

# **PROGRAMME TRUST DEED**

**BETWEEN**

**FIDELITY BANK PLC**  
(RC NO. 103022)

**AND**

**FBNQUEST TRUSTEES LIMITED**  
(RC NO. 29763)

**IN CONNECTION WITH THE  
₦100,000,000,000.00 (ONE HUNDRED BILLION NAIRA) BOND  
ISSUANCE PROGRAMME BY FIDELITY BANK PLC**

**DATED 4<sup>TH</sup> MAY, 2020**

Prepared by:



**THE TRUSTEE WILL BE LIABLE FOR ANY BREACH OF ITS DUTIES WHERE IT FAILS TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS PROGRAMME TRUST DEED OR TO REPORT ANY BREACH OF THE TERMS TO THE SECURITIES AND EXCHANGE COMMISSION.**

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**THIS PROGRAMME TRUST DEED** is made this 4<sup>th</sup> day of May, 2020

**BETWEEN:**

**FIDELITY BANK PLC** with RC No. 103022, a company duly incorporated in Nigeria with RC Number 103022 and its principal place of business at No. 2 Kofo Abayomi Street, Victoria-Island, Lagos, (hereinafter referred to as the “**Issuer**” which expression shall, where the context so admits, include its successors-in-title and assigns) of the first part;

**AND**

**FBNQUEST TRUSTEES LIMITED** a private company duly incorporated in Nigeria with RC No. 29763 and having its registered office at 10 Keffi Street, Off Awolowo Road, Ikoyi, Lagos (hereinafter referred to as “**Trustee**” which expression shall, where the context so admits, include its successors-in-title and assigns) of the second part.

The Issuer and the Trustee may hereinafter be referred to individually as the “**Party**” and collectively as the “**Parties**”.

**WHEREAS:**

- A. Pursuant to Articles 86 of the Issuer’s Articles of Association and by resolutions passed by the Board of Directors on 19<sup>th</sup> March, 2019, the Issuer authorised the establishment of a Bond Issuance Programme of up to ₦100,000,000,000 (One Hundred Billion Naira) (hereinafter called the “**Programme**”) in such tranches or series, by way of an offer for subscription, auction, rights issue, private placement or such other methods including through a book building process, and in such proportions, on such dates and time and on such terms and conditions including without limitation, coupon rates and maturities as may be determined by the Directors, subject to the approval of the relevant regulatory authorities.
- B. The Trustee is duly incorporated under the CAMA (defined below) and registered with the SEC (defined below) as a trustee.
- C. The Issuer has appointed the Trustee, and the Trustee has agreed to act as Trustee, under the Programme for the benefit of the Bondholders (defined below) on the terms and conditions contained in this Trust Deed.

**NOW THIS TRUST DEED WITNESSES** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Trust Deed (including the recitals and the schedules), except as otherwise provided herein, the following expressions shall have the following meanings:

**“Accession Agreement”** is as set out in the Third Schedule to this Trust Deed;

**“Affiliate”** means in relation to a person, a Subsidiary of that person or a holding company of that person or any Subsidiary of that holding company;

**“Aggregate Principal Amount”** means up to ₦100,000,000,000 (One Hundred Billion Naira) only being the maximum aggregate nominal amount of Bonds that can be issued and outstanding at any time under the Programme;

**“Applicable Law”** means any law (including statutory and common law), statute, constitution, judgment, treaty, regulation, rule, by-law, order, decree, code of practice, circular, directive, other legislative measure, guidance note, requirement, request, guideline or injunction (whether or not having force of law and, to the extent not having force of law, is generally complied with by persons to whom it is addressed or applied) of or made by any Authority, which is binding and enforceable on or against the Issuer or the subject matter of, or any party to any of the Issue Documents including but not limited to the rules, regulations and guidelines issued by the CBN from time to time;

**“Auditors”** means any such independent auditors auditing the accounts of the Issuer or in the event of their being unable or unwilling to promptly carry out any action requested of them pursuant to the provisions hereof, such other firm of accountants as may be duly appointed by the Issuer;

**“Authority”** means any national, regional or local government or governmental, administrative, fiscal, judicial, or government-owned body, department, commission, authority, tribunal, agency or entity having jurisdiction over the Issuer;

**“Board” or “Board of Directors”** means the Issuer’s board of directors as may be constituted from time to time;

**“Bond(s)”** means any debt instrument issued by the Issuer under the Programme by which the Issuer is obligated to repay the Bondholders the Principal Amount and Coupon on specified dates after the date of issue;

**“Bondholder”** means a person in whose name a Bond is registered in the Register and/or in the records of the CSCS which shall include the legal and personal representatives or successors of the Bondholders and “Bondholders” shall be construed accordingly;

**“Business Day”** means any day (other than a Saturday, Sunday or a public holiday declared by the Federal Government of Nigeria) on which banks are open for general business in Lagos Nigeria;

**“CAMA”** means the Companies and Allied Matters Act (Chapter C20) LFN 2004;

**“CBN”** means the Central Bank of Nigeria;

**“Conditions”** means in relation to the Bonds of any Series, the terms and conditions in accordance with which the Bonds will be issued as set out in the section headed “Terms and Conditions of the Bonds” in the relevant Series Trust Deed or as may otherwise be endorsed on or incorporated by reference to the Bond or Bonds constituting such Series and which is in the form or substantially in the form specified in the First Schedule to this Deed; having regard to the terms of the Bonds of the relevant Series, as may be agreed between the Issuer and the Trustee, in each case as may be from time to time modified in accordance with the provisions of this Deed;

**“Coupon”** means the periodic interest payable on any Bonds specified to be coupon-bearing in the amount and on the dates specified in the applicable Pricing Supplement;

**“Coupon Commencement Date”** means the date of issue for any particular series of Bonds or such other date as may be specified in the Pricing Supplement from which the Coupon on the Bonds (other than zero coupon bonds) begin to accrue;

**“Coupon Determination Date”** means the date falling no later than 2 (two) Business days prior to the Coupon Payment Date where the Trustee determines the Coupon Rate applicable to a Bond (other than Fixed rate and zero-coupon Bonds);

**“Coupon Payment Date”** means any date set out in the applicable Pricing Supplement as the date on which the Coupon becomes payable;

**“Coupon Period”** means the period from (and including) a Coupon Payment Date (or as the case may be the Coupon Commencement Date) to (but excluding) the next Coupon Payment Date;

**“Coupon Rate”** means the applicable rate of the Coupon; for a floating rate Bond, this will be the rate determined by the Issuer on a Coupon Determination Date for each Coupon Period and communicated to the Registrar by the Trustee for that Coupon Period;

**“CSCS”** means the Central Securities Clearing Systems Plc, which expression shall include its successors or any additional or alternative clearing system as is approved by the Issuer or as may otherwise be specified in the applicable Pricing Supplement;

**“CSCS Account”** means a securities account maintained by an investor with the CSCS;

**“Default Rate”** means the default rate on the Coupon for any late payment specified in the applicable Series Trust Deed and/or Supplementary Shelf Prospectus or Pricing Supplement;

**“Director”** means any of the members of the Board of Directors of the Issuer and “Directors” shall be construed accordingly;

**“Event of Default”** means the events of default which are particularly described in Condition 19 of the First Schedule hereof;

**“Extraordinary Resolution”** means a resolution of the Bondholders passed in accordance with the provisions contained in the Second Schedule to this Deed;

**“Final Broken Amount”** means the final coupon payment in respect of the period from (and including) the preceding Coupon Payment Date, to (but excluding) the Maturity Date, in relation to any Tranche or Series issued under the Programme;

**“Financial Indebtedness”** means any indebtedness for or in respect of:

- (a) monies borrowed;
- (b) any Bond, note, debenture, loan, or other similar instrument;
- (c) any redeemable preference share;
- (d) any finance or capital lease;
- (e) receivables sold or discounted (otherwise than on a non-recourse basis);
- (f) the acquisition cost of any asset to the extent payable after its acquisition or possession by the party liable where the deferred payment is arranged primarily as a method of raising finance or financing the acquisition of an asset;
- (g) any counter-indemnity obligation in respect of any guarantee, indemnity, bond or any other instrument issued by a bank or financial institution;
- (h) any guarantee, indemnity or similar assurance against any financial loss of any person in respect of any item referred to in i-viii above;

**“FMDQ”** means the Financial Markets Dealers Quotations over-the-counter securities exchange for the trading of United States Dollars/Naira products, Federal Government of Nigeria bonds, supra-national bonds, agency bonds, State government bonds, corporate bonds, Nigerian treasury bills and other money market instruments;

**“Force Majeure”** means any event or circumstance (or combination of events or circumstances) that is beyond the control of the Issuer and the Trustee which materially and adversely affects the ability of any party to perform its obligations under or pursuant to this Deed, which could not have been reasonably foreseen, including without limitation change of law, national emergency, war, acts of God, invasion by foreign enemy, revolution, act of terrorism, civil commotion, and industrial unrest;

**“IFRS”** means the International Financial Reporting Standards promulgated by the International Accounting Standards Board (IASB) (which include standards and interpretations approved by the IASB and International Accounting Standards issued under previous constitutions), together with its pronouncements thereon from time to time, and applied on a consistent basis;

**“Independent Expert”** means a financial audit firm of repute appointed from amongst PricewaterhouseCoopers, Ernst & Young, KPMG and Deloitte;

**“ISA”** means the Investments and Securities Act, No. 29 of 2007;

**“Issue Date”** means the date on which the Bonds are issued by the Issuer as set out in the relevant Series Trust Deed and Pricing Supplement;

**“Issue Documents”** means the documents required to be executed and delivered in connection with the issue of the Bonds under the Programme and includes this Deed, the Shelf Prospectus and in relation to any Series, the Series Trust Deed, the Pricing Supplement and any other agreement or document filed with the Commission and relating to the issue of the Bond;

**“LFN”** means the Laws of the Federation of Nigeria 2004;

**“Listing”** means the admission of the Bonds to the daily official list of the Exchange and to trading by the governing council of the Exchange;

**“Material Adverse Effect”** means any event or circumstance, which based on the certified opinion of an Independent Expert, when taken alone or together with any previous event or circumstance, has or could be expected to have, a material adverse effect on all or any of:

- (a) the assets, business or financial condition of the Issuer;
- (b) the ability of the Issuer to perform its obligations under this Deed; or
- (c) the rights of the Bondholders under this Deed;

**“Majority Bondholders”** means at any time after the issue of the Bond, Bondholders representing fifty-one percent (51%) or more of the Principal Amount Outstanding at any particular time;

**“Maturity Date”** means the date on which the aggregate Principal Amount of any Series shall become due and payable in accordance with the Supplementary Shelf Prospectus or Pricing Supplement and/or the Series Trust Deed constituting that Series;

**“Moratorium”** means an authorised postponement or suspension of payment of any Financial Indebtedness;

**“Naira” or the sign “N”** means the official currency of the Federal Republic of Nigeria, or the prevailing currency as may be obtainable from time to time;



**“Nigeria”** means the Federal Republic of Nigeria;

**“Permitted Security”** means:

- i. Security Interests created by the Issuer or any Subsidiary which is in existence before the date of this Deed;
- ii. Security Interests arising in the ordinary course of the Issuer's or any Subsidiary's business not exceeding an aggregate value of ₦500,000,000 (five hundred million Naira) at any given time; and
- iii. any Security Interest arising out of the refinancing, extension, renewal or refunding of any Financial Indebtedness secured by a Security Interest permitted by any of the above exceptions, provided that the Financial Indebtedness secured by such Security Interest does not exceed the amount of the original Financial Indebtedness and such Security Interest is not extended to cover any assets or property not previously subject to such Security Interest;

**"Potential Event of Default"** means any condition, event or act which, with the lapse of time, making or giving of any notice, certification, declaration, demand, determination or request, or the taking of any similar action or the fulfillment of any similar condition, would constitute an Event of Default;

**“Pricing Supplement”** means the document(s) to be issued pursuant to the Prospectus, which shall provide final terms and conditions of a specific Series under the Programme or supplementing information contained in the Prospectus;

**“Principal Amount”** means the face value or nominal amount of each Bond issued in relation to any Series or Tranche as specified in the applicable Pricing Supplement;

**“Principal Amount Outstanding”** means the principal amount outstanding and remaining unredeemed on the Bonds at any particular time;

**“Rating Agency”** means Global Credit Rating Co. (GCR) Limited or any rating agency for the time being appointed by the Issuer in respect of the Bonds;

**“Redemption Date”** means the date on which the outstanding principal and accrued Coupon, if any, due and payable on the Bond, must be redeemed in full;

**“Register”** means the Bond register kept at the specified office of the Registrar into which shall be entered the names and addresses of each Bondholder and the particulars, transfers and redemption of the Bonds held by each Bondholder for the relevant Series;

**“Registrar”** means First Registrars & Investors Services Limited or any other person or entity for the time being appointed registrar by the Issuer;

**“Relevant Exchange” or “Exchange”** means the FMDQ or The Nigerian Stock Exchange or any other securities exchange recognised by the Commission;

**“SEC” or “Commission”** means the Securities and Exchange Commission established and constituted under the ISA;

**“SEC Rules”** means the Rules and Regulations of the SEC 2013 (as amended) and any amendments thereto issued by the Commission pursuant to the provisions of the ISA;

**“Security Interest”** means any mortgage, charge, assignment (including by way of security), lien, pledge, encumbrance, hypothecation, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same;

**“Series”** means a tranche of the Bonds, together with any further tranche(s) of Bonds, that are (a) expressed to be consolidated and form a single Series and are (b) identical in all respects (including as to listing) except for their issue price, issue date and/or Coupon Commencement Dates;

**“Series Trust Deed”** means a trust deed supplementing or modifying the provisions of this Deed made between the Issuer and the Trustee in relation to a specific Series under the Programme and empowering the Trustee to hold, administer and manage the applicable assets;

**“Shelf Prospectus” or “Prospectus”** means the document issued in accordance with the SEC Rules, which details the aggregate size and broad terms and conditions of the Programme;

**“Sinking Fund” or “Debt Service Reserve Account”** means the fund/bank account which may be established pursuant to the terms of the applicable Series Trust Deed into which shall be paid all Coupon, principal and other monies due in accordance with the provisions of the Series Trust Deed and managed by the Trustee;

**“Subsidiary”** means a subsidiary (as defined in section 338 of the CAMA) for the time being of the Issuer;

**“Taxes”** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest);

**“Tier II Capital”** means Subordinated Debt as described in the Guidance Notes on Regulatory Capital published by the CBN in 2015;

**“Tranche”** means all Bonds, which are identical in all respects as to the terms

and conditions of their issue (including as to listing);

**“Trust Deed”** or **“Deed”** means this Programme Trust Deed and includes the Series Trust Deed, any document supplemental to this Deed or executed in pursuance of this Deed or any amendments thereof;

**“Trustees Investment Act”** means Trustees Investment Act (Chapter T22) LFN 2004 as may be amended from time to time;

**“VAT”** means Value Added Tax imposed on goods and services pursuant to the Value Added Tax Act (Chapter V1) LFN 2004 (as amended by the Value Added Tax (Amendment) Act 2007 and the Finance Act of 2020) and as may be further amended from time to time and any other tax of a similar nature; and

**“Year”** means a calendar year.

## 1.2 Interpretation

1.2.1 The headings to the clauses of this Deed are for reference purposes only and shall in no way govern or affect the interpretation of the terms of this Deed and neither shall it modify or amplify the terms of this Deed or any Clause hereof;

1.2.2 Words importing the singular number only shall include the plural and vice-versa and words importing the feminine gender only shall include the masculine and neuter genders and words importing persons shall include corporations, associations, partnerships and governments (whether state or local), and the words “written” or “in writing” shall include printing, engraving, lithography or other means of visible reproduction;

1.2.3 A reference to a statutory provision shall be deemed to include that provision as the same may from time to time be modified, amended or re-enacted;

1.2.4 Any reference to Clauses and Schedules, are to Clauses and Schedules of this Deed, and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the Clause or Schedule in which they appear;

1.2.5 A reference to a provision of this Deed is to that provision as amended in accordance with the terms of this Deed;

1.2.6 References in this Deed to costs, charges and expenses shall, unless otherwise provided, include any VAT or similar tax charged or chargeable in respect of such costs, charges and expenses;

1.2.7 Any register, index, minute book of account, or accounting record required to be kept by this Deed shall be kept and inspection of such documents shall be allowed and copies shall be supplied in such form

and manner and subject to such precautions as would from time to time be permissible or required if it were a register, index, minute book of account or accounting record required to be kept by CAMA and references to such records in this Deed; and

1.2.8 Headings herein are inserted for convenience only and shall not affect the construction of the provisions hereof.

## **2. APPOINTMENT OF TRUSTEE**

2.1 The Issuer hereby appoints the Trustee and the Trustee hereby agrees and accepts to act as trustee on behalf of the Bondholders.

