has the meaning given to it in the Mudaraba Agreement;

**"Mudareb"** has the meaning given to it in Condition 5 (*The Trust*);

**"Non-Payment Election"** has the meaning given to it in Condition 8.2 (*Non-Payment Election*);

**"Non-Payment Event"** has the meaning given to it in Condition 8.1 (*Non-Payment Event*);

**"Non-Viability Event"** means that the Financial Regulator has informed the Bank in writing that it has determined that a Trigger Event has occurred;

**"Non-Viability Event Write-down Date"** shall be the date on which the Write-down will take place as specified in the Non-Viability Notice, which date shall be no later than 10 Business Days after the date of the Non-Viability Notice;

**"Non-Viability Notice"** has the meaning given to it in Condition 11.2 (*Non-Viability Notice*);

**"Ordinary Shares"** means the common shares of the Bank;

**"Outstanding Payments"** means, in relation to any amounts payable on redemption of the Certificates, an amount representing accrued and unpaid Periodic Distribution Amounts for the Periodic Distribution Period during which redemption occurs to the date of redemption *plus* Additional Amounts thereon, if any, and if the Certificates are redeemed following a Capital Event and prior to the First Call Date, shall include a further profit amount in an amount equal to the Capital Event Profit Amount;

**"Pari Passu Obligations"** means all subordinated payment obligations of the Bank which rank, or are expressed to rank, *pari passu* with the Relevant Obligations;

**"Payment Business Day"** has the meaning given to it in Condition 9.4 (*Payment only on a Payment Business Day*);

**"Periodic Distribution Amount"** has the meaning given to it in Condition 7.2 (*Periodic Distribution Amounts*);

**"Periodic Distribution Date"** means 30 June and 30 December in each year, starting on (and including) 30 December 2021;

**"Periodic Distribution Period"** means the period beginning on (and including) the Issue Date and ending on (but excluding) the first Periodic Distribution Date and each successive period beginning on (and including) a Periodic Distribution Date and ending on (but excluding) the next succeeding Periodic Distribution Date;

**"Person"** means any individual, company, corporation, firm, partnership, joint venture, association, organisation, state or agency of a state or other entity, whether or not having separate legal personality;

**"Potential Dissolution Event"** means an event which, with the giving of notice, lapse of time, determination of materiality or fulfilment of any other applicable condition (or any combination of the foregoing), would constitute a Dissolution Event;

**"Proceedings"** has the meaning given to it in Condition 21.3 (*Appointment of Process Agent*);

**"Profit Rate"** means, in respect of the Initial Period, the Initial Periodic Distribution Rate, and, in respect of each Reset Period thereafter, the rate calculated in accordance with the provisions of Condition 7.4(a) (*Periodic Distribution Rate*);

**"Qualifying Tier 1 Instruments"** means instruments (whether securities, trust certificates, interests in limited partnerships or otherwise) issued directly or indirectly by the Bank that:

- (i) will be eligible to constitute (or would, but for any applicable limitation on the amount of such capital, constitute) Tier 1 Capital of the Bank;
- (ii) have terms and conditions not materially less favourable to a Certificateholder than the Certificates (as reasonably determined by the Bank, **provided that** in making this determination the Bank is not required to take into account the tax treatment of the new instrument in the hands of all or any Certificateholder, or any transfer or similar taxes that may apply on the acquisition of the new instrument), **provided that** a certification to such effect of two Authorised Signatories of the Bank shall have been delivered to the Trustee and the Delegate prior to the variation of the terms of the instruments and upon which the Trustee and Delegate may rely without further enquiry and without liability to any person, in accordance with Condition 10.1(c) (*Redemption or Variation due to Taxation*) or Condition 10.1(d) (*Redemption or Variation for Capital Event*), as applicable;
- (iii) will constitute direct or indirect (whether by a guarantee or equivalent support undertaking) obligations of the Bank;
- (iv) rank, on a winding-up of the Bank, at least *pari passu* with the Relevant Obligations;
- (v) have at least the same face value amount and profit distribution dates as the Certificates and at least equal profit or distribution rate or rate of return as the Certificates;
- (vi) are listed on the same stock exchange as the Certificates (if the Certificates were so listed immediately prior to the variation);
- (vii) have, to the extent such payment is not cancelled, the same claim to accrued but unpaid distributions;
- (viii) (where the instruments are varied prior to the First Reset Date) have the same first reset date as the Certificates;
- (ix) have the same optional redemption dates as the Certificates, save that any right to redeem the Certificates prior to the fifth anniversary of the Issue Date may be disapplied if such right to redeem would cause a Capital Event; and
- (x) preserve the Relevant Obligations upon any redemption of the Certificates and the ranking of any claims in a winding-up or dissolution of the Bank, and which may include such technical changes as necessary to reflect the requirements of Tier 1 Capital under the Capital Regulations then applicable to the Bank (including, without limitation, such technical changes as may be required in the adoption and implementation of Basel III);

"**Rab-al-Maal**" has the meaning given to it in Condition 5 (*The Trust*);

"**Rab-al-Maal Mudaraba Profit**" has the meaning given to it in the Mudaraba Agreement;

**"Rab-al-Maal Final Mudaraba Profit"** has the meaning given to it in the Mudaraba Agreement;

**"Record Date"** means in the case of the payment of a Periodic Distribution Amount, the date falling on the fifteenth day before the relevant Periodic Distribution Date and, in the case of the payment of a Dissolution Distribution Amount, the date falling two Payment Business Days before the date for payment of the relevant Dissolution Distribution Amount, as the case may be;

**"Register"** has the meaning given to it in Condition 2.1 (*Form and Denomination*);

**"Registered Account"** has the meaning given to it in Condition 9.1 (*Payments in respect of the Certificates*);

**"Relevant Date"** in respect of a Certificate means: (a) the date on which payment in respect of such Certificate first becomes due; or (b) if the full amount of the money payable has not been received by the Principal Paying Agent or the Delegate on or before the due date, the date on which, the full amount of the money having been so received, notice to that effect has been duly given to Certificateholders in accordance with Condition 17 (*Notices*);

**"Relevant Jurisdiction"** means the Cayman Islands (in the case of any payment made by the Trustee) and the State of Kuwait (in the case of any payment made by the Bank) or, in each case, any political sub-division or authority thereof or therein having the power to tax;

**"Relevant Obligations"** has the meaning given to it in Condition 4.2 (*Subordination*);

**"Relevant Five Year Reset Rate"** means, in respect of each Reset Period: (i) a rate (expressed as a decimal) determined on the relevant U.S. Securities Determination Date to be the per annum rate equal to the weekly average yield to maturity for U.S. Treasury securities with a maturity of five years and trading in the public securities markets; or (ii) if there is no such published U.S. Treasury security with a maturity of five years and trading in the public securities markets, then the rate will be determined on the relevant U.S. Securities Determination Date by interpolation between the most recent weekly average yield to maturity for two series of U.S. Treasury securities trading in the public securities markets: (A) one maturing as close as possible to, but earlier than, the immediately following Reset Date; and (B) the other maturing as close as possible to, but later than, the immediately following Reset Date, in each case as published in the most recent H.15 (519). If the Bank cannot procure the determination of the Relevant Five Year Reset Rate on the relevant U.S. Securities Determination Date pursuant to the methods described in (i) and (ii) above, then the Relevant Five Year Reset Rate will be: (i) equal to the rate applicable to the immediately preceding Reset Period; or (ii) in the case of the Reset Period commencing on the First Reset Date, 0.865 per cent.;

**"Reserved Matter"** has the meaning given to it in the Declaration of Trust;

**"Reset Date"** means the First Reset Date and every fifth anniversary thereafter;

**"Reset Period"** means the period from (and including) the First Reset Date to (but excluding) the earlier of: (a) the Mudaraba End Date; and (b) the following Reset Date, and (if applicable) each successive period thereafter from (and including) such Reset Date to (but excluding) the earlier of (x) the Mudaraba End Date and (y) the next succeeding Reset Date;

**"Rules"** has the meaning given to it in Condition 21.2 (*Arbitration*);

**"Senior Creditors"** means creditors of the Bank (including depositors (in respect of their due claims) and, for this purpose, holders of any instrument issued by, or other obligation of, the Bank which ranks senior to the claims of the Trustee in respect of the Relevant Obligations) other than creditors in respect of obligations the claims in relation to which rank or are expressed to rank *pari passu* with, or junior to, the claims of the Trustee in respect of the Relevant Obligations;

**"Senior Obligations"** means all unsubordinated payment obligations of the Bank (including payment obligations to the Bank's depositors, which include as at the date hereof holders of current accounts, saving investment accounts, fixed-term deposit investment accounts and open-term deposit investment accounts) and all subordinated payment obligations (if any) of the Bank except *Pari Passu* Obligations and Junior Obligations;

**"Subsidiary"** means, in relation to any Person (the "**first person**") at any particular time, any other Person (the "**second person**") whose affairs and policies the first Person controls or has the power to control, whether by ownership or share capital, contract, the power to appoint or remove members of the governing body of the second Person or otherwise;

**"Substituted Territory"** has the meaning given to it in Condition 12.2 (*Trustee Events*);

**"Substituted Trustee"** has the meaning given to it in Condition 12.2 (*Trustee Events*);

**"Taxes"** has the meaning given to it in Condition 13 (*Taxation*);

**"Tax Event"** means the Bank or the Trustee (as the case may be) would, as a result of a Tax Law Change, in making any payments under the Mudaraba Agreement (in the case of the Bank (in its capacity as Mudareb)) on the next due date for a payment of Mudaraba Profit or the Certificates (in the case of the Trustee) on the next due date for payment of a Periodic Distribution Amount (as the case may be) (whether or not a Non-Payment Event has occurred or a Non-Payment Election has been made), be required to pay Additional Amounts or additional amounts under clause 5.11 of the Mudaraba Agreement (and such requirement cannot be avoided by the Bank or the Trustee (as the case may be) taking reasonable measures available to it);

**"Tax Event Redemption Amount"** in relation to a Certificate, means 100 per cent. of its outstanding face amount together with any Outstanding Payments;

**"Tax Law Change"** means any change in, or amendment to, the laws, published practice or regulations of any Relevant Jurisdiction, or any change in the application or official interpretation of such laws, published practice or regulations (including a

holding by a court of competent jurisdiction), which change or amendment becomes effective (or, in the case of application or official interpretation, is announced) on or after 28 June 2021);

**"Tier 1 Capital"** means capital other than Common Equity Tier 1 Capital qualifying as (or which would qualify as, but for any applicable limitation on the amount of such capital), and approved by the Financial Regulator as, tier 1 capital in accordance with the Capital Regulations;

**"Tier 2 Capital"** means capital qualifying as (or which would qualify as, but for any applicable limitation on the amount of such capital), and approved by the Financial Regulator as, tier 2 capital in accordance with the Capital Regulations;

**"Transaction Account"** has the meaning given to it in Condition 5 (*The Trust*);

**"Transaction Documents"** means each of the Declaration of Trust, the Agency Agreement, the Mudaraba Agreement and any other agreements, deeds, undertakings or other documents designated as such by the parties thereto;

**"Trigger Event"** has the meaning given to it in the Instructions;

*For the definition of "Trigger Event" as set out in the Instructions, see "Overview of Banking and Finance Regulations in Kuwait – Certain Banking Regulations – Capital Adequacy Regulations";*

**"Trust Assets"** has the meaning given to it in Condition 5 (*The Trust*);

**"Trustee Call Amount"** in relation to a Certificate, means 100 per cent. of its outstanding face amount together with any Outstanding Payments;

**"Trustee Event"** means any of the following events:

- (i) **Non-Payment:** default is made in the payment of the Dissolution Distribution Amount, or default is made in the payment of any Periodic Distribution Amount, in each case, on the due date for payment thereof and, in the case of the Dissolution Distribution Amount, such default continues for a period of seven Business Days or, in the case of any Periodic Distribution Amount, such default continues for a period of 14 Business Days; or
- (ii) **Winding-up:** an order is made or an effective resolution is passed for the winding-up or dissolution or administration of the Trustee or the Trustee applies or petitions for a winding-up or administration order in respect of itself except, in each case, for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Delegate (acting in accordance with the Declaration of Trust and these Conditions) or by an Extraordinary Resolution of the Certificateholders; or
- (iii) **Analogous Event:** any event occurs that under the laws of the Cayman Islands has an analogous effect to any of the events referred to in paragraph (ii) above.

For the purpose of subparagraph (i) above, all amounts payable in respect of the Certificates shall be considered due and payable (including any amounts calculated as

being payable under Condition 7.4 (*Periodic Distributions*)) notwithstanding that the Trustee has at the relevant time insufficient funds or relevant Trust Assets to pay such amounts including, without limitation, as a result of any failure by the Mudareb to comply with the matters described in Condition 4.4(c) (*Limited Recourse and Agreement of Certificateholders*) (save in each case where such insufficient funds arise solely as a result of the occurrence of a Non-Payment Event or a Non-Payment Election);

"**Trustee's Territory**" has the meaning given to it in Condition 12.2 (*Trustee Events*);

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

"**U.S. Government Securities Business Day**" means any day except for a Saturday, Sunday or a day on which the U.S. Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. government securities;

"**U.S. Securities Determination Date**" means the second U.S. Government Securities Business Day before the commencement of the Reset Period for which the rate will apply; and

"**Write-down**" means:

- (i) the Certificateholders' rights to the Trust Assets (including the Mudaraba Assets) shall automatically be deemed to be irrevocably and unconditionally cancelled (in the case of a Write-down in whole) or written-down in part (in the case of a Write-down in part) in the same manner as the Certificates;
- (ii) the Certificates shall be cancelled (in the case of a Write-down in whole) or written-down in part on a *pro rata* basis (in the case of a Write-down in part) by the Trustee in accordance with the prevailing Capital Regulations; and
- (iii) all rights of any Certificateholder for payment of any amounts under or in respect of the Certificates (including, without limitation, any amounts arising as a result of, or due and payable upon the occurrence of, a Dissolution Event) shall, as the case may be, be cancelled or written-down *pro rata* among the Certificateholders and, in each case, will not be restored under any circumstances, irrespective of whether such amounts have become due and payable prior to the date of the Non-Viability Notice or the Non-Viability Event Write-down Date and even if the Non-Viability Event has ceased,

and references herein to "written-down" will be construed accordingly.

All references in these Conditions to "**U.S. dollars**", "**U.S.\$**" and "**\$**" are to the lawful currency of the United States of America.

## 2. **Form, Denomination and Title**

### 2.1 **Form and Denomination**

The Certificates are issued in registered form in denominations of U.S.\$200,000 and integral multiples of U.S.\$1,000 in excess thereof (each an "**Authorised**



**Denomination**"). A Certificate will be issued to each Certificateholder in respect of its registered holding of Certificates. Each Certificate will be numbered serially with an identifying number which will be recorded on the relevant Certificate and in the register of Certificateholders (the "**Register**").

Upon issue, the Certificates will be represented by a Global Certificate which will be deposited with, and registered in the name of a nominee for, a common depository for Euroclear Bank SA/NV ("**Euroclear**") and Clearstream Banking S.A. ("**Clearstream, Luxembourg**"). Ownership interests in the Global Certificate will be shown on, and transfers thereof will only be effected through, records maintained by Euroclear and Clearstream, Luxembourg (as applicable), and their respective participants. These Conditions are modified by certain provisions contained in the Global Certificate. Except in certain limited circumstances, owners of interests in the Global Certificate will not be entitled to receive definitive Certificates representing their holdings of Certificates. See "*Global Certificate*".

## 2.2 **Title**

The Trustee will cause the Registrar to maintain the Register outside the United Kingdom in accordance with the provisions of the Agency Agreement. Title to the Certificates passes only by registration in the Register. The registered Certificateholder will (except as otherwise required by law) be treated as the absolute owner of the Certificates represented by the Certificate for all purposes (whether or not any payment thereon is overdue and regardless of any notice of ownership, trust or any interest or any writing on, or the theft or loss of, the Certificate) and no person will be liable for so treating any Certificateholder. The registered Certificateholder will be recognised by the Trustee as entitled to his Certificate free from any equity, set-off or counterclaim on the part of the Trustee against the original or any intermediate holder of such Certificate.

## 3. **Transfers of Certificates**

### 3.1 **Transfers**

Subject to Conditions 3.4 (*Closed Periods*) and 3.5 (*Regulations*) and the provisions of the Agency Agreement, a Certificate may be transferred in an Authorised Denomination only by depositing the Certificate by which it is represented, with the form of transfer on the back duly completed and signed, at the specified office of any of the Transfer Agents together with such evidence as the Registrar or (as the case may be) such Transfer Agent may reasonably require to prove the title of the transferor and the individuals who have executed the forms of transfer.

