

Date: 17 March 2022

AMENDMENT AND RESTATEMENT DEED

between

**NMC HEALTHCARE LTD (IN ADMINISTRATION) (SUBJECT TO A DEED OF
COMPANY ARRANGEMENT)**

RICHARD DIXON FLEMING AND BENJAMIN THOM CAIRNS
in their capacities as deed administrators

ABU DHABI COMMERCIAL BANK PJSC
in its capacity as Holdco Global Agent

and

ABU DHABI COMMERCIAL BANK PJSC
in its capacity as Opco Global Facility Agent

relating to a restructuring implementation deed originally dated 17 March 2022
between, among others, the companies listed therein as the Group DOCA Companies,
Richard Dixon Fleming and Benjamin Thom Cairns as the Deed Administrators and Joint
Administrators, NMC Holdco SPV Ltd as Holdco and NMC Opco Ltd as Opco

KIRKLAND & ELLIS INTERNATIONAL LLP

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THIS DEED is dated 17 March 2022 and is made as a deed between:

- (1) **NMC HEALTHCARE LTD (IN ADMINISTRATION (SUBJECT TO A DEED OF COMPANY ARRANGEMENT)**, a private limited company incorporated in the Abu Dhabi Global Market (registered number 000004210) with registered address at 16th Floor, WeWork Hub71, Al Khatem Tower, ADGM Square, PO Box 764659, Al Maryah Island, Abu Dhabi, UAE (“LTD”);
- (2) **RICHARD DIXON FLEMING AND BENJAMIN THOM CAIRNS**, the joint and several deed administrators of LTD (each a “**Deed Administrator**” and together the “**Deed Administrators**”) each a managing director of Alvarez & Marsal Europe LLP, with address at 16th Floor, WeWork Hub71, Al Khatem Tower, ADGM Square, PO Box 764659, Al Maryah Island, UAE, acting as agents only for and on behalf of the Seller and without personal liability;
- (3) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as global agent under the Holdco Finance Documents (the “**Holdco Global Agent**”); and
- (4) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as global facility agent under the Opcos Finance Documents for and on behalf of the Opcos Finance Parties (the “**Opcos Global Facility Agent**”).

BACKGROUND:

- (A) This Deed amends and restates the restructuring implementation deed originally dated 17 March 2022 and made between, among others, the Group DOCA Companies and the Deed Administrators (the "**Original Restructuring Implementation Deed**").
- (B) This Deed is entered into in accordance with clause 11.1 and 11.2 of the Original Restructuring Implementation Deed. That provision provides that the consent of the Majority RID Financiers, the Majority Opcos Financiers and LTD is required.
- (C) In accordance with the LTD DOCA (as defined below), the Deed Administrators are authorised to enter into this Deed on behalf of LTD.
- (D) In accordance with clause 11 of the Original Restructuring Implementation Deed, the Holdco Global Agent is authorised to enter into this Deed on behalf of the Majority RID Financiers.
- (E) In accordance with clause 40.1 of the Opcos Common Terms Agreement, the Opcos Global Facility Agent is authorised to enter into this Deed on behalf of the Majority Opcos Financiers.
- (F) It is intended by the parties that this Deed shall take effect as a deed, even though the parties may only execute it under hand.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"Amendment Effective Date" means the date of this Deed.

"Amended Restructuring Implementation Deed" means the Original Restructuring Implementation Deed as amended and restated by this Deed in the form set out in Schedule 1 (*Amended Restructuring Implementation Deed*);

"LTD DOCA" means the deed of company arrangement entered into by, among others, LTD and NMC Holdco SPV Ltd; and

"Original Restructuring Implementation Deed" has the meaning given to it in Recital (A).

1.2 Construction

Unless otherwise expressly defined in this Deed or the context otherwise requires:

- (a) words and expressions defined in the Original Restructuring Implementation Deed have the same meaning in this Deed;
- (b) references to Clauses are to Clauses of the Original Restructuring Implementation Deed unless otherwise stated; and
- (c) save as set out in this Deed, the provisions of Clause 1.2 (*Construction*) of the Original Restructuring Implementation Deed apply to this Deed as though they were set out in full in this Deed, except that references therein to "this Deed" will be construed as references to this Deed.

2. AMENDMENTS TO THE RESTRUCTURING IMPLEMENTATION DEED

2.1 Amended Restructuring Implementation Deed

With effect from the Amendment Effective Date, the Original Restructuring Implementation Deed shall be amended and restated so that it shall be read and construed for all purposes as set out in Schedule 2 (*Amended Restructuring Implementation Deed*).

2.2 Continuing obligations

Save as expressly set out in this Deed:

- (a) the provisions of the Original Restructuring Implementation Deed shall continue in full force and effect; and
- (b) nothing in this Deed shall constitute or be construed as a waiver or compromise of any other term or condition of the Restructuring Implementation Deed or any

of the parties' rights in relation to them which for the avoidance of doubt shall continue to apply in full force and effect.

2.3 **Further assurance**

LTD and the Deed Administrators shall, at the request of the Majority RID Financiers or the Majority Opcos Financiers, do all such acts and things necessary or desirable to give effect to the amendments effected or to be effected pursuant to this Deed.

3. **NO PERSONAL LIABILITY**

In the performance or exercise, or purported performance or exercise, of any of the Deed Administrators' functions, powers and duties under this Deed, the Deed Administrators will not be personally liable for:

- (a) any debt, liability or other obligation which the Deed Administrators may incur on behalf of any of the Group DOCA companies pursuant to this Deed; or
- (b) any loss or damage caused by any act, default or omission by the Deed Administrators or on behalf of the Deed Administrators in the performance of the Deed Administrators' powers, functions and duties under this Deed,

except where such loss, damage, claim, liability or expense is caused by fraud, gross negligence or wilful misconduct.

4. **MISCELLANEOUS**

4.1 **Counterparts**

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

4.2 **Governing Law and Jurisdiction**

Clause 20 (*Governing Law and Jurisdiction*) of the Original Restructuring Implementation Deed shall apply to this Deed as though it was set out in full in this Deed, except that references therein to "this Deed" will be construed as references to this Deed.

IN WITNESS whereof this Deed has been duly executed as a deed on the date first above written

SCHEDULE 1
Amended Restructuring Implementation Deed

Date: 17 March 2022

AMENDED AND RESTATED RESTRUCTURING IMPLEMENTATION DEED

between

THE GROUP DOCA COMPANIES

RICHARD DIXON FLEMING AND BENJAMIN THOM CAIRNS
in their capacities as deed administrators and joint administrators

NMC HOLDCO SPV LTD

NMC OPCO LTD

THE GROUP CREDITORS

and

CERTAIN OTHER PARTIES LISTED HEREIN

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THIS DEED is made on 17 March 2022 between:

- (1) **THE COMPANIES** whose names are set out in Schedule 1 (*The Group DOCA Companies*) (the “**Group DOCA Companies**”);
- (2) **RICHARD DIXON FLEMING AND BENJAMIN THOM CAIRNS**, as joint and several administrators of the DOCAs (the “**Deed Administrators**”) and as joint and several administrators of the Administration Companies (as defined in the Voting Support Agreement) (the “**Joint Administrators**”) each a managing director of Alvarez & Marsal Europe LLP, Park House 16-18 Finsbury Circus, London, EC2M 7EB, United Kingdom, acting as agents only for and on behalf of the Group DOCA Companies and without personal liability;
- (3) **NMC HOLDCO SPV LTD**, a private limited company incorporated in the Abu Dhabi Global Market (licence number 000005914) with registered address at 2462ResCoWork01, 24th Floor; Al Sila Tower; Abu Dhabi Global Market Square; Abu Dhabi (“**Holdco**”);
- (4) **NMC OPCO LTD**, a private limited company incorporated in the Abu Dhabi Global Market (licence number 000005918) with registered address at 2462ResCoWork01, 24th Floor; Al Sila Tower; Abu Dhabi Global Market Square; Abu Dhabi (“**Opcos**”);
- (5) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as global agent under the Holdco Finance Documents (the “**Holdco Global Agent**”);
- (6) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as conventional facility agent under the Holdco Finance Documents (the “**Holdco Conventional Facility Agent**”);
- (7) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as investment agent under the Holdco Finance Documents (the “**Holdco Investment Agent**”);
- (8) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as security agent under the Holdco Finance Documents (the “**Holdco Facilities Security Agent**” and together with the Holdco Global Agent, the Holdco Conventional Facility Agent, the Holdco Investment Agent, the “**Holdco Agents**”);
- (9) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as global facility agent under the Opcos Finance Documents for and on behalf of the Opcos Finance Parties (the “**Opcos Global Facility Agent**”);
- (10) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as global facility agent under the AFF Documents (the “**AFF Global Facility Agent**”);
- (11) **EACH OF THE DEED COMPANY CREDITORS (AS DEFINED IN EACH DOCA)**, in each case acting by the LTD Deed Administrators pursuant to the power of attorney granted in the DOCAs; and
- (12) **MOUNT STREET MORTGAGE SERVICING LIMITED**, in its capacity as trustee under the Holding Period Trust Deed (the “**Holding Period Trustee**”).

WHEREAS

- (A) The DOCAs were approved by the requisite majorities of Group Creditors on 15 September 2021 and the applicable DOCAs were executed by each of the parties thereto on 21 September 2021. The DOCAs for LTD and the IVF Operating Companies were subsequently amended and restated. These amendments were approved by the requisite majorities of the applicable Group Creditors on 27 October 2021 and executed on 27 October 2021.
- (B) Each of the DOCAs authorise the implementation of the Restructuring as envisaged by the terms of this Deed and the other Restructuring Documents.
- (C) This Deed gives effect to the terms of the DOCAs, sets out the steps pursuant to which the Restructuring is to be implemented and the actions and other steps required to be taken in relation to such implementation.

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed capitalised terms used but not defined herein shall have the meaning given to that term in the LTD DOCA. In addition:

"Additional Protocols" means any protocol (other than the Budget and Oversight Protocol) or any other document or agreement designated in writing by LTD and the Majority RID Financiers as an "Additional Protocol Document" and which relates to the pursuit and conduct of disputes, litigation and/or arbitration;

"Ad Hoc Committee" means the informal ad hoc committee of creditors from time to time formed for the purposes of considering and negotiating the Restructuring, which as at date of this Deed comprises of: (i) Abu Dhabi Commercial Bank, (ii) Barclays Bank PLC, (iii) Emirates Islamic Bank PJSC, (iv) Marathon Asset Management, LP, (v) Sculptor Capital LP, and (vi) Silver Point Capital, L.P.;

"Administrative Parties" means the Holding Period Trustee, the Holdco Agents, the Opcos Global Facility Agent and the Opcos Global Security Agent (as defined in the Opcos Common Terms Agreement) and the AFF Global Facility Agent;

"AFF Deed of Release" means the deed of release relating to the AFF Documents between, among others LTD and the AFF Global Facility Agent;

"AFF Finance Documents" means the Finance Documents (as defined in the AFF CTA);

"AFF Payoff Letter" means the payoff letter relating to the AFF Finance Documents between, among others, LTD and the AFF Global Facility Agent;

"Affiliate" means with respect to a person, any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such person and, for the purpose of this definition, "control" shall mean the power, direct or indirect, to (a) vote on more than 50 per cent. of the securities having ordinary

voting power for the election of directors of such person, or (b) direct or cause the direction of the management and policies of such person whether through ownership of voting securities, by contract, or agency or otherwise (and "controlled" shall be construed accordingly);

"Agent Indemnity Commitments" means the Total Commitments excluding any Commitments held by the Holding Period Trustee;

"AHC Financial Adviser" means Lazard & Co., Limited as financial advisers to the Ad Hoc Committee;

"AHC Legal Advisers" means:

- (a) Clifford Chance LLP;
- (b) Walkers (Dubai) LLP; and
- (c) Al Tamimi & Company,

or any successor financial or legal adviser, to the Ad Hoc Committee in respect of the Restructuring;

"ATA Deed of Release" has the meaning given to that term in the LTD Asset Transfer Agreement;

"Bankruptcy Order" means the order of the Abu Dhabi Court permitting the transfer of Saeed Mohamed Butti Mohamed Alqebaisi's interests in the shares of certain of the Related DOCA Companies;

"Break Costs" has the meaning given to that term in the Opcos Common Terms Agreement;

"Closing Time Notice" has the meaning given to that term in the Opcos Common Terms Agreement;

"Completion Action" has the meaning given to that term in the LTD Asset Transfer Agreement;

"Completion Date Transferring Subsidiaries" has the meaning given to that term in the LTD Asset Transfer Agreement;

"Confirmation Parties" means each of the Advisers, the Opcos Financiers Legal Advisers, the Ad Hoc Committee, the Joint Administrators, the Deed Administrators, LTD, Holdco and Opcos, provided that where any of the foregoing parties is providing a confirmation, the reference to Confirmation Parties shall exclude that person;

"Consent Fee" means the fee payable pursuant to clause 5 (*Consent Fee*) of the Voting Support Agreement;

"Consent Fee Creditor" has the meaning given to that term in the Voting Support Agreement;

“Counterindemnity Claims” has the meaning given to that term in each Related DOCA;

“Declaratory Order” means the order of the Court confirming the effect of the DOCAs;

“Deed of Release” means the deed of waiver and release of claims relating to certain Released Parties (as defined therein) to be dated on the Restructuring Effective Date, substantially in the form described in the Revised Administrators' Proposals (which for the avoidance of doubt shall be in addition to the releases and/or discharges set out at Clause 14 (*Release and Discharge of other Claims*) of the LTD DOCA and each Related DOCA);

“Delayed Transfer Entities” has the meaning given to that term in the LTD Asset Transfer Agreement;

“Delayed Transfer Schedule” has the meaning set out in the LTD Asset Transfer Agreement;

“Demand Creditor” has the meaning given to that term in each Related DOCA;

“Disbursements Account” has the meaning given to that term in the Opcos Finance Documents;

“DOCA Commencement Date” means the date on which the Commencement Date (as defined in each DOCA) has occurred and all conditions to the effectiveness of such DOCAs have been satisfied;

“DOCAs” means the deeds of company arrangement, entered into by each Group DOCA Company on the DOCA Commencement Date and as amended and restated from time to time (and a “**DOCA**” means any one of them);

“Excess Cash” shall have the meaning given to it in Clause 5.12(d);

“Fakih ADGM Transaction” means the transfer of the shares in the IVF Operating Companies to Fakih Holdco under and in accordance with the DOCA for each IVF Operating Company;

“Fakih ADGM Transaction Documents” means the share transfer instruments and all other deeds and documents required to implement the Fakih ADGM Transaction;

“Fakih Commitment Agreement” means the commitment agreement entered into between the Deed Administrators, LTD, the IVF Operating Companies and Dr. Michael Hasan Fakih dated 29 September 2021;

“Fakih Holdco” means a special purpose vehicle established in the ADGM with registration number 000006623;

“Fakih Holdco STA” means the share transfer agreement for the Fakih Holdco Transaction in the agreed form, being a form which each of (a) LTD and (b) Dr. Michael Hasan Fakih have confirmed in writing is acceptable to them;

“Fakih Holdco Transaction” means the transfer by LTD of 35% of the issued share capital of Fakih Holdco to Dr. Michael Hasan Fakih in accordance with the terms of the Fakih Commitment Agreement;

“Fakih Holdco Transaction Documents” means each of the Fakih SHA, the New Leases, the Fakih Holdco STA and all deeds and documents as may be necessary to enter into and implement the Fakih SHA, the New Leases and the Fakih Holdco Transaction in the manner contemplated in the Fakih Commitment Agreement;

“Fakih Opcos Transaction” means (i) the transfer by LTD of 65% of the issued share capital of Fakih Holdco to Opcos; and (ii) the accession by Opcos to the Fakih SHA in accordance with the terms of the LTD DOCA and the Fakih Commitment Agreement;

“Fakih Opcos Transaction Documents” means the share transfer instruments and all other deeds and documents required to implement the Fakih Opcos Transaction;

“Fakih SHA” means the shareholders’ agreement to be entered into by Dr. Michael Hasan Fakih, LTD and Fakih Holdco in the form appended to the Fakih Commitment Agreement;

“Financing Fee” means the amount referred to as the “Financing Fee” payable to Perella Weinberg UK Limited as financial adviser to LTD pursuant to the Funds Flow Statement;

“Former Cocom” means the coordinating committee of creditors formed for the purpose of considering and negotiating the Restructuring which was terminated pursuant to a letter dated 26 February 2021;

“Former Cocom Claim” means any claim by the Former Cocom under any fee letter entered into by a member of the Former Cocom and any Group DOCA Company;

“Funds Flow Statement” means the completion funds flow prepared by Alvarez & Marsal Europe LLP and agreed with the AHC Financial Adviser;

“Governance Agreement” means the governance agreement between, among others, Holdco and the Financiers (as defined therein) substantially in the form set out in Schedule 3 (*Governance Agreement*);

“Group Transfer Documents” means:

- (a) the LTD Asset Transfer Agreement;
- (b) the Fakih ADGM Transaction Documents;
- (c) the Fakih Holdco Transaction Documents;
- (d) the Fakih Opcos Transaction Documents;
- (e) the Transitional Transfer Documents;
- (f) the Service Agreements;

- (g) Intra-Group Debt Deed; and
- (h) any other documents required to implement Restructuring Asset Completion pursuant to the terms of the LTD Asset Transfer Agreement and each DOCA;

“Holdco Articles of Association” has the meaning given to the term Articles of Association of Holdco in the Governance Agreement;

“Holdco Claim” means the receivable owing from LTD to Holdco in an amount equal to the value of the Holdco Issuance arising pursuant to clause 13.1(b) of the LTD DOCA;

“Holdco Common Terms Agreement” means the common terms agreement dated on the Restructuring Effective Date between, among others, the Holdco Global Agent, the Holdco Conventional Facility Agent and the Holdco Investment Agent;

“Holdco Conventional Facility” has the meaning given to the term “Conventional Facility” in the Holdco Common Terms Agreement;

“Holdco Conventional Facility Agreement” means the facility agreement between, amongst others, Holdco, the Holdco Conventional Facility Agent and the Original Conventional Lenders (each as defined therein) substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Declaration of Trust” means the declaration of trust in respect of certain shares in Opcos granted by Holdco in favour of the Holdco Investment Agent substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco EPM Value” has the meaning given to that term in each Related DOCA;

“Holdco Facilities” means the facilities to be made available to Holdco on the Restructuring Effective Date pursuant to the terms of the Holdco Finance Documents;

“Holdco Facilities Legal Opinions” means those legal opinions listed in subparagraphs (a), (b) and (c) of paragraph 8 of Schedule 4 (*Restructuring Effective Date Conditions Precedent*);

“Holdco Fee Letters” has the meaning given to the term “Fee Letters” in the Holdco Common Terms Agreement;

“Holdco Finance Documents” means:

- (a) the Holdco Common Terms Agreement;
- (b) the Holdco Conventional Facility Agreement;
- (c) the Holdco Investment Agency Agreement;
- (d) the Holdco Master Sale and Purchase Agreement;
- (e) the Holdco Purchase Undertaking;

- (f) the Holdco Sale Undertaking;
- (g) the Holdco Service Agency Agreement;
- (h) the Holdco Declaration of Trust;
- (i) the Governance Agreement;
- (j) the Holdco First Supplemental Sale and Purchase Agreement;
- (k) the Holdco Fee Letters; and
- (l) the Holdco Security Agreements;

“Holdco First Supplemental Sale and Purchase Agreement” means the Supplemental Sale and Purchase Agreement (as defined in the Holdco Common Terms Agreement) to be delivered on the Restructuring Effective Date;

“Holdco Investment Agency Agreement” means the investment agency agreement between, amongst others, the Holdco Investment Agent, the Original Participants and Holdco substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Master Sale and Purchase Agreement” means the master sale and purchase agreement to be entered into between the Holdco Investment Agent as purchaser and Holdco as seller substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Participations” has the meaning given to the term “Participation” in the Holdco Common Terms Agreement;

“Holdco Purchase Undertaking” means the purchase undertaking to be granted by Holdco in favour of the Holdco Investment Agent substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Sale Undertaking” means the sale undertaking to be granted by the Holdco Investment Agent in favour of Holdco Investment Agent substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Security Agreements” has the meaning given to the term “Transaction Security Documents” in the Holdco Common Terms Agreement;

“Holdco Service Agency Agreement” means the service agency agreement between Holdco as agent and the Holdco Investment Agent substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Valuation” has the meaning given to the term "Initial Valuation" in the Holdco Investment Agency Agreement;

“Holding Period Trust Deed” means the holding period trust deed to be entered into by, amongst others, the Holding Period Trustee and Holdco substantially in the form described in the Revised Administrators' Proposals;

“Holding Period Trust Documents” means;

- (a) the Holding Period Trust Deed;
- (b) the Holding Period Trust Fee Letter;
- (c) the Holding Period Trust Opcos Accession Letter;

“Holding Period Trust Fee Letter” means the fee letter to be entered into by the Holding Period Trustee and LTD in connection with the Holding Period Trustee’s engagement under the Holding Period Trust Deed;

“Holding Period Trust Opcos Accession Letter” means the accession letter to be entered into by Opcos in connection with the the Holding Period Trust Fee Letter;

“Initial Closing Notice” has the meaning given to that term in the Opcos Common terms Agreement;

“Initial Portfolio” has the meaning given to that term in the Holdco Master Sale and Purchase Agreement;

“Interest” has the meaning given to that term in the Opcos Primary Facilities Agreement;

“Intra-Group Debt Deed” has the meaning given to that term in the LTD Asset Transfer Agreement;

“Islamic Financing Facility” has the meaning given to that term in the Holdco Common Terms Agreement;

“IVF Operating Companies” means Eve Fertility Center Ltd (in administration) (subject to a deed of company arrangement), Fakih IVF Fertility Center Ltd (in administration) (subject to a deed of company arrangement) and Fakih IVF Ltd (in administration) (subject to a deed of company arrangement), each an **“IVF Operating Company”**;

“Longstop Date” means (i) ; or (ii) such later date as may be agreed by LTD and the Majority RID Financiers;

“Losses” means all losses, liabilities (including interest and penalties), costs, charges, expenses, actions, proceedings, claims and demands (together, in each case, with any irrecoverable VAT thereon), and:

- (a) save as set out in paragraph (b) below, includes professional and legal costs and experts’ and consultants’ fees which in each case are reasonably and properly incurred and documented; but
- (b) does not include any amounts (including, for the avoidance of doubt, any professional and legal costs or experts’ or consultants’ fees) which are expressly contemplated in or required to be agreed as part of the ATA Budget (as defined in the Asset Transfer Agreement) (and any variations thereto) or which are to be agreed in accordance with any Protocol (as defined in the

Asset Transfer Agreement) or a Capital Provision Agreement (as defined in the Asset Transfer Agreement));

"LTD" means NMC Healthcare Ltd (in administration) (subject to a deed of company arrangement);

"LTD Cash Reserve" means:

- (a) an amount of \$32,618,509.00 (in any currency or currencies and subject to adjustment in accordance with the Budget and Oversight Protocol) to be retained by LTD following the Restructuring Effective Time to fund ongoing costs;
- (b) an amount of USD 4,260,924 to redeem any Security Interests with a Determined Value; and
- (c) an amount of USD 2,937,521 held by LTD on behalf of Moncatalo S.L.U to satisfy expected tax liabilities of Moncatalo S.L.U incurred prior to the Restructuring,

in each case as set out in the Funds Flow Statement;

"LTD Deed Administrators" means Richard Dixon Fleming and Benjamin Thom Cairns in their capacity as deed administrators under the LTD DOCA;

"LTD DOCA" means the deed of company arrangement by among others LTD and Holdco;

"LTD Legal Adviser" means Kirkland & Ellis International LLP;

"LTD Payoff Amount" means, without double counting, an amount equal to A minus (B + C) provided that where such calculation is a negative amount it shall be zero, where:

A is equal to all of the cash available to LTD including, for these purposes, any amounts standing to the credit of (i) the Mandatory Prepayment Account which are reserved for the repayment of amounts outstanding under the AFF Documents and (ii) any account of any Non-Transferring Subsidiary, excluding any Minimum Cash Balance and excluding any amounts standing to the credit of the LTD Proceeds Pledged Account;

B is equal to the LTD Cash Reserve; and

C is equal to the Transaction Fees

as set out in the Funds Flow Statement.