2.2 All sums received by the Trustee in respect of the Bonds or amounts payable under this Deed shall be received by the Trustee on trust to apply same in accordance with the rights of each Bondholder as set out in this Deed and the relevant Series Trust Deed.

## **3. DECLARATION OF TRUST**

### **3.1 The Trustee**

The Trustee hereby declare itself as a trustee for the Bondholders with effect from the date of this Deed to hold the benefit of the covenants and other obligations on the part of the Issuer herein contained in trust for the Bondholders and itself according to their respective interests, subject to the terms and conditions of this Deed.

### **3.2 Duration of Trust**

The Trust created by this Deed shall remain in full force and effect until the date on which, following the redemption of all Bonds issued pursuant to the Programme and receipt by the Trustee of unconditional confirmation in writing from the Registrar that the Bondholders have been paid all outstanding obligations, the Issuer receives an unconditional release in writing from the Trustee from all of its obligations under this Deed.

## **4. THE TRUST DEED BINDING ON ALL PARTIES**

The provisions of this Deed shall be binding on the Issuer, the Trustee and the Bondholders and all persons claiming through them respectively as if such Bondholders and persons are Parties to this Deed.

## **5. THE BONDS**

5.1 The Issuer shall issue and offer Bonds in Series having an aggregate nominal amount, from time to time, up to and not exceeding the Aggregate Principal Amount by way of public offer, book building, private placement or any other method selected by the Issuer in accordance with the terms of this Deed. Any Bonds issued hereunder shall be constituted by this Deed without further formality.

- 5.2 Any Series, as and when issued, shall constitute a single class and shall be direct, unsecured and unconditional obligations of the Issuer as provided in the relevant Series Trust Deed and the ranking shall be as specified in the relevant Series Trust Deed and/or Pricing Supplement.
- 5.3 The issued Bonds shall constitute an irrevocable obligation of the Issuer to the Bondholders for the Principal Amount and Coupon (where applicable).
- 5.4 The Bonds shall be issued by way of an offer for subscription or private placement through a pre-pricing process, underwriting process, book building process and/or any other such methods as set out more particularly in a Pricing Supplement.
- 5.5 Each issue of Bonds shall form a separate Series. The provisions of this Deed shall apply *mutatis mutandis*, separately and independently to each Series. Each Series shall be constituted by a separate trust created by a Series Trust Deed under which the Trustee shall hold the benefit of the covenant in Clause 7.2 (Covenant to Repay and to Pay Coupon on the Bonds) in this Trust Deed in trust for the Bondholders of the particular Series. The provisions contained in any Series Trust Deed apply only in relation to the Series to which it relates.
- 5.6 The name of each Series will commence with the word “Series” and will be followed by a number in consecutive order of issuance of the Series (for example the first Series will be known as the “Series 1 Bonds”).
- 5.7 Each Series may be issued in tranches (each a “**Tranche**”) on the same or different issue dates. The specific terms of each Tranche will be set out in the applicable Series Trust Deed.
- 5.8 If there is any conflict between the provisions of a Series Trust Deed relating to a Series and the provisions of this Trust Deed, the provisions of the Series Trust Deed shall prevail over the provisions of this Trust Deed in respect of the relevant Series.
- 5.9 Subject to the approval of the Relevant Exchange, the Bonds shall be listed on the Relevant Exchange and/or admitted to listing, trading and/or quotation by any other listing authority, securities exchange and/or quotation system as specified in the relevant Pricing Supplement.
- 5.10 The Bonds will be issued in denominations as specified in the Series Trust Deed relating to the relevant Series.
- 5.11 The tenor of the Bonds for each Series shall be specified in the Series Trust Deed.
- 5.12 Other than as provided in this Deed, there are no restrictions on the transferability of the Bonds.

### **5.13 Form of the Bonds**

5.13.1 The Bonds shall be delivered in de-materialised (uncertificated) form and held in electronic book-entry form with the CSCS. The bonds shall be freely transferable in accordance with the provisions of this Trust Deed and shall be made eligible for admission to Listing on a recognised Exchange and issued in accordance with applicable exchange listing authority and/or quotation system requirements and evidenced by credit into the Bondholder's securities account. Each bondholder shall be entitled to deal with the Bonds in accordance with CSCS procedures and guidelines.

5.13.2 The statements issued by the CSCS as to the aggregate number of Bonds standing to the CSCS Account of any person shall be conclusive and binding for all purposes save in the case of manifest error, such person (or his/her legal representatives) shall be treated by the Issuer, the Trustee and the Registrar as the legal and beneficial owner of such aggregate number of Bonds for all purposes. Provided, and subject to the guidelines of the CSCS, a Bondholder may request for a composite statement of the Bonds which it holds.

5.13.3 The holder of a Bond as shown in the records of CSCS (or his/her legal representatives or any successor in title to a corporate Bondholder) is entitled to the benefit of, bound by, and is deemed to have notice of, all the provisions of this Deed and any relevant Series Trust Deed.

### **5.14 Conditions of the Bond**

The Issuer shall comply with, perform and observe all the provisions of this Deed, which are binding on it, and of the Conditions. The Conditions shall be deemed to be incorporated in this Deed and shall be binding on the Issuer, the Trustee and the Bondholders and all persons claiming through or under them respectively.

### **5.15 Ranking of Bonds**

The ranking of the Bonds as and when issued shall be as specified in the relevant Series Trust Deed and/or Pricing Supplement.

## **6. PURPOSE**

6.1 The purpose for which the proceeds of the Bonds are to be utilised shall be specified in the relevant Pricing Supplement.

6.2 Without prejudice to the generality of the foregoing and the subsequent provisions of this Deed, the Trustee shall not be bound to enquire as to the application of the proceeds of the Bonds.

## **7 COVENANTS OF THE ISSUER**

### **7.1 Covenant of Compliance**

The Issuer hereby covenants with the Trustee that it shall comply with and perform all the provisions of this Deed which are binding on it. The Conditions shall be binding on the Issuer, Trustee and Bondholders. The Trustee shall be entitled to enforce the obligations of the Issuer under the Bonds as if the same were set out and contained in the Trust Deed, which shall be read and construed as one document with the Bonds. The Trustee shall hold the benefit of this covenant upon trust for themselves and the Bondholders according to their respective interests.

### **7.2 Covenant to Repay and to Pay Coupon on the Bonds**

7.2.1 The size of the Bonds under the Programme is limited to the Aggregate Principal Amount and the aggregate principal amount of the Bonds of each Series is limited to the amount specified in the Series Trust Deed(s) in respect of such Series.

7.2.2 The Issuer hereby acknowledges that, to the extent that any such Bonds are constituted under the relevant Series Trust Deed and are issued, it will be indebted to the Bondholders in an aggregate Principal Amount specified in the Series Trust Deed(s) in respect of such Series. The Issuer covenants with and undertakes to the Trustee that the Bonds, to the extent constituted and issued, shall be redeemed together with any outstanding Coupon and other moneys on the Redemption Date (or earlier on an amortised basis) provided for in the relevant Series Trust Deed or such earlier date as the same or any part thereof may become due and repayable thereunder. As and when the Bond or any part thereof ought to be redeemed or repaid in accordance with the provisions of the relevant Series Trust Deed, the Issuer shall pay or procure to be paid to or to the order of the Trustee in immediately available funds, the full Principal Amount of the Bond or as the case may be such part of the Bond as ought to be redeemed on that date together with such premiums (if any) thereon as may be payable, and shall in the meantime and until such date (both before and after any judgment or other order of a court of competent jurisdiction) pay or procure to be paid unconditionally to or to the order of the Trustee as aforesaid, Coupon (which shall accrue from day to day) on the principal amount of the Bonds.

7.2.3 In any case where payment is not made to the Trustee on or before the due date or improperly withheld or refused by the Issuer, the Coupon shall continue to accrue on the Principal Amount Outstanding of the Bonds so withheld or refused (both before and after any judgment or order of a court of competent jurisdiction) at the Coupon Rate up to and including the date on which the Trustee determine to be the date on which payment is made to the Bondholders.

7.2.4 Every payment of principal and or Coupon on the Bonds shall be made

free of all costs, commissions, charges, fees, or other payments or deductions, other than any tax on income which the Issuer may by any Applicable Laws be required to deduct.

### 7.3 Authorisations

The Issuer shall obtain, make and keep in full force and effect all authorisations that may be required for the validity and enforceability of the Issue Documents against the Issuer.

### 7.4 Compliance with Laws

7.4.1 The Issuer shall comply in all respects with all Applicable Laws, permits, and licences to which it may be subject and which in each case are material to its business and its obligations under the Issue Documents for as long as any Bonds are outstanding under the Programme, and shall obtain and maintain such permits and licences except where such non-compliance will not result in a Material Adverse Effect on its business or its obligations under the Issue Documents.

#### 7.4.2 Capital Adequacy

For so long as any of the Bonds forming part of the Issuer's regulatory capital remains outstanding, the Issuer shall:

- (i) not redeem any of the Bonds prior to its stated maturity ("**Early Redemption**") unless:
  - (A) a minimum of 5 years has lapsed since the Issue Date specified on the applicable Series Trust Deed;
  - (B) the Issuer has obtained the consent of the CBN for such Early Redemption; and
  - (C) the Early Redemption will not result in the Issuer's capital adequacy ratio falling below the regulatory minimum ratio prescribed by the CBN; and
- (ii) at all times comply with all rules, regulations and prudential supervision ratios of the CBN applicable to banks in the Nigeria.

### 7.5 Financial Statements and Covenants

7.5.1 The Issuer shall furnish the Trustee with a copy of the financial statement on its quarterly performance within ten (10) Business Days of sending the financial statement to the Commission and the Relevant Exchange.

7.5.2 The Issuer shall furnish the Trustee with a copy of its consolidated audited financial statements (as soon as same is available in any event within 90 (ninety) days of the end of the its financial year) for that fiscal



year as giving a true and fair representation of the financial condition of the Issuer as at the close of each fiscal year provided that the approval of the CBN and any other regulatory authority for the publication of such accounts has been obtained within the stipulated period.

#### **7.6 Pari Passu ranking**

The Issuer shall procure that its payment obligations under the Bonds will rank in respect of principal and any Coupon thereon, at all times, at least equally as may be specified in the applicable Series Trust Deed and/or Pricing Supplement.

#### **7.7 Mergers and other arrangements**

The Issuer shall not, for as long as any Bonds remain outstanding and, without the prior written consent of the Trustee (such consent not to be unreasonably withheld, delayed and which may be based on the direction of the Bondholders), enter into any amalgamation, de-merger, merger, consolidation or corporate reconstruction. Provided that the Issuer, in seeking the Trustee's consent, shall have delivered to the Trustee (a) an opinion of independent legal adviser(s) of recognised standing, stating whether the amalgamation, de-merger, merger, consolidation or corporate reconstruction complies with the provisions of subparagraph (i) below and (b) a certificate signed by 2 (two) of its Directors stating whether the amalgamation, de-merger, merger, consolidation or corporate reconstruction complies with the provisions of subparagraphs (i) and (ii) below.

- (i) the Issuer shall be the continuing person, or the successor person (as a result of such amalgamation, de-merger, merger, consolidation or corporate reconstruction), shall continue to be a company incorporated and validly existing under the laws of Nigeria, and shall assume all of the obligations of the Issuer under the Trust Deed by way of a supplemental trust deed to this Deed in form and substance satisfactory to the Trustee; and
- (ii) immediately before and after giving effect to such amalgamation, de-merger, merger, consolidation or corporate reconstruction no Potential Event of Default or Event of Default shall have occurred and be continuing.

#### **7.8 Share Capital and other matters**

The Issuer shall not change or amend its constitutional documents being the Memorandum and Articles of Association in a manner that would adversely affect its ability or obligation to pay the principal and/or coupon on the Bonds issued under this Deed or the Programme and/or any moneys payable under this Deed unless the written consent of the Trustee is first obtained, which consent shall not be unreasonably withheld and or delayed.

## 7.9 **Auditors**

The Issuer shall retain a reputable firm of auditors as its auditors at all times.

## 7.10 **Taxation**

The Issuer shall duly and punctually pay and discharge all Taxes (a) for which it reasonably believes it is liable pursuant to any self-assessment procedure and (b) assessed upon it or its assets under any Applicable Law within the time period allowed without incurring penalties, except solely, in the case of (b), to the extent that:

7.10.1 such payment is being contested in good faith;

7.10.2 adequate reserves are being maintained for those Taxes and any interest or penalties; and

7.10.3 such payment can be lawfully withheld.

## 7.11 **Statutory Payments**

The Issuer shall pay all stamp duties or other taxes imposed by any Authority upon or in connection with the issue and subscription of the Bonds and the execution and delivery of the Issue Documents. The Issuer shall also indemnify the Trustee and the Bondholders from and against all stamp or other taxes paid by any of them in connection with any action taken by or on behalf of the Trustee in relation to the Bonds or, as the case may be, the Bondholders to enforce the Issuer's obligations under this Trust Deed or the Bonds.

## 7.12 **Legal Status**

The Issuer shall ensure that it maintains its legal status and ensure that it complies with all Applicable Laws required to maintain such status.

## 7.13 **Information - Miscellaneous**

The Issuer shall ensure that information that has been or will be made available to the Bondholders, or the Trustee, by the Issuer or any director, officer, employee, or representative of the Issuer in connection with the transactions contemplated herein shall:

- (a) be complete and correct in all material respects; and
- (b) not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein misleading in light of the circumstances under which such statements were or are made.

