

EXECUTION VERSION

Dated 26 January 2021

NCB TIER 1 SUKUK LIMITED

as Rab-al-Maal

and

THE NATIONAL COMMERCIAL BANK

as Mudareb

MUDARABA AGREEMENT

relating to

U.S.\$1,250,000,000 Tier 1 Capital Certificates issued by NCB Tier 1 Sukuk Limited

Linklaters

Ref: L-278123

Linklaters LLP

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This Mudaraba Agreement (this “**Agreement**”) is dated 26 January 2021 and made **between**:

- (1) **NCB Tier 1 Sukuk Limited**, in its capacity as issuer of the Certificates (as defined herein) and as trustee for and on behalf of the Certificateholders and in such capacity, as rab-al-maal (the “**Rab-al-Maal**”); and
- (2) **The National Commercial Bank** (the “**Bank**” and, in its capacity as mudareb, the “**Mudareb**”).

Recitals:

- (A) NCB Tier 1 Sukuk Limited (in its capacity as issuer) has issued U.S.\$1,250,000,000 Tier 1 Capital Certificates to Certificateholders. The Certificates are constituted by a declaration of trust (the “**Declaration of Trust**”) dated the date hereof between the Rab-al-Maal, the Mudareb and the Delegate (as defined herein).
- (B) Pursuant to the Conditions (as defined herein), the Rab-al-Maal is authorised by the Certificateholders to invest the proceeds of the Certificates with the Mudareb in accordance with this Agreement.
- (C) The Mudareb has invited the Rab-al-Maal (as capital provider and Rab-al-Maal) to invest with it in accordance with an investment plan prepared by the Mudareb (a copy of which is set out at Schedule 1 (*Investment Plan*) to this Agreement (the “**Investment Plan**”).
- (D) This Agreement constitutes the mudaraba (the “**Mudaraba**”) between the Mudareb and the Rab-al-Maal and sets out the rights and obligations of the Rab-al-Maal and the Mudareb in relation thereto.

It is agreed as follows:

1 Definitions and Interpretation

1.1 Definitions

Except as otherwise expressly provided in this Agreement, capitalised terms used in this Agreement shall have the meanings given to such terms in the Conditions. In addition, the following terms shall have the meanings given below:

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

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

“**Agency Agreement**” has the meaning given to it in the Conditions;

“**Applicable Rate**” means:

- (a) from (and including) the date of this Agreement to (but excluding) the Mudaraba Profit Rate Reset Date, 3.500 per cent. per annum; and
- (b) in respect of each Reset Period, the aggregate of:
 - (i) the Margin; and
 - (ii) the Relevant Six Year Reset Rate on the relevant Applicable Rate Determination Date,

for the purpose of calculating the Periodic Distribution Amount to be paid out of the Rab-al-Maal Mudaraba Profit or Rab-al-Maal Final Mudaraba Profit, as applicable;

“Applicable Rate Determination Date” means the second U.S Government Securities Business Day (as defined in the Conditions) before the commencement of the Reset Period for which the rate will apply;

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

“Applicable Statutory Loss Absorption Regime” has the meaning given to it in the Conditions;

“Assets” means the consolidated gross assets of the Mudareb as shown in the latest audited or (as the case may be) auditor reviewed consolidated balance sheet of the Mudareb, 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 the Mudareb) a bankruptcy trustee (or such equivalent insolvency practitioner) may determine;

“Auditors” means, at any time, the statutory independent auditors to the Mudareb at the relevant time or such other auditor as may be appointed for the purpose of this Agreement;

“Bank Event” has the meaning given to it in the Conditions;

“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 the Kingdom of Saudi Arabia, New York City and London;

“Business Portfolio” means the general *Shari’a* compliant banking activities of the Mudareb;

“Calculation Agent” means the independent investment bank or financial institution of international repute selected and appointed by the Mudareb for the purposes of performing any of the functions expressed to be performed by the calculation agent pursuant to this Agreement, the Conditions and the Agency Agreement;

“Capital Event” is deemed to have occurred if the Mudareb is notified in writing by the Financial Regulator to the effect that the outstanding face amount (or, if some amount of the Certificates outstanding are held by the Mudareb or whose purchase is funded by the Mudareb, the amount that qualifies as regulatory capital) of the Certificates is excluded (in full or, to the extent not prohibited by relevant regulatory criteria for Tier 1 Capital, in part) from the consolidated Tier 1 Capital of the Mudareb (save where such non-qualification is only as a result of either (a) any applicable limitation on the amount of such capital; or (b) such capital ceasing to count towards the Mudareb’s capital base through any amortisation or similar process or any changes thereto (including any amortisation or similar process imposed through any grandfathering arrangement));

“Capital Regulations” means, at any time, the regulations, requirements, guidelines and policies relating to capital adequacy then in effect in the Kingdom of Saudi Arabia including those of the Financial Regulator;

“Certificates” has the meaning given to it in the Conditions;

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

“Conditions” means the terms and conditions relating to the Certificates as set out in Schedule 2 (*Terms and Conditions of the Certificates*) to the Declaration of Trust, as modified, for so long as the Certificates are represented by a Global Certificate (as defined in the Declaration of Trust), by the provisions of such Global Certificate, and a reference to any particular **“Condition”** thereof shall be construed accordingly;

“Delegate” has the meaning given to it in the Declaration of Trust;

“Directors” means the executive and non-executive directors of the Mudareb who make up its board of directors;

“Dispute” has the meaning given to it in Clause 22.1 (*Arbitration*);

“Dissolution Distribution Amount” has the meaning given to it in the Conditions;

“Dissolution Event” has the meaning given to it in the Conditions;

“Dissolution Mudaraba Capital” has the meaning given to it in Clause 7.3(a) (*Final Constructive Liquidation at Mudareb’s Option*);

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

“Distributable Profits” means the amount of the Mudareb’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 calculated by the Mudareb based on its most recent consolidated financial statements, or any equivalent or successor term from time to time as prescribed by the Capital Regulations;

“Dividend Stopper Date” has the meaning given to it in Clause 5.8 (*Dividend and Redemption Restriction*);

“Effective Date” has the meaning given to it in Clause 6.1 (*Write-down at the Point of Non-Viability*);

“Excess Liquidation Proceeds” has the meaning given to it in Clause 7.5 (*Amounts in excess of Required Liquidation Amount*);

“Existing Tier 1 Securities” means the SAR2,000,000,000 perpetual tier 1 mudaraba sukuk issued by the Mudareb on 15 July 2015 in connection with a mudaraba agreement dated the same date, the SAR 2,700,000,000 perpetual tier 1 mudaraba sukuk issued by the Mudareb on 23 December 2015 in connection with a mudaraba agreement dated the same date, the SAR 1,300,000,000 perpetual tier 1 mudaraba sukuk issued by the Mudareb on 5 June 2017, in connection with a mudaraba agreement dated the same date and the SAR 4,200,000,000 perpetual tier 1 mudaraba sukuk issued by the Mudareb on 30 June 2020 in connection with a mudaraba agreement dated the same date;

“Expected Mudaraba Profit Rate” means, on a per annum basis, the rate (expressed as a percentage) obtained by dividing (a) the then Applicable Rate by (b) 0.99;

“Final Mudaraba Profit” has the meaning given to it in Clause 5.1(a) (*Final Mudaraba Profit on Mudaraba End Date*);

“Financial Regulator” means SAMA or such other governmental authority which assumes or performs the functions of SAMA, as at the Issue Date, or such other successor authority exercising primary banking supervision, in each case with respect to prudential matters in relation to the Mudareb;

“First Mudaraba Optional Liquidation Date” means the date falling six months prior to the Mudaraba Profit Rate Reset Date;

“First Mudaraba Profit Distribution Date” means 26 July 2021;

“General Mudaraba Pool” means the general mudaraba pool of the Mudareb comprising: (i) the Mudareb’s shareholders’ equity; (ii) proceeds of all current savings and investment deposit accounts with the Mudareb; (iii) any other source of funds included in the general mudaraba pool by the Mudareb from time to time; and (iv) following contribution of the Mudaraba Capital on the commencement date of the Mudaraba, the Mudaraba Capital;

“Indemnity Payment” has the meaning given to it in Clause 12.2 (*Costs, Compensation and Indemnity*);

“Investment Plan” has the meaning given in Recital (C);

“Issue Date” means 26 January 2021;

“Issuer” means NCB Tier 1 Sukuk Limited in its capacity as issuer of the Certificates;

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

“LCIA” means the London Court of International Arbitration;

“Liabilities” means the consolidated gross liabilities of the Mudareb as shown in the latest audited or (as the case may be) auditor reviewed consolidated balance sheet of the Mudareb, 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 the Mudareb) a bankruptcy trustee (or such equivalent insolvency practitioner) may determine;

“Liquidation Condition” has the meaning given to it in Clause 7.3(d) (*Liquidation Conditions*);

“Liquidation Proceeds” has the meaning given to it in Clause 7.3(a) (*Final Constructive Liquidation at Mudareb’s option*);

“Margin” means 2.889 per cent. per annum;

“Mudaraba” has the meaning given in Recital (D);

“Mudaraba Accounts” means, in respect of each Mudaraba Profit Distribution Period, the accounts of the Mudaraba prepared by (or on behalf of) the Mudareb;