"LTD Proceeds Pledged Account" means the proceeds pledged account held with Barclays Bank plc in the name of LTD;

"LTD Proceeds Pledged Amount" has the meaning given to it in Clause 4.3(b)(ii);

“Majority RID Financiers” means those Original Financiers who, at the Restructuring Effective Time, will represent a simple majority in value of Total Admitted Commitments, as calculated by the Joint Administrators in consultation with the AHC Financial Adviser pursuant to Clause 1.4 of this Deed;

“Management Deed of Release” means the deed of waiver and release of claims relating to certain managers of the Group to be dated on the Restructuring Effective Date;

“Management Indemnity Agreement” means the indemnity agreement relating to certain managers of the Group to be provided by Opco and dated on the Restructuring Effective Date;

“Mandatory Prepayment Account” has the meaning given to such term in the AFF Documents;

“Minimum Cash Balance” means the minimum cash balance that a Non-Transferring Subsidiary or a Delayed Transfer Entity is required to maintain at all times in a bank account to avoid any charges or penalties being incurred, provided that any such amount shall not exceed AED 100,000 per bank account;

“Minority Director” has the meaning given to such term in the Governance Agreement;

“Minority Reporting Financier” has the meaning given to such term in the Governance Agreement;

“New Leases” means, together, the following leases:

- (a) the lease in respect of the Abu Dhabi Clinic (as defined in the Fakih SHA) made between (1) Dr Amal Moawiyah Saleh Alshunnar and (2) Fakih IVF Fertility Center Ltd (in administration) (subject to a deed of company arrangement), in the form set out in Schedule 7 to the Fakih SHA; and
- (b) the lease in respect of the Dubai Clinic (as defined in the Fakih SHA) made between (1) Dr. Zainab Abdulla Mohd Aqil Kazim and (2) Fakih IVF Ltd (in administration) (subject to a deed of company arrangement) in the form set out in Schedule 7 to the Fakih SHA;

“NMC VAT Group” means the entities set out at Schedule 5 (*NMC VAT Group*);

“Opco Articles of Association” has the meaning given to the term Articles of Association of Opco in the Governance Agreement;

“Opco Common Terms Agreement” means the common terms agreement dated on or around the date of this Deed between, among others, Opco, the Opco Global Facility Agent, and the Opco Primary Facility Agents (each as defined therein);

“Opco Facilities” has the meaning given to the term “Facilities” in the Opco Common Terms Agreement;

“Opco Facility Receivable” has the meaning given in Clause 5.9(c);

“Opcos Fee Letters” has the meaning given to the term “Fee Letters” in the Opcos Common Terms Agreement;

“Opcos Finance Documents” means:

- (a) the Opcos Common Terms Agreement;
- (b) the Opcos Primary Facilities Agreement;
- (c) the Opcos Fee Letters;
- (d) the Opcos Security Agreements; and
- (e) the Opcos Intercreditor Agreement;

“Opcos Finance Party” has the meaning given to the term “Finance Party” in the Opcos Common Terms Agreement;

“Opcos Financier” has the meaning given to the term “Financier” in the Opcos Common Terms Agreement;

“Opcos Financiers Legal Advisers” means Milbank LLP or any successor legal adviser, to the Opcos Financiers in respect of the Restructuring;

“Opcos Funding Amount” means an amount sufficient to meet Opcos funding obligations pursuant to Clause 5.9(b), as set out in the Funds Flow Statement;

“Opcos Intercreditor Agreement” has the meaning given to the term “Intercreditor Agreement” in the Opcos Common Terms Agreement;

“Opcos Legal Opinions” means those legal opinions required to be provided under the Opcos Finance Documents when the RED Guarantors accede to the Opcos Common Terms Agreement and enter into the Opcos Security Agreements;

“Opcos Longstop Date” means the date falling two (2) Business Days after the proposed Utilisation Date (as defined in the Opcos Common Terms Agreement) as set out in the Request (as defined in the Opcos Common Terms Agreement);

“Opcos Payoff Amount” means an amount sufficient to discharge all amounts outstanding pursuant to the AFF Documents (including any AFF Cash Entitlements) after the payment to the AFF Global Facility Agent of the LTD Payoff Amount and the LTD Proceeds Pledged Amount in accordance with Clauses 5.9(a) and 5.9(b), as set out in the Funds Flow Statement;

“Opcos Primary Facilities Agreement” has the meaning given to the term “Primary Facilities Agreement” in the Opcos Common Terms Agreement;

“Opcos Security Agreements” means:

- (a) each Debenture (as defined in the Opcos Common Terms Agreement) to be entered into by Opcos and each RED Guarantor;

- (b) the LTD Account Security Agreement (as defined in the Opcos Common Terms Agreement); and
- (c) the Moveables Security Agreement (as defined in the Opcos Common Terms Agreement) to be entered into by Opcos and each RED Guarantor;

"Opcos Utilisation Request" means the utilisation request delivered by Opcos to the Opcos Global Facility Agent pursuant to the terms of the Opcos Finance Documents;

"Original Financiers" has the meaning given to that term in the Holdco Common Terms Agreement;

"Original Participants" has the meaning given to that term in the Holdco Investment Agency Agreement;

"Party" means a party to this Deed;

"Pre-Commencement Debt Claim/Entitlement Waiver and Release Notice" has the meaning given to that term in AFF CTA;

"Pre-Completion Actions" means the pre-completion actions set out in schedule 1 (*Pre-Completion Actions*) of the LTD Asset Transfer Agreement;

"Post-Completion Filing Actions" means the post-completion filing actions set out in paragraph 4 of Schedule 2 (*Completion Actions*) of the LTD Asset Transfer Agreement;

"Post-Completion Protocol" means the post-completion protocol set out in schedule 3 (*Post-Completion Protocol*) of the LTD Asset Transfer Agreement;

"Post RED Budget" has the meaning given to that term in the Budget and Oversight Protocol, which for the avoidance of doubt does not include:

- (a) any amount agreed by Opcos and LTD to be payable in connection with the LTD Asset Transfer Agreement; and
- (b) the amounts referred to in limbs (b) and (c) of the definition of LTD Cash Reserve;

"Proposed Minority Director" has the meaning given to it in Clause 4.1(c);

"Proposed Minority Director Voting Deadline" has the meaning given to it in Clause 4.1(d);

"Proposed Restructuring Effective Date" means the date notified to Group Creditors pursuant to clause 7.2 of the LTD DOCA;

"RED Guarantors" has the meaning given to it in the Opcos Common Terms Agreement;

"Registrar" has the meaning given to that term in section 298 of the Regulations;

“Related DOCA Assignment Deed” means the assignment deed entered into by each Related DOCA Company on the Restructuring Effective Date and acknowledged by LTD;

“Remuneration and Nomination Committee” has the meaning given to such term in the Governance Agreement;

“Reservations” means the reservations set out in the legal opinions delivered pursuant to paragraph 8 of Schedule 4 (*Restructuring Effective Date Conditions Precedent*);

“Residual Loan” means a loan to be made between Opco (as lender) and LTD (as borrower) which shall be limited in recourse to any proceeds arising from a sale of LTD’s direct or indirect interests in the Saudi JV;

“Residual Loan Document” means the loan agreement between LTD (as borrower) and Opco (as lender) documenting the Residual Loan;

“Restructuring Asset Completion” has the meaning given to the term “Completion” in the LTD Asset Transfer Agreement;

“Restructuring Conditions” means each of the conditions set out in Clause 3.2(a) to 3.2(d) of this Deed (other than the issuance of the Restructuring Conditions Satisfaction Notice and/or the Restructuring Effective Time);

“Restructuring Conditions Satisfaction Notice” means the notice from the LTD Deed Administrators to the Administrative Parties, the Advisers and the Opco Financiers Legal Advisers confirming that each of the Restructuring Conditions have been satisfied or waived (as applicable);

“Restructuring Documents” means:

- (a) this Deed;
- (b) the Group Transfer Documents;
- (c) the Holdco Finance Documents;
- (d) the Opco Finance Documents;
- (e) the Holding Period Trust Documents;
- (f) the Deed of Release;
- (g) the ATA Deed of Release;
- (h) the Management Deed of Release;
- (i) the Management Indemnity Agreement;
- (j) the Additional Protocol Documents;

- (k) any other documents that LTD and the Majority RID Financiers consider to be necessary or desirable (acting reasonably) to give effect to the Restructuring; and
- (l) any instruction letter which an Administrative Party requests to authorise it to enter into any of the above mentioned documents;

“**Restructuring Effective Date**” has the meaning given to it in Clause 4.2(c);

“**Restructuring Effective Date Conditions Precedent**” means the conditions precedent to the Restructuring Effective Date set out in Schedule 4 (*Restructuring Effective Date Conditions Precedent*);

“**Restructuring Effective Time**” means the time at which the last Restructuring Step set out in Clause 5 (*Restructuring Steps*) has been completed;

“**Restructuring Effective Time Actions**” has the meaning given to such term in the LTD Asset Transfer Agreement;

“**Restructuring Steps**” means the steps, transactions, or actions set out in Clause 5 (*Restructuring Steps*) and “**Restructuring Step 1, 2, 3, etc.**” shall refer to the relevant step as further described under that heading in Clause 5 (*Restructuring Steps*);

“**Revised Administrators' Proposals**” means the revised administrators' proposals issued by the Group Company Administrators to the Group Creditors on 9 August 2021;

“**RID Financier**” means a Group Creditor who will or who is likely to be an Original Financier at the Restructuring Effective Time;

“**Saudi JV**” means all of LTD and NMC Health Investments LLC's interests in the joint venture between LTD, NMC Health Investments LLC and GOSI Investment Ventures constituted by a joint venture agreement dated 23 May 2019;

“**Service Agreements**” has the meaning given to that term in the LTD Asset Transfer Agreement;

“**Shari'a Event**” has the meaning given to that term in the Holdco Purchase Undertaking;

“**Share Transfer Companies**” means each Completion Date Transferring Subsidiary and each Delayed Transfer Entity;

“**Spanish Pledge Release Agreement**” means the pledge release agreement dated on or around the date of this Deed between GLAS Trust Corporation Limited (in its capacity as security agent) and Moncatalo, S.L.U;

“**Subsidiary**” has the same meaning as in section 298 of the Regulations;

“**Tax Authority**” means each of (i) the Federal Tax Authority of the United Arab Emirates; (ii) the Oman Tax Authority as part of the Secretariat General for Taxation; or (iii) any governmental, state or municipality or any local, state, federal or other

fiscal, revenue, customs or excise authority, or body competent to impose, administer, levy, assess or collect VAT in any applicable jurisdiction;

“Tax Structure Memorandum” means the final report relating to the Restructuring produced by Alvarez & Marsal Tax and UK LLP addressed to LTD;

“Third Party Shareholder Order” means an order of the Court under Section 81(1) of the Regulations with respect to certain Related DOCA Companies;

“Total Admitted Commitments” means the Total Commitments less the Holdco Facilities Commitments to be issued to the Holding Period Trustee on or around the Restructuring Effective Date;

“Total Commitments” has the meaning given to it in the Holdco Common Terms Agreement;

“Total Conventional Commitments” has the meaning given to it in the Holdco Common Terms Agreement;

“Total Islamic Financing Commitments” has the meaning given to it in the Holdco Common Terms Agreement;

“Transaction Fees” means the fees payable to the AHC Financial Adviser and Perella Weinberg UK Limited as financial adviser to LTD upon completion of the Restructuring;

“Transfer Consideration” has the meaning given to the term "Consideration" in the LTD Asset Transfer Agreement;

“Transitional Transfer Documents” has the meaning given to that term in the LTD Asset Transfer Agreement;

“VAT” means: (i) Tax as defined in the VAT Law; and (ii) any other tax of a similar fiscal nature, whether imposed in the UAE or the Sultanate of Oman in substitution for, or levied in addition to, such Tax, or imposed by any Tax Authority in any other jurisdiction to which the VAT Indemnified Persons or the relevant Share Transfer Companies are subject;

“VAT Claim” means any assessment, notice, demand, letter or other document issued or action taken by or on behalf of any Tax Authority from which it appears that any VAT Indemnified Person is or may be subject to a VAT liability (including interest and penalties) for which the VAT Indemnifying Persons are or may be liable under Clause 6.1;

“VAT Dispute” means any dispute, appeal, negotiations or other proceedings in connection with a VAT Claim;

“VAT Indemnified Persons” means the Joint Administrators, the Deed Administrators, LTD and NMC Holding Ltd (in administration);

“VAT Indemnifying Persons” means Opco and each Related DOCA Company;

“VAT Law” means: (i) UAE Federal Decree-Law No. (8) of 2017 on Value Added Tax and UAE Cabinet Decision No. (52) of 2017 on the Executive Regulations of the Federal Decree- Law No. (8) of 2017 on Value Added Tax; (ii) the Value Added Tax Law as promulgated by Royal Decree No. 121/2020 in the Sultanate of Oman; and (iii) any legislation and regulations supplemental to (i) or (ii);

“VAT Records” means all records of LTD or any of its subsidiaries or other Affiliates which are or have been members of the NMC VAT Group, which are required to be preserved under the VAT Law;

“Voluntary Disclosure” means a voluntary disclosure made to the relevant Tax Authority in relation to a VAT liability (including interest and penalties) of a VAT Indemnified Person for which the VAT Indemnifying Persons are or may be liable under Clause 6.1; and

“Voting Support Agreement” means the voting support agreement, dated 16 April 2021 originally between, among others, LTD, the Joint Administrators and the Group DOCA Companies (as defined therein).

1.2 Interpretation

- (a) Unless otherwise indicated, any reference in this Deed to:
 - (i) “\$”, “USD” and “dollars” denote the lawful currency of the United States of America;
 - (ii) “AED” and “dirham” denote the lawful currency of the United Arab Emirates;
 - (iii) a “Clause” or a “Schedule” is a reference to a clause of, or schedule to, this Deed;
 - (iv) “this Deed” shall include the Schedules to this Deed;
 - (v) a “person” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality) or two or more of the foregoing;
 - (vi) a “regulation” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (vii) any person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (viii) the term “including” shall be without limitation and shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;

- (ix) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
 - (x) any agreement or instrument is a reference to that agreement or instrument as amended, restated, extended, supplemented or novated from time to time;
 - (xi) a provision of law is a reference to that provision as amended or re-enacted from time to time;
 - (xii) a time of day is a reference to Abu Dhabi time;
 - (xiii) any reference to a “**day**” (including within the phrase “**Business Day**”) shall mean a period of 24 hours running from midnight to midnight;
 - (xiv) words importing the singular shall include the plural equivalent and vice versa;
 - (xv) references to a Group Creditor shall be construed to refer to any of its Nominated Recipient(s) where applicable; and
 - (xvi) Clause and Schedule headings are for ease of reference only.
- (b) A reference to a document being “**dated and compiled**” or an authority granted to “**date and compile**” a document will include the insertion in manuscript or otherwise of all missing dates, figures and information required for the relevant document to be completed.
- (c) Unless provided otherwise or agreed between the Parties in connection with the delivery of any document or notice, where this Deed provides for a document or notice to be “**delivered**” to a Party, it is sufficient for that document to be delivered in accordance with Clause 10 (*Notices*).
- 1.3 A reference to a document being “substantially in the form” shall be construed in accordance with clause 1.2(q) of the LTD DOCA.
- 1.4 In calculating the “Majority RID Financiers”, the Joint Administrators shall consult the AHC Financial Advisers and will act reasonably and on the basis of the information available to the Joint Administrators at the relevant time including:
- (a) Admitted Group Creditors’ likely satisfaction of (or failure to satisfy) the Initial Distribution Requirements; and
 - (b) the existence of Holdback Claims in respect of which Holdco Facilities Commitments will be issued to the Holding Period Trustee on or around the Restructuring Effective Date,
- provided that**, on the Holdco Facilities being made available on or about the Restructuring Effective Date in accordance with this Deed, the “Majority RID Financiers” will be calculated in accordance with the Holdco Facilities Commitments

held by Original Financiers, excluding Holdco Facilities Commitments to be issued to the Holding Period Trustee on or around the Restructuring Effective Date.

- 1.5 The Joint Administrators shall upon the request of the AHC Financial Advisers share any information which the AHC Financial Advisers may reasonably require to enable it to calculate whether the approval of the Majority RID Financiers has been obtained or is capable of being reached.
- 1.6 Notwithstanding any provision in this Deed to the contrary, nothing in this Deed shall affect the rights and obligations of Opcos and Holdcos under the Opcos Finance Documents and the Holdco Finance Documents (as applicable).

2. INSTRUCTIONS TO IMPLEMENT THE RESTRUCTURING

- 2.1 Unless otherwise specified in this Deed, each Party's signature page or counterpart to each Restructuring Document shall be released concurrently with the release of all other the signature pages or counterparts to such document (if any).
- 2.2 Each Group Creditor (or, where applicable, each respective Nominated Recipient(s)) hereby authorises and instructs the Holdco Agents and the Holding Period Trustee to undertake such steps as it considers necessary or desirable for it to take for the purposes of facilitating the implementation of the Restructuring, including (without limitation) entering into and executing in its respective capacity the Restructuring Documents to which it is a party and any document that it reasonably considers necessary or advisable to implement the Restructuring.
- 2.3 All grants of authority granted under this Clause 2 shall be treated, for all purposes whatsoever and without limitation, as having been granted by deed.

3. RESTRUCTURING CONDITIONS SATISFACTION NOTICE

- 3.1 Each Party (other than the Opcos Global Facility Agent and the Holding Period Trustee) shall use reasonable endeavours to procure that the Restructuring Conditions are satisfied as soon as reasonably practicable following the execution of this Deed.
- 3.2 The LTD Deed Administrators shall deliver the Restructuring Conditions Satisfaction Notice to the Administrative Parties, the Advisers, and the Opcos Financier Legal Advisers as soon as reasonably practicable on the date on which each of the following conditions have been satisfied:
 - (a) *Confirmations from the LTD Deed Administrators:* the LTD Deed Administrators have confirmed in writing to the Confirmation Parties that:
 - (i) the DOCA Commencement Date has occurred, and (on the date on which the Restructuring Conditions Satisfaction Notice is issued) each DOCA remains in full force and effect;
 - (ii) the conditions precedent at paragraph 9(c) of Schedule 4 (Restructuring Effective Date Conditions Precedent)) is in a form and substance satisfactory to the LTD Deed Administrators or that the requirement to satisfy any such Restructuring Effective Date

Conditions Precedent has been waived by the LTD Deed Administrators; and

- (iii) LTD has:
 - (A) issued the notice required to be provided pursuant to clause 8.4 of the LTD Asset Transfer Agreement; and
 - (B) confirmed that it is satisfied with the notice required to be provided by Opcos pursuant to clause 8.5 of the LTD Asset Transfer Agreement;
- (b) *Confirmations from Opcos:* Opcos have confirmed in writing to the Confirmation Parties that it has:
 - (i) issued the notice required to be provided pursuant to clause 8.5 of the LTD Asset Transfer Agreement;
 - (ii) confirmed that it is satisfied with the notice required to be provided by LTD pursuant to clause 8.4 of the LTD Asset Transfer Agreement; and
- (c) *Confirmation from Clifford Chance LLP as an AHC Legal Adviser:* Clifford Chance LLP as an AHC Legal Adviser has confirmed in writing to the Confirmation Parties that:
 - (i) the Majority RID Financiers have confirmed that the Budget and Oversight Protocol and the Additional Protocol Documents are in form and substance acceptable to the Majority RID Financiers (including, without limitation, any amendments or updates to reflect the situation following the Restructuring Effective Time);
 - (ii) the Majority RID Financiers have confirmed that the Pre-Completion Actions have been completed on terms satisfactory to the Majority RID Financiers or the requirement to complete a Pre-Completion Action has been waived by the Majority RID Financiers; and
 - (iii) the Majority RID Financiers have confirmed that the Restructuring Effective Date Conditions Precedent (other than any Opcos Finance Documents (excluding the Opcos Common Terms Agreement and the Opcos Intercreditor Agreement) referred to in paragraph 7(k) and the conditions precedent at paragraphs 9(c) of Schedule 4 (*Restructuring Effective Date Conditions Precedent*)) are in a form and substance satisfactory to the Majority RID Financiers or that the requirement to satisfy any such Restructuring Effective Date Conditions Precedent has been waived by the Majority RID Financiers;
- (d) *Confirmation from the Opcos Financiers Legal Advisers:* the Opcos Financiers Legal Advisers have confirmed in writing to the Confirmation Parties that:
 - (i) the Opcos Finance Documents have been executed by each of the parties thereto;

- (ii) the Opco Global Facility Agent has issued the Initial Closing Notice confirming that each of the conditions precedent specified in part A (*Initial Conditions Precedent*) of schedule 2 (*Conditions Precedent/Subsequent*) to the Opco Common Terms Agreement are in form and substance satisfactory to the Majority Financiers (as defined in the Opco Common Terms Agreement); and
- (iii) subject to being held in escrow pending release in accordance with the Restructuring Step 6, each of the conditions precedent specified in part B (*Closing Time Conditions Precedent*) of schedule 2 (*Conditions Precedent/Subsequent*) to the Opco Common Terms Agreement are in a form and substance satisfactory to the Majority Financiers (as defined in the Opco Common Terms Agreement) or have been waived by the Majority Financiers (the “**Opco Conditions Precedent**”).