#### **7.14 Proper Books of Account**

The Issuer shall keep proper books of account and make true and proper entries therein and, at any time after an Event of Default or Potential Event of Default has occurred or if the Trustee reasonably believe that an Event of Default or Potential Event of Default may have occurred or may be about to occur, allow the Trustee and the Issuer's Auditors free access to such books of account at all reasonable times during normal business hours.

#### **7.15 Establishment of a Debt Service Reserve Account**

The Issuer may establish a Debt Service Reserve Account in a manner as may be provided for under the Pricing Supplement and the relevant Series Trust Deed.

#### **7.16 Restricted Payments**

The Issuer shall not declare or pay any dividend in cash or otherwise or make a distribution (whether by way of redemption, acquisition or otherwise) in respect of its share capital if an Event of Default or a Potential Event of Default has occurred and is continuing.

#### **7.17 Consent for Divestment**

The Issuer shall not, for as long as any Bonds remain outstanding and, without the prior written consent of the Trustee (such consent not to be unreasonably withheld or delayed), divest any of its majority interest in any of its Subsidiaries.

#### **7.18 Additional Covenants**

The Issuer further covenants to the Trustee that it shall:

7.18.1 use its best endeavours to maintain the Listing on the Exchange of the Bonds which are quoted or listed or, if it is unable to do so having used such endeavours, use its best endeavours to obtain and maintain a Listing of such Bonds on a Exchange or securities market or markets as the Issuer may decide, and, upon obtaining a Listing of such Bonds issued by it on a Exchange or securities market or markets, enter into a deed supplemental to this Trust Deed or the relevant Series Trust Deed to effect such consequential amendments as the Trustee may require or as shall be requisite to comply with the requirements of any Exchange or securities market. Provided that the Issuer shall not delist the Bonds from any Exchange without the prior approval of the majority bondholders;

7.18.2 provide to the Trustee all such documents and information as the Trustee may reasonably require in connection with the performance by the Trustee of its obligations under this Deed within 15 (fifteen) Business Days of receipt of a written request from the Trustee or, in the

event that the Issuer may require a longer period to obtain such documents or information from third parties as soon as is reasonably practicable after such request and in any event by such longer period as may be agreed with the Trustee in writing; and

7.18.3 on written request, issue to the Trustee in each year in which any part of the Principal Amount and any Coupon accrued thereon remains outstanding, a certificate stating that:

- (a) all arrangements required during the next financial year to meet payment obligations of the Issuer have been put in place by the Issuer; and
- (b) to the best of its knowledge, the Issuer is not aware of any facts or unforeseen circumstances in its ordinary course of business that will affect its ability to meet its payments obligations as and when due.

## **8. PRINCIPAL AND COUPON**

### **8.1 Principal Amount**

The principal amount due on the Bonds shall be repaid on the relevant Maturity Date or on an amortising basis in accordance with the terms of the relevant Series as specified in the Series Trust Deed and in accordance with the Conditions.

### **8.2 Coupon Rate**

In the case of any coupon bearing Bond, Coupon shall be payable on the Bond at the rate specified in the Series Trust Deed relating to the applicable Series.

### **8.3 Coupon Payment Date**

Coupon Payment Dates shall fall on the days and years as specified in the Series Trust Deed relating to the relevant Series.

## **9. CREATION OF ADDITIONAL SERIES**

- 9.1 Subject to Clause 5.1, the Issuer shall be at liberty from time to time (but subject always to the provisions of this Deed), without the consent of the Bondholders, to create and issue additional Series pursuant to the Programme either (i) ranking *pari passu* in all respects (or in all respects save for the first payment of Coupon thereon, issue price, issue dates and aggregate principal amount) with outstanding Series, or (ii) upon such terms as to ranking, interest, conversion, redemption and otherwise as the Issuer may at the time of issue thereof determine. For the avoidance of doubt, any further issuance of Bonds may have the same terms and conditions as the Bonds of any Series (or the same terms and conditions in all respects save for the amount and date of the first payment of coupon thereon, issue price, issue

dates and aggregate principal amount) so that the same shall be *consolidated* and form a single series with the outstanding Bonds of a particular Series.

- 9.2 Any Series created pursuant to the provisions of Sub clause 9.1 shall be constituted by a Series Trust Deed supplemental to this Trust Deed (“**Series Trust Deed**”). In any such case, the Issuer may make such consequential modifications to this Trust Deed as the Trustee shall require in order to give effect to such issue of a Series.
- 9.3 A memorandum of every Series Trust Deed shall be endorsed by the Trustee on this Trust Deed and by the Issuer on duplicates of this Trust Deed.
- 9.4 The provisions of this Trust Deed except as otherwise varied in the relevant Series Trust Deed shall be incorporated by reference in the Series Trust Deed relating to any Series created pursuant to this Trust Deed.

## 10 REPRESENTATIONS AND WARRANTIES OF THE PARTIES

### 10.1 Representations and warranties of the Issuer

The Issuer hereby undertakes, represents and warrants to the Trustee that, as of the date of this Deed and to the Trustee and the Bondholders of the relevant Series as at the Issue Date and Coupon Payment Date of any Series of the Bonds to the best of Issuer’s knowledge ):

10.1.1 it is a public limited liability company duly incorporated under Nigerian law with full power and authority, and has obtained all governmental licences, authorisations, consents and approvals, to enter into, execute, deliver and perform its obligations under the Issue Documents;

10.1.2 its execution and delivery of the Issue Documents, issuance of the Bonds and its performance thereunder:

10.1.2.1 have been duly authorised by all necessary corporate action (including any necessary shareholder or similar action);

10.1.2.2 will not contravene any Applicable Law;

10.1.2.3 will not contravene or constitute a default under any contractual obligation, judgment, injunction, order or decree binding upon it or its assets; and

10.1.2.4 will not contravene other agreements and any of the provisions of the Issuer’s constitutional documents;

10.1.3 each of the documents required to be executed and delivered in connection with the issue of the Bonds have been or will be duly executed and delivered by it and (with respect to any Bond, upon its authentication and delivery by the Trustee) constitutes its legal, valid and binding obligation, enforceable against it (subject to corporate insolvency and similar exceptions) in accordance with its terms;

- 10.1.4 it is in material compliance with all Applicable Laws in relation to its obligations under the Programme;
- 10.1.5 the execution of this Deed does not contravene any of the provisions of the CAMA, the ISA or any other Applicable Law in Nigeria;
- 10.1.6 it has obtained and, to the extent that it has not obtained, will obtain the required registration necessary for the issuance of the Bonds;
- 10.1.7 neither the Issuer nor any of its assets has any right of immunity on the ground of sovereignty or otherwise, from the jurisdiction, attachment (before or after judgment) or execution in respect of any action or proceeding relating in any way to the Issue Documents that may be brought in the courts of Nigeria or any relevant jurisdiction and where any such right is conveyed while the Bonds are outstanding, the Issuer hereby waives such right;
- 10.1.8 the obligations of the Issuer under the Issue Documents are direct, general and unconditional obligations of the Issuer and rank at least *pari passu* with all other present and future Financial Indebtedness, if any, of the Issuer as set out in the relevant Issue Document;
- 10.1.9 that it is neither unable nor has it admitted to any inability to pay its debts as they fall due and has not suspended making payments on any of its debts (other than debts disputed in good faith) or, by reason of actual or anticipated financial difficulties, commenced negotiations with one or more of its creditors with a view to rescheduling any of its Financial Indebtedness;
- 10.1.10 no Moratorium has been declared in respect of any of its current Financial Indebtedness; and
- 10.1.11 the value of its assets is not less than its actual liabilities: and
- 10.1.12 save as may be otherwise disclosed in the applicable Pricing Supplement, no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if determined, might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief) been started or threatened against it or its Subsidiary.
- 10.1.13 all the information in the Issue Documents and any other document(s) that has been or will hereafter be made available to the Bondholders by the Issuer or any director, officer, employee or representative of the Issuer in connection with the transactions contemplated herein is, and will at all times be complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements were or are made.

## 10.2 Representations and warranties of the Trustee

The Trustee hereby undertakes, represents and warrants to the Issuer that, as of the date of this Deed and as at the Closing Date of any Series of the Bonds:

- 10.2.1 it is a company within the meaning of the CAMA;
- 10.2.2 it is duly registered and authorised by the Commission to act as trustee in connection with capital market transactions;
- 10.2.3 It has full power and authority to enter into this Deed and to exercise its rights and perform its obligations hereunder and have obtained all authorisations and consents necessary for it to enter, exercise rights and perform obligations under this Deed and such authorisations and consent are in full force and effect;
- 10.2.4 it has the resources, capacity and expertise to act on behalf of the Bondholders;
- 10.2.5 the obligations expressed to be assumed by it under this Deed are legal and valid obligations binding on it in accordance with its terms and it shall comply with the provisions of the ISA, and this Deed, in the performance of its obligations;
- 10.2.6 it shall provide any information that the Commission or the Issuer may require in connection with its obligation to act on behalf of the Bondholders;
- 10.2.7 it shall not allow any conflict to occur between its obligations in connection with the Bonds and its commercial interests;
- 10.2.8 it does not have any subsisting and undisclosed fiduciary relationship with the Issuer; and
- 10.2.9 it shall comply with its obligations under this Deed.

## 11. ENFORCEMENT

The rights and duties of the Trustee, and the rights and duties of the Bondholders, in respect of the Bonds as to recovery of amounts owing on the Bonds and the Coupons are set out in Condition 19 (*Events of Default*) of the First Schedule.

## 12. ACCELERATION OF THE BONDS

- 12.1 The Issuer shall promptly give notice to the Trustee of each Potential Event of Default and of any other event that has or might have a Material Adverse Effect on its ability to perform its obligations under this Deed.

- 12.2 Subject to the provisions of Condition 19(B) (*Events of Default*) of the First Schedule to this Trust Deed, upon the occurrence of an Event of Default the Trustee at its discretion may or shall (if requested to do so in writing by the Majority Bondholders, or is directed to do so by an Extraordinary Resolution of the Bondholders, and each case is indemnified to its satisfaction), give notice in writing to the Issuer, (a “**Bond Acceleration Notice**”) declaring the Bond to be immediately due and payable. When a Bond Acceleration Notice is given, all Bonds will become immediately due and payable in accordance with the terms of the Trust Deed at their Principal Amount Outstanding together with accrued but unpaid Coupon without further action or formality.

### **13. PROCEEDINGS TO ENFORCE REPAYMENT**

At any time after the Bonds shall have become immediately repayable pursuant to a Bond Acceleration Notice, the Trustee may, at its discretion and shall upon the request in writing of the Majority Bondholders, or upon being so directed by an Extraordinary Resolution and without further notice institute such proceedings as it may think fit to enforce the repayment of the Bonds and/or to enforce the other obligations of the Issuer under this Deed.

### **14. TRUST OF RECEIPTS**

- 14.1 All monies received by the Trustee under this Deed shall be held by the Trustee (subject to the payment of any money having priority to the Bond) upon trust to apply such money for the following purposes and in the following order of priority:

14.1.1 Firstly, in the payment of all costs, charges, expenses and liabilities incurred and payments made in or about the execution of the trusts of this Deed including all remuneration payable to the Trustee with interest on such sums as provided in Clause 14.2 of this Deed;

14.1.2 Secondly, in or towards the payment of Coupon, default payments, or any sum due or owing upon the Bonds *pari passu* and without preference or priority; and

14.1.3 Thirdly, in or towards the payment of the principal sum owing upon the Bonds *pari passu* and without preference or priority.

The surplus (if any) shall be paid to the Issuer or to the person or persons entitled to such surplus.

- 14.2 Fees, cost, charges, expenses and interest (in respect of late payment) if any, that is charged by any, attorney, agent or other person appointed by the Trustee pursuant to this Deed shall be for the account of the Issuer.

### **15. METHOD OF PAYMENT OF PRINCIPAL MONEY, COUPON AND PREMIUM**

- 15.1 Payment of principal, Coupon and premium (if any) for the time being owing or due on all or any part of the Bond will be credited to the bank account



nominated for this purpose by the Bondholder (or in the case of joint registered Bondholders, by the joint Bondholders) or any other method as the Trustee may determine.

- 15.2 Without prejudice to the provisions of the Conditions attaching to the Bonds referred to in the First Schedule, the receipt by each Bondholder or in the case of joint Bondholders by any one of such joint Bondholders of any principal or interest payable in respect of the Bond held by such Bondholder or joint Bondholders shall constitute a discharge of the payment obligations of the Issuer to pay such principal or coupon.

## **16. APPLICATION OF ENFORCEMENT PROCEEDS**

All monies received by the Trustee in relation to enforcement proceeds shall be held by the Trustee, upon trust to apply the same in accordance with the order of priority set out in Clause 14 hereof.

## **17. TRUSTEE TO ACT ON INSTRUCTIONS OF BONDHOLDERS**

The Trustee may, but shall not be bound to, take any proceedings or any other action in relation to this Deed, the Bonds or any documents executed pursuant thereto or any of the other Issue Documents to which the Trustee are party unless:

- 17.1 It shall have been so directed by an Extraordinary Resolution of the Bondholders; or
- 17.2 It shall have been requested to do so in writing by the Majority Bondholders; and
- 17.3 in either case, the Trustee (and every attorney, delegate, manager, agent or other person appointed by the Trustee hereunder) shall be entitled to be indemnified by the Bondholders and or secured to its satisfaction in respect of all liabilities, proceedings, claims, demands, costs, charges and expenses to which they may thereby become liable or which may be incurred by them (or any of the aforementioned parties so appointed by the Trustee) in connection therewith, provided that the Trustee shall not be held liable for the consequence of taking any such action.

## **18. TRUSTEE TO ENFORCE**

None of the bondholders shall have any independent power to enforce right or to exercise any rights, discretions or powers or to grant any consents or releases pursuant to any of the Issue Documents. Any power or right of the Bondholders under the Trust Deed shall be exercisable by the Trustee or any delegate appointed by the Trustee in accordance with the terms of the Trust Deed. Provided that it is hereby agreed that any Bondholder who feels dissatisfied shall be entitled personally initiate legal action to enforce his rights under the Trust Deed where the Trustee having become bound to so proceed or exercise any such right fails to do so within fourteen (14) days and the

failure is continuing.

## **19. POWERS, DUTIES, RELIEFS AND INDEMNITIES OF TRUSTEE**

19.1 The Trustee shall enjoy all powers, reliefs and indemnities granted to trustees pursuant to all Applicable Laws for the time being in force.

19.2 The Trustee:

- i. shall have the power to do any act in accordance with this Deed, the relevant Series Trust Deed, the ISA and any Applicable Law which shall be on behalf of and for the benefit of the Bondholders;
- ii. hereby acknowledges and covenants that the assets/accounts attributable to the Bonds constituted under this Trust Deed shall clearly identified, effectively segregated and ring-fenced from the assets/accounts of the Trustee or any other trust that is being administered by the Trustee. The Trustee further covenants that it shall not deal with any of the trust assets except in accordance with the provisions of this Series Trust Deed, the ISA and the SEC Rules.