“Mudaraba Assets” has the meaning given to it in Clause 4.1(c) (*Mudaraba Assets*);

“Mudaraba Capital” means the capital amount contributed to the Mudaraba by the Rab-al-Maal, which shall be an amount equal to U.S.\$1,250,000,000 on the date of this Agreement and which may be subject to change after the date of this Agreement in accordance with the terms of Clause 7.3(g) (*Purchase*);

“Mudaraba End Date” has the meaning given to it in Clause 2.1(b) (*Term of the Mudaraba*);

“Mudaraba Profit” means the profit (if any) earned from the Mudaraba, being an amount equal to the value of the Mudaraba Assets on the relevant date minus the aggregate of:

- (a) the Mudaraba Capital;
- (b) any costs (consisting of direct costs and allocated costs) and/or provisions associated with the operation of the Mudaraba during the Mudaraba Term; and
- (c) any taxes or zakat incurred in connection with the operation of the Mudaraba (including in connection with any transfer, sale or disposal of any Mudaraba Asset during the Mudaraba Term) but excluding the Mudareb’s obligations (if any) to pay any Taxes and/or Additional Amounts under, or in connection with, Clause 5.11 (*Taxation*),

as reflected in the Mudaraba Accounts;

“Mudaraba Profit Distribution Date” means 26 January and 26 July in each year, starting on (and including) the First Mudaraba Profit Distribution Date;

“Mudaraba Profit Distribution Period” means the period beginning on (and including) the date of this Agreement and ending on (but excluding) the First Mudaraba Profit Distribution Date and each successive period beginning on (and including) a Mudaraba Profit Distribution Date and ending on (but excluding) the next succeeding Mudaraba Profit Distribution Date or the Mudaraba End Date (as applicable);

“Mudaraba Profit Rate Reset Date” means 26 January 2027;

“Mudaraba Reserve” has the meaning given to it in Clause 5.4(a)(i) (*Mudaraba Reserve*);

“Mudaraba Term” means the period commencing on the date of this Agreement and ending (a) on the Mudaraba End Date or (b) (if earlier), in the case of a Write-down in whole only, on the Non-Viability Event Write-down Date;

“Non-Payment Election” has the meaning given to it in Clause 5.6 (*Non-Payment Election*);

“Non-Payment Event” has the meaning given to it in Clause 5.5 (*Non-Payment Event*);

“Non-Viability Event” means that the Financial Regulator has notified the Mudareb in writing that it has determined that the Mudareb is, or will become, Non-Viable without:

- (a) a Write-down of the Certificates (and write-down of any of the Mudareb’s other capital instruments or other obligations constituting Tier 1 Capital and/or Tier 2 Capital of the Mudareb that, pursuant to their terms or by operation of law, are capable of being written-down and/or converted into equity); or
- (b) a public sector injection of capital (or equivalent support), provided that such injection of capital is not made (i) by a shareholder of the Mudareb or (ii) on terms that are more favourable to the Mudareb than those that would be accepted by private investors in comparable transactions;

“Non-Viability Event Write-down Date” shall be the date on which the Write-down will take place as specified in the Non-Viability Notice, which date shall be no later than 10 Business Days after the date of the Non-Viability Notice (or such earlier date as determined by the Financial Regulator);

“Non-Viability Notice” has the meaning given to it in Clause 6.3 (*Write-down at the Point of Non-Viability*);

“Non-Viable” means, in the case of the Mudareb, (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 Capital Regulations or any Applicable Statutory Loss Absorption Regime;

“Ordinary Shares” means the common shares of the Mudareb;

“Other Common Equity Tier 1 Instruments” means securities issued by the Mudareb that qualify as Common Equity Tier 1 Capital of the Mudareb 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 the Mudareb’s payment obligations under the transaction documents relating to the Existing Tier 1 Securities and all other subordinated payment obligations of the Mudareb which rank, or are expressed to rank, *pari passu* with the Relevant Obligations;

“Parties” means the parties to this Agreement;

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

“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;

“Principal Paying Agent” means Citibank, N.A., London Branch;

“Proceedings” has the meaning given to it in Clause 22.2 (*Waiver of Judgment Interest*);

“Rab-al-Maal Final Mudaraba Profit” has the meaning given to it in Clause 5.1(b) (*Final Mudaraba Profit on Mudaraba End Date*);

“Rab-al-Maal Mudaraba Profit” has the meaning given to it in Clause 5.2(b) (*Mudaraba Profit*);

“Registrar” means Citigroup Global Markets Europe AG;

“Relevant Jurisdiction” means the Cayman Islands (in the case of any payment made by the Rab-al-Maal) and the Kingdom of Saudi Arabia (in the case of any payment made by the Mudareb) or, in each case, any political sub-division or authority thereof or therein having the power to tax;

“Relevant Obligations” means the payment obligations of the Mudareb under this Agreement;

“Relevant Rab-al-Maal Mudaraba Profit Amount” has the meaning given to it in Clause 5.5(a) (*Non-Payment Event*);

“Relevant Six Year Reset Rate” has the meaning given to it in the Conditions;

“Required Liquidation Amount” means:

- (a) the Mudaraba Capital; and
- (b) subject to a Non-Payment Event not having occurred and being continuing and provided that a Non-Payment Event will not occur as a result of such payments, the Rab-al-Maal Final Mudaraba Profit (being an amount equal to the Periodic Distribution Amount payable on the redemption of the Certificates in full);

“Reset Date” means the Mudaraba Profit Rate Reset Date, and every sixth anniversary thereafter;

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

“Rules” has the meaning given to that term in Clause 22.1 (*Arbitration*);

“SAMA” means the Saudi Central Bank and/or any of its successors or assigns;

“Senior Creditors” means creditors of the Mudareb (including payment obligations to the Mudareb’s depositors and, for this purpose, holders of any instrument issued by, or other obligation of, the Mudareb which ranks senior to the claims of the Rab-al-Maal 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 Rab-al-Maal in respect of the Relevant Obligations;

“Senior Obligations” means all unsubordinated payment obligations of the Mudareb (including payment obligations to the Mudareb’s depositors) and all subordinated payment obligations (if any) of the Mudareb except *Pari Passu* Obligations and Junior Obligations;

“Shortfall” has the meaning given to it in Clause 7.3(e) (*Shortfall*);

“Solvent” means that (i) the Mudareb is able to pay its debts as they fall due and (ii) the Mudareb’s Assets exceed its Liabilities;

“Solvency Conditions” has the meaning given to it in Clause 2.4(a) (*Status*);

“Subsidiary” means any entity whose financial statements at any time are required by law or in accordance with provisions of generally accepted accounting principles to be fully consolidated with those of the Mudareb and **“Subsidiaries”** shall be construed accordingly;

“Taxes” has the meaning given to it in Clause 5.11 (*Taxation*);

“Tax Event” means the Mudareb or the Rab-al-Maal (as the case may be) would, as a result of a Tax Law Change, in making any payments under the Mudaraba Agreement (in the case of the Mudareb) on the next due date for a payment of Mudaraba Profit or the Certificates (in the case of the Rab-al-Maal) 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 the Mudareb or the Rab-al-Maal (as the case may be) taking reasonable measures available to it);

“Tax Law Change” means any change in, or amendment to, the laws, published practice or regulations of any Relevant Jurisdiction, or any change in the application or official

interpretation of such laws, published practice or regulations (including a holding by a court of competent jurisdiction), which change or amendment becomes effective (or, in the case of application or official interpretation, is announced) on or after 26 January 2021;

“Tier 1 Capital” means capital qualifying as (or would qualify as, but for any applicable limitation on the amount of such capital), and approved by the Financial Regulator as, tier 1 capital in accordance with the Capital Regulations;

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

“Transaction Account” has the meaning (and interpretation) given to it in the Conditions;

“Transaction Documents” has the meaning given to it in the Conditions;

“Trust Assets” has the meaning given to it in the Conditions;

“U.S.\$”, “U.S. dollars” and **“\$”** mean the lawful currency of the United States of America;

“Winding-Up Proceeding” has the meaning given to it in the Conditions;

“Write-down” means:

- (a) the Certificateholders’ rights under or in respect of the Trust Assets (including the Mudaraba Assets) shall automatically be deemed to be irrevocably and unconditionally Written-down in a proportion corresponding to the relevant Write-down Amount;
- (b) (in the case of a Write-down in whole) the Certificates shall be cancelled or (in the case of a Write-down in part) Written-down in part on a *pro rata* basis;
- (c) in the case of a Write-down in whole, the Certificateholders’ rights under the Mudaraba Assets shall be granted to the Mudareb such that the value of the Mudaraba Assets is zero;
- (d) the Trustee shall pay (x) any accrued and unpaid Periodic Distribution Amounts (in relation to the relevant Write-down Amount); and (y) any Additional Amounts (in relation to the relevant Write-down Amount), in each case, if and only to the extent that such Periodic Distribution Amount or Additional Amount, as applicable, became due and payable prior to the date of the Non-Viability Notice (and provided payment of such amounts are not prohibited by the Financial Regulator or the Capital Regulations at such time); and
- (e) except as described in paragraph (d) above, all rights of any Certificateholder for payment of any amounts under or in respect of the Certificates (including, without limitation, the Dissolution Distribution Amount and 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 the outstanding face amount of the Certificates and the principal notional amount of the Trust Assets that the Financial Regulator has determined to be Written-down.