- 3.3 The Administrators shall post the Restructuring Conditions Satisfaction Notice to the NMC Stakeholder Website.
- 3.4 Immediately following the circulation of the Restructuring Conditions Satisfaction Notice:
 - (a) to the extent that they have not already done so, the LTD Deed Administrators shall sign but leave undated all of the Restructuring Documents, including any documents ancillary to the Restructuring Documents which may be required to be delivered thereunder:
 - (i) on their own behalf; and
 - (ii) on behalf of all Group Creditors who are party to them (acting as their attorney pursuant to the terms of the DOCAs),

and return all of the signature pages, together with the full execution versions, to the LTD Legal Adviser, at such address and in such number of copies as the LTD Legal Adviser may reasonably specify; and
 - (b) if it has not already done so each other Party to the Restructuring Documents shall sign but leave undated the Restructuring Documents to which it is a party and shall return all of the signature pages, together with the full execution versions, at such address and in such number of copies as the LTD Legal Adviser may reasonably specify.
- 3.5 For the avoidance of doubt, and notwithstanding any provision of this Deed or any Restructuring Document permitting electronic delivery of documents, all signatures to the Restructuring Documents (other than the Opco Finance Documents) must be provided in physical “wet-ink” form unless otherwise agreed by the Joint Administrators and the AHC Legal Advisers.
- 3.6 Each Party (other than the Opco Global Facility Agent) hereby authorises the LTD Legal Adviser to date, complete and release the Restructuring Documents to which it is a party in accordance with the terms of this Deed. The signatures of each Opco

Financier to any Restructuring Document shall only be released upon express order of the Opcos Financiers Legal Advisers.

- 3.7 Upon receipt by the LTD Legal Adviser of signature pages to each of the Restructuring Documents (other than the Opcos Finance Documents) in accordance with Clause 3.4 above, the Restructuring Documents (other than the Opcos Finance Documents) shall be held in escrow pending their release, completion, dating and delivery in accordance with the Restructuring Steps below.
- 3.8 Each Party acknowledges that in taking the actions set out in Clauses 3.6 and 3.7 above, the LTD Legal Adviser is acting solely in its capacity as legal adviser to LTD and is not acting as agent of, nor shall have any liability to, any other Party to this Deed.

4. PRE-RESTRUCTURING STEPS

4.1 Pre-Steps - Holdco Finance Documents

- (a) Promptly following the Record Date (and in any event no later than two Business Days prior to the Proposed Restructuring Effective Date):
- (i) the Joint Administrators shall confirm to Holdco, the Holdco Global Agent, the Holdco Conventional Facility Agent and the Holdco Investment Agent, the Total Conventional Commitments and the Total Islamic Financing Commitments as well as the Commitments (as defined in the Holdco Common Terms Agreement) of each Original Participant and each Original Conventional Lender (each as defined in the Holdco Common Terms Agreement);
 - (ii) the LTD Legal Adviser shall populate the Holdco Common Terms Agreement, the Holdco Conventional Facility Agreement and the Holdco Investment Agency Agreement with the Total Conventional Commitments, the Total Islamic Financing Commitments and the Total Commitments; and
 - (iii) the LTD Legal Adviser shall populate the Holdco First Supplemental Sale and Purchase Agreement with the details of the Initial Portfolio and the Purchase Price (as defined in the Holdco First Supplemental Sale and Purchase Agreement);
- (b) The Governance Agreement will be signed and dated no later than six Business Days prior to the Proposed Restructuring Effective Date).
- (c) On or before the day falling five Business Days before the Proposed Restructuring Effective Date, Lazard & Co., Limited in consultation with the Ad Hoc Committee (acting as the Renumeralation and Nomination Committee in accordance with the terms of the Governance Agreement, including applying the criteria set out in Schedule 3 of the Governance Agreement) shall notify the Joint Administrators of the proposed candidate for the role of Minority Director (the "**Proposed Minority Director**") and shall provide the Joint Administrators with a copy of the CV of the Proposed Minority Director.

- (d) On or before the day falling four Business Days before the Proposed Restructuring Effective Date, the Joint Administrators shall provide the Minority Reporting Financiers with the name and CV of the Proposed Minority Director and shall ask the Minority Reporting Financiers to confirm on or before 5pm on the day falling two Business Days prior to the Proposed Restructuring Effective Date (the "**Proposed Minority Director Voting Deadline**") if they object to the appointment of the Proposed Minority Director.
- (e) The appointment of the Proposed Minority Director shall be deemed to have been approved by the Minority Reporting Financiers unless Minority Reporting Financiers, holding at least twenty per cent. of the total Holdco Facilities Commitments to be held by Minority Reporting Financiers on the Proposed Restructuring Effective Date have notified the Joint Administrators by the Proposed Minority Director Voting Deadline, that they object to the appointment of the Proposed Minority Director.
- (f) If, the appointment of the Proposed Minority Director is approved, the Joint Administrators shall promptly notify the Holdco Global Agent that the Proposed Minority Director has been appointed in accordance with this clause 4.1.
- (g) If, by the Proposed Minority Director Voting Deadline, the Proposed Minority Director is not approved, the Minority Director shall be appointed following the Proposed Restructuring Effective Date in accordance with the provisions set out in the Governance Agreement.

4.2 Pre-Steps - Opcos Facility Pre-Funding

- (a) For the purposes of this Clause 4.2 and unless otherwise defined in this Deed, capitalised terms used in this Clause shall have the meaning given to them in the applicable Opcos Finance Documents.
- (b) With respect to the Opcos Facilities:
 - (i) no later than the date of this Deed:
 - (A) the executed Opcos Finance Documents will be dated and released by the Opcos Financiers Legal Advisers;
 - (B) Opcos shall deliver an executed Opcos Utilisation Request with respect to an aggregate amount equal to the Total Commitments (as defined in the Opcos Common Terms Agreement) which shall, in each case, specify the date of the Proposed Restructuring Effective Date as the proposed Utilisation Date (as applicable); and
 - (C) the Opcos Global Facility Agent (on behalf of the Opcos Primary Facility Agents) shall notify Opcos of the total aggregate participations of each Financier in the Advances (as defined in the Opcos Common Terms Agreement);

- (D) no later than the day falling three Business Days prior to the Proposed Restructuring Effective Date the Opcos Global Facility Agent (on behalf of the Opcos Primary Facility Agents) shall confirm to Opcos the applicable EIBOR to be used in accordance with the applicable Opcos Finance Documents;
 - (ii) no later than four days prior to the Proposed Restructuring Effective Date, LTD shall transfer the amounts standing to the balance of the LTD Proceeds Pledged Account (the "**LTD Proceeds Pledged Amount**") to the AFF Global Agent;
 - (iii) no later than the day one Business Day prior to the Proposed Restructuring Effective Date, the Opcos Global Facility Agent shall confirm in writing to LTD, the LTD Deed Administrators and the Advisers that it has received the funds required under the Opcos Utilisation Request and shall provide documentary evidence (which may be in the form of a SWIFT or MT confirmation) to LTD or the LTD Deed Administrators (as the case may be) in respect of receipt of funds transferred pursuant to this Clause 4.2(b),

(the period beginning in sub-paragraph (b)(ii) to (b)(iii) inclusive and ending on the Opcos Longstop Date being the "**Pre-Funding Period**");
 - (iv) no later than the day one Business Day prior to the Proposed Restructuring Effective Date and provided that the LTD Payoff Amount is greater than zero, LTD shall submit the debit order to the AFF Global Facility Agent in respect of the LTD Payoff Amount; and the LTD Proceeds Pledged Amount; and
 - (v) no later than the day one Business Day prior to the Proposed Restructuring Effective Date, Opcos shall submit the debit order to the Opcos Global Facility Agent in respect of the Opcos Payoff Amount.
- (c) The "**Restructuring Effective Date**" shall take place on the Business Day following receipt of funds by the Opcos Global Facility Agent with respect to the Facilities (as defined in the Opcos Common Terms Agreement), pursuant to Clause 4.2(b).

5. RESTRUCTURING STEPS

5.1 Order of the Restructuring Steps

- (a) Each Party hereby agrees that:
 - (i) subject to the Restructuring Conditions Satisfaction Notice being issued and the completion of the steps set out in Clauses 4.1 (Pre-Steps - Holdco Finance Documents) and 4.2 (Pre-Steps - Opcos Facility Pre-Funding) above, the Restructuring Steps shall be completed in the order set out in this Clause 5;
 - (ii) each Restructuring Step shall be completed as soon as reasonably practicable following the completion of each action, transaction or

other step to be taken under or pursuant to the previous Restructuring Step;

- (iii) the effectiveness of each Restructuring Step shall be conditional upon each other Restructuring Step becoming effective so that, if any one of the Restructuring Steps does not become effective, none of the other Restructuring Steps shall become effective; and
- (iv) in the event that any Restructuring Step (a “**Relevant Restructuring Step**”) is not completed on the Business Day on which the Restructuring Steps are commenced pursuant to this Clause 5, then:
 - (A) the process of the closing of the Restructuring shall be paused until the date on which the Relevant Restructuring Step and all remaining Restructuring Steps can be completed (on which date all such Restructuring Steps shall be completed);
 - (B) to the fullest extent permitted by law, any Restructuring Step completed before the day on which the Restructuring Effective Time occurs shall be deemed to have occurred on the date of the Restructuring Effective Time;
 - (C) no Party shall be permitted to raise any objection for the purposes of this Deed in connection with the fact that a Restructuring Step has not been completed on the date of the Restructuring Effective Time by reason of the operation of the provisions of this Clause 5.1(a)(iv); and
 - (D) in the event that any Restructuring Step is completed before the date on which the Restructuring Effective Time has occurred and it cannot be treated as having occurred on a subsequent date under the provisions of this Clause 5.1(a)(iv), then the fact of its occurrence on a date prior to the date of the Restructuring Effective Time shall not prevent it from being regarded for the purposes of this Deed as having occurred on the date the Restructuring Effective Time occurs.

5.2 **Restructuring Step 1: AFF documents and Holding Period Trust Deed**

Promptly on the Restructuring Effective Date:

- (a) the AFF Deed of Release and the AFF Payoff Letter shall be dated; and
- (b) the Holding Period Trust Deed and the Holding Period Trust Fee Letter shall be dated and become effective and the Holding Period Trustee hereby confirms it shall hold any Holdco Facilities Commitments which it receives in accordance with Restructuring Step 5 in accordance with the terms of the Holding Period Trust Deed; and
- (c) the Holding Period Trust Opcos Accession Letter shall be dated and become effective.

5.3 Restructuring Step 2: Demand and Assignment

Immediately following the completion of Restructuring Step 1, each of the steps set out below shall take place in respect of each Related DOCA Company pursuant to clause 10 (*Demand and Claim Assignment*) of each Related DOCA;

- (a) each Demand Creditor (as defined in the applicable Related DOCA) shall:
 - (i) declare that its Deed Company Claims (as defined in the applicable Related DOCA) are immediately due and payable; and
 - (ii) demand that the Related DOCA Company immediately pays its immediately due and payable Deed Company Claims (as defined in the applicable Related DOCA),

and in each case, the aggregate amount of Deed Company Claims (as defined in the applicable Related DOCA) shall be an amount equivalent to the applicable Related DOCA Company's Holdco EPM Value;

- (b) each Demand Creditor shall irrevocably and unconditionally assign all of their rights, title and interests in their Deed Company Claims (as defined in the applicable Related DOCA) to Holdco in consideration for the issuance of Holdco Facilities Commitments pursuant to Restructuring Step 5;
- (c) each Deed Company (as defined in the applicable Related DOCA) shall irrevocably and unconditionally assign all of their rights, title and interests in the Counterindemnity Claims to Holdco; and
- (d) Holdco agrees that the Counterindemnity Claims assigned to it by the Deed Company (as defined in the applicable Related DOCA) shall be subordinated to all other provable debts owed by LTD and/or any Group DOCA Company (as applicable) and that it shall only be entitled to make demand or prove for any Counterindemnity Claim against LTD and/or any Group DOCA Company (as applicable), or to receive any payment in respect thereof, if all such other provable debts owing by LTD and/or such DOCA Group Company have been discharged in full.

5.4 Restructuring Step 3: Assignment of Assigned Related DOCA Claims and provision of the Litigation Undertaking

Immediately following the completion of Restructuring Step 2:

- (a) each Related DOCA Company shall assign the Assigned Related DOCA Claims under each Related DOCA to LTD pursuant to clause 9 (*Assignment of Assigned Claims*) of the applicable Related DOCA;
- (b) the Related DOCA Assignment Deed shall be dated and released; and
- (c) in consideration for the assignments provided under Clauses 5.4(a) and 5.4(b), LTD shall provide the Litigation Undertaking set out in clause 11 (*Litigation Undertaking*) of the LTD DOCA in favour of the Related DOCA Creditors.

5.5 Restructuring Step 4: Group Transfers

Immediately following the completion of Restructuring Step 3:

- (a) LTD shall date and release the Group Transfer Documents (other than the LTD Asset Transfer Agreement, the Fakih ADGM Transaction Documents, the Fakih Holdco Transaction Documents, the Fakih Opco Transaction Documents and any documents signed and delivered as a Pre-Completion Action);
- (b) upon completion of the final Completion Action, Opco shall deliver a notice to LTD confirming that the Completion Actions have been satisfied or waived in accordance with clause 9.4 of the LTD Asset Transfer Agreement and Restructuring Asset Completion shall occur;
- (c) the updated share registers for each Completion Date Transferring Subsidiary (other than Fakih Holdco and the IVF Operating Companies), including the name of Opco and/or its nominee, shall be released; and
- (d) Opco shall promptly notify the Opco Global Facility Agent that this Restructuring Step 4 has occurred.

5.6 Restructuring Step 5: Holdco Facilities made available

Immediately following the completion of Restructuring Step 4:

- (a) each of the Holdco Common Terms Agreement, the Holdco Conventional Facility Agreement, the Holdco Investment Agency Agreement, the Holdco Master Sale and Purchase Agreement, the Holdco Service Agency Agreement, the Holdco Purchase Undertaking and the Holdco Sale Undertaking and the Holdco Fee Letters shall be dated and become effective in accordance with their terms;
- (b) the Holdco Conventional Facility shall be deemed to be fully drawn and the Holdco Facilities Commitments issued by Holdco to the Original Financiers (including the Holding Period Trustee for and on behalf of the Holdback Creditors and the Disqualified Creditors subject to the terms of the LTD DOCA and the Holding Period Trust Deed) in consideration of (i) the transfer of assets by LTD to Opco in accordance with Restructuring Step 4; and (ii) the transfer of the Deed Company Claims in accordance with Restructuring Step 2(b);
- (c) the Original Participants (including the Holding Period Trustee) shall be deemed to have made their Holdco Participations in accordance with the terms of the Holdco Investment Agency Agreement in consideration of:
 - (i) the transfer of assets by LTD to Opco in accordance with Restructuring Step 4;
 - (ii) the transfer of the Deed Company Claims in accordance with Restructuring Step 2(b); and

- (iii) the payment by the Holdco Investment Agent to Opcos of a fee of USD 100;
- (d) Opcos hereby confirms the adequacy of the payment in Clause 5.6(c)(iii);
- (e) the Holdco First Supplemental Sale and Purchase Agreement and the Holdco Declaration of Trust shall be dated and become effective in accordance with their terms;
- (f) the Holdco Security Agreements shall be dated and become effective in accordance with their terms;
- (g) each Holdco Facilities Legal Opinion shall be released; and
- (h) the Pre-Commencement Debt Claim/Entitlement Right Waiver and Release Notices shall become effective.

5.7 Restructuring Step 6: Opcos Facilities released from escrow

Immediately following the completion of Restructuring Step 5:

- (a) the RED Guarantors shall accede to the Opcos Common Terms Agreement as guarantors and Opcos and the RED Guarantors shall enter into the Opcos Security Agreements;
- (b) each Opcos Legal Opinion shall be released;
- (c) the Opcos Global Facility Agent shall issue the Closing Time Notice to Opcos; and
- (d) Opcos hereby represents to the Opcos Global Facility Agent that, upon the occurrence of the Restructuring Effective Date, all statements, representations, deliverables and confirmations provided by it or on its behalf in accordance with the Opcos Conditions Precedent under Clauses 3.2(d)(ii) and 4.2, are accurate and correct in all respects.

Immediately following the completion of the steps set out in sub-paragraph (a) to (d) above, the amount of the Utilisation (as defined in the Opcos Common Terms Agreement) made pursuant to the Utilisation Request (as defined in the Opcos Common Terms Agreement) delivered pursuant to Clause 4.2(b) minus the Opcos Payoff Amount shall be transferred by the Opcos Global Facility Agent to the Disbursement Account. The residual amount of the Utilisation in an amount equivalent to the Opcos Payoff Amount shall be applied in accordance with clause 5.9(b) below.

5.8 Restructuring Step 7: Intercompany balances

Immediately following the completion of Restructuring Step 6:

- (a) Holdco hereby contributes the Holdco Claim to Opcos in consideration for Opcos issuing new shares to Holdco;

- (b) LTD hereby agrees that Opcos obligation to pay the Transfer Consideration under the LTD Asset Transfer Agreement shall be satisfied by the partial release and discharge provided by Opcos; and
- (c) Opcos hereby partially releases and discharges the Holdco Claim with the effect that the amount owed by LTD thereunder shall be reduced to \$155,000,000 and each of Opcos and LTD hereby acknowledge and agree that the remaining balance of the Holdco Claim shall thereafter constitute the Residual Loan and be subject to the terms of the Residual Loan Document which shall, at the same time, be dated and released.

5.9 **Restructuring Step 8: Repayment of the AFF and Payment of Consent Fee**

Immediately following the completion of Restructuring Step 7, the following steps shall occur in the following order:

- (a) the LTD Proceeds Pledged Amount shall be transferred to the AFF Global Facility Agent in accordance with Clause 4.3(b)(ii);
- (b) the LTD Payoff Amount shall be transferred to the AFF Global Facility Agent in accordance with the debit order provided in Clause 4.2(b)(iv);
- (c) the Opcos Global Facility Agent shall transfer the Opcos Payoff Amount to the AFF Global Facility Agent in accordance with the Utilisation Request (as defined in the Opcos Common Terms Agreement) delivered pursuant to clause 4.2(b)(i) and the AFF Payoff Letter;
- (d) the AFF Global Facility Agent shall confirm receipt of the LTD Payoff Amount, the LTD Proceeds Pledged Amount, and the Opcos Payoff Amount, following which the Effective Time (as defined in the AFF Deed of Release) shall occur and a receivable equal to the Opcos Funding Amount shall be outstanding from LTD to Opcos (the “**Opcos Facility Receivable**”);
- (e) the AFF Global Facility Agent shall apply the amounts received pursuant to Clause 5.9(d) to repay the AFF in accordance with the debit orders delivered pursuant to Clauses 4.2(b)(iv) and 4.2(b)(v) and the AFF Payoff Letter;
- (f) The Opcos Global Facility Agent shall, pay:
 - (i) the Former Cocom Fees (to the extent that invoices have been submitted 5 Business Days prior to the Proposed Restructuring Effective Date) in accordance with the Funds Flow Statement;
 - (ii) to each applicable Adviser an amount equal to its outstanding invoices (as set out in the Funds Flow Statement) excluding any Transaction Fees and shall provide evidence of payment of such invoices to the Advisers as soon as available;
 - (iii) to the Group Company Administrators and the Group Company Deed Administrators an amount equal to their outstanding invoices for fees, costs and expenses (as approved in accordance with the AFF Documents and the Budget and Oversight Protocol and as set out in the

- Funds Flow Statement) and shall provide evidence of payment of such invoices to the Group Company Administrators and the Group Company Deed Administrators as soon as available;
- (iv) the processing, arrangement and other fees including the Financing Fee (as set out in the Funds Flow Statement) payable pursuant to the Opcos Finance Documents; and
 - (v) provided that the LTD Payoff Amount is zero, an amount equal to B + C – A (with A, B and C having the meaning given to such terms in the definition of the LTD Payoff Amount) to LTD;
- (g) following the payment of the Opcos Payoff Amount and the amounts specified in Clause 5.9(f), the Opcos Global Facility Agent shall transfer any remaining balance of the Advances to the Central Account (as defined in the Opcos Common Terms Agreement);
- (h) LTD shall pay the Transaction Fees to the AHC Financial Advisers and Perella Weinberg UK Limited;
- (i) as soon as reasonably practicable, the Opcos Global Facility Agent and LTD, as applicable shall provide evidence of the payment of each of the amounts set out in Clauses 5.9(f), (g) and (h); and
- (j) with immediate effect following completion of each of the steps outlined in paragraphs (a) to (h) above, Opcos hereby fully and irrevocably releases and discharges LTD from any and all obligations outstanding in respect of the Opcos Facility Receivable.

5.10 **Restructuring Step 9: Releases and Transfers**

Immediately following completion of Restructuring Step 8, the following shall occur:

- (a) the releases provided pursuant to:
 - (i) clauses 13 (*Release and Discharge of Deed Company Claims*) and 14 (*Release and Discharge of other Claims*) of the LTD DOCA;
 - (ii) clauses 11 (*Release and Discharge of intra-group claims*), 12 (*Release and Discharge of Non-Transferring Subsidiaries*), 13 (*Release and Discharge of Deed Company Claims*) and 14 (*Release and Discharge of other Claims*) of each Related DOCA;
 - (iii) each Group Creditor's Admitted Group Creditor Letter,
 - (iv) clauses 3.3(b) and 4.3(b) of the ATA Deed of Release;
 - (v) clauses 6 of the Intra-Group Debt Deed; and
 - (vi) clause 2 of the Management Debt of Release;

shall become effective in accordance with their terms;

- (b) the Deed of Release shall be dated and become effective in accordance with its terms; and
- (c) the assignments, novations and set offs specified at clauses 3, 4 and 5 of the Intra-Group Debt Deed shall become effective in accordance with their terms.

Immediately following the completion of clauses 5.10(a)-(c), the LTD Legal Advisor shall date and release each of the Additional Protocol Documents.

5.11 **Restructuring Effective Time**

Immediately following completion of Restructuring Step 9, LTD shall promptly notify the Parties and the Advisers in writing of the occurrence of the Restructuring Effective Time (the “**Restructuring Effective Time Notice**”).