19.3 The Trustee shall have the following duties and responsibilities:

19.3.1 safeguard the rights of the Bondholders for the Issuer's obligations under the Programme;

19.3.2 to summon, as and when necessary, meetings of all Bondholders of a Series or Tranche where a statement of affairs on the management of any funds on behalf of the Bondholders shall be presented and/or any other necessary business and or matter shall be presented and determined. A meeting shall be convened by the giving of at least 14 (fourteen) clear days' written notice to all Bondholders (specifying the agenda at the meeting), and the said notice may also be published in at least 2 (two) national newspapers. The procedure of and regulations for such a meeting of the Bondholders shall be in accordance with the Second Schedule to this Deed; and

19.3.3 not to enter into contracts or other arrangements that would amount to a conflict of interest in the performance of its respective obligations under this Deed, or any other customary obligations of a trustee;

19.3.4 in the performance of its duties under this Trust Deed;

- i. ensure a prompt payment of the principal and coupon once the Issuer has provided required funds;
- ii. protect/ act in the best interest of the Bondholders;
- iii. act honestly, prudently, in good faith and exercise due care, skill, diligence and vigilance in carrying out its functions and in safeguarding the rights and interests of the Bondholders; and
- iv. observe its fiduciary roles and obligations to the Bondholders as

the beneficiaries of the trust and its discretions.

- 19.4 The Trustee acting through its specified offices shall make payments of Coupon and principal in respect of the Bonds in accordance with the Conditions and this Trust Deed and for so long as the Bonds are evidenced by records confirmed by the Registrar.
- 19.5 The Trustee shall not make any payment of coupon or principal in respect of any Series of the Bonds in an amount which is greater than the amount of coupon or principal payable in accordance with the Conditions in respect of such Series of Bonds and determined or calculated by the Trustee.
- 19.6 Prior to an Event of Default and after the curing or waiving of all Events of Default which may have occurred, the Trustee shall not be liable except for the performance of such duties as specifically set down in this Deed.
- 19.7 The Trustee shall make available for inspection by Bondholders at its specified office copies of this Deed and the latest consolidated audited accounts of the Issuer.
- 19.8 The Trustee shall have no liability for any act or omission to act hereunder, or under any other instrument or document executed pursuant hereto except for the Trustee's negligence, wilful default and misconduct.
- 19.9 The duties and obligations of the Trustee shall be determined solely by the express provisions hereof, and no implied powers, duties or obligations of the Trustee, save as mandated by the ISA or any other Applicable Law, shall be construed into this Deed.
- 19.10 Upon the occurrence of an Event of Default, the Trustee shall, subject to the provisions of this Deed, exercise such rights and utilise such powers vested in it under this Deed, and the ISA, and shall use the required degree of care and skill in the exercise of its duties.
- 19.11 The Trustee shall not be required to expend or risk its own funds or otherwise incur any liability in the performance of its duties or in the exercise of its rights or powers as Trustee, except such liability as may result from its negligence, willful default and/or misconduct.
- 19.12 Notwithstanding any other provisions hereof, the Trustee shall have no liability for (a) an error of judgment made in good faith by an officer or employee of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or (b) action taken or omitted to be taken by it in good faith in accordance with the lawful direction of the Majority Bondholders.
- 19.13 It is hereby expressly agreed and declared as follows:
  - 19.13.1 the Trustee may in relation to this Deed act on the opinion or advice of, or any information from any solicitor, valuer, surveyor, broker, auctioneer, accountant, or other expert, whether obtained by the

Issuer or by the Trustee or otherwise, and shall not be responsible for any loss occasioned by so acting provided that it has used its best efforts to ensure that such persons are competent; and any such advice, opinion or information may be obtained or sent by letter, or, electronic mail, and the Trustee shall not be liable for acting on any advice, opinion or information purporting to be so conveyed even though the same shall contain some error or shall not be authentic;

- 19.13.2 the Issuer shall bear the fees and reasonable costs and expenses incurred by the Trustee in the appointment of any solicitor, valuer, surveyor, broker, auctioneer, accountant or any other agent, expert or professional in respect of the trust constituted by this Deed and agreed in advance in writing by the Issuer. The Issuer hereby agrees to pay to the Trustee such fees and expenses within 15 (fifteen) days on a full indemnity basis together with any VAT or similar tax payable in respect thereof in connection with the engagement of any such agent, expert or professional upon receipt of the Trustee's written request;
- 19.13.3 the Trustee shall not be bound to give notice to any person or persons of the execution of this Deed or of any acts or deeds made or done by virtue of this Deed or to see to the registration of this Deed in any registry or to any other formalities (except to the due execution by them of this Deed) in connection herewith;
- 19.13.4 save as herein otherwise provided, the Trustee shall not be bound to take any step to ascertain whether any event has happened upon the occurrence of which the Bonds may be declared immediately repayable;
- 19.13.5 save as herein otherwise expressly provided, the Trustee shall, as regards all trusts, powers, authorities and discretions hereby vested in them, have absolute and uncontrolled discretion as to the exercise thereof, and in the absence of fraud, negligence, or misconduct, shall not be responsible for any loss, costs, damages, expenses or inconvenience that may result from the exercise or non-exercise thereof, and in particular, the Trustee shall not be bound to act at the request or discretion of the Bondholders under any provision of this Deed unless the Trustee shall first be indemnified to its satisfaction by the Bondholders against all costs, charges, expenses and liability which may be incurred in complying with such request or discretion;
- 19.13.6 the Trustee shall not be responsible for the monies subscribed by applicants for the Bonds or be bound to see to the application thereof;
- 19.13.7 the Trustee shall be at liberty to accept:
- 19.13.7.1 a certificate signed by any two (2) Directors as to any

fact or matter on which the Trustee may need or wish to be satisfied as sufficient evidence of such fact or matter including the certification that any properties or assets in the opinion of such people have a particular value or produce a particular income or are suitable for the Issuer's purposes as sufficient evidence that they have that value or produce a particular income or are so suitable; and

- 19.13.7.2 the Trustee shall not be bound in such case to call for further evidence or be responsible for any loss that may be occasioned by its failing to do so or by its acting on any such certificate;
- 19.13.8 the Trustee shall not be responsible for having acted upon any resolution purporting to have been passed at any meeting of the Bondholders in respect whereof minutes have been made and signed, even though it may subsequently be found that there was some defect in the constitution of the meeting or the passing of the resolution with the effect that the resolution was not valid or binding upon the Bondholders except where the Trustee had actual knowledge of such defect prior to taking such action;
- 19.13.9 the Trustee shall not be bound to declare any Series of the Bonds immediately repayable or to take any steps to enforce payment thereof or any of the provisions of this Deed unless and until in any of such cases the Trustee is required to do so in writing by Majority Bondholders or by an Extraordinary Resolution passed at a duly convened meeting of the Bondholders; provided that the Trustee shall in any case inform the Bondholders of the happening of any Event of Default that comes to its knowledge;
- 19.13.10 without prejudice to the right of indemnity by law given to the Trustee, every attorney, manager, agent or other person appointed by it hereunder (the "Indemnified Persons") shall be entitled to be indemnified by the Issuer in respect of all liabilities and expenses incurred by the Indemnified Persons in the execution of the powers and trusts hereof or of any powers, authorities or discretions vested in it or them pursuant to this Deed; provided that the Trustee, the attorney, agent or manager or other person appointed by the Trustee have not acted negligently or in default of its powers, duty and obligations, and the Trustee may retain and pay out of any monies in its hands upon the trusts of these, the amount of any such liabilities and expenses and also the remuneration of the Trustee as hereinbefore provided; and
- 19.13.11 the Trustee shall not be liable for any thing save only a breach of trust committed by it, PROVIDED NEVERTHELESS that nothing contained in this Clause 19 shall exempt the Trustee from or indemnify them against any liability for negligence, wilful misconduct or breach of trust where the Trustee fail to show the

degree of care and diligence required of it having regard to the provisions hereof conferring on it powers, authorities or discretions.

#### **19.14 Power to Delegate or Appoint Agents**

- 19.14.1 The Trustee may in the conduct of the trust business, instead of acting personally, employ and pay an agent (whether a solicitor or other professional person), to transact or conduct or concur in doing all acts required to be done by the Trustee, including the receipt and payment of money, in connection with the trusts hereof. PROVIDED however that where the Trustee intends to delegate all its powers to an agent, the Trustee shall (i) seek the prior written consent of the Issuer (such consent not to be unreasonably withheld), which shall be communicated to the Trustee within three (3) Business Days of receiving the Trustee's request; and (ii) notify the Commission of such an intended delegation.
- 19.14.2 It is hereby agreed that, for the purpose of liability, where the Trustee appoints and have delegated its trust powers and functions to agent(s), the Trustee will be liable for the acts and omissions of such agent(s).

#### **19.15 Dealings with the Issuer and its Securities**

- 19.15.1 Subject to the provisions of the ISA, and Section 188 of CAMA, anybody corporate which is for the time being a trustee hereof shall be at liberty in the ordinary course of its business, and every director, other officer or servant of any such body corporate shall be at liberty, to enter into contracts with or hold any office of profit under the Issuer or any Affiliate of the Issuer and to hold, purchase, sell, underwrite or otherwise deal with any of the Bonds or any other securities and other obligations of the Issuer or of any such Affiliate and to act as trustee of any other securities or obligations of the Issuer or of any such Affiliate without being accountable for any receipt, profits, interest charges, commissions, fees or other remuneration arising therefrom.
- 19.15.2 Without prejudice to the generality of sub-clause 19.15.1 it is expressly declared that such contracts, transactions or arrangement may include:
- 19.15.2.1 any contract for the purchase by or leasing to the Trustee of the whole or any part of the property of the Issuer or of any property or assets formerly included in such property of the Issuer; or any contract for the sale or leasing by the Trustee of any property or assets on the basis that such property or assets will become part of the property of the Issuer or will be paid for out of capital money or exchanged for all or part of the property of the Issuer or otherwise; or any other dealing with or in relation to property or assets

subject to the trusts of this Deed whether similar to those contracts or not;

19.15.2.2 any contract, transaction or arrangement for or in relation to the placing, underwriting, purchasing, subscribing for or dealing with or lending money upon the Bonds or any other bond, shares, debenture bond, debentures or other securities of the Issuer or any Subsidiary or any contracts of insurance with the Issuer or any Subsidiary or any contract of insurance with the Issuer; and

19.15.2.3 the Trustee acting as trustee of any other securities or obligations of the Issuer, or its Subsidiary.

19.15.3 The Trustee shall not be accountable to the Issuer, or any Subsidiary or to the Bondholders for any profits or benefits resulting or arising from any contract, transaction or arrangement as is mentioned in this clause and the Trustee shall also be at liberty to retain for its own benefit and shall be in no way accountable to the Issuer, or any Subsidiary or to the Bondholders for any benefits or profits or any fees, commissions discount or share of brokerage allowed to them by bankers, brokers or other parties in relation to or otherwise arising out of any contract, transaction or arrangement (including any dealing with the Bonds or the property of the Issuer) permitted by or effected under, or in connection with, this Deed. PROVIDED that such contract, financial or other transaction contemplated in this Clause 19.15 shall not result in a conflict with the interest of the Issuer or Bondholders under the Bonds.

#### **19.16 Authorisation of the Trustee**

Each of the Bondholders hereby authorises the Trustee (whether or not by or through employees or agents):

19.16.1 to exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Trustee by this Deed together with such powers and discretions as are reasonably incidental thereto; and

19.16.2 to take such action on its behalf as may from time to time be authorised under or in accordance with this Deed.

#### **19.17 Trustee's Authority to Execute Documents**

19.17.1 Each of the Bondholders hereby authorises the Trustee to enter into and execute any further document(s) which is required to be executed with respect to the Bond.

19.17.2 In each and every case, the Trustee agree to hold the rights and benefits thereby created for the benefit of the Bondholders in the

manner contemplated by this Deed.

### **19.18 Covenant of Compliance**

The Trustee hereby covenants with the Issuer that it shall comply with and perform all provisions of this Deed which are binding on them.

### **20. TRUSTEE'S LIABILITY**

Nothing in this Deed shall, in any case in which the Trustee have failed to show the degree of care and diligence required of it as trustee having regard to the provisions of this Deed conferring on it any trusts, powers, authorities or discretions, exempt the Trustee from or indemnify it against any liability for negligence, fraud, wilful default, misconduct, breach of duty or breach of trust in relation to its duties under this Trust Deed.

### **21. RELIANCE ON CERTIFICATES**

The Trustee may accept a certificate from the Issuer that the entire Bond has been redeemed or relating to any matter primarily within the knowledge of the Issuer as sufficient evidence thereof and any such certificate shall be a complete protection to the Trustee who act thereon.

### **22. APPOINTMENT OF REGISTRAR**

The Registrar shall be appointed by the Issuer but shall be responsible to the Trustee.

### **23. THE BOND REGISTER**

- 23.1 The Issuer shall at all times keep, at the office of the Registrar in Lagos for the time being or at such other place in Nigeria as the Trustee may approve, an accurate Bond Register showing the amount of the Bond for the time being issued and fully paid and the date of registration and all subsequent transfers or changes of ownership thereof and the name and address and any other description of each of the Bondholders and any person deriving title under him/it, such information to be obtained by the Registrar.
- 23.2. The Trustee and the Bondholders or any of them and any persons authorised in writing by any of them shall be at liberty to inspect the said Bond Register and to take copies of and extracts from the same or any part thereof between the hours of 8.00am and 4.00pm on a Business Day. The said Register may be closed at such times and for such periods as the Registrar may from time to time determine provided that it shall not be closed for more than thirty (30) days in any year.
- 23.3. The Registrar shall maintain and update the Bond Register until such time that all outstanding Bonds have been fully redeemed and the Issuer's liability has been discharged. The Registrar shall provide details of the Bond Register to the Trustee on a quarterly basis during the period in which the Bonds are outstanding.



- 23.4. Only those Bondholders whose names appear on the Bond Register at the relevant record date for any payment shall be entitled to receive any payments of principal, and coupon or premium due on the Bonds.

## **24. PURCHASE OF BOND BY THE ISSUER**

The Issuer may at any time and from time to time purchase any part of the Bonds through the market or by tender (available to all Bondholders alike) but not otherwise. Any Bond so purchased will be cancelled and will not be available for re-issue.