1.2 Construction

- (a) Unless a contrary indication appears any reference in this Agreement to:
- (i) a **“Party”**, the **“Rab-al-Maal”**, the **“Mudareb”**, the **“Principal Paying Agent”**, the **“Calculation Agent”**, the **“Registrar”**, or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) **“Rab-al-Maal”** shall include a reference to NCB Tier 1 Sukuk Limited acting as trustee for and on behalf of the Certificateholders and **“Mudareb”** shall include a reference to The National Commercial Bank acting in any capacity;
 - (iii) **“asset”** includes present and future properties, revenues and rights of every description;
 - (iv) a **“law”** includes any law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (v) a **“person”** shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
 - (vi) a **“constructive liquidation”** on a particular date shall be construed as a reference to the value of the Mudaraba Assets should they be liquidated by the Mudareb on that date (without any actual liquidation being required to be effected in connection therewith);
 - (vii) **“Shari’a”** shall be construed as a reference to Islamic *Shari’a* as determined by the Shari’a Supervisory Board of the Mudareb;
 - (viii) a provision of law is a reference to that provision as amended or re-enacted;
 - (ix) an agreement or document is a reference to that agreement or document as modified, amended, supplemented or restated from time to time;
 - (x) the singular includes the plural and *vice versa* (unless the context otherwise requires); and
 - (xi) a time of day is a reference to Riyadh time (unless otherwise specified) and dates shall be determined by reference to the Gregorian calendar.
- (b) Schedule 1 (*Investment Plan*) forms an integral part of this Agreement.
- (c) Section headings, Clause headings and Schedule headings are for ease of reference only.
- (d) In the case of any conflict between the Conditions and any other part of this Agreement, the Conditions shall prevail.

- (e) The recitals to this Agreement are incorporated into, and form an integral part of, this Agreement.

2 Term and Purpose of Mudaraba

2.1 Term of the Mudaraba

- (a) The Rab-al-Maal hereby offers to enter into this Mudaraba Agreement with the Mudareb who hereby accepts the same subject to the terms and conditions of this Agreement. The Rab-al-Maal hereby appoints the Mudareb as mudareb and the Mudareb accepts its appointment as mudareb in accordance with this Agreement.
- (b) The Mudaraba will commence on the date of the payment of the Mudaraba Capital to the Mudareb and will end (i) on the date (being the “**Mudaraba End Date**”) on which the Certificates are redeemed in whole but not in part in accordance with the Conditions, following the constructive liquidation of the Mudaraba in accordance with the terms of this Agreement or (ii) (if earlier), and in the case of a Write-down in whole only, on the Non-Viability Event Write-down Date.
- (c) This Agreement shall only terminate in the circumstances referred to in Clause 6 (*Write-down at the Point of Non-Viability*) and Clause 7 (*Liquidation of the Mudaraba*).

2.2 Mudaraba Treatment

(a) Mudaraba End Date Liquidation

The Mudareb shall liquidate the Mudaraba on the Mudaraba End Date (by way of a final constructive liquidation or mandatory liquidation, as the case may be, pursuant to the relevant provisions of Clause 7 (*Liquidation of the Mudaraba*)) and, in doing so, shall, subject to Clause 7 (*Liquidation of the Mudaraba*), return to the Rab-al-Maal all amounts due and payable to the Rab-al-Maal in accordance with this Agreement. After payment in full of the amounts due and payable to the Rab-al-Maal pursuant to the terms of this Agreement, the Rab-al-Maal will have no further right or claim to any assets of the Mudareb.

(b) Payments to Other Creditors

The Rab-al-Maal irrevocably undertakes and agrees that:

- (i) the Mudareb shall be entitled (in its capacity as Mudareb or otherwise) to utilise the Mudaraba Assets (and the proceeds thereof) to make payments in respect of the claims of Senior Creditors or to cover losses of the Mudaraba and such entitlement shall apply at any time before an order has been made, or an effective resolution has been passed, for the winding-up, dissolution or liquidation (or other analogous event) of the Mudareb; and
- (ii) payments of Rab-al-Maal Mudaraba Profit (if any) or Rab-al-Maal Final Mudaraba Profit are subject to Clause 5.5 (*Non-Payment Event*), (in the case of Rab-al-Maal Mudaraba Profit only) Clause 5.6 (*Non-Payment Election*) and Clause 5.7 (*Effect of Non-Payment Event or Non-Payment Election*).

2.3 Objective

The objective of the Mudaraba is to invest the Mudaraba Capital on an unrestricted co-mingling basis by the Mudareb in the Business Portfolio carried out through the General

Mudaraba Pool and to earn profit thereon in accordance with the Investment Plan. The Rab-al-Maal and the Mudareb acknowledge that the Rab-al-Maal has no obligation to monitor the Mudaraba or any investment by the Mudareb of the Mudaraba Capital.

2.4 Status

- (a) Except upon the occurrence and continuation of any Winding-Up Proceeding and without prejudice to Clauses 5.5 (*Non-Payment Event*) and 5.6 (*Non-Payment Election*), the Relevant Obligations are conditional upon the following (together, the “**Solvency Conditions**”):
- (i) the Mudareb (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) the Mudareb (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 the Mudareb 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.
- (b) Upon the occurrence and continuation of any Winding-Up Proceeding, the Relevant Obligations will (i) constitute Additional Tier 1 Capital of the Mudareb, (ii) constitute direct, unsecured, conditional and subordinated obligations of the Mudareb, (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 the Mudareb's (in its capacity as Mudareb or otherwise) obligations under the Existing Tier 1 Securities and (v) rank in priority only to all Junior Obligations.
- (c) The Rab-al-Maal irrevocably waives its rights to the extent necessary to give effect to the subordination provisions of this Clause 2.4 (*Status*). In order to give effect to such subordination provisions, each of the Rab-al-Maal and the Mudareb agrees that if a Winding-Up Proceeding shall have occurred and be continuing, any amounts that would be due and payable to the Rab-al-Maal (including any amounts standing to the credit of the Mudaraba Reserve) will be applied:
- (i) first, to the payment in full of each claim in respect of a Senior Obligation (including any amount in respect of a claim accruing after the date of commencement of such Winding-Up Proceeding); and
 - (ii) thereafter, to the payment, equally and rateably, of each amount owing in respect of the Relevant Obligations and all Pari Passu Obligations.
- (d) The Rab-al-Maal shall not be permitted to exercise or claim any right of set-off in respect of any amount owed to it by the Mudareb arising under or in connection with

the Relevant Obligations and the Rab-al-Maal shall be deemed to have waived all such rights of set-off to the fullest extent permitted by law.

3 The Investment Plan

The Mudareb:

- (a) acknowledges and agrees that the Investment Plan was prepared by it with due skill, care and attention;
- (b) represents and warrants to the Rab-al-Maal that the Investment Plan is fair and accurate in all material respects; and
- (c) acknowledges that the Rab-al-Maal has entered into the Mudaraba and this Agreement in reliance on the Investment Plan.

4 Mudaraba Capital and Assets

4.1 Mudaraba Assets

The Mudareb acknowledges and agrees that:

- (a) the Rab-al-Maal has on the date of this Agreement paid U.S.\$1,250,000,000 to the Mudareb by credit transfer in U.S.\$ for same day value to such account as the Mudareb has designated to the Rab-al-Maal prior to the date of this Agreement;
- (b) such amount constitutes the initial Mudaraba Capital; and
- (c) the Mudaraba Capital will, following investment of the Mudaraba Capital in the General Mudaraba Pool in accordance with the Investment Plan, constitute *pro rata* undivided assets in the General Mudaraba Pool (the "**Mudaraba Assets**").

4.2 Co-mingling

The Mudareb is authorised to co-mingle any of its own *Shari'a* compliant assets from time to time with the Mudaraba Assets during the Mudaraba Term, provided that prior to the calculation of any Mudaraba Profit or Final Mudaraba Profit the Mudareb shall deduct a proportion of any profit earned for its own account. For the purpose of such calculation the proportion deducted shall be equal to the ratio of (a) the value of the co-mingled assets (excluding the Mudaraba Assets) to (b) the value of the co-mingled assets (including the Mudaraba Assets).

4.3 Certificates

- (a) This Agreement evidences the Rab-al-Maal's contribution of Mudaraba Capital to the Mudaraba.
- (b) The Parties acknowledge and agree that the Rab-al-Maal, in its capacity as Issuer, has issued Certificates to the Certificateholders and that the Certificates:
 - (i) represent an undivided ownership interest in the Trust Assets; and
 - (ii) constitute Tier 1 Capital of the Mudareb.