5.12 **Steps after the Restructuring Effective Time**

Promptly following the delivery of the Restructuring Effective Time Notice, or earlier if required pursuant to the terms of the LTD Asset Transfer Agreement:

- (a) Opco, on behalf of LTD, shall distribute to each Consent Fee Creditor an amount equal to its entitlement to the Consent Fee (provided, in each case an invoice has been issued if applicable), in satisfaction of LTD’s obligation pursuant to clause 5.1 (*Consent Fee*) of the Voting Support Agreement);
- (b) Opco, on behalf of LTD, shall distribute any outstanding Former CoCom Claims that have not been discharged pursuant to Clause 5.9(f)(i) within 5 Business Days of receipt of an invoice;
- (c) Opco shall procure that the fees payable under the Holdco Fee Letters are paid on or before 5 Business Days following the Restructuring Effective Date;
- (d) Holdco and Opco shall reconstitute their respective boards of directors and management teams in accordance with the terms of the Governance Agreement;
- (e) the shareholder resolutions approving the Holdco Articles of Association and the Opco Articles of Association shall be dated and become effective in accordance with their terms and all relevant filings made;
- (f) if and to the extent that (for any reason), the cash balances held by LTD at the Restructuring Effective Time are in excess of the LTD Cash Reserve (the “**Excess Cash**”), LTD shall make a payment to Opco in an amount equal to the Excess Cash;
- (g) the Restructuring Effective Time Actions shall occur and, upon completion of the final Restructuring Effective Time Action, Opco shall deliver a notice to LTD and the OpCo Global Facility Agent confirming that the Restructuring Effective Time Actions have been satisfied pursuant to clause 9.12 of the LTD Asset Transfer Agreement;

- (h) the Post-Completion Filing Actions shall occur and, upon completion of the final Post-Completion Filing Action, Opco shall deliver a notice to LTD and the Opco Global Facility Agent confirming that the Post-Completion Filing Actions have been satisfied pursuant to clause 9.8 of the LTD Asset Transfer Agreement;
- (i) LTD, acting by the LTD Deed Administrators, shall use reasonable endeavours to (A) obtain the Declaratory Order and (B) insofar as the Declaratory Order has been obtained, shall seek the recognition and enforcement of the Declaratory Order, or shall continue to pursue any steps already taken to recognise and enforce the Declaratory Order, in ongoing proceedings with respect to any Group DOCA Company in each applicable jurisdiction;
- (j) as soon as reasonably practicable, all Holdback Claims will be finally determined and DOCA Creditor Entitlements will be allocated accordingly;
- (k) LTD shall use the portion of the LTD Cash Reserve reserved to redeem Security Interests for that purpose (and for the avoidance of doubt, such portion of the LTD Cash Reserve shall not be used for any other purpose);
- (l) LTD and Opco shall comply with their obligations under the Post-Completion Protocol (including the Transitional Transfer Documents) and the Additional Protocols in accordance with the terms of the LTD Asset Transfer Agreement, the Transitional Transfer Documents and the Additional Protocols;
- (m) if LTD, the Joint Administrators or each of their Affiliates are in possession of any amounts retained by LTD pursuant to the LTD Cash Reserve in connection with the Post RED Budget upon a termination of the LTD DOCA or the administration of LTD and which are no longer required to discharge all of its obligations contemplated by the Post RED Budget, the Joint Administrators shall refund such amounts to Opco as soon as reasonably practicable;
- (n) LTD shall use its reasonable endeavours to procure that any notices required to be delivered pursuant to the Spanish Pledge Release Agreement are delivered promptly following the Restructuring Effective Time;
- (o) LTD shall comply with its obligations under paragraph 5.1.6 of Schedule 2 (Completion Actions) to the Asset Transfer Agreement; and
- (p) LTD shall make a payment to each member of the Former Cocom in an amount equal to their Former Cocom Claim, as detailed in the Funds Flow Statement;.

6. VAT INDEMNITY

- 6.1 On and from the Restructuring Effective Date, the VAT Indemnifying Persons shall, subject to the provisions of this Clause 6, indemnify the VAT Indemnified Persons on a full indemnity basis and hold them harmless against (without double counting) all Losses incurred or suffered by any of them as a result of any claim made arising out

of or in connection with any VAT liability (plus any related interest and penalties that may be levied in addition) including, without limitation, which arises as a result of, or in connection with: (i) the LTD Asset Transfer Agreement; (ii) the transactions contemplated by the Restructuring; (iii) any step contemplated by this Deed; (iv) the VAT Indemnified Persons ceasing to have obligations in respect of any intercompany payables transferred to Opcos and its subsidiaries pursuant to the Restructuring; (v) the failure by the VAT Indemnifying Persons and each of their subsidiaries from time to time to discharge any VAT liability which is chargeable directly or primarily against that entity or LTD (in its capacity as the representative member of NMC VAT Group); (vi) any VAT liabilities of any VAT Indemnified Person or any Share Transfer Company arising prior to the date of the Administration Order; or (vii) any Voluntary Disclosure made by any VAT Indemnified Person after the date of this Deed.

- 6.2 LTD shall procure that each of its Affiliates which is or has been a member of the NMC VAT Group shall promptly notify the Joint Administrators in the event that it becomes aware of a VAT Claim or intends to make a Voluntary Disclosure and Opcos shall procure that each Share Transfer Company shall promptly notify Opcos and Holdco in the event that it becomes aware of a VAT Claim.
- 6.3 If any of the Joint Administrators, Opcos or Holdco becomes aware of a VAT Claim or any VAT Indemnified Person intends to submit a Voluntary Disclosure, the Joint Administrators, Opcos or Holdco (as appropriate) shall promptly notify Opcos, Holdco or the Joint Administrators (as appropriate) of: (i) the basis for such liability (with any such supporting documents or other evidence provided by the relevant Tax Authority as is otherwise reasonably necessary); and (ii) the amount of the relevant VAT liability (including interest and penalties howsoever arising) (the “VAT Payment Amount”) or, if the relevant amount has not yet been ascertained, a reasonable estimate thereof.
- 6.4 If Opcos indemnifies the VAT Indemnified Persons to their reasonable satisfaction against all liabilities, costs, damages or expenses that may be incurred by them in relation thereto, the VAT Indemnified Persons shall take into account all reasonable comments (such comments not to be unreasonably withheld or delayed) made by Opcos or Holdco in writing to the Joint Administrators in relation to any Voluntary Disclosure or for the VAT Indemnified Persons to take reasonable actions made to avoid, dispute, defend, resist, appeal or request a Tax Authority review, or compromise any VAT Claim (including, without limitation, initiating a VAT Dispute).
- 6.5 The Parties agree that any Voluntary Disclosure, VAT Claim and related VAT Dispute shall be conducted on the following basis:
 - (a) the Joint Administrators, Opcos and Holdco shall consult with each other in good faith in relation to what actions to take in relation to any Voluntary Disclosure or VAT Claim (including in order to verify the basis on which it is made) and any related VAT Dispute, it being agreed that LTD (acting by the Joint Administrators) shall be primarily responsible for liaising with the relevant Tax Authority in relation to any Voluntary Disclosure, VAT Claim and any related VAT Dispute unless the relevant VAT liability arises in relation to any transaction undertaken by a Share Transfer Company following

- the Restructuring Effective Date and at such time when: (i) it is not or no longer a member of the NMC VAT Group; and (ii) is no longer considered by the relevant Tax Authority as being joint and severally liable for any VAT liability arising from such transaction with members of the NMC VAT Group;
- (b) the Joint Administrators shall continue to retain their existing tax and legal advisers with respect to any Voluntary Disclosures, VAT Claims or VAT Disputes following the Restructuring Effective Date (or otherwise appoint new advisers as they deem necessary from time to time). Opcos and Holdco shall be entitled to appoint their own advisers with respect to such matters, who will be entitled to receive copies of and review any advice provided to the Joint Administrators;
 - (c) in the event that the relevant parties do not agree on what actions to take in relation to any Voluntary Disclosure, VAT Claim or any related VAT Dispute, they shall (at the cost of Opcos and Holdco) jointly instruct an independent and internationally recognised firm of tax advisers with expertise in VAT Law, which shall act as an expert and not as an arbitrator and their determination shall be final and binding on the parties, save in the case of manifest error;
 - (d) the VAT Indemnifying Persons shall (and shall procure that their Affiliates shall) and the VAT Indemnified Persons shall (and shall procure that their Affiliates shall) promptly provide such information within their possession or under their control that is reasonably requested by the other in relation to any Voluntary Disclosure, VAT Claim or VAT Dispute;
 - (e) if the VAT Indemnifying Persons are in possession of any VAT Records, relevant personnel and expertise, they shall preserve such VAT Records for such period as may be required by law and permit the VAT Indemnified Persons reasonable access to (and, where appropriate, copies of) those VAT Records, relevant personnel and expertise. If any VAT Records come into the possession of the VAT Indemnifying Persons which relate solely to LTD or NMC Holding Ltd (in administration), the relevant VAT Indemnifying Person shall promptly notify the Joint Administrators and deliver such VAT Records to the Joint Administrators on demand;
 - (f) the Joint Administrators, Opcos and Holdco shall keep each other fully informed of all material developments in relation to any Voluntary Disclosure, VAT Claim or VAT Dispute and shall provide each other with copies of all material correspondence and records of other material communications with any relevant Tax Authority, court or tribunal in relation to any Voluntary Disclosure, VAT Claim or VAT Dispute unless such disclosure is: (i) not permitted by applicable law; or (ii) restricted for reasons of legal privilege where such disclosure is not reasonably agreed between the relevant parties as being covered by common interest privilege;
 - (g) the Joint Administrators shall submit to Opcos and Holdco correspondence and documents which they or any VAT Indemnified Person (or any of their Affiliates) intend to submit to any relevant Tax Authority, court or tribunal in relation to any Voluntary Disclosure, VAT Claim or VAT Dispute unless such disclosure is: (i) not permitted by applicable law; or (ii) restricted for reasons

of legal privilege where such disclosure is not reasonably agreed between the relevant parties as being covered by common interest privilege and shall take into account all such reasonable comments as Opco and Holdco may make (such comments not to be unreasonably withheld or delayed) and, so far as possible, no VAT Indemnified Person (or any of its Affiliates) shall arrange a meeting or telephone call with the relevant Tax Authority about any such matter without giving the other reasonable notice thereof and the opportunity to attend such meeting or telephone call;

- (h) the Joint Administrators, LTD, Opco and Holdco agree that: (i) no Voluntary Disclosure shall be submitted; and (ii) no appeal against any determination by any Tax Authority that a VAT liability (including any penalties and interest) is payable by a VAT Indemnified Person shall be issued without the prior written consent of Opco and Holdco (subject to paragraph (i) below, such consent not to be unreasonably withheld or delayed, specifically with respect to any deadlines for lodging such an appeal imposed by the applicable Tax Authority);
 - (i) any withholding of or delay in Opco or Holdco's consent to the submission of a Voluntary Disclosure beyond the date (which shall be notified to Opco and Holdco as soon as is reasonably practicable) on which the Joint Administrators and their advisers (acting reasonably and in good faith) consider it necessary and appropriate for such Voluntary Disclosure to be submitted based on their course of dealings with the relevant Tax Authority shall not be considered reasonable for the purposes of paragraph (h) above, provided that the Joint Administrators have otherwise complied with this Clause 6.5 in relation to such Voluntary Disclosure; and
 - (j) no VAT Indemnified Person (or any of its Affiliates) shall make any settlement, admission of liability, agreement or compromise in relation to any VAT Claim without the prior written consent of Opco and Holdco (such consent not to be unreasonably withheld or delayed).

6.6 The VAT Indemnified Persons shall not be obliged to take any action under this Clause 6 in respect of any Voluntary Disclosure, VAT Claim or VAT Dispute if:

- (a) Opco or Holdco does not request the VAT Indemnified Persons to take any action under this Clause 6 or fails to indemnify the VAT Indemnified Persons to their reasonable satisfaction in relation thereto; or
- (b) to do so would in the relevant VAT Indemnified Person's opinion (acting reasonably and in good faith) be materially detrimental to the commercial, financial or tax position of such VAT Indemnified Person.

6.7 The VAT Indemnifying Persons shall pay the applicable VAT Indemnified Persons an amount equal to the VAT Payment Amount by no later than the later of: (i) 15 days before the last date on which the VAT Payment Amount can be paid without incurring interest or penalties (as specified by the Joint Administrators as soon as is reasonably practicable); and (ii) 20 Business Days after receipt of notification by the VAT Indemnifying Persons of the intended Voluntary Disclosure or VAT Claim (setting out details of the VAT Payment Amount and reasonable particulars of the matter to

which it relates) under Clause 6.2 provided that if, in the course of an appeal, a successful application is made to the relevant Tax Authority to postpone the date on which the relevant VAT liability (and any interest and penalties) is due (without any payment on account being required), the due date for paying the VAT Payment Amount shall be the date on which the requirement for payment ceases to be postponed and the VAT liability becomes payable.

- 6.8 The VAT Indemnifying Persons shall pay any VAT Payment Amount directly to the relevant Tax Authority following the reasonable request of the VAT Indemnified Persons and having provided evidence reasonably satisfactory to the VAT Indemnifying Persons that the relevant Tax Authority has agreed to such an arrangement, such payment to be made no earlier than the date on which VAT Payment Amount would have been paid under Clause 6.7.
- 6.9 The indemnity contained in Clause 6.1 shall not cover any liability if and to the extent that:
 - (a) the relevant liability has been satisfied on or before the Restructuring Effective Date;
 - (b) a relief, allowance, credit, exemption or set-off or right to repayment or payment is available to the relevant VAT Indemnified Person in respect of the relevant VAT liability (and any interest and penalty); or
 - (c) the relevant liability is caused by fraud, gross negligence or wilful misconduct of the Joint Administrators or Deed Administrators.
- 6.10 Where any VAT Indemnifying Person has actually paid an amount to any VAT Indemnified Person under Clause 6.1 and any VAT Indemnified Person (or any of its Affiliates) recovers from a person that is not a VAT Indemnified Person (or any of its Affiliates) any amount in respect of the same VAT liability (and any interest and penalty), the Joint Administrators shall notify Opcos and Holdcos as soon as reasonably practicable and account to Opcos for the lesser of: (i) the amount actually recovered less any Losses reasonably suffered or incurred by the VAT Indemnified Persons in recovering such amount; and (ii) the amount paid by the relevant VAT Indemnifying Person under Clause 6.1.
- 6.11 Where a VAT Indemnifying Person has received a refund, relief, allowance, credit, exemption or set off or right to repayment or payment from a Tax Authority which properly relates to a VAT liability (including any interest and penalty) of a VAT Indemnified Person for which the VAT Indemnifying Persons are liable under Clause 6.1 then Opcos shall notify the Joint Administrators as soon as reasonably practicable and (to the extent permitted by law) account to the VAT Indemnified Persons for such amounts, provided that the liability of the VAT Indemnifying Persons under Clause 6.1 shall be reduced accordingly.
- 6.12 On and from the Restructuring Effective Date and for so long as LTD is a member of the NMC VAT Group, if the VAT Indemnifying Persons intend to take any steps to add or remove any entities from the NMC VAT Group, they shall consult with LTD and shall take into account all reasonable comments as LTD may make (such

comments not to be unreasonably withheld or delayed) in deciding what steps (if any) to take in relation thereto.

- 6.13 For the avoidance of doubt, Holdco is only party to the provisions of this Clause 6 in order to benefit from consultation rights in relation to any Voluntary Disclosure, VAT Claim or VAT Dispute and shall have no liability under this Clause 6.

7. REPRESENTATIONS

- 7.1 Each Party other than the Group Creditors represents and warrants to the other Parties on the date of this Deed and as at the Restructuring Effective Time:

- (a) it is duly incorporated (if a corporate person) or duly established and validly existing under the law of its jurisdiction of incorporation or formation;
- (b) it has the power to enter into, exercise its rights under, perform and deliver, and has taken all necessary action to authorize its entry into, performance and delivery of this Deed and other Restructuring Documents to which it is a party;
- (c) the obligations expressed to be assumed by it under the Restructuring Documents to which it is (or will on or before the Restructuring Effective Time be) a party are legal, valid, binding and enforceable obligations subject to the Reservations;
- (d) the entry into and performance by it, and the transactions contemplated by, this Deed and the Restructuring Documents to which it is (or will on or before the Restructuring Effective Time be) a party do not and will not conflict with:
 - (i) any agreement, mortgage, bond or other instrument or treaty to which it is a party, or which is binding upon it or any of its assets;
 - (ii) its constitutional documents; or
 - (iii) any law, regulation or official or judicial order applicable to it; and
- (e) all acts, conditions and things required to be done, fulfilled and performed in order:
 - (i) to enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it in this Deed and the Restructuring Documents to which it is (or will on or before the Restructuring Effective Time) a party;
 - (ii) to ensure that the obligations expressed to be assumed by it in this Deed and the Restructuring Documents to which it is (or will on or before the Restructuring Effective Time be) a party,

have been done, fulfilled and performed and are in full force and effect.

8. PROVISIONS APPLICABLE TO THE RESTRUCTURING

8.1 Termination

- (a) Subject to Clause 8.2 (*Survival*), this Deed shall terminate:
- (i) automatically if the Restructuring Effective Time has not occurred by the Longstop Date;
 - (ii) immediately following notice from the Joint Administrators or the Majority RID Financiers to the other Parties to this Deed where:
 - (A) following good faith discussions between the Joint Administrators, the Majority RID Financiers and the AFF Financiers, it is agreed between such parties that the Restructuring Effective Time cannot reasonably be expected to occur as envisaged by the DOCAs, the Voting Support Agreement and this Deed; or
 - (B) the LTD DOCA is terminated in accordance with its terms prior to the occurrence of the Restructuring Effective Time.
- (b) Subject to Clause 8.2 (*Survival*), in the event that this Deed is terminated the Parties agree:
- (i) this Deed shall be construed as if it had never become effective and the rights and obligations of the Group Creditors under the Restructuring Documents shall not be effective and shall not remain in full force and effect;
 - (ii) that any of the Restructuring Steps contemplated or actions taken under this Deed will be deemed not to have been completed or taken and shall have no legal or binding effect and will be deemed to be null and void and to have never occurred and any cash payments paid by a Party (save for any payments made under the Opcos Finance Documents (all payment obligations or rights thereunder being governed exclusively by the Opcos Finance Documents) shall be promptly returned to that Party; and
 - (iii) following termination, to the extent permitted by law, to take such steps as are necessary or desirable to reverse any Restructuring Steps already taken pursuant to this Deed provided that no Party shall be required to incur any material out-of-pocket costs or expenses,

provided that nothing in this clause (b) shall prejudice any obligations incurred by Opcos or any of its Subsidiaries under the Opcos Finance Documents.

8.2 Survival

The rights and obligations of the Parties under Clauses 8.1(b), 8.3 (*Exclusion of liability*), 10 (*Notices*), 12 (*Parties' Rights and Obligations*), 14 (*Remedies and*

Waivers), 15 (Reservation of Rights) and 21 (Governing Law and Jurisdiction) shall survive the termination of this Deed.

8.3 Exclusion of liability

- (a) No Group Creditor (or its Nominated Recipient(s)) shall be entitled to challenge the validity of any act done or omitted to be done in good faith by any of the Advisers, the Group DOCA Companies, each member of the Group, Holdco, Opco, the Administrative Parties and the Ad Hoc Committee (or any of its Affiliates and any of its or their respective officers, directors, employees, partners, shareholders) (the “**Excluded Persons**”) in connection with their actions or omissions pursuant to the provisions of this Deed or the exercise by any of the Excluded Persons in good faith of any power conferred upon them for the purposes of this Deed if exercised in accordance with the provisions of this Deed.
- (b) Subject to the operation of Clause 8.2, no Excluded Person shall be liable for any cost, loss or liability in connection with the DOCAs or this Deed unless such loss is attributable to its wilful misconduct or fraud.
- (c) With respect to the Group Creditors or any other person affected or bound by the DOCAs or this Deed, the Administrative Parties undertake to perform or to observe only such of its covenants or obligations as are specifically set forth in the DOCAs and this Deed. The Administrative Parties shall have only those duties, obligations and responsibilities expressly specified in this Deed and the Restructuring Documents to which they are party and no others shall be implied.
- (d) Nothing in the Revised Administrators’ Proposals, the DOCAs, or this Deed shall impose any obligation on the Administrative Parties to expend its own funds or pay any amount out of its personal assets with respect to any claims made by a Group Creditor as a result of the Administrative Parties taking any of the steps contemplated by this Deed except to the extent that the same arises from the gross negligence, wilful misconduct or fraud of such Parties (as applicable).
- (e) None of the Administrative Parties and/or their respective directors, officers, employees, agents and advisers shall be personally responsible or accountable in damages or otherwise to any Group Creditor or any other person affected or bound by the DOCA or this Deed for any loss, damage or claim incurred by reason of any act or omission performed or omitted by the Administrative Parties in good faith in accordance with this Deed that it reasonably believes to be within the scope of the authority conferred on it by the Restructuring Documents to which they are party.
- (f) None of the Administrative Parties shall be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any Group Creditors or any other person affected or bound by this Deed, with all such liability, if any, being expressly waived by any such persons claiming by, through or under any of the foregoing.

- (g) The Administrative Parties shall at all times be entitled to and may rely on any document notice, consent, order, opinion or certificate given, issued or granted by any person or court that it reasonably believes to be genuine and correct pursuant to any Restructuring Document to which it is party, without being under any obligation to enquire or otherwise determine whether any such notice, consent, order, opinion or certificate is adequate, accurate and/or complete and has been given or granted in accordance with applicable laws or any contractually binding obligation and without being under any responsibility or being under any obligation to validate the legality, effectiveness, completeness, adequacy or enforceability of the Restructuring that is to be implemented as a consequence of the DOCAs and this Deed.
- (h) Nothing in this Deed shall prejudice the rights and entitlements and protections afforded to the Administrative Parties under the Restructuring Documents to which they are party.
- (i) Nothing in this Deed shall restrict, or attempt to restrict, the Joint Administrators from complying with their duties as the Joint Administrators of the Administration Companies and as officers of the Court.
- (j) The Joint Administrators act as agents for the Group DOCA Companies and neither they nor their representatives shall incur any personal liability in any circumstances whatsoever by virtue of this Deed or in relation to the Restructuring or any related matter, claim or statutory process.
- (k) Mount Street Mortgage Servicing Limited acts solely in its role as Holding Period Trustee pursuant to the terms of the Holding Period Trust Documents. It is not a party to any other Restructuring Document other than this Deed and the Holding Period Trust Documents and, accordingly, shall not be required to exercise any rights or perform any obligations under any other Restructuring Document (notwithstanding the terms of such document or any references to Mount Street Mortgage Servicing Limited in such document).

8.4 Application to the Court for directions

Without prejudice to any rights that the Group DOCA Companies might otherwise have in connection with the DOCAs or this Deed or any aspect of them, the Group DOCA Companies and the Administrators shall be entitled to make an application to the Court for directions at any time in connection with any matter arising under or in relation to the DOCAs or this Deed.

8.5 Exercise of discretion

Where, under or pursuant to any provision of this Deed, a matter is to be determined by the Group DOCA Companies, it shall be determined by the Administrators (acting for and on behalf of each Related DOCA Company) or the LTD Deed Administrators (acting for and on behalf of LTD), in their discretion in such manner as they may consider fair and reasonable.

8.6 Payment of Opco Pre-Funding Costs and Indemnity

- (a) The Opcos Global Facility Agent shall within two Business Days of the earlier of (i) a demand by LTD and (ii) one Business Day prior to the Opcos Longstop Date confirm in writing to Opcos and the LTD the amount of Break Costs, Interest accrued during the Pre-Funding Period (the “**Opcos Pre-Funding Costs**”).
- (b) In the event that the Restructuring Effective Date does not occur by the Opcos Longstop Date and subject to the Opcos Global Facility Agent provided the written confirmation required under paragraph (a) above, LTD shall, within two Business Days of the Opcos Longstop Date, pay to the Opcos Global Facility Agent (for and on behalf of each Opcos Finance Party) the Opcos Pre-Funding Costs.
- (c) In the event that the Opcos Longstop Date does not occur by the Opcos Longstop Date, LTD shall within two Business Days of demand, indemnify Opcos for the amount of Opcos Pre-Funding Costs together with any fees, expenses, costs, losses or liabilities, (including for the avoidance of doubt any penalties, default interest or default income or any amounts payable by Opcos under the Opcos Finance Documents) arising directly or indirectly as a result of a failure by LTD to pay the Opcos Pre-Funding Costs in accordance with paragraph (b) above.
- (d) LTD shall make the payment of the Opcos Pre-Funding Costs and any payments required pursuant to paragraph (c) above in AED. If any deductions or withholdings are required by law, or any payments due from LTD are liable for taxation by Opcos or the Opcos Global Facility Agent (as the case may be), LTD shall be liable to pay to Opcos or the Opcos Global Facility Agent (as the case may be) such further sums as shall be required to ensure that the net amount received by Opcos or the Opcos Global Facility Agent (as the case may be) will equal the full amount which would have been received in the absence of any such deductions or withholdings.