## **25. APPOINTMENT, REMUNERATION AND REMOVAL OF TRUSTEE**

- 25.1 Subject to the notification and approval of the Commission, the power to appoint a new trustee hereof shall, for so long as any of the Bonds is outstanding, be vested in the Issuer but no person shall be appointed who shall not previously have been approved by an Extraordinary Resolution of the Bondholders for the time being which Bondholders shall in addition have power at any time by an Extraordinary Resolution to remove from office any trustee appointed pursuant to this Deed. Provided that the Bondholders can only move to remove such an appointed trustee when the trustee is in breach of its representations and warranties in Clause 10.2 of this deed, as well as in the case of negligence, wilful default, breach of duty or breach of trust in relation to its duties as provided in Clause 19 of this Trust Deed and where the removal of the trustee would result in there being no trustee for the Bonds, such removal shall not be effective until the Issuer has appointed a new trustee (and such appointment has been approved by an Extraordinary Resolution of the Bondholders). Such successor trustee(s) shall be a reputable, duly registered and experienced trustee, have accepted such appointment, and shall have delivered to the Issuer the duly executed Accession Instrument in or substantially in the form in the Third Schedule to this Deed.
- 25.2 Notwithstanding the provisions above, the Trustee may, upon giving prior notice to the Issuer and upon obtaining the approval of the Commission, appoint any other trustee registered with the Commission or any other relevant regulator to act either as a separate trustee or as a co-trustee jointly with the Trustee only in the following circumstances:
- 25.2.1 for the purposes of conforming to any legal requirements, restrictions or conditions in any jurisdiction in which any particular act or acts is or are to be performed; or
- 25.2.2 for the purposes 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 this Deed against the Issuer.
- 25.3 The Issuer irrevocably appoints the Trustee to be its attorney in its name and on its behalf to execute any such instrument of appointment pursuant to Clause 25.2 above. Such trustee shall (subject always to the provisions of this

Deed) have such trusts, powers, authorities and discretions (not exceeding those conferred on the Trustee by these provisions) and such duties and obligations as shall be conferred or imposed by the instrument of appointment. The Trustee shall have power in like manner to remove any such trustee. Such reasonable remuneration as the Trustee may pay to any such trustee, together with any attributable liabilities incurred by it in performing its function as a separate trustee or co-trustee, shall for the purposes of these provisions be treated as liabilities incurred by the Trustee. The Issuer shall during the continuance of this trust and until the trusts hereof shall be finally wound up and whether or not the trusts of this Deed be in the course of administration by or under the direction of any court, pay to the Trustee for its services hereunder, the Trustee Fees in accordance with this Deed or any other agreed terms between the Issuer and the Trustee, subject to such upward review as the Parties may agree in writing from time to time and subject to the regulatory limit on Trustee fees prescribed by the Commission.

- 25.4 The Issuer shall pay the Trustee the sign-on/participation fee and the annual fees in the amount and manner agreed to by the Parties in the Trustee engagement letter.
- 25.5 The Issuer shall in addition pay to the Trustee an amount equal to the amount of any Value Added Tax, or any similar tax chargeable in respect of its remuneration under this Deed.
- 25.6 The Trustee may retain and pay to itself out of any monies held by them upon the trusts of this Deed, all sums owing to it in respect of agreed remuneration costs, charges, expenses or interest or by virtue of any indemnity from the Issuer to which it is entitled hereunder or by law and all such sums as aforesaid shall rank in priority to the claims of the Bondholders. The Trustee shall not incur cumulative expenses in excess of One Million Naira (₦1,000,000.00) per annum without the prior written approval of the Issuer. Provided that the prior approval of the Issuer shall not be required in relation to expenses which are incurred in connection with Events of Default or Potential Events of Default.
- 25.7 The Issuer shall also pay all costs, fees, charges and expenses incurred by the Trustee in the exercise of the powers, authorities and discretions vested in it under this Deed.

## **26 RETIREMENT/RESIGNATION OF THE TRUSTEE**

The Trustee hereof may retire/resign at any time without being responsible for any costs occasioned by such retirement/resignation, provided that:

- (i) such Trustee shall have given 3 (three) months' notice in writing to the Issuer and the Bondholders; and
- (ii) no such retirement shall take effect until the Issuer has appointed a new Trustee (and such appointment has been approved by an Extraordinary Resolution of the Bondholders). Such successor Trustee shall be a reputable, duly registered and experienced

trustee, duly registered with the Commission, and shall have accepted such appointment, and shall have delivered to the Issuer the duly executed Accession Instrument in or substantially in the form in the Third Schedule to this Deed.

## **27. INDEMNITY RELATING TO APPLICATIONS TO THE COURT**

The Issuer shall indemnify the Trustee in so far as may be lawful in respect of all costs and expenses incurred by the Trustee in relation to or arising out of any application made to any court (either in Nigeria or any other country whereby any assets of the Issuer are situated) by the Trustee or any of the Bondholders for an order that the trust of this Deed may be carried out under the direction of the court or for an order of declaration relating to the administration of the trust of this Deed or the enforcement of the rights under this Deed or the construction of this Deed.

## **28. POWER TO RECOUP MONEY OWED TO THE TRUSTEE**

Without prejudice to the right of indemnity by law given to Trustee, the Trustee, attorney, agent or other person appointed by the Trustee under the provisions of this Deed shall be entitled to be indemnified out of the property or assets of the Issuer in respect of:

- 28.1 all liabilities, costs, charges and expenses incurred by them in relation to this Deed or to the preparation and execution or purported execution of this Deed,
- 28.2 the carrying out of the trusts of this Deed,
- 28.3 the exercise of any trusts, powers or discretion vested in them pursuant to this Deed, and
- 28.4 all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted relating to this Deed;

in priority to any payments to the Bondholders, the Trustee may retain and pay out of any money in its hands arising from the trusts of this Deed, all sums necessary to effect such indemnity and also the remuneration of the Trustee as provided in this Deed.

## **29. MODIFICATION OF TERMS OF THE DEED**

- 29.1 Subject to the approval of the Commission, in addition and without prejudice to the powers of the Bondholders exercisable by Extraordinary Resolution, the Trustee may at any time without the sanction of an Extraordinary Resolution concur with the Issuer in making any modification to this Deed as may be agreed between the Issuer and the Trustee where the Trustee is of the opinion that such modification will not be materially prejudicial to the interests of the Bondholders or that the modification is intended to correct a manifest error or omission or that in its opinion, the modification is of a formal, minor or technical nature or in compliance with the provision(s) of an Applicable Law.

Any such modification shall be binding on the Bondholders and any such modification shall be notified by the Trustee to the Bondholders as soon as practicable.

- 29.2 The Issuer will not, without the prior written consent of the Trustee or an Extraordinary Resolution of the Bondholders, agree to any amendments to or any modification of, or waiver of the terms of any outstanding Bonds and will act at all times in accordance with any instructions of the Trustee from time to time with respect to any outstanding Bonds. Any such amendment, modification, waiver or authorisation made with the consent of the Trustee shall be binding on the Bondholders and, unless the Trustee agree otherwise, any such amendment or modification shall be notified by the Issuer to the Bondholders in accordance with Condition 20 (*Notices*) contained in the First Schedule.
- 29.3 No such consolidation, modification, alteration or addition shall impose any further payment on the Bondholders in respect of the Bonds held by them or any liability in respect thereof.

### **30. WAIVER OF DEFENCES**

The obligations of the Issuer under this Trust Deed shall not be affected by any act, omission, matter or thing which, but for this provision, might operate to release or otherwise exonerate the Issuer from its obligations under this Trust Deed in whole or in part, including, whether or not known to the Issuer or the Trustee:

- 30.1 any time, indulgence or waiver granted to or composition with the Issuer or any other person;
- 30.2 the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights, remedies or securities against the Issuer or any other person or any non-presentment or non-observance of any formality or other requirement in respect of any instruments; or
- 30.3 any legal limitation, disability, incapacity or other circumstances relating to the Issuer or any other person.

### **31. INCORPORATION OF SCHEDULES**

The provisions contained in the schedules hereto shall have full effect in the same manner as if such provisions were herein set forth. The powers hereby conferred upon the Trustee shall be in addition to any powers which may from time to time be vested in it by Applicable Law or by the Bondholders.

### **32. NOTICE OF BREACH TO THE COMMISSION**

The Trustee shall inform the Commission whenever it becomes necessary to enforce the terms of this Trust Deed and whenever there is a breach of the terms and conditions of the Trust Deed not later than 10 (ten) Business Days

after the breach.

### **33. COMPLIANCE WITH THE ISA AND SEC RULES**

- 33.1 The Trustee in exercise of the powers and discretions vested in them pursuant to this Deed shall comply with the provisions of the ISA and the SEC Rules.
- 33.2 The provisions of this Trust Deed shall be subject to the relevant provisions of the ISA, SEC Rules, Trustees Investment Act and other Applicable Laws

### **34. NOTICES**

- 34.1 All notices required to be given in connection with this Deed shall be in writing, either delivered by hand, pre-paid post or courier or by dispatching the same by electronic mail transmission or other means of communication in permanent written form, and due service shall be deemed to have been made at the time of actual receipt, save that in the case of any electronic mail transmission sent after 4.30 pm, it shall be deemed to have been served at 9.00 am on the next Business Day. All notices shall be effective when received at the addresses specified for the service by the relevant party or as amended from the time to time in writing as set out below.

For the Issuer:

#### **Fidelity Bank PLC**

Address: 2 Kofo Abayomi Street  
Victoria-Island,  
Lagos

Attention: Gbolahan Joshua  
Telephone: +234 (1) 4480853  
Email: gbolahan.joshua@fidelitybank.ng

For the Trustee:

#### **FBNQuest Trustees Limited**

Address: 10 Keffi Street,  
Off Awolowo Road,  
Ikoyi,  
Lagos

Attention: Head, Corporate Trust  
Telephone: +234 (1) 279 8300  
Email: corporatetrust@fbnquest.com

or to such other address as shall have been notified (in accordance with this Clause) to the other parties hereto and any notice or demand sent by post as aforesaid shall be deemed to have been given, made or served seven (7) days after dispatch.

- 34.2 In the case of joint registered Bondholders, a notice given to the holder whose name stands first in the Register in respect of such Bond shall be sufficient notice to all the joint holders of such Bond.

### **35 MISCELLANEOUS**

- 35.1 No failure or delay by the Trustee in exercising any right or remedy shall operate as a waiver thereof nor shall any single or any partial exercise or waiver of any right or remedy preclude it from further exercise or the exercise of any other right or remedy.
- 35.2 Each of the provisions of this Deed is severable and distinct from the others and, if at any time one or more of such provisions is or becomes invalid, illegal or enforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 35.3 No amalgamation, reconstruction or other change in the status of the Issuer shall be interpreted to avoid the obligations herein imposed on the Issuer and in the event (if any) of any change in status of the Issuer as aforesaid, the successor or successors-in-title of the Issuer shall be held and deemed responsible for the due performance of the obligations herein intended by this Trust Deed.

### **36 FORCE MAJEURE**

Neither the Issuer nor the Trustee herein shall be liable to the other for failure or delay in the performance of a required obligation under this Trust Deed if such failure or delay is caused by an event termed as "Force Majeure" PROVIDED THAT such party gives prompt written notice of such condition, the steps being taken or proposed to be taken in relation to such event, and resumes its performance as soon as reasonably possible after the cessation of such condition and such condition does not continue for a period exceeding 30 (thirty) days PROVIDED ALSO THAT the other party is reasonably satisfied that such condition impedes the relevant party's ability to discharge its obligations under the Trust Deed.

### **37 GOVERNING LAW AND JURISDICTION.**

This Trust Deed shall be governed by, and construed in accordance with, Nigerian law. Subject to Clause 38 below, the courts of Nigeria shall have jurisdiction to adjudicate on any matter arising out of, or in connection with, this Trust Deed for the purpose of granting any interim reliefs or order that may be required pending the determination of any dispute pursuant to clause 38 below.

### **38. DISPUTE RESOLUTION**

- 38.1 The Parties shall endeavour to resolve any dispute arising out of or in connection with this Deed by mutual consultation or through appointed representatives within a period of ten (10) Business Days of the declaration of such dispute.

- 38.2. Any such dispute arising out of or in connection with this Trust Deed which cannot be resolved by mutual consultation shall be referred to arbitration, in accordance with the Arbitration and Conciliation Act (Chapter A18) LFN 2004 in the manner set out in Clause 38.4.
- 38.3 Whenever a dispute arises between the parties, the Commission shall be notified within five (5) Business Days.
- 38.4 The Arbitral Tribunal shall consist of three (3) Arbitrators, one appointed by the Issuer, a second appointed jointly by the Trustee, and the two (2) Arbitrators so appointed shall appoint the third Arbitrator who shall preside over the panel. In the event that the two (2) Arbitrators appointed by the Parties do not agree on the appointment of such third Arbitrator, or if the Issuer or the Trustee fail to appoint their respective Arbitrator within ten (10) Business Days after the period specified in Clause 38.1, then such Arbitrator shall be appointed by the Chairman of the Chartered Institute of Arbitrators UK (Nigeria Branch) on the application of any Party and when appointed, the third Arbitrator shall convene an arbitrators meeting and act as Chairman of the same.
- 38.5 The venue of the arbitration shall be Lagos, Nigeria, or otherwise as agreed by the Parties. The arbitration shall be in English Language.
- 38.6 The arbitrator shall have a maximum period of twenty (20) Business Days following Parties' submission of final written addresses or such further period as the parties may agree, to resolve the dispute. In the event the Parties are not satisfied with the decision of the Arbitral Tribunal, the said dispute shall be referred to the Commission, for resolution.
- 38.7 Any Party aggrieved by the decision of the Commission reached in accordance with Clause 38.6 hereof, may then refer the dispute to the Investments and Securities Tribunal in accordance with Section 289 of the ISA.
- 38.8 The provisions of this Clause shall be severable from the rest of this Trust Deed and shall survive the termination from whatever cause arising out of any or all the terms of this Trust Deed.

## **39. ASSIGNMENTS AND TRANSFERS**

### **39.1 Transfers by the Trustee**

The Trustee may assign or transfer any of its rights, interests or obligations under or in respect of this Deed to any successor as trustee, subject to the provisions of this Deed, provided that it notifies the Issuer and the Commission of such transfer.

### **39.2 Transfers by the Issuer**

The Issuer may not assign or transfer any of its rights, interests or obligations

under or in respect of this Deed to any person, without the express written consent of the Trustee and the Commission.

**40. COUNTERPARTS**

This Deed may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, but all of which taken together, shall constitute one and the same instrument.

**41. TERMINATION**

This Deed shall remain in full force and effect until the discharge by the Issuer of all of its obligations under this Trust Deed and written confirmation of such discharge received from the Trustee.