5 Mudaraba Profit

5.1 Final Mudaraba Profit on Mudaraba End Date

Subject to Clause 5.5 (*Non-Payment Event*), Clause 5.9 (*Final Mudaraba Profit on the Mudaraba End Date and Incentive Payment*) and Clause 2.2 (*Mudaraba Treatment*), the Mudareb shall on the Mudaraba End Date:

- (a) distribute Mudaraba Profit amounts for the final Mudaraba Profit Distribution Period (the **"Final Mudaraba Profit"**) (if any) between the Parties, in accordance with the profit sharing ratio set out in Clause 5.3 (*Distribution of Mudaraba Profit*); and
- (b) pay to the Rab-al-Maal its share of the Final Mudaraba Profit (if any) (to be paid from the proceeds of the final constructive or mandatory liquidation of the Mudaraba in accordance with Clause 7.4 (*Mandatory Final Liquidation*)) (the **"Rab-al-Maal Final Mudaraba Profit"**).

5.2 Mudaraba Profit

Subject to Clause 5.5 (*Non-Payment Event*), Clause 5.6 (*Non-Payment Election*) and Clause 2.2 (*Mudaraba Treatment*), the Mudareb shall, on each Mudaraba Profit Distribution Date, on the basis of a constructive liquidation of the Mudaraba by the Mudareb:

- (a) distribute the Mudaraba Profit for the relevant Mudaraba Profit Distribution Period (if any) between the Parties; and
- (b) pay to the Rab-al-Maal its share of the Mudaraba Profit (if any) (the **"Rab-al-Maal Mudaraba Profit"**),

in accordance with the profit sharing ratio set out in Clause 5.3 (*Distribution of Mudaraba Profit*).

5.3 Distribution of Mudaraba Profit

Mudaraba Profit and the Final Mudaraba Profit (in each case, if any) will be distributed in accordance with the following profit sharing ratio:

- (a) the Rab-al-Maal, ninety-nine per cent. (99 per cent.); and
- (b) the Mudareb, one per cent. (1 per cent.).

5.4 Mudaraba Reserve

- (a) The Parties agree that:
 - (i) if the Mudareb (at its sole discretion but subject as provided in Clause 5.1 (*Final Mudaraba Profit on Mudaraba End Date*) and Clause 5.2 (*Mudaraba Profit*), as applicable) elects to make a payment of Mudaraba Profit, or Final Mudaraba Profit is otherwise payable pursuant to this Agreement, and if the Rab-al-Maal Mudaraba Profit or the Rab-al-Maal Final Mudaraba Profit (as applicable) payable to the Rab-al-Maal on any Mudaraba Profit Distribution Date, or the Mudaraba End Date in the case of the Rab-al-Maal Final Mudaraba Profit, is greater than the then applicable Periodic Distribution Amount, the amount of any excess shall be credited to a reserve account (the **"Mudaraba Reserve"**) and the Rab-al-Maal Mudaraba Profit or the Rab-al-Maal Final Mudaraba Profit (as applicable) payable to the Rab-al-Maal shall be reduced accordingly;

- (ii) the Mudaraba Reserve: (A) shall be recorded by the Mudareb through a book-entry ledger account; (B) will not be required to be maintained in a separate defined bank account; and (C) shall be reflected in the Mudaraba Accounts; and
 - (iii) the Mudareb shall be entitled to deduct amounts standing to the credit of the Mudaraba Reserve (at its sole discretion) at any time prior to the Mudaraba End Date and to use such amounts for its own purposes, provided that such amounts shall be repaid by it to the Mudaraba Reserve if so required to fund a shortfall pursuant to Clause 5.4(b) (*Mudaraba Reserve*).
- (b) If the Mudareb (at its sole discretion but subject as provided in Clause 5.1 (*Final Mudaraba Profit on Mudaraba End Date*) and Clause 5.2 (*Mudaraba Profit*), as applicable) elects to make a distribution of Mudaraba Profit, or Final Mudaraba Profit is otherwise payable pursuant to this Agreement, and if the Rab-al-Maal Mudaraba Profit or the Rab-al-Maal Final Mudaraba Profit (as applicable) payable to the Rab-al-Maal on any Mudaraba Profit Distribution Date, or the Mudaraba End Date in the case of the Rab-al-Maal Final Mudaraba Profit, is less than the then applicable Periodic Distribution Amount, the Mudareb:
- (i) first, shall utilise any amount available in the Mudaraba Reserve (after re-crediting amounts to it pursuant to Clause 5.4(a)(iii) (*Mudaraba Reserve*), if applicable) to make payments to the Rab-al-Maal in order to cover such shortfall; and
 - (ii) second, may (at its sole discretion) elect (but shall not be obliged) to make one or more payments from its own cash resources as a donation in order to cover such shortfall.

5.5 Non-Payment Event

If any of the following events occur (each, a “**Non-Payment Event**”), the 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 relevant Mudaraba Profit Distribution Date or Mudaraba End Date (as the case may be), and as a result thereof the Rab-al-Maal shall not pay Periodic Distribution Amounts on the corresponding Periodic Distribution Date:

- (a) the amount equal to the then applicable Periodic Distribution Amount to be paid by the Mudareb out of the Rab-al-Maal Mudaraba Profit or Rab-al-Maal Final Mudaraba Profit, as applicable (the “**Relevant Rab-al-Maal Mudaraba Profit Amount**”), when aggregated with any distributions or amounts payable by the Mudareb (whether 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 and Junior Obligations, exceeds, on the relevant date for payment of the Relevant Rab-al-Maal Mudaraba Profit Amount, the Mudareb’s Distributable Profits; or
- (b) the Mudareb (whether as Mudareb or otherwise) is, on that Mudaraba Profit Distribution Date or Mudaraba End Date (as the case may be), in breach of (or such payment would cause a breach of) the Applicable Regulatory Capital Requirements (including any payment restrictions due to a breach of any capital buffers imposed on the Mudareb by the Financial Regulator); or

- (c) the Financial Regulator requires (i) the Mudareb not to pay the Relevant Rab-al-Maal Mudaraba Profit Amount to the Rab-al-Maal on that Mudaraba Profit Distribution Date or Mudaraba End Date (as the case may be) or (ii) the Rab-al-Maal not to pay the relevant Periodic Distribution Amount on that Periodic Distribution Date, in each case, on account of the Mudareb making a net loss during the relevant financial period or for any other reason as it may deem necessary; or
- (d) the Solvency Conditions are not satisfied (or would no longer be satisfied if the Relevant Rab-al-Maal Mudaraba Profit Amount was paid).

5.6 Non-Payment Election

The Mudareb may in its sole discretion elect that the Rab-al-Maal Mudaraba Profit (in whole or in part) will not be paid to the Rab-al-Maal on any Mudaraba Profit Distribution Date, provided that the foregoing in this Clause 5.6 (*Non-Payment Election*) shall not apply in respect of Rab-al-Maal Final Mudaraba Profit payable on any Mudaraba End Date (any such election being a “**Non-Payment Election**”). The Mudareb may not, however, make a Non-Payment Election once it has given notice to the Rab-al-Maal regarding the liquidation of the Mudaraba as may be required in accordance with Clause 7 (*Liquidation of the Mudaraba*).

5.7 Effect of Non-Payment Event or Non-Payment Election

- (a) If the Mudareb makes a Non-Payment Election or a Non-Payment Event occurs, then the Mudareb shall (i) in the case of a Non-Payment Election, no later than 14 calendar days prior to such event, and (ii) in the case of a Non-Payment Event, as soon as practicable thereafter but in any case no later than five Business Days prior to the relevant Mudaraba Profit Distribution Date or Mudaraba End Date, as the case may be, give notice to the Rab-al-Maal and the Principal Paying Agent in accordance with Clause 19 (*Notices*), to the Delegate in accordance with clause 23 (*Communications*) of the Declaration of Trust and to the Certificateholders in accordance with Condition 17 (*Notices*), in each case providing details of such Non-Payment Election (including, if relevant, details of any partial payment to be made) or Non-Payment Event, as the case may be. In the absence of notice of such Non-Payment Election or Non-Payment Event, as the case may be, having been given in accordance with this Clause 5.7(a) (*Effect of Non-Payment Event or Non-Payment Election*), the fact of non-payment of the Relevant Rab-al-Maal Mudaraba Profit Amount (or any part thereof) on the relevant Mudaraba Profit Distribution Date or Mudaraba End Date (as the case may be) shall be evidence of the occurrence of a Non-Payment Election or a Non-Payment Event, as the case may be.
- (b) The Rab-al-Maal shall have no claim in respect of any Rab-al-Maal Mudaraba Profit (or any part thereof, as applicable) or Rab-al-Maal Final Mudaraba Profit not paid as a result of either (in the case of Rab-al-Maal Mudaraba Profit only) a Non-Payment Election or (in the case of Rab-al-Maal Mudaraba Profit or Rab-al-Maal Final Mudaraba Profit) a Non-Payment Event (in each case, irrespective of whether notice of such Non-Payment Election or Non-Payment Event has been given in accordance with this Clause 5.7 (*Effect of Non-Payment Event or Non-Payment Election*)) and any such non-payment in whole or in part, as applicable, of Rab-al-Maal Mudaraba Profit or Rab-al-Maal Final Mudaraba Profit in such circumstance shall not constitute a Dissolution Event. The Mudareb shall not have any obligation to make any subsequent payment in respect of any such unpaid profit (or any part thereof, as

applicable) (whether from its own cash resources, from the Mudaraba Reserve or otherwise).