9. PROVISIONAL APPOINTMENT OF CERTAIN ADMINISTRATIVE PARTIES

9.1 Appointment of the Holdco Agents

- (a) The Original Financiers appoint the Holdco Agents to act as their agents under and in connection with this Deed and the draft Holdco Finance Documents up to and including the Restructuring Effective Date on a provisional basis pending the execution of the Holdco Finance Documents.
- (b) Following the occurrence of the Restructuring Effective Date, the terms of the Holdco Finance Documents shall govern the appointment, rights and obligations of the Holdco Agents and the provisions of this Clause 9 (*Provisional Appointment of Certain Administrative Parties*), other than Clause 9.7 (*Indemnity to the Holdco Agents*), shall cease to have any effect on the Parties unless expressly stated otherwise in the Holdco Finance Documents.

9.2 Instructions

- (a) The Holdco Agents shall:
 - (i) unless a contrary indication appears in this Deed or the draft Holdco Finance Documents, exercise or refrain from exercising any right, power, authority or discretion vested in it as agent in accordance with any instructions given to it by the Majority RID Financiers;
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above; and
 - (iii) be entitled to rely on any calculation of the "Majority RID Financiers" provided by the Joint Administrators in accordance with Clause 1.4 and shall not be liable to any party for doing so;
- (b) Each of the Holdco Agents shall be entitled to request instructions, or clarification of any instruction, from the Majority RID Financiers as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Holdco Agents may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) The Holdco Agents may refrain from acting in accordance with any instructions of any of Majority RID Financiers until it has received any indemnification that it may in its discretion require for any cost, loss or liability which it may incur in complying with those instructions.
- (d) In the absence of instructions, the Holdco Agents a may act (or refrain from acting) as it considers to be in the best interest of the Original Financiers.
- (e) The Holdco Agents are not authorised to act on behalf of an Original Financier (without first obtaining that Original Financier's) in any legal or arbitration proceedings relating to this Deed or any Restructuring Document.

9.3 Duties of the Holdco Agents

- (a) The Holdco Agents' duties under this Deed and the Holdco Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Holdco Agents shall promptly forward to a Party the original or a copy of any document which is delivered to them for that Party by any other Party.
- (c) The Holdco Agents:
 - (i) shall not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party or any calculation of the Majority RID Financiers carried by the Joint Administrators in accordance with Clause 1.4; and
 - (ii) shall have only those duties, obligations and responsibilities expressly specified in the Deed to which it is expressed to be a party (and no others shall be implied).

9.4 Rights and Discretions

- (a) The Holdco Agents may:
- (i) rely on any representation, communication, notice or document (including, without limitation, any notice given by an Original Financier believed by it to be genuine, correct and appropriately authorised);
 - (ii) assume that:
 - (A) any instructions received by it from the Majority RID Financiers, any Original Financier or any group of them are duly given in accordance with the terms of this Deed; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked;
 - (iii) rely on a certificate from any person;
 - (iv) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (v) to the effect that such person approves of any particular dealing, transaction, step, action or thing,
- as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Holdco Agents may act in relation to this Deed through its officers, employees and agents and the Holdco Agents shall not:
- (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Holdco Agents' gross negligence or wilful misconduct.
- (c) Notwithstanding any other provision of this Deed to the contrary, none of the Holdco Agents are obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (d) Notwithstanding any provision of this Deed, the Holdco Agents are not obliged to expend or risk their own funds or otherwise incur any financial liability in the performance of their duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

9.5 No duty to monitor

The Holdco Agents shall not be bound to enquire:

- (a) as to the performance, default or any breach by any Party of its obligations under this Deed; or
- (b) whether any other event specified in this Deed has occurred.

9.6 Exclusion of liability

- (a) Without limiting paragraph (b) below and without prejudice to any other provision of this Deed excluding or limiting the liability of the Holdco Agents, none of the Holdco Agents will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with this Deed, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with this Deed or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with this Deed; or
 - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) Without prejudice to any provision of this Deed excluding or limiting the Holdco Agents' liability, any liability arising under or in connection with this Deed shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Holdco Agents or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to them at any time which increase the amount of that loss. In no event shall the Holdco Agents be liable for any loss

of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Holdco Agents has been advised of the possibility of such loss or damages.

9.7 Indemnity to the Holdco Agents

- (a) The Original Financiers (other than the Holding Period Trustee) shall (in proportion to its shares of the Agent Indemnity Commitments or, if the Agent Indemnity Commitments are then zero, to its shares of the Agent Indemnity Commitments immediately prior to their reduction to zero) indemnify the Holdco Agents, within three Business Days of demand, against any cost, loss or liability incurred by the Holdco Agents (otherwise than by reason of their gross negligence or wilful misconduct) in acting as agents under this Deed.
- (b) Subject to paragraph (c) below, Holdco shall immediately on demand reimburse the relevant Original Financiers respectively for any payment that the Original Financiers make to the Holdco Agents pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the relevant Original Financiers claims reimbursement relates to a liability of the Holdco Agents.

10. NOTICES

- 10.1 Any communication to be made under or in connection with this Deed shall be made in writing in English and may be made by letter or electronic mail (where provided), or, in the case of the Joint Administrators and/ or Deed Administrators, by posting on the NMC Stakeholder Website.
- 10.2 The contact details of the Parties for all communications under or in connection with this Deed are as identified below, or any substitute contact details as a Party may notify the other Parties by not less than four (4) Business Days' notice:
 - (a) **LTD:** Kirkland & Ellis International LLP, marked for the attention of Partha Kar and Lisa Stevens at email address: nmccore@kirkland.com;
 - (b) **Related DOCA Companies prior to the Restructuring Effective Date:** Kirkland & Ellis International LLP, marked for the attention of Partha Kar and Lisa Stevens at email address: nmccore@kirkland.com;
 - (c) **Related DOCA Companies following the Restructuring Effective Date:** For the attention of the Group General Counsel, c/o NMC Healthcare, 31st Floor, Etihad Towers 3, West Corniche, Abu Dhabi, United Arab Emirates;
 - (d) **the Group Creditors and the Majority RID Financiers:** by notice posted on the NMC Stakeholder Website;

With a copy to: ProjectNeptuneCConly@CliffordChance.com, marked for the attention of Iain White and Nicola Reader;

- (e) **AFF Financier:** Milbank LLP marked for the attention of Yushan Ng and Karen McMaster at email address: nmcta@milbank.com;
 - (f) **Joint Administrators and/ or Deed Administrators:** Richard Fleming and Ben Cairns, at email addresses: rleaming@alvarezandmarsal.com; bencairns@alvarezandmarsal.com; INS_NMCADGM@alvarezandmarsal.com.
 - (g) **Holdco Conventional Facility Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com;
 - (h) **Holdco Global Facility Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com;
 - (i) **Holdco Investment Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com;
 - (j) **Holdco Security Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com;
 - (k) **Opcos Global Facility Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com;
 - (l) **AFF Global Facility Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com; and
 - (m) **any other person:** via the address set forth for that person in any agreement entered into in connection with the DOCAs or this Deed.
- 10.3 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:
- (a) if by letter:
 - (i) delivered in person, when it has been left at the relevant address;
 - (ii) sent by post, four (4) Business Days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address; or
 - (iii) sent by international priority courier delivery, three days after delivery to such courier,

- and, if a particular department or individual is specified as part of its address details provided above, if addressed to that department or individual;
- (b) if by e-mail, when received in legible form; and
 - (c) if by posting to the NMC Stakeholder Website, when uploaded to the NMC Stakeholder Website.
- 10.4 Any notice, approval, consent or other communication under or in connection with this Deed:
- (a) made by the Ad Hoc Committee Advisers or the AFF Financiers Advisers will be deemed to be validly received as if it had been made by the Majority RID Financiers (or any member thereof) or the AFF Financiers, as applicable;
 - (b) to be made to the Majority RID Financiers will be deemed to have been validly received by the Majority RID Financiers if it is delivered to and actually received by the Ad Hoc Committee Advisers in writing by email to:
Email: ProjectNeptuneCConly@CliffordChance.com;
 - (c) to be made to the AFF Financiers will be deemed to have been validly received by the AFF Financiers if it is delivered to and actually received by the AFF Financiers' advisers in writing by email to:
Email: #NMCLN@milbank.com.
- 10.5 The accidental omission to send any notice, written communication or other document in accordance with this Clause 9, or the non-receipt of any such notice by any Group Creditor, shall not affect the provisions of this Deed.
- ## 11. AMENDMENTS AND WAIVERS
- 11.1 Subject to Clauses 11.2 and 11.3 below, the terms of this Deed, including the terms of any of its Schedules, may be amended or waived only with the prior written consent of the LTD Deed Administrators and the Majority RID Financiers.
- 11.2 This Deed may be amended or waived by:
- (a) the LTD Legal Advisers and the Ad Hoc Committee Advisers in respect of any amendments which are necessary or desirable in order to correct any manifest error, to insert the calculation and completion of any commitments, or complete any blanks (including, without limitation any dates, notice provisions, legal entity names, list of parties or signature blocks);
 - (b) the LTD Deed Administrators, the Majority RID Financiers and the Opco Global Facility Agent, to the extent that such amendment or waiver will impose a new obligation or more onerous obligation on the Opco Global Facility Agent;
 - (c) the Required Parties in respect of any non-material or technical amendments which are necessary for the purpose of reflecting the Restructuring Objectives

or the transactions intended to be entered into in order to reflect the Restructuring;

- (d) the LTD Deed Administrators, the Majority RID Financiers and the Opcos Global Facility Agent, to the extent that such amendment or waiver has an effect on the sequencing for or circumstances surrounding the funding of the Opcos Facilities pursuant to the terms of this Deed, or the satisfaction of the conditions precedent thereto, the Opcos Global Facility Agent (acting on the instruction of the Majority Opcos Financiers);
- (e) the Required Parties in respect of any amendments which are required to implement the Restructuring and which would not have an adverse effect on the interests of the Group DOCA Companies or the Group Creditors;
- (f) the parties specified in the applicable consent threshold for an amendment or waiver under a Restructuring Document in respect of an amendment or waiver which materially alters the economic terms of the Restructuring as set out in the Restructuring Documents;
- (g) the Joint Administrators and/or Deed Administrators to the extent that any amendment or waiver affects the rights of the Joint Administrators or the Deed Administrators;
- (h) the Deed Company Advisers and the Ad Hoc Committee Advisers in respect of any non-material amendments agreed with which are required to ensure that they are legal, valid, binding and enforceable upon the parties thereto, provided that such amendments do not have an adverse effect on the interests of the Deed Company or the Group Creditors;
- (i) the Deed Company Advisers and the Ad Hoc Committee Advisers in respect of any amendments required to ensure compliance with any applicable securities law, rules or regulations or any shari'ah principles; and/or
- (j) an individual Group Creditor where such amendment or waiver would have an adverse and disproportionate effect on that particular Group Creditor (other than pursuant to the Claims Determination Process).

- 11.3 If a RID Financier fails to respond to a request for consent pursuant to Clauses 11.1 above within 5 Business Days of that request being made its Holdco Facilities Commitments will not be included (including for the avoidance of doubt in the numerator and denominator) for the purposes of calculating whether the approval of the Majority RID Financiers has been obtained.
- 11.4 The Holdco Global Facility Agent may effect, on behalf of the RID Financiers any amendment or waiver permitted by this Clause 11.

12. PARTIES' RIGHTS AND OBLIGATIONS

- 12.1 The obligations of each Party under this Deed are separate and independent obligations. Failure by a Party to perform its obligations under this Deed shall not affect the obligations of any other Party under this Deed. Unless otherwise provided

in this Deed, no Party is responsible for the obligations of any other Party under this Deed.

- 12.2 If a single legal entity enters into this Deed in more than one capacity, that entity's rights and obligations under this Deed will be separate and independent in each of those capacities. A party may separately enforce its rights under this Deed.
- 12.3 The rights of each Party under or in connection with this Deed are separate and independent rights. Each Party may separately and independently enforce its rights under this Deed.

13. NO DOUBLE RECOVERY

Notwithstanding any other provision of this Deed, the LTD Asset Transfer Agreement or any Restructuring Document, no party shall be entitled to indemnification or reimbursement, to recover damages, obtain restitution or to claim any other compensation at law or in equity more than once in respect of the same loss suffered (whether pursuant to this Deed, the LTD Asset Transfer Agreement or any Restructuring Document).

14. REMEDIES AND WAIVERS

- 14.1 No failure to exercise, nor any delay in exercise, on the part of any Party, any right , power, privilege or remedy under this Deed shall operate as a waiver of any such right, power, privilege or remedy or constitute an election to affirm this Deed.
- 14.2 No election to affirm this Deed on the part of any Party shall be effective unless it is in writing.
- 14.3 No single or partial exercise of any right, power, privilege or remedy shall prevent any further or other exercise of such right, power, privilege or remedy of any other right or remedy.
- 14.4 The rights, power, privilege and remedies provided by this Deed are cumulative and not exclusive of any rights, power, privilege or remedies provided by law.

15. RESERVATION OF RIGHTS

- 15.1 Except as expressly provided in this Deed, this Deed does not modify, amend or waive any Party's rights or obligations under the Voting Support Agreement, any Holdco Finance Document or any other document or agreement, or any Party's rights as creditor of any Group DOCA Company.
- 15.2 The Parties fully reserve any and all of their rights that are unaffected by this Deed.
- 15.3 If this Deed is terminated by any Party for any reason, the rights of that Party against the other Parties to this Deed and those other Parties' rights against the terminating Party shall be fully reserved.

16. SPECIFIC PERFORMANCE

Each Party agrees and acknowledges for the benefit of the other Party that:

- (a) damages may not be an adequate remedy for any breach of the terms of this Deed by any Party; and
- (b) specific performance and/or relief to compel performance are appropriate remedies for any such breach and any such remedies shall not be exclusive but shall be cumulative and in addition to any other remedies available to any Party.

17. FURTHER ASSURANCES

Each Party undertakes to provide such further assistance (at the expense of the Group DOCA Companies) as may be reasonably required to implement the Restructuring (including the transactions contemplated thereunder), provided that any such actions shall be consistent in all material respects with the Restructuring Documents.

18. SUCCESSORS AND ASSIGNS

This Deed is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

19. COUNTERPARTS

This Deed may be executed in any number of counterparts, which may be delivered by electronic mail in portable document format (pdf). This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

20. PARTIAL INVALIDITY

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction:

- (a) neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction shall in any way be affected or impaired; and
- (b) the invalid provision shall be deemed to be replaced with a legal provision that is as close as possible to the original.

21. GOVERNING LAW AND JURISDICTION

- 21.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of the Abu Dhabi Global Market.
- 21.2 The courts of the Abu Dhabi Global Market have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed and/or the Restructuring (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a “Dispute”).

21.3 The Parties agree that the courts of the Abu Dhabi Global Market are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

Schedule 1
The Group DOCA Companies

No.	Company	Registration No.
1.	NMC Healthcare Ltd (in administration) (subject to a deed of company arrangement)	000004210
2.	Bait Al Shifaa Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004236
3.	Eve Fertility Center Ltd (in administration) (subject to a deed of company arrangement)	000004206
4.	Fakih IVF Fertility Center Ltd (in administration) (subject to a deed of company arrangement)	000004224
5.	Fakih IVF Ltd (in administration) (subject to a deed of company arrangement)	000004220
6.	Grand Hamad Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004238
7.	Hamad Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004209
8.	NMC Provita International Medical Center Ltd (in administration) (subject to a deed of company arrangement)	000004240
9.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004225
10.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004245
11.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004237
12.	NMC Royal Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004197
13.	NMC Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004217
14.	NMC Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004241
15.	New Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004214

No.	Company	Registration No.
16.	New Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004216
17.	New Medical Centre Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004253
18.	New Medical Centre Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004255
19.	New Medical Centre Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004228
20.	New Medical Centre Trading Ltd (in administration) (subject to a deed of company arrangement)	000004218
21.	NMC Trading Ltd (in administration) (subject to a deed of company arrangement)	000004233
22.	New Pharmacy Company Ltd (in administration) (subject to a deed of company arrangement)	000004230
23.	New Sunny Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004202
24.	NMC Royal Family Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004243
25.	NMC Royal Womens Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004235
26.	Reliance Information Technology Ltd (in administration) (subject to a deed of company arrangement)	000004234
27.	Sharjah Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004239
28.	Sunny Al Buhairah Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004199
29.	Sunny Al Nahda Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004232
30.	Sunny Dental Centre Ltd (in administration) (subject to a deed of company arrangement)	000004198
31.	Sunny Halwan Speciality Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004204

No.	Company	Registration No.
32.	Sunny Maysloon Speciality Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004205
33.	Sunny Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004231
34.	Sunny Sharqan Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004203
35.	Sunny Specialty Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004200

Schedule 2
Holdco Common Terms Agreement

EXECUTION VERSION

**NMC HOLDCO SPV LTD
AS THE COMPANY**

**ABU DHABI COMMERCIAL BANK PJSC
AS GLOBAL AGENT**

**ABU DHABI COMMERCIAL BANK PJSC
AS CONVENTIONAL FACILITY AGENT**

AND

**ABU DHABI COMMERCIAL BANK PJSC
AS INVESTMENT AGENT**

COMMON TERMS AGREEMENT

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THIS COMMON TERMS AGREEMENT is dated _____ 2022

BETWEEN:

- (1) **NMC HOLDCO SPV LTD**, a limited liability company incorporated under the laws of the Abu Dhabi Global Market, United Arab Emirates, with its registered office at c/o Walkers Professional Services (Middle East) Limited, 2462ResCowork01, 24th Floor, Al Sila Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates and company registration number 000005914) (the "**Company**");
- (2) **THE FINANCIAL INSTITUTIONS** listed in Part I (*Original Conventional Lenders*) of Schedule 1 (*The Original Financiers*) (the "**Original Conventional Lenders**");
- (3) **THE FINANCIAL INSTITUTIONS** listed in Part II (*Original Participants*) of Schedule 1 (*The Original Financiers*) (the "**Original Participants**");
- (4) **ABU DHABI COMMERCIAL BANK PJSC** as facility agent of the Conventional Finance Parties (other than the Global Agent) (the "**Conventional Facility Agent**");
- (5) **ABU DHABI COMMERCIAL BANK PJSC** as investment agent of the Islamic Financing Parties (other than the Global Agent) (the "**Investment Agent**");
- (6) **ABU DHABI COMMERCIAL BANK PJSC** as global agent of the Finance Parties (the "**Global Agent**"); and
- (7) **ABU DHABI COMMERCIAL BANK PJSC** as security agent for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Acceleration Event" means any notification from the Global Agent to the Company in accordance with Clause 18.10 (*Acceleration*).

"Acceptable Bank" means a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB- or higher by S&P Global Ratings, a division of S&P Global Inc. or Fitch Ratings Ltd or Baa3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency.

"Accounting Principles" means generally accepted accounting principles in the UAE, including IFRS.

"Accruals" has the meaning given to it in the Holding Period Trust Deed.

"ADGM" means the Abu Dhabi Global Market, Abu Dhabi, UAE.

"ADGM Courts" means the courts of the ADGM established pursuant to Abu Dhabi Law No.4 of 2013.

"ADGM Security Agreements" means

- (a) the Holdco ADGM Security Agreement; and
- (b) the Investment Agent ADGM Security Agreement.

"Administrative Costs" means any administrative fees, costs or expenses payable by or on behalf of the Company including the amounts payable to any corporate service provider of the Company, any member of the board of directors of the Company, any MIP Payments, any professional advisers or auditors, and, following the occurrence of an Exit Event, any amounts payable in connection with the winding up, liquidation or dissolution of the Company, including any amounts of VAT or other taxes payable thereon.

"Agency Fees" means any fees, costs or expenses payable by or on behalf of the Company to an Agent, the Security Agent or the Holding Period Trustee under the Transaction Documents.

"Admitted Group Claims" has the meaning set out in the LTD DOCA.

"Admitted Group Creditor Letter" has the meaning set out in the LTD DOCA.

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"Agent" means the Global Agent, the Conventional Facility Agent and the Investment Agent.

"Agent Indemnity Commitments" means the Total Commitments excluding any Commitments held by the Holding Period Trustee.

"Asset Transfer Agreement" has the meaning given to it in the Restructuring Implementation Deed.

"Assignment Agreement" means an agreement substantially in the form set out in Schedule 4 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Business Day" means, unless specified as otherwise in this Agreement, a day on which banks are open for general business in Abu Dhabi, Dubai and London and in relation to a day (other than a Friday) on which payments are to be made in dollars under the Transaction Documents, New York.

"Cash Pay Interest" has the meaning given to it in the Conventional Facility Agreement.

"Charged Property" means all of the assets of the Company which from time to time are, or are expressed to be, the subject of the Transaction Security.

"Cash Waterfall" means the waterfall of payments set out in Clause 13.2 (*Cash Waterfall*).

"Code" means the US Internal Revenue Code of 1986.

"Collection Account" means a Shari'a compliant or non-interest bearing account held in the name of the Company:

- (a) identified in a letter between the Company and the Global Agent as the Collection Account; and
- (b) from which no withdrawals may be made by the Company except as contemplated by the Transaction Documents.

"Commitment" means:

- (a) a Conventional Commitment; and
- (b) an Islamic Financing Commitment.

"Confidential Information" means all information relating to the Company, the Group, the Transaction Documents or a Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Transaction Documents or a Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 35 (*Confidential Information*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

For the avoidance of doubt, no information provided to Unrestricted Financiers shall be deemed to be Confidential Information.

"Confidentiality Undertaking" means a confidentiality undertaking substantially in the current recommended form of the Loan Market Association or in any other form agreed between the Company and the Global Agent.

"Contribution" has the meaning given to it in the Investment Agency Agreement.

"Contributions Outstanding" has the meaning given to it in the Investment Agency Agreement.

"Conventional Commitment" means, in respect of a Conventional Lender, its Commitment under and as defined in the Conventional Facility Agreement.

"Conventional Lender" means:

- (a) an Original Conventional Lender; or
- (b) any person which becomes a Party as a Conventional Lender in accordance with Clause 5.2 (*Re-allocation of Commitments*) or Clause 19 (*Changes to the Financiers*),

which, in each case, has not ceased to be a Conventional Lender or a Party in accordance with the terms of the Conventional Finance Documents.

"Conventional Facility" means the dollar term loan facility made available under the Conventional Finance Documents as described in Clause 2.1 (*The Conventional Facility*).

"Conventional Facility Agreement" means the USD 1,885,747,323 term facility agreement dated on or around the date of this Agreement between, amongst others, the Company, the Conventional Facility Agent and the Original Conventional Lenders.

"Conventional Finance Document" means:

- (a) this Agreement;
- (b) the Conventional Facility Agreement;
- (c) any Fee Letter relating to the Conventional Facility or the Conventional Finance Parties; and
- (d) any other document designated as such by the Conventional Facility Agent and the Company.