*(Schedules and Execution Pages follow.)*



## FIRST SCHEDULE

### TERMS AND CONDITIONS OF THE BONDS

*The following is the text of the general terms and conditions which, (subject to amendment and as completed, modified, supplemented, varied or replaced, in whole or in part, by the final terms which are set out in the relevant Series Trust Deed and/or Supplementary Shelf Prospectus (the “Final Terms”) and, save for the italicised text), will apply to the Bonds.*

*The provisions of these terms and conditions set out below (the “Conditions”) which are applicable to the Bonds issued under the Programme shall be deemed to be completed by the information contained in the relevant Final Terms. Bonds may be issued in individual tranches which together with other tranches may form a series of bonds. Any provisions of the Final Terms modifying, supplementing or replacing, in whole or in part, the provisions of these Conditions shall be deemed to so modify, supplement or replace, in whole or in part, the provisions of these Conditions; alternative or optional provisions of these Conditions as to which the corresponding provisions of the Final Terms are not completed or are deleted shall be deemed to be deleted from these Conditions; and all provisions of these Conditions which are inapplicable to the Bonds shall be deemed to be deleted from these Conditions, as required to give effect to the terms of the relevant Final Terms.*

### GENERAL NOTES

- (1) The Bonds are constituted by and under a Programme Trust Deed (the “**Trust Deed**”) dated 4<sup>th</sup> May, 2020 between Fidelity Bank PLC (the “**Issuer**”) and FBNQuest Trustees Limited (the “**Trustee**”) as supplemented by the relevant Series Trust Deed between the Issuer and the Trustee. The Bondholders are entitled to the benefit of and are bound by, and are deemed to have notice of, all the provisions of the Trust Deed and the relevant Series Trust Deed applicable to them. Copies of the Trust Deed are available for inspection at the office of the Trustee set out in Clause 34.1 of the Programme Trust Deed and at the offices of the Registrar as specified in the Pricing Supplement.
- (2) Any Series of Bonds which is to be created and issued pursuant to the Programme Trust Deed shall be constituted by, be subject to and have the benefit of a Series Trust Deed (the “**Series Trust Deed**”) between the Issuer and the Trustee. The Issuer shall execute and deliver such Series Trust Deed to the Trustee containing such provisions (whether or not corresponding to any of the provisions contained in the Programme Trust Deed) as the Trustee may require. Each Series Trust Deed shall set out the form of the Series of Bonds to be so constituted thereby.
- (3) These Conditions include summaries of and are subject to the detailed provisions of the Trust Deed and the relevant Series Trust Deed. The Bondholders are entitled to the benefit of and are bound by, and are deemed to have notice of, all the provisions of the Programme Trust Deed and the relevant Series Trust Deed applicable to them.
- (4) Words and expressions defined in the Trust Deed (as same may be amended, varied or supplemented from time to time with the consent of the Parties thereto) are expressly and specifically incorporated into and shall apply to these Conditions.
- (5) Capitalised terms used but not defined in these Conditions shall have the meanings attributed to them in the Trust Deed unless the context otherwise requires or unless otherwise stated.

## **1. FORM, DENOMINATION**

### **Form and Denomination**

Bonds issued under the Programme may be fixed rate bonds, floating rate bonds, discounted or a combination thereof in denominations as may be specified in the relevant Pricing Supplement.

The Bonds shall be issued in uncertificated (dematerialised or book-entry) form, which shall be registered with a separate securities identification code with the CSCS. The Bondholders may deal in the Bonds in accordance with the CSCS procedures and guidelines.

## **2. Repayment**

The principal on the Bonds will be repaid on the relevant Maturity Date or on an amortising basis in accordance with the terms of the relevant Series Trust Deed or such date as the Trustee in accordance with the Trust Deed declares the Bonds to have become immediately repayable, together with such premium (if any) agreed in the relevant Series Trust Deed, on such Bonds.

## **3. Redemption**

### **3.1 Redemption at Maturity**

Unless previously redeemed or purchased and cancelled, the Issuer will redeem the Bonds at their principal amount on such dates as specified in the Series Trust Deed.

### **3.2 Redemption prior to Maturity**

3.2.1 Subject to the terms of the relevant Series Trust Deed and the provisions of Condition 3.5 in relation to Bonds issued as Tier II Capital, the Issuer shall be entitled at any time to redeem the whole or any part of the Bonds upon giving the holders of the Bonds to be redeemed not less than three months' notice of its intention to do so, and at the expiration of such notice, the Issuer shall be entitled and bound to redeem the Bonds in respect of which such notice has been given. Provided that such redemption shall not constitute a breach of covenant or event of default under any other agreement entered into by the Issuer.

3.2.2 In the event of the Issuer at any time determining to redeem part only of the Bond for the time being outstanding, the particular Bond to be redeemed shall be selected by drawing to be made as provided in Condition 10 or at the option of the Issuer pro rata to holdings.

3.2.3 Early redemption shall take place on such terms as shall be agreed in the relevant Series Trust Deed or on such terms as shall be determined by the Bondholders or the relevant Bondholder whose Bond is to be redeemed at 11a.m on the date set for redemption.

3.2.4 In the case of redemptions made under this Condition, not less than 3 (three) month's previous notice in writing of the date fixed for redemption, which shall be a Coupon Repayment Date, shall be given by the Issuer to each Bondholder any of whose Bond is to be redeemed. Such notice shall state the amount of the Bond due for redemption and the condition under which such redemption is to be effected and shall name the date and place for redemption of such Bond.

Provided that in the case of any Bonds which form part of the Issuer's Tier II Capital, the right of the Issuer to an early redemption of the Bond shall be subject to the prior approval of the CBN and shall comply with the requirements of Condition 3.5 below.

### 3.3 Redemption for Taxation Reasons

If so specified in the Pricing Supplement and subject to the provisions of Condition 3.5 in relation to Bonds issued as Tier II Capital, the Bonds may be redeemed at the option of the Issuer in whole, or in part, on giving not less than 30 (thirty) and not more than 60 (sixty) days' notice to the Bondholders (which notice shall be irrevocable) at their early redemption amount together with the Coupon accrued to the date fixed for redemption, if:

- (i) the Issuer satisfies the Trustee and the Commission immediately prior to the giving of such notice that it has or will become obliged to pay additional amounts as a result of any change in, or amendment to, the laws or regulations of Nigeria or any political subdivision or any authority thereof or therein having power to impose tax (other than the expiry of the exemption in respect of the Bonds set out in the Companies Income Tax (Exemption of Bonds and Short Term Government Securities) Order, 2011 (made pursuant to the Companies Income Tax Act (Chapter C21) LFN 2004 in relation to Bonds with a maturity date later than January 2, 2022), or any change in the application or official interpretation of such laws or regulations, which change or amendment becomes effective on or after the date on which agreement is reached to issue the Series or Tranche of the Bonds; and
- (ii) such obligation cannot be avoided by the Issuer taking reasonable measures available to it, provided that no such notice of redemption shall be given earlier than 90 (ninety) days prior to the earliest date on which the Issuer would be obliged to pay such additional amounts were a payment in respect of the Bonds then due. Prior to the publication of any notice of redemption pursuant to this paragraph, the Issuer shall deliver to the Trustee and the Commission a certificate signed by two Directors stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer so to redeem have occurred.

Provided, however, that no such notice of redemption shall be given earlier than:

- (i) where the Bonds may be redeemed at any time, 90 (ninety) days prior to the earliest date on which the Issuer would be obliged to pay such additional amounts or would be entitled (as such entitlement is materially reduced) to claim a deduction in respect of computing its taxation liabilities; or
- (ii) where the Bonds may be redeemed only on a Coupon Payment Date, 60 (sixty) days prior to the Coupon Payment Date occurring immediately before the earliest date on which the Issuer would be obliged to pay such additional amounts or would not be entitled (or such entitlement is materially reduced) to claim a deduction in respect of computing its taxation liabilities.

Provided that in the case of any Bonds which form part of the Issuer's Tier II Capital, the Issuer shall have no right to redeem unless it complies with the requirements of Condition 3.5 below.

### 3.4 **Redemption at the Option of the Issuer following a Capital Disqualification Event**

3.4.1 In relation to any tranche of the Bonds, in the event of a Capital Disqualification Event, the Issuer may, at its option, having given not less than 30 (thirty), and not more than 45 (forty five), days' notice (or such other period as may be specified in the relevant Pricing Supplement) to the Bondholders in accordance with Condition 20 (*Notices*) (which notice shall be irrevocable and shall specify the date fixed for redemption), at any time redeem all, or if so provided, some of the Bonds, with interest accrued thereto up to but excluding the date of redemption.

3.4.2 Prior to the publication of any notice of redemption by the Issuer pursuant to this Condition 3.4, the Issuer shall deliver to the Trustee:

- (a) a copy of the circular, notification, directive or other official policy communique evidencing the occurrence of such Capital Disqualification Event (a "**CBN Communication**"); and
- (b) a certificate signed by two directors of the Issuer stating that:
  - (i) the Issuer has consulted with the CBN following the release of the relevant CBN Communication;
  - (ii) the approval of the CBN is not required or (if required by the applicable banking regulations) the CBN has given its approval; and
  - (iii) a Capital Disqualification Event has occurred,

and the Trustee shall be entitled to accept the certificate as sufficient evidence of the satisfaction of the conditions in this Condition 3.4.

3.4.3 For the purpose of this Condition 3.4, "**Capital Disqualification Event**" means if, as a result of:

- (a) any change in Applicable Law or banking regulation; or

- (b) any change in the application or official interpretation of such Applicable Law or banking regulation,

all or any part of the outstanding Bonds ceases to be classified as Tier II capital of the Issuer.

3.5 Notwithstanding the provisions of this Conditions 3, in relation to any Bonds which form part of the Issuer's Tier II Capital, the Issuer shall not be entitled to redeem the Bonds outstanding prior to the Redemption Date stated in the applicable Series Trust Deed unless:

- (a) a minimum of 5 years or such number of years as may be prescribed by the CBN, has lapsed from the Issue Date specified in the applicable Series Trust Deed and Pricing Supplement;
- (b) the Issuer has obtained the prior approval of the CBN for such early redemption; and
- (c) prior to the exercise of such right to redeem, the Issuer can demonstrate that its capital position will be well above the minimum capital requirement as prescribed by the CBN.

#### **4. Purchase of Bond by the Issuer**

The Issuer may at any time and from time to time purchase any part of the Bonds through the market or by tender (available to all Bondholders alike) but not otherwise. Any Bond so purchased will be cancelled and will not be available for re-issue.

#### **5. Status of the Bonds**

The Bonds are direct and unconditional obligations of the Issuer and the status of the Bonds shall be as set out under the relevant Pricing Supplement and Series Trust Deed.

#### **6. Covenants by the Issuer**

##### **6.1 Negative Pledge**

For as long as any of the Bonds remain outstanding, the Issuer shall not, without the prior consent of the Trustee in writing, create or permit to subsist any Security Interest to secure any Financial Indebtedness, unless the Issuer's obligations under the Bonds (that are are not part of the Issuer's Tier II Capital) are secured equally and rateably therewith or have the benefit of such other security, guarantee, indemnity or other arrangement as the Trustee in its absolute discretion shall deem not to be materially less beneficial to the Bondholders. **PROVIDED THAT** the restrictions in this condition 6.1 will not apply to Permitted Security.

## 6.2 Further Indebtedness

For as long as the Bonds remain outstanding and save as provided in this Trust Deed, the Issuer may incur any other indebtedness for borrowed moneys provided that such further indebtedness shall not be in breach of Condition 6.1 above.

## 6.3 Restricted Payments

The Issuer shall not declare or pay any dividend in cash or otherwise or make a distribution (whether by way of redemption, acquisition or otherwise) in respect of its share capital if an Event of Default has occurred and is continuing.

## 7. Coupon

If a Pricing Supplement so specifies, the Bonds of that Series will bear Coupon from the Coupon Commencement Date at the Coupon Rate(s) specified in, or determined in accordance with, the Pricing Supplement and such Coupon will be payable in respect of each Coupon Period on the Coupon Payment Date(s) specified in the Pricing Supplement. The Coupon payable on the Bonds of any Series for a period other than a full Coupon Period shall be determined in accordance with the Pricing Supplement.

### 7.1 Coupon on Fixed Rate Bonds

- (a) The Fixed Rate Bonds (being those Bonds that specify that the coupon is payable at a fixed rate) shall bear coupon on the Principal Amount Outstanding at the Coupon Rate specified in the applicable Pricing Supplement from (and including) the Coupon Commencement Date specified in the applicable Pricing Supplement to (but excluding) the Maturity Date. Coupon shall be payable in arrears on the Coupon Payment Date in each year. The first payment of coupon will be made on the Coupon Payment Date following the Coupon Commencement Date (specified in the applicable Pricing Supplement) and, if the first anniversary of that Coupon Commencement Date is not a Coupon Payment Date, the first payment of coupon shall be as specified in the applicable Pricing Supplement.
- (b) If the Maturity Date is not a Coupon Payment Date, coupon from (and including) the preceding Coupon Payment Date (or the Coupon Commencement Date, as the case may be) to (but excluding) the Maturity Date will amount to the Final Broken Amount. If coupon is required to be calculated for a period other than a full year, such coupon shall be calculated on the basis of the actual number of days elapsed divided by 365 or such other method as described in the applicable Pricing Supplement.

## 7.2 Coupon on Floating Rate Bonds

### (a) General

The Floating Rate Bonds (being those Bonds that specify that the coupon is payable at a floating rate) shall bear interest on its Principal Amount by reference to a specified floating rate benchmark plus a margin as may be described in the applicable Pricing Supplement and/or Series Trust Deed.

### (b) Coupon Payment Dates

The Floating Rate Bonds shall bear coupon on its Principal Amount from (and including) the Coupon Commencement Date at the rate equal to the Coupon Rate payable in arrears on the Coupon Payment Date(s).

### (c) Coupon Rate

The Coupon payable from time to time in respect of each of the Floating Rate Bonds will be determined in the manner specified in the applicable Pricing Supplement.

### (d) Calculation of Coupon

The Coupon amount payable in respect of the Bonds shall be calculated by applying the Coupon Rate to the specified denomination and multiplying such sum by the applicable Day Count Fraction.

For the Purposes of Condition 7.2 (d):

*“Day Count Fraction”* means, in respect of the calculation of an amount of Coupon for any Coupon Period (specified in the applicable Pricing Supplement):

- (i) if “Actual/365” is specified, the actual number of days elapsed in the Coupon Period divided by 365; or
- (ii) such other specified calculation method.

## 7.3 Discounted Bonds

The Zero-Coupon Bonds (being those Bonds that are issued at a discount to their face value) will be issued at an issue price such that the yield to maturity is reflected in the difference between the discounted issue price and the final redemption amount of such Zero Coupon Bond as specified in the applicable Pricing Supplement and/or Series Trust Deed. Zero Coupon Bonds will not bear Coupon other than in the case of late payment, which will be calculated as specified in the applicable Supplementary Shelf Prospectus and/or Series Trust Deed.

## **8. Sinking Fund/Debt Service Reserve Account**

8.1 The provisions of this Condition 8 will only apply where provision is made for a sinking fund or debt service reserve account in the relevant Series Trust Deed. Where no such provision is made, this Condition 8 shall not apply to the Bonds.

8.2 The Issuer shall, not later than the date specified in a Series Trust Deed for any Series, cause payments to be made into a bank account which shall be called a "Sinking Fund Account" or "Debt Service Reserve Account" ("DSRA") which shall be managed by the Trustee and shall form part of the trust property. The Issuer shall irrevocably authorise the Chief Financial Officer or any officer for the time being in charge of the finance of the Issuer to deduct, as a first charge on the Issuer's cashflows and to place to the credit of the Sinking Fund Account or the DSRA (in accordance with the Series Trust Deed setting up a particular Series and referenced in the Applicable Pricing Supplement), such sum or sums from the finance of the Issuer, at the Issuer's discretion not below the sum as stipulated in the Series Trust Deed on a monthly basis which sum shall be applied by the Trustee towards the payment of Coupon and the redemption, at par, of the Bond PROVIDED THAT the Trustee at its discretion may ask the Issuer to increase the amount being credited to the account if in its opinion the amount being credited to the account may not be sufficient to meet Coupon and principal repayment due on the Bonds at any time.

### **8.3 Authorised Investment**

Any monies standing to the credit of the Sinking Fund Account or the DSRA may, at the discretion of the Trustee in consultation with the Issuer, be invested by the Trustee in its name or under its legal control in any investments for the time being authorised by the Trustees Investment Act for the investment of trust monies or such other instruments as may be agreed by the Trustee and the Issuer, or in any other investments which may be approved by the Commission. **PROVIDED HOWSOEVER** that the Trustee shall, while any Bonds are outstanding, render accounts on a half-yearly basis to the Issuer.