*Transfers of interests in the Global Certificate will be effected in accordance with the rules of the relevant clearing system through which the interest is held.*

### 3.2 **Delivery of New Certificates**

Each new Certificate to be issued upon any transfer of Certificates will, within five business days of receipt by the relevant Transfer Agent of the duly completed form of transfer endorsed on the relevant Certificate (or such longer period as may be required to comply with any applicable fiscal or other laws or regulations), be delivered at the

specified office of the relevant Transfer Agent or mailed by uninsured mail at the risk of the holder entitled to the Certificate to the address specified in the form of transfer. For the purposes of this Condition, "**business day**" shall mean a day on which banks are open for business in the city in which the specified office of the Transfer Agent with whom a Certificate is deposited in connection with a transfer is located.

Where some but not all of the Certificates in respect of which a Certificate is issued are to be transferred, a new Certificate in respect of the Certificates not so transferred will, within five business days of receipt by the relevant Transfer Agent of the original Certificate, be mailed by uninsured mail at the risk of the holder of the Certificates not so transferred to the address of such Certificateholder appearing on the Register or as specified in the form of transfer.

### 3.3 **Formalities Free of Charge**

Registration of any transfer of Certificates will be effected without charge by or on behalf of the Trustee or any Transfer Agent except that the Trustee may require payment of a sum to it (or the giving of such indemnity as the Trustee or any Transfer Agent may reasonably require) to cover any stamp duty, tax or other governmental charges which may be imposed in relation to such transfer.

### 3.4 **Closed Periods**

No Certificateholder may require the transfer of a Certificate to be registered during the period of 15 days ending on a Periodic Distribution Date or any other date on which any payment of the face amount or payment of any premium or profit in respect of a Certificate falls due.

### 3.5 **Regulations**

All transfers of Certificates and entries on the Register will be made subject to the detailed regulations concerning the transfer of Certificates scheduled to the Declaration of Trust. The Regulations may be changed by the Trustee from time to time with the prior written approval of the Delegate (acting in accordance with the Declaration of Trust and these Conditions) and the Registrar. A copy of the current regulations will be mailed (free of charge) by the Registrar to any Certificateholder who requests a copy of such regulations.

The Certificateholders shall be entitled to receive, in accordance with Condition 3.2 (*Delivery of New Certificates*), only one Certificate in respect of his entire holding of Certificates. In the case of a transfer of a portion of the face amount of a Certificate, a new Certificate in respect of the balance of the Certificates not transferred will be issued to the transferor in accordance with Condition 3.2 (*Delivery of New Certificates*).

## 4. **Status, Subordination and Limited Recourse**

### 4.1 **Status**

The Certificates represent an undivided ownership interest in the Trust Assets and are limited recourse obligations of the Trustee. Each Certificate will constitute unsecured obligations of the Trustee and shall at all times rank *pari passu* without any preference or priority, with all other Certificates. The rights and claims of the Trustee and the

Certificateholders against the Bank in respect of the Relevant Obligations are subordinated as described in Condition 4.2 (*Subordination*).

## 4.2 Subordination

- 4.2.1 The payment obligations of the Bank under the Mudaraba Agreement (including all payments which are the equivalent of principal and profit) (the "**Relevant Obligations**") will: (a) constitute Tier 1 Capital of the Bank; (b) constitute direct, unsecured, conditional and subordinated obligations of the Bank; (c) rank subordinate to all Senior Obligations; (d) rank *pari passu* with all other *Pari Passu* Obligations; and (e) rank in priority to all Junior Obligations.
- 4.2.2 The Trustee or the Delegate may only exercise its enforcement rights in relation to any Relevant Obligation or in relation to any of its other rights under the Mudaraba Agreement or any other Transaction Document in the manner provided in Condition 12.3 (*Winding-up, dissolution or liquidation*).
- 4.2.3 The Trustee will, in each relevant Transaction Document, unconditionally and irrevocably waive any right of set-off, counterclaim, abatement or other similar remedy which it might otherwise have, under the laws of any jurisdiction, in respect of the Relevant Obligations. No collateral is or will be given by the Bank for the Relevant Obligations and any collateral that may have been or may in the future be given in connection with other obligations of the Bank shall not secure the Relevant Obligations.
- 4.2.4 Nothing in these Conditions shall affect or prejudice the payment of the costs, charges, expenses, liabilities or remuneration of the Delegate or the rights and remedies of the Delegate in respect thereof, all of which shall accordingly remain unsubordinated.

## 4.3 Other Issues

So long as any of the Certificates remain outstanding, the Bank (in its capacity as Mudareb or otherwise) will not issue any securities (regardless of name or designation) or create any guarantee of, or provide any contractual support arrangement in respect of, the obligations of any other entity which in each case constitutes (whether on a solo, or a solo consolidated or on a consolidated basis) issued Tier 1 Capital of the Bank if claims in respect of such securities, guarantee or contractual support arrangement would rank (as regards distributions on a return of assets on a winding-up or in respect of distribution or payment of dividends and/or any other amounts thereunder) senior to the Relevant Obligations. This prohibition will not apply if at the same time or prior thereto: (a) these Conditions and (to the extent applicable) the Transaction Documents are amended to ensure that the Trustee (on behalf of the Certificateholders) obtains and/or (b) the Relevant Obligations have, in each case, the benefit of, such of those rights and entitlements as are contained in or attached to such securities or under such guarantee or contractual support arrangement as are required so as to ensure that claims in respect of the Relevant Obligations rank *pari passu* with, and contain substantially equivalent rights of priority as to distributions or payments on, such securities or under such guarantee or contractual support arrangement.

## 4.4 Limited Recourse and Agreement of Certificateholders

Save as provided in this Condition 4.4 (*Limited Recourse and Agreement of Certificateholders*), the Certificates do not represent an interest in any of the Trustee, the Delegate, the Bank, any of the Agents or any of their respective affiliates. Each Certificateholder, by subscribing for or acquiring the Certificates, acknowledges and agrees that notwithstanding anything to the contrary contained in these Conditions or any Transaction Document:

- (a) no payment of any amount whatsoever shall be made by the Trustee or any of its directors, officers, employees or agents on its behalf except to the extent funds are available therefor from the Trust Assets;
- (b) the Trustee may not deal with the Mudaraba Assets or realise or deal with its interest, rights, title, benefit and entitlements, present and future, in, to and under the Transaction Documents and the Trust Assets except in the manner expressly permitted by the Transaction Documents;
- (c) the proceeds of the Trust Assets are the sole source of payments on the Certificates. Payment by the Trustee of any Periodic Distribution Amount or any amount required to redeem the Certificates is subject to receipt by the Trustee of the amounts expected to be received by it from the Mudareb in accordance with the provisions of the Mudaraba Agreement;
- (d) if the net proceeds of the realisation of, or enforcement with respect to, the Trust Assets is not sufficient to make all payments due in respect of the Certificates, Certificateholders will have no recourse to any assets of the Trustee (other than the Trust Assets in the manner contemplated in the Transaction Documents) or of the Delegate or the Agents, or any of their respective affiliates in respect of any such shortfall, and no recourse shall be had, and no Certificateholder will have any claim, for the payment of any amount due and owing hereunder or under any Transaction Document, whether for the payment of any fee, indemnity or other amount hereunder or any other obligation or claim arising out of or based upon the Transaction Documents, against the Trustee to the extent the Trust Assets have been exhausted (following which all obligations of the Trustee shall be extinguished) or the Delegate or the Agents;
- (e) it will not petition for, institute, or join with any other person in instituting proceedings for, the reorganisation, arrangement, liquidation, bankruptcy winding-up or receivership or other proceedings under any bankruptcy or similar law against the Trustee or any of its directors, officers, agents, shareholders or affiliates as a consequence of such shortfall or otherwise;
- (f) no recourse (whether by institution or enforcement of any legal proceedings or assessment or otherwise) in respect of any breaches of any duty, obligation or undertaking of the Trustee arising under or in connection with these Conditions or the Transaction Documents by virtue of any customary law, statute or otherwise shall be had against any shareholder, officer, director or corporate services provider of the Trustee in their capacity as such. The obligations of the Trustee under these Conditions and the Transaction Documents are corporate or limited liability obligations of the Trustee and no personal liability shall attach to or be incurred by the shareholders, members, officers, agents, directors or corporate services provider of the Trustee (in each of their respective capacities

as such), save in the case of their wilful default or actual fraud. References in these Conditions to wilful default or actual fraud mean a finding to such effect by a court of competent jurisdiction (in relation to the conduct of the relevant party);

- (g) it shall not be entitled to claim or exercise any right of set-off, counterclaim, abatement or other similar remedy which it might otherwise have, under the laws of any jurisdiction, in respect of any sums due under such Certificate. No collateral is or will be given for the payment obligations under the Certificates; and
- (h) the Trustee and the Mudareb have agreed in the Mudaraba Agreement that the Mudareb shall not be responsible for any losses to the Mudaraba Capital suffered by the Trustee unless such losses are caused by (i) the Mudareb's breach of the Mudaraba Agreement or (ii) the Mudareb's gross negligence, wilful misconduct or fraud.

The Bank is obliged to make certain payments under the Transaction Documents directly to or to the order of the Trustee. Such payment obligations form part of the Trust Assets and the Trustee and/or the Delegate will, subject to Condition 4.2 (*Subordination*) and Condition 12.3 (*Winding-up, dissolution or liquidation*), have direct recourse against the Bank to recover payments due to the Trustee from the Bank pursuant to such Transaction Documents notwithstanding any other provision of this Condition 4.4 (*Limited Recourse and Agreement of Certificateholders*). Such right of the Trustee and the Delegate shall constitute an unsecured claim against the Bank. None of the Certificateholders, the Trustee and the Delegate shall be entitled to claim any priority right in respect of any specific assets of the Bank in connection with the enforcement of any such claim.

## 5. The Trust

### 5.1 The Mudaraba

KFH Tier 1 Sukuk Limited (in its capacity as Trustee and as the "**Rab-al-Maal**") will enter into a mudaraba agreement (the "**Mudaraba Agreement**") to be dated the Issue Date with the Bank (in such capacity, the "**Mudareb**"). Pursuant to the Mudaraba Agreement, the Rab-al-Maal will contribute the proceeds of the issue of the Certificates to the Mudareb, which proceeds will form the initial capital of the Mudaraba (as defined below) and which may be subject to change after the Issue Date in accordance with Condition 10.2 (*Purchase*) (the "**Mudaraba Capital**"). The Mudareb will invest the Mudaraba Capital in its general business activities carried out through the General Mudaraba Pool and following investment of the Mudaraba Capital in the General Mudaraba Pool, the Mudaraba Capital shall constitute *pro rata* undivided assets in the General Mudaraba Pool (the "**Mudaraba Assets**") in accordance with the Mudaraba Agreement, which shall include an investment plan prepared by the Mudareb and shall constitute a mudaraba (the "**Mudaraba**").

The Trustee has opened a non-interest bearing transaction account in London (the "**Transaction Account**") in its own name with the Principal Paying Agent (details of which are set out in the Declaration of Trust) into which the Mudareb will pay all amounts due to the Trustee under the Mudaraba Agreement. If the Trustee is substituted

in accordance with Condition 12.2 (*Trustee Events*), the Substituted Trustee will be required to open a new non-interest bearing transaction account in London in its name with the Principal Paying Agent into which the Mudareb will pay all amounts due to the Trustee under the Mudaraba Agreement from the date of substitution onwards, and references in these Conditions to the "Transaction Account" will be construed accordingly.

## 5.2 The Trust Assets

Pursuant to the Declaration of Trust, the Trustee holds:

- (a) the cash proceeds of the issue of the Certificates, pending application thereof in accordance with the terms of the Transaction Documents;
- (b) all of the Trustee's rights, title, interest and benefit, present and future, in, to and under the assets from time to time constituting the Mudaraba Assets;
- (c) all of the Trustee's rights, title, interest and benefit, present and future, in, to and under the Transaction Documents (other than in relation to any representations given by the Bank (acting in any capacity) pursuant to any of the Transaction Documents and the covenant given to the Trustee pursuant to clauses 12.1 and 12.10 of the Declaration of Trust); and
- (d) all amounts standing to the credit of the Transaction Account from time to time,

and all proceeds of the foregoing (together, the "**Trust Assets**") upon trust absolutely for and on behalf of the Certificateholders *pro rata* according to the face amount of Certificates held by each such Certificateholder in accordance with the Declaration of Trust and these Conditions.

## 5.3 Application of Proceeds from Trust Assets

On each Periodic Distribution Date and on any date fixed for payment of the Dissolution Distribution Amount, the Principal Paying Agent shall apply the monies standing to the credit of the Transaction Account in the following order of priority (in each case, only if and to the extent that payments of a higher priority have been made in full):

- (a) *first* (to the extent not previously paid), to each of the Delegate, each Agent and/or any Appointee (as defined in the Declaration of Trust) in respect of all amounts owing to it under the Transaction Documents in its capacity as Delegate (in accordance with the Declaration of Trust), Agent (in accordance with the Agency Agreement) or Appointee, as applicable;
- (b) *second*, in or towards reimbursement *pari passu* and rateably of any amounts paid by any Indemnifying Parties as contemplated by clause 12.8 of the Declaration of Trust together with any profit payable thereon;
- (c) *third*, only if such payment is due on or before a Periodic Distribution Date (to the extent not previously paid) to pay, *pro rata* and *pari passu*, (i) the Trustee in respect of all amounts owing to it under the Transaction Documents in its capacity as trustee; and (ii) the Trustee Administrator in respect of all amounts

owing to it under the Transaction Documents, the Corporate Services Agreement and the Registered Office Terms in its capacity as trustee administrator and registered office provider;

- (d) *fourth*, only if such payment is due on a Periodic Distribution Date, and subject to Condition 8 (*Periodic Distribution Restrictions*), in or towards payment *pari passu* and rateably of all Periodic Distribution Amounts (including Additional Amounts) due but unpaid;
- (e) *fifth*, only if such payment is due on a date fixed for payment of the Dissolution Distribution Amount, in or towards payment *pari passu* and rateably of the Dissolution Distribution Amount; and
- (f) *sixth*, only after all amounts required to be paid in respect of the Certificates have been discharged in full, in payment of any residual amount to the Bank, or prior to the Mudaraba End Date, the Mudaraba Reserve.

## 6. Covenants

The Trustee has covenanted in the Declaration of Trust that, *inter alia*, for so long as any Certificate is outstanding, it shall not (without the prior written consent of the Delegate (given in accordance with the Declaration of Trust and these Conditions)):

- (a) incur any indebtedness in respect of financed, obtained or raised money whatsoever (whether structured (or intended to be structured) in accordance with the principles of *Shari'a* or otherwise), or give any guarantee or indemnity in respect of any obligation of any person or issue any shares (or rights, warrants or options in respect of shares or securities convertible into or exchangeable for shares) except, in all cases, as contemplated in the Transaction Documents;
- (b) secure any of its present or future indebtedness or present or future obligations (whether structured in accordance with the principles of *Shari'a* or otherwise) by granting or permitting to be outstanding any lien, pledge, charge, mortgage or other security interest upon any of its present or future undertakings, assets, properties or revenues (other than those arising by operation of law (if any) or under or pursuant to any of the Transaction Documents);
- (c) sell, transfer, assign, participate, exchange or pledge, mortgage, hypothecate or otherwise encumber (by security interest, lien (statutory or otherwise), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever or otherwise, or permit such to occur or suffer such to exist) any part of its interest in any of the Trust Assets except pursuant to any of the Transaction Documents (other than those arising by operation of law);
- (d) use the proceeds of the issue of the Certificates for any purpose other than as stated in the Transaction Documents;
- (e) amend or agree to any amendment to any Certificate or Transaction Document (other than in accordance with the terms thereof) in each case in a manner which is materially prejudicial to the rights of Certificateholders, without the prior

approval of the Certificateholders by way of Extraordinary Resolution, save that it shall be permitted to make such variations to the Transaction Documents and these Conditions as are required pursuant to Condition 10.1 (*Redemption and variation*);

- (f) act as trustee in respect of any trust other than the Trust or in respect of any parties other than the Certificateholders;
- (g) have any subsidiaries or employees;
- (h) redeem or purchase any of its shares or pay any dividend or make any other distribution to its shareholders;
- (i) prior to the date which is one year and one day after the date on which all amounts owing by the Trustee under the Transaction Documents have been paid in full, put to its directors or shareholders any resolution for, or appoint any liquidator for, its winding-up (except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Delegate or by an Extraordinary Resolution of the Certificateholders) or any resolution for the commencement of any other bankruptcy or insolvency proceedings with respect to it;
- (j) consolidate or merge with any other person; or
- (k) enter into any contract, transaction, amendment, obligation or liability other than the Transaction Documents or any permitted amendment or supplement thereto or as expressly permitted or required thereunder or engage in any business or activity other than:
  - (i) as provided for or permitted in the Transaction Documents;
  - (ii) the ownership, management and disposal of the Trust Assets as provided in the Transaction Documents; and
  - (iii) such other matters which are incidental thereto.