"Conventional Finance Party" means the Global Agent, the Conventional Facility Agent and the Conventional Lenders.

"Declaration of Trust" means a declaration of trust dated on or about the date of this Agreement in respect of certain shares in NMC Opco granted by the Company in favour of the Investment Agent.

"Default" means:

- (a) an Event of Default; or
- (b) any event or circumstance specified in Clause 18 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Transaction Documents, or a combination of any of the foregoing) be an Event of Default.

"Defaulting Financier" means any Financier:

- (a) which has otherwise rescinded or repudiated a Transaction Document; or
- (b) with respect to which an Insolvency Event has occurred and is continuing.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"Determined Indemnity Cover" has the meaning given to it in the Asset Transfer Agreement.

"Determined Indemnity Cover Amount" means, in relation to an Indemnity Determination Event, the amount of the "Indemnity Cover" determined pursuant to such Indemnity Determination Event.

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by the Transaction Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Transaction Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Transaction Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Distribution Date" has the meaning given to it in paragraph (a) of Clause 13.2 (*Cash Waterfall*) of this Agreement.

"Eligible Institution" means any Financier or other bank, financial institution, trust, fund or other entity selected by the Company.

"End Date" has the meaning given to it in the Asset Transfer Agreement.

"Enhanced Confidential Information" means Confidential Information provided to Supervising Financiers under the terms of any Transaction Document or otherwise other than Reporting Financier Information.

"EPM" has the meaning given to it in the LTD DOCA.

"EPM Administrators" means Richard Fleming and Benjamin Cairns of Alvarez & Marsal Europe LLP.

"EPM Entitlements" has the meaning given to it in the LTD DOCA.

"EPM Re-Run" means each re-run of the EPM pursuant to Clause 5.1 (*EPM Re-Run*).

"Event of Default" means any event or circumstance specified as such in Clause 18 (*Events of Default*).

"Exercise Notice" has the meaning given to it in the Purchase Undertaking or the Sale Undertaking (as applicable).

"Exercise Price" has the meaning given to it in the Purchase Undertaking or the Sale Undertaking (as applicable).

"Exit Event" means the occurrence of an NMC Holdco Refinancing, an NMC Opco Listing, an NMC Opco Merger or an NMC Opco Sale.

"Extension Request" means a request from the Company substantially in the form set out in Schedule 2 (*Form of Extension Request*) in relation to the extension of the Final Maturity Date.

"Facility" means the Conventional Facility or the Islamic Financing Facility.

"Facility Office" means:

- (a) in respect of a Financier, the office or offices notified by that Financier to the Global Agent in writing on or before the date it becomes a Financier (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

"Facility Representative" means:

- (a) in respect of the Conventional Facility, the Conventional Facility Agent; and
- (b) in respect of the Islamic Financing Facility, the Investment Agent.

"FATCA" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

- (a) in relation to a "**withholdable payment**" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "**passthru payment**" described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

"FATCA Deduction" means a deduction or withholding from a payment under a Transaction Document required by FATCA.

"FATCA Exempt Party" means a Party that is entitled to receive payments free from any FATCA Deduction.

"Fee Letter" means any fee letter entered into by reference to this Agreement between a Finance Party and the Company setting out any of the fees referred to in Clause 8 (*Fees*).

"Final Maturity Date" means, subject to Clause 6.3 (*Extension option*), the date falling 60 months after the date of this Agreement, provided that, following the occurrence of an Exit Event which is a Novated Exit Event and the application of amounts standing pursuant to the Collection Account in accordance with paragraph (b) of Clause 13.2 (*Cash Waterfall*) of this Agreement, the Final Maturity Date shall be deemed to be the End Date.

"Finance Parties" means the Global Agent, the Security Agent, the Conventional Finance Parties and the Islamic Financing Parties.

"Financial Adviser" means any:

- (a) independent internationally recognised investment bank;
- (b) independent internationally recognised accountancy firm; or
- (c) other independent internationally recognised professional services firm which is regularly engaged in providing valuations of businesses or financial assets or, where applicable, advising on competitive sales processes.

"Financial Indebtedness" means any indebtedness for or in respect of:

- (a) moneys borrowed (and any Shari'a compliant financing arrangement) and debit balances at banks or other financial institutions;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument or any other Shari'a compliant financing arrangement which has the same commercial effect;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);

- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Final Maturity Date or are otherwise classified as borrowings under the Accounting Principles;
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 180 days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing;
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

"Financier" means a Conventional Lender or a Participant, as the context requires.

"Financier Schedule" means the certified schedule provided by the Company to the Global Agent, the Conventional Facility Agent and the Investment Agent on the Restructuring Effective Date specifying the Commitments of each Financier.

"Governance Agreement" means the governance agreement dated on or about the date of this Agreement and made between, among others, the Company and the Financiers (other than the Holding Period Trustee).

"Group" means the Company and its Subsidiaries.

"Group DOCA" has the meaning set out in the LTD DOCA.

"Holdback Creditors" has the meaning given to it in the LTD DOCA.

"Holdco ADGM Security Agreement" means the ADGM law governed security agreement dated on or around the date of this Agreement granted by the Company in favour of the Security Agent in respect of all the assets of the Company.

"Holdco First Supplemental Sale and Purchase Agreement" has the meaning given to it in the Restructuring Implementation Deed.

"Holding Period Trust Deed" means the holding period trust deed dated on or about the Restructuring Effective Date, and made between, among others, the Company and the Global Agent.

"Holding Company" means, in relation to a person, any other person, in respect of which it is a Subsidiary.

"Holding Period Trustee" means Mount Street Mortgage Servicing Limited in its capacity as Holding Period Trustee pursuant to the Holding Period Trust Deed.

"IFRS" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"Impaired Agent" means an Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Transaction Documents by the due date for payment;
- (b) it otherwise rescinds or repudiates a Transaction Document;
- (c) (if it is also a Financier) it is a Defaulting Financier under paragraph (a) of the definition of **"Defaulting Financier"**; or
- (d) an Insolvency Event has occurred and is continuing with respect to that Agent;

unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within three Business Days of its due date; or
- (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

"Income Amount" means the Income Cash Amount, the Income PIK Amount and the Income Variable Amount.

"Income Cash Amount" has the meaning given to it in the Service Agency Agreement.

"Income Period" has the meaning given to it in the Service Agency Agreement.

"Income PIK Amount" has the meaning given to it in the Service Agency Agreement.

"Income Variable Amount" has the meaning given to it in the Service Agency Agreement.

"Increased Cost" means:

- (a) a reduction in the rate of return from a Facility or on a Finance Party's (or any of its Affiliates') overall capital;
- (b) an additional or increased cost (excluding, in relation to an Islamic Financing Party only, any costs of funding or opportunity costs); or
- (c) a reduction of an amount due and payable under any Transaction Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Transaction Document.

"Increased Majority Reporting Financiers" means a Reporting Financier or Reporting Financiers whose Participations aggregate more than 66½ per cent. of the Total Reporting Financier Commitments (or, if the Total Reporting Financier Commitments have been reduced to zero, aggregated more than 66½ per cent. of the Total Reporting Financier Commitments immediately prior to that reduction).

"Indemnity Account" means a Shari'a compliant or non-interest bearing account held in the name of the Company:

- (a) identified in a letter between the Company and the Global Agent as the Indemnity Account;
- (b) from which no withdrawals may be made by the Company except as contemplated by the Transaction Documents; and
- (c) is an Acceptable Holding Account (as defined in the Asset Transfer Agreement).

"Indemnity Cover Settlement Process" has the meaning given to it in the Asset Transfer Agreement.

"Indemnity Determination Event" means:

- (a) the determination of the amount of "Determined Indemnity Cover" (as defined in the Asset Transfer Agreement) in accordance with the Indemnity Cover Settlement Process at any time after the date of the Novation Documents; and
- (b) the determination of the amount of the "Updated Determined Indemnity Cover" (as defined in the Asset Transfer Agreement) following the receipt of an Updated Administrators' Proposal in accordance with the terms of the Asset Transfer Agreement.

"Industrial Competitor" means any:

- (a) person whose primary business is substantially similar or in competition to that carried out by the NMC Group (which is the business of the provision of healthcare services);
- (b) any Affiliate of any such person; or
- (c) is otherwise under common control, ownership or management of such a person,

provided that a bank or financial institution or independent debt fund or equivalent investment vehicle falling within paragraphs (b) or (c) above shall be deemed not to be an Industrial Competitor if:

- (i) it is a bank or other financial institution or a bona fide debt fund or investment vehicle that is engaged in making, purchasing, holding or

otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business; and

- (ii) no personnel involved with the equity investments of the relevant Industrial Competitor or Affiliate thereof, as applicable:
 - (A) makes (or has the right to make or participate with others in making) any debt investment decisions; or
 - (B) has access to any information (other than information publicly available) relating to the NMC Group or any entity that forms a part of the NMC Group's business including their subsidiaries.

"Insolvency Officeholder" means a liquidator, provisional liquidator, administrator, administrative receiver, receiver, receiver or manager, compulsory or interim manager, nominee, supervisor, trustee, conservator, guardian or other similar officer in respect of the Company or in respect of any arrangement, compromise or composition with any creditors or any equivalent or analogous officer under the law of any jurisdiction.

"Insolvency Proceedings" means any winding-up, dissolution or administration (whether by court action or otherwise) of the Company and shall be construed so as to include any equivalent or analogous proceedings under the law of any jurisdiction including the seeking of liquidation, winding-up, reorganisation, dissolution, administration (whether by court action or otherwise), arrangement, adjustment, protection or relief of debtors.

"Insolvency Event" in relation to an entity means that the entity:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:

- (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
- (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Interest Period" has the meaning given to it in the Conventional Facility Agreement.

"Investment Agency Agreement" means the investment agency agreement dated on or about the date of this Agreement and made between, amongst others, the Investment Agent, the Original Participants and the Company.

"Investment Agent ADGM Security Agreement" means the ADGM law governed security agreement dated on or around the date of this Agreement granted by the Investment Agent in favour of the Security Agent in respect of its interest in the shares in NMC Opco.

"Islamic Financing Commitment" means, in respect of a Participant, its Commitment under and as defined in the Investment Agency Agreement.

"Islamic Financing Facility" means the Islamic facility made available under the Islamic Financing Transaction Documents as described in Clause 2.2 (*The Islamic Financing Facility*).

"Islamic Financing Party" has the meaning given to it in the Investment Agency Agreement.

"Islamic Financing Transaction Document" means:

- (a) this Agreement;

- (b) the Investment Agency Agreement;
- (c) the Master Sale and Purchase Agreement;
- (d) any Supplemental Sale and Purchase Agreement;
- (e) the Service Agency Agreement;
- (f) the Purchase Undertaking;
- (g) the Sale Undertaking;
- (h) a Sale Agreement;
- (i) the Declaration of Trust;
- (j) any Fee Letter relating to the Islamic Financing Facility or the Islamic Financing Parties;
- (k) an Exercise Notice; and
- (l) any other document designated as such by the Investment Agent and the Company.

"Legal Reservations" means

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under applicable limitation laws (including, without limitation, the Limitation Acts), the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered to the Global Agent under Clause 4 (*Deemed Utilisation*).

"Loan" has the meaning given to it in the Conventional Facility Agreement.

"Limitation Acts" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

"LTD Administrators" has the meaning given to it in the Restructuring Implementation Deed.

"LTD DOCA" means the deed of company arrangement executed by NMC Healthcare Ltd (in administration) (subject to deed of company arrangement) pursuant to Chapter

8 of Part 1 of the Insolvency Regulations for the purpose of implementing the Restructuring.

"Majority Conventional Lenders" has the meaning given to the term "Majority Lenders" in the Conventional Facility Agreement.

"Majority Financiers" means a Financier or Financiers whose Participations aggregate 66½ per cent. or more of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated 66½ per cent. or more of the Total Commitments immediately prior to that reduction).

"Majority Participants" has the meaning given to it in the Investment Agency Agreement.

"Majority Reporting Financiers" means a Reporting Financier or Reporting Financiers whose Participations aggregate more than 50 per cent. of the Total Reporting Financier Commitments (or, if the Total Reporting Financier Commitments have been reduced to zero, aggregated more than 50 per cent. of the Total Reporting Financier Commitments immediately prior to that reduction).

"Majority RID Financiers" has the meaning given to it in the Restructuring Implementation Deed.

"Management Incentive Plan" has the meaning given to it in the Governance Agreement.

"Margin" means:

- (a) in relation to Cash Pay Interest or Income Cash Amount, 0.5 per cent. per annum; and
- (b) in relation to PIK Interest or Income PIK Amount, 2.0 per cent. per annum.

"Master Sale and Purchase Agreement" means the master sale and purchase agreement to be entered into between the Investment Agent as purchaser (as agent of the Participants) and the Company as seller.

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole;
- (b) the ability of the Company to perform its obligations under the Transaction Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Transaction Documents or the rights or remedies of any Finance Party under any of the Transaction Documents.

"Material Company" means the Company or NMC Opc.

"Minimum Cash Balance" means an amount equal to USD100,000.

"MIP Payments" means any amounts payable by the Company pursuant to the Management Incentive Plan.

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period or Income Period begins on the last Business Day of a calendar month, that Interest Period or Income Period shall end on the last Business Day in the calendar month in which that Interest Period or Income Period is to end.

The above rules will only apply to the last Month of any period.

"Moveables Security Agreement" means the UAE law governed moveables security agreement dated on or around the date of this Agreement granted by the Company in favour of the Security Agent in respect of certain moveable assets (including the Collections Account) of the Company.

"NMC Holdco Refinancing" means the refinancing, repayment or other replacement in full of the Facilities including the issuance of other Financial Indebtedness in exchange or replacement for the Facilities.

"NMC Opcos" means NMC Opcos Ltd, a private company limited by shares incorporated and registered in the Abu Dhabi Global Market with registered number 5918, whose registered office is at 2473ResCo-work07, 24 Sila Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates.

"NMC Opcos Default" means a "Default" under and as defined in the NMC Opcos CTA.

"NMC Opcos CTA" means the common terms agreement dated on or about the date of this Agreement between, among others, NMC Opcos as the company and Abu Dhabi Commercial Bank PJSC as global agent.

"NMC Opcos Facilities" means the "Facilities" under and as defined in the NMC Opcos CTA.

"NMC Opcos Finance Documents" means the "Finance Documents" under and as defined in the NMC Opcos CTA.

"NMC Opcos Group" means NMC Opcos and each of its Subsidiaries from time to time.

"NMC Opcos Listing" means a successful application being made for the admission of the entire share capital of NMC Opcos to trading on a recognised stock exchange or other similar market.

"NMC Opcos Merger" means an amalgamation, demerger, merger, consolidation or corporate reconstruction where the surviving entity of that amalgamation, demerger, merger, consolidation or corporate reconstruction is NMC Opcos.

"NMC Opcos Sale" means the sale of all or substantially all of the assets of NMC Opcos whether in a single transaction or a series of related transactions.

"Nominating Financier" means each Reporting Financier:

- (a) whose Commitments (when aggregated with the Commitments of its Affiliates and Related Funds) represent more than 10 per cent. of the Total Commitments; and/or
- (b) has elected to nominate one or more directors of the Company in accordance with clause 4.4 of the Governance Agreement,

in each case, to the extent that the Commitments of the Reporting Financier (or its Affiliates or Related Funds) have not been cancelled, reduced or transferred by it under this Agreement such that the Commitments of the Reporting Financier (when aggregated with the Commitments of its Affiliates and Related Funds) fails to meet the relevant threshold.

"Non-Consenting Financier" has the meaning given to it in Clause 34.6 (*Replacement of Financier*).

"Non-Submitting Creditors" has the meaning given to it in the Holding Period Trust Deed.

"Novated Exit Event" means an Exit Event pursuant to which Novation Documents are entered into between the Company and relevant third parties in respect of the Novated Indemnities.

"Novated Indemnities" has the meaning given to it in the Asset Transfer Agreement.

"Novated Indemnity Cover Amount" means, in relation to a Novated Exit Event, the amount of the "Indemnity Cover" (as defined in the Asset Transfer Agreement) set out in the Novation Documents entered into in connection with such Novated Exit Event.

"Novation Documents" has the meaning given to it in the Asset Transfer Agreement.

"Old NMC Group" means the NMC Healthcare Limited (in administration) and its Subsidiaries.

"Original Financier" means the Original Conventional Lenders and the Original Participants.

"Original Jurisdiction" means the jurisdiction under whose laws the Company is incorporated as at the date of this Agreement.

"Participant" means:

- (a) an Original Participant; or
- (b) any person which becomes a Party as an Participant in accordance with Clause 5.2 (*Re-allocation of Commitments*) or Clause 19 (*Changes to the Financiers*),

which, in each case, has not ceased to be a Participant or a Party in accordance with the terms of the Islamic Financing Transaction Document.

"Participation" means:

- (a) in respect of a Conventional Lender, the aggregate for the time being of its share in the Loans; and
- (b) in respect of a Participant, the aggregate for the time being of its share in the Contributions Outstanding.

"Participation Purchase Transaction" means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment, Contribution or amount outstanding under this Agreement.

"Party" means a party to this Agreement.

"Payment Date" means any of:

- (a) the last day of an Interest Period; and
- (b) the last day of an Income Period.

"PIK Interest" has the meaning given to it in the Conventional Facility Agreement.

"Priority Holdco Financial Indebtedness" has the meaning given to it in Clause 5.3 (*Priority Holdco Financial Indebtedness*).

"Purchase Price" has the meaning given to it in the Master Sale and Purchase Agreement.

"Purchase Transaction" has the meaning given to it in the Master Sale and Purchase Agreement.

"Purchase Transaction Date" has the meaning given to it in the Master Sale and Purchase Agreement.

"Purchase Undertaking" means the purchase undertaking dated on or about the Purchase Transaction Date provided by the Company in favour of the Investment Agent.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

"Reallocated Amount" means, on a Payment Date, the difference between:

(a) in respect of the Conventional Commitments:

- (i) the amount of Conventional Commitments held by the Holding Period Trustee on such Payment Date; and
- (ii) the amount of Conventional Commitments which would need to be held by the Holding Period Trustee on that Payment Date in order for it to transfer Conventional Commitments to:
 - (A) each Holdback Creditor and Non-Submitting Creditor which has elected to participate in the Conventional Facilities pursuant to the Admitted Group Creditor Letter signed by it; and/or
 - (B) each Conventional Lender which is a Reallocated Group Creditor,

in accordance with paragraph (d)(ii) of Clause 5.1 (*EPM Re-run*); and

(b) in respect of the Islamic Financing Commitments, the amount calculated pursuant to Clause 5.2(b) of this Agreement.

"Reallocated Group Creditors" has the meaning given to it in the Holding Period Trust Deed.

"Re-Allocation Conditions" has the meaning given to it in Clause 5.1 (*EPM Re-Run*).

"Related DOCAs" has the meaning set out in the LTD DOCA.

"Relevant Assets" has the meaning given to it in the Master Sale and Purchase Agreement.

"Relevant Jurisdiction" means, in relation to the Company:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated; and
- (c) any jurisdiction where it conducts its business.

"Relevant Term Assets" has the meaning given to it in the Service Agency Agreement.

"Replacement Financier" has the meaning given to it in Clause 34.6 (*Replacement of Financier*).

"Reporting Financier" means any Financier other than the Holding Period Trustee which is not an Unrestricted Financier.

"Reporting Financier Commitment" means the Commitment of a Reporting Financier.

"Reporting Financier Information" has the meaning given to it in the Governance Agreement.

"Representative" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"Requisite Determined Indemnity Amount" means, in relation to an Indemnity Determination Event, an amount equal to the Total Commitments outstanding at such time less an amount equal to the Determined Indemnity Cover Amount in respect of such Indemnity Determination Event.

"Requisite Novated Indemnity Amount" means, at the time of a Novated Exit Event, an amount equal to the Total Commitments outstanding at such time less an amount equal to the Novated Indemnity Cover Amount.

"Restricted Party" means any individual or entity that is:

- (a) listed on, or owned or controlled (as such terms, including any applicable ownership and control requirements, are defined and construed in the applicable Sanctions laws and regulations or in any official guidance in relation to such Sanctions laws and regulations) by a person listed on, a Sanctions List;
- (b) a government of a Sanctioned Country;
- (c) an agency or instrumentality of, or an entity directly or indirectly owned or controlled by, a government of a Sanctioned Country;
- (d) resident, organised or located in, operating from, or incorporated under the laws of, a Sanctioned Country, or any individual or entity directly or indirectly owned or controlled by that individual or entity;
- (e) otherwise a target of Sanctions, or with whom it would be a breach of any applicable Sanctions for any Finance Party or any affiliate of a Finance Party to deal; or
- (f) an entity that the Company is aware (having made due enquiry) is acting on behalf of any of the persons listed in paragraphs (a) to (e) above, for the purpose of evading or avoiding, or having the intended effect of or intending to evade or avoid, or facilitating the evasion or avoidance of any Sanctions.

"Restructuring" means the proposed restructuring of the financial indebtedness of NMC Healthcare Ltd (in administration) and certain of its direct and indirect subsidiaries.

"Restructuring Effective Date" has the meaning given to it in the Restructuring Implementation Deed.

"Restructuring Effective Date Conditions Precedent" has the meaning given to it in the Restructuring Implementation Deed.

"Restructuring Implementation Deed" means the restructuring implementation deed entered into in connection with the LTD DOCA.

"Sale Agreement" has the meaning given to it in the Purchase Undertaking or the Sale Undertaking, as the case may be.

"Sale Undertaking" means the sale undertaking dated on or about the Purchase Transaction Date provided by the Investment Agent in favour of the Company.

"Sanctioned Country" means any country, region or other territory that is, or whose government is, subject to a general export, import, financial or investment embargo under any Sanctions, or is the subject of Sanctions broadly prohibiting dealings with such government, country or territory.

"Sanctions" means economic or financial sanctions or trade embargoes or other comprehensive prohibitions against transaction activity pursuant to anti-terrorism laws or export control laws enacted, imposed, administered or enforced from time to time by any Sanctions Authority.

"Sanctions Authority" means: (a) the US government; (b) the United Nations Security Council; (c) the European Union; (d) the United Kingdom; (e) the United Arab Emirates; (f) the respective governmental institutions of any of the foregoing including, without limitation, Her Majesty's Treasury, the Office of Foreign Assets Control of the US Department of the Treasury, the US Department of Commerce, the US Department of State and any other agency of the US government; or (g) any other relevant sanctions authority.

"Sanctions List" means any of the lists of specifically designated nationals or designated or sanctioned individuals or entities (or equivalent) issued by any Sanctions Authority, each as amended, supplemented or substituted from time to time.

"Secured Obligations" means all present and future obligations and liabilities at any time due, owing or incurred by the Company to any Secured Party under the Transaction Documents, whether actual or contingent and whether incurred solely or jointly and as principal or surety or in any other capacity and whether originally incurred by the Company or by some other person, including the obligations set out in Clause 23.2 (*Parallel debt*).

"Secured Parties" means each Finance Party from time to time party to this Agreement and any Receiver or Delegate.

"Securities Act" means the US Securities Act of 1933, as amended.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Service Agency Agreement" means the service agency agreement dated on or about the date of this Agreement and made between the Company as agent and the Investment Agent.

