

# **DECLARATION OF TRUST**

**19 NOVEMBER 2020**

**DIB TIER 1 SUKUK (4) LTD.**

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

**ALLEN & OVERY**

Legal Consultants

**Allen & Overy LLP**

0090244-0000060 DBO1: 2000699485.9

## CONTENTS

Clause	Page
1. Definitions and Interpretation.....	1
2. Declaration of Trust.....	6
3. Form, Issue and Status of Certificates.....	6
4. Entitlement to treat Registered Certificateholder as Absolute Owner.....	8
5. Appointment of Agents.....	8
6. Powers Vested in the Delegate.....	9
7. Delegation of Authority to the Delegate.....	10
8. The Delegate.....	11
9. Duties of the Trustee and the Delegate.....	11
10. Undertakings.....	12
11. Additional Undertakings of DIB.....	14
12. Remuneration and Indemnification of the Trustee and the Delegate.....	15
13. Investment.....	17
14. Application of Moneys.....	17
15. Provisions Applicable to the Trustee and the Delegate.....	18
16. Protection of Trustee or Delegate.....	27
17. Enforcement of Rights.....	27
18. Substitution.....	28
19. Termination.....	29
20. No Partnership.....	29
21. Appointment, Removal or Retirement of Delegate.....	30
22. Delegate Not Precluded from Entering into Contracts.....	30
23. Notices.....	30
24. Limited Recourse and Non-Petition.....	32
25. Severability.....	33
26. General.....	33
27. Contracts (Rights of Third Parties) Act 1999.....	33
28. Shari'a Compliance.....	34
29. Governing Law and Dispute Resolution.....	34

### Schedule

1. Forms of Certificates.....	37
Part 1 Form of Global Certificate.....	37
Part 2 Form of Definitive Certificate.....	42
2. Terms and Conditions of the Additional Tier 1 Capital Certificates.....	46
3. Register and Transfer of Definitive Certificates.....	83
4. Provisions for Meetings of Certificateholders.....	85
5. Form of Authorised Signatories' Certificate.....	93

Signatories to the Declaration of Trust.....	94
--	----

**THIS DECLARATION OF TRUST** is dated 19 November 2020 and made as a deed

**BETWEEN:**

- (1) **DIB TIER 1 SUKUK (4) LTD.** (in its capacity as issuer of the Certificates (as defined in below) and in its capacity as trustee for and on behalf of the holders of the Certificates, as applicable, the **Trustee**);
- (2) **DUBAI ISLAMIC BANK PJSC (DIB)**; and
- (3) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** in its capacity as: (a) donee of the powers set out in Clause 6; and (b) as delegate of the Trustee pursuant to Clause 7, 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.\$1,000,000,000 additional 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 defined below) as authorised and directed by the Certificateholders in the Conditions. The Trust Assets include 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) 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, authorisations, discretions and rights to the Delegate as provided in this Declaration of Trust.
- (E) The Trustee and the Trustee Administrator (as defined below) have entered into a corporate services agreement (the **Corporate Services Agreement**) dated 10 November 2020 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 Except as otherwise expressly provided in this Declaration of Trust, capitalised terms used in this Declaration of Trust shall have the meanings given to such terms in the Conditions. In addition, the following terms shall have the meanings given below:

**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 agency agreement dated 19 November 2020 between the Trustee, DIB, the Delegate and the Agents;

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

**Authorised Signatory** means any person who: (a) is an Initial Authorised Person; or (b) has been notified by either the Trustee or DIB 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 DIB, 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 Depositary** means a depositary common to Euroclear and Clearstream, Luxembourg;

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

**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 hereof;

**DFSA** means the Dubai Financial Services Authority or such other entity or body to which its functions have been transferred;

**DFSA Official List** means the official list maintained by the DFSA;

**DIFC** means the Dubai International Financial Centre;

**Electronic Consent** has the meaning given to it in paragraph 1 of Schedule 4;

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

**Euronext Dublin** means the Irish Stock Exchange plc trading as Euronext Dublin or such other entity or body to which its functions have been transferred;

**Extraordinary Resolution** shall have the meaning given to it in paragraph 1 of Schedule 4;

**FATCA Withholding** means any withholding or deduction required pursuant to an agreement described in Section 1471(b) of the Code or otherwise imposed pursuant to sections 1471 through 1474 of the Code, any regulations or agreements thereunder, any official interpretations thereof, or any law implementing an intergovernmental approach thereto;

**Financial Period End** means each of 31 March, 30 June and 30 September of each calendar year;

**Financial Year End** means 31 December of each calendar year;

**FSMA** means the Financial Services and Markets Act 2000;

**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;

**Initial Authorised Person** means (a) in respect of DIB, either: (i) any two members of the asset and liabilities committee of DIB (acting jointly); or (ii) the chief executive officer of DIB (acting individually); and (b) in respect of the Trustee, Stacy Bodden, John Curran and 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, expense, fees (including legal fees), expense, judgment, action, proceeding or other liability whatsoever (including, without limitation in respect of taxes, duties, levies, imposts and other charges) 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, in each case, excluding costs of funding or opportunity costs;

**Mudaraba Agreement** means the mudaraba agreement dated 19 November 2020 between DIB Tier 1 Sukuk (4) Ltd. and DIB;

**Nasdaq Dubai** means Nasdaq Dubai or such other entity or body to which its functions have been transferred;

**Official List** means the official list of Euronext Dublin;

**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 DIB or any of its Subsidiaries and cancelled in accordance with Conditions 10.2 and 10.3;
- (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) 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;
- (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;
- (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; 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 to participate in any Written Resolution or Electronic Consent and any direction or request by the Certificateholders;
- (ii) the determination of how many and which Certificates are for the time being outstanding for the purposes of Clauses 15 and 17 of, and Schedule 4 to, these presents and Conditions 12 and 18;
- (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 DIB or any Subsidiary of DIB, in each case as beneficial owner, shall (unless and until ceasing to be so held) be deemed not to remain outstanding;

**Prospectus** means the prospectus dated 18 November 2020 prepared by each of the Trustee and DIB 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;

**Relevant Powers** has the meaning given to it in Clause 7.1;

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

**Tax** means any present or future taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed by or on behalf of any Authority having power to tax;

**these presents** means this Declaration of Trust and the Schedules hereto (including the Conditions), 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. dollar denominated account in London in the name of the Trustee operated by HSBC Bank plc on behalf of the Trustee for the benefit of the Certificateholders (or such other Transaction Account as is opened in London in the name of any Substituted Trustee and operated by the Principal Paying Agent on behalf of the Substituted Trustee and for the benefit of the Certificateholders);

**Trust** means the trust declared pursuant to Clause 2 of this Declaration of Trust;

**Trust Corporation** means a trust corporation entitled by the rules made under the Public Trustee Act 1906 of Great Britain or entitled pursuant to any other compatible 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; and

**Written Resolution** has the meaning given to it in paragraph 1 of Schedule 4.

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 **successor** shall include any entity to whom the business of a person has been transferred under the applicable law;
- (d) a **Clause**, a **paragraph** or a **Schedule** is a reference to a clause or paragraph of, or a schedule to, this Declaration of Trust;
- (e) any **Transaction Document** or a **document** or any **provision** of any such Transaction Document or other document is a reference to that Transaction Document or other document or provision as amended, novated, supplemented, extended, replaced or restated from time to time; and
- (f) a time of day is a reference to London time.

1.3 The headings in this Declaration of Trust are for ease of reference only and do not affect its interpretation.

1.4 In this Declaration of Trust:

- (a) words denoting the singular shall include the plural and *vice versa*; and
- (b) words denoting one gender only shall include the other gender.

1.5 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.

1.6 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.

1.7 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.

1.8 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 *mutatis mutandis*.

1.9 All references to Certificates which are to have a **listing** or to be **listed** on: (a) Euronext Dublin shall be construed to mean that such Certificates have been admitted to the Official List and admitted to trading on the regulated market of Euronext Dublin. The regulated market of Euronext Dublin is a

regulated market for the purposes of Directive 2014/65/EU (as amended); and (b) Nasdaq Dubai shall be construed to mean that such Certificates have been admitted to the DFSA Official List and admitted to trading on Nasdaq Dubai.

- 1.10 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.
- 1.11 All references in these presents or in the Agency Agreement involving compliance by the Trustee or the Delegate with a test of reasonableness shall 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.

## **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 and on behalf of the Certificateholders *pro rata* according to the face amount of Certificates held by each Certificateholder, in accordance with these presents;
- (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 reasonable times during normal business 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 The rights and claims of the Trustee against DIB in respect of the Relevant Obligations are subordinated in right of payment to the claims of all Senior Creditors and, accordingly, payments in respect of the Relevant Obligations by DIB are conditional upon the following (together, the **Solvency Conditions**):



- (a) DIB (in its capacity as Mudareb or otherwise) being Solvent at all times from (and including) the first day of the relevant Periodic Distribution Period (or the Issue Date in the case of the first such period) to (and including) the time of payment of the Relevant Obligations that are due and payable;
  - (b) DIB (in its capacity as Mudareb or otherwise) being capable of making payment of the Relevant Obligations and any other payment that is due to be made on the relevant date to a creditor in respect of all Senior Obligations and all *Pari Passu* Obligations and still be Solvent immediately thereafter; and
  - (c) the total share capital (including, without limitation, retained earnings) of DIB being greater than zero at all times from (and including) the first day of the relevant Periodic Distribution Period (or the Issue Date in the case of the first such period) to (and including) the time of payment of the Relevant Obligations that are due and payable.
- 3.3 Notwithstanding any other provision in this Declaration of Trust or in the Conditions, to the extent that any of the Solvency Conditions are not satisfied at the relevant time or if a bankruptcy order in respect of DIB has been issued by a court in the UAE, all claims of the Trustee in respect of the Relevant Obligations will be extinguished and the Certificates will be cancelled without any further payment to be made by DIB in respect of the Relevant Obligations.
- 3.4 For the avoidance of doubt, nothing in this Declaration of Trust or in the Conditions shall affect or prejudice the payment of Liabilities of the Delegate or the rights and remedies of the Delegate in respect thereof, all of which shall accordingly remain unsubordinated.
- 3.5 The Certificates shall, on issue, be represented by the Global Certificate which the Trustee shall issue to a bank 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.
- 3.6 The Global Certificate shall be printed or typed in the form or substantially in the form set out in Part 1 of Schedule 1. The Global Certificate shall be signed manually or in facsimile 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.
- 3.7 The Trustee shall only issue Definitive Certificates in exchange for the Global Certificate in exceptional circumstances and in accordance with the provisions thereof.
- 3.8 Any Definitive Certificates, if issued, shall be issued in the form or substantially in the form set out in Part 2 of Schedule 1. 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.
- 3.9 Any Definitive Certificates, if issued, shall be signed manually or in facsimile 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 and authenticated shall represent binding and valid obligations of the Trustee.

- 3.10 For the purposes of Clauses 3.6 and 3.9 above, 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.
- 3.11 Title to the Certificates shall pass upon registration of transfer in respect thereof in accordance with the provisions of this Declaration of Trust. Interests in the Global Certificates shall be transferable only in accordance with the rules and procedures for the time being of Euroclear and Clearstream, Luxembourg.

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

Subject 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**

- 5.1 The Trustee has initially appointed the persons named as the Principal Paying Agent, the Registrar, the Transfer Agent and the Calculation 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 promptly by the Trustee (failing which, DIB) to the Delegate and to Certificateholders in accordance with Condition 17.
- 5.2 At any time after a Dissolution Event or a Potential Dissolution Event shall have occurred, or the Certificates shall otherwise become due and payable or the Trustee or the Delegate shall have received any money which it proposes to pay under Clause 14 to the Certificateholders, the Delegate may acting pursuant to the power of attorney granted in Clause 7.1:
- (a) by notice in writing to the Trustee, DIB and each Agent require each Agent pursuant to the Agency Agreement to act thereafter as an agent of the Delegate under the provisions of these presents *mutatis mutandis* on the terms provided in the Agency Agreement (save that the Delegate's liability under any provisions thereof for the indemnification, remuneration and payment of expenses of each Agent shall be limited to the amounts for the time being held on the trusts of these presents relating to the Certificates and available to the Delegate for such purpose) and thereafter:
    - (i) to hold all Certificates and all sums, documents and records held by them in respect of those Certificates on behalf of the Delegate; and/or
    - (ii) to deliver up all Certificates and all sums, documents and records held by them in respect of those 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 law or regulation; and/or

- (b) by notice in writing to each of the Trustee, DIB and the Principal Paying Agent, require the Trustee or DIB, as the case may be, 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 and until such notice is withdrawn.

## **6. POWERS VESTED IN THE DELEGATE**

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

- (a) the power to convene and conduct meetings of Certificateholders as required pursuant to Schedule 4 in its discretion or at the request of the Certificateholders, the Trustee and/or DIB, 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;
- (b) the powers set out in Condition 12.1;
- (c) the power to determine that any undertaking or covenant in terms corresponding to the terms of Condition 13 given to the Delegate pursuant to Clause 10.1(n) is satisfactory, acting in the interests of the Certificateholders;
- (d) the right to retire upon giving notice and the power to appoint a co-delegate in accordance with Clause 21.2; and
- (e) the right to pay, or cause to be paid, amounts from the proceeds from the Trust Assets in accordance with Condition 15.

6.2 DIB may (acting in its sole discretion) instruct the Trustee to, whereupon the Trustee shall, vary the terms of the Mudaraba Agreement (subject to the approval of the Fatwa and Sharia Supervisory Board of the Mudareb) 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 that the Delegate shall consent to such variation, subject to and in accordance with Conditions 10.1(c) and 10.1(d), and 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.

6.3 These presents and any other Transaction Document may only be amended by the Trustee with the consent of the Delegate and the Delegate may (but shall not be obliged to), without the consent of the Certificateholders:

- (a) agree to any modification to the Conditions or any provisions of the Transaction Documents which, in the sole opinion of the Delegate, is of a formal, minor or technical nature or is made to correct a manifest error; or
- (b) agree to any modification (other than in respect of a Reserved Matter (as defined in paragraph 4.4 of Schedule 4)) of these presents or any other Transaction Document,

provided that such modification is not, in the sole opinion of the Delegate, materially prejudicial to the interests of Certificateholders.

Any such modification pursuant to this Clause 6.3 shall be binding on all of the Certificateholders and shall be notified by the Trustee to the Certificateholders as soon as practicable thereafter in accordance with Condition 17.

6.4 The Delegate may, but shall not be obliged to, without the consent of the Certificateholders:

- (a) agree to waive or to authorise any breach or proposed breach of any of the provisions of these presents or the other 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 not (i) in the sole opinion of the Delegate, materially prejudicial to the interests of the Certificateholders; and (ii) in contravention of any express direction by Extraordinary Resolution or request in writing by the holders of at least 20 per cent. of the aggregate face amount of the Certificates then outstanding. 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 to the Certificateholders in accordance with Condition 17 as soon as practicable thereafter.

6.5 The Delegate shall have the powers set out in Clause 15 and shall also have such other powers as expressly specified in these presents and in the other Transaction Documents.

6.6 It is hereby declared that the authorities, discretions, rights and powers conferred on the Delegate in this Clause 6 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 Clause 15.3(b)(xi), 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), 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 of the Trustee under the Mudaraba Agreement and any of the other Transaction Documents 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**), 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 or managing 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 its powers under this Clause 7. This Delegation is made by the Trustee to the Delegate for the benefit of the Delegate and the Certificateholders, subject to the terms of these presents.