8.4 If at any time prior to the date specified in the Series Trust Deed, the Issuer redeems any Bond under the provisions of Condition 3 hereof or purchases any Bond under the provisions of Condition 4 above, the Trustee shall remit to the Issuer such monies received from the Issuer for the credit of the DSRA which are over and above the amount necessary to meet all future coupon payments and principal redemptions, at par, PROVIDED THAT, subject to Clause 14 of the Deed, the Trustee in its absolute discretion may withhold such sums as deemed necessary to maintain a cushion against coupon fluctuations.

## **9. Cancellation of Bonds**

Any part of the Bonds redeemed or purchased shall be cancelled and the Issuer shall not keep such Bond valid for the purpose of re-issue.



## **10. Drawing of Bonds for Redemption**

Whenever under these Conditions a drawing of Bond for redemption is required to be made, the Issuer shall (subject as provided in these Conditions) cause such drawing to be made at the registered office of the Trustee for the time being or at some other place approved by the Trustee. Notice in writing of the day, time and place of every such drawing shall be given by the Issuer to the Trustee and any person appointed by the Trustee shall be entitled to be present at such drawing. Every such drawing shall be made in such manner and by such methods as the Trustee may approve as convenient for selecting the amount of Bonds required to be drawn.

## **11. Delivery of Document**

If required by the Issuer every Bondholder whose Bond is due to be redeemed under these Conditions shall not later than the due date for such redemption deliver up any such document(s) as may be required by the Issuer.

## **12. Trusts**

- 12.1 Except as required by law, or as ordered by a court of competent jurisdiction, the Issuer will recognise the Bondholder of any Bond as the absolute owner of such Bond and shall not be bound to take notice or see to the execution of any trust whether express, implied or constructive to which any Bond may be subject.
- 12.2 The receipt by a Bondholder for the time being of any Bond (or in the case of joint registered holders, the payment to the joint Bondholder whose name stands first in the Register) of the principal of such Bond or of any other money payable in respect of such Bond shall be a good discharge to the Issuer notwithstanding any notice it may have whether express or otherwise of the right, title, coupon or claim of any other person to or in such principal, dividend or other money. No notice of any trust whether express, implied or constructive shall (except as provided by statute or as required by a court of competent jurisdiction) be entered in the Register in respect of any Bond.

## **13. Freedom from Equities**

Every Bondholder will be recognised by the Issuer as entitled to his Bond free from any equities, set-off or cross-claim on the part of the Issuer against the original or any intermediate holder of the Bond.

## **14. Transfers**

- 14.1 The Bond is transferable in amounts or integral multiples of an amount specified in the Series Trust Deed.
- 14.2 Transfers of the Bond shall be by an instrument in writing and in accordance with the provisions of Condition 18 below.

- 14.3 If the Bonds are listed, the Bonds shall be transferred on the Relevant Exchange in accordance with the rules and regulation of the Relevant Exchange.
- 14.4 Every instrument of transfer must be signed by or on behalf of the transferor or where the transferor is a corporation, properly executed according to its constitutional documents, and the transferor shall be deemed to remain the owner of the Bonds until the name of the transferee is entered in the Register.
- 14.5 Every instrument of transfer must be left for registration at the place where the Register shall for the time being be kept accompanied by such evidence as the Issuer may require to prove the title of the transferor or his right to transfer the Bond and if the instrument of transfer is executed by some other person on his behalf, the authority of that person so to do.
- 14.6 Closed Periods: No Bondholder may require the transfer of a Bond to be registered during the period of 15 (fifteen) days ending on the due date for any payment of principal or Coupon on that Bond.

## **15. Transmission**

- 15.1 In the case of the death of a Bondholder the survivor or survivors where the deceased was a joint holder and the executor or administrator of the deceased where he was a sole or only surviving holder shall be the only person recognised by the Issuer as having any title to such Bond.
- 15.2 Any person becoming entitled to any Bond in consequence of the death or bankruptcy of any Bondholder or of any other event giving rise to the transmission of such Bond by operation of law may upon producing such evidence of his title as the Registrars shall think sufficient, be registered as the holder of such Bond himself or, subject to Condition 14, may transfer such Bond without himself being registered as the holder of such Bond.

## **16. Method of Payment of Principal Money, Coupon and Premium**

Payment of the Principal, Coupon and premium (if any) for the time being owing or due on all or any part of the Bond will be credited to the bank account nominated for this purpose by the Bondholder or in the case of joint registered Bondholders by the joint Bondholders or any other method as the Trustee may determine.

## **17 Receipts for Money Paid**

If several persons are entered in the register as joint holders of any Bond, then the receipt by any of such persons of any Coupon or principal or other money payable on or in respect of such Bond shall be as effective a discharge to the Issuer as if the person signing such receipt were the sole registered holder of such Bond.

## 18 Title

Transfer of title to Bonds issued in uncertificated form shall be effected in accordance with the rules governing transfer of title in securities held by CSCS. In these Conditions, Bondholders and (in relation to a Bond) holder means the person in whose name a Bond is registered in the Register of Bondholders.

## 19 Events of Default

**A.** In relation to Bonds not forming part of the Tier II Capital of the Issuer, If any of the following events stated in this Condition 19 A (“Events of Default”) have occurred and are continuing in accordance with the time frame set out below, the Trustee may at its discretion or shall:

- i. if so requested in writing by the Majority Bondholders; or
- ii. if so directed by an Extraordinary Resolution of the Bondholders,

give written notice to the Issuer at its specified office that the Bonds are immediately repayable whereupon the Principal Amount Outstanding on the Bonds together with accrued Coupon shall become immediately due and repayable:

**19A.1 Non-Payment:** if the Issuer fails to pay any sums representing principal, coupon and premium (if any) on the Bond or any fees or other sums as they fall due in accordance with this Deed unless its failure to pay is caused by an administrative or technical error, and payment is made within 10 (ten) Business Days of its due date. Provided however that where such non-payment is due to a Force Majeure event the Trustee may in its discretion (after consultation with the Issuer) determine that such Force Majeure event can be remedied within a reasonable period after the grace period referred to above in this Clause and extend the grace period;

**19A.2 Cross Default:** if any Financial Indebtedness of the Issuer of a value exceeding ₦5,000,000,000.00 in aggregate (for the avoidance of doubt, any amounts being contested in good faith shall not be counted towards such value) is not paid when due or within any applicable grace period, or the Financial Indebtedness of the Issuer of a value exceeding ₦5,000,000,000.00 in aggregate is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an Event of Default (however described) and such event shall be certified in writing by the Trustee to be in its opinion materially prejudicial to the interest of the Bondholders;

### 19A.3 Insolvency: If

19A.3.1 the Issuer is unable, for the purposes of CAMA, to pay its debts, or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its Financial

Indebtedness;

19A.3.2 A Moratorium is declared in respect of any Financial Indebtedness of the Issuer, and such Moratorium is not discharged within 45 (forty-five) Business Days after it was declared. Provided that the Issuer is able to show to the satisfaction of the Trustee within 10 (ten) Business days after such Moratorium is declared that it is in good faith negotiating for the lifting of the Moratorium;

19A.3.3 Any corporate action or legal proceedings is concluded and judgment given against the Issuer in relation to:

19A.3.3.1 a Moratorium of any Financial Indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Issuer other than a solvent liquidation or any reorganisation of the Issuer;

19A.3.3.2 the appointment of a liquidator (other than in respect of a solvent liquidation of the Issuer) receiver, administrator, administrative receiver or other similar officer in respect of the Issuer or any of its assets; or

19A.3.3.3 any analogous procedure or step is taken in any jurisdiction, and such proceeding is not dismissed or terminated on or before the 30 (thirtieth) Business Day (which would exclude days on which Nigerian courts are on vacation) after the order is made or if any such dismissal or stay ceases to be in effect (or such longer period as the Trustee may permit) PROVIDED THAT the Issuer has within 10 (ten) Business Days filed good faith legal proceedings in the relevant court for the order to be set aside, dismissed or stayed;

**19A.4 Cessation of Business:** if the Issuer ceases to conduct all or substantially all of its business as is now conducted or changes all or substantially all of the nature of such business or merges or consolidates with any other entity without the prior written consent of the Trustee pursuant to Clause 7.7 of the Trust Deed; or

**19A.5 Material Adverse Effect:** If a Material Adverse Effect has occurred;

**19A.6 Enforcement Proceedings:** if any distress, execution or other process shall be levied or enforced or sued upon or against any asset(s) of the Issuer having an aggregate value of ₦3,000,000,000.00 (Three Billion Naira) (“Assets”) and such action or process is not discharged, or stayed within 90 (ninety) days of service by the relevant officer of the court of such attachment, execution or other legal process or if an encumbrancer shall take possession or a Receiver shall be appointed over the Assets of the Issuer and such event shall be certified in writing by the Trustee to be in its opinion materially prejudicial to the interests of the Bondholders PROVIDED THAT if the Issuer

has filed good faith legal proceedings in the relevant court for application for dismissal or stay within 10 (ten) Business Days of becoming aware of the order or action, then such shall not be regarded as an Event of Default; or

**19A.7 Breach of Other Obligations:** Other than Non-Payment as in Condition 19.1, if default shall be made by the Issuer in the performance or observance of any covenant, condition, provision or agreement including the representations and warranties which default will affect the capacity of the Issuer to perform its payment obligations under this Trust Deed, and the Issuer shall fail to perform fully or make good the breach of such covenant, condition, provision or agreement within 30 (thirty) days from receipt of notice in writing by the Trustee (or in its opinion such longer period as the Trustee may reasonably determine is not materially prejudicial to the interests of the Bondholders);

**19A.8 Withdrawal of Licence:** the banking license of the Issuer is terminated, revoked or suspended and is not replaced or any license from any governmental authority which the Issuer holds and which is necessary for it to carry on its business, is terminated, revoked or suspended and in any such case is not replaced within 180 days thereafter; or

**19.A9 Release of Issuer:** If there shall be any release of the Issuer from its obligations under the undertaking provided in this Deed, other than with the approval of the Trustee and a Extraordinary Resolution of the Bondholders, including any release by operation of law, or any failure by the Issuer to make payment when demanded by the Trustee in accordance with the undertaking aforesaid.

**B.** In relation to the Bonds forming part of the Tier II Capital of the Issuer, an Event of Default shall occur if:

**19B.1 Winding up Proceedings:** if an order is made by the court or a resolution is passed for the winding-up of the Issuer; and

**19B.2 Liquidation:** if the Issuer is liquidated or declared insolvent,

Upon the occurrence of either event in Condition 19B.1 or 19B.1 above, the Trustee may, at its discretion, or shall, if so requested in writing by the Majority Bondholders or so directed by an Extraordinary Resolution of the Bondholders, give written notice to the Issuer at its specified office that the Bonds are immediately repayable whereupon the Principal Amount Outstanding on the Bonds which form part of the Issuer's Tier II Capital together with accrued Coupon shall become immediately due and repayable.

## **20. Notices**

20.1 Any notice or other document may be given to or served on any Bondholder either personally or by sending it by electronic mail, by post in a prepaid envelope or delivering it addressed to him at his registered address or (if he desires that notices shall be sent to some other persons or address) to the person at the address supplied by him to the Issuer for the giving of notice to him.

- 20.2 In the case of joint registered holders of any Bond a notice given to the Bondholder whose name stands first in the Register shall be sufficient notice to all the joint holders.
- 20.3 Any notice or other document duly served on or delivered to any Bondholder under these conditions shall (notwithstanding that such Bondholder is then dead or bankrupt or that any other event has occurred and whether or not the Issuer has notice of the death or the bankruptcy or other event) be deemed to have been duly served or delivered in respect of any Bond registered in the name of such Bondholder as sole or joint holder unless before the day of posting (or if it is not sent by post before the day of service or delivery) of the notice or document his name has been removed from the Register as the holder of the Bond and such service or delivery shall for all purposes be deemed a sufficient service or delivery of such notice or document on all persons interested (whether jointly with or claiming through or under him) in the Bond.
- 20.4 Any notice shall be deemed to have been served on the seventh (7<sup>th</sup>) day following that on which the letter containing the notice is posted and in proving such service it shall be sufficient to prove that the envelope containing the notice or the notice itself was properly addressed, stamped and posted. Any notice given by delivery otherwise than by post shall be deemed given at the time it is delivered to the address specified.

## **21. Meetings of Bond holders**

The rights and duties of the Bondholders in respect of attendance at meetings of Bondholders are set out in the Second Schedule of the Trust Deed (Provisions for Meetings of Bondholders). Decisions taken at Bondholders meetings may only be exercised by the Trustee in accordance with the Trust Deed or under these Conditions. For the avoidance of doubt, the Conditions of the Bond can only be amended in accordance with the provisions of Clause 29 of the Trust Deed.

## **22. Governing Law**

The Bonds are governed by, and shall be construed in accordance with, the laws of Nigeria.

## **23. Prescription**

Claims against the Issuer in respect of the Bonds shall be void unless presented for payment within six (6) years (in the case of principal and coupon) from the due date for payment of any amount due on such Bonds.

## **SECOND SCHEDULE PROVISIONS FOR MEETINGS OF BONDHOLDERS**

For the avoidance of doubt, all references to "nominal amount" in this Second Schedule shall be read to mean "Principal Amount Outstanding" in the case of Bonds that are redeemable on an amortising basis.

### **1. Who may Convene Meetings?**

Either of the Issuer or the Trustee may at any time at its discretion and the Trustee shall, on the requisition in writing of the Bondholders holding not less than one-quarter (1/4) of the nominal amount of the Bonds, or in the case of a matter affecting the interests of any Series, not less than one-quarter (1/4) of the nominal amount of the Bonds under that Series, for the time being outstanding, and the Trustee upon being indemnified to its satisfaction against all reasonable costs and expenses to be thereby incurred, convene a meeting or meetings of the Bondholders, or the Bondholders of that Series, in accordance with the provisions of this Schedule to discuss and determine any matter affecting their interests. Any such meeting shall be held at such place as the Trustee shall determine or approve in writing.

### **2. Notice of Meetings**

2.1 A meeting of the Bondholders may be called by giving not less than 14 (fourteen) days' notice in writing. In addition to the provision of clause 3 below, the Trustee may publish such notices in two (2) national daily newspapers.

2.2 A meeting may be called after giving shorter notice than that specified in paragraph 2.1 if consent is accorded thereto by Bondholders holding not less than 60% (sixty per cent) of the nominal amount of the Bonds, or if it is a matter affecting the interests of any Series, not less than 60% (sixty per cent) of the nominal amount of the Bonds issued under that Series, for the time being outstanding.

### **3. Content and Manner of Service of Notice**

3.1 Every notice of a meeting shall specify the place and the day and hour of the meeting and shall contain a statement of the business to be transacted and the terms of every Extraordinary Resolution to be proposed thereat or state fully the effect on the Bondholders of such resolution, if passed. Provided that there shall be annexed to every notice convening a meeting of the Bondholders, a statement setting out the material facts concerning each item of business and where any item of business consists of granting approval to any document by the meeting the time and place where the documents can be inspected shall be specified in the statement aforesaid.