## **7. Periodic Distributions**

### **7.1 Distribution of Mudaraba Profit**

The Trustee has agreed in the Mudaraba Agreement that the Bank shall be entitled (in its capacity as Mudareb or otherwise) to utilise the Mudaraba Assets (and the proceeds thereof) to make payments in respect of the claims of Senior Creditors or to cover losses of the Mudaraba and that such entitlement shall apply at any time before an order has been made, or an effective resolution has been passed, for the winding-up, dissolution or liquidation (or other analogous event) of the Bank (in its capacity as Mudareb or otherwise).

### **7.2 Periodic Distribution Amounts**

Subject to Conditions 4.2 (*Subordination*), 4.4 (*Limited Recourse and Agreement of Certificateholders*), 7.3 (*Cessation of Accrual*), 8 (*Periodic Distribution Restrictions*),



9 (*Payments*) and 11 (*Write-down at the Point of Non-Viability*), the Trustee shall distribute to Certificateholders, *pro rata* to their respective holdings, out of amounts transferred into the Transaction Account, a distribution in relation to the Certificates on each Periodic Distribution Date equal to the Periodic Distribution Amount. The "**Periodic Distribution Amount**" payable on each Periodic Distribution Date (i) falling prior to and including the First Reset Date shall be U.S.\$18.00 per U.S.\$1,000 in face amount of the Certificates and (ii) falling after the First Reset Date shall be the relevant amount calculated pursuant to Condition 7.4 (*Periodic Distributions*).

### 7.3 Cessation of Accrual

Subject to Conditions 4.2 (*Subordination*), 8 (*Periodic Distribution Restrictions*) and 11 (*Write-down at the Point of Non-Viability*), each Certificate will cease to be eligible to earn Periodic Distribution Amounts from the due date for redemption, following liquidation of the Mudaraba in accordance with these Conditions and the Mudaraba Agreement.

### 7.4 Periodic Distributions

Subject to Condition 8 (*Periodic Distribution Restrictions*), the Certificates bear profit at the applicable Profit Rate from (and including) the Issue Date in accordance with the provisions of this Condition 7 (*Periodic Distributions*). Periodic Distribution Amounts will not be cumulative and any Periodic Distribution Amount which is not paid will not accumulate or compound and Certificateholders will have no right to receive such Periodic Distribution Amount at any time, even if Periodic Distribution Amounts are paid in the future.

Subject to Condition 88 (*Periodic Distribution Restrictions*), Periodic Distribution Amounts shall be payable on the Certificates semi-annually in arrear on each Periodic Distribution Date, in each case as provided in this Condition 7 (*Periodic Distributions*).

If a Periodic Distribution Amount is required to be calculated in respect of a period of less than a full Periodic Distribution Period (the "**Relevant Period**"), it shall be calculated as an amount equal to the product of: (a) the applicable Profit Rate; (b) the face amount of the relevant Certificates; and (c) the applicable Day-count Fraction for the Relevant Period, rounding the resultant figure to the nearest cent (half a cent being rounded upwards).

#### (a) *Periodic Distribution Rate*

For the Initial Period, the Certificates bear profit at the Profit Rate of 3.600 per cent. per annum (the "**Initial Periodic Distribution Rate**").

The Profit Rate will be reset on each Reset Date on the basis of the aggregate of the Margin and the Relevant Five Year Reset Rate on the relevant U.S. Securities Determination Date, as determined by the Calculation Agent.

The Calculation Agent will, as soon as practicable upon determination of the Profit Rate which shall apply to the Reset Period commencing on the relevant Reset Date, but in no event later than the second Business Day thereafter, cause the applicable Profit Rate and the corresponding Periodic Distribution Amount

to be notified to each of the Paying Agents, the London Stock Exchange or any other stock exchange on which the Certificates are for the time being listed (if then required by the London Stock Exchange or such other stock exchange) and to be notified to Certificateholders in accordance with Condition 17 (*Notices*). To the extent that the Calculation Agent is unable to notify the London Stock Exchange, or any other stock exchange on which the Certificates are for the time being listed (if then required by the London Stock Exchange or such other stock exchange), the Calculation Agent shall promptly notify the Bank, which shall procure the performance of such obligation.

For the avoidance of doubt, the Calculation Agent shall not be responsible to the Trustee, the Bank, the Certificateholders or any third party as a result of the Calculation Agent having relied upon any quotation, ratio or other information provided to it by any person for the purposes of making any determination hereunder, which subsequently may be found to be incorrect or inaccurate in any way.

(b) ***Calculation Agent***

With effect from the First Reset Date, and so long as any Certificates remain outstanding thereafter, the Trustee will maintain a Calculation Agent. The name of the initial Calculation Agent and its initial specified office is set out at the end of these Conditions.

The Trustee may, with the prior written approval of the Delegate (given in accordance with the Declaration of Trust and these Conditions), from time to time replace the Calculation Agent with another leading investment, merchant or commercial bank or financial institution in London. If the Calculation Agent is unable or unwilling to continue to act as the Calculation Agent or (without prejudice to Condition 7.4(c) (*Determinations of Calculation Agent or Trustee Binding*)) fails duly to determine the Profit Rate in respect of any Reset Period as provided in Condition 7.4(a) (*Periodic Distribution Rate*), the Trustee shall forthwith appoint another leading investment, merchant or commercial bank or financial institution in London approved in writing by the Delegate (in accordance with the Declaration of Trust and these Conditions) to act as such in its place. The Calculation Agent may not resign its duties or be removed without a successor having been appointed as aforesaid.

(c) ***Determinations of Calculation Agent or Trustee Binding***

All notifications, opinions, determinations, certificates, calculations, quotations and decisions given, expressed, made or obtained for the purposes of this Condition 7 (*Periodic Distributions*), whether by the Calculation Agent or the Trustee (or its agent), shall (in the absence of manifest error) be binding on the Trustee, the Bank, the Calculation Agent, the Paying Agents, the Delegate and all Certificateholders and (in the absence of wilful default or gross negligence) no liability to the Trustee, the Bank, any Agent, the Delegate and the Certificateholders shall attach to the Calculation Agent or the Trustee (or its agent) in connection with the exercise or non-exercise by them of any of their powers, duties and discretions.

## 8. Periodic Distribution Restrictions

### 8.1 Non-Payment Event

Notwithstanding Condition 7.4 (*Periodic Distributions*), if any of the following events occur (each, a "**Non-Payment Event**"), the Bank (as Mudareb) shall not pay Mudaraba Profit (and, as a result, Rab-al-Maal Mudaraba Profit) or Final Mudaraba Profit (and, as a result, Rab-al-Maal Final Mudaraba Profit) on any Mudaraba Profit Distribution Date or Mudaraba End Date (as the case may be), and as a result thereof the Trustee shall not pay Periodic Distribution Amounts on the corresponding Periodic Distribution Date:

- (i) the amount equal to the then applicable Periodic Distribution Amount to be paid by the Bank out of the Rab-al-Maal Mudaraba Profit or Rab-al-Maal Final Mudaraba Profit, as applicable (the "**Relevant Rab-al-Maal Mudaraba Profit Amount**"), when aggregated with any distributions or amounts payable by the Bank (in its capacity as Mudareb or otherwise) on the same date (or otherwise due and payable on such date) on any other obligations in respect of *Pari Passu* Obligations, exceeds, on the relevant date for payment of the Relevant Rab-al-Maal Mudaraba Profit Amount, the Mudareb's Distributable Funds; or
- (ii) the Bank (in its capacity as Mudareb or otherwise) is, on that Mudaraba Profit Distribution Date or Mudaraba End Date (as the case may be), in breach of (or such payment would cause a breach of) the Applicable Regulatory Capital Requirements (including any applicable capital buffers imposed on the Bank by the Financial Regulator); or
- (iii) the Financial Regulator requires: (a) the Bank not to pay the Relevant Rab-al-Maal Mudaraba Profit Amount to the Trustee (in its capacity as Rab-al-Maal) on that Mudaraba Profit Distribution Date or Mudaraba End Date (as the case may be); or (b) the Trustee (in its capacity as Rab-al-Maal) not to pay the relevant Periodic Distribution Amount on that Periodic Distribution Date.

### 8.2 Non-Payment Election

Notwithstanding Condition 7.4 (*Periodic Distributions*), the Bank may in its sole discretion elect that Rab-al-Maal Mudaraba Profit (in whole or in part) will not be paid to the Trustee (in its capacity as Rab-al-Maal) on any Mudaraba Profit Distribution Date, and the Bank shall, in each case, instruct the Trustee not to make payment of a Periodic Distribution Amount (in whole or in part) to Certificateholders on such Periodic Distribution Date, **provided that** the foregoing in this Condition 8.2 (*Non-Payment Election*) shall not apply in respect of Rab-al-Maal Final Mudaraba Profit payable on any Mudaraba End Date (any such election being a "**Non-Payment Election**"). The Bank may not, however, make a Non-Payment Election once the Trustee has given notice to Certificateholders that the Certificates will be redeemed in whole in accordance with Condition 10 (*Redemption and Variation*).

### 8.3 Effect of Non-Payment Event or Non-Payment Election

If the Bank makes a Non-Payment Election or a Non-Payment Event occurs, then the Bank shall (i) in the case of a Non-Payment Election, no later than 14 calendar days

prior to such event, and (ii) in the case of a Non-Payment Event, as soon as practicable thereafter but in any case no later than five Business Days prior to the relevant Mudaraba Profit Distribution Date or Mudaraba End Date, as the case may be, give notice to the Trustee and the Principal Paying Agent in accordance with the Mudaraba Agreement, the Delegate in accordance with the Declaration of Trust and Certificateholders in accordance with Condition 17 (*Notices*) in each case providing details of the Non-Payment Election (including, if relevant, details of any partial payment to be made) or Non-Payment Event, as the case may be. In the absence of notice of such Non-Payment Election or Non-Payment Event, as the case may be, having been given in accordance with this Condition 8.3 (*Effect of Non-Payment Event or Non-Payment Election*), the fact of non-payment of the Relevant Rab-al-Maal Mudaraba Profit Amount (or any part thereof) on the relevant Mudaraba Profit Distribution Date or Mudaraba End Date (as the case may be) shall be evidence of the occurrence of a Non-Payment Election or a Non-Payment Event, as the case may be. Certificateholders shall have no claim in respect of any Periodic Distribution Amount (or any part thereof, as applicable) not paid as a result of either a Non-Payment Election or a Non-Payment Event (in each case, irrespective of whether notice of such Non-Payment Election or Non-Payment Event has been given in accordance with this Condition 8.3 (*Effect of Non-Payment Event or Non-Payment Election*)) and any such non-payment in whole or in part, as applicable, of Rab-al-Maal Mudaraba Profit, Rab-al-Maal Final Mudaraba Profit (in the case of a Non-Payment Event only) or a Periodic Distribution Amount in such circumstance shall not constitute a Dissolution Event. The Bank shall not have any obligation to make any subsequent payment in respect of any such unpaid profit (or any part thereof, as applicable) (whether from its own cash resources, from the Mudaraba Reserve or otherwise) and the Trustee shall not have any obligation to make any subsequent payment in respect of any such Periodic Distribution Amounts (or any part thereof, as applicable).

#### 8.4 **Dividend and Redemption Restrictions**

If any amount of Rab-al-Maal Mudaraba Profit, Rab-al-Maal Final Mudaraba Profit or Periodic Distribution Amount is not paid as a consequence of a Non-Payment Election or a Non-Payment Event pursuant to Condition 8.1 (*Non-Payment Event*) or 8.2 (*Non-Payment Election*) (as the case may be), then, from the date of such Non-Payment Election or Non-Payment Event (the "**Dividend Stopper Date**"), the Bank will not, so long as any of the Certificates are outstanding:

- (i) declare or pay any distribution or dividend or make any other payment on, and will procure that no distribution or dividend or other payment is made on, Ordinary Shares issued by the Bank (other than to the extent that any such distribution, dividend or other payment is declared before such Dividend Stopper Date); or
- (ii) declare or pay profit or any other distribution on any of its shares (other than Ordinary Shares) or securities ranking, as to the right of payment of dividend, distributions or similar payments, junior to or *pari passu* with the Relevant Obligations (excluding securities the terms of which do not at the relevant time enable the Bank to defer or otherwise not to make such payment), only to the extent such restriction on payment or distribution is permitted under the relevant regulatory criteria for Tier 1 Capital applicable from time to time; or

- (iii) directly or indirectly redeem, purchase, cancel, reduce or otherwise acquire any Ordinary Shares issued by the Bank; or
- (iv) directly or indirectly redeem, purchase, cancel, reduce or otherwise acquire any securities issued by the Bank ranking, as to the right of repayment of capital, junior to or *pari passu* with the Relevant Obligations (excluding securities the terms of which stipulate (i) any mandatory redemption in accordance with its terms or (ii) any conversion into, or exchange for, Ordinary Shares), only to the extent such restriction on redemption, purchase, cancellation, reduction or acquisition is permitted under the relevant regulatory criteria for Tier 1 Capital applicable from time to time,

in each case unless or until: (a) two consecutive payments of Rab-al-Maal Mudaraba Profit; or (b) (as the case may be) payment of the Rab-al-Maal Final Mudaraba Profit, in each case following the Dividend Stopper Date, have been made in full (or an amount equal to the same has been duly set aside or provided for in full for the benefit of the Trustee in accordance with the Mudaraba Agreement).

## 9. **Payments**

### 9.1 **Payments in respect of the Certificates**

Subject to Condition 9.2 (*Payments subject to Applicable Laws*), payment of the Dissolution Distribution Amount and any Periodic Distribution Amount will be made by or on behalf of the Trustee in U.S. dollars by wire transfer in same day funds to the Registered Account (as defined below) of the Certificateholder. Payments of the Dissolution Distribution Amount will only be made against presentation and surrender of the relevant Certificate at the specified office of any of the Paying Agents. The Dissolution Distribution Amount and each Periodic Distribution Amount will be paid to the Certificateholder shown on the Register at the close of business on the relevant Record Date.

For the purposes of this Condition 9 (*Payments*), a Certificateholder's "**Registered Account**" means the U.S. dollar account maintained by or on behalf of such Certificateholder with a bank that processes payments in U.S. dollars, details of which appear on the Register at the close of business on the relevant Record Date.

### 9.2 **Payments subject to Applicable Laws**

Payments in respect of the Certificates are subject in all cases to: (a) any fiscal or other laws and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 13 (*Taxation*); and (b) any withholding or deduction required 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 Sections 1471 through 1474 of the Code, any regulations or agreements thereunder, any official interpretations thereof, or (without prejudice to the provisions of Condition 13 (*Taxation*)) any law implementing an intergovernmental approach thereto.

### 9.3 **No Commissions**

No commissions or expenses shall be charged to the Certificateholders in respect of any payments made in accordance with this Condition 9 (*Payments*).

#### 9.4 **Payment only on a Payment Business Day**

Where payment is to be made by transfer to a Registered Account, payment instructions (for value the due date or, if that is not a Payment Business Day (as defined below), for value the first following day which is a Payment Business Day) will be initiated by the Principal Paying Agent on the due date for payment or, in the case of a payment of the Dissolution Distribution Amount, if later, on the Payment Business Day on which the relevant Certificate is surrendered at the specified office of a Paying Agent for value as soon as practicable thereafter.

Certificateholders will not be entitled to any additional payment for any delay after the due date in receiving the amount due if the due date is not a Payment Business Day or if the relevant Certificateholder is late in surrendering its Certificate (if required to do so).

If the amount of the Dissolution Distribution Amount or, subject to Conditions 8.1 (*Non-Payment Event*) and 8.2 (*Non-Payment Election*), any Periodic Distribution Amount is not paid in full when due, the Registrar will annotate the Register with a record of the amount in fact paid.

In these Conditions, "**Payment Business Day**" means a day (other than a Saturday or Sunday) on which commercial banks and foreign exchange markets in New York City and London settle payments and are open for general business and, in the case of presentation of a Certificate, in the place in which the Certificate is presented.

#### 9.5 **Agents**

The names of the initial Agents and their initial specified offices are set out at the end of these Conditions. The Trustee reserves the right at any time to vary or terminate the appointment of any Agent and to appoint additional or other Agents, **provided that:** (a) it will at all times maintain a Principal Paying Agent and a Registrar (which may be the same entity); and (b) so long as any Certificates are admitted to listing, trading and/or quotation on any listing authority, stock exchange and/or quotation system, it will at all times maintain a Paying Agent, a Registrar and a Transfer Agent having its specified office in such place (if any) as may be required by the rules of such listing authority, stock exchange and/or quotation system. Notice of any termination or appointment and of any changes in specified offices will be given to Certificateholders promptly by the Trustee in accordance with Condition 17 (*Notices*).