"Shari'a Illegality Event" has the meaning given to it in the Purchase Undertaking.

"Subsidiary" means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

"Super Majority Reporting Financiers" means a Reporting Financier or Reporting Financiers whose Participations aggregate more than 75 per cent. of the Total Reporting Financier Commitments (or, if the Total Reporting Financier Commitments have been reduced to zero, aggregated more than 75 per cent. of the Total Reporting Financier Commitments immediately prior to that reduction).

"Supervising Financiers" means any Reporting Financier which:

(a) is not a Nominating Financier and:

- (i) has elected to be Supervising Financier by notice to the Company, the Global Agent and the relevant Facility Representative; and
- (ii) has Commitments which represent 5 per cent. or more of the Total Commitments; and/or has the top 10 largest Commitment of any single Financier; or

(b) is a Nominating Financier,

in each case, to the extent that the Reporting Financier's Commitments have not been cancelled, reduced or transferred by it under this Agreement such that the Commitments of the Reporting Financier fail to meet the relevant threshold.

"Supplemental Sale and Purchase Agreement" means a supplemental sale and purchase agreement to be entered into between the Investment Agent as purchaser (as agent of the Participants) and the Company as seller pursuant to the Master Sale and Purchase Agreement.

"Surplus Cover" has the meaning given to it in the Asset Transfer Agreement.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including, in relation to the Conventional Facility, any penalty or commission payable in connection with any failure to pay or any delay in paying any of the same).

"Total Commitments" means the Total Conventional Commitments and the Total Islamic Financing Commitments, being USD 364,252,143 as at the date of this Agreement.

"Total Conventional Commitments" has the meaning given to it in the Conventional Facility Agreement.

"Total Islamic Financing Commitments" has the meaning given to it in the Investment Agency Agreement.

"Total Reporting Financier Commitments" means the aggregate of the Reporting Financier Commitments.

"Transaction Documents" means:

- (a) this Agreement;
- (b) the Restructuring Implementation Deed;
- (c) any Conventional Finance Documents;
- (d) any Islamic Financing Transaction Documents;
- (e) the Governance Agreement;
- (f) the Transaction Security Documents; and
- (g) any other document designated as such by the Company and the Global Agent.

"Transaction Security" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

"Transaction Security Documents" means:

- (a) each ADGM Security Agreement;
- (b) the Moveables Security Agreement; and
- (c) any other document designated as such by the Global Agent, the Security Agent and the Company.

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 3 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Company.

"Transfer Date" means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the relevant Agents execute the relevant Assignment Agreement or Transfer Certificate.

"Treasury Transaction" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

"Unpaid Sum" means any sum due and payable but unpaid by the Company under the Transaction Documents.

"Updated Administrators' Proposal" has the meaning given to it in the Asset Transfer Agreement.

"Updated Determined Indemnity Cover" has the meaning given to it in the Asset Transfer Agreement.

"Unrestricted Financier" means any Financier other than the Holding Period Trustee:

- (a) whose Commitments represent less than 0.5 per cent. of the Total Commitments, unless such Financier has elected to become a Reporting Financier by notice to the Company and the Agents and the Company has (in its sole discretion) agreed that such Financier may be a Reporting Financier;
- (b) is an Industrial Competitor, trade counterparty and/or a person engaged in any litigation, arbitration or other dispute with a member of the Group which, if adversely determined, is reasonably likely to have a Material Adverse Effect; and/or
- (c) has elected to be an Unrestricted Financier by notice to the Company, the Global Agent and the relevant Facility Representative,

and, for the avoidance of doubt, a Financier shall be an Unrestricted Financier if it satisfies any one of the above conditions.

"US" means the United States of America, its territories, possessions and other areas subject to the jurisdiction of the United States of America.

"US Person" has the meaning given to it in Rule 902 of Regulation S promulgated under the Securities Act.

"USD" or **"dollars"** means the lawful currency of the US.

"Variable Interest" has the meaning given to it in the Conventional Facility Agreement.

"VAT" means value added tax or any similar tax imposed in any jurisdiction.

1.2 **Construction**

- (a) In each Transaction Document, unless the contrary intention appears, a reference to:
 - (i) an **"Agent"**, the **"Conventional Facility Agent"**, any **"Conventional Lender"**, any **"Finance Party"**, any **"Secured Party"**, any **"Financier"**, the **"Global Agent"**, the **"Investment Agent"**, any **"Participant"**, any **"Party"**, the **"Holding Period Trustee"**, any **"Security Agent"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Transaction Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Transaction Documents;

- (ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Company and the Global Agent or, if not so agreed, is in the form specified by the Global Agent;
 - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
 - (iv) a "**Transaction Document**" or any other agreement or instrument is a reference to that Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (v) a "**group of Financiers**" includes all the Financiers;
 - (vi) "**guarantee**" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
 - (vii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (x) any "**cost**" in respect of an Islamic Financing Party shall be calculated on an actual cost basis excluding any interest, opportunity cost and/or cost of funds;
 - (xi) a provision of law is a reference to that provision as amended or re-enacted from time to time; and
 - (xii) a time of day is a reference to time in the United Arab Emirates.
- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period or an Income Period shall disregard any inconsistency arising from the last day of that Interest Period or Income Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only.

- (d) Unless a contrary indication appears, a term used in any other Transaction Document or in any notice given under or in connection with any Transaction Document has the same meaning in that Transaction Document or notice as in this Agreement.
- (e) A Default (including an Event of Default) is "**continuing**" if it has not been remedied or waived.

1.3 Third party rights

Unless expressly provided to the contrary in a Transaction Document, a person who is not a Party to a Transaction Document may not enforce or enjoy the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") and notwithstanding any term of any Transaction Document, no consent of any third party is required for any amendment (including any release or compromise of any liability) or termination of any Transaction Document.

1.4 Relationship with other Transaction Documents

- (a) The terms of this Agreement override anything in any other Transaction Document to the contrary. If there is any inconsistency between the terms of another Transaction Document and this Agreement, that Transaction Document will be construed as if it has been amended to conform with the terms of this Agreement, except that no provision of this Agreement (or any amendment to this Agreement) shall under any circumstances permit any Islamic Financing Party to:
 - (i) pay, receive, claim or demand the payment of, any interest or any other amounts which are prohibited under the AAOIFI Shari'a Standards (as determined by the Shari'a supervisory board of the Investment Agent); or
 - (ii) undertake or perform any activity or participate in or benefit from any right which is prohibited under the AAOIFI Shari'a Standards (as determined by the Shari'a supervisory board of the Investment Agent).
- (b) A Finance Party has the benefit of any term of a Transaction Document expressed to be in its favour notwithstanding that it is not a party to that Transaction Document.
- (c) If a Transaction Document provides that the Global Agent may exercise any rights or discretions or make any determinations under that Transaction Document, then the Global Agent may exercise such right or discretion or make such determination notwithstanding that it is not a party to that Transaction Document.
- (d) If a Transaction Document provides that the Global Agent must take instructions, make a payment to or on behalf of, or otherwise interact with the Financiers then all such references shall be deemed complied with by the Global Agent if it takes such instructions, makes such payments to or on behalf of, or

otherwise interacts with the Financiers through the relevant Facility Representative.

SECTION 2 **THE FACILITIES**

2. THE FACILITIES

2.1 The Conventional Facility

Subject to the terms of the Conventional Finance Documents, the Conventional Lenders shall be deemed to have made available to the Company a term loan facility in an aggregate amount equal to the Total Conventional Commitments.

2.2 The Islamic Financing Facility

Subject to the terms of the Islamic Financing Transaction Documents, the Participants shall be deemed to have made available to the Company the Islamic Financing Facility in an aggregate amount equal to the Total Islamic Financing Commitments.

2.3 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Transaction Documents are several. Failure by a Finance Party to perform its obligations under the Transaction Documents does not affect the obligations of any other Party under the Transaction Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Transaction Documents.
- (b) The rights of each Finance Party under or in connection with the Transaction Documents are separate and independent rights and any debt arising under the Transaction Documents to a Finance Party from the Company is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt or right owing to that Finance Party under the Transaction Documents and, for the avoidance of doubt, any part of a Loan, Contribution, or any other amount owed by the Company which relates to a Finance Party's participation in a Facility or its role under a Transaction Document (including any such amount payable to an Agent on its behalf) is a debt owing to that Finance Party by the Company.
- (c) A Finance Party may, except as specifically provided in the Transaction Documents, separately enforce its rights under or in connection with the Transaction Documents.

3. PURPOSE

3.1 Purpose

The Company shall apply all amounts deemed to have been incurred by it under the Facilities in the manner contemplated in the Restructuring Implementation Deed.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to the Transaction Documents.

4. DEEMED UTILISATION

4.1 Conditions of availability

- (a) The Parties acknowledge that the Restructuring Effective Date Conditions Precedent will be deemed satisfied or waived by the Majority RID Financiers in the manner contemplated in the Restructuring Implementation Deed.
- (b) Once the Majority RID Financiers have confirmed to the Global Agent that the Restructuring Effective Date Conditions Precedent have been satisfied or waived in accordance with the terms of the Restructuring Implementation Deed, the Global Agent shall notify the Company, the Conventional Facility Agent, the Investment Agent, the Financiers and the LTD Administrators promptly in writing upon the Majority RID Financiers providing such confirmation.
- (c) The Financiers authorise (but do not require) the Global Agent to give the notification described in paragraph (b) above. The Global Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 Utilisation – Conventional Facility

The Conventional Facility shall be deemed fully utilised on the Restructuring Effective Date at the time and in the manner specified in the Restructuring Implementation Deed.

4.3 Purchase Transaction – Islamic Financing Facility

- (a) The Islamic Financing Facility shall be deemed fully utilised on the Restructuring Effective Date following the execution of the Holdco First Supplemental Sale and Purchase Agreement and the Declaration of Trust at the time and in the manner specified in the Restructuring Implementation Deed.
- (b) Following the execution of the Holdco First Supplemental Sale and Purchase Agreement and the Declaration of Trust at the time and in the manner specified in the Restructuring Implementation Deed, the Parties acknowledge that a Purchase Transaction shall be created between the Investment Agent (acting as agent for and on behalf of the Participants) and the Company upon the terms of such Holdco First Supplemental Sale and Purchase Agreement and incorporating the terms and conditions set out in the Islamic Financing Transaction Documents.
- (c) Each Party acknowledges and agrees that time is of the essence in the completion of a Purchase Transaction.

4.4 Right in respect of the Relevant Term Assets

- (a) No Participant nor the Investment Agent shall have any right to cause the sale or other disposition of the Relevant Term Assets other than in accordance with the right given to the Investment Agent in the Purchase Undertaking or Sale Undertaking.

(b) Notwithstanding any term to the contrary in any Islamic Financing Transaction Document, the Investment Agent acknowledges that it, and each Participant acknowledges that the Investment Agent, has no:

- (i) right to exercise any voting rights in respect of the Relevant Term Assets; or
- (ii) right to instructs or require the Company to transfer the registered legal title to the Investment Agent or its nominee,

other than in accordance with this Agreement and the Governance Agreement.

(c) The Company shall re-acquire the Relevant Term Assets in accordance with the terms of the Purchase Undertaking or the Sale Undertaking.

5. EPM

5.1 EPM Re-run

- (a) The Company shall engage the EPM Administrators to re-run the EPM:
 - (i) on the date falling 10 Business Days prior to each of the first, the second and the third anniversary of the Restructuring Effective Date; and
 - (ii) at any other time reasonably requested by the Company.
- (b) The Parties acknowledge that:
 - (i) following each EPM Re-Run, the EPM Entitlements of the Financiers may change;
 - (ii) accordingly the Holding Period Trustee may be required, following such EPM Re-Run, to transfer certain of its Commitments and corresponding Accruals to Holdback Creditors, Non-Submitting Creditors and/or to existing Financiers in their capacity as Reallocated Group Creditors in accordance with the provisions of the Holding Period Trust Deed and the terms of the Transaction Documents; and
 - (iii) in the case of the transfer of Commitments and corresponding Accruals to Holdback Creditors, Non-Submitting Creditors and/or to existing Financiers in their capacity as Reallocated Group Creditors in accordance with paragraph (ii) above, the Holding Period Trustee shall transfer:
 - (A) Conventional Commitments and corresponding Accruals to existing Financiers that are Conventional Lenders; and
 - (B) Islamic Financing Commitments and corresponding Accruals to existing Financiers that are Participants.
- (c) For the avoidance of doubt, none of the Financier's Commitments will be reduced as a result of an EPM Re-Run.

- (d) The Parties further acknowledge that if:
- (i) the Holding Period Trustee is required to transfer a portion of its Commitments and corresponding Accruals pursuant to paragraph (b) above; and
 - (ii) the Conventional Commitments (together with corresponding Accruals) held by the Holding Period Trustee at that time are insufficient to enable the Holding Period Trustee to transfer the requisite amount of Conventional Commitments (together with corresponding Accruals) to:
 - (A) each Holdback Creditor and Non-Submitting Creditor which has elected to participate in the Conventional Facilities pursuant to the Admitted Group Creditor Letter signed by it; and/or
 - (B) each Conventional Lender which is a Reallocated Group Creditor,
- (the "**Re-Allocation Conditions**"), then the Commitments and corresponding Accruals of the Holding Period Trustee may be reallocated in the manner envisaged in Clause 5.2 (*Re-allocation of Commitments*) below.

5.2 Re-allocation of Commitments

- (a) If, following an EPM Re-run, the Holding Period Trustee determines that the Re-Allocation Conditions apply, the Holding Period Trustee shall promptly (and in any event within five Business Days of becoming aware of such Re-Allocation Conditions applying) notify the Global Agent (with a copy to the Conventional Facility Agent and the Investment Agent).
- (b) On the next Payment Date following the notification referred to in paragraph (a) above:
 - (i) the Islamic Financing Commitments of the Holding Period Trustee shall be cancelled in an amount equal to the Reallocated Amount of such Islamic Financing Commitments such that:
 - (A) the Company and the Holding Period Trustee shall no longer be subject to the rights or obligations of a Participant corresponding to the Reallocated Amount of such Islamic Financing Commitments;
 - (B) the Holding Period Trustee shall no longer be (x) a Party as a "Participant" or (y) a party to the Investment Agency Agreement as a "Participant", in each case in respect of such Reallocated Amount of Islamic Financing Commitments, and the Holding Period Trustee and each of the other Finance Parties shall no longer be subject to obligations towards one another and or have the benefit of rights against one another as the Holding Period Trustee and those Finance Parties would have been subject to and/or had the benefit of had the Holding Period Trustee been an

Original Participant in respect of the Reallocated Amount of the Islamic Financing Commitments which are to be cancelled;

- (C) the Commitments of the other Financiers shall continue in full force and effect; and
- (ii) in consideration of the cancellation referred to in paragraph (i) above, the Conventional Commitments of the Holding Period Trustee shall be correspondingly increased in an amount equal to the Reallocated Amount of such Conventional Commitments (the "**Reallocated Commitments**") such that:
 - (A) the Holding Period Trustee shall assume all the obligations of a Conventional Lender corresponding to the Reallocated Commitments;
 - (B) the Company and the Holding Period Trustee shall assume obligations towards one another and/or acquire rights against one another as the Company and the Holding Period Trustee would have assumed and/or acquired had the Holding Period Trustee been an Original Conventional Lender from the Restructuring Effective Date in respect of the Reallocated Amount of the Conventional Commitments that it is to assume;
 - (C) the Holding Period Trustee shall become (x) a Party as a "Conventional Lender" and (y) a party to the Conventional Facility Agreement as a "Lender", in each case in respect of such Reallocated Amount of Conventional Commitments, and the Holding Period Trustee and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as the Holding Period Trustee and those Finance Parties would have assumed and/or acquired had the Holding Period Trustee been an Original Conventional Lender in respect of the Reallocated Amount of the Conventional Commitments which it is to assume;
 - (D) the Commitments of the other Financiers shall continue in full force and effect;
- (iii) the Commitments held by the Holding Period Trustee immediately following the re-allocation pursuant to paragraph (b) above shall be deemed to be fully utilised; and
- (iv) the Accruals corresponding to the Islamic Financing Commitments deemed to have been cancelled pursuant to paragraph (b)(i) above shall be deemed to have accrued in respect of the Reallocated Commitments deemed to have increased pursuant to paragraph (b)(ii) above and shall, for the avoidance of doubt, remain due and payable in accordance with, and subject to, the terms of the Transaction Documents.

- (c) The Parties agree that each of the steps set out in paragraph (b) above shall be deemed to occur simultaneously, such that the Reallocated Amount of Conventional Commitments shall be increased at the same time that the Reallocated Amount of Islamic Financing Commitments is cancelled and no movement of cash shall be required to give effect to such increase and cancellation, which shall instead be effected by way of a series of book entries by the Global Agent and each of the Facility Representatives.
- (d) The Company shall promptly on demand pay the Global Agent, the relevant Facility Representative and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by any of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any cancellation or increase in Commitments under this Clause.

5.3 Priority Holdco Financial Indebtedness

- (a) If:
 - (i) an NMC Opcos Default has occurred and is continuing under and in accordance with the NMC Opcos Finance Documents; and
 - (ii) such NMC Opcos Default can be cured by the provision of additional equity or subordinated loans to NMC Opcos, which will then be applied to prepay the NMC Opcos Facilities; and
 - (iii) the net proceeds will be applied solely for that purpose,

the Company may, by notice to the Global Agent, incur additional financial indebtedness in a maximum aggregate amount of USD250,000,000 (or such higher amount as the Super Majority Reporting Financiers may agree) (the "**Priority Holdco Financial Indebtedness**").
- (b) The Priority Holdco Financial Indebtedness shall be assumed by one or more Supervising Financiers willing to make available such Priority Holdco Financial Indebtedness, and such Supervising Financiers shall be entitled to a right of first refusal, on a pro rata basis, in respect of the provision of such Priority Holdco Financial Indebtedness, provided that such Supervising Financiers shall be permitted to syndicate the Priority Holdco Financial Indebtedness (and shall be permitted to receive payment of a syndication fee in connection with any such syndication).
- (c) The Priority Holdco Financial Indebtedness shall be subject to the following conditions:
 - (i) the Company shall use all commercially reasonable efforts to ensure that any Priority Holdco Financial Indebtedness made available pursuant to a Priority Holdco Financial Indebtedness Increase is made available under an Islamic Financing Facility and a Conventional Facility (taking into account compliance with the terms of the Islamic Financing Transaction Documents);

- (ii) the amount of profit or interest payable in respect of such Priority Holdco Financial Indebtedness shall be no higher than the aggregate of (i) the amount payable in respect of the NMC Opco Facilities, and (ii) 2.5% p.a. (unless such Priority Holdco Financial Indebtedness is offered to all of the Reporting Financiers as part of the syndication process);
- (iii) the final maturity date of the Priority Holdco Financial Indebtedness shall be the same date as the Final Maturity Date; and
- (iv) the financiers of the Priority Holdco Financial Indebtedness shall have no voting rights under this Agreement, save in respect of any matter directly affecting such Priority Holdco Financial Indebtedness.

SECTION 3

REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loans

- (a) The Company shall repay the aggregate Loans in full on the Final Maturity Date.
- (b) The Company may not re-borrow any part of the Conventional Facility which is repaid.

6.2 Payment of Exercise Price

- (a) The Company shall pay the Exercise Price in respect of the Final Maturity Date in accordance with the terms of the Purchase Undertaking.
- (b) The Company may not re-sell to the Investment Agent any part of the Relevant Term Assets which are re-acquired by the Company pursuant to the payment of an Exercise Price other than pursuant to the Transaction Documents.

6.3 Extension option

- (a) The Company may, by delivering an Extension Request in relation to each Facility to the Global Agent (with a copy to the Conventional Facility Agent and the Investment Agent) not less than 20 Business Days prior to the Final Maturity Date, request an extension to the Final Maturity Date, on no more than two occasions, in each case by twelve Months.
- (b) Without prejudice to Clause 38.4 (*Financier consultation*), the Financiers (other than the Holding Period Trustee) shall consult together and act reasonably in considering any Extension Request submitted by the Company with a view to avoiding an insolvent administration or liquidation of the Company, including, without limitation, considering any other steps requested or available for such purposes, including any request to equitise the Facilities.
- (c) The Extension Request shall be unconditional and irrevocable and the extension requested in the Extension Request shall become effective **provided that:**
 - (i) in relation to the first extension, the prior consent of the Majority Reporting Financiers has been obtained (such consent not to be unreasonably withheld); and
 - (ii) in relation to the second extension, the prior consent of the Super Majority Reporting Financiers has been obtained (such consent not to be unreasonably withheld).

7. EARLY PAYMENT AND CANCELLATION

7.1 Mandatory early payment – illegality

- (a) If, in any applicable jurisdiction, it becomes unlawful for a Financier to perform any of its obligations as contemplated by the relevant Transaction Documents or to fund or maintain its participation in any Loan, its Contribution and/or Participation (as applicable) or it becomes unlawful for any Affiliate of a Financier for that Financier to do so:
- (i) that Financier shall (if it is a Conventional Lender) promptly notify the Global Agent (with a copy to the Conventional Facility Agent) upon becoming aware of that event;
 - (ii) that Financier shall (if it is a Participant) promptly notify the Global Agent (with a copy to the Investment Agent) upon becoming aware of that event;
 - (iii) following the notification pursuant to (i) or (ii) above, the Global Agent shall notify the Company of the event; and
 - (iv) to the extent that the Financier's Participation has not been transferred pursuant to Clause 34.6 (*Replacement of Financier*), the Company shall:
 - (A) in the case of Conventional Lender, repay that Conventional Lender's participation in the Loans on the date specified in paragraph (b) below; and
 - (B) in the case of a Participant, prepay that Participant's Participation, on the date specified in paragraph (c) below, by purchasing that Participant's ownership rights and benefit in the Relevant Term Assets pursuant to the terms of the Purchase Undertaking upon exercise by the Investment Agent of its rights under sub-paragraph (b) of clause 2 (*Grant of Rights*) of the Purchase Undertaking.

- (b) The date for repayment or prepayment of a Conventional Lender's share in a Loan under paragraph (a) above will be:
- (i) the last day of the Interest Period of that Loan occurring after the Global Agent has notified the Company pursuant to paragraph (a)(iii) above; or
 - (ii) if earlier, the date specified by the Conventional Lender in the notice delivered to the Global Agent under paragraph (a) above (being no earlier than the last day of any applicable grace period permitted by law) and that Conventional Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.
- (c) The date for early payment of a Participant's Participation under paragraph (a) above will be:
- (i) the last day of the current Income Period; or

- (ii) if earlier, the date specified by the Participant in the notice delivered to the Global Agent under paragraph (a) above (being no earlier than the last day of any applicable grace period permitted by law) and that Participant's corresponding Commitment(s) shall be immediately cancelled in an amount equal to the early payment.

7.2 Voluntary early payment

The Company shall not be permitted to prepay the whole or any part of any Loan or exercise its rights under the Sale Undertaking to make early payments in whole or in part except as otherwise provided in this Agreement.

7.3 Voluntary cancellation

The Company shall not cancel the whole or any part of the Conventional Facility or the Islamic Financing Facility except as otherwise provided in this Agreement.