- (c) If the Mudareb makes a Non-Payment Election or a Non-Payment Event occurs, any profit from the Mudaraba for the relevant period which is not paid to the Rab-al-Maal in such circumstances shall be credited by the Mudareb to the Mudaraba Reserve. The Mudareb shall be entitled to deduct amounts standing to the credit of the Mudaraba Reserve (at its sole discretion) at any time prior to the Mudaraba End Date and to use such amounts for its own purposes, provided that such amounts shall be repaid by it to the Mudaraba Reserve if so required to fund a shortfall pursuant to Clause 5.4(b) (*Mudaraba Reserve*).

5.8 Dividend and Redemption Restriction

If the Mudareb makes a Non-Payment Election or a Non-Payment Event occurs, then from the date of such Non-Payment Election or Non-Payment Event (the “**Dividend Stopper Date**”), the Mudareb will not, during the Mudaraba Term:

- (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 issued by the Mudareb (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 shares (other than 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 the Mudareb 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 any Ordinary Shares issued by the Mudareb; or
- (d) directly or indirectly redeem, purchase, cancel, reduce or otherwise acquire Other Common Equity Tier 1 Instruments issued by the Mudareb 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 any (i) mandatory redemption in accordance with its terms or (ii) conversion into, or exchange for, Ordinary Shares), only to the extent such restriction on redemption, purchase, cancellation, reduction or acquisition is permitted under the relevant regulatory criteria for Tier 1 Capital applicable from time to time,

in each case unless or until (i) the next following payment of Rab-al-Maal Mudaraba Profit or (ii) (as the case may be) payment of the Rab-al-Maal Final Mudaraba Profit, in each case following the Dividend Stopper Date has been made in full (or an amount equal to that amount has been duly set aside or provided for in full for the benefit of the Rab-al-Maal).

5.9 Final Mudaraba Profit on the Mudaraba End Date and Incentive Payment

The Parties agree that, on the Mudaraba End Date, the Mudareb will calculate and distribute the Final Mudaraba Profit (if any) in accordance with Clause 5.1 (*Final Mudaraba Profit on Mudaraba End Date*) and Clause 5.4 (*Mudaraba Reserve*), and in doing so:

- (a) the Rab-al-Maal Final Mudaraba Profit payable to the Rab-al-Maal will (if generated) be an amount equal to the final Periodic Distribution Amount; and
- (b) the balance of amounts standing to the credit of the Mudaraba Reserve, after paying all amounts due to the Rab-al-Maal pursuant to Clause 7.3 (*Mudareb's Option to liquidate in whole on the basis of final constructive liquidation*), shall be paid to the Mudareb as an incentive fee for its performance under this Agreement.

The Rab-al-Maal acknowledges that it shall have no entitlement in respect of any surplus amounts that are paid to the Mudareb pursuant to Clause 5.9(b) (*Final Mudaraba Profit on the Mudaraba End Date and Incentive Payment*).

5.10 Mudaraba Accounts

- (a) If so requested by the Rab-al-Maal, and provided that the Mudareb will not be breaching any law or regulation by doing so, the Mudareb shall within 90 days of such request supply a copy of the Mudaraba Accounts to the Rab-al-Maal.
- (b) Each set of Mudaraba Accounts delivered by the Mudareb shall be prepared by the Mudareb so as to represent fairly the financial condition of the Mudaraba for the period to which the Mudaraba Accounts relate.

5.11 Taxation

All payments under this Agreement by the Mudareb to the Rab-al-Maal 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 such withholding or deduction is required by law. In such event, and/or if Additional Amounts are payable by the Rab-al-Maal in respect of the Certificates in accordance with Condition 13 (*Taxation*), the Mudareb will pay such Taxes and/or additional amounts by payment to the Transaction Account in U.S. dollars by wire transfer for same day value so that the net amounts received by the Certificateholders shall equal the respective amounts that would have been received in the absence of the withholding or deduction to which this Clause 5.11 (*Taxation*) applies and in the absence of the withholding or deduction to which Condition 13 (*Taxation*) applies.

5.12 Applicable Rate

The Applicable Rate will be reset on each Reset Date on the basis of the aggregate of the Margin and the Relevant Six Year Reset Rate on the relevant Applicable Rate Determination Date, as determined by the Calculation Agent.

6 Write-Down at the Point of Non-Viability

- 6.1** The provisions of this Clause 6 (*Write-down at the Point of Non-Viability*) will lapse and cease to apply with effect from (and including) the date on which the Applicable Statutory Loss Absorption Regime becomes effective in respect of the Certificates (the "**Effective Date**"), except to the extent such provisions are required by the Applicable Statutory Loss Absorption Regime. Forthwith following the occurrence of the Effective Date, the Mudareb shall give notice of such occurrence to each of the Rab-al-Maal and the Delegate in accordance with the Declaration of Trust and to the Certificateholders in accordance with Condition 17 (*Notices*). If the Mudareb becomes Non-Viable on or after the Effective Date, the Financial Regulator (or the Mudareb on instructions from the Financial Regulator) may take such

action in respect of the Certificates as is required or permitted by such Applicable Statutory Loss Absorption Regime.

6.2 If a Non-Viability Event occurs at any time on or after the Issue Date and prior to the Effective Date, a Write-down (in whole or in part, as applicable) will take place in accordance with Clause 6.3 (*Write-down at the Point of Non-Viability*).

6.3 On the third Business Day following the date on which such Non-Viability Event occurs, (i) the Mudareb will notify the Rab-al-Maal thereof in accordance with this Agreement and (ii) the Rab-al-Maal will then notify the Certificateholders and the Principal Paying Agent thereof in accordance with the Conditions (a "**Non-Viability Notice**"). Such Non-Viability Notice shall:

- (a) state that a Non-Viability Event has occurred;
- (b) state that a Write-down will take place and, following guidance from the Financial Regulator, whether such Write-down will be a full or partial Write-down;
- (c) specify, in the case of a partial Write-down, the amount as determined by the Financial Regulator and notified to the Mudareb by which the aggregate face amount of the Certificates then outstanding is to be Written-down;
- (d) specify, in the case of a full Write-down, that the Mudareb has received written confirmation from the Financial Regulator that the Financial Regulator has determined the principal notional amount of the Trust Assets to be zero; and
- (e) specify the Non-Viability Event Write-down Date.

6.4 A Write-down will occur on the Non-Viability Event Write-down Date.

6.5 In the case of a Write-down in full only, this Agreement will be automatically terminated with effect from the Non-Viability Event Write-down Date and none of the Rab-al-Maal, the Certificateholders nor the Delegate shall be entitled to any claim for any amounts in connection with the Mudaraba Assets.

6.6 In the case of a Write-down in part only, the Mudaraba Capital shall be reduced in proportion to the face amount of the Certificates that are to be Written-down and none of the Rab-al-Maal, the Certificateholders nor the Delegate shall be entitled to any claim for any amounts in connection with the Mudaraba Assets that relate to the proportion of the Mudaraba Capital that has been reduced.

7 Liquidation of the Mudaraba

7.1 Any final constructive liquidation of the Mudaraba in whole but not in part pursuant to Clause 7.3(a) (*Final Constructive Liquidation at Mudareb's option*), Clause 7.3(b) (*Final Constructive Liquidation due to taxation*) or Clause 7.3(c) (*Final Constructive Liquidation for Capital Event*) is subject to the following conditions:

- (a) (except to the extent that the Financial Regulator and/or the Capital Regulations no longer so require(s)) the Mudareb having obtained the prior consent of the Financial Regulator;
- (b) (except to the extent that the Financial Regulator and/or the Capital Regulations no longer so require(s)) the requirement that at the time when the relevant notice of liquidation is given, the Mudareb being in compliance with the Applicable Regulatory Capital Requirements;

- (c) (except to the extent that the Financial Regulator and/or the Capital Regulations no longer so require(s)) immediately following such constructive liquidation, the Mudareb being in compliance with the Applicable Regulatory Capital Requirements;
- (d) the Solvency Conditions being satisfied; and
- (e) (in the case of a final constructive liquidation pursuant to Clauses 7.3(b) (*Final Constructive Liquidation due to Taxation*) or 7.3(c) (*Final Constructive Liquidation for Capital Event*) only) the Tax Law Change or Capital Event, as the case may be, having become, or becoming, effective on or after the date of this Agreement.

7.2 Any final constructive liquidation of the Mudaraba in whole but not in part (a) pursuant to Clause 7.3(a) (*Final Constructive Liquidation at Mudareb's option*) may occur on the First Mudaraba Optional Liquidation Date and on any date thereafter up to and including the Mudaraba Profit Rate Reset Date, or any Mudaraba Profit Distribution Date thereafter; and (b) pursuant to Clause 7.3(b) (*Final Constructive Liquidation due to taxation*) or Clause 7.3(c) (*Final Constructive Liquidation for Capital Event*) may occur on any date on or after the date of this Agreement (whether or not a Mudaraba Profit Distribution Date).