3.2 Notice of every meeting shall be given to:

3.2.1 every Bondholder in the manner specified for the service of notices in Condition 20 of the Bond;

- 3.2.2 the person entitled to a Bond in consequence of the death, bankruptcy, insolvency, winding-up or dissolution of a Bondholder addressed by name or by the title of the representative of the deceased or assignee of the insolvent or by any like description to the address (if any) supplied for the purpose by the person claiming to be so entitled, or until such an address has been so supplied by giving the notice in any manner in which it might have been given if the death, insolvency, winding-up or dissolution had not occurred;
- 3.2.3 the Registrar;
- 3.2.4 the Issuer when the meeting is convened by the Trustee or to the Trustee when the meeting is convened by the Issuer; and
- 3.2.5 the Commission and the Relevant Exchange.
- 3.3 The accidental omission to give notice to or the non-receipt of notice by any Bondholder or other person to whom it should be given or an error or omission in a notice with respect to the place, date, time or general nature of the business of a meeting shall not invalidate the proceedings of the meeting, unless the officer responsible for the error or omission acted in bad faith or failed to exercise due care and diligence, provided that in the case of accidental error or omission, the officer responsible shall effect the necessary correction before or during the meeting.

#### 4. **Quorum for Meeting**

- 4.1 No business shall be transacted at any meeting unless the requisite quorum has been met and:
  - 4.1.1 the Trustee is present when the meeting proceeds to business; or
  - 4.1.2 in the case of a meeting convened by the Issuer, the Issuer and the Trustee are present when the meeting proceeds to business.
- 4.2 Any two (2) or more persons present or represented by proxy and holding at least 3/5 (three-fifth) of the nominal amount of the Bonds, or if it is a matter affecting the coupon of any series, the Bonds issued under the Series, for the time being outstanding shall be a quorum for the meeting of the Bondholders.
- 4.3 Where the business of the meeting includes the consideration of an Extra Ordinary Resolution, the necessary quorum shall be two (2) or more persons present or represented by proxy and holding in aggregate more than 3/4 (three-fourth) of the nominal amount of the Bonds for the time being outstanding.
- 4.4 Where a meeting (whether a meeting to consider an Ordinary Resolution or an Extra Ordinary Resolution) is adjourned for lack of quorum, two or more persons present or represented by proxy and holding in aggregate not less than 3/5 (three-fifth) of the nominal amount of the Bonds for the time being outstanding, shall remain the quorum for such a reconvened meeting.



- 4.5 If within half an hour from the time appointed for holding the meeting a quorum is not present, the meeting, if called upon by the requisition of Bondholders, shall stand dissolved. In any other case, the meeting shall stand adjourned to such day and time not being less than 7 (seven) days thereafter and to such place as the Chairman may determine.
- 4.6 At least 7 (seven) days' notice of any adjourned meeting shall be given in the same manner as for an original meeting, but it shall not be necessary to specify in such notice the business to be transacted at the adjourned meeting as the business of such an adjourned meeting will be same as the original meeting.

## **5. Chairman of Meeting**

Such person nominated by the Trustee in writing shall be entitled to act as the chairman at every meeting and if no such nomination is made or if at any meeting the person nominated shall not be present within 15 (fifteen) minutes after the time appointed for holding the meeting, the Trustee may appoint a Bondholder present at the meeting to act as chairman for that meeting.

## **6. Persons Entitled to Attend Meeting**

The Trustee, its lawyers and financial advisers and any director or officer of the Issuer and any other person authorised in that behalf by the Trustee may attend and speak at any meeting but shall not be entitled to vote thereat.

## **7. Evidence of Passing of Resolution**

At any meeting a resolution or any question put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded in the manner hereinafter mentioned, and unless a poll is so demanded a declaration by the Chairman that on a show of hands the resolution has been carried either unanimously or by a particular majority or lost or not carried either unanimously or by a particular majority, and an entry to that effect in the books containing the minutes of the proceedings of the meeting, shall be conclusive evidence of that fact without proof of the number or proportion of the votes cast in favour of, or against such resolution.

## **8. Demand for Poll**

- 8.1 Before or on the declaration of the result of the voting on any point or question on a show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on demand made in that behalf by the Trustee or at least five (5) Bondholders having the right to vote on the resolution and present in person or by proxy or by the holders of not less than one-quarter ( $\frac{1}{4}$ ) in nominal amount of the Bond for the time being outstanding having the right to vote on the resolution and present in person.
- 8.2 The demand for a poll may be withdrawn at any time by any person or

persons who made the demand.

## **9. Time of Taking Poll**

- 9.1 A poll demanded on a question of adjournment shall be taken forthwith.
- 9.2 A poll demanded on any other question (not being a question relating to the election of a Chairman as provided for in Provision 5 hereof) shall be taken at once but where this is not practicable in such manner and at such time not being later than thirty (30) days from the time when the demand was made as the Chairman may direct.
- 9.3 The demand for a poll shall not prevent the continuance of the meeting from the transaction of any business other than the resolution or question on which the poll has been demanded.

## **10. Votes**

On a show of hands every Bondholder who (being an individual) is present in person or by proxy or (being a body corporate) is present by its duly authorised representative shall have one vote, and on a poll every Bondholder who is present in Person or by proxy shall have 1 (one) vote in respect of every Bond of which he is the holder. In the case of joint Bond holders, the vote of the one named first in the Register who tenders a vote whether in person or by proxy shall be accepted to the exclusion of the votes of other joint holders.

## **11. Representatives of Corporate Bodies**

Any corporate body which is a Bondholder may by writing under the hand of a duly authorised officer authorise such person as it thinks fit to act as its representative at any meeting of the Bondholders and the person so authorised shall be entitled to exercise the same powers on behalf of the body corporate which he represents as that body corporate could exercise if it were an individual Bondholder.

## **12. Proxies**

- 12.1 The registered holder of the Bond or in case of joint holders the one named first in the Register shall be entitled to vote in respect thereof either in person or by proxy and in the latter case as if such joint holder was solely entitled to such Bond. A registered holder of the Bond shall be entitled to appoint another person (whether a Bondholder or not) as his proxy to attend and vote instead of himself.
- 12.2 In every notice calling a meeting of the Bondholder there shall appear with reasonable prominence a statement that a Bondholder entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself and that a proxy need not be a Bondholder.

- 12.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarized copy of the power of authority, shall be deposited at such place as may be specified in the notice convening the meeting or if no place is so specified then at the office of the Registrar for the time being, not less than 48 (forty-eight) hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or in the case of a poll not less than 24 (twenty-four) hours before the time appointed for the taking of the poll and in default the instrument of proxy shall not be treated as valid.
- 12.4 The instrument appointing a proxy shall be:
- 12.4.1 an instrument in writing in English language and in usual common form or such other form as the Trustee may approve; and
  - 12.4.2 signed by the Bondholder so appointing or his attorney duly authorised in writing or if the Bondholder so appointing is a body corporate be under its seal or be signed by an officer or any attorney duly authorised by it.
- 12.5 No instrument appointing a proxy shall be valid after the expiration of 12 (twelve) months from the date named in it as the date of execution. An instrument appointing a proxy shall be deemed to confer authority to demand or to join in a demand for a poll.
- 12.6 Every Bondholder entitled to vote at a meeting of Bondholders or on any resolution to be moved there shall be entitled during the period beginning 24 (twenty-four) hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting to inspect by himself or through a duly authorised person the proxies lodged at any time during the business hours of the Registrar, provided that not less than 3 (three) days' notice in writing of the intention so to inspect is given to the Registrar.
- 12.7 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death, insanity or revocation shall have been received by the Registrar at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

### **13. Entitlement of Bondholder to Vote Differently**

On a poll taken at a meeting of Bondholders, a Bondholder entitled to more than 1 (one) vote, or his proxy or other person entitled to vote for him as the case may be need not, if he votes, use all his votes or cast all his votes in the same way.

### **14. Scrutineers at Poll**

- 14.1 Where a poll is to be taken, the Chairman of the meeting may appoint 2 (two) scrutineers to scrutinize the votes given on the poll and to report thereon to

him.

14.2 The Chairman shall have power at any time before the result of the poll is declared to remove a scrutineer from office and to fill vacancies in the office of scrutineer arising from such removal or for any other cause.

14.3 Of the 2 (two) scrutineers appointed under this clause one shall always be a Bondholder (not being an officer or employee of the Issuer) present at the meeting, provided that such a Bondholder is available and willing to be appointed.

## **15. Manner of Poll and Result Thereof**

The Chairman of the meeting shall have power to regulate the manner in which a poll shall be taken.

## **16. Power to Adjourn Meeting**

The Chairman of a meeting of the Bondholders may in case of a development requiring an adjournment, with the consent of (and shall if directed by) any such meeting at which a quorum is present, adjourn the same from time to time and from place to place, provided that no business shall be transacted at any such adjourned meeting other than business which might lawfully have been transacted at the meeting from which the adjournment took place.

## **17. Casting Vote**

In the case of equality of votes, whether on a show of hands or a poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote in addition to the votes to which he may be entitled as or on behalf of a Bondholder.

## **18. Chairman to be Sole Judge**

The Chairman of any meeting shall be the sole judge of the validity of every vote tendered at such meeting, and the Chairman present at the taking of a poll shall be the sole judge of the validity of every vote tendered at such poll.

## **19. Meaning of Ordinary and Extraordinary Resolution**

### **19.1 Extraordinary Resolution means:**

A resolution shall be deemed to be an Extraordinary Resolution if the same shall be passed by a majority consisting of not less than 3/4<sup>th</sup> (three-fourths) of the persons present and voting thereat upon a show of hands, or if a poll is demanded, by Bondholders holding not less than 3/4<sup>th</sup> (three-fourths) in value of the Bonds held by the Bondholders present or represented by proxies at the meeting.

## **19.2 Ordinary Resolution** means:

- 19.2.1 a resolution passed at a meeting duly convened and held in accordance with this second schedule by a majority consisting of not less than a simple majority of the persons present or represented by proxies at the meeting and voting thereat upon a show of hands;
- 19.2.2 Where a poll is duly demanded in a meeting, the result of the poll shall be deemed to be an Ordinary resolution if it has been passed by a majority consisting of not less than a simple majority in value of the total votes given on such poll;
- 19.2.3 a resolution in writing signed by or on behalf of the bondholders of more than 50% (fifty per cent) of the Principal Amount Outstanding which resolution may be contained in one document or in several documents in like form each signed by the Bondholders holding more than 50% (fifty per cent) of the bond amount.

## **20. Power of General Meeting**

A meeting of the Bondholders shall *inter alia* have the following powers exercisable by Extraordinary Resolution:

- (a) to sanction the release of the Issuer from all or any part of the principal monies and any other sums owing upon the Bond;
- (b) to sanction any modification or compromise or any agreements in respect of the rights of the Bondholders against the Issuer whether such rights shall arise under this Deed or otherwise;
- (c) to assent to any modification of the provisions contained in the Trust Deed proposed or agreed by the Issuer;
- (d) to authorise and empower the Trustee 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; or
- (e) to give any release to the Trustee in respect of anything done or omitted to be done by the Trustee hereunder before the giving of the release.

## **21. Resolution Binding**

A resolution passed at a meeting of the Bondholders duly convened and held in accordance with this Deed shall be binding upon all the Bondholders whether present or not present at such meeting and whether or not voting, and each of the Bondholders 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, the intention being that it shall rest with the meeting to determine without appeal whether or not the circumstances justify the passing of such resolution. Notice of the result of

any resolution duly considered by the Bondholders shall be published by the Trustee (with the approval of the Issuer) within 14 (fourteen) days of such result being known, in a manner to be determined by the Trustee, provided that the non-publication of such notice shall not invalidate such result.

## **22. Minutes**

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

## **23. Resolution in Writing**

A resolution in writing duly signed by the holders of all the Bonds for the time being outstanding, shall be as effective for all purposes as an Extraordinary Resolution duly passed at a meeting of the Bondholders. Such resolution in writing may be contained in one document or in several documents of like form duly signed by or on behalf of all of the Bondholders.

**THIRD SCHEDULE  
(FORM OF ACCESSION AGREEMENT)**

[To be reproduced on the Acceding Party's letterhead]

[Issuer's Address]

[Existing Trustee's Address]

**RE: DEED OF ACCESSION BY [NAME OF TRUSTEE] (the "Acceding Party")**

Whereas this Deed of Accession (this "Deed") is supplemental to the Programme Trust Deed dated [•] between Fidelity Bank PLC (the "Issuer") and FBNQuest Trustees Limited (the "Trustee").

It is hereby agreed as follows:

**1.0 Definition and Interpretation**

Words and expressions defined in the Trust Deed shall have the same meaning when used in this Deed.

**2.0 Accession of Acceding Party**

By its execution of this Deed, the Acceding Party unconditionally and irrevocably undertakes, and agrees with each of the other Parties to this Deed, to observe and be bound by the terms and provisions of the Trust Deed as if it were an original party thereto in the capacity in which it is entering into this Deed with respect to the Series [•] Bonds ("Series [•]Bonds").

Each of the Parties to this Deed, other than the Acceding Party, agrees to the accession of the Acceding Party on the terms set out in this Deed and agrees that the Trust Deed shall hereafter be read and construed as if the Acceding Party has been named therein as Trustee in connection with the Series [•] Bonds.

Save as amended by this Deed and the Series Trust Deed for the Series [•] Bonds, all terms and conditions of the Trust Deed shall continue in full force and effect and apply to the Series [•] Bonds.

**3.0 Interpretation**

This Deed shall hereafter be read as one with the Trust Deed so that all references in the Trust Deed to "this Trust Deed", "this Deed", "herein" and similar expressions shall include references to this Deed.

**4.0 Notices**

The address, telephone, electronic mail and contact address of the Acceding Party for notices and demands under the Trust Deed are as follows:

Address:

Attention:  
Telephone:  
Email:

## **5.0 Delivery**

This Deed shall be treated as having been executed and delivered as a Deed only upon being dated.

## **6.0 Counterparts**

This Deed may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same agreement and any Party may enter into this Deed by executing a counterpart.

## **7.0 Third Party Rights**

Unless the right of enforcement is expressly granted, it is not intended that a third party should have the right to enforce a provision of this Deed.

## **8.0 Governing Law and Dispute Resolution**

The provisions of Clause 37 (Governing Law) of the Trust Deed shall apply mutatis mutandis to this Deed as if the same were set out in full in this Deed.



**IN WITNESS WHEREOF** the Parties have executed and delivered this Deed as a deed in the manner below the day and year first above written.

**The ISSUER**

**THE COMMON SEAL** of the within-named  
**FIDELITY BANK PLC**  
was hereunto affixed:

In the presence of:

.....  
**Name:**  
**DIRECTOR**

.....  
**Name:**  
**DIRECTOR/COMPANY SECRETARY**

**The TRUSTEE**

**THE COMMON SEAL** of the within-named  
**FBNQUEST TRUSTEES LIMITED**  
was hereunto affixed:

In the presence of:

.....  
**Name:**  
**DIRECTOR**

.....  
**Name:**  
**DIRECTOR/COMPANY SECRETARY**