7.4 Right of cancellation and early payment in relation to a single Financier

- (a) If:
 - (i) any sum payable to any Financier by the Company is required to be increased under paragraph (c) of Clause 9.2 (*Tax gross-up*); or
 - (ii) any Financier claims indemnification from the Company under Clause 9.3 (*Tax indemnity*), clause 7 (*Increased Costs*) of the Conventional Facility Agreement or any provisions relating to increased costs under the Islamic Financing Transaction Documents,

the Company may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the relevant Facility Representative and the Global Agent notice of cancellation of the Commitment(s) of that Financier and its intention to procure the repayment of that Financier's participation in the Loans or exercise its rights under the Sale undertaking in respect of that Financier (as applicable).

- (b) On the last day of each Interest Period or Income Period (as applicable) which ends after the Company has given notice under paragraph (a) above (or, if earlier, the date specified by the Company in that notice), the Company shall repay or settle that Financier's Participation together with all amounts accrued in respect of that Financier's Participation under the Transaction Documents and that Financier's corresponding Commitment(s) shall be immediately cancelled in the amount of the Participations repaid.
- (c) An early payment of Loans or Contributions Outstanding or cancellation of Commitments made under this Clause 7.4 shall be applied in accordance with Clause 28.6 (*Partial payments*) as if references in that Clause to "amounts due but unpaid under the Transaction Documents" were references to "amounts due but unpaid to a Financier pursuant to Clause 7.4 (*Right of cancellation and early payment in relation to a single Financier*)".

7.5 Miscellaneous provisions

- (a) No prepayment or payment of any Exercise Price (as applicable) or cancellation of all or any part of the Commitments shall be permitted except in accordance with the express terms of the Transaction Documents.
- (b) Subject to Clause 5.2 (*Re-allocation of Commitments*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (c) The Company may not re-borrow any part of the Conventional Facility which is prepaid or re-sell to the Investment Agent any part of the Relevant Term Assets which are the subject of an Exercise Price.

SECTION 4 FEES

8. FEES

8.1 Global Agent fee

The Company shall pay to the Global Agent for its own account an agency fee in the amount and manner agreed in a Fee Letter between the Global Agent and the Company.

8.2 Conventional Facility Agent fee

The Company shall pay to the Conventional Facility Agent for its own account an agency fee in the amount and manner agreed in a Fee Letter between the Conventional Facility Agent and the Company.

8.3 Investment Agent fee

The Company shall pay to the Investment Agent for its own account an agency fee in the amount and manner agreed in a Fee Letter between the Investment Agent and the Company.

8.4 Security Agent fee

The Company shall pay to the Security Agent for its own account an agency fee in the amount and manner agreed in a Fee Letter between the Security Agent and the Company.

SECTION 5 ADDITIONAL PAYMENT OBLIGATIONS

9. TAX GROSS-UP AND INDEMNITIES

9.1 General

(a) In this Clause 9:

"Protected Party" means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Transaction Document.

"Tax Credit" means a credit against, relief or remission for, or repayment of, any Tax.

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Transaction Document, other than a FATCA Deduction.

"Tax Payment" means either the increase in a payment made by the Company to a Finance Party under Clause 9.2 (*Tax gross-up*) or a payment under Clause 9.3 (*Tax indemnity*).

"UAE Qualifying Financier" means a Financier (other than a Financier which is a Sub-Participant Financier) which is beneficially entitled (in the case of a UAE Treaty Financier, within the meaning of the relevant UAE Treaty) to a commission payable to that Financier in respect of a Transaction Document by the Company domiciled and/or resident for tax purposes in the UAE and is:

- (i) a Financier (other than a UAE Treaty Financier) which has fulfilled any conditions that must be fulfilled (including the completion of procedural formalities) to obtain full exemption from Tax under the laws of the United Arab Emirates, such that any payment under a Transaction Document may be made by the Company to that Financier without a Tax Deduction; or
- (ii) a UAE Treaty Financier.

"UAE Treaty Financier" means, in relation to a payment under a Transaction Document by the Company domiciled and/or resident for tax purposes in the UAE, a Financier which:

- (i) is treated as a resident of a UAE Treaty State for the purposes of the relevant UAE Treaty and is entitled to the benefit of such UAE Treaty;
- (ii) does not carry on a business in the United Arab Emirates through a permanent establishment (as such term is defined for the purposes of the relevant Treaty) with which that Financier's participation in the relevant Loan or Contribution Outstanding is effectively connected; and

- (iii) fulfils any other conditions which must be fulfilled in order to obtain the full exemption from Tax imposed by the United Arab Emirates on any commission payable to that Financier in respect of an advance under a Finance Document under the relevant UAE Treaty and under domestic law (including the completion of procedural requirements necessary for the Company to make such payments to that Financier without a Tax Deduction).

"UAE Treaty State" means a jurisdiction having a double taxation agreement (a "UAE Treaty") with the United Arab Emirates which makes provision for full exemption from Tax imposed by the United Arab Emirates on commission payments.

- (b) Unless a contrary indication appears, in this Clause 9 a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

9.2 Tax gross-up

- (a) The Company shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) If the Company becomes aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) or a Financier becomes so aware in respect of a payment payable to that Financier, the Company or the Financier (as applicable) must promptly notify:
 - (i) in the case of a Tax Deduction relating to the Conventional Facility, the Conventional Facility Agent; and
 - (ii) in the case of a Tax Deduction relating to the Islamic Financing Facility, the Investment Agent.

If the Conventional Facility Agent or the Investment Agent receives such notification, it must promptly notify the Global Agent and the Company. If the Global Agent receives such notification from a Financier it shall notify each other Agent and the Company.

- (c) If a Tax Deduction is required by law to be made by the Company, the amount of the payment due from the Company shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Arab Emirates, if on the date on which the payment falls due:
 - (i) the payment could have been made to the relevant Financier without a Tax Deduction if the Financier had been a UAE Qualifying Financier, but on that date that Financier is not or has ceased to be a UAE Qualifying Financier other than as a result of any change after the date it became a Financier under this Agreement in (or in the interpretation,

- administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
- (ii) the relevant Financier is a UAE Qualifying Financier (or would be a UAE Qualifying Financier following the completion of any relevant procedural formalities) and the Company is able to demonstrate that the payment could have been made to the Financier without the Tax Deduction had that Financier complied with its obligations under paragraph (h) below.
- (e) If the Company is required to make a Tax Deduction, the Company must make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
 - (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company shall deliver to the Global Agent for the Finance Party entitled to the payment a valid original certificate of deduction of tax or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
 - (g) A Financier and the Company shall co-operate in promptly completing or assisting with the completion of any procedural formalities necessary for the Company or to obtain authorisation to make that payment without a Tax Deduction and maintain that authorisation where an authorisation expires or otherwise ceases to have effect.
 - (h) In the event that, as a result of a change in law, any payment by the Company to a Financier hereunder becomes or will become subject to any Tax under the laws of the UAE, such Financier and the Company shall, to the extent legally permissible, enter into good-faith discussions with a view to mitigating or otherwise minimising the impact of such Tax on the arrangements set out herein. Such good-faith discussions shall be concluded within 28 days of the earlier of: (i) the date on which such change in law is proposed in reasonably sufficient detail for mitigating action to be taken; and (ii) the date on which such change becomes law.

9.3 Tax indemnity

- (a) The Company shall (within five Business Days of demand by the Global Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Transaction Document.
- (b) Paragraph (a) above does not apply:
 - (i) with respect to any Tax assessed on a Protected Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in

- which that Finance Party is treated as domiciled and/or resident for tax purposes by the Company (acting reasonably) or (if different), by the relevant tax authority; or
- (B) under the laws of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,
- if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
- (ii) to the extent a loss, liability or cost:
- (A) is compensated for by an increased payment under Clause 9.2 (*Tax gross-up*); or
- (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above must promptly notify the Global Agent of the event which will give, or has given, rise to the claim, following which the Global Agent shall notify the Company.
- (d) A Protected Party shall, on receiving a payment from the Company under this Clause 9.3, notify the Global Agent.

9.4 Tax Credit

If the Company makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Company which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment had not been required to be made by the Company.

9.5 Financier status confirmation

- (a) Each Financier, which is not an Original Financier, shall indicate, in the documentation which it executes on becoming a Party as a Financier which of the following categories it falls in:
- (i) not a UAE Qualifying Financier; or
- (ii) a UAE Qualifying Financier (other than a UAE Treaty Financier); or
- (iii) a UAE Treaty Financier.

- (b) If such a Financier fails to indicate its status in accordance with this Clause 9.5 then that Financier shall be treated for the purposes of this Agreement (including by the Company) as if it is not a UAE Qualifying Financier until such time as it notifies the Global Agent which category applies (and the Global Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, the documentation which a Financier executes on becoming a Party as a Financier shall not be invalidated by any failure of a Financier to comply with this Clause 9.5.

9.6 Stamp taxes

The Company shall pay and, within five Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Transaction Document, provided that this Clause 9.6 shall not apply in respect of any stamp duty, registration or other similar Taxes payable:

- (a) in respect of a voluntary assignment or transfer or sub-participation or sub-contract by a Financier (other than the Holding Period Trustee) of any of its rights or obligations under any Facility, not including, for the avoidance of doubt, any such assignment, transfer, sub-participation or sub-contract carried out when an Event of Default is continuing or any such transfer or assignment pursuant to Clause 11.1 (*Mitigation*) or any assignment or transfer made by the Holding Period Trustee; or
- (b) pursuant or to the extent that such stamp duty, registration or other similar Tax becomes payable upon a voluntary registration made by any Party if such registration is not required by any applicable law or not necessary to evidence, prove, maintain, enforce, compel or otherwise assert the rights of such Party or obligations of any Party under a Transaction Document.

9.7 VAT

- (a) All amounts expressed to be payable under a Transaction Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Transaction Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Transaction Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Transaction Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party (other than the Holding Period Trustee) must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Transaction Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 9.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference that group at such time.
- (e) In relation to any supply made by a Finance Party to any Party under a Transaction Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

9.8 FATCA information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests

for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Transaction Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) Notwithstanding any other provision of this Agreement, the Company shall not be liable for any loss, liability or cost of a Finance Party which arises as a result of any failure by a Finance Party to comply with its obligations under this Clause 9.8, or otherwise arises to a Finance Party as a result of that Finance Party's failure to comply with any information reporting or exchange of information obligations to which such Finance Party is subject.

9.9 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Company and the Global Agent, and the Global Agent shall notify the other Finance Parties.

10. OTHER INDEMNITIES

10.1 Currency indemnity

- (a) If any sum due from the Company under the Transaction Documents (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:
 - (i) making or filing a claim or proof against the Company; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Company shall as an independent obligation, within three Business Days of demand, indemnify each Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Company waives any right it may have in any jurisdiction to pay any amount under the Transaction Documents in a currency or currency unit other than that in which it is expressed to be payable.

10.2 Other indemnities

The Company shall, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by the Company to pay any amount due under a Transaction Document on its due date, including without limitation any cost, loss or liability arising as a result of Clause 25 (*Sharing among the Finance Parties*);
- (c) other than by reason of default or negligence by the relevant Finance Party alone funding, or making arrangements to fund, its participation in a Loan requested by the Company but not made by reason of the operation of any one or more of the provisions of the Conventional Finance Documents;
- (d) a Loan (or part of a Loan) not being prepaid in accordance with the Conventional Finance Documents; or
- (e) payment of an Exercise Price not being made in accordance with the Islamic Financing Transaction Documents.

10.3 Indemnity to the Agents

The Company shall promptly indemnify each Agent against:

- (a) any cost, loss or liability incurred by that Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes to be a Default;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Transaction Documents; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by any Agent (otherwise than by reason of that Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 28.11 (*Disruption to payment systems etc.*) notwithstanding that Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of that Agent) in acting as an Agent under the Transaction Documents.

10.4 Indemnity to the Security Agent

- (a) The Company shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
 - (i) any failure by the Company to comply with its obligations under Clause 12 (*Costs and expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Transaction Documents or by law;
 - (v) any default by the Company in the performance of any of the obligations expressed to be assumed by it in the Transaction Documents; or
 - (vi) acting as Security Agent, Receiver or Delegate under the Transaction Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).

- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 10.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

11. MITIGATION BY THE FINANCIERS

11.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Mandatory early payment – illegality*), Clause 9 (*Tax Gross-Up and Indemnities*), clause 7 (*Increased Costs*) of the Conventional Facility Agreement and any provision relating to increased costs under the Islamic Financing Transaction Documents including (but not limited to) transferring its rights and obligations under the Transaction Documents to an Affiliate or to another Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Company under the Transaction Documents.

11.2 Limitation of liability

- (a) The Company shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 11.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 11.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

12. COSTS AND EXPENSES

12.1 Transaction expenses

The Company shall, promptly on demand, pay each Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) the Transaction Documents and any other documents referred to in the Transaction Documents or in a Transaction Security Document; and
- (b) any other Transaction Documents executed after the date of this Agreement.

12.2 Amendment costs

If:

- (a) the Company requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 28.10 (*Change of currency*),

the Company shall, within three Business Days of demand, reimburse each Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by that Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

12.3 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 10.4 (*Indemnity to the Security Agent*) and this Clause 12 shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Company and the Financiers, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default;
 - (ii) the Security Agent being requested by the Company or the Majority Financiers to undertake duties which the Security Agent and the Company agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Transaction Documents; or
 - (iii) the Security Agent and the Company agreeing that it is otherwise appropriate in the circumstances,

the Company shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Security Agent and the Company fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Company or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Company) and the determination of any investment bank shall be final and binding upon the Parties.

12.4 Enforcement and preservation costs

The Company shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Transaction Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

SECTION 6

CASH WATERFALL AND EXIT

13. CASH SWEEP

13.1 Undertaking to upstream cash

- (a) Subject only to restrictions imposed by applicable law and the terms of the NMC Opco Finance Documents, the Company shall take all steps necessary to procure that all amounts of cash or other monies available to be distributed to the Company from the NMC Opco Group are paid or otherwise distributed to the Company within five Business Days of the date such distribution is declared.
- (b) The Company shall ensure that all amounts of cash received or recovered by it shall be paid into the Collection Account as soon as reasonably practicable after receipt for application in accordance with the Cash Waterfall, provided that the Company shall be permitted to:
 - (i) retain an amount equal to the Minimum Cash Balance in the Collection Account at all times;
 - (ii) access the Collection Account to settle:
 - (A) ad hoc payment obligations incurred by the Company in the ordinary course of its business (including any Administrative Costs and Agency Fees); and
 - (B) any amounts required to settle any payments due to a Financier:
 - (1) pursuant to paragraph (b)(ii) of Clause 7.1 (*Mandatory early payment – illegality*); or
 - (2) following the Investment Agent exercising its rights under the Purchase Undertaking as a result of a Shari'a Illegality Event.

13.2 Cash Waterfall

- (a) Subject to paragraph (b) below, on the first Payment Date after the Restructuring Effective Date and each date falling every three Months thereafter (each, a "**Distribution Date**"), the Company shall, and hereby authorises the Global Agent on its behalf to, apply all amounts of cash held in the Collection Account towards the payment and discharge of the obligations of the Company under the Transaction Documents and the Governance Agreement in the following manner and order of priority:
 - (i) *first*, in or towards payment of all unpaid Administrative Costs;
 - (ii) *secondly*, in or towards payment *pro rata* of any unpaid Agency Fees;
 - (iii) *thirdly*, in or towards payment *pro rata* of any accrued cash interest (including all due and unpaid cash interest, including from previous

interest periods), expected income cash amount (including all due and unpaid income cash amount, including from previous income periods), late payment amount, profit, fee or commission due but unpaid in connection with the Priority Holdco Financial Indebtedness (if any);

- (iv) *fourthly*, if an Acceleration Event is continuing, in or towards payment *pro rata* of any principal amount or exercise price (or any other similar or equivalent amount payable) due but unpaid in connection with the Priority Holdco Financial Indebtedness;
- (v) *fifthly*, in or towards payment *pro rata* of any accrued Cash Pay Interest (including all due and unpaid Cash Pay Interest from previous Interest Periods), Income Cash Amount (including all due and unpaid Income Cash Amount from previous Income Periods), profit, fee or commission due but unpaid under the Transaction Documents, together with all other amounts due and payable under the Transaction Documents at such time;
- (vi) *sixthly*, if no Acceleration Event is continuing, in or towards payment *pro rata* of any principal amount (including any capitalised amounts) or exercise price (or any other similar or equivalent amount payable) due but unpaid in connection with the Priority Holdco Financial Indebtedness;
- (vii) *seventhly*, in or towards prepayment *pro rata* of any principal amount (including any PIK Interest, Income PIK Amount or other capitalised amounts) or Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents) outstanding under the Transaction Documents up to an amount equal to 90 per cent. of the Total Commitments as at the date of such payment; and
- (viii) *eightly*, if no Exit Event has occurred, in or towards payment *pro rata* of any Variable Interest or Income Variable Amount,

provided that, if, following the application of amounts in accordance with paragraph (i) to (a)(iv) above, the amounts standing to the credit of the Collection Account at such time are less than USD 10,000,000, neither the Company nor the Global Agent shall be obliged to apply any further amounts in accordance with paragraph (a)(v) onwards unless the Global Agent determines, in its sole and absolute discretion, that it is not operationally burdensome to make such payment. Any amounts not paid in accordance with this provision shall remain in the Collection Account until the next Distribution Date.

- (b) Promptly following an Exit Event which is a Novated Exit Event, the Company shall, and hereby authorises the Global Agent on its behalf to, apply all amounts standing to the credit of the Collection Account in the following manner and order of priority:

- (i) *first*, in transfer to the Indemnity Account an amount sufficient to ensure that the amount standing to the credit of the Indemnity Account immediately following such transfer is at least equal to the Novated Indemnity Cover Amount;
 - (ii) *secondly*, in accordance with paragraph (a)(i) to (a)(vi) above;
 - (iii) *thirdly*, in or towards prepayment *pro rata* of any principal amount (including any PIK Interest, Income PIK Amount or other capitalised amounts) or Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents) outstanding under the Transaction Documents up to an amount equal to the Requisite Novated Indemnity Amount; and
 - (iv) *fourthly*, in or towards payment *pro rata* of any Variable Interest or Income Variable Amount.
- (c) Following the application of amounts standing to the credit of the Collection Account in accordance with paragraph (b) above, the Company shall not be permitted to access any amounts standing to the credit of the Indemnity Account provided that:
- (i) if an Indemnity Determination Event occurs, the Company shall be permitted to, and hereby authorises the Global Agent on its behalf to, transfer an amount equal to the Surplus Cover in respect of such Indemnity Determination Event to the Collection Account and thereafter apply such amounts in the following manner and order of priority:
 - (A) *firstly*, in accordance with paragraph (a)(i) to (a)(vi) above;
 - (B) *secondly*, in or towards prepayment *pro rata* of any principal amount (including any PIK Interest, Income PIK Amount or other capitalised amounts) or Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents) outstanding under the Transaction Documents up to an amount equal to the Requisite Determined Indemnity Amount; and
 - (C) *thirdly*, in or towards payment *pro rata* of any Variable Interest or Income Variable Amount; and
 - (ii) following the occurrence of the End Date, the Company shall be permitted to, and hereby authorises the Global Agent on its behalf to, transfer all amounts standing to the credit of the Indemnity Account to the Collection Account and thereafter apply such amounts in the following manner and order of priority:
 - (A) *firstly*, in accordance with paragraph (a)(i) to (a)(vi) above;
 - (B) *secondly*, in or towards prepayment *pro rata* of any principal amount (including any PIK Interest, Income PIK Amount or other capitalised amounts) or Exercise Price (or any other similar

- or equivalent amount payable under the Islamic Financing Transaction Documents) outstanding under the Transaction Documents; and
- (C) *thirdly*, in or towards payment *pro rata* of any Variable Interest or Income Variable Amount.
- (d) On an Exit Event which is not a Novated Exit Event, the Company shall, and hereby authorises the Global Agent on its behalf to, apply all amounts standing to the credit of the Collection Account in the following manner and order of priority:
- (i) *first*, in accordance with paragraph (a)(i) to (a)(vi) above;
 - (ii) *secondly*, in or towards prepayment *pro rata* of any principal amount (including any PIK Interest, Income PIK Amount or other capitalised amounts) or Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents) outstanding under the Transaction Documents; and
 - (iii) *thirdly*, in or towards payment *pro rata* of any Variable Interest or Income Variable Amount.
- (e) This Clause will override any appropriation made by the Company.

14. EXIT

14.1 Commencement of Exit process

If the Company has not commenced an Exit within three years following the date of this Agreement, the Global Agent (acting on the instructions of the Majority Reporting Financiers) may at any time require the Company to use commercially reasonable endeavours to pursue an Exit by such means as the Majority Reporting Financiers may at that time determine.

14.2 Consideration on Exit

- (a) Unless the prior written consent of the Global Agent (acting on the instructions of the Super Majority Reporting Financiers) is obtained, the Company shall not (and shall ensure that no other member of the Group will) agree to any Exit Event unless:
- (i) such agreement provides that each Financier is entitled to elect to receive any consideration payable to it following the occurrence of such Exit Event pursuant to the Cash Waterfall in cash (of equivalent value to any non-cash consideration payable, as determined pursuant to paragraph (b) below); and
 - (ii) the cash consideration payable pursuant to such Exit Event is sufficient to discharge all amounts payable pursuant to paragraphs (a)(i) and (a)(ii) of Clause 13.2 (*Cash Waterfall*) and the amounts payable to Financiers who have made the election referred to in paragraph (a)(i) above.

- (b) The cash value of any non-cash consideration shall be determined by reference to a valuation obtained by the Global Agent from a Financial Adviser appointed in connection with such Exit Event.
- (c) If any non-cash consideration is distributed pursuant to Clause 13.2 (*Cash Waterfall*), the extent to which such distribution is treated as discharging the relevant amounts payable in accordance with the Cash Waterfall shall be determined by reference to the cash value of such non-cash consideration determined pursuant to paragraph (b) above.

14.3 **Competitive bid**

No provision of this Agreement or any other Transaction Document shall prevent one or more Financiers from bidding to acquire all or any part of the NMC Opco Group, financing any such bid, or otherwise participating in an Exit in any capacity.

14.4 **Facilitation of winding up of the Company post Exit**

Each Party agrees to use its reasonable endeavours to take any steps necessary to facilitate the release of any residual amounts outstanding under the Transaction Documents following an Exit to be released in a tax-efficient manner in order to permit the solvent and timely winding up of the Company.

SECTION 7 **REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

15. REPRESENTATIONS

15.1 General

The Company on behalf of itself makes the representations and warranties set out in this Clause 15 to each Finance Party.

15.2 Status

- (a) It is a private company limited by shares, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) Each of its Subsidiaries is a private company limited by shares, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (c) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

15.3 Binding obligations

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

15.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Transaction Security do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of the Company; or
- (c) any agreement or instrument binding upon it or NMC Opco or any of its of NMC Opco's assets or constitute a default or termination event (however described) under any such agreement or instrument.

15.5 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction

Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

- (b) No limit on its powers will be exceeded as a result of the borrowing, or otherwise assuming payment obligations under the Islamic Financing Transaction Documents, grant of Security or giving