### 10. **Redemption and Variation**

#### 10.1 **Redemption and variation**

(a) ***No Fixed Redemption Date and Conditions for Redemption and Variation***

The Certificates are perpetual securities in respect of which there is no fixed redemption date and the Trustee shall (subject to the provisions of Condition 4.2 (*Subordination*), Condition 11 (*Write-down at the Point of Non-Viability*) and Condition 12.3 (*Winding-up, dissolution or liquidation*) and without

prejudice to the provisions of Condition 14 (*Prescription*)) only have the right to redeem the Certificates or vary the terms thereof in accordance with the following provisions of this Condition 10 (*Redemption and Variation*).

The redemption of the Certificates or variation of these Conditions, in each case pursuant to this Condition 10 (*Redemption and Variation*), is subject to the following conditions (in addition to those set out elsewhere in this Condition 10.1 (*Redemption and variation*)):

- (i) (except to the extent that the Financial Regulator no longer so requires) the Bank having obtained the prior approval of the Financial Regulator; and
- (ii) (except to the extent that the Financial Regulator no longer so requires) the requirement that at the time when the relevant notice of redemption or variation is given and immediately following any redemption or variation (as applicable), the Bank is or will be (as the case may be) in compliance with the Applicable Regulatory Capital Requirements (including any applicable capital buffers imposed on the Bank by the Financial Regulator).

(b) ***Trustee's Call Option***

Subject to Condition 10.1(a) (*No Fixed Redemption Date and Conditions for Redemption and Variation*) and Condition 10.1(f) (*No redemption following delivery of a Non-Viability Notice*), the Bank may (acting in its sole discretion) instruct the Trustee to, whereupon the Trustee shall, by giving not less than 15 nor more than 30 days' prior notice to the Certificateholders in accordance with Condition 17 (*Notices*) and to the Delegate in accordance with the Declaration of Trust, (which notice shall specify the date fixed for redemption and shall, subject to Condition 10.1(f) (*No redemption following delivery of a Non-Viability Notice*), be irrevocable), redeem all, but not some only, of the Certificates at the Trustee Call Amount.

Redemption of the Certificates pursuant to this Condition 10.1(b) (*Trustee's Call Option*) may occur on the First Call Date and on any date thereafter up to and including the First Reset Date, or any Periodic Distribution Date thereafter.

Prior to the publication of any notice of redemption pursuant to this Condition 10.1(b) (*Trustee's Call Option*), the Bank shall give to the Trustee and the Delegate a certificate signed by two Authorised Signatories stating that all conditions precedent to the redemption of the Certificates pursuant to this Condition 10.1(b) (*Trustee's Call Option*) (other than the notice to Certificateholders described in this Condition 10.1(b) (*Trustee's Call Option*)) have been satisfied (upon which the Delegate may rely without further enquiry and without liability to any person), and the Delegate shall accept the certificate without any further enquiry as sufficient evidence of the satisfaction of the conditions precedent set out above, in which event it shall be conclusive and binding on the Certificateholders.

(c) ***Redemption or Variation due to Taxation***

- (i) Subject to Condition 10.1(a) (No Fixed Redemption Date and Conditions for Redemption and Variation), this Condition 10.1(c) (Redemption or Variation due to Taxation) and Condition 10.1(f) (No redemption following delivery of a Non-Viability Notice), if a Tax Event occurs, the Bank may (acting in its sole discretion) instruct the Trustee to, whereupon the Trustee shall, by giving not less than 15 nor more than 30 days' prior notice to the Certificateholders in accordance with Condition 17 (Notices) and to the Delegate in accordance with the Declaration of Trust, (which notice shall specify the date fixed for redemption or variation (as applicable) and applicable Record Date, and shall, subject to Condition 10.1(f) (No redemption following delivery of a Non-Viability Notice), be irrevocable): (a) redeem all, but not some only, of the Certificates at the Tax Event Redemption Amount; or (b) vary the terms of the Mudaraba Agreement, subject to the approval of the Mudareb's Shari'a board, and the Certificates such that the Certificates remain or become, as the case may be, Qualifying Tier 1 Instruments, in each case without any requirement for consent or approval of the Certificateholders, and in the case of (b) only **provided that** such modifications or any document giving effect to such modifications do not impose, in the Delegate's sole opinion, more onerous obligations or duties upon it or expose it to liabilities or reduce its protections, and that such modifications or any document giving effect to such modifications are approved by the Trustee and the Delegate (who shall be obliged to approve the same if the requirements of Condition 10.1(c)(iii) (Redemption or Variation due to Taxation) are satisfied). No such notice shall be given earlier than 90 days prior to the earliest date on which the Trustee or the Bank would be obliged to pay Additional Amounts or additional amounts under clause 5.11 of the Mudaraba Agreement. If the Bank does not instruct the Trustee to so redeem or vary in accordance with this Condition 10.1(c)(i) (Redemption or Variation due to Taxation) in respect of such Tax Event then the Certificates shall continue to be perpetual securities in respect of which there is no fixed redemption date unless the Trustee shall otherwise (subject to the provisions of Condition 4.2 (Subordination), Condition 11 (Write-down at the Point of Non-Viability) and Condition 12.3 (Winding-up, dissolution or liquidation) and without prejudice to the provisions of Condition 14 (Prescription)) redeem the Certificates or vary the terms thereof in accordance with the provisions of this Condition 10 (Redemption and Variation).
- (ii) Redemption of the Certificates, or variation of these Conditions, pursuant to this Condition 10.1(c) (*Redemption or Variation due to Taxation*) may occur on any date on or after the Issue Date (whether or not a Periodic Distribution Date).
- (iii) Prior to the delivery of any notice of redemption or variation, as the case may be, pursuant to this Condition 10.1(c) (*Redemption or Variation due to Taxation*), the Bank shall give to the Trustee and the Delegate: (i) a copy of the opinion of an independent tax or legal adviser of recognised standing to the effect that a Tax Event has occurred (upon



which the Delegate may rely without liability to any person); and (ii) a certificate signed by two Authorised Signatories (upon which the Delegate may rely without liability to any person) stating that: (A) the conditions set out in Condition 10.1(a) (*No Fixed Redemption Date and Conditions for Redemption and Variation*) have been satisfied; (B) a Tax Event has occurred; and (C) in the case of a variation only, the Certificates, as so varied, are Qualifying Tier 1 Instruments and that the Financial Regulator has confirmed that they satisfy limb (i) of the definition of "Qualifying Tier 1 Instruments". Such certificate and opinion shall be conclusive and binding evidence of the satisfaction of the conditions precedent set out above in this Condition 10.1(c)(iii) (*Redemption or Variation due to Taxation*) and the Delegate shall be entitled to accept and rely on such certificate and opinion without any further inquiry as sufficient evidence of the satisfaction of such conditions precedent without liability to any person. Upon expiry of such notice, the Trustee shall redeem or vary the terms of the Certificates, as the case may be.

*The Capital Regulations, as in force from time to time, may oblige the Bank to demonstrate to the satisfaction of the Financial Regulator that (among other things) the Tax Law Change was not reasonably foreseeable as at the Issue Date.*

(d) ***Redemption or Variation for Capital Event***

- (i) Subject to Condition 10.1(a) (No Fixed Redemption Date and Conditions for Redemption and Variation), this Condition 10.1(d) (Redemption or Variation for Capital Event) and Condition 10.1(f) (No redemption following delivery of a Non-Viability Notice), if a Capital Event occurs and is continuing, the Bank may (acting in its sole discretion) instruct the Trustee to, whereupon the Trustee shall, by giving not less than 15 nor more than 30 days' prior notice to the Certificateholders in accordance with Condition 17 (Notices) and to the Delegate in accordance with the Declaration of Trust, (which notice shall specify the date fixed for redemption or variation (as applicable) and the applicable Record Date and shall, subject to Condition 10.1(f) (No redemption following delivery of a Non-Viability Notice), be irrevocable): (a) redeem all, but not some only, of the Certificates at the Capital Event Redemption Amount; or (b) solely for the purpose of ensuring compliance with the Applicable Regulatory Capital Requirements, vary the terms of the Mudaraba Agreement, subject to the approval of the Mudareb's Shari'a board, and the Certificates such that the Certificates remain or become, as the case may be, Qualifying Tier 1 Instruments without any requirement for consent or approval of the Certificateholders, and, in the case of (b) only, **provided that** such modifications or any document giving effect to such modifications do not impose, in the Delegate's sole opinion, more onerous obligations or duties upon it or expose it to liabilities or reduce its protections, and that such modifications or any document giving effect to such modifications are approved by the Trustee and the Delegate (who shall be obliged to

approve the same if the requirements of Clause 10.1(d)(iii) are satisfied). If the Bank does not instruct the Trustee to so redeem or vary in accordance with this Condition 10.1(d)(i) (Redemption or Variation for Capital Event) in respect of such Capital Event then the Certificates shall continue to be perpetual securities in respect of which there is no fixed redemption date unless the Trustee shall otherwise (subject to the provisions of Condition 4.2 (Subordination), Condition 11 (Write-down at the Point of Non-Viability) and Condition 12.3 (Winding-up, dissolution or liquidation) and without prejudice to the provisions of Condition 14 (Prescription)) redeem the Certificates or vary the terms thereof in accordance with the provisions of this Condition 10 (Redemption and Variation).

- (ii) Redemption of the Certificates, or variation of these Conditions, pursuant to this Condition 10.1(d) (Redemption or Variation for Capital Event) may occur on any date on or after the Issue Date (whether or not a Periodic Distribution Date).
- (iii) Prior to the delivery of any notice of redemption or variation, as the case may be, pursuant to this Condition 10.1(d) (Redemption or Variation for Capital Event), the Bank shall give to the Trustee and the Delegate a certificate signed by two Authorised Signatories (upon which the Delegate shall rely without liability to any person) stating that: (A) the conditions set out in Condition 10.1(a) (No Fixed Redemption Date and Conditions for Redemption and Variation) and Condition 10.1(d)(iv) (Redemption or Variation for Capital Event) have been satisfied; (B) a Capital Event has occurred and is continuing as at the date of the certificate; and (C), in the case of a variation only, the Certificates, as so varied, are Qualifying Tier 1 Instruments and the Financial Regulator has confirmed that they satisfy limb (i) of the definition of Qualifying Tier 1 Instruments and such certificate shall be conclusive and binding evidence of the satisfaction of the conditions precedent set out above in this Condition 10.1(d)(iii) (Redemption or Variation for Capital Event) and the Delegate shall be entitled to accept and rely on such certificate without any further enquiry as sufficient evidence of the satisfaction of such conditions precedent without liability to any person. Upon expiry of such notice the Trustee shall redeem or vary the terms of the Certificates, as the case may be.
- (iv) The redemption of the Certificates or variation of these Conditions, in each case pursuant to this Condition 10.1(d) (Redemption or Variation for Capital Event) is subject to the requirement that the circumstance that entitles the Bank to instruct the Trustee to exercise its right of redemption or variation is a change of law, published practice or regulation (including Applicable Regulatory Capital Requirements) in the State of Kuwait or a change in the interpretation or application of such law, published practice or regulation by any court or authority entitled to do so which change becomes, or would become, effective on or after 28 June 2021.

*The Capital Regulations, as in force from time to time, may oblige the Bank to demonstrate to the satisfaction of the Financial Regulator that (among other things) the Capital Event was not reasonably foreseeable as at the Issue Date.*

(e) ***Taxes upon Variation***

In the event of a variation in accordance with Condition 10.1(c) (*Redemption or Variation due to Taxation*) or 10.1(d) (*Redemption or Variation for Capital Event*), none of the Trustee, the Delegate and the Bank will be obliged to pay and will not pay any liability of any Certificateholder to corporation tax, corporate income tax or tax on profits or gains or any similar tax arising in respect of the variation of the terms of the Certificates, **provided that** (in the case of a Tax Event) or so that (in the case of a Capital Event) the Certificates remain or become, as the case may be, Qualifying Tier 1 Instruments, and further will not be liable for any stamp duty or similar other taxes arising on any subsequent transfer, disposal or deemed disposal of the Qualifying Tier 1 Instruments by such Certificateholder.

(f) ***No redemption following delivery of a Non-Viability Notice***

If the Bank has instructed the Trustee to redeem the Certificates and prior to the redemption of the Certificates a Non-Viability Event occurs, the relevant redemption notice shall be automatically rescinded and shall be of no force and effect and the Trustee shall (upon receiving written notice of the Non-Viability Event) give notice thereof to the Certificateholders (in accordance with Condition 17 (*Notices*)), the Delegate, the Principal Paying Agent and the Registrar as soon as practicable. Further, no notice of redemption shall be given in the period following the giving of a Non-Viability Notice and prior to the relevant Non-Viability Event Write-down Date.

## 10.2 **Purchase**

Subject to the Bank: (A) obtaining the prior approval of the Financial Regulator (except to the extent that the Financial Regulator no longer so requires); and (B) being in compliance with the Applicable Regulatory Capital Requirements, the Bank or any of its Subsidiaries, may, in those circumstances permitted by the Applicable Regulatory Capital Requirements, purchase the Certificates in any manner and at any price. Upon any such purchase, the Bank shall deliver such Certificates to any Paying Agent for cancellation, and upon such cancellation, the Mudaraba Capital shall be reduced by the face amount of the Certificates so cancelled.

## 10.3 **Cancellation**

All Certificates that are redeemed, and all Certificates that are purchased pursuant to Condition 10.2 (*Purchase*) and which the Bank delivers for cancellation in accordance with Condition 10.2 (*Purchase*), will be cancelled as soon as possible and accordingly may not be held, reissued or resold.

## 11. **Write-down at the Point of Non-Viability**

### 11.1 **Non-Viability Event**

If a Non-Viability Event occurs, a Write-down (in whole or in part, as applicable) will take place in accordance with Condition 11.2 (*Non-Viability Notice*).

Any such Write-down shall not constitute a Dissolution Event. Certificateholders acknowledge that there shall be no recourse to the Financial Regulator in respect of any determination made by it with respect to the occurrence of a Non-Viability Event.

*It is the Mudareb's current intention to procure that a Write-down will take place: (1) after the Ordinary Shares in the Mudareb absorb losses (if and to the extent such loss absorption is permitted at the relevant time under all relevant rules and regulations applicable to the Mudareb at such time) and the Financial Regulator has not notified the Mudareb in writing that the relevant Non-Viability Event has been cured as a result of such loss absorption; and (2) simultaneously and pro rata with the write-down of any of the Mudareb's other obligations in respect of Tier 1 Capital and any other trust certificates and other instruments related to the Mudareb's other obligations constituting Tier 1 Capital; and (3) prior to the write-down or write-off of any of the Mudareb's obligations in respect of Tier 2 Capital and any other trust certificates and other instruments related to the Mudareb's other obligations constituting Tier 2 Capital. However, the Mudareb may at any time depart from this policy at its sole discretion or if so required by the Applicable Regulatory Capital Requirements or the Financial Regulator.*

### 11.2 **Non-Viability Notice**

On the third Business Day following the date on which such Non-Viability Event occurs: (a) the Mudareb will notify the Trustee thereof in accordance with the Mudaraba Agreement; and (b) the Trustee will then notify the Delegate and the Certificateholders thereof and the Principal Paying Agent in accordance with Condition 17 (*Notices*) (a "**Non-Viability Notice**"). A Write-down will occur on the Non-Viability Event Write-down Date and, with effect from such date, (i) in the case of a Write-down in whole only, the Mudaraba Agreement will be automatically terminated; and (ii) in the case of a Write-down in part only, the Mudaraba Capital shall be reduced in proportion to the face amount of the Certificates that are to be written-down and Periodic Distribution Amounts shall only be in respect of the face amount of the Certificates that have not been written-down. In the case of (i) above, the Trustee shall not be entitled to any claim for any amounts in connection with the Mudaraba Assets. In the case of (ii) above, the Trustee shall not be entitled to any claim for any amounts in connection with the Mudaraba Assets that relate to the proportion of the Mudaraba Capital that has been reduced.

### 11.3 **Liability of Delegate and Agents**

Neither the Delegate nor the Agents shall have any responsibility for, or liability or obligation in respect of, any loss, claim or demand incurred as a result of or in connection with a Non-Viability Event (or its disapplication, if applicable) or any consequent Write-down and/or cancellation of any Certificates or termination of the Mudaraba Agreement or any claims in respect thereof, and the Delegate and the Agents

shall not be responsible for any calculation, determination or the verification of any calculation or determination in connection with the foregoing.

## 12. **Dissolution Events and Winding-up**

The Declaration of Trust contains provisions entitling the Delegate to claim from the Trustee and the Bank, *inter alia*, the fees, expenses and liabilities incurred by it in carrying out its duties under the Declaration of Trust. The restrictions on commencing proceedings described below will not apply to any such claim.