7.3 Mudareb's Option to liquidate in whole on the basis of final constructive liquidation

(a) **Final Constructive Liquidation at Mudareb's option**

Subject to this Clause 7 (*Liquidation of the Mudaraba*) and Clause 2.2(b) (*Payments to Other Creditors*), the Mudareb may (in its sole discretion), by giving not less than 20 nor more than 35 days' prior notice to the Rab-al-Maal in accordance with Clause 19 (*Notices*), which notice shall, subject to Clause 7.3(h) (*No liquidation following a Non-Viability Event*), be irrevocable, shall specify the date fixed for liquidation of the Mudaraba and shall constitute instructions to the Rab-al-Maal for the purposes of Condition 10.1(b) (*Trustee's Call Option*), elect to liquidate the Mudaraba in whole but not in part in accordance with Clause 2.2(a) (*Mudaraba End Date Liquidation*) of this Agreement for the purposes of (i) firstly, returning capital (the "**Dissolution Mudaraba Capital**") to the Rab-al-Maal; and (ii) secondly, subject to Clause 5.9 (*Final Mudaraba Profit on the Mudaraba End Date and Incentive Payment*) paying the Rab-al-Maal Final Mudaraba Profit to the Rab-al-Maal (the aggregate of (i) and (ii) being the "**Liquidation Proceeds**") on the Mudaraba End Date.

(b) **Final Constructive Liquidation due to taxation**

Subject to this Clause 7 (*Liquidation of the Mudaraba*) and Clause 2.2(b) (*Payments to Other Creditors*), upon the occurrence of a Tax Event, the Mudareb may (in its sole discretion), by giving not less than 20 nor more than 35 days' prior notice to the Rab-al-Maal in accordance with Clause 19 (*Notices*) (which notice shall, subject to Clause 7.3(h) (*No liquidation following a Non-Viability Event*), be irrevocable and shall specify the date fixed for liquidation of the Mudaraba and shall constitute instructions to the Rab-al-Maal for the purposes of Condition 10.1(c) (*Redemption due to Taxation*)), elect to liquidate the Mudaraba in whole but not in part in accordance with Clause 2.2(a) (*Mudaraba End Date Liquidation*) of this Agreement for the purposes of paying the Liquidation Proceeds to the Rab-al-Maal on the Mudaraba End Date.

(c) **Final Constructive Liquidation for Capital Event**

Subject to this Clause 7 (*Liquidation of the Mudaraba*) and Clause 2.2(b) (*Payments to Other Creditors*), if a Capital Event occurs and is continuing, the Mudareb may (in its sole discretion), by giving not less than 20 nor more than 35 days' prior notice to the Rab-al-Maal in accordance with Clause 19 (*Notices*) (which notice shall, subject to Clause 7.3(h) (*No liquidation following a Non-Viability Event*), be irrevocable and shall specify the date fixed for liquidation of the Mudaraba and shall constitute instructions to the Rab-al-Maal for the purposes of Condition 10.1(d) (*Redemption for Capital Event*)), elect to liquidate the Mudaraba in whole but not in part in accordance with Clause 2.2(a) (*Mudaraba End Date Liquidation*) for the purposes of paying the Liquidation Proceeds to the Rab-al-Maal on the Mudaraba End Date.

(d) **Liquidation Condition**

Any such final constructive liquidation in whole in accordance with Clause 7.3(a) (*Final Constructive Liquidation at Mudareb's option*), Clause 7.3(b) (*Final Constructive Liquidation due to taxation*) or Clause 7.3(c) (*Final Constructive Liquidation for Capital Event*) will also be subject to the Liquidation Proceeds being equal to such minimum amount as is set out in Clause 7.3(e) (*Shortfall*) (the application of such thresholds being referred to as the "**Liquidation Condition**").

(e) **Shortfall**

If the Mudareb, in its sole discretion, were to exercise its option to liquidate the Mudaraba in whole, but not in part, on the basis of a final constructive liquidation of the Mudaraba in accordance with Clause 7.3(a) (*Final Constructive Liquidation at Mudareb's option*), Clause 7.3(b) (*Final Constructive Liquidation due to taxation*) or Clause 7.3(c) (*Final Constructive Liquidation for Capital Event*), and the Liquidation Proceeds which would be generated upon such liquidation are less than the Required Liquidation Amount, the Mudareb would, if it were to proceed with such final constructive liquidation, be in breach of the Liquidation Condition and as a result of such breach the Rab-al-Maal would suffer a loss in an amount equal to the difference between the Required Liquidation Amount and the Liquidation Proceeds (the "**Shortfall**").

(f) **Shortfall Consequences**

In the circumstances set out in Clause 7.3(e) (*Shortfall*), the Mudareb shall either:

- (i) continue investing the Mudaraba Capital in the Mudaraba, and accordingly the Mudareb shall not proceed with the final constructive liquidation of the Mudaraba and as a result no distribution of the Liquidation Proceeds shall occur; or
- (ii) proceed with the final constructive liquidation of the Mudaraba and indemnify the Rab-al-Maal in respect of the Shortfall (in accordance with the terms of Clause 12 (*Costs, Compensation and Indemnity*)), and transfer the Liquidation Proceeds into the Transaction Account, provided always that the Mudareb will not be in breach of Clause 2.2(b) (*Payments to Other Creditors*) and Clause 5.5 (*Non-Payment Event*).

(g) **Purchase**

- (i) Subject to the Mudareb (a) obtaining the prior approval of the Financial Regulator (except to the extent that the Financial Regulator no longer so requires), (b) being in compliance with the Applicable Regulatory Capital Requirements and (c) satisfying the Solvency Conditions at the time of purchase, the Mudareb or any of its Subsidiaries, may, in those circumstances permitted by the Applicable Regulatory Capital Requirements, purchase the Certificates in any manner and at any price.
- (ii) Upon any purchase in accordance with paragraph (i) above, the Mudareb shall deliver such Certificates to any Paying Agent for cancellation and, upon such cancellation, the Mudaraba Capital shall be reduced by the face amount of the Certificates so cancelled.

(h) **No liquidation following a Non-Viability Event**

If the Mudareb has notified the Rab-al-Maal of the date fixed for liquidation of the Mudaraba pursuant to Clause 7.3(a) (*Final Constructive Liquidation at Mudareb's option*), Clause 7.3(b) (*Final Constructive Liquidation due to taxation*) or Clause 7.3(c) (*Final Constructive Liquidation for Capital Event*) and prior to such liquidation a Non-Viability Event occurs, the relevant notice of liquidation shall be automatically rescinded and shall be of no force and effect. Further, no notice of liquidation pursuant to such Clauses shall be given in the period following the occurrence of a Non-Viability Event and prior to the relevant Non-Viability Event Write-down date.

7.4 Mandatory Final Liquidation

The Mudaraba will mandatorily be liquidated in whole but not in part if a Bank Event occurs and a Dissolution Notice is delivered pursuant to Condition 12.1 (*Bank Events*), and the Mudareb acknowledges that the Rab-al-Maal shall, in each such case, be entitled to claim for all amounts in respect of Mudaraba Capital, Rab-al-Maal Mudaraba Profit, Rab-al-Maal Final Mudaraba Profit, Indemnity Payments and any other payments due in accordance with the terms of this Agreement, provided that:

- (a) all such claims shall be subject to the provisions of Clause 2.2(b) (*Payments to Other Creditors*); and
- (b) references in this Agreement to Mudaraba End Date and related provisions shall be construed accordingly.

7.5 Amounts in excess of Required Liquidation Amount

If, following the liquidation of the Mudaraba in accordance with this Clause 7 (*Liquidation of the Mudaraba*), the Required Liquidation Amount payable to or to the order of the Certificateholders on the Mudaraba End Date is greater than the then applicable Dissolution Distribution Amount, the amount of any excess (the "**Excess Liquidation Proceeds**") shall be credited to the Mudaraba Reserve and the Required Liquidation Amount payable to or to the order of the Certificateholders shall be reduced accordingly.

8 Bank Events

- 8.1** Notwithstanding any of the provisions in this Clause 8 (*Bank Events*), the right to institute winding-up, bankruptcy, liquidation or analogous proceedings against the Mudareb is limited to circumstances where a Bank Event has occurred. Pursuant to Clause 2.4 (*Status*), any

Mudaraba Capital, Rab-al-Maal Final Mudaraba Profit, Indemnity Payment and any other Relevant Obligations in respect of the Mudaraba will not be payable if the Solvency Conditions are not satisfied. Also, in the case of any Rab-al-Maal Mudaraba Profit or Rab-al-Maal Final Mudaraba Profit, such Rab-al-Maal Mudaraba Profit or Rab-al-Maal Final Mudaraba Profit will not be payable if a Non-Payment Event or (in the case of Rab-al-Maal Mudaraba Profit only) a Non-Payment Election occurs. Accordingly, no default will have occurred or be deemed to have occurred in each such circumstance.