- 7.2 The Delegate accepts its appointment pursuant to Clause 7.1 above as delegate of the Trustee and agrees to comply with the terms of these presents and the other Transaction Documents. Subject to the terms of these presents 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; 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 or of any holding, affiliated or associated company of the Delegate 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, officer or affiliate of the Delegate shall be liable to Certificateholders for any profit made by it or him thereby or in connection therewith.
- 8.2 The Trustee 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 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 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, subject to and in accordance with Clause 6 and Clause 7.1 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 Each of the Trustee and, in the circumstances specified in Clause 5.2, the Delegate, shall cause all income from the Trust Assets to be distributed, and all payments in respect of the Certificates to be made, in accordance with these presents and the Agency Agreement.

## 10. UNDERTAKINGS

10.1 The Trustee and, in the case of Clauses 10.1(b), 10.1(c), 10.1(d), 10.1(i), 10.1(k), 10.1(l), 10.1(m) and 10.1(n), DIB 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 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 as if the same were set out in these presents;
- (b) to the extent that it prepares accounts, cause to be prepared and certified by its Auditors in respect of each financial accounting period accounts in such form as will comply with all relevant legal and accounting requirements and all requirements for the time being of the Cayman Islands (in the case of the Trustee) and the Emirate of Dubai and, to the extent applicable, the federal laws of the UAE (in the case of DIB), and it shall at all times keep such books of account as may be necessary to comply with all applicable laws and so as to enable the accounts to be prepared. Any such accounts prepared in respect of each financial accounting period will be sent to the Delegate as soon as practicable after the issue or publication thereof or in any event, in the case of annual financial statements, not later than 180 days from the Financial Year End or, in the case of interim financial statements, not later than a period of 120 days from the Financial Period End, as the case may be;
- (c) send to the Delegate (in the case of DIB, with a copy to Trustee): (i) within 14 days after demand by the Delegate therefor and (ii) (without the necessity for any such demand) promptly after the publication of its financial statements in respect of each financial year and, if applicable, each financial period, and in any event not later than:
  - (A) in the case of annual financial statements, 180 days from the Financial Year End; and
  - (B) in the case of interim financial statements, 120 days from the Financial Period End,a certificate (in the form set out in Schedule 5) of the Trustee or DIB (as the case may be) signed by an Authorised Signatory of the Trustee or DIB (as the case may be) to the effect that, as at a date (the **Certification Date**) not more than seven days before the date of the certificate, no Non-Viability Event, Dissolution Event, Potential Dissolution Event, Non-Payment Event, Non-Payment Election, Tax Event or Capital Event or other breach of this Declaration of Trust 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;
- (d) 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;
- (e) use all reasonable endeavours to maintain the listing and/or quotation of the Certificates on Euronext Dublin and Nasdaq Dubai 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 DIB 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 shall be required to comply with the requirements of any such stock exchange or securities market;

- (f) at all times maintain a Principal Paying Agent, Registrar, a Transfer Agent, a Calculation 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;
- (g) comply with the provisions of Condition 6 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;
- (h) on each date on which a Periodic Distribution Amount or a Dissolution 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(h) except to the extent that there is default in the subsequent payment thereof to the Certificateholders in accordance with the Conditions;
- (i) in order to enable the Delegate to ascertain the amount of Certificates then outstanding for any of the purposes referred to in the proviso to the definition of "outstanding" in Clause 1, it will 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, DIB) setting out the total number and aggregate outstanding face amount of Certificates which are at the date of such certificate held by, or for the benefit of or on behalf of, DIB or any Subsidiary of DIB;
- (j) 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 despatched to their registered holders promptly upon issue;
- (k) 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 possible in accordance with Condition 17;
- (l) give or procure to be given to the Delegate such opinions, certificates, information and evidence as it shall require and in such form as it shall reasonably require (including without limitation the procurement by the Trustee (or, as the case may be, DIB) of all such certificates called for by the Delegate pursuant to Clause 15.3(b)(iv)) for the purpose of the

discharge or exercise of the duties, powers, authorities and discretions delegated to it under these presents, any other Transaction Document or by operation of law;

- (m) send to the Delegate, not less than three days 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 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 two copies of, the final form of every notice to be given by it to the Certificateholders in accordance with Condition 17 (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); and
- (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 Cayman Islands or any such political sub-division or any such authority therein or thereof, immediately upon becoming aware 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 with the substitution for (or, as the case may be, the addition to) the references therein to the Relevant Jurisdiction or any political sub-division or any authority therein or thereof having power to tax 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 (where applicable in the opinion of the Delegate, acting reasonably) to this Declaration of Trust also to modify Condition 13 and/or the definition of "Relevant Jurisdiction" in Condition 1 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.

10.2 The Trustee 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 DIB**

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

- (a) comply with and perform and observe all the provisions of 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 DIB under the Transaction Documents as if the same were set out and contained in these presents;
- (b) comply with all provisions of the Conditions which are expressed to be applicable to it;
- (c) at all times keep proper books of account in relation to its obligations under all Transaction Documents and shall provide copies of such records upon request to the Delegate;
- (d) if the Trustee fails to comply with any obligation to pay Additional Amounts pursuant to Condition 13, unconditionally and irrevocably (irrespective of the payment of any fee), as a continuing obligation, pay to or to the order the Delegate (for the benefit of the Certificateholders) an amount equal to the liability of the Trustee in respect of any and all Additional Amounts required to be paid by it in respect of the Certificates pursuant to Condition 13. For the avoidance of doubt, any payment by DIB pursuant to this Clause



11.1(d) shall discharge *pro tanto* the Trustee's obligation to pay additional amounts pursuant to Condition 13; and

- (e) 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 law 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 advisors 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 DIB for all Liabilities arising in connection with these presents or any other Transaction Document (including fees and disbursements of, or any indemnity or similar undertaking given to, legal counsel or other third party advisors appointed by or on behalf of the Trustee including, without limitation, all fees and expenses payable by the Trustee pursuant to the Corporate Services Agreement) 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 DIB 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 the Certificateholders in the absence of such indemnity.

12.2 DIB shall pay to the Delegate, by way of remuneration for its services as delegate of these presents, such remuneration as shall be agreed in writing between DIB and the Delegate from time to time. 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, all the Certificates having become due for redemption, the Dissolution Amounts and Periodic Distribution Amounts (if any) thereon to the date of redemption have been paid to the Principal Paying Agent or the Delegate provided that if upon due surrender of any Certificate of the moneys due in respect thereof is improperly withheld or refused, remuneration will be deemed not to have ceased to accrue and will continue to accrue until payment in respect of such Certificate is duly made.

12.3 If a Dissolution Event or a Potential Dissolution Event shall have occurred or the Delegate considers it expedient or necessary or has been requested by the Trustee or DIB to undertake duties which the Delegate and DIB agree to be of an exceptional nature or otherwise outside the scope of the normal duties of the Delegate under these presents, DIB shall pay to the Delegate such additional remuneration as shall be agreed between them.

12.4 DIB 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 DIB failing to agree:

- (a) (in a case to which Clause 12.1 above applies) upon the amount of the remuneration; or
- (b) (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 DIB 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 Trustee) and the determination of any such person shall be final and binding upon the Trustee, Delegate and DIB.

- 12.6 Without prejudice to any other right of indemnity, DIB agrees, on demand, to indemnify, reimburse, compensate, hold harmless, pay and discharge all properly incurred Liabilities (including, but not limited to, all costs, charges and expenses paid or incurred in disputing or defending any of the foregoing) incurred by or made against the Delegate and its directors, officers, employees and controlling persons and every Appointee and any Receiver in relation to the preparation and execution of the Transaction Documents and the exercise, or attempted exercise, of their powers and the performance, or attempted performance, of their duties under, and in any other manner in relation to, these presents or any other Transaction Document, including but not limited to travelling expenses and any stamp, issue, registration, documentary and other taxes or duties paid or payable by the Delegate or the above mentioned persons in connection with any action taken or contemplated by or on behalf of the Delegate or the above mentioned persons for enforcing, or resolving any doubt concerning, or for any other purpose in relation to, these presents in each case excluding any Liability arising from the gross negligence, wilful default or fraud of any such persons. The Contracts (Rights of Third Parties) Act 1999 is applicable to this Clause 12.6.
- 12.7 All amounts payable pursuant to Clause 12.6 above shall be payable by DIB on the date specified in a demand by the Delegate.
- 12.8 DIB undertakes to the Trustee and the Delegate that, if any amount payable by DIB to the Trustee or the Delegate pursuant to any Transaction Document is not recoverable from DIB 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 cost, expense or loss (which must be evidenced to DIB by the production of receipts) as a result of the Trustee's holding of the Trust Assets, which cost, expense or loss is not recoverable under the Transaction Documents, then (notwithstanding that the same may have been known to the Trustee or the Delegate) DIB 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 losses, claims, costs, charges and expenses to which it may be subject or which it may incur under or in respect of the Transaction Documents. This indemnity constitutes a separate and independent obligation from the other obligations of DIB under this Declaration of Trust and shall give rise to a separate and independent cause of action.
- 12.9 If, under any applicable law and whether pursuant to a judgment being made or registered against DIB or in the liquidation, insolvency or analogous process of DIB 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 current rate of exchange on the date of payment or, if it is not practicable for the Trustee, the Delegate, any Appointee and each of their respective employees, agents and duly appointed representatives (each a **Compensated Person**) to purchase the required currency with the other currency on the date of

payment, at the current rate of exchange as soon thereafter as it is practicable for it to do so or, in the case of a liquidation, insolvency or analogous process, at the current rate of exchange on the latest date permitted by applicable law for the determination of liabilities in such liquidation, insolvency or analogous process) actually received by the relevant Compensated Person falls short of the amount due under the terms of these presents, DIB undertakes that it shall, as a separate and independent obligation, indemnify and hold harmless the Compensated Person against the amount of such shortfall. For the purpose of this Clause 12.9, **current rate of exchange** means the spot rate at which the relevant Compensated Person 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.

- 12.10 Notwithstanding the foregoing, under no circumstances will any party to this Declaration of Trust be liable for any special, consequential or indirect loss of any kind whatsoever (including, but not limited to, 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.
- 12.11 DIB hereby undertakes to the Delegate and the Trustee that all moneys payable by it to the Delegate under this Clause 12 shall be made without set-off or counterclaim and without any withholding or deduction unless the withholding or deduction is required by law, in which event DIB will pay such additional amounts as will result in the receipt by the Delegate of the amounts which would otherwise have been payable by DIB to the Delegate or the Trustee, as the case may be, under this Clause 12 in the absence of any such withholding or deduction.
- 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.

### **13. INVESTMENT**

The Delegate shall have no powers of investment with respect to the Trust Assets.

### **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 in accordance with the order of priority set out in Condition 5.3 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 or, following the occurrence of a Dissolution Event and subject to Clause 5.2, the Delegate, shall 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.
- 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 in respect of which claims have been prescribed under Condition 14, such monies shall be promptly donated by the Trustee to a registered or otherwise officially recognisable charitable organisation.
- 14.4 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 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 (to the extent applicable) 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 or delegated to the Delegate pursuant to Clause 7, as appropriate, in respect of their respective capacities:
    - (i) the Delegate and the Trustee may in relation to these presents, act and/or rely on the opinion or advice of, or a report, certificate, or any information (whether addressed to the Delegate or the Trustee or not and whether or not such opinion report, certificate or advice or any engagement letter or other related document contains a monetary or other limitation of liability or limits the scope and/or basis of such advice, opinion, report, certificate or information) obtained from any lawyer, valuer, banker, broker, accountant (including the Auditors) or other expert appointed by DIB, the Trustee, the Delegate or an Agent or otherwise, and shall not be responsible to the Certificateholders or any other person for any loss occasioned by so acting and/or relying whether such advice, opinion, certificate, report or information is obtained or addressed to the Trustee, the Delegate or any other person;
    - (ii) any such opinion, advice, certificate, report 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, advice, certificate, report or information purporting to be conveyed by such means even if it contains some error or is not authentic;
    - (iii) the Trustee and the Delegate may act and/or rely without liability to Certificateholders or any other person on any report, confirmation or certificate or any advice of any accountants, financial advisers, financial institution or any other expert, whether or not addressed to the Trustee or the Delegate and whether or not liability in relation thereto is limited by reference to a monetary cap, methodology or otherwise;
    - (iv) if the Delegate requires to be satisfied or to have any information as to any fact or the expediency of any act verified, the Delegate may call for and shall be at liberty to accept as sufficient evidence of such facts or matters or the expediency of any such transaction or thing or act, a certificate signed by any two duly authorised representatives of the Trustee or DIB, and the Delegate shall not be bound in any such case to call for further evidence or be responsible for any Liability that may be occasioned by it or any other person acting on such certificate;
    - (v) the Delegate and the Trustee shall 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 Delegate to be of good repute and the Delegate and the Trustee shall not be responsible for, or be required to insure against, any Liability incurred in connection with any such holding or deposit and may pay all sums required to be paid on account of or in respect of any such deposit;

- (vi) the Delegate shall not 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 it shall have actual knowledge or shall have express notice pursuant to these presents to the contrary, 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 other parties to the Transaction Documents and the Trustee 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;
- (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 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 Trustee, DIB and the Certificateholders save in the case of manifest error;
- (viii) the Delegate as between itself 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, DIB and the Certificateholders;
- (ix) in connection with the exercise by it of any of its powers, (in the case of the Trustee only) trusts, authorities and discretions under these presents (including, without limitation, any modification), 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, DIB 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 DIB to the extent already provided for in Condition 13);

- (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 him or any partner of his or by his firm in connection with the Trust and also his proper charges in addition to disbursements for all other work and business done and all time spent by him or his 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) the Delegate or the Trustee may, in the execution and exercise of all or any of the (in the case of the Trustee only) 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, as the case may be, 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 or a co-delegate 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, provided that any such delegate or sub-delegate is entitled to only those rights as the Delegate has pursuant to and in accordance with the provisions of these presents and provided that the Trustee and the Delegate shall have exercised due 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 supervise the proceedings or acts of any such delegate or sub-delegate or be in any way responsible for any Liability incurred by reason of any misconduct, omission or default on the part of any such delegate or sub-delegate;
- (xii) the Delegate or the Trustee may, in the conduct of its duties and powers in relation to the Trust, instead of acting personally employ and pay an 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 due care in the selection of such agent, neither the Delegate nor the Trustee shall be responsible for any Liability incurred by reason of any misconduct, omission or default on the part of any such agent or be bound to 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) makes no representation and assumes no responsibility for the validity or enforceability of any Trust Assets and shall not under any circumstances have any liability to the Certificateholders or any other party 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 or any other party for any amount on any sum or assets which should have been paid or delivered by it;
- (xiv) neither the Delegate nor the Trustee shall 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) in relation to any discretion to be exercised or action, step or proceeding to be taken by the Delegate under any Transaction Document, the Delegate may, at its discretion and without further notice or shall, if it has been so directed by an Extraordinary Resolution of the Certificateholders (whether passed at a meeting of Certificateholders, by Written Resolution or by Electronic Consent) or if so requested in writing by the holders of at least 20 per cent. in aggregate face amount of such Certificates then outstanding, exercise such discretion or take such action, step or proceeding provided that, in either case, the Delegate shall not be obliged to exercise such discretion or take such action, step or proceeding unless it shall have been indemnified and/or secured and/or prefunded to its satisfaction against all Liabilities and provided that the Delegate shall not be held liable for the consequences of exercising and/or not exercising its discretion or taking or not taking any such action, step or proceeding and may do so without having regard to the effect of such action on individual Certificateholders;
- (xviii) 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, DIB and the Certificateholders shall be conclusive and binding on the Trustee, DIB and the Certificateholders) and shall not be responsible for any liability which may result from their 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, DIB 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;
- (xix) 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 by Electronic Consent) 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 or a direction or request, that it was not signed by the requisite number of Certificateholders, in the case of an Electronic Consent, that it was not communicated 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;