### 12.1 **Bank Events**

If a Bank Event occurs, the Delegate (provided it shall have been given notice in writing thereof by the Trustee or the Bank or otherwise upon the Delegate's Agency & Trust function having actual knowledge of the Bank Event, and subject to it being indemnified and/or prefunded to its satisfaction) shall promptly give notice of the occurrence of such Bank Event to the Certificateholders in accordance with Condition 17 (*Notices*) with a request to such Certificateholders to indicate to the Trustee and the Delegate in writing if they wish the Certificates to be redeemed in whole and the Trust to be dissolved (a "**Dissolution Request**"). The Delegate may and, if so requested in writing by the Certificateholders of at least one-fifth of the then aggregate face amount of the Certificates outstanding or if so directed by an Extraordinary Resolution of Certificateholders, shall (but in each case subject to Condition 12.3(e)(i) (*Realisation of Trust Assets*)), give notice (a "**Dissolution Notice**") to the Trustee that the Certificates are immediately due and payable at the aggregate face amount of the outstanding Certificates together with any Outstanding Payments, whereupon the aggregate face amount of the outstanding Certificates together with any Outstanding Payments shall become immediately due and payable without presentation, demand, protest or other notice of any kind. A Dissolution Notice may be given whether or not a Dissolution Request has been given to Certificateholders.

### 12.2 **Trustee Events**

(i) The Bank has undertaken in the Declaration of Trust that, as soon as practicable following the occurrence of a Trustee Event, it will procure, subject to such amendment of the Declaration of Trust and such other conditions as the Delegate may require and subject to the consent of the Financial Regulator, the substitution of any newly formed special purpose company in form substantially the same as that of the Trustee, in place of the Trustee (the "**Substituted Trustee**"), or of any previous substituted company, as trustee and issuer under the Declaration of Trust and the Certificates **provided that:**

(A) a deed is executed or undertaking given by the Substituted Trustee to the Delegate, in form and manner satisfactory to the Delegate (acting in accordance with the Declaration of Trust and these Conditions), agreeing to be bound by the Declaration of Trust, the Certificates and the Transaction Documents (with consequential amendments as the Delegate may deem appropriate) as if the Substituted Trustee had been named in the Declaration of Trust, the Certificates and the other Transaction Documents as trustee and issuer in place of the Trustee;

- (B) if the Substituted Trustee is subject generally to the taxing jurisdiction of a territory or any political sub-division or authority of or in that territory with power to tax (the "**Substituted Territory**") other than the territory of the taxing jurisdiction to which (or to any such authority of or in which) the Trustee is subject generally (the "**Trustee's Territory**"), the Substituted Trustee shall give to the Delegate an undertaking satisfactory to the Delegate in terms corresponding to Condition 13 (*Taxation*) with the substitution for or the addition to the references in that Condition to the Trustee's Territory of references to the Substituted Territory whereupon the Declaration of Trust and the Certificates shall be read accordingly (and the Bank shall also be required to give to the Delegate an undertaking satisfactory to the Delegate in terms corresponding to the last paragraph of Condition 13 (*Taxation*), extending its obligations thereunder to the Substituted Territory);
  - (C) two directors of the Substituted Trustee certify that it will be solvent immediately after such substitution (the Delegate need not have regard to the Substituted Trustee's financial condition, profits or prospects or compare them with those of the Trustee);
  - (D) the Trustee, the Substituted Trustee and the Bank comply with such other requirements as the Delegate may direct in the interests of the Certificateholders; and
  - (E) such substitution would not, in the sole opinion of the Delegate, be materially prejudicial to the interests of the Certificateholders.
- (ii) Subject to this Condition 12.2 (*Trustee Events*), the Delegate may agree to the substitution of the Substituted Trustee without obtaining the consent or approval of the Certificateholders (it being acknowledged that each Certificateholder has by virtue of the last paragraph of the preamble to these Conditions authorised each Substituted Trustee to act as Rab-al-Maal pursuant to the Mudaraba Agreement on its behalf).
  - (iii) If the Bank fails to comply with the foregoing provisions of this Condition 12.2 (*Trustee Events*) within 60 days of the occurrence of the relevant Trustee Event, Conditions 12.1 (*Bank Events*) and 12.3 (*Winding-up, dissolution or liquidation*) shall apply to the relevant Trustee Event as if it was a Bank Event.

### 12.3 **Winding-up, dissolution or liquidation**

#### (a) ***Proceedings for Winding-up***

If a Bank Event occurs and a Dissolution Notice is delivered pursuant to Condition 12.1 (*Bank Events*), the Mudaraba will be liquidated in accordance with the provisions of the Mudaraba Agreement, and either the Trustee or the Delegate may at its discretion, and the Delegate shall, in each case subject to Condition 12.3(e)(i) (*Realisation of Trust Assets*), if it shall have been so requested by an Extraordinary Resolution of the Certificateholders or so requested in writing by the Certificateholders holding at least one-fifth of the

then aggregate face amount of the Certificates outstanding: (i) institute any steps, actions or proceedings for the winding-up of the Bank; and/or (ii) prove in the winding-up of the Bank; and/or (iii) institute any steps, actions or proceedings for the bankruptcy of the Bank and/or (iv) claim in the liquidation of the Bank; and/or (v) take such other steps, actions or proceedings which, under the laws of the State of Kuwait, have an analogous effect to the actions referred to in (i) to (iv) above, in each case, for (subject as set out below) all amounts of Mudaraba Capital, Rab-al-Maal Mudaraba Profit, Rab-al-Maal Final Mudaraba Profit and/or other amounts due to the Trustee on termination of the Mudaraba Agreement in accordance with its terms and the terms of the other Transaction Documents, **provided, however, that** the Trustee or the Delegate may only take any such steps, actions or proceedings as described in this Condition 12.3(a) (*Proceedings for Winding-up*), but may take no further or other steps, actions or proceedings to enforce, prove or claim for any payment and **provided further that** neither the Trustee nor the Delegate may take any steps, actions or proceedings against the Bank with respect to any sum that the Bank has paid into the Transaction Account in accordance with the Transaction Documents in circumstances where the Trustee has failed to pay that amount to Certificateholders in accordance with these Conditions. No payment in respect of the Transaction Documents may be made by the Bank as a result of any steps, actions or proceedings taken pursuant to Condition 12.1 (*Bank Events*), nor will the Trustee or the Delegate accept the same, otherwise than during or after a winding-up (or analogous event) of the Bank, unless the Bank has given prior written notice (with a copy to the Trustee and the Delegate) to, and received no objection from, the Financial Regulator (which the Bank shall confirm in writing to the Trustee and the Delegate).

(b) ***Enforcement***

Without prejudice to Condition 12.1 (*Bank Events*) and the remaining provisions of this Condition 12.3 (*Winding-up, dissolution or liquidation*), the Trustee (or the Delegate) may at its discretion and the Delegate shall, in each case subject to Condition 12.3(e)(i) (*Realisation of Trust Assets*), if it shall have been so requested by an Extraordinary Resolution of the Certificateholders or so requested in writing by the Certificateholders holding at least one-fifth of the then aggregate face amount of the Certificates outstanding and without further notice institute such steps, actions or proceedings against the Bank or against the Trustee, as it may think fit to enforce any term or condition binding on the Bank or the Trustee (as the case may be) under the Certificates and the Transaction Documents (other than any payment obligation of the Bank under or arising from the Transaction Documents, including, without limitation, payment of any principal or premium or satisfaction of any payments in respect of the Transaction Documents, including any damages awarded for breach of any obligations), including, without limitation, any failure by the Bank to procure the substitution of the Trustee in the circumstances described in Condition 12.2 (*Trustee Events*). However, in no event shall the Bank, by virtue of the institution of any such steps, actions or proceedings, be obliged to pay any sum or sums, in cash or otherwise, sooner than the same would otherwise have been payable by it in accordance with the Transaction Documents. Nothing in this Condition 12.3 (*Winding-up, dissolution or liquidation*) shall, however,

prevent the Trustee (or the Delegate) from taking such steps, actions or proceedings as described in Condition 12.3(a) (*Proceedings for Winding-up*) in respect of any payment obligations of the Bank arising from the Mudaraba Agreement or any other Transaction Document (including any damages awarded for breach of any obligations).

(c) ***Non-Viability***

All claims by the Delegate and/or the Certificateholders against the Trustee under the Certificates and all claims by the Trustee (or the Delegate) against the Bank under the Transaction Documents (including, without limitation, any claim in relation to any unsatisfied payment obligation of the Trustee and/or the Bank under the Certificates or the Transaction Documents, as the case may be) shall be subject to, and shall be superseded by the provisions of Condition 11 (*Write-down at the Point of Non-Viability*), irrespective of whether the relevant Non-Viability Event occurs prior to or after the event which is the subject matter of the claim **provided that** nothing in these Conditions shall affect or prejudice the payment of the costs, charges, expenses, liabilities or remuneration of the Delegate or the rights and remedies of the Delegate in respect thereof, all of which shall accordingly remain unsubordinated.

(d) ***Extent of Certificateholder remedy***

No remedy against the Bank, other than as referred to in this Condition 12 (*Dissolution Events and Winding-up*), shall be available to the Delegate, the Trustee or the Certificateholders, whether for the recovery of amounts owing in respect of the Transaction Documents or in respect of any breach by the Bank of any of its other obligations under or in respect of the Transaction Documents.

(e) ***Realisation of Trust Assets***

(i) Neither the Trustee nor the Delegate shall be bound to take any steps, actions or proceedings to enforce or to realise the Trust Assets or any of the actions, steps or proceedings referred to in these Conditions in respect of the Bank or, in the case of the Delegate only, the Trustee to enforce the terms of the Certificates or the Transaction Documents or give a Dissolution Notice (including, without limitation, pursuant to this Condition 12 (*Dissolution Events and Winding-up*)), unless: (1) it shall have been so requested by an Extraordinary Resolution of the Certificateholders or in writing by Certificateholders holding at least one-fifth of the then aggregate face amount of the Certificates outstanding; and (2) it shall have been indemnified and/or secured and/or pre-funded to its satisfaction.

(ii) No Certificateholder shall be entitled to proceed directly against the Trustee or the Bank or to take the actions, steps or proceedings referred to in Conditions 12.3(a) (*Proceedings for Winding-up*) and 12.3(b) (*Enforcement*) above, unless: (i) the Trustee or the Delegate, having become bound so to proceed, fails to do so within a reasonable period and such failure is continuing; and (ii) the relevant Certificateholder (or such Certificateholder together with the other Certificateholders who



propose to proceed directly against any of the Trustee or the Bank, as the case may be) holds at least one-fifth of the then outstanding aggregate face amount of the Certificates, in which case the Certificateholders shall have only such rights against the Bank as those which the Trustee or the Delegate is entitled to exercise as set out in Condition 12.1 (*Bank Events*) and this Condition 12.3 (*Winding-up, dissolution or liquidation*).

- (iii) Under no circumstances shall the Delegate or any Certificateholder have any right to cause the sale or other disposition of any of the Trust Assets (other than as expressly contemplated in the Transaction Documents) and the sole right of the Delegate and the Certificateholders against the Trustee and the Bank shall be to enforce their respective obligations under the Certificates and the Transaction Documents.
- (iv) The foregoing paragraphs in this Condition 12.3(e) (*Realisation of Trust Assets*) are subject to this paragraph. After enforcing or realising the Trust Assets and distributing the net proceeds thereof in accordance with the Declaration of Trust, the obligations of the Trustee in respect of the Certificates shall be satisfied and no Certificateholder may take any further steps against the Trustee (or any steps against the Delegate) to recover any further sums in respect of the Certificates and the right to receive any such sums remaining unpaid shall be extinguished. In particular, no Certificateholder shall be entitled in respect thereof to petition or to take any other steps for the winding-up of the Trustee.

### 13. **Taxation**

All payments in respect of the Certificates by or on behalf of the Trustee shall be made free and clear of and without withholding or deduction for, or on account of, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature, imposed, levied, collected, withheld or assessed by or on behalf of any Relevant Jurisdiction ("**Taxes**"), unless the withholding or deduction of the Taxes is required by law. In such event, the Trustee will pay additional amounts ("**Additional Amounts**") so that the full amount which otherwise would have been due and payable under the Certificates in the absence of any such deduction or withholding is received by the parties entitled thereto, except that no such Additional Amount shall be payable in relation to any payment in respect of any Certificate:

- (a) the holder of which is liable for such Taxes in respect of such Certificate by reason of having some connection with a Relevant Jurisdiction other than the mere holding of such Certificate; or
- (b) presented for payment (where presentation is required) more than 30 days after the Relevant Date except to the extent that a holder would have been entitled to additional amounts on presenting the same for payment on such thirtieth day assuming that day to have been a Payment Business Day.

In these Conditions, references to the Dissolution Distribution Amount or any Periodic Distribution Amounts (and related expressions including, without limitation, the "**face amount**" of the Certificates and "**Outstanding Payments**") shall be deemed to include

any Additional Amounts payable under this Condition 13 (*Taxation*) or any undertaking given in addition to or in substitution for it under the Declaration of Trust.

Notwithstanding any other provision in these Conditions, the Trustee and the Paying Agents shall be permitted to withhold or deduct any amounts imposed pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to Sections 1471 through 1474 of the Code (or any regulations thereunder or official interpretations thereof), or an intergovernmental agreement between the United States and another jurisdiction facilitating the implementation thereof, implementing legislation adopted by another jurisdiction in connection with these provisions, or any agreement with the U.S. Internal Revenue Service (or any fiscal or regulatory legislation, rules or practices implementing such an intergovernmental agreement) (any such withholding or deduction, a "**FATCA withholding**"). None of the Trustee, the Delegate or any Agent will have any obligation to pay Additional Amounts or otherwise indemnify a Certificateholder for any FATCA withholding deducted or withheld by the Trustee, a Paying Agent or any other party as a result of any person not being entitled to receive payments free of FATCA withholding.

Neither the Delegate nor any Agent shall be responsible for paying any tax, duty, charges, withholding or other payment referred to in this Condition 13 (*Taxation*) or for determining whether such amounts are payable or the amount thereof, and none of them shall be responsible or liable for any failure by the Trustee, the Bank, any Certificateholder or any third party to pay such tax, duty, charges, withholding or other payment in any jurisdiction or to provide any notice or information to the Delegate or any Agent that would permit, enable or facilitate the payment of any principal, premium (if any), any additional amount or other amount under or in respect of the Certificates without deduction or withholding for or on account of any tax, duty, charge, withholding or other payment imposed by or in any jurisdiction.

The Mudaraba Agreement provides that payments made thereunder by the Bank (in its capacity as the Mudareb) to the Trustee shall be made free and clear of, and without withholding or deduction for, or on account of, any present or future Taxes, unless such withholding or deduction is required by law. In such event, and/or if Additional Amounts are payable by the Trustee in respect of the Certificates in accordance with this Condition 13 (*Taxation*), the Mudaraba Agreement provides for the payment by the Bank of such additional amounts by payment to the Transaction Account in U.S. dollars by wire transfer for same day value so that the net amounts received by the Certificateholders shall equal the respective amounts that would have been received in the absence of such withholding or deduction and in the absence of the withholding or deduction to which this Condition 13 (*Taxation*) applies.

#### 14. **Prescription**

Subject to applicable law, the right to receive any amount in respect of the Certificates shall be prescribed and become void unless claimed within 10 years from the Relevant Date thereof.

#### 15. **Delegate**

##### 15.1 **Delegation of Powers**

The Trustee will in the Declaration of Trust irrevocably and unconditionally appoint the Delegate to be its attorney and in its name, on its behalf and as its act and deed, to execute, deliver and perfect all documents, and to exercise all of the present and future duties, powers (including the power to sub-delegate), trusts, rights, authorities (including, but not limited to, the authority to request directions from any Certificateholders and the power to make any determinations to be made under the Transaction Documents) and discretions vested in the Trustee by the Declaration of Trust, that the Delegate may consider to be necessary or desirable in order to, upon the occurrence of a Dissolution Event or Potential Dissolution Event, and subject to its being indemnified and/or secured and/or pre-funded to its satisfaction, (i) exercise all of the rights of the Trustee and have all the protections of the Trustee under the Mudaraba Agreement and any of the other Transaction Documents and (ii) make such distributions from the Trust Assets as the Trustee is bound to make in accordance with the Declaration of Trust (together the "**Delegation**" of the "**Relevant Powers**"), **provided that:** (i) no obligations, duties, liabilities or covenants of the Trustee pursuant to the Declaration of Trust or any other Transaction Document shall be imposed on the Delegate by virtue of the Delegation; (ii) in no circumstances will such Delegation of the Relevant Powers result in the Delegate holding on trust the Trust Assets; and (iii) such Delegation of the Relevant Powers shall not include any duty, power, trust, right, authority or discretion to dissolve the trusts constituted by the Declaration of Trust following the occurrence of a Dissolution Event or Potential Dissolution Event or to determine the remuneration of the Delegate. The Trustee shall ratify and confirm all things done and all documents executed by the Delegate in the exercise of all or any of the Relevant Powers.