8.2 If a Bank Event occurs and a Dissolution Notice is delivered pursuant to Condition 12.1 (*Bank Events*), the Mudaraba will be liquidated in accordance with Clause 7.4 (*Mandatory Final Liquidation*) and the Rab-al-Maal may at its discretion:

- (a) institute any steps, actions or proceedings for the winding-up of the Mudareb; and/or
- (b) prove in the winding-up of the Mudareb; and/or
- (c) institute any steps, actions or proceedings for the bankruptcy of the Mudareb; and/or
- (d) claim in the liquidation of the Mudareb; and/or
- (e) take such other steps, actions or proceedings which, under the laws of the Kingdom of Saudi Arabia, has an analogous effect to the events referred to in Clauses 8.2(a) to 8.2(d) (*Bank Events*),

(in each case for all amounts of Mudaraba Capital, Dissolution Mudaraba Capital, any Indemnity Payment, Rab-al-Maal Mudaraba Profit, Rab-al-Maal Final Mudaraba Profit and/or other amounts due to the Rab-al-Maal on termination of this Agreement in accordance with this Agreement and the other Transaction Documents), provided that the Rab-al-Maal may not take any steps, actions or proceedings against the Mudareb with respect to any sum that the Mudareb has paid into the Transaction Account in accordance with the Transaction Documents in circumstances where the Rab-al-Maal has failed to pay that amount to Certificateholders in accordance with the Conditions.

8.3 Without prejudice to Clause 8.2 (*Bank Events*), the Rab-al-Maal may, at its discretion and without further notice, institute such steps, actions or proceedings against the Mudareb as it may think fit to enforce any term or condition binding on the Mudareb under this Agreement or any other Transaction Document (other than for the payment of Mudaraba Capital, Dissolution Mudaraba Capital, any Indemnity Payment, Rab-al-Maal Mudaraba Profit or Rab-al-Maal Final Mudaraba Profit), provided that the Mudareb shall not 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 this Agreement. Nothing in this Clause 8.3 (*Bank Events*) shall, however, prevent the Rab-al-Maal from taking such steps, actions or proceedings as described in Clause 8.2 (*Bank Events*) in respect of any payment obligations of the Mudareb arising from this Agreement or any other Transaction Document (including any damages awarded for breach of any obligations).

8.4 No remedy against the Mudareb shall be available to the Rab-al-Maal for all or any amounts of Mudaraba Capital, Dissolution Mudaraba Capital, any Indemnity Payment, Rab-al-Maal Mudaraba Profit, Rab-al-Maal Final Mudaraba Profit and/or other amounts due to the Rab-al-Maal on termination of this Agreement in accordance with this Agreement and the other Transaction Documents, or in respect of any breach by the Mudareb of any of its other obligations under or in respect of this Agreement or the other Transaction Documents, other

than as provided in Clauses 8.2 and 8.3 (*Bank Events*). The Rab-al-Maal may take no further or other steps, actions or proceedings to enforce, prove or claim for any payment.

9 Representations

The Mudareb represents and warrants to the Rab-al-Maal on the date of this Agreement that (in its capacity as Mudareb or otherwise):

- (a) it has been duly established and is validly existing under the laws of the Kingdom of Saudi Arabia with full power and authority to conduct its business;
- (b) the execution of this Agreement has been duly authorised by it and, upon due execution, issue and delivery the same will constitute its legal, valid, binding and enforceable obligations, subject to any qualifications contained in any legal opinion delivered to the Rab-al-Maal in connection with this Agreement; and
- (c) the execution of this Agreement will not infringe any law or regulation of the Kingdom of Saudi Arabia and is not contrary to the provisions of its constitutional documents and will not result in any breach of the terms of, or constitute a default under, any instrument or agreement to which it is a party or by which it or its property is bound.

10 Undertaking and Acknowledgement

10.1 Mudareb's Undertaking

- (a) The Mudareb undertakes that it will (to the extent not already obtained) obtain all necessary authorisations, consents, approvals, resolutions, licences, exemptions, filings, notarisations or registrations required in connection with the Investment Plan or otherwise in connection with the Mudaraba.
- (b) The Mudareb undertakes to comply with the provisions of the Conditions applicable to it (as Mudareb or otherwise), including without limitation Condition 4.3 (*Other Issues*).

10.2 Undertaking on substitution

If the Rab-al-Maal is to be substituted pursuant to and in accordance with Condition 12.2 (*Trustee Events*), the Parties hereby undertake to make such variations to this Agreement as are necessary to effect the substitution referred to therein.

10.3 Acknowledgement

The Mudareb hereby acknowledges that pursuant to the Declaration of Trust, the Trustee has appointed the Delegate to act as its delegate to carry out, exercise and enforce all of the Rab-al-Maal's rights, interests and benefits under this Agreement in accordance with its terms and the terms of the Declaration of Trust. The provisions of this Clause 10.3 (*Acknowledgement*) are intended to confer third party rights on the Delegate and shall survive the termination of this Agreement.

11 Mudareb's Responsibilities, Standards and Payment

11.1 Responsibilities

- (a) The Mudareb shall ensure that the Mudaraba Capital is invested in accordance with the Investment Plan in income generating or yielding assets (whether by

appreciation, monetary return or otherwise) in the General Mudaraba Pool. The Parties' commercial intention is that the expected rate of return from the Mudaraba Assets should be not less than the Expected Mudaraba Profit Rate. For the avoidance of doubt, the Rab-al-Maal acknowledges that there is no guarantee of any return from the Mudaraba Assets. The Mudareb shall exercise such rights, powers and discretions as arise under this Agreement (together with any other incidental rights, powers, authorities and discretions), and shall take such action as it deems appropriate, in each case:

- (i) in accordance with material applicable laws;
 - (ii) with the degree of skill and care that it would exercise in respect of its own assets; and
 - (iii) in a manner that is not repugnant to *Shari'a*.
- (b) The Mudareb shall not be responsible for any losses to the Mudaraba Capital suffered by the Rab-al-Maal unless such losses are caused by: (i) the Mudareb's breach of this Agreement; or (ii) the Mudareb's gross negligence, wilful misconduct or fraud.
- (c) Following the investment of the Mudaraba Capital, the Mudareb shall ensure, in conjunction with its Shari'a Supervisory Board, that the Mudaraba Capital remains, at all times, compliant with the principles of *Shari'a*.

11.2 Existing Business

Nothing in this Agreement will prevent the Mudareb from carrying on its own business in the manner which it thinks fit, unless, by so doing, it would render itself unable to perform its obligations under this Agreement in the manner contemplated in this Agreement.

11.3 Payments to the Mudareb

Other than its portion of Mudaraba Profit and any incentive payment it may be entitled to in accordance with Clause 5.9 (*Final Mudaraba Profit on the Mudaraba End Date and Incentive Payment*), the Mudareb shall not be entitled to any remuneration from the Mudaraba.

12 Costs, Compensation and Indemnity

12.1 Each Party will bear and pay all costs and expenses incurred by it in connection with its entry into this Agreement.

12.2 If the Rab-al-Maal suffers an actual loss as a result of any breach by the Mudareb of any of its obligations under this Agreement (including the Liquidation Condition), or through the Mudareb's gross negligence, wilful misconduct or fraud, the Mudareb shall fully indemnify, and pay on demand, the Rab-al-Maal for such loss (an "**Indemnity Payment**"). Any obligation to pay under this Clause 12.2 (*Costs, Compensation and Indemnity*) shall be subordinated in accordance with Clause 2.4 (*Status*). Any other losses are to be borne solely by the Rab-al-Maal.

13 Calculation Agent

The Mudareb shall procure that the Calculation Agent promptly notifies the Parties of all rates and amounts to be determined by the Calculation Agent as soon as practicable after

the time of determination, but in any event no later than the second Business Day thereafter, of any such rates or amounts.

14 Counterparts

This Agreement 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 Agreement.

15 Calculations, Certificates and Payments

15.1 Determinations by Calculation Agent

Any certification or determination by the Calculation Agent of a rate or amount under this Agreement (including the Applicable Rate) shall, save in the case of manifest error, be final and binding on the Mudareb and the Rab-al-Maal.

15.2 Day Count Convention

Any profit accruing under the Mudaraba will accrue from day to day and is calculated on the basis of 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 Mudaraba Profit Distribution Period in which the relevant period falls (including the first such day but excluding the last)).

15.3 Payments

Notwithstanding any other provision of this Agreement:

- (a) save where a Non-Payment Election has been made by the Mudareb or a Non-Payment Event has occurred, all amounts of Rab-al-Maal Mudaraba Profit shall be paid to the Rab-al-Maal on the Business Day preceding the relevant Mudaraba Profit Distribution Date; and
- (b) save where a Non-Payment Event has occurred, all amounts of Rab-al-Maal Final Mudaraba Profit and Dissolution Mudaraba Capital shall be paid to the Rab-al-Maal on the Business Day preceding the Mudaraba End Date,

provided that in each case such amounts paid to the Transaction Account shall be in an amount equal to, but not exceeding, the amounts due under the Certificates.

16 General

16.1 No relaxation, forbearance, indulgence, failure or delay on the part of the Rab-al-Maal in exercising (nor any omission to exercise) any right, power, privilege or remedy accruing to it under this Agreement shall impair any such right, power, privilege or remedy or, unless expressly agreed by the Parties, be construed as a waiver thereof or an acquiescence in any default or affect or impair any right, power or privilege or remedy any other or subsequent default nor shall any single or partial or prior exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any other rights or remedies provided by law.

16.2 The rights, liabilities and/or obligations created by this Agreement shall continue to be valid and binding for all purposes notwithstanding any change in name or change by

amalgamation, reconstruction, reorganisation, restructuring or otherwise which may be made in the constitution of any Party.