- (xx) 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;
- (xxi) 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. 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;
- (xxii) neither the Trustee nor the Delegate shall (unless and to the extent required to do so by any Transaction Document or by law or ordered so to do by a court of competent jurisdiction) be required to disclose to any Certificateholder or any other person any information (including, without limitation, information of a confidential, financial or price sensitive nature) made available by DIB or any other person 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;
- (xxiii) the Delegate or 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 due care in the selection of such custodian or nominee the Delegate or the Trustee shall not 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 supervise the proceedings or acts of such person;
- (xxiv) the Delegate shall not 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;
- (xxv) 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;
- (xxvi) 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 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;

- (xxvii) 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 hereto or 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 and all Liabilities which may be incurred in connection with such action, step or proceeding and may demand prior to taking any such action, step or proceeding that there be paid to it in advance such sums as it considers (without prejudice to any further demand) shall be sufficient so to indemnify it on an after tax basis;
- (xxviii) notwithstanding anything contained in these presents, to the extent required by any applicable law, if the Delegate is required to make any withholding or deduction from any distribution or payment made by it under these presents (other than in connection with its remuneration as provided for herein) or if the Delegate is otherwise charged to, or may become liable to, Tax as a consequence of performing its duties under these presents or the other Transaction Documents, then the Delegate shall be entitled to make such withholding or deduction 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 Trustee on Trust or available to the Delegate for such purpose;
- (xxix) 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, interest, 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 his own benefit;
- (xxx) 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 DIB 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;
- (xxxi) no provision of these presents or any other Transaction Document shall require the Delegate or the Trustee to do, and notwithstanding anything else contained in these presents or the other Transaction Documents the Delegate and/or the Trustee may refrain from doing, anything which would or may in its opinion:

- (A) be illegal or contrary to any applicable law of any jurisdiction or directive or regulation of any agency of any state (and the Delegate and/or the Trustee may do anything which is, in its opinion, necessary to comply with any such law, directive or regulation) or prevent the Delegate or the Trustee from doing anything which is necessary to comply with any applicable law or regulation or directive;
  - (B) render it liable to any person; or
  - (C) cause it to expend or risk its own funds or otherwise incur any Liability in the performance of any of its duties or in the exercise of any of its rights, powers, authorities or discretions hereunder, if it shall have grounds for believing that repayment of such funds or adequate indemnity against or security for such risk or Liability is not assured to it;
- (xxxii) unless notified to the contrary, the Delegate shall be entitled to assume without enquiry (other than requesting a certificate pursuant to Clause 10.1(i) above) that no Certificates are held by, for the benefit of, or on behalf of DIB or any Subsidiary of DIB;
- (xxxiii) the Delegate shall have no responsibility whatsoever to the Trustee, DIB 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;
- (xxxiv) any certificate or report of the Auditors or insolvency officials (as applicable) of the Trustee, DIB 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 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, DIB or such other person in respect thereof and notwithstanding that the scope and/or basis of such 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 such case be bound to call for further evidence or be responsible for any liability or inconvenience that may be occasioned by its failure to do so;
- (xxxv) 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, any other Transaction Document, the Certificates or any other agreement or document relating to the transactions contemplated in these presents or under such other agreement or document;
- (xxxvi) 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. 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 or other document to such effect purporting to be issued by Euroclear or Clearstream, Luxembourg and subsequently found to be forged or not authentic;

- (xxxvii) the Delegate makes no 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;
- (xxxviii) the Delegate shall not be liable for any error of judgment made in good faith by any officer or employee of the Delegate assigned by the Delegate to administer its corporate trust matters;
- (xxxix) the Delegate has no obligation to assume the role or responsibility of the Mudareb or to appoint a successor Mudareb;
- (xl) 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;
- (xli) the Delegate may determine whether or not:
  - (A) a DIB Event, Dissolution Event, Potential Dissolution Event or any other default in the performance by the Trustee or DIB of any obligation under the provisions of these presents or contained in the Certificates or any other Transaction Document has occurred and, if applicable, whether such default is capable of remedy and/or is materially prejudicial to the interests of the Certificateholders; and
  - (B) any matter constitutes a Reserved Matter, and any such determination shall be conclusive and binding upon the Trustee, DIB and the Certificateholders;
- (xlii) the Delegate may do anything which is, in its opinion, necessary to comply with any applicable law, directive or regulation;
- (xliii) 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;
- (xliv) 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;
- (xlv) 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;

- (xlvi) 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 or instructions or directions received by it in accordance with these presents;
- (xlvii) the Delegate shall have no responsibility whatsoever to the Trustee, DIB, the Certificateholders or any other Person, (i) as regards any deficiency which might arise because the Delegate is subject to any Tax in respect of all or any of the Trust Assets, the income therefrom or the proceeds thereof, or (ii) for any inability to enforce any judgment against DIB for any reason;
- (xlviii) notwithstanding anything in these presents or any other 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.
- (xlix) the Delegate shall have the discretion at any time:
  - (A) to 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 licenses; and
  - (B) to 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.

Nothing in this Declaration of Trust shall require the Delegate to assume an obligation of the Trustee arising under any provisions of the listing, prospectus, disclosure or transparency rules (or equivalent rules of any other competent authority besides the Financial Conduct Authority or Prudential Regulation Authority);

- (l) 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.
- (li) the Delegate shall be entitled to assume, without further investigation or inquiry, for the purpose of exercising or performing any right, power, authority 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; and

- (lii) the Delegate shall be entitled to deduct FATCA Withholding and shall have no obligation to gross-up any payment hereunder or to pay any additional amount as a result of such FATCA Withholding.

## **16. PROTECTION OF TRUSTEE OR DELEGATE**

- 16.1 Subject to Sections 750 and 751 of the Companies Act 2006 (if applicable) and notwithstanding anything to the contrary in the Transaction Documents, neither the Trustee nor the Delegate shall be liable to any person for any matter or thing done or omitted in any way in connection with or in relation to the Transaction Documents save in relation to its own gross negligence, wilful default or fraud having regard to the provisions of the Transaction Documents conferring on it any (in the case of the Trustee only) trusts, powers, authorities or discretions.
- 16.2 Any liability of the Delegate arising under 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 the Transaction Documents, or at the time of accepting any relevant instructions, which increase the amount of the loss. In no event shall the Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated savings, or for special, punitive or consequential damages, whether or not the Delegate has been advised of the possibility of such loss or damages and regardless of the form of action.

## **17. ENFORCEMENT OF RIGHTS**

- 17.1 If a DIB Event occurs and a Dissolution Notice is delivered by the Delegate to the Trustee, the Delegate may at its discretion or shall, if so requested in writing by the Certificateholders holding at least 20 per cent. of the aggregate face amount of the Certificates then outstanding, in each case subject to Condition 12.3(e)(i), take one or more of the following steps: (a) institute any steps, actions or proceedings for the winding-up of DIB; and/or (b) prove in the winding-up of DIB; and/or (c) institute any steps, actions or proceedings for the bankruptcy of DIB; and/or (d) claim in the liquidation of DIB; and/or (e) take such other steps, actions or proceedings which, under the laws of the UAE, have an analogous effect to the actions referred to in (a) to (d) above, in each case for (subject to the provisos contained in Condition 12.3(a)), 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, 12.3 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 20 per cent. of the aggregate face amount of the Certificates then outstanding and without further notice (subject in each case to Condition 12.3(e)(i)) institute such steps, actions or proceedings against DIB, and the Delegate may at its discretion and without further notice institute such steps, actions or proceedings against the Trustee, as it may think fit to enforce any term or condition binding on DIB or the Trustee (as the case may be) under the Transaction Documents (other than any payment obligation of DIB under or arising from the Transaction Documents, including, without limitation, payment of any principal 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 DIB to procure the substitution of the Trustee in the circumstances described in Condition 12.2, and in no event shall DIB, 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) in respect of any payment obligations of DIB 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 or DIB or to take the steps, actions or proceedings referred to in Conditions 12.3(a) and 12.3(b) unless the Delegate, having become so bound to proceed, (a) fails to do so within a reasonable period, or (b) is unable by reason of an order of a court having competent jurisdiction to do so, and such failure or inability shall be continuing, in which case the Certificateholders shall have only such rights against DIB as those which the Trustee or the Delegate is entitled to exercise as set out in Condition 12.3.
- 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 DIB shall be to enforce their respective obligations under the Transaction Documents.
- 17.5 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 steps, actions or proceedings referred to in the Conditions in respect of DIB or, in the case of the Delegate only, the Trustee to enforce the terms of the Transaction Documents or give a Dissolution Notice (including without limitation, pursuant to Condition 12) unless (a) it shall have been so requested by an Extraordinary Resolution of the Certificateholders or in writing by the Certificateholders holding at least 20 per cent. of the aggregate face amount of the Certificates then outstanding, and (b) it shall have been indemnified and/or secured and/or pre-funded to its satisfaction provided that the Delegate shall not be liable for the consequences of exercising its discretion or taking such steps, actions or proceedings 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 thereof in accordance with Condition 5.3, 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.
- 17.7 Pursuant to the terms of the Transaction Documents, DIB is obliged to make certain payments directly or to the order of to the Trustee. Such payment obligations form part of the Trust Assets and the Trustee and/or the Delegate will, subject to Conditions 4.2 and 12.3, have recourse against DIB to recover such payments, notwithstanding any other provisions of this Clause 17 or Clause 24.

## 18. SUBSTITUTION

- 18.1 DIB 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, 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 trustee and issuer 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 (unless the Delegate otherwise agrees) give to the Delegate an undertaking satisfactory to the Delegate in terms corresponding to Condition 13 with the substitution for or the addition to the references in that Condition and the definition of Relevant Jurisdiction to the Trustee's Territory of references to the Substituted Territory whereupon this Declaration of Trust and the Certificates shall be read accordingly (and DIB 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, extending its obligations thereunder to the Substituted Territory);
- (c) if any 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 DIB comply with such other requirements as the Delegate may direct in the interests of the Certificateholders; and
- (e) if the Trustee is substituted in accordance with Clause 18.1, the Substituted Trustee will open and maintain a transaction account in London in its name which shall be operated by the Principal Paying Agent on behalf of the Trustee for the benefit of the Certificateholders and 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 this Declaration of Trust to the "Transaction Account" will be construed accordingly.

18.2 Subject to Condition 12.2, the Delegate may agree to the substitution of the Substituted Trustee without obtaining the consent 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).

18.3 If DIB 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 and 12.3 shall apply to the relevant Trustee Event as if it was a DIB Event.

## **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, all remaining Trust Assets shall be distributed to DIB and the Trust shall be dissolved.

## **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 the 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 60 days 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 the power to appoint any person to act as co-delegate jointly with the Delegate:
- (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 the 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 depository 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. NOTICES**

- 23.1 All notices or other communications under or in connection with these presents shall be given in writing, by email or by facsimile 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 email, when sent; and
  - (c) if by facsimile, when received in legible form.



23.2 However, a notice given in accordance with the above but received on a day which is not a business day or after business hours in the place of receipt will only be deemed to be given on the next business day. Any such notice shall take effect, if delivered in person, at the time of delivery, if sent by registered post, five business days after despatch, in the case of an email, when sent, subject to no delivery failure notification being received by the sender within 24 hours of the time of sending and, in the case of a facsimile, when a transmission report showing the successful transmission of the facsimile is received by the sender.

The address, email address and facsimile number (as the case may be) of each of the Trustee, DIB and the Delegate for all notices under or in connection with this Declaration of Trust are:

(a) In the case of the Trustee, to:

DIB Tier 1 Sukuk (4) Ltd.  
MaplesFS Limited  
Boundary Hall  
Cricket Square  
PO Box 1093  
Grand Cayman, KY1-1102  
Cayman Islands

Facsimile No.: +1 345 945 7100  
Attention: The Directors

(with a copy to be sent to the Delegate)

(b) In the case of DIB, to:

Dubai Islamic Bank PJSC  
P.O. Box 1080  
Dubai  
United Arab Emirates

Facsimile No.: +971 4 211 2329 / +971 4 294 2423  
Attention: Mohammed Saleem / Mouhanad Al Ghabra

(c) In the case of the Delegate, to:

HSBC Corporate Trustee Company (UK) Limited  
8 Canada Square  
London E14 5HQ  
United Kingdom

Email: ctla.trustee.admin@hsbc.com  
Facsimile No.: +44 20 7991 4350  
Attention: Issuer Services Trustee Administration

or, in each case, to such other address, email 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 business days' written notice in accordance with the provisions of this Clause 23. In this Clause 23, **business day** in relation to any place means a day on which commercial banks are open for general business in that place.

- 23.3 The Delegate shall without delay send a copy to DIB and (to the extent such has not been received from the Trustee) the Trustee of:
- (a) every notice, certificate, opinion, document, information or communication received by it pursuant to the terms of any Transaction Document; and
  - (b) every notice, certificate, opinion, document, information or communication given by it pursuant to the terms of any Transaction Document.

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

- 24.1 Each of DIB and the Delegate agrees and each of the Certificateholders, by subscribing for or acquiring the Certificates, acknowledges and agrees that notwithstanding anything to the contrary contained in these presents or any other Transaction Document:
- (a) no payment of any amount whatsoever shall be made by the Trustee or any of its shareholders, 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. The Mudaraba Agreement provides that there is no guarantee of any return from the Mudaraba Assets and DIB's obligation to pay amounts thereunder are subject to the more detailed provisions set out therein, and references in the Conditions to "Periodic Distribution Amount", "profit" and "Profit Rate" should be construed accordingly;
  - (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 neither DIB 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, employees, agents, shareholders or affiliates as a consequence of such shortfall or otherwise;
  - (f) no recourse (whether by institution or enforcement of any legal proceeding or assessment or otherwise) in respect of any breaches of any duty, obligation or undertaking of the Trustee arising under or in connection with the Conditions or the Transaction Documents by virtue

of any customary law, statute or otherwise shall be had against any shareholder, member, officer, agent, 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 means 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 the Certificates.

24.2 The provisions of this Clause 24 shall survive any termination of these presents or any other Transaction Document.

## **25. SEVERABILITY**

If any provision in or obligation under this Declaration of Trust is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair (i) the validity, legality or enforceability under the law of that jurisdiction of any other provision in or obligation under this Declaration of Trust or (ii) the validity, legality or enforceability under the law of any other jurisdiction of that or any other provision in or obligation under this Declaration of Trust.

## **26. GENERAL**

26.1 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.

26.2 The Trustee will pay on written demand by the Delegate, any properly evidenced and incurred stamp, issue, registration, documentary and other similar fees, duties or taxes (if any) payable in connection with (a) the execution and delivery of these presents and (b) the constitution and original issue of the Certificates and (ii) in any jurisdiction on or in connection with 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.

26.3 DIB agrees that if the Trustee fails to make any payment required to be made by it under these presents or fails to take or procure the taking of any other action required to be taken or procured by it under these presents, DIB shall make such payment or take or procure the taking of the relevant action.

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

A person who is not a party to this Declaration of Trust has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these presents except and to the extent that this Declaration of Trust expressly provides for such Act to apply to any of its terms, but this does not affect any right or remedy of a third party which exists or is available apart from that Act. Notwithstanding any term of this Declaration of Trust, any termination, rescission, variation, waiver or settlement under this Declaration of Trust is not subject to the consent of any person that is not a party to this Declaration of Trust.

## 28. SHARI'A COMPLIANCE

Each of DIB Tier 1 Sukuk (4) Ltd. and Dubai Islamic Bank PJSC hereby agrees that it has accepted the Shari'a compliant nature of the Transaction Documents and, to the extent permitted by law, further agrees that:

- (a) it shall not claim that any of its obligations under the Transaction Documents (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; and
- (c) none of its obligations under the Transaction Documents 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 are not compliant with the principles of Shari'a.