In addition to the Delegation of the Relevant Powers under the Declaration of Trust, the Delegate also has certain powers which are vested solely in it from the date of the Declaration of Trust.

The appointment of a delegate by the Trustee is intended to be in the interests of the Certificateholders and does not affect the Trustee's continuing role and obligations as sole trustee.

## 15.2 **Indemnification**

The Declaration of Trust contains provisions for the indemnification of the Delegate in certain circumstances and for its relief from responsibility, including provisions relieving it from taking any action, step or proceeding unless indemnified and/or secured and/or pre-funded to its satisfaction. In particular, but without limitation, in connection with the exercise of any of its rights in respect of the Trust Assets or any other right it may have pursuant to the Declaration of Trust or the other Transaction Documents, the Delegate shall in no circumstances be bound to take any action, step or proceeding unless directed to do so in accordance with Condition 12 (*Dissolution Events and Winding-up*), and then only if it shall also have been indemnified and/or secured and/or pre-funded to its satisfaction. The Declaration of Trust provides that, when determining whether an indemnity or any security or pre-funding is satisfactory to it, the Delegate shall be entitled: (i) to evaluate its risk in any given circumstance by considering the worst-case scenario; and (ii) to require that any indemnity or security given to it by the Certificateholders or any of them be given on a joint and several basis and be supported by evidence satisfactory to it as to the financial standing and creditworthiness of each counterparty and/or as to the value of the security and an

opinion as to the capacity, power and authority of each counterparty and/or the validity and effectiveness of the security.

### **15.3 No Liability**

- (a) The Delegate makes no representation and assumes no responsibility for the validity, sufficiency or enforceability of the obligations of the Bank or the Trustee under the Transaction Documents and shall not under any circumstances have any liability or be obliged to account to the Certificateholders in respect of any payments which should have been paid by the Bank or the Trustee but are not so paid and shall not in any circumstances have any liability arising from the Trust Assets other than as expressly provided in these Conditions or in the Declaration of Trust.
- (b) Each of the Trustee and the Delegate is exempted from: (i) any liability in respect of any loss or theft of the Trust Assets or any cash, unless such loss or theft arises as a result of fraud, wilful default or gross negligence by the Trustee or the Delegate, as the case may be; (ii) any obligation to monitor or insure the Trust Assets or any cash; and (iii) any claim arising from the fact that the Trust Assets or any cash are held by or on behalf of the Trustee or on deposit or in an account with any depository or clearing system or are registered in the name of the Trustee or its nominee.

### **15.4 Reliance on Opinions, Certificates, Reports and/or Information**

The Delegate may rely on any opinion, certificate, report or information of the auditors or insolvency officials (as applicable) of the Trustee or the Bank or any other expert or other person called for by or provided to the Delegate (whether or not addressed to the Delegate) in accordance with or for the purposes of the Declaration of Trust or the other Transaction Documents and such opinion, certificate, report or information may be relied upon by the Delegate (without liability to any person) as sufficient evidence of the facts stated therein notwithstanding that such opinion, certificate, report, information and/or any engagement letter or other document contains a monetary or other limit on the liability of the auditors or insolvency officials of the Trustee or the Bank or such other expert or other person in respect thereof and notwithstanding that the scope and/or basis of such opinion, certificate, report or information may be limited by an engagement or similar letter or by the terms of the opinion, certificate, report or information itself and the Delegate shall not be bound in any such case to call for further evidence or be responsible for any liability, delay or inconvenience that may be occasioned by its failure to do so.

### **15.5 Proper performance of duties**

Nothing shall, in the case of the Trustee (having regard to the provisions of the Declaration of Trust conferring on it any trusts, powers, authorities or discretions) or in the case of the Delegate as donee and delegate (having regard to the powers, authorities and discretions conferred on it by the Declaration of Trust and to the Relevant Powers delegated to it), respectively exempt the Trustee or the Delegate from or indemnify either of them against any liability for gross negligence, wilful default or fraud of which either of them may be guilty in relation to their duties under the Declaration of Trust.

## 15.6 **Illegality**

The Delegate may refrain from taking any action in any jurisdiction if the taking of such action in that jurisdiction would, in its opinion based upon legal advice in the relevant jurisdiction, be contrary to any law of that jurisdiction. Furthermore, the Delegate may also refrain from taking such action if it would otherwise render it liable to any person in that jurisdiction or if, in its opinion based upon such legal advice, it would not have the power to do the relevant thing in that jurisdiction by virtue of any applicable law in that jurisdiction or if it is determined by any court or other competent authority in that jurisdiction that it does not have such power.

## 15.7 **Delegate not Precluded from Conducting Business with the Trustee and the Bank**

The Delegate is entitled, *inter alia*: (i) to enter into business transactions with the Trustee, the Bank and/or any entity related to the Trustee and/or the Bank and to act as trustee for the holders of any other securities issued or guaranteed by, or relating to, the Trustee and/or any entity related to the Trustee and/or the Bank; (ii) 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 Certificateholders; and (iii) to retain and not be liable to account for any profit made or any other amount or benefit received thereby or in connection therewith.

## 15.8 **Notice of Events**

The Delegate shall not be responsible for monitoring or ascertaining whether or not a Non-Payment Event, Capital Event, Tax Event, Non-Viability Event, Dissolution Event or Potential Dissolution Event has occurred or exists or is continuing or will or may occur or exist and, unless and until the Delegate's Agency & Trust function shall have actual knowledge or the Delegate has received express written notice to the contrary, it will be entitled to assume that no such event or circumstance exists or has occurred or is continuing (without any liability to the Certificateholders or any other person for so doing).

## 16. **Replacement of Certificates**

If a definitive Certificate is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the specified office of the Registrar (and if the Certificates are then admitted to listing, trading and/or quotation by any competent authority, stock exchange and/or quotation system which requires the appointment of a Paying Agent or Transfer Agent in any particular place, the Paying Agent or Transfer Agent having its specified office in the place required by such competent authority, stock exchange and/or quotation system), subject to all applicable laws and competent authority, stock exchange and/or quotation system requirements, upon payment by the claimant of the expenses incurred in connection with the replacement and on such terms as to evidence and indemnity as the Trustee, the Bank, the Registrar, the Paying Agent or the Transfer Agent may require. Mutilated or defaced Certificates must be surrendered before replacements will be issued.

## 17. **Notices**

Notices to Certificateholders will be deemed to be validly given if mailed to Certificateholders by pre-paid registered mail (or its equivalent) or (if posted to an overseas address) by airmail at their respective addresses in the Register. The Trustee shall also ensure that notices are duly given or published in a manner which complies with the rules and regulations of any listing authority, stock exchange and/or quotation system (if any) on which the Certificates are for the time being admitted to listing, trading and/or quotation. Any notices shall be deemed to have been given on the day (being a day other than a Saturday or a Sunday) after being so mailed (or on the date of publication, or if so published more than once or on different dates, on the date of the first publication).

Notices to be given by any Certificateholder shall be in writing and given by lodging the same, together with evidence of entitlement to the relevant Certificates, with the Principal Paying Agent.

*So long as the Certificates are represented by a Global Certificate and such Global Certificate is held on behalf of Euroclear or Clearstream, Luxembourg, or any other clearing system, notices to the Certificateholders may be given by delivery of the relevant notice to that clearing system for communication by it to entitled accountholders in substitution for mailing. Any such notice shall be deemed to have been given to the Certificateholders on the day on which such notice was given to Euroclear and/or Clearstream, Luxembourg and/or such other clearing system.*

18. **Meetings of Certificateholders, Modification, Waiver, Authorisation and Determination**

The Declaration of Trust contains provisions for convening meetings of Certificateholders to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution of a modification of any of these Conditions or any provisions of the Declaration of Trust. Such a meeting may be convened by the Trustee, the Bank or the Delegate, and shall be convened by the Trustee, or subject to it being indemnified and/or secured and/or pre-funded to its satisfaction, the Delegate, if the Trustee or the Delegate (as the case may be) receives a request in writing from Certificateholders holding not less than 10 per cent. in aggregate face amount of the Certificates for the time being outstanding. The quorum for any meeting convened to consider an Extraordinary Resolution (except in the case of a Reserved Matter (as defined below)) shall be one or more persons holding or representing more than a clear majority in aggregate face amount of the Certificates for the time being outstanding, or at any adjourned meeting one or more persons being or representing Certificateholders whatever the aggregate face amount of the Certificates held or represented. If the business of such meeting includes consideration of proposals to (each a "**Reserved Matter**"):

- (a) amend any date for payment (including any optional redemption date) in respect of the Certificates;
- (b) reduce or cancel the face amount of, or any premium payable on redemption of, the Certificates;

- (c) reduce the rate or rates of profit in respect of the Certificates or to vary the method or basis of calculating the rate or rates or amount of profit or the basis for calculating any Periodic Distribution Amount in respect of the Certificates;
- (d) vary any method of, or basis for, calculating the Dissolution Distribution Amount;
- (e) vary the currency of payment or denomination of the Certificates;
- (f) modify the provisions concerning the quorum required at any meeting of Certificateholders or the majority required to pass an Extraordinary Resolution;
- (g) modify or cancel the payment obligations of the Bank (in any capacity) and/or the Trustee under the Transaction Documents and/or the Certificates (as the case may be);
- (h) amend any of the Trustee's and the Bank's covenants set out in the Transaction Documents;
- (i) sanction any such scheme or proposal or substitution as is described in paragraphs 5.8(i) and 5.8(l) of Schedule 4 to the Declaration of Trust;
- (j) amend the order of application of monies set out in Condition 5.3 (*Application of Proceeds from Trust Assets*); or
- (k) amend this definition or the proviso to paragraph 4.7 of Schedule 4 to the Declaration of Trust,

then: (i) the necessary quorum shall be one or more persons holding or representing not less than three quarters, or at any adjourned such meeting not less than one quarter, in aggregate face amount of the Certificates for the time being outstanding; and (ii) such meeting may only be convened if following written consent from the Bank to convene such meeting.

For the avoidance of doubt, in the event of any inconsistency between these provisions and Schedule 4 of the Declaration of Trust, Schedule 4 of the Declaration of Trust shall prevail. Any Extraordinary Resolution duly passed shall be binding on all Certificateholders (whether or not they voted on the resolution).

- 18.2 The Declaration of Trust provides that a resolution in writing signed by or on behalf of holders of not less than 90 per cent. in aggregate face amount of the Certificates outstanding shall for all purposes be as valid and effective as an Extraordinary Resolution passed at a meeting of Certificateholders duly convened and held. Such a resolution in writing may be contained in one document or several documents in the same form, each signed by or on behalf of one or more Certificateholders.
- 18.3 The Delegate may (but shall not be obliged to), without the consent of the Certificateholders: (a) agree to any modification of any of the provisions of the Declaration of Trust or the Transaction Documents that is, in the sole opinion of the Delegate, (i) of a formal, minor or technical nature, or (ii) is made to correct a manifest error, or (iii) is not materially prejudicial to the interests of the outstanding Certificateholders **provided that** such modification is in the case of (iii), other than in

respect of a Reserved Matter; or (b): (A) agree to any waiver or authorisation of any breach or proposed breach, of any of the provisions of the Declaration of Trust or the Transaction Documents; or (B) determine that any Dissolution Event or Potential Dissolution Event shall not be treated as such, **provided that** such waiver, authorisation or determination is in the sole opinion of the Delegate not materially prejudicial to the interests of the outstanding Certificateholders and is other than in respect of a Reserved Matter and not in contravention of any express direction by Extraordinary Resolution or request in writing by the holders of at least 25 per cent. of the outstanding aggregate face amount of the Certificates.

- 18.4 In connection with the exercise by it of any of its powers, authorities and discretions (including, without limitation, those referred to in this Condition 18 (*Meetings of Certificateholders, Modification, Waiver, Authorisation and Determination*)), the Delegate shall have regard to the general interests of the Certificateholders as a class and shall not have regard to the consequences of such exercise for individual Certificateholders and the Delegate shall not be entitled to require, nor shall any Certificateholder be entitled to claim from the Trustee, the Bank or the Delegate any indemnification or payment in respect of any tax consequence of any such exercise upon individual Certificateholders.
- 18.5 Any modification, waiver, authorisation or determination shall be binding on all of the Certificateholders and, unless the Delegate agrees otherwise, such modification, waiver, authorisation or determination shall be notified by the Trustee (or the Bank on its behalf) to the Certificateholders as soon as practicable thereafter in accordance with Condition 17 (*Notices*).

This Condition 18 (Meetings of Certificateholders, Modification, Waiver, Authorisation and Determination) is without prejudice to Condition 10.1(c) (Redemption or Variation due to Taxation) and Condition 10.1(d) (Redemption or Variation for Capital Event).

## 19. **Currency Indemnity**

If any sum due from the Trustee in respect of the Certificates or any order or judgment given or made in relation thereto has to be converted from the currency (the "**first currency**") in which the same is payable under these Conditions or such order or judgment into another currency (the "**second currency**") for the purpose of: (a) making or filing a claim or proof against the Trustee; (b) obtaining an order or judgment in any court or other tribunal; or (c) enforcing any order or judgment given or made in relation to the Certificates, the Trustee shall indemnify each Certificateholder, on the written demand of such Certificateholder addressed to the Trustee and delivered to the Trustee or to the specified office of the Principal Paying Agent, against any loss suffered as a result of any discrepancy between: (i) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency; and (ii) the rate or rates of exchange at which such Certificateholder may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgment, claim or proof.

This indemnity constitutes a separate and independent obligation of the Trustee and shall give rise to a separate and independent cause of action. In no circumstances will the Delegate incur any liability by virtue of this Condition 19 (*Currency Indemnity*).



## 20. **Contracts (Rights of Third Parties) Act 1999**

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

## 21. **Governing Law and Dispute Resolution**

### 21.1 **Governing Law**

The Declaration of Trust (including these Conditions), the Agency Agreement, the Mudaraba Agreement and the Certificates, and any non-contractual obligations arising out of or in connection with them are governed by, and shall be construed in accordance with, English law.

### 21.2 **Arbitration**

The Delegate, the Trustee and the Bank have in the Declaration of Trust agreed that any dispute, claim, difference or controversy arising out of, relating to or having any connection with the Declaration of Trust (including these Conditions and this Condition 21.2 (*Arbitration*)) and the Certificates (including any dispute, claim, difference or controversy as to their existence, validity, interpretation, performance, breach or termination or the consequences of the nullity of any of them or a dispute relating to any non-contractual obligations arising out of or in connection with them) (a "**Dispute**") shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the LCIA (the "**Rules**"), which Rules (as amended from time to time) are deemed to be incorporated by reference into this Condition 21.2 (*Arbitration*). For these purposes:

- (a) the seat of arbitration shall be London, England;
- (b) there shall be three arbitrators, each of whom shall be disinterested in the arbitration and shall be an attorney experienced in international securities transactions. The parties to the Dispute shall each nominate one arbitrator and both arbitrators in turn shall appoint a further arbitrator who shall be the presiding arbitrator of the tribunal. In cases where there are multiple claimants and/or multiple respondents, the class of claimants jointly, and the class of respondents jointly, shall each nominate one arbitrator. If one party or both parties fail to nominate an arbitrator within the time limits specified by the Rules, such arbitrator(s) shall be appointed by the LCIA. If the party nominated arbitrators fail to nominate the third arbitrator within 15 days of the appointment of the second arbitrator, such arbitrator shall be appointed by the LCIA; and
- (c) the language of the arbitration shall be English.

### 21.3 **Appointment of Process Agent**

Each of the Trustee and the Bank has, in the Declaration of Trust, appointed Maples and Calder at its registered office at 11<sup>th</sup> Floor, 200 Aldersgate Street, London, EC1A 4HD, United Kingdom as its agent for service of process and has undertaken that, in the event of Maples and Calder ceasing so to act or ceasing to be registered in England, it will appoint another person as its agent for service of process in England in respect

of any Disputes or proceedings relating to a Dispute ("**Proceedings**") and notify the Delegate and the Certificateholders of such appointment in accordance with this Condition 21.3 (*Appointment of Process Agent*). Nothing herein shall affect the right to serve proceedings in any other manner permitted by law.

#### 21.4 **Waiver of Immunity**

Under the Transaction Documents to which it is a party, the Bank has agreed that, to the extent that it may claim for itself or its assets or revenues immunity from jurisdiction, enforcement, prejudgment proceedings, injunctions and any other legal or arbitral proceedings and relief and to the extent that such immunity (whether or not claimed) may be attributed to it or any of its assets or revenues, it will not claim and has irrevocably and unconditionally waived such immunity in relation to any Proceedings or Disputes. Further, the Bank has irrevocably and unconditionally consented to the giving of any relief or the issue of any process, including, without limitation, jurisdiction, enforcement, prejudgment proceedings and injunctions in connection with any Proceedings or Disputes.