- 16.3** No amendment, modification or termination of any provision of this Agreement shall be effective unless the same shall be (i) approved by the Shari'a Supervisory Board of the Mudareb and (ii) in writing and signed or executed by the Parties.
- 16.4** No waiver of, or consent to any departure by the Mudareb from, any provisions of this Agreement shall be effective unless the same shall be in writing and signed or executed by the Rab-al-Maal and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.
- 16.5** The Mudareb agrees that notwithstanding anything to the contrary contained herein:
- (a) no payment of any amount whatsoever shall be made by the Rab-al-Maal or any of its directors, officers, employees or agents on its behalf except to the extent funds are available therefor from the Trust Assets;
 - (b) no recourse shall be had for the payment of any amount due and owing hereunder or under any other Transaction Document, whether for the payment of any fee, indemnity or other amount under, or any other obligation or claim arising out of or based upon, this Agreement or any other Transaction Document, against the Rab-al-Maal to the extent the Trust Assets have been exhausted, following which all obligations of the Rab-al-Maal shall be extinguished;
 - (c) 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 Rab-al-Maal or any of its directors, officers, agents, shareholders or affiliates as a consequence of such shortfall or otherwise;
 - (d) 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 Rab-al-Maal arising under or in connection with the Certificates or the Transaction Documents by virtue of any customary law, statute or otherwise shall be had against any shareholder, officer, director or corporate services provider of the Rab-al-Maal in their capacity as such. The obligations of the Rab-al-Maal under the Transaction Documents are corporate or limited liability obligations of the Rab-al-Maal and no personal liability shall attach to or be incurred by the shareholders, members, officers, agents, directors or corporate services provider of the Rab-al-Maal (in each of their respective capacities as such), save in the case of their wilful default or actual fraud. References in this Agreement to "**wilful default**" or "**actual fraud**" mean a finding to such effect by a court of competent jurisdiction in relation to the conduct of the relevant party; and
 - (e) 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 this Agreement or any part thereof. No collateral is or will be given for the payment obligations under this Agreement, or any of the other Transaction Documents or the Certificates.

The provisions of this Clause 16.5 (*General*) shall survive the termination of this Agreement.

17 Entire Agreement

This Agreement sets out the entire agreement between the Parties and supersedes any previous agreement between them in relation to the subject matter of this Agreement.

18 Severability

To the extent permitted by applicable law, if a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect the legality, validity or enforceability in:

- (a) that jurisdiction of any provision of this Agreement; or
- (b) any other jurisdiction of that or any other provision of this Agreement.

19 Notices

19.1 Addresses

Any communication under this Agreement shall be given by letter, fax, electronic communication or telephone, in the case of notices to the Mudareb, to it at:

The National Commercial Bank
P.O. Box 3555
Jeddah 21481
KSA

Email: MoneyMarket-TreasuryDivision-HeadOffice@alahli.com

Attention: Hatem AlZimaiti

and, in the case of notices from the Mudareb, to the Rab-al-Maal at:

NCB Tier 1 Sukuk Limited
c/o MaplesFS Limited
Boundary Hall
Cricket Square
Grand Cayman KY1-1102
Cayman Islands

Fax: +1 345 945 7100/+971 4511 4100

Email: cayman@maples.com/dubai@maples.com

Attention: The Directors

19.2 Effectiveness

Any such communication shall take effect, in the case of a letter, at the time of delivery, in the case of a fax, when the relevant delivery receipt is received by the sender, in the case of an electronic communication, when the relevant receipt of such communication being read is given, or where no read receipt is requested by the sender, at the time of sending, provided that no delivery failure notification is received by the sender within 24 hours of sending such communication or, in the case of a telephone communication, when made; provided that any communication which is received (or deemed to take effect in accordance with the foregoing) outside business hours or on a non-business day in the place of receipt shall be deemed to take effect at the opening of business on the next following business day in such place. Any

communication delivered to any party under this Agreement which is to be sent by fax or electronic communication will be written legal evidence.

19.3 Confirmations

Any communication by telephone shall be confirmed by letter, fax or electronic communication but failure to send or receive such confirmation shall not invalidate the original communication.

20 Shari'a Compliance

Each of NCB Tier 1 Sukuk Limited and The National Commercial Bank hereby agrees that it has accepted the *Shari'a* compliant nature of the Transaction Documents to which it is a party and, to the extent permitted by law, further agrees that:

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

21 Governing Law

This Agreement (including the provisions of Clause 22 (*Dispute Resolution*)) and any non-contractual obligations arising out of or in connection with this Agreement, are governed by, and shall be construed in accordance with, English law.

22 Dispute Resolution

22.1 Arbitration

Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including this Clause 22.1 (*Arbitration*), (including a dispute, claim, difference or controversy as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising from or in connection with it) (a "**Dispute**") shall be referred to and finally resolved by arbitration in accordance with the Arbitration Rules of the LCIA (the "**Rules**"), which Rules (as amended from time to time) are deemed to be incorporated by reference into this Clause 22.1 (*Arbitration*). For these purposes:

- (a) the seat of arbitration shall be London, England;
- (b) there shall be three arbitrators, each of whom shall be disinterested in the arbitration and shall be an attorney experienced in international securities transactions. The parties to the Dispute shall each nominate one arbitrator and both arbitrators in turn shall appoint a further arbitrator who shall be the presiding arbitrator of the tribunal. In cases where there are multiple claimants and/or multiple respondents, the class of claimants jointly, and the class of respondents jointly, shall each nominate one

arbitrator. If one party or both fails to nominate an arbitrator within the time limits specified by the Rules, such arbitrator(s) shall be appointed by the LCIA. If the party nominated arbitrators fail to nominate the third arbitrator within 15 days of the appointment of the second arbitrator, such arbitrator shall be appointed by the LCIA; and

- (c) the language of the arbitration shall be English.

22.2 Waiver of Judgment Interest

- (a) Each Party agrees that if any arbitration is commenced in relation to a Dispute and/or any proceedings relating to a Dispute (“**Proceedings**”) are brought by or on behalf of a Party to this Agreement, it will (i) not claim interest under, or in connection with, such arbitration and/or Proceedings; and (ii) to the fullest extent permitted by law, waive all and any entitlement it may have to interest awarded in its favour by an arbitrator as a result of such arbitration and/or a court as a result of such Proceedings.
- (b) For the avoidance of doubt, nothing in this Clause 22.2 (*Waiver of Judgment Interest*) shall be construed as a waiver of rights in respect of any Mudaraba Profit, Final Mudaraba Profit, Periodic Distribution Amounts payable under the Certificates, Rab-al-Maal Mudaraba Profit, Rab-al-Maal Final Mudaraba Profit, Indemnity Payment, Outstanding Payments or profit of any kind howsoever described payable by the Mudareb (in any capacity) or the Rab-al-Maal (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.

22.3 Waiver of Immunity

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

23 Contracts (Rights of Third Parties) Act 1999

Other than as provided in Clause 10.3 (*Acknowledgement*), a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act. Subject to Clause 16 (*General*), the Parties to this Agreement may agree to vary or rescind this Agreement without the consent of any third party.

In witness whereof, the Parties have executed this Agreement on the date first mentioned above.

Schedule 1 Investment Plan

Investment of the Mudaraba Capital

The Mudaraba Capital will be invested on an unrestricted co-mingling basis by the Mudareb in the Business Portfolio carried out through the General Mudaraba Pool including, without limitation, as follows:

- to provide financing pursuant to the Business Portfolio;
- to purchase from third parties any assets required in connection with the development of the Business Portfolio from time to time;
- to enable the Mudareb to expand the Business Portfolio by acquisition of other companies (or other entities) in the Islamic banking and/or Islamic finance sector;
- for business development activities related to the Business Portfolio; and/or
- for such other investment activities in connection with the Business Portfolio as the Mudareb considers appropriate (including, without limitation, to make payments in respect of the claims of Senior Creditors or to cover losses of the Mudaraba in accordance with Clause 2.2(b) (*Payments to Other Creditors*) of this Agreement).

Any cash awaiting investment by the Mudareb may, from time to time, be deposited by the Mudareb in any *Shari'a* compliant long-term or short-term deposit or investment accounts with any bank or financial institution that the Mudareb deems appropriate in its sole discretion.

Expected Return

The Parties' commercial intention is that the expected rate of return from the Mudaraba Assets should be not less than the Expected Mudaraba Profit Rate after payment of Taxes and that the rate of return for the Rab-al-Maal in respect of its share of the profits in the Mudaraba should be not less than the Applicable Rate after payment of Taxes. For the avoidance of doubt, the Rab-al-Maal acknowledges that there is no guarantee of any return from the Mudaraba Assets.

Signatories

Rab-al-Maal

NCB Tier 1 Sukuk Limited

By: _____
Name:  John Curran
Director

Mudareb

The National Commercial Bank

By: _____
Name:

By: _____
Name:

Signatories

Rab-al-Maal

NCB Tier 1 Sukuk Limited

By: _____

Name:

Mudareb

The National Commercial Bank

By: _____

Name: Ramzy Darwish



By: _____

Name: Lama Ghazzaoui

LAMA A. GHAZZAOU, CPA
Chief Financial Officer

TEK