## 29. GOVERNING LAW AND DISPUTE RESOLUTION

29.1 These presents (including the remaining provisions of this Clause 29) 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.

29.2 Subject to Clause 29.3 any dispute, claim, difference or controversy arising out of, relating to or having any connection with these presents (including any dispute as to their existence, validity, interpretation, performance, breach or termination or the consequences of their nullity or any 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 London Court of International Arbitration (the **LCIA**) (the **Rules**), which Rules (as amended from time to time) are deemed to be incorporated by reference into this Clause 29.2. For these purposes:

- (a) the seat of arbitration shall be London;
- (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 nominate 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 the party nominated arbitrators fail to nominate the third arbitrator within 15 days of the nomination of the second arbitrator, such arbitrator shall be appointed by the LCIA; and
- (c) the language of the arbitration shall be English.

29.3 Notwithstanding Clause 29.2, the Delegate may, in the alternative, and at its sole discretion, by notice in writing to the Trustee and DIB (as applicable):

- (a) within 28 days of service of a Request for Arbitration (as defined in the Rules); or
- (b) if no arbitration has commenced,

require that a Dispute be heard by a court of law. If such notice is given, the Dispute to which such notice refers shall be determined in accordance with Clause 29.5 and, any arbitration commenced under Clause 29.2 in respect of that Dispute will be terminated. With the exception of the Delegate

(whose costs will be borne by the Trustee, failing which DIB), each of the parties to the terminated arbitration will bear its own costs in relation thereto.

- 29.4 If any notice to terminate is given after service of any Request for Arbitration in respect of any Dispute, the Delegate must promptly give notice to the LCIA Court and to any Tribunal (each as defined in the Rules) already appointed in relation to the Dispute that such Dispute will be settled by the courts. Upon receipt of such notice by the LCIA Court, the arbitration and any appointment of any arbitrator in relation to such Dispute will immediately terminate. Any such arbitrator will be deemed to be *functus officio*. The termination is without prejudice to:
- (i) the validity of any act done or order made by that arbitrator or by the court in support of that arbitration before his appointment is terminated;
  - (ii) his entitlement to be paid his proper fees and disbursements; and
  - (iii) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.
- 29.5 If a notice pursuant to Clause 29.3 is issued, the following provisions shall apply:
- (a) subject to Clause 29.5(c) below, the courts of England or the courts of the DIFC, at the option of the Delegate, shall have exclusive jurisdiction to settle any Dispute and each of the Trustee and DIB submits to the exclusive jurisdiction of such courts;
  - (b) each of Trustee and DIB agrees that the courts of either England or the DIFC, as the case may be, at the option of the Delegate, are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue to the contrary; and
  - (c) this Clause 29.5 is for the benefit of the Delegate only. As a result, and notwithstanding Clauses 29.5(a) and 29.5(b) above, the Delegate may take proceedings relating to a Dispute (the **Proceedings**) in any other courts with jurisdiction. To the extent allowed by law, the Delegate may take concurrent Proceedings in any number of jurisdictions.
- 29.6 Each of the Trustee and DIB appoints Maples and Calder at its registered office at 11th Floor, 200 Aldersgate Street, London EC1A 4HD, as its agent for service of process in England 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 Proceedings or Disputes and notify the Delegate and the Certificateholders of such appointment. Nothing in this Declaration of Trust shall affect the right to serve process in any other manner permitted by law.
- 29.7 DIB agrees that, to the extent that it may claim for itself or its assets or revenues immunity from jurisdiction, enforcement, prejudgment, proceedings, injunctions and all other legal proceedings and relief and to the extent that such immunity (whether or not claimed) may be attributed to it or its assets or revenues, it will not claim and hereby irrevocably and unconditionally waives such immunity in relation to any Proceedings or Disputes. Further, DIB irrevocably and unconditionally consents to the giving of any relief or the issue of any legal proceedings, including, without limitation, jurisdiction, enforcement, prejudgment, proceedings and injunctions in connection with any Proceedings or Disputes.
- 29.8 Each party irrevocably agrees that no interest will be payable or receivable under or in connection with this Declaration of Trust and in the event that it is determined that any interest is payable or receivable in connection with this Declaration of Trust by a party, whether as a result of any judicial award or by operation of any applicable law or otherwise, such party agrees to waive any rights it

may have to claim or receive such interest and agrees that if any such interest is actually received by it, it shall promptly donate the same to a registered or otherwise officially recognised charitable organisation.

- 29.9 For the avoidance of doubt, nothing in Clause 29.8 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, Indemnity Payment, Capital Event Profit Amount, Periodic Distribution Amounts, Outstanding Payments or profit of any kind howsoever described payable by DIB (in any capacity) or the Trustee (in any capacity) pursuant to the Transaction Documents and/or the 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 and delivered 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 OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT PURSUANT TO AN EXEMPTION FROM OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION UNDER THE SECURITIES ACT.**

**ISIN:** XS2258453443

**Common Code:** 225845344

#### **DIB TIER 1 SUKUK (4) LTD.**

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

#### **GLOBAL CERTIFICATE**

**representing**

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

This Certificate is a Global Certificate in respect of a duly authorised issue of U.S.\$1,000,000,000 Additional Tier 1 Capital Certificates (the **Certificates**) of DIB Tier 1 Sukuk (4 Ltd. in its capacity as trustee (the **Trustee**). The Certificates are constituted by a Declaration of Trust dated 19 November 2020 (the **Declaration of Trust**) between the Trustee, DIB and HSBC Corporate Trustee Company (UK) Limited (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 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

HSBC Issuer Services Common Depository Nominee (UK) 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 HSBC Bank plc as registrar (the **Registrar**) and shall initially be:

U.S.\$1,000,000,000 (ONE BILLION 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 8 Canada Square, London E14 5HQ, United Kingdom 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 shown on the Register as the Registered Holder 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 (i) if a DIB Event has occurred and a Dissolution Notice is delivered in accordance with Condition 12.1 or (ii) both Euroclear and Clearstream, Luxembourg have been closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) 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 (each, an **Exchange Event**).

The Trustee will promptly give notice to the Certificateholders in accordance with Condition 17 upon the occurrence of an Exchange Event. If an Exchange Event occurs, any of the Trustee, the Delegate or Euroclear and/or Clearstream, Luxembourg (acting on the instructions of any holder of an interest in this Global Certificate) may 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 Registered Holder on any day (other than a Saturday or Sunday) on which banks are open for general business in Luxembourg 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 payable in accordance with the Conditions or that the date fixed for payment of the Dissolution Distribution Amount has occurred and, in either case, payment in full of the amount due has not been made to the Registered Holder 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 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 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 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 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 Accountholders in substitution for notification as required by Condition 17 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 stock 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, 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 through Euroclear and/or Clearstream, Luxembourg 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 (in the case of the Dissolution Distribution Amount) and five years (in the case of any Periodic Distribution Amounts or Outstanding Payments) 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.

Whilst any Certificates held by a Certificateholder are represented by this Global Certificate, any partial Write-down of the Certificates will be effected in accordance with the operating procedures of Euroclear and/or Clearstream, Luxembourg by way of a pool factor adjustment.

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, English law.

If any provision in or obligation under this Global Certificate is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair: (a) the validity, legality or enforceability under the law of that jurisdiction of any other provision in or obligation under this Global Certificate, and (b) the validity, legality or enforceability under the law of any other jurisdiction of that or any other provision in or obligation under this Global Certificate.

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 manually or in facsimile by a person duly authorised on its behalf.

**DIB TIER 1 SUKUK (4) LTD.**

By \_\_\_\_\_  
Duly authorised

19 November 2020

**Certificate of authentication**

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

Duly authorised for and on behalf of

**HSBC BANK PLC**

as Registrar

**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 OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, U.S. PERSONS EXCEPT PURSUANT TO AN EXEMPTION, OR IN A TRANSACTION NOT SUBJECT TO, THE FROM REGISTRATION UNDER THE SECURITIES ACT.**

---

U.S.\$●

ISIN: ●

[Serial No.]

---

**DIB TIER 1 SUKUK (4) LTD.**

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

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

The issue of the Certificates was authorised by a resolution of the board of directors of DIB Tier 1 Sukuk (4) Ltd. in its capacity as trustee (the **Trustee**) dated 10 November 2020.

This Certificate is constituted by a Declaration of Trust dated 19 November 2020 (the **Declaration of Trust**) between the Trustee, DIB and HSBC Corporate Trustee Company (UK) Limited (the **Delegate**) and issued in the aggregate face amount of:

U.S.\$[●] ([●] 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.

**DIB TIER 1 SUKUK (4) LTD.**

By \_\_\_\_\_  
Duly authorised

Dated as of [●]

**Certificate of authentication**

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

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

**HSBC BANK PLC**

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 **DIB TIER 1 SUKUK (4) LTD.** 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 OF THE ADDITIONAL TIER 1 CAPITAL CERTIFICATES

DIB Tier 1 Sukuk (4) Ltd. (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 Additional Tier 1 Capital Certificates (the **Certificates**) in an aggregate face amount of U.S.\$1,000,000,000. The Certificates are constituted by a declaration of trust (the **Declaration of Trust**) dated 19 November 2020 (the **Issue Date**) made between the Trustee, Dubai Islamic Bank PJSC (**DIB**) and HSBC Corporate Trustee Company (UK) Limited (the **Delegate**, which expression shall include all persons for the time being appointed as the delegate or delegates under the Declaration of Trust) and will represent an undivided ownership interest in the Trust Assets (as defined in Condition 5).

Payments relating to the Certificates will be made pursuant to an agency agreement dated the Issue Date (the **Agency Agreement**) made between the Trustee, DIB, the Delegate, HSBC Bank plc 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**), HSBC Bank plc as registrar (in such capacity, the **Registrar**) and as transfer agent (in such capacity, the **Transfer Agent** and, together with the Registrar and any further or other transfer agents appointed from time to time in respect of the Certificates, the **Transfer Agents**) and HSBC Bank plc as calculation agent (the **Calculation Agent**, which expression includes the Calculation Agent for the time being). 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). 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:

- (a) to contribute the sums paid by it in respect of its Certificate(s) to the Mudareb (as defined in Condition 5) in accordance with the Mudaraba Agreement (as defined in Condition 12.2);
- (b) to act as Rab-al-Maal (as defined in Condition 5) 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 in Condition 12.2)); and
- (c) to enter into each Transaction Document, subject to the provisions of the Declaration of Trust and these Conditions.

#### 1. DEFINITIONS AND 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;



**Additional Tier 1 Capital** means capital qualifying as, and approved by the Financial Regulator as, additional tier 1 capital in accordance with the Capital Regulations;

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

**Assets** means the consolidated gross assets of DIB as shown (if required by any relevant party) in the latest audited or (as the case may be) auditor reviewed consolidated balance sheet of DIB, but adjusted for subsequent events in such manner as the Directors, the Auditors or (if a bankruptcy trustee (or any equivalent insolvency practitioner) has been appointed in respect of DIB) a bankruptcy trustee (or such equivalent insolvency practitioner) may determine;

**Auditors** means, at any time, the statutory independent auditors to DIB at the relevant time or such other auditor as may be appointed for the purpose of the Transaction Documents or, failing such appointment, as may be nominated by the Delegate (subject to the Delegate being indemnified and/or secured and/or pre-funded to its satisfaction);

**Authorised Denomination** has the meaning given to that term in Condition 2.1;

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

**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 Dubai, New York City and London;

**Call Date** means the First Call Date and any date thereafter up to and including the First Reset Date and any Periodic Distribution Date following the First Reset Date;

**Capital Event** is deemed to have occurred if DIB is notified in writing by the Financial Regulator to the effect that the face amount (or the amount that qualifies as regulatory capital, if some amount of the Certificates are held by DIB or whose purchase is funded by DIB) of the Certificates outstanding would cease to be eligible to qualify, in whole or in part, for inclusion in the consolidated Tier 1 Capital of DIB (save where such non-qualification is only as a result of any applicable limitation on the amount of such capital), and provided that DIB satisfies the Financial Regulator that such non-qualification was not reasonably foreseeable at the time of the issuance of the Certificates;

**Capital Event Amount** means, in relation to a Certificate, its Prevailing Face Amount together with any Outstanding Payments;

**Capital Event Profit Amount** means, on the date of final constructive liquidation of the Mudaraba pursuant to clause 7.5(c) of the Mudaraba Agreement, an amount equal to one per cent. of the Mudaraba Capital payable from the Rab-al-Maal Final Mudaraba Profit (if any) on such date;

**Capital Regulations** means, at any time, the regulations, requirements, standards, guidelines, guidance and policies relating to the maintenance of capital and/or capital adequacy then in effect in the UAE, including those of the Financial Regulator;

**Central Bank** means the Central Bank of the UAE or any successor thereto;

**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;

**Common Equity Tier 1 Capital** means capital qualifying as, and approved by the Financial Regulator as, common equity tier 1 in accordance with the Capital Regulations;

**Corporate Services Agreement** means the corporate services agreement dated 10 November 2020 made between the Trustee and the Trustee Administrator;

**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));

**Determination Date** means, in respect of a Reset Period, the third Business Day prior to the commencement of such Reset Period;

**DIB Event** means:

- (a) **Non-payment:** DIB (acting in its capacity as Mudareb) fails to pay an amount which is equivalent to principal (being capital amounts, including the Mudaraba Capital, payable in accordance with the provisions of the Mudaraba Agreement) or profit (including Additional Amounts) due and payable by it pursuant to any Transaction Document and the failure continues for a period of (in the case of principal) seven days or (in the case of profit) 14 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
- (b) **Insolvency:** a final determination is made by a court or other official body that DIB is insolvent or bankrupt or unable to pay its debts including any financing arrangement issued (or intended to be issued) in compliance with the principles of Shari'a and which is treated as debt for the purposes of applicable law, in each case whether entered into directly or indirectly by DIB; or
- (c) **Winding-up:** an administrator is appointed, an order is made or an effective resolution is passed for the winding-up or dissolution or administration of DIB or DIB applies or petitions, for a winding-up or administration order in respect of itself or ceases, or through an official action of its Directors threatens to cease, to carry on all or substantially all of its business or operations, except, in each case (i) 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 (ii) for any step or procedure which is part of a solvent reconstruction or amalgamation approved by any court of competent jurisdiction or other competent authority; or
- (d) **Analogous Event:** any event occurs which under the laws of the UAE has an analogous effect to any of the events referred to in paragraphs (b) or (c) above;

**Directors** means the executive and non-executive directors of DIB who make up its board of directors;

**Dispute** has the meaning given to it in Condition 20.2;

**Dissolution Distribution Amount** means the Trustee Call Amount, the Capital Event Amount or the Tax 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 DIB Event and/or a Trustee Event;

**Dissolution Notice** has the meaning given to it in Condition 12.1;

**Dissolution Request** has the meaning given to it in Condition 12.1;

**Distributable Items** means the amount of DIB's consolidated retained earnings and reserves, including general reserves, special reserves and statutory reserves (to the extent not restricted from distribution by applicable law) after the transfer of any amounts to non-distributable reserves, all as set out in its latest audited or (as the case may be) auditor reviewed consolidated financial statements, or any equivalent or successor term from time to time as prescribed by the Capital Regulations, including the applicable criteria for Tier 1 Capital that do not constitute Common Equity Tier 1 Capital;

**Excess Liquidation Proceeds** has the meaning given to it in the Mudaraba Agreement;

**Existing Tier 1 Securities** means the Existing 2015 Tier 1 Securities, the Existing 2016 Tier 1 Securities and the Existing 2019 Tier 1 Securities;

**Existing 2015 Tier 1 Securities** means the U.S.\$1,000,000,000 perpetual tier 1 capital certificates issued by DIB Tier 1 Sukuk (2) Ltd. on 20 January 2015 in connection with a mudaraba agreement dated 20 January 2015 made between DIB Tier 1 Sukuk (2) Ltd. and DIB;

**Existing 2016 Tier 1 Securities** means the U.S.\$500,000,000 perpetual tier 1 capital certificates issued by Noor Tier 1 Sukuk Limited on 1 June 2016 in connection with a mudaraba agreement dated 1 June 2016 made between Noor Tier 1 Sukuk Limited and Noor Bank PJSC (with Noor Bank PJSC having been substituted by DIB with effect from 13 October 2020);

**Existing 2019 Tier 1 Securities** means the U.S.\$750,000,000 perpetual additional tier 1 capital certificates issued by DIB Tier 1 Sukuk (3) Ltd. on 22 January 2019 in connection with a mudaraba agreement dated 22 January 2019 made between DIB Tier 1 Sukuk (3) Ltd. and DIB;

**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 or any successor entity having primary bank supervisory authority with respect to DIB in the UAE;

**First Call Date** means 19 May 2026;

**First Mudaraba Profit Distribution Date** means 19 May 2021;

**First Reset Date** means 19 November 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 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.