#### 21.5 **Waiver of Interest**

- (a) Each of the Trustee, the Delegate and the Bank has irrevocably agreed in the Declaration of Trust that if any arbitration is commenced in relation to a Dispute and/or any Proceedings are brought by or on behalf of a party under the Declaration of Trust, it will (i) not claim interest under, or in connection with, such arbitration and/or Proceedings; and (ii) to the fullest extent permitted by law, waive all and any entitlement it may have to interest awarded in its favour by an arbitrator as a result of such arbitration and/or by a court as a result of such Proceedings.
- (b) For the avoidance of doubt, nothing in this Condition 21.5 (*Waiver of Interest*) shall be construed as a waiver of rights in respect of Mudaraba Profit, Final Mudaraba Profit, Rab-al-Maal Mudaraba Profit, Rab-al-Maal Final Mudaraba Profit, Periodic Distribution Amounts, Outstanding Payments or profit of any kind howsoever described payable by the Bank or the Trustee pursuant to the Transaction Documents and/ or these Conditions, howsoever such amounts may be described or re-characterised by any court or arbitral tribunal.

**SCHEDULE 3**  
**REGISTER AND TRANSFER OF DEFINITIVE CERTIFICATES**

1. The Trustee shall use its reasonable endeavours to ensure that at all times the Registrar maintains at its specified office the Register showing the amount of the Definitive Certificates from time to time outstanding and the dates of issue and all subsequent transfers and changes of ownership thereof and the names, addresses and payment details of the holders of the Definitive Certificates. The Delegate and the holders of the Definitive Certificates or any of them and any person authorised by it or any of them may at all reasonable times during office hours inspect the Register and take copies of or extracts from it. The Register may be closed by the Trustee for such periods at such times (not exceeding in total 30 days in any one year) as it may think fit.
2. Each Definitive Certificate shall have an identifying serial number which shall be entered on the Register.
3. The Definitive Certificates are transferable by execution of the form of transfer endorsed thereon under the hand of the transferor or, where the transferor is a corporation, under its common seal or under the hand of two of its officers duly authorised in writing.
4. The Definitive Certificates to be transferred must be delivered for registration to the specified office of the Registrar with the form of transfer endorsed thereon duly completed and executed and must be accompanied by such documents, evidence and information as may be required pursuant to the Conditions and such other evidence as the Trustee may reasonably require to prove the title of the transferor or their right to transfer such Definitive Certificates and, if the form of transfer is executed by some other person on their behalf or in the case of the execution of a form of transfer on behalf of a corporation by its officers, the authority of that person or those persons to do so.
5. The executors or administrators of a deceased holder of Definitive Certificates (not being one of several joint holders) and in the case of the death of one or more of several joint holders the survivor or survivors of such joint holders shall be the only person or persons recognised by the Trustee as having any title to such Definitive Certificates.
6. Any person becoming entitled to Definitive Certificates in consequence of the death or bankruptcy of the holder of such Definitive Certificates may upon producing such evidence that they hold the position in respect of which they propose to act under this paragraph or of their title as the Trustee shall require be registered himself as the holder of such Definitive Certificates or, subject to the preceding paragraphs as to transfer, may transfer such Definitive Certificates. The Trustee shall be at liberty to retain any amount payable upon such Definitive Certificates to which any person is so entitled until such person shall be registered as aforesaid or shall duly transfer such Definitive Certificates.
7. Unless otherwise requested by him, the holder of Definitive Certificates shall be entitled to receive only one Definitive Certificate in respect of their entire holding.
8. The joint holders of Definitive Certificates shall be entitled to one Definitive Certificate only in respect of their joint holding which shall, except where they otherwise direct,

be delivered to the joint holder whose name appears first in the Register in respect of such joint holding.

9. Where a holder of Definitive Certificates has transferred part only of their holding there shall be delivered to him, subject to and in accordance with the provisions of paragraph 10 below, without charge a Definitive Certificate in respect of the balance of such holding.
10. The Registrar shall, subject to the Conditions, make no charge to the Certificateholders for the registration of any holding of Definitive Certificates or any transfer thereof or for the issue thereof or for the delivery thereof at the specified office of the Registrar or by uninsured mail to the address specified by the relevant Certificateholder. If any Certificateholder entitled to receive a Definitive Certificate wishes to have the same delivered to them otherwise than at the specified office of the Registrar, such delivery shall be made, upon their written request to the Registrar, at their risk and (except where sent by uninsured mail to the address specified by the Certificateholder) at their expense.
11. Neither the Trustee nor the Registrar shall be required to register the transfer of any Definitive Certificate (or part of any Definitive Certificate) on which any amount is due and, accordingly, may validly pay such amount to the holder of such Definitive Certificate at the date such Definitive Certificate was called for redemption as if the purported transfer had not taken place.

**SCHEDULE 4**  
**PROVISIONS FOR MEETINGS OF CERTIFICATEHOLDERS**

**1. DEFINITIONS**

1.1 As used in this Schedule the following expressions shall have the following meanings unless the context otherwise requires:

**"24 Hours"** means a period of 24 hours including all or part of a day upon which banks are open for business in both the place where the relevant meeting is to be held and in each of the places where the Paying Agents have their specified offices (disregarding for this purpose the day upon which such meeting is to be held) and such period shall be extended by one period or, to the extent necessary, more periods of 24 hours until there is included as aforesaid all or part of a day upon which banks are open for business in all of the places as aforesaid.

**"48 Hours"** means a period of 48 hours including all or part of two days upon which banks are open for business both in the place where the relevant meeting is to be held and in each of the places where the Paying Agents have their specified offices (disregarding for this purpose the day upon which such meeting is to be held) and such period shall be extended by one period or, to the extent necessary, more periods of 24 hours until there is included as aforesaid all or part of two days upon which banks are open for business in all of the places as aforesaid.

**"Block Voting Instruction"** means an English language document issued by a Paying Agent in which:

- (a) it is certified that on the date thereof Certificates represented by the Global Certificate or Definitive Certificates which are held in an account with any Clearing System (in each case not being Certificates in respect of which a Voting Certificate has been issued and is outstanding in respect of the meeting specified in such Block Voting Instruction) are held to that Paying Agent's order or under its control or are blocked in an account with a Clearing System and that no such Certificates will cease to be so held or blocked until the first to occur of:
  - (i) the conclusion of the meeting specified in such Block Voting Instruction; and
  - (ii) the Certificates ceasing with the agreement of the Paying Agent to be so blocked and the giving of notice by the Paying Agent to the Trustee in accordance with paragraph 3.5 of the necessary amendment to the Block Voting Instruction;
- (b) it is certified that each holder of such Certificates has instructed such Paying Agent that the vote(s) attributable to the Certificates so blocked should be cast in a particular way in relation to the resolution(s) to be put to such meeting and that all such instructions are, during the period commencing 48 Hours prior to the time for which such meeting is convened and ending at the conclusion or adjournment thereof, neither revocable nor capable of amendment;

- (c) the aggregate face amount of the Certificates so deposited or held or blocked is listed distinguishing with regard to each such resolution between those in respect of which instructions have been given that the votes attributable thereto should be cast in favour of the resolution and those in respect of which instructions have been so given that the votes attributable thereto should be cast against the resolution; and
- (d) one or more persons named in such Block Voting Instruction (each hereinafter called a proxy) is or are authorised and instructed by such Paying Agent to cast the votes attributable to the Certificates so listed in accordance with the instructions referred to in (c) above as set out in such Block Voting Instruction;

**"Clearing System"** means Euroclear and/or Clearstream, Luxembourg and includes in respect of any Certificate any clearing system on behalf of which such Certificate is held or which is the holder or (directly or through a nominee) registered owner of a Certificate, in either case whether alone or jointly with any other Clearing System(s). For the avoidance of doubt, the provisions of Clause 1.13 (*Definitions and Interpretation*) shall apply to this definition.

**"Eligible Person"** means any one of the following persons who shall be entitled to attend and vote at a meeting:

- (a) a holder of a Certificate in definitive form which is not held in an account with any Clearing System;
- (b) a bearer of any Voting Certificate;
- (c) a proxy specified in any Block Voting Instruction; and
- (d) a proxy appointed by a holder of a Certificate in definitive form which is not held in an account with any Clearing System;

**"Extraordinary Resolution"** means a resolution passed: (a) at a meeting duly convened and held in accordance with this Declaration of Trust by a majority of at least 75 per cent. of the votes cast by Eligible Persons voting thereat; or (b) by a Written Resolution;

**"Written Resolution"** means a resolution in writing signed by the holders of not less than 90 per cent. in face amount of the Certificates outstanding;

**"Voting Certificate"** means an English language certificate issued by a Paying Agent in which it is stated:

- (a) that on the date thereof Certificates represented by the Global Certificate or Definitive Certificates which are held in an account with any Clearing System (in each case not being Certificates in respect of which a Block Voting Instruction has been issued and is outstanding in respect of the meeting specified in such Voting Certificate) are held to that Paying Agent's order or under its control or are blocked in an account with a Clearing System and that no such Certificates will cease to be so held or blocked until the first to occur of:
  - (i) the conclusion of the meeting specified in such Voting Certificate; and

- (ii) the surrender of the Voting Certificate to the Paying Agent who issued the same; and
- (b) that the bearer thereof is entitled to attend and vote at such meeting in respect of the Certificates represented by such Voting Certificate.

For the purposes of calculating a period of "**Clear Days**" in relation to a meeting, no account shall be taken of the day on which the notice of such meeting is given (or, in the case of an adjourned meeting, the day on which the meeting to be adjourned is held) or the day on which such meeting is held.

All references in this Schedule to a "meeting" shall, where the context so permits, include any relevant adjourned meeting.

## 2. **EVIDENCE OF ENTITLEMENT TO ATTEND AND VOTE**

A holder of a Certificate represented by the Global Certificate or a Definitive Certificate which is held in an account with any Clearing System may require the issue by a Paying Agent of Voting Certificates and Block Voting Instructions in accordance with the terms of paragraph 3.

For the purposes of paragraph 3, the Principal Paying Agent and each Paying Agent shall be entitled to rely, without further enquiry, on any information or instructions received from a Clearing System and shall have no liability to any holder or other person for any loss, damage, cost, claim or other liability occasioned by its acting in reliance thereon, nor for any failure by a Clearing System to deliver information or instructions to the Principal Paying Agent or any Paying Agent.

The holder of any Voting Certificate or the proxies named in any Block Voting Instruction shall for all purposes in connection with the relevant meeting be deemed to be the holder of the Certificates to which such Voting Certificate or Block Voting Instruction relates.

## 3. **PROCEDURE FOR ISSUE OF VOTING CERTIFICATES, BLOCK VOTING INSTRUCTIONS AND PROXIES**

### 3.1 **Global Certificate and Definitive Certificates held in a Clearing System – Voting Certificate**

A holder of a Certificate (not being a Certificate in respect of which instructions have been given to the Principal Paying Agent in accordance with paragraph 3.2) represented by the Global Certificate or which is in definitive form and is held in an account with any Clearing System may procure the delivery of a Voting Certificate in respect of such Certificate by giving notice to the Clearing System through which such holder's interest in the Certificate is held specifying by name a person (an "**Identified Person**") (which need not be the holder himself) to collect the Voting Certificate and attend and vote at the meeting. The relevant Voting Certificate will be made available at or shortly prior to the commencement of the meeting by the Principal Paying Agent against presentation by such Identified Person of the form of identification previously notified by such holder to the Clearing System. The Clearing System may prescribe forms of identification (including, without limitation, a passport or driving licence) which it

deems appropriate for these purposes. Subject to receipt by the Principal Paying Agent from the Clearing System, no later than 24 Hours prior to the time for which such meeting is convened, of notification of the face amount of the Certificates to be represented by any such Voting Certificate and the form of identification against presentation of which such Voting Certificate should be released, the Principal Paying Agent shall, without any obligation to make further enquiry, make available Voting Certificates against presentation of the form of identification corresponding to that notified.

### 3.2 **Global Certificate and Definitive Certificates held in a Clearing System – Block Voting Instruction**

A holder of a Certificate (not being a Certificate in respect of which a Voting Certificate has been issued) represented by the Global Certificate or which is in definitive form and is held in an account with any Clearing System may require the Principal Paying Agent to issue a Block Voting Instruction in respect of such Certificate by first instructing the Clearing System through which such holder's interest in the Certificate is held to procure that the votes attributable to such Certificate should be cast at the meeting in a particular way in relation to the resolution or resolutions to be put to the meeting. Any such instruction shall be given in accordance with the rules of the Clearing System then in effect. Subject to receipt by the Principal Paying Agent of instructions from the Clearing System, no later than 24 Hours prior to the time for which such meeting is convened, of notification of the face amount of the Certificates in respect of which instructions have been given and the manner in which the votes attributable to such Certificates should be cast, the Principal Paying Agent shall, without any obligation to make further enquiry, appoint a proxy to attend the meeting and cast votes in accordance with such instructions.

### 3.3 **Definitive Certificates not held in a Clearing System – appointment of proxy**

- (a) A holder of Certificates in definitive form and not held in an account with any Clearing System may, by an instrument in writing in the English language (a "**form of proxy**") signed by the holder or, in the case of a corporation, executed under its common seal or signed on its behalf by an attorney or a duly authorised officer of the corporation and delivered to the specified office of the Registrar or any Transfer Agent not less than 48 Hours before the time fixed for the relevant meeting, appoint any person (a "**proxy**") to act on their or its behalf in connection with any meeting.
- (b) Any proxy appointed pursuant to subparagraph (a) above shall so long as such appointment remains in force be deemed, for all purposes in connection with the relevant meeting, to be the holder of the Certificates to which such appointment relates and the holders of the Certificates shall be deemed for such purposes not to be the holder.

- 3.4 Each Block Voting Instruction, together (if so requested by the Delegate) with proof satisfactory to the Delegate of its due execution on behalf of the relevant Paying Agent, and each form of proxy shall be deposited by the relevant Paying Agent or (as the case may be) by the Registrar or the relevant Transfer Agent at such place as the Delegate shall approve not less than 24 Hours before the time appointed for holding the meeting at which the proxy or proxies named in the Block Voting Instruction or form of proxy



proposes to vote, and in default the Block Voting Instruction or form of proxy shall not be treated as valid unless the Chairman of the meeting decides otherwise before such meeting proceeds to business. A copy of each Block Voting Instruction and form of proxy shall be deposited with the Delegate before the commencement of the meeting but the Delegate shall not thereby be obliged to investigate or be concerned with the validity of or the authority of the proxy or proxies named in any such Block Voting Instruction or form of proxy.

- 3.5 Any vote given in accordance with the terms of a Block Voting Instruction or form of proxy shall be valid notwithstanding the previous revocation or amendment of the Block Voting Instruction or form of proxy or of any of the instructions of the relevant holder or the relevant Clearing System (as the case may be) pursuant to which it was executed **provided that** no intimation in writing of such revocation or amendment has been received from the relevant Paying Agent (in the case of a Block Voting Instruction) or from the holder thereof (in the case of a proxy appointed pursuant to paragraph 3.3) by the Trustee at its registered office (or such other place as may have been required or approved by the Delegate for the purpose) by the time being 24 Hours (in the case of a Block Voting Instruction) or 48 Hours (in the case of a proxy) before the time appointed for holding the meeting at which the Block Voting Instruction or form of proxy is to be used.

#### 4. **CONVENING OF MEETINGS, QUORUM AND ADJOURNED MEETINGS**

- 4.1 The Trustee, the Bank or the Delegate may at any time, and the Trustee shall upon a requisition in writing in the English language signed by the holders of not less than ten per cent. in aggregate face amount of the Certificates for the time being outstanding, convene a meeting subject to it being indemnified and/or secured and/or pre-funded to its satisfaction. Whenever the Trustee or the Bank is about to convene any such meeting the Trustee or the Bank, as the case may be, shall forthwith give notice in writing to the Delegate of the day, time and place thereof and of the nature of the business to be transacted thereat. Every such meeting shall be held at such time and place as the Delegate may appoint or approve in writing.
- 4.2 At least 21 Clear Days' notice (exclusive of the day of which the notice is given and of the day of the meeting) specifying the place, day and hour of meeting shall be given to the holders prior to any meeting in the manner provided by Condition 17 (*Notices*). Such notice, which shall be in the English language, shall state generally the nature of the business to be transacted at the meeting thereby convened and, in the case of an Extraordinary Resolution, shall either specify in such notice the terms of such resolution or state fully the effect on the holders of such resolution, if passed. Such notice shall include statements as to the manner in which holders may arrange for Voting Certificates or Block Voting Instructions to be issued and, if applicable, appoint proxies. A copy of the notice shall be sent by post to the Delegate (unless the meeting is convened by the Delegate), to the Trustee (unless the meeting is convened by the Trustee) and to the Bank (unless the meeting is convened by the Bank).
- 4.3 A person (who may but need not be a holder) nominated in writing by the Delegate shall be entitled to take the chair at the relevant meeting, but if no such nomination is made or if at any meeting the person nominated shall not be present within 15 minutes after the time appointed for holding the meeting the holders present shall choose one of their number to be Chairman, failing which the Trustee may appoint a Chairman. The

Chairman of an adjourned meeting need not be the same person as was Chairman of the meeting from which the adjournment took place.

- 4.4 The following may attend and speak at a meeting: Certificateholders and agents (including proxies and representatives), the chairman, the Trustee, the Bank, the Delegate and the Registrar (through their respective representatives) and their respective financial and legal advisers, the Joint Lead Managers and their advisers and any other person approved by the meeting or the Delegate. No-one else may attend or speak.
- 4.5 At any such meeting one or more Eligible Persons present and holding or representing in the aggregate not less than one-twentieth of the face amount of the Certificates for the time being outstanding shall (except for the purpose of passing an Extraordinary Resolution) form a quorum for the transaction of business and no business (other than the choosing of a Chairman) shall be transacted at any meeting unless the requisite quorum be present at the commencement of the relevant business. The quorum at any such meeting for passing an Extraordinary Resolution (not relating to a Reserved Matter (as defined below)) shall be one or more Eligible Persons present and holding or representing in the aggregate more than 50 per cent. in face amount of the Certificates for the time being outstanding, **provided that** at any meeting the business of which includes any of the following matters (each of which shall only be capable of being effected after having been approved by Extraordinary Resolution) namely the consideration of proposals to:
- (a) amend any date for payment (including any optional redemption date) in respect of the Certificates;
  - (b) reduce or cancel the face amount of, or any premium payable on redemption of, the Certificates;
  - (c) reduce the rate or rates of profit in respect of the Certificates or to vary the method or basis of calculating the rate or rates or amount of profit or the basis for calculating any Periodic Distribution Amount in respect of the Certificates;
  - (d) vary any method of, or basis for, calculating the Dissolution Distribution Amount;
  - (e) vary the currency of payment or denomination of the Certificates;
  - (f) modify the provisions concerning the quorum required at any meeting of Certificateholders or the majority required to pass an Extraordinary Resolution;
  - (g) modify or cancel the payment obligations of the Bank (in any capacity) and/or the Trustee under the Transaction Documents and/or the Certificates (as the case may be);
  - (h) amend any of the Trustee's and the Bank's covenants set out in the Transaction Documents;
  - (i) sanction any such scheme or proposal or substitution as is described in paragraphs 5.8(i) and 5.8(l);

- (j) amend the order of application of monies set out in Condition 5.3 (*Application of Proceeds from Trust Assets*); or
- (k) amend this definition or the proviso to paragraph 4.7,

then: (i) the necessary quorum shall be one or more persons holding or representing not less than three quarters, or at any adjourned such meeting not less than one quarter, in aggregate face amount of the Certificates for the time being outstanding; and (ii) such meeting may only be convened following written consent from the Bank to convene such meeting.

(each a "**Reserved Matter**"),

the quorum shall be one or more Eligible Persons present and holding or representing in the aggregate not less than 75 per cent. in face amount of the Certificates for the time being outstanding.

- 4.6 If within 15 minutes after the time appointed for any such meeting a quorum is not present for the transaction of any particular business, then, subject and without prejudice to the transaction of the business (if any) for which a quorum is present, the meeting shall if convened upon the requisition of holders be dissolved. In any other case it shall stand adjourned for such period, being not less than 14 Clear Days nor more than 42 Clear Days, and to such place as may be appointed by the Chairman either at or subsequent to such meeting and approved by the Delegate). If within 15 minutes after the time appointed for any adjourned meeting a quorum is not present for the transaction of any particular business, then, subject and without prejudice to the transaction of the business (if any) for which a quorum is present, the Chairman may either (with the approval of the Delegate) dissolve such meeting or adjourn the same for such period, being not less than 14 Clear Days (but without any maximum number of Clear Days), and to such place as may be appointed by the Chairman either at or subsequent to such adjourned meeting and approved by the Delegate, and the provisions of this sentence shall apply to all further adjourned such meetings.
- 4.7 At any adjourned meeting one or more Eligible Persons present (whatever the face amount of the Certificates so held or represented by them) shall (subject as provided below) form a quorum and shall have power to pass any resolution and to decide upon all matters which could properly have been dealt with at the meeting from which the adjournment took place had the requisite quorum been present, **provided that** at any adjourned meeting the quorum for the transaction of business comprising any Reserved Matter shall be one or more Eligible Persons present and holding or representing in the aggregate not less than 25 per cent. in face amount of the Certificates for the time being outstanding.
- 4.8 Notice of any adjourned meeting shall be given in the same manner as notice of an original meeting but as if 10 were substituted for 21 in paragraph 4.2 and such notice shall state the required quorum.

## 5. **CONDUCT OF BUSINESS AT MEETINGS**

- 5.1 Every question submitted to a meeting shall be decided in the first instance by a show of hands. A poll may be demanded (before or on the declaration of the result of the

show of hands) by the Chairman, the Trustee, the Bank, the Delegate or any Eligible Person (whatever the amount of the Certificates so held or represented by him).

- 5.2 At any meeting, unless a poll is duly demanded, a declaration by the Chairman that a resolution has been carried or carried by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 5.3 Subject to paragraph 5.4, if at any such meeting a poll is so demanded it shall be taken in such manner and, subject as hereinafter provided, either at once or after an adjournment as the Chairman directs and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded as at the date of the taking of the poll. The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than the motion on which the poll has been demanded.
- 5.4 Any poll demanded at any such meeting on the election of a Chairman or on any question of adjournment shall be taken at once.
- 5.5 Any director or officer of the Delegate, its lawyers and financial advisers, any director or officer of the Trustee, the Bank, their respective lawyers and financial advisers, any director or officer of any of the Paying Agents and any other person authorised so to do by the Delegate may attend and speak at any meeting. Save as aforesaid, no person shall be entitled to attend and speak nor shall any person be entitled to vote at any meeting unless they are an Eligible Person. No person shall be entitled to vote at any meeting in respect of Certificates which are deemed to be not outstanding by virtue of the proviso to the definition of "**outstanding**" in Clause 1 (*Definitions and Interpretation*).
- 5.6 At any meeting:
- (a) on a show of hands every Eligible Person present shall have one vote; and
  - (b) on a poll every Eligible Person present shall have one vote in respect of each integral currency unit (or, in the case of meetings of holders of Certificates denominated in another currency, such amount in such other currency as the Delegate in its absolute discretion may stipulate), in face amount of the Certificates held or represented by such Eligible Person.

Without prejudice to the obligations of the proxies named in any Block Voting Instruction or form of proxy, any Eligible Person entitled to more than one vote need not use all their votes or cast all the votes to which they are entitled in the same way.

- 5.7 The proxies named in any Block Voting Instruction or form of proxy need not be holders. Nothing herein shall prevent any of the proxies named in any Block Voting Instruction or form of proxy from being a director, officer or representative of or otherwise connected with the Trustee or the Bank.

- 5.8 A meeting shall in addition to the powers hereinbefore given have the following powers exercisable only by Extraordinary Resolution (subject to the provisions relating to quorum contained in paragraphs 4.4 and 4.7) namely, the power to:
- (a) sanction any compromise or arrangement proposed to be made between the Trustee, the Bank, the Delegate, any Appointee and the holders or any of them;
  - (b) sanction any abrogation, modification, compromise or arrangement in respect of the rights of the Delegate, any Appointee, the holders, the Trustee or the Bank against any other or others of them or against any of their property whether such rights arise under these presents or otherwise;
  - (c) assent to any modification of the provisions of these presents which is proposed by the Trustee, the Bank, the Delegate or any holder;
  - (d) give any authority or sanction which under the provisions of these presents is required to be given by Extraordinary Resolution;
  - (e) appoint any persons (whether holders or not) as a committee or committees to represent the interests of the holders and to confer upon such committee or committees any powers or discretions which the holders could themselves exercise by Extraordinary Resolution;
  - (f) approve a proposed new Delegate and power to remove any Delegate or Delegates for the time being of these presents;
  - (g) discharge or exonerate the Delegate and/or any Appointee from all liability in respect of any act or omission for which the Delegate and/or such Appointee may have become responsible under these presents;
  - (h) authorise the Delegate and/or any Appointee to concur in and execute and do all such deeds, instruments, acts and things as may be necessary to carry out and give effect to any Extraordinary Resolution;
  - (i) sanction any scheme or proposal for the exchange or sale of the Certificates for or the conversion of the Certificates into or the cancellation of the Certificates in consideration of shares, stock, certificates and/or securities of the Trustee or any other company formed or to be formed, or for or into or in consideration of cash, or partly for or into or in consideration of such shares, stock, certificates and/or other obligations and/or securities as aforesaid and partly for or into or in consideration of cash and for the appointment of some person with power on behalf of the holders to execute an instrument of transfer of the Certificates held by them in favour of the persons with or to whom the Certificates are to be exchanged or sold respectively;
  - (j) to appoint any persons (whether Certificateholders or not) as a committee or committees to represent the Certificateholders' interests and to confer on them any powers or discretions which the Certificateholders could themselves exercise by Extraordinary Resolution;

- (k) to discharge or exonerate the Trustee, the Bank and/or the Delegate from any liability in respect of any act or omission for which it may become responsible under these presents; and
- (l) approve the substitution of any entity for the Trustee and/or the Bank (or any previous substitute) in respect of their obligations under the Certificates (in the case of the Trustee) and the Transaction Documents (in the case of the Trustee and the Bank) to which they are a party.

5.9 Any Extraordinary Resolution passed (a) at a meeting of the holders duly convened and held in accordance with these presents or (b) a Written Resolution in accordance with these presents shall be binding upon all the holders whether or not present or whether or not represented at any meeting and whether or not they voted on or participated in the resolution and whether or not they participated in such Written Resolution and each of them shall be bound to give effect thereto accordingly and the passing of any such resolution shall be conclusive evidence that the circumstances justify the passing thereof. Notice of the result of the voting on any resolution duly considered by the holders shall be published in accordance with Condition 17 (*Notices*) by the Trustee within 14 days of such result being known, **provided that** the non-publication of such notice shall not invalidate such result.

#### 5.10 **Written Resolution**

5.11 Subject to paragraph 5.12 below, a Written Resolution may be contained in one document or in several documents in like form, each signed by or on behalf of one or more of the Certificateholders.

5.12 For so long as the Certificates are in the form of the Global Certificate and registered in the name of any nominee for a depositary common to one or more of Euroclear, Clearstream, Luxembourg or another clearing system, then, in respect of any resolution proposed by the Trustee, the Bank or the Delegate for the purpose of determining whether a Written Resolution has been validly passed, the Trustee, the Bank and the Delegate shall be entitled to rely on consent or instructions given in writing directly to the Trustee, the Bank and/or the Delegate, as the case may be, by (a) Accountholders in the clearing system(s) with entitlements to such Global Certificate and/or (b) or, where the accountholders hold any such entitlement on behalf of another person, on written consent from or written instruction by the person for whom such entitlement is ultimately beneficially held, whether such beneficiary holds directly with the accountholder or via one or more intermediaries and **provided that**, in each case, the Trustee, the Bank and the Delegate have obtained commercially reasonable evidence to ascertain the validity of such holding and have taken reasonable steps to ensure that such holding does not alter following the giving of such consent or instruction and prior to the effecting or implementation of such consent or instructions. For the purpose of establishing "**commercially reasonable evidence**" the entitlement to give any such consent or instruction, the Trustee, the Bank and the Delegate shall be entitled to rely on any certificate or other document issued by, in the case of (a) above, Euroclear, Clearstream, Luxembourg or any other relevant alternative clearing system (the "**relevant clearing system**") and, in the case of (b) above, the relevant clearing system and the Accountholder identified by the relevant clearing system for the purposes of (b) above. Any resolution passed in such manner shall be binding on all Certificateholders, even if the relevant consent or instruction proves to be defective. Any such certificate

or other document shall, in the absence of manifest error, be conclusive and binding for all purposes. Any such certificate or other document may comprise any form of statement or print out of electronic records provided by the relevant clearing system (including Euroclear's EUCLID or Clearstream, Luxembourg's CreationOnline system) in accordance with its usual procedures and in which the accountholder of a particular principal or nominal amount of the Certificates is clearly identified together with the amount of such holding. None of the Trustee, the Bank and/or the Delegate shall be liable to any person by reason of having accepted as valid or not having rejected any certificate or other document to such effect purporting to be issued by any such person and subsequently found to be forged or not authentic.

5.13 A Written Resolution shall take effect as an Extraordinary Resolution. A Written Resolution shall be binding on all Certificateholders, whether or not they participated in such Written Resolution.

5.14 Minutes of all resolutions and proceedings at every meeting shall be made and entered in books to be from time to time provided for that purpose by the Trustee and any such minutes as aforesaid, if purporting to be signed by the Chairman of the meeting at which such resolutions were passed or proceedings transacted, shall be conclusive evidence of the matters therein contained and, until the contrary is proved, every such meeting in respect of the proceedings of which minutes have been made shall be deemed to have been duly held and convened and all resolutions passed or proceedings transacted thereat to have been duly passed or transacted.

## 6. **CANCELLATION OF MEETING**

A meeting that has been validly convened in accordance with paragraph 4 above, may be cancelled by the person who convened such meeting by giving at least 7 days' notice (exclusive of the day on which the notice is given and of the day of the meeting) to the Certificateholders (with a copy to the Delegate where such meeting was convened by the Trustee or to the Trustee where such meeting was convened by the Delegate). Any meeting cancelled in accordance with this paragraph 6 shall be deemed not to have been convened.

**SCHEDULE 5**  
**FORM OF DIRECTOR'S/AUTHORISED SIGNATORIES' CERTIFICATE**

**[ON THE HEADED PAPER OF THE TRUSTEE/KUWAIT FINANCE HOUSE K.S.C.P.]**

*For use by the Trustee and the Bank:*

To: Citibank, N.A., London Branch (the "**Delegate**")

[Date]

Dear Sirs

**KFH TIER 1 SUKUK LIMITED**

**U.S.\$750,000,000 Tier 1 Capital Certificates**

This certificate is delivered to you in accordance with Clause 10.1(d) (*Undertakings*) of the Declaration of Trust dated 30 June 2021 (the "**Declaration of Trust**") and made between KFHH Tier 1 Sukuk Limited (the "**Trustee**"), Kuwait Finance House K.S.C.P. (the "**Bank**") and the Delegate. All words and expressions defined in the Declaration of Trust shall (save as otherwise provided herein or unless the context otherwise requires) have the same meanings herein.

We hereby certify, for and on behalf of KFHH Tier 1 Sukuk Limited Kuwait Finance House K.S.C.P. and without attracting liability as individuals therefor, that, having made all reasonable enquiries, to the best of our knowledge, information and belief, (a) as at [●]<sup>1</sup>, no Non-Viability Event, Dissolution Event, Potential Dissolution Event, Non-Payment Event, Non-Payment Election, Tax Event or Capital Event or breach of the Declaration of Trust or of any of our obligations under the Certificates or any Transaction Document existed [other than [●]]<sup>2</sup> and no Non-Viability Event, Dissolution Event, Potential Dissolution Event, Non-Payment Event, Non-Payment Election, Tax Event or Capital Event or breach of the Declaration of Trust or of any of our obligations under the Certificates or any Transaction Document had existed at any time since [●]<sup>3</sup> [the Certification Date (as defined in the Declaration of Trust) of the last certificate delivered under Clause 10.1(d) (*Undertakings*)<sup>4</sup> [other than [●]]]<sup>5</sup>.

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

<sup>2</sup> If any Non-Viability Event, Dissolution Event, Potential Dissolution Event, Non-Payment Event, Non-Payment Election, Tax Event or Capital Event or breach of the Declaration of Trust did exist, give details; otherwise delete.

<sup>3</sup> Insert date of the Declaration of Trust, otherwise delete.

<sup>4</sup> Include unless the certificate is the first certificate delivered under Clause 10.1(d), in which case delete.

<sup>5</sup> If any Non-Viability Event, Dissolution Event, Potential Dissolution Event, Non-Payment Event, Non-Payment Election or Capital Event or breach of the Declaration of Trust did exist, give details; otherwise delete.



**[KFH Tier 1 Sukuk Limited/Kuwait Finance House K.S.C.P.]**

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[Director/Authorised Signatory]

[Director/Authorised Signatory]

## Signatories

**EXECUTED and DELIVERED as a DEED by  
KFH TIER 1 SUKUK LIMITED**

acting by:

acting under the authority of that company

in the presence of:

Witness's signature

Name:

Address:

**EXECUTED and DELIVERED as a DEED by  
KUWAIT FINANCE HOUSE K.S.C.P. acting by:**

acting under the authority of that company

in the presence of:

Witness's signature

Name:

Address:

**EXECUTED and DELIVERED as a DEED by  
CITIBANK, N.A., LONDON BRANCH**  
acting by:  
acting under the authority of that company