Government 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);

**Junior Obligations** means all claims of the holders of Ordinary Shares and all payment obligations of DIB in respect of its Other Common Equity Tier 1 Instruments and any other payment obligations that rank or are expressed to rank junior to the Certificates;

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

**Liabilities** means the consolidated gross liabilities of DIB as shown (if required by any relevant party) in the latest audited or (as the case may be) auditor reviewed consolidated balance sheet of DIB, but adjusted for contingent liabilities and for subsequent events in such manner as the Directors, the Auditors or (if a bankruptcy trustee (or any equivalent insolvency practitioner) has been appointed in respect of DIB) a bankruptcy trustee (or such equivalent insolvency practitioner) may determine;

**Margin** means 4.077 per cent. per annum;

**Mudaraba** has the meaning given to it in Condition 5;

**Mudaraba Agreement** has the meaning given to it in Condition 5;

**Mudaraba Assets** has the meaning given to it in Condition 5;

**Mudaraba Capital** has the meaning given to it in Condition 5;

**Mudaraba End Date** means the date on which the Mudaraba ends, being the date on which all, but not some only, of the Certificates are redeemed in accordance with these Conditions;

**Mudaraba Profit** has the meaning given to it the Mudaraba Agreement;

**Mudaraba Profit Distribution Date** means 19 May and 19 November in each year, starting on 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;

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

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

**Non-Viability Event** means that the Financial Regulator has notified DIB in writing that it has determined that DIB is, or will become, Non-Viable without (a) a Write-down; or (b) a public sector injection of capital (or equivalent support);

**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 as determined by the Financial Regulator;

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

**Non-Viable** means (a) insolvent, bankrupt, unable to pay a material part of its obligations as they fall due or unable to carry on its business or (b) any other event or circumstance which is specified as constituting non-viability by the Financial Regulator or in applicable banking regulations;

**Ordinary Shares** means issued ordinary shares of DIB, having on the Issue Date a par value of AED1.00 each;

**Other Common Equity Tier 1 Instruments** means securities issued by DIB that qualify as Common Equity Tier 1 Capital of DIB other than Ordinary Shares;

**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;

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

**Payment Business Day** has the meaning given to it in Condition 9.3;

**Periodic Distribution Amount** has the meaning given to it in Condition 7.2;

**Periodic Distribution Date** means 19 May and 19 November in each year, starting on (and including) 19 May 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;

**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;

**Prevailing Face Amount** means, in respect of a Certificate, the initial face amount of such Certificate as reduced by a Write-down of such Certificate (on one or more occasions) at or prior to such time pursuant to Condition 11;

**Proceedings** has the meaning given to it in Condition 20.5;

**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);

**Qualifying Tier 1 Instruments** means instruments (whether securities, trust certificates, interests in limited partnerships or otherwise) other than Ordinary Shares or Other Common Equity Tier 1 Instruments, issued directly or indirectly by DIB that:

- (a) will be eligible to constitute (or would, but for any applicable limitation on the amount of such capital, constitute) Additional Tier 1 Capital;

- (b) have terms and conditions not materially less favourable to a holder of the Certificates than the terms and conditions of the Certificates (as reasonably determined by DIB (*provided that* in making this determination DIB is not required to take into account the tax treatment of the new instrument in the hands of all or any Certificateholders, 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 Directors shall have been delivered to the Trustee prior to the variation of the terms of the Certificates in accordance with Condition 10.1(c) or Condition 10.1(d) (as the case may be));
- (c) continue to be obligations of DIB, directly or indirectly or by a guarantee or equivalent support undertaking by DIB;
- (d) rank on a winding-up at least *pari passu* with the Relevant Obligations;
- (e) have the same face value amount, profit distribution dates and profit or distribution rate or rate of return as the Certificates;
- (f) (where the Certificates are varied prior to the First Call Date) have a first call date no earlier than the First Call Date and otherwise have the same optional redemption dates as the Certificates; and
- (g) if, immediately prior to the variation of the terms of the Certificates in accordance with Condition 10.1(c) or Condition 10.1(d) (A) the Certificates were listed or admitted to trading on a Regulated Market, have been listed or admitted to trading on a Regulated Market; or (B) the Certificates were listed or admitted to trading on a recognised stock exchange other than a Regulated Market, have been listed or admitted to trading on any recognised stock exchange (including, without limitation, a Regulated Market), in each case as selected by the Trustee and approved by the Delegate,

and which may include such technical changes as necessary to reflect the requirements of Additional Tier 1 Capital under the Capital Regulations then applicable to DIB (including, without limitation, such technical changes as may be required in the adoption and implementation of the Basel III Documents);

**Rab-al-Maal** has the meaning given to it in Condition 5;

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

**Rab-al-Maal 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;

**Registered Account** has the meaning given to it in Condition 9.1;

**Regulated Market** means a regulated market for the purposes of Directive 2014/65/EU, as amended;

**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;

**Relevant Six 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 six years and trading in the public securities markets; or (ii) if there is no such published U.S. Treasury security with a maturity of six 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 market: (A) one maturing as close as possible to, but earlier than, the immediately following Reset Date; and (B) the other maturity 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 Trustee cannot procure the determination of the Relevant Six Year Reset Rate on the relevant Determination Date pursuant to the methods described in (i) and (ii) above, then the Relevant Six 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, 0.548 per cent.;

**Relevant Jurisdiction** means the Cayman Islands (in the case of any payment made by the Trustee) and the UAE and/or the Emirate of Dubai (in the case of any payment made by DIB) 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 Condition 4.2(a);

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

**Reset Date** means the First Reset Date and every sixth 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 (i) the Mudaraba End Date and (ii) the next succeeding Reset Date;

**Rules** has the meaning given to it in Condition 20.2;

**Senior Creditors** means creditors of DIB (including depositors (in respect of their due claims) and, for this purpose, holders of any instrument issued by, or other obligation of, DIB 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 DIB (including payment obligations to DIB's depositors (in respect of their due claims)) and all subordinated payment obligations (if any) of DIB except *Pari Passu* Obligations and Junior Obligations;

**Solvency Conditions** has the meaning given to it in Condition 4.2(b);

**Solvent** means that: (a) DIB is able to pay its debts as they fall due and (b) its Assets exceed its Liabilities;

**Subsidiary** means any entity whose financial statements at any time are required by applicable law or in accordance with provisions of generally accepted accounting principles to be fully consolidated with those of DIB;

**Substituted Territory** has the meaning given to it in Condition 12.2;

**Substituted Trustee** has the meaning given to it in Condition 12.2;

**Tax Event** means DIB 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 DIB (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 (and such requirement cannot be avoided by DIB or the Trustee (as the case may be) taking reasonable measures available to it), and provided that DIB satisfies the Financial Regulator that such Tax Law Change was not reasonably foreseeable at the time of the issuance of the Certificates;

**Tax Law Change** means any change in, or amendment to, the laws, regulations or rulings affecting taxation of any Relevant Jurisdiction, or any change in the official application of such laws, regulations or rulings;

**Tax Redemption Amount** means, in relation to a Certificate, its Prevailing Face Amount together with any Outstanding Payments;

**Taxes** has the meaning given to it in Condition 13;

**Tier 1 Capital** means capital qualifying as, and approved by the Financial Regulator as, tier 1 capital in accordance with the Capital Regulations;

**Transaction Account** has the meaning given to it in Condition 5;

**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;

**Trust Assets** has the meaning given to it in Condition 5;

**Trustee Administrator** means MaplesFS Limited;

**Trustee Call Amount** means, in relation to a Certificate, its Prevailing Face Amount together with any Outstanding Payments;

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

- (a) **Non-Payment:** default is made in the payment of the Dissolution Distribution Amount on the due date for payment thereof or default is made in the payment of any Periodic Distribution Amount on the due date for payment thereof and, in the case of any Periodic Distribution Amount only, such default continues for a period of seven days; or
- (b) **Insolvency:** the Trustee is (or is deemed by law or a court to be) insolvent or bankrupt or unable to pay its debts, stops, suspends or threatens to stop or suspend payment of all or (in the opinion of the Delegate) a material part of (or of a particular type of) its debts, proposes or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors in respect of any of such debts or a moratorium is agreed or declared or comes into effect in respect of or affecting all or any part of (or of a particular type of) the debts of the Trustee; or



- (c) **Winding-up:** an administrator is appointed, 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 or ceases or through an official action of its board of directors threatens to cease to carry on all or substantially all of its business or operations, in each case 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
- (d) **Analogous Events:** any event occurs that under the laws of any relevant jurisdiction has an analogous effect to any of the events referred to in paragraphs (b) or (c) above;

For the purpose of paragraph (a) 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) 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) (save in each case where such insufficient funds arise solely as a result of DIB making a Non-Payment Election or the occurrence of a Non-Payment Event);

**Trustee's Territory** has the meaning given to it in Condition 12.2;

**UAE** means United Arab Emirates;

**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;

**Write-down** means:

- (a) the Certificateholders' rights to the Trust Assets (including the Mudaraba Assets) shall automatically be deemed to be irrevocably, unconditionally and permanently written down in a proportion corresponding to the relevant Write-down Amount;
- (b) in the case of the relevant Write-down Amount corresponding to the full proportion of the Prevailing Face Amount of each Certificate then outstanding, the Certificates shall be cancelled; and
- (c) the 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) in a proportion corresponding to the relevant Write-down Amount (and any related unpaid Periodic Distribution Amounts) shall be cancelled and not 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 all references to **Written-down** will be construed accordingly; and

**Write-down Amount** means, on any Non-Viability Event Write-down Date, the amount as determined by the Financial Regulator by which the aggregate Prevailing Face Amount of the

Certificates then outstanding is to be Written-down on a *pro rata* basis and shall be calculated per Certificate by reference to the Prevailing Face Amount of each Certificate then outstanding which is to be Written-down.

All references in these Conditions to **U.S. dollars** and **U.S.\$** 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**).

### **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 holder of any Certificate 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 the holder of any Certificate. The registered holder of a Certificate 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 and 3.5 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.

### **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 holder 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 but upon payment (or the giving of such indemnity as the Trustee or any Transfer Agent may reasonably require) by the transferee in respect of 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 and the Registrar. A copy of the current regulations will be mailed (free of charge) by the Registrar to any Certificateholder who requests in writing a copy of such regulations.

The holder of Certificates shall be entitled to receive, in accordance with Condition 3.2, 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.

## **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 DIB in respect of the Relevant Obligations are subordinated as described in Condition 4.2.

### **4.2 Subordination**

- (a) The payment obligations of DIB under the Mudaraba Agreement (including all payments which are the equivalent of principal (being capital amounts, including the Mudaraba Capital, payable in accordance with the provisions of the Mudaraba Agreement) and profit) (the **Relevant Obligations**) will (i) constitute Additional Tier 1 Capital of DIB, (ii) constitute direct, unsecured, conditional and subordinated obligations of DIB, (iii) rank subordinate and junior to all Senior Obligations but not further or otherwise, (iv) rank *pari passu* with all other *Pari Passu* Obligations, which, for the avoidance of doubt, includes and shall continue to include DIB's obligations under the Existing Tier 1 Securities, and (v) subject to the Solvency Conditions being satisfied at the relevant time and no bankruptcy order having been issued in respect of DIB by a court in the UAE, rank in priority only to all Junior Obligations.

- (b) The rights and claims of the Trustee against DIB in respect of the Relevant Obligations are subordinated in right of payment to the claims of all Senior Creditors and accordingly payments in respect of the Relevant Obligations by DIB are conditional upon the following (together, the **Solvency Conditions**):
- (i) DIB (in its capacity as Mudareb or otherwise) being Solvent at all times from (and including) the first day of the relevant Periodic Distribution Period (or the Issue Date in the case of the first such period) to (and including) the time of payment of the Relevant Obligations that are due and payable;
  - (ii) DIB (in its capacity as Mudareb or otherwise) being capable of making payment of the Relevant Obligations and any other payment that is due to be made on the relevant date to a creditor in respect of all Senior Obligations and all Pari Passu Obligations and still be Solvent immediately thereafter; and
  - (iii) the total share capital (including, without limitation, retained earnings) of DIB being greater than zero at all times from (and including) the first day of the relevant Periodic Distribution Period (or the Issue Date in the case of the first such period) to (and including) the time of payment of the Relevant Obligations that are due and payable.
- (c) The Trustee has agreed in the Mudaraba Agreement that DIB shall be entitled (in its capacity as Mudareb or otherwise) to utilise the Mudaraba Assets (or any part thereof) or utilise the Mudaraba Profit (or any part thereof) to make payments in respect of the claims of Senior Creditors and, for the avoidance of doubt, such entitlement shall apply both in circumstances (i) where DIB (in its capacity as Mudareb or otherwise) is Solvent and/or (ii) where an order has been made, or an effective resolution has been passed, for the winding-up, bankruptcy, dissolution or liquidation (or other analogous event) of DIB (in its capacity as Mudareb or otherwise).
- (d) Notwithstanding any other provision in these Conditions, to the extent that any of the Solvency Conditions are not satisfied at the relevant time or if a bankruptcy order in respect of the Mudareb has been issued by a court in the UAE, all claims of the Trustee in respect of the Relevant Obligations will be extinguished and the Certificates will be cancelled without any further payment to be made by the Mudareb in respect of the Relevant Obligations.
- (e) The Trustee 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.
- (f) 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 DIB for the Relevant Obligations and any collateral that may have been or may in the future be given in connection with other obligations of DIB shall not secure the Relevant Obligations.

#### **4.3 Other Issues**

So long as any of the Certificates remain outstanding, DIB (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 a consolidated basis) Additional Tier 1 Capital of DIB 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 and DIB's obligations under the Relevant Obligations have, 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, the Certificates do not represent an interest in any of the Trustee, DIB, the Delegate, 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 shareholders, 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. The Mudaraba Agreement provides that there is no guarantee of any return from the Mudaraba Assets and DIB's obligation to pay amounts thereunder are subject to the more detailed provisions set out therein, and references in these Conditions to "Periodic Distribution Amount", "profit" and "Profit Rate" should be construed accordingly;
- (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 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 holder 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, employees, 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, member, officer, agent, 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 means 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 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.

DIB 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 and Condition 12.3, have recourse against DIB to recover payments due to the Trustee from DIB pursuant to such Transaction Documents notwithstanding any other provision of this Condition 4.4. Such right of the Trustee and the Delegate shall constitute an unsecured claim against DIB. None of the Certificateholders, the Trustee and the Delegate shall be entitled to claim any priority right in respect of any specific assets of DIB in connection with the enforcement of any such claim.

## 5. THE TRUST

- 5.1 DIB Tier 1 Sukuk (4) Ltd. (in its capacity as Trustee and in its capacity as rab-al-maal (in such capacity, the **Rab-al-Maal**)) will enter into a mudaraba agreement (the **Mudaraba Agreement**) to be dated the Issue Date with DIB (in its capacity as mudareb (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 (the **Mudaraba Capital**). The Mudareb will invest the Mudaraba Capital on an unrestricted co-mingling basis in its general business activities carried out through the General Mudaraba Pool and following investment of the Mudaraba Capital in the General Mudaraba Pool, it shall constitute *pro rata* undivided assets in the General Mudaraba Pool (the **Mudaraba Assets**), on a basis proportionate to the rights and obligations of holders of equity of DIB and 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 which shall be operated by the Principal Paying Agent on behalf of the Trustee and for the benefit of the Certificateholders, and 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, the Substituted Trustee will be required to open and maintain a transaction account in London in its name which shall be operated by the Principal Paying Agent on

behalf of the Trustee and for the benefit of the Certificateholders and 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 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 its 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 its rights, title, interest and benefit, present and future, in, to and under the Transaction Documents (other than in relation to any representations given by DIB (acting in any capacity) pursuant to any of the Transaction Documents and the covenant given to the Trustee pursuant to clause 12.1 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 holder in accordance with the Declaration of Trust and these Conditions.

5.3 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 the Delegate in respect of all amounts owing to it under the Transaction Documents in its capacity as Delegate in accordance with the Declaration of Trust;
- (b) *second*, 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; (ii) the Trustee Administrator in respect of all amounts owing to it under the Transaction Documents, the Corporate Services Agreement in its capacity as Trustee Administrator; and (iii) each Agent in respect of all amounts owing to such Agent on account of its fees, costs, charges and expenses and the payment or satisfaction of any Liability (as defined in the Declaration of Trust) incurred by such Agent pursuant to the Agency Agreement or the other Transaction Documents in its capacity as Agent;
- (c) *third*, only if such payment is due on a Periodic Distribution Date, and subject to Condition 8, in or towards payment *pari passu* and rateably of all Periodic Distribution Amounts (including Additional Amounts) due but unpaid;
- (d) *fourth*, 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
- (e) *fifth*, 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 DIB.

Any such residual amount shall be credited to the Mudaraba Reserve and the balance of amounts standing to the credit of the Mudaraba Reserve, after paying all amounts due to the Trustee pursuant to the Mudaraba Agreement, shall be paid to DIB as an incentive fee.

## 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):

- (a) incur any indebtedness in respect of financed, borrowed 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 (whether structured in accordance with the principles of Shari'a or otherwise) by granting or permitting to be outstanding any lien, pledge, charge or other security interest upon any of its present or future 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;
- (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) 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; and



- (j) 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 DIB shall be entitled (in its capacity as Mudareb or otherwise) to utilise the Mudaraba Assets (and the proceeds thereof) in respect of the Certificates 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 DIB (in its capacity as Mudareb or otherwise).

### **7.2 Periodic Distribution Amounts**

Subject to Conditions 4.2(d), 4.4, 7.3, 8, 9 and 11, 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 (a) falling prior to and including the First Reset Date shall be equal to the product of: (A) the Initial Periodic Distribution Rate; and (B) the Prevailing Face Amount of the Certificates then outstanding and (b) falling after the First Reset Date shall be the relevant amount calculated pursuant to Condition 7.4.

### **7.3 Cessation of Accrual**

Subject to Conditions 4.2(d), 8 and 11, 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, 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 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 claim in respect of any such Periodic Distribution Amount at any time, even if Periodic Distribution Amounts are paid in the future.

If DIB makes a Non-Payment Election or a Non-Payment Event occurs, any Periodic Distribution Amount which is not paid to the Certificateholders shall be credited by DIB to the Mudaraba Reserve.

Subject to Condition 8, Periodic Distribution Amounts shall be payable on the Certificates semi-annually in arrear on each Periodic Distribution Date, in respect of the Periodic Distribution Period ending on such date, in each case as provided in this Condition 7.

If a Periodic Distribution Amount is required to be calculated in respect of a period of less than a full Periodic Distribution Period and other than the first 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 Prevailing Face Amount of the relevant Certificate then outstanding; 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 4.625 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 Six Year Reset Rate procured by the Trustee on the relevant Determination Date, and notified to the Calculation Agent on such Determination Date.

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 Irish Stock Exchange plc trading as Euronext Dublin or any other stock exchange on which the Certificates are for the time being listed (if then required by such stock exchange) and to be notified to Certificateholders in accordance with Condition 17.

**(b) Calculation Agent**

With effect from the U.S. Securities Determination Date prior to the First Reset Date, and so long as any Certificates remain outstanding thereafter, the Trustee will maintain a Calculation Agent.

The Trustee may, with the prior written approval of the Delegate, 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)) fails duly to determine the Profit Rate in respect of any Reset Period as provided in Condition 7.4(a), the Trustee shall forthwith appoint another leading investment, merchant or commercial bank or financial institution in London approved in writing by the Delegate 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, whether by the Calculation Agent or the Trustee (or its agent), shall (in the absence of manifest error) be binding on the Trustee, DIB, the Calculation Agent, the Paying Agents, the Delegate and all Certificateholders and (in the absence of wilful default, gross negligence or fraud) no liability to the Certificateholders, the Trustee, any Agent or the Delegate shall attach to the Calculation Agent, the Trustee (or its agent) in connection with the exercise or non-exercise by them of any of their powers, duties and discretions.

## 7.5 Capital Event Profit Amount

If the Certificates are redeemed following a Capital Event, the Periodic Distribution Amount payable as part of the Outstanding Payments shall include a further profit amount in an amount equal to the Capital Event Profit Amount. In these Conditions, references to any **Periodic Distribution Amounts** (and the related expression, Rab-al-Maal Final Mudaraba Profit) shall be deemed, where relevant, to include the Capital Event Profit Amount payable under this Condition 7.5.

## 8. PERIODIC DISTRIBUTION RESTRICTIONS

### 8.1 Non-Payment Event

Notwithstanding Condition 7.4, if any of the following events occurs (each, a **Non-Payment Event**), DIB (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:

- (a) the amount equal to the then applicable Periodic Distribution Amount (which for the purposes of these Conditions includes Additional Amounts as referred to in Condition 13) to be paid by DIB 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 DIB (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 Rab-al-Maal Mudaraba Profit or Rab-al-Maal Final Mudaraba Profit, Distributable Items; or
- (b) DIB (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 the Applicable Regulatory Capital Requirements (including any payment restrictions due to a breach of any capital buffers imposed on DIB by the Financial Regulator) or payment of the Relevant Rab-al-Maal Mudaraba Profit Amount (as applicable) to the Trustee would cause it to be in breach thereof; or
- (c) the Financial Regulator requires (i) DIB not to pay the Relevant Rab-al-Maal Mudaraba Profit Amount to the Trustee on that Mudaraba Profit Distribution Date or Mudaraba End Date (as the case may be) or (ii) the Trustee not to pay the relevant Periodic Distribution Amount on that Periodic Distribution Date, in each case, for any reason as it may deem necessary; or
- (d) the Solvency Conditions are not satisfied (or would no longer be met if the Relevant Rab-al-Maal Mudaraba Profit Amount was paid).

### 8.2 Non-Payment Election

Notwithstanding Condition 7.4, DIB may in its sole discretion elect that Rab-al-Maal Mudaraba Profit will not be paid to the Trustee (in its capacity as Rab-al-Maal) on any Mudaraba Profit Distribution Date, including, without limitation, if DIB incurs a net loss during the relevant financial period and DIB shall, in such case, instruct the Trustee not to make payment of a Periodic Distribution Amount to Certificateholders on such Periodic Distribution Date provided that the foregoing in this Condition 8.2 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**).

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

If a Non-Payment Election or a Non-Payment Event occurs, then DIB shall (a) in the case of a Non-Payment Election, no later than seven calendar days prior to such event, and (b) 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, which notice shall be revocable, in each case providing details of the Non-Payment Election 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, the fact of non-payment of the relevant Periodic Distribution Amount 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 due but 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, as the case may be, has been given in accordance with this Condition 8.3) and any non-payment 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. DIB shall not have any obligation to make any subsequent payment in respect of any such unpaid profit (whether from its own cash resources, from the Mudaraba Reserve or otherwise) (which shall be credited by DIB to the Mudaraba Reserve). The Trustee shall not have any obligation to make any subsequent payment in respect of any such Periodic Distribution Amounts but, for the avoidance of doubt, any such unpaid profit shall continue to constitute part of the Mudaraba Assets.

### 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 or 8.2 (as the case may be), then, from the date of such Non-Payment Election or Non-Payment Event (the **Dividend Stopper Date**), DIB will not, so long as any of the Certificates are outstanding:

- (a) 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 (other than to the extent that any such distribution, dividend or other payment is declared before such Dividend Stopper Date); or
- (b) declare or pay profit or any other distribution on any of its Other Common Equity Tier 1 Instruments 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 DIB 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
- (c) directly or indirectly redeem, purchase, cancel, reduce or otherwise acquire Ordinary Shares; or
- (d) directly or indirectly redeem, purchase, cancel, reduce or otherwise acquire Other Common Equity Tier 1 Instruments or any securities issued by DIB 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 a mandatory redemption or conversion into equity), 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 the next following payment of Rab-al-Maal Mudaraba Profit or (as the case may be) Rab-al-Maal Final Mudaraba Profit following the Dividend Stopper Date has 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, 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 holder shown on the Register at the close of business on the relevant Record Date.

For the purposes of this Condition 9, 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 Certificates are subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 13.

### **9.3 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 and 8.2, 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 this Condition 9.3, **Payment Business Day** means a day on which commercial banks and foreign exchange markets in Dubai, London and New York City 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.

## 9.4 Agents

The names of the initial Agents 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, 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.

## 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, Condition 11) and without prejudice to the provisions of Condition 14) only have the right to redeem the Certificates or vary the terms thereof in accordance with the following provisions of this Condition 10.

The redemption of the Certificates or variation of these Conditions, in each case pursuant to this Condition 10, is subject to the following conditions (in addition to those set out elsewhere in this Condition 10.1) (to the extent then required by the Financial Regulator and/or the Capital Regulations):

- (i) DIB having obtained the prior consent of the Financial Regulator;
- (ii) at the time when the relevant notice of redemption or variation is given, DIB is in compliance with the Applicable Regulatory Capital Requirements;
- (iii) immediately following such redemption or variation (as applicable), DIB will be in compliance with the Applicable Regulatory Capital Requirements;
- (iv) the Solvency Conditions are satisfied; and
- (v) (in the case of a redemption or variation pursuant to Conditions 10.1(c) or 10.1(d) only) the Tax Law Change or Capital Event, as the case may be, becomes, or would become, effective on or after the Issue Date.

If the Trustee (upon the instructions of DIB (acting in its sole discretion)) gives a notice of redemption in accordance with this Condition 10 and, after giving such notice but prior to the relevant redemption date specified in such notice, a Non-Viability Event occurs, the relevant notice of redemption shall be automatically rescinded and shall be of no force and effect, the Certificates will not be redeemed on the scheduled date of redemption and instead a Write-down shall occur in accordance with Condition 11.



Following the occurrence of a Non-Viability Event, the Trustee (upon the instructions of DIB (acting in its sole discretion)) shall not be entitled to give a notice of redemption in accordance with Condition 10 prior to the Non-Viability Event Write-down Date.

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

Subject to Condition 10.1(a), DIB may (acting in its sole discretion) instruct the Trustee to, whereupon the Trustee shall give not less than 10 nor more than 15 days' prior notice to the Certificateholders in accordance with Condition 17 and to the Delegate in accordance with the Declaration of Trust, and, provided that any such notice has not been revoked by the Trustee (upon the instructions of DIB (acting in its sole discretion)) by giving notice of such revocation to the Certificateholders in accordance with Condition 17 and to the Delegate in accordance with the Declaration of Trust prior to the redemption date specified in the initial notice, 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) may only occur on a Call Date.

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

- (i) Subject to Condition 10.1(a) and the provisions of this Condition 10.1(c), if a Tax Event occurs, DIB may (acting in its sole discretion) instruct the Trustee to, whereupon the Trustee shall, by giving not less than ten nor more than 15 days' prior notice to the Certificateholders in accordance with Condition 17 and to the Delegate in accordance with the Declaration of Trust, and, provided that any such notice has not been revoked by the Trustee (upon the instructions of DIB (acting in its sole discretion)) by giving notice of such revocation to the Certificateholders in accordance with Condition 17 and to the Delegate in accordance with the Declaration of Trust prior to the redemption date specified in the initial notice (A) redeem all, but not some only, of the Certificates at the Tax Redemption Amount; or (B) vary the terms of the Mudaraba Agreement (subject to the approval of the Fatwa and Sharia Supervisory Board of the Mudareb) 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. If DIB does not instruct the Trustee to so redeem or vary in accordance with this Condition 10.1(c)(i) 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, Condition and Condition 12.3 and without prejudice to the provisions of Condition 14) redeem the Certificates or vary the terms thereof in accordance with the provisions of this Condition 10.
- (ii) Redemption of the Certificates, or variation of these Conditions, pursuant to this Condition 10.1(c) may occur on any date on or after the Issue Date (whether or not a Periodic Distribution Date).
- (iii) At the same time as the delivery of any notice of redemption or variation, as the case may be, pursuant to this Condition 10.1(c), DIB shall give to the Trustee and the Delegate a certificate signed by two Directors (upon which the Delegate may rely without liability to any person) stating that (A) the conditions set out in Condition 10.1(a) 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 (a) of the definition of Qualifying Tier 1 Instruments. Such certificate shall

be conclusive and binding evidence of the satisfaction of the conditions precedent set out above in this Condition 10.1(c)(iii) and the Delegate shall be entitled to accept and rely on such certificate as sufficient evidence of the satisfaction of such conditions precedent without liability to any person. Upon expiry of such notice and provided that it has not been revoked, the Trustee shall redeem or vary the terms of the Certificates, as the case may be.

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

- (i) Subject to Condition 10.1(a) and the provisions of this Condition 10.1(d), if a Capital Event occurs, DIB may (acting in its sole discretion) instruct the Trustee to, whereupon the Trustee shall, by giving not less than ten nor more than 15 days' prior notice to the Certificateholders in accordance with Condition 17 and to the Delegate in accordance with the Declaration of Trust, and, provided that any such notice has not been revoked by the Trustee (upon the instructions of DIB (acting in its sole discretion)) by giving notice of such revocation to the Certificateholders in accordance with Condition 17 and to the Delegate in accordance with the Declaration of Trust prior to the redemption date specified in the initial notice, (A) redeem all, but not some only, of the Certificates at the Capital Event 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 Fatwa and Sharia Supervisory Board of the Mudareb) 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. If DIB does not instruct the Trustee to so redeem or vary in accordance with this Condition 10.1(d)(i) 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, Condition 11 and Condition 12.3 and without prejudice to the provisions of Condition 14) redeem the Certificates or vary the terms thereof in accordance with the provisions of this Condition 10.
- (ii) Redemption of the Certificates, or variation of these Conditions, pursuant to this Condition 10.1(d) may occur on any date on or after the Issue Date (whether or not a Periodic Distribution Date).
- (iii) At the same time as the delivery of any notice of redemption or variation, as the case may be, pursuant to this Condition 10.1(d), DIB shall give to the Trustee and the Delegate a certificate signed by two Directors (upon which the Delegate may rely without liability to any person) stating that (A) the conditions set out in Condition 10.1(a) have been satisfied; (B) a Capital Event has occurred; 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 (a) of the definition of Qualifying Tier 1 Instruments. 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) and the Delegate shall be entitled to accept and rely on such certificate as sufficient evidence of the satisfaction of such conditions precedent without liability to any person. Upon expiry of such notice and provided that it has not been revoked, the Trustee shall redeem or vary the terms of the Certificates, as the case may be.

**(e) Taxes upon Variation**

In the event of a variation in accordance with Conditions 10.1(c) or 10.1(d), none of the Trustee, the Delegate and DIB 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, including in respect of 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.

## **10.2 Purchase**

Subject to DIB (to the extent then required by the Financial Regulator and/or the Capital Regulations) (a) obtaining the prior written consent of the Financial Regulator, (b) being in compliance with the Applicable Regulatory Capital Requirements immediately following such purchase, and (c) being Solvent at the time of purchase, DIB or any of its Subsidiaries may, after the First Call Date, purchase the Certificates in the open market or otherwise at such price(s) and upon such other conditions as may be agreed upon between DIB or the relevant Subsidiary (as the case may be) and the relevant Certificateholder(s). Upon any purchase, DIB shall deliver such Certificates to any Paying Agent for cancellation and upon such cancellation, the Mudaraba Capital shall be reduced by the Prevailing 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 and which DIB delivers for cancellation in accordance with Condition 10.2 will forthwith be cancelled and accordingly may not be held, reissued or resold.

## **11. WRITE-DOWN AT THE POINT OF NON-VIABILITY (AS PRESCRIBED BY THE FINANCIAL REGULATOR)**

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

If a Non-Viability Event occurs, a Write-down will take place in accordance with Condition 11.2.

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

On the third Business Day following the date on which such Non-Viability Event occurs (or on such earlier date as determined by the Financial Regulator), the Mudareb will notify the Trustee in writing thereof in accordance with the Mudaraba Agreement and the Trustee will then notify the Delegate, the Certificateholders and the Principal Paying Agent in writing thereof in accordance with Condition 17 (a **Non-Viability Notice**). A Write-down will occur on the Non-Viability Event Write-down Date. In the case of a Write-down resulting in the reduction of the Prevailing Face Amount of each Certificate then outstanding to nil, the Mudaraba Agreement will be automatically terminated with effect from the Non-Viability Event Write-down Date and the Trustee shall not be entitled to any claim for any amounts in connection with the Mudaraba Assets.

## **12. DISSOLUTION EVENTS AND WINDING-UP**

The Declaration of Trust contains provisions entitling the Delegate to claim from the Trustee and DIB, *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 DIB Events

If a DIB Event occurs, the Delegate (provided it shall have been given notice in writing thereof by the Trustee or DIB or otherwise upon becoming aware of such DIB Event through actual knowledge or express notice) shall as soon as practicable give notice of the occurrence of such DIB Event to the Certificateholders in accordance with Condition 17 with a request to such Certificateholders to indicate to the Trustee and the Delegate in writing if they wish the Certificates to be redeemed and the Trust to be dissolved (a **Dissolution Request**). The Delegate may, and if so requested in writing by the Certificateholders of at least 20 per cent. of the aggregate face amount of the Certificates then outstanding, or if so directed by an Extraordinary Resolution of Certificateholders, the Delegate shall (but in each case subject to Condition 12.3(e)(i)), give notice (a **Dissolution Notice**) to the Trustee that the Certificates are immediately due and payable at the Prevailing Face Amount of the Certificates then outstanding together with any Outstanding Payments, whereupon the aggregate face amount of the Certificates then outstanding together with any Outstanding Payments shall become immediately due and payable. A Dissolution Notice may be given whether or not a Dissolution Request has been given to Certificateholders.

## 12.2 Trustee Events

- (a) DIB 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:
- (i) 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 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;
  - (ii) 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 (unless the Delegate otherwise agrees) give to the Delegate an undertaking satisfactory to the Delegate in terms corresponding to Condition 13 with the substitution for or the addition to the references in that Condition and the definition of Relevant Jurisdiction to the Trustee's Territory of references to the Substituted Territory whereupon the Declaration of Trust and the Certificates shall be read accordingly (and DIB 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, extending its obligations thereunder to the Substituted Territory);
  - (iii) if any 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; and
  - (iv) the Trustee, the Substituted Trustee and DIB comply with such other requirements as the Delegate may direct in the interests of the Certificateholders.
- (b) Subject to this Condition 12.2, the Delegate may agree to the substitution of the Substituted Trustee without obtaining the consent 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).

- (c) If DIB fails to comply with the foregoing provisions of this Condition 12.2 within 60 days of the occurrence of the relevant Trustee Event, Conditions 12.1 and 12.3 shall apply to the relevant Trustee Event as if it was a DIB Event.

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

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

If a DIB Event occurs and a Dissolution Notice is delivered pursuant to Condition 12.1, 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 if so requested in writing by the Certificateholders holding at least 20 per cent of the aggregate face amount of the Certificates then outstanding (subject in each case to Condition 12.3(e)(i)), (i) institute any steps, actions or proceedings for the winding-up of DIB and/or (ii) prove in the winding-up of DIB and/or (iii) institute any steps, actions or proceedings for the bankruptcy of DIB and/or (iv) claim in the liquidation of DIB and/or (v) take such other steps, actions or proceedings which, under the laws of the UAE, 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 such steps, actions or proceedings as described in this Condition 12.3(a), 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 DIB with respect to any sum that DIB 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 DIB as a result of any steps, actions or proceedings taken pursuant to Condition 12.1, nor will the Trustee or the Delegate accept the same, otherwise than during or after a winding-up (or analogous event) of DIB, unless DIB has given prior written notice (with a copy to the Trustee and the Delegate) to, and received no objection from, the Financial Regulator (which DIB shall confirm in writing to the Trustee and the Delegate).

#### **(b) Enforcement**

Without prejudice to Condition 12.1 and the remaining provisions of this Condition 12.3, the Trustee (or the Delegate) may at its discretion and the Delegate shall if so requested in writing by the Certificateholders holding at least 20 per cent. of the aggregate face amount of the Certificates then outstanding and without further notice (subject in each case to Condition 12.3(e)(i)) institute such steps, actions or proceedings against DIB, and the Delegate may at its discretion and without further notice institute such steps, actions or proceedings against the Trustee, as it may think fit to enforce any term or condition binding on DIB or the Trustee (as the case may be) under the Transaction Documents (other than any payment obligation of DIB under or arising from the Transaction Documents, including, without limitation, payment of any principal 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 DIB to procure the substitution of the Trustee in the circumstances described in Condition 12.2. However, in no event shall DIB, 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 shall, however, prevent the Trustee (or the Delegate) from taking such steps, actions or proceedings as described in Condition 12.3(a) in

respect of any payment obligations of DIB arising from the Mudaraba Agreement or any other Transaction Document (including any damages awarded for breach of any obligations).

**(c) Non-Viability and Solvency Conditions**

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 DIB under the Transaction Documents (including, without limitation, any claim in relation to any unsatisfied payment obligation of the Trustee and/or DIB under the Certificates or the Transaction Documents, as the case may be) shall be subject to, and shall be superseded by: (i) the provisions of Condition 11, irrespective of whether the relevant Non-Viability Event occurs prior to or after the event which is the subject matter of the claim and (ii) the provisions of Condition 4.2(d), irrespective of whether the breach of a Solvency Condition at the relevant time or the issue of a bankruptcy order in respect of DIB occurs prior to or after the event which is the subject matter of the claim, in each case provided that nothing in these Conditions or the Transaction Documents shall affect or prejudice the payment of the actual 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 DIB, other than as referred to in this Condition 12, 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 DIB 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 steps, actions or proceedings referred to in these Conditions in respect of DIB or, in the case of the Delegate only, the Trustee to enforce the terms of the Transaction Documents or give a Dissolution Notice (including, without limitation, pursuant to this Condition 12), unless (A) it shall have been so requested by an Extraordinary Resolution of the Certificateholders or in writing by Certificateholders holding at least 20 per cent. of the aggregate face amount of the Certificates then outstanding and (B) it shall have been indemnified and/or secured and/or pre-funded to its satisfaction provided that the Delegate shall not be liable for the consequences of exercising its discretion or taking such steps, actions or proceedings and may do so without having regard to the effect of such action on individual Certificateholders.
- (ii) No Certificateholder shall be entitled to proceed directly against the Trustee or DIB or to take the steps, actions or proceedings referred to in Conditions 12.3(a) and 12.3(b) above, unless the Delegate, having become bound so to proceed, (A) fails to do so within a reasonable period, or (B) is unable by reason of an order of a court having competent jurisdiction to do so, and such failure or inability shall be continuing, in which case the Certificateholders shall have only such rights against DIB as those which the Trustee or the Delegate is entitled to exercise as set out in this Condition 12.3.
- (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 DIB shall be to enforce their respective obligations under the Transaction Documents.

- (iv) The foregoing paragraphs in this Condition 12.3(e) are subject to this paragraph. After enforcing or realising the Trust Assets and distributing the net proceeds thereof in accordance with these Conditions and 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 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, in respect of Periodic Distribution Amounts (but not, for the avoidance of doubt, in respect of Dissolution Distribution Amounts (other than any Outstanding Payments)), additional amounts (**Additional Amounts**) as shall be necessary in order that the net amounts of Periodic Distribution Amounts received by the Certificateholders after such withholding or deduction shall equal the respective amounts of Periodic Distribution Amounts due and payable to any Certificateholder which would otherwise been receivable in the absence of such withholding or deduction, 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 any 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 the last day of the period of 30 days assuming, whether or not such is in fact the case, that day to have been a Payment Business Day.

In these Conditions, references to any **Periodic Distribution Amounts** (and related expressions including, without limitation, **Rab-al-Maal Mudaraba Profit**, **Rab-al-Maal Final Mudaraba Profit** and **Outstanding Payments**) shall be deemed to include any Additional Amounts payable under this Condition 13 or any undertaking given in addition to or in substitution for it under the Declaration of Trust.

Notwithstanding any other provision in these Conditions, in no event will the Trustee be required to pay any additional amounts in respect of the Certificates for, or on account of, 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, or any official interpretations thereof, or any law implementing an intergovernmental approach thereto.

The Mudaraba Agreement provides that all payments made thereunder by DIB (in its capacity as the Mudareb) to the Trustee shall be made without any withholding or deduction for, or on account of, any present or future Taxes, unless such withholding or deduction is required by law. In the event there is any such withholding or deduction in relation to any Rab-al-Maal Mudaraba Profit or Rab-al-Maal Final Mudaraba Profit, as the case may be, DIB shall pay such Additional Amounts as shall result in the receipt by the Trustee of such net amounts of Rab-al-Maal Mudaraba Profit or Rab-al-Maal Final Mudaraba Profit, as the case may be, as would have been receivable by it if no such withholding or deduction had been required. To the extent that any such Additional Amounts are

paid by DIB pursuant to the Mudaraba Agreement, DIB shall be entitled to recover amounts equal to such Additional Amounts from any amounts (if any) standing to the credit of the Mudaraba Reserve and if, following such recovery a shortfall remains between the amounts standing to the credit of the Mudaraba Reserve and such Additional Amounts paid by DIB (such shortfall, the **Additional Amounts Shortfall**), DIB shall be entitled to recover amounts equal to such Additional Amounts Shortfall from any Excess Liquidation Proceeds.

## **14. PRESCRIPTION**

The right to receive distributions in respect of the Certificates will be forfeited unless claimed within periods of ten years (in the case of the Dissolution Distribution Amount) and five years (in the case of Periodic Distribution Amounts or Outstanding Payments) from the Relevant Date in respect thereof. Any amounts in respect of which claims have been prescribed under this Condition 14 shall be promptly donated by the Trustee to a registered or otherwise officially recognised charitable organisation.

## **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 powers (including the power to sub-delegate), 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, (a) exercise all of the rights of the Trustee under the Mudaraba Agreement and any of the other Transaction Documents and (b) 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 or managing 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, and then only if it shall also have been indemnified and/or secured and/or pre-funded to its satisfaction.

### **15.3 No Liability**

- (a) The Delegate makes no representation and assumes no responsibility for the validity, sufficiency or enforceability of the obligations of DIB 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 DIB 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; (ii) any obligation to 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 depositary or clearing system or are registered in the name of the Trustee or its nominee, unless such loss or theft arises as a result of actual fraud, wilful default or gross negligence by the Trustee or the Delegate, as the case may be.

### **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 DIB 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 entered into by the Delegate or any other person in connection therewith contains a monetary or other limit on the liability of the auditors or insolvency officials of the Trustee or DIB 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 as donee and delegate, in the case of the 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 actual fraud of which either of them may be guilty in relation to their duties under the Declaration of Trust.

### **15.6 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 occur or exist and, unless and until it shall have 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, DIB, the Registrar, the Paying Agent or the Transfer Agent may reasonably 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 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.

## **18. MEETINGS OF CERTIFICATEHOLDERS, MODIFICATION, WAIVER, AUTHORISATION AND DETERMINATION**

- 18.1 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 Transaction Documents. Such a meeting may be convened by Certificateholders holding not less than 10 per cent. in face amount of the Certificates then outstanding. The quorum for any meeting convened to consider an Extraordinary Resolution will be one or more Certificateholders, proxies or representatives holding or representing in aggregate more than 50 per cent. in face amount of the Certificates then outstanding, or at any adjourned such meeting one or more Certificateholders, proxies or representatives present whatever the face amount of the Certificates held or represented, except that any meeting the business of which includes consideration of proposals, *inter alia*, (a) to modify any date for payment in respect of the Certificates, (b) to reduce or cancel or vary the method for calculating the amount of any payment due in respect of the Certificates, (c) to amend any of the Trustee's and/or DIB's covenants set out in the Transaction Documents, (d) to amend the covenant given by the Trustee and the Delegate in clause 14 of the Declaration of Trust, (e) to alter the currency of payment or the denomination of the Certificates, (f) to modify the provisions concerning the quorum required at any meeting of Certificateholders or the majority required to pass an Extraordinary Resolution, (g) to sanction any such substitution as is described in paragraph 5.9(i) of Schedule 4 to the Declaration of Trust, or (h) to amend the above list or the proviso to paragraph 4.6 of Schedule 4 to the Declaration of Trust, in which case the quorum shall be one or more Certificateholders, proxies or representatives holding or representing in aggregate not less than two-thirds, or at any adjourned such meeting not less than one-third, in face amount of the Certificates for



the time being outstanding. To be passed, an Extraordinary Resolution requires (i) a majority in favour consisting of not less than 75 per cent. of the votes cast, (ii) a Written Resolution (as defined in the Declaration of Trust) or (iii) Electronic Consent (as defined in the Declaration of Trust). Any Extraordinary Resolution, if duly passed, will be binding on all Certificateholders, whether or not they were present at the meeting at which such resolution was passed and whether or not they voted.

- 18.2 The Declaration of Trust provides that a Written Resolution or an Electronic Consent 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 Written Resolution may be contained in one document or several documents in the same form, each signed by or on behalf of one or more Certificateholders. Such a Written Resolution and/or Electronic Consent will be binding on all Certificateholders whether or not they participated in such Written Resolution or Electronic Consent.
- 18.3 The Delegate may (but shall not be obliged to), without the consent of the Certificateholders: (a) agree to any modification to these Conditions or any provisions of the Transaction Documents which, in the sole opinion of the Delegate, is of a formal, minor or technical nature or is made to correct a manifest error; (b) agree to any modification (other than in respect of a Reserved Matter) of these Conditions, the Declaration of Trust or any other Transaction Document, or to the waiver or authorisation of any breach or proposed breach of, any of these Conditions or any of the provisions of the Declaration of Trust or the other Transaction Documents; or (c) determine that any Dissolution Event or Potential Dissolution Event shall not be treated as such, provided in the case of limbs (b) and (c) above that such modification, waiver, authorisation or determination is not, in the sole opinion of the Delegate, materially prejudicial to the interests of Certificateholders and that such waiver, authorisation or determination is not in contravention of any express direction by Extraordinary Resolution or request in writing by the holders of at least 20 per cent. of the aggregate face amount of the Certificates then outstanding.
- 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), the Delegate shall have regard to the interests of the Certificateholders as a class (but shall not have regard to any interests arising from circumstances particular to individual Certificateholders (whatever their number) and, in particular but without limitation, shall not have regard to the consequences of any 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) and the Delegate shall not be entitled to require, nor shall any Certificateholder be entitled to claim from the Delegate or any other person, any indemnification or payment in respect of any tax consequence of any such exercise upon individual Certificateholders except to the extent provided in Condition 13.
- 18.5 Any modification, waiver, authorisation or determination shall be binding on all of the Certificateholders and shall be notified to the Certificateholders as soon as practicable thereafter in accordance with Condition 17.

## **19. 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.

## **20. GOVERNING LAW AND DISPUTE RESOLUTION**

### **20.1 Governing Law**

The Declaration of Trust (including these Conditions) 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.

### **20.2 Arbitration**

Subject to Condition 20.3, any dispute, claim, difference or controversy arising out of, relating to or having any connection with the Declaration of Trust (including these Conditions) and the Certificates (including any dispute as to their existence, validity, interpretation, performance, breach or termination or the consequences of their 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 20.2. For these purposes:

- (a) the seat of arbitration shall be London;
- (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 nominate 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 the party nominated arbitrators fail to nominate the third arbitrator within 15 days of the nomination of the second arbitrator, such arbitrator shall be appointed by the LCIA; and
- (c) the language of the arbitration shall be English.

### **20.3 Option to Litigate**

Notwithstanding Condition 20.2 above, the Delegate may in the alternative, and at its sole discretion, by notice in writing to the Trustee and DIB (as applicable):

- (a) within 28 days of service of a Request for Arbitration (as defined in the Rules); or
- (b) if no arbitration has commenced,

require that a Dispute be heard by a court of law. If such notice is given, the Dispute to which such notice refers shall be determined in accordance with Condition 20.5 and any arbitration commenced under Condition 20.2 in respect of that Dispute will be terminated. With the exception of the Delegate (whose costs will be borne by the Trustee, failing which DIB), each of the parties to the terminated arbitration will bear its own costs in relation thereto.

### **20.4 Notice to Terminate**

If any notice to terminate is given after service of any Request for Arbitration in respect of any Dispute, the Delegate must promptly give notice to the LCIA Court and to any Tribunal (each as defined in the Rules) already appointed in relation to the Dispute that such Dispute will be settled by the courts. Upon receipt of such notice by the LCIA Court, the arbitration and any appointment of

any arbitrator in relation to such Dispute will immediately terminate. Any such arbitrator will be deemed to be *functus officio*. The termination is without prejudice to:

- (a) the validity of any act done or order made by that arbitrator or by the court in support of that arbitration before his appointment is terminated;
- (b) his entitlement to be paid his proper fees and disbursements; and
- (c) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.

## **20.5 Submission to Jurisdiction**

If a notice is issued pursuant to Condition 20.3, the following provisions shall apply:

- (a) subject to paragraph (c) below, the courts of England or the courts of the Dubai International Financial Centre (the **DIFC**), at the option of the Delegate, shall have exclusive jurisdiction to settle any Dispute and each of the Trustee and DIB submits to the exclusive jurisdiction of such courts;
- (b) each of the Trustee and DIB agrees that the courts of either England or the DIFC, as the case may be, at the option of the Delegate, are the most appropriate and convenient courts to settle any Dispute and, accordingly, that it will not argue to the contrary; and
- (c) this Condition 20.5 is for the benefit of the Delegate only. As a result, and notwithstanding paragraphs (a) and (b) above, the Delegate may take proceedings relating to a Dispute (the **Proceedings**) in any other courts with jurisdiction. To the extent allowed by law, the Delegate may take concurrent Proceedings in any number of jurisdictions.

## **20.6 Appointment of Process Agent**

Each of the Trustee and DIB has, in the Declaration of Trust, appointed Maples and Calder at its registered office at 11th Floor, 200 Aldersgate Street, London EC1A 4HD as its agent for service of process in England 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 Proceedings or Disputes and notify the Delegate and the Certificateholders of such appointment in accordance with this Condition 20.6. Nothing herein shall affect the right to serve proceedings in any other manner permitted by law.

## **20.7 Waiver of Immunity**

Under the Declaration of Trust, DIB 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 all other legal proceedings and relief and to the extent that such immunity (whether or not claimed) may be attributed to it or its assets or revenues, it will not claim and has irrevocably and unconditionally waived such immunity in relation to any Proceedings or Disputes. Further, DIB has irrevocably and unconditionally consented to the giving of any relief or the issue of any legal proceedings, including, without limitation, jurisdiction, enforcement, prejudgment, proceedings and injunctions in connection with any Proceedings or Disputes.

## **20.8 Waiver of Interest**

- (a) Each of the Trustee, DIB and the Delegate has irrevocably agreed in the Declaration of Trust that no interest will be payable or receivable under or in connection therewith and in the event that it is

determined that any interest is payable or receivable in connection therewith by a party, whether as a result of any judicial award or by operation of any applicable law or otherwise, such party has agreed to waive any rights it may have to claim or receive such interest and has agreed that if any such interest is actually received by it, it shall promptly donate the same to a registered or otherwise officially recognised charitable organisation.

- (b) For the avoidance of doubt, nothing in this Condition 20.8 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, Indemnity Payment, Capital Event Profit Amount, Periodic Distribution Amounts, Outstanding Payments or profit of any kind howsoever described payable by DIB (in any capacity) or the Trustee (in any capacity) 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 outside of the United Kingdom 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. Subject to paragraph 4, 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 his right to transfer such Definitive Certificates and, if the form of transfer is executed by some other person on his 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 he holds the position in respect of which he proposes to act under this paragraph or of his 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 his 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 his holding there shall be delivered to him, subject to and in accordance with the provisions of paragraph 10 below, without charge an 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 an Definitive Certificate wishes to have the same delivered to him otherwise than at the specified office of the Registrar, such delivery shall be made, upon his written request to the Registrar, at his risk and (except where sent by uninsured mail to the address specified by the Certificateholder) at his 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

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; and

**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 blocked in an account with a Clearing System and that no such Certificates will cease to be so 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 1.10 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) a resolution passed at a meeting duly convened and held in accordance with these presents by a majority consisting of not less than 75 per cent., of the Eligible Persons voting thereat upon a show of hands or, if a poll is duly demanded, by a majority consisting of not less than three-fourths of the votes cast on such poll;
- (b) a resolution in writing signed by or on behalf of the holders of not less than 75 per cent., in aggregate face amount of the Certificates (a **Written Resolution**), which 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 holders; or
- (c) consent given by way of electronic consents communicated through the electronic systems of the relevant Clearing System(s) in accordance with their operating rules and procedures (in a form satisfactory to the Delegate) by or on behalf of the holders of not less than 75 per cent. in aggregate face amount of the Certificates then outstanding (an **Electronic Consent**); and

**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 blocked in an account with a Clearing System and that no such Certificates will cease to be so 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 his or its behalf in connection with any meeting.
- (b) Any proxy appointed pursuant to paragraph (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.
- (c) If Certificates have been issued in definitive form and are not held in an account with any Clearing System, the Delegate may from time to time prescribe further regulations (in accordance with paragraph 5.12) to enable the holders of such Certificates to attend and/or vote at a meeting in respect of such Certificates.

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, DIB 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 then outstanding, convene a meeting and if the Trustee makes default for a period of seven days in convening such a meeting the same may be convened by the Delegate or the requisitionists. Whenever the Trustee or DIB is about to convene any such meeting the Trustee or DIB, 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 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. 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 DIB (unless the meeting is convened by DIB).
- 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 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 then 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 shall (subject as provided below) 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 then 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:
- (a) modification of any date for payment in respect of the Certificates;
  - (b) reduction, cancellation or variation of the method for calculating the amount of any payment due in respect of the Certificates;
  - (c) amendment to any of the Trustee's and DIB's covenants set out in the Transaction Documents;
  - (d) amendment to the covenant given by the Trustee and the Delegate in Clause 14;

- (e) alteration of the currency of payment or the denomination of the Certificates;
- (f) modification of the provisions concerning the quorum required at any meeting of Certificateholders or alteration of the majority required to pass an Extraordinary Resolution;
- (g) sanctioning of any such substitution as is described in paragraph 5.9(i); and
- (h) amendment to this proviso or the proviso to paragraph 4.6;

(each a **Reserved Matter**),

the quorum shall be one or more Eligible Persons present and holding or representing in the aggregate not less than two-thirds, or at any adjourned such meeting not less than one-third, of the aggregate face amount of the Certificates then outstanding.

- 4.5 If within 15 minutes (or such longer period not exceeding 30 minutes as the Chairman may decide) 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 (or such longer period not exceeding 30 minutes as the Chairman may decide) 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.
- 4.6 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 the 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 one-third of the aggregate face amount of the Certificates then outstanding.
- 4.7 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, DIB, 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 5.5, 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 The Chairman may, with the consent of (and shall if directed by) any such meeting, adjourn the same from time to time and from place to place; but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.
- 5.5 Any poll demanded at any such meeting on the election of a Chairman or on any question of adjournment shall be taken at the meeting without adjournment.
- 5.6 Any director or officer of the Delegate, its lawyers and financial advisors, any director or officer of the Trustee, DIB, their respective lawyers and financial advisors, 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 he is 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.
- 5.7 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 U.S.\$1, 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 his votes or cast all the votes to which he is entitled in the same way.

- 5.8 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 DIB.
- 5.9 Certificateholders 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 4.6) namely, the:
- (a) power to sanction any compromise or arrangement proposed to be made between the Trustee, DIB, the Delegate, any Appointee and the holders or any of them;
  - (b) power to sanction any abrogation, modification, compromise or arrangement in respect of the rights of the Delegate, any Appointee, the holders, the Trustee or DIB against any other or others of them or against any of their property whether such rights arise under these presents or otherwise;
  - (c) power to assent to any modification of the provisions of these presents or the other Transaction Documents which is proposed by the Trustee, DIB, the Delegate or any holder;

- (d) power to give any authority or sanction which under the provisions of these presents is required to be given by Extraordinary Resolution;
- (e) power to 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) power to approve of a proposed new Delegate and power to remove any Delegate or Delegates for the time being of these presents;
- (g) power to 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) power to 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; and
- (i) (other than as provided under Clause 18) power to approve the substitution of any entity for the Trustee and/or DIB (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 DIB) to which they are a party.

5.10 Any Extraordinary Resolution (a) passed at a meeting of the holders duly convened and held in accordance with these presents, (b) passed as a Written Resolution in accordance with these presents or (c) passed by way of Electronic Consent 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 voting on the resolution and whether or not they participated in such Written Resolution or Electronic Consent 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 by the Trustee within 14 days of such result being known, PROVIDED THAT the non-publication of such notice shall not invalidate such result.

5.11 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.

5.12 Subject to all other provisions of these presents the Delegate may (after consultation with the Trustee and DIB where the Delegate considers such consultation to be practicable but without the consent of the Trustee, DIB or the holders) prescribe such further or alternative regulations regarding the requisitioning and/or the holding of meetings and attendance and voting thereat as the Delegate may in its sole discretion reasonably think fit (including, without limitation, the substitution for periods of 24 Hours and 48 Hours referred to in this Schedule of shorter periods). Such regulations may, without prejudice to the generality of the foregoing, reflect the practices and facilities of any relevant Clearing System. Notice of any such further or alternative regulations may, at the sole discretion of the Delegate, be given to holders in accordance with Condition 17 at the time of service of any notice convening a meeting or at such other time as the Delegate may decide.

**SCHEDULE 5**

**FORM OF AUTHORISED SIGNATORIES' CERTIFICATE**

**[ON THE HEADED PAPER OF THE TRUSTEE/DUBAI ISLAMIC BANK PJSC]**

*For use by the Trustee and DIB:*

To: HSBC Corporate Trustee Company (UK) Limited (the **Delegate**)

[Date]

Dear Sir or Madam

**DIB Tier 1 Sukuk (4) Ltd.  
U.S.\$1,000,000,000 Additional Tier 1 Capital Certificates**

This certificate is delivered to you in accordance with Clause 10.1(c) of the Declaration of Trust dated 19 November 2020 (the **Declaration of Trust**) and made between DIB Tier 1 Sukuk (4) Ltd. (the **Trustee**), Dubai Islamic Bank PJSC (**DIB**) 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 [DIB Tier 1 Sukuk (4) Ltd./Dubai Islamic Bank PJSC], that, having made all reasonable enquiries, to the best of our knowledge, information and belief, (a) as at ●<sup>1</sup> (the **Certification Date**), no Non-Viability Event, Dissolution Event, Potential Dissolution Event, Non-Payment Event, Non-Payment Election, Tax Event or Capital Event or other breach of the Declaration of Trust has occurred since [ ]<sup>2</sup> [certificate delivered under Clause 10.1(c)<sup>3</sup>/the date of the Declaration of Trust] [other than [ ]]<sup>4</sup>.

<b>[DIB Tier 1 Sukuk (4) Ltd./Dubai Islamic Bank PJSC]</b>	
.....	[.....]
[Authorised Signatory]	[Authorised Signatory]

<sup>1</sup> Specify a date not more than seven days before the date of delivery of the certificate.  
<sup>2</sup> Insert date of the Declaration of Trust, otherwise delete.  
<sup>3</sup> Include unless the certificate is the first certificate delivered under Clause 10.1(c), in which case delete.  
<sup>4</sup> If any Non-Viability Event, Dissolution Event, Potential Dissolution Event, Non-Payment Event, Non-Payment Election or Capital Event or other breach of the Declaration of Trust did exist, give details; otherwise delete.

**SIGNATORIES TO THE DECLARATION OF TRUST**

**EXECUTED and DELIVERED as a DEED** )  
by **DIB TIER 1 SUKUK (4) LTD.** )  
acting by: )  
acting under the authority of that company )  
in the presence of: )



John Curran

Witness's signature





Name


Address



**EXECUTED and DELIVERED as a DEED**  
by **DUBAI ISLAMIC BANK PJSC**  
acting by:  
and  
acting under the authority of that company  
in the presence of:

)  
)  
)  
)  
)  
)

  
  
**Mohammed S.**  
Chief of Treasury  
Dubai Islamic Bank  
**Salman Liaqat**  
Chief of Strategy & Investor Relations  
Dubai Islamic Bank

Witness's signature 

Name **ALI MUHAMMAD**  
Address **PO Box 1080, DUBAI ISLAMIC BANK HEAD OFFICE, DUBAI, UAE**

**EXECUTED and DELIVERED as a DEED by  
HSBC CORPORATE TRUSTEE COMPANY  
(UK) LIMITED**

acting by:

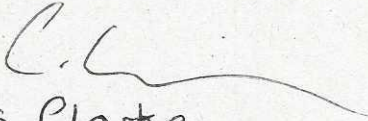
in the presence of:

)  
)  
)  
)



Emma White  
Authorised Signatory

Witness's signature



Name

Chris Clarke

Address:

175 Ardleigh Green Rd.,  
RM11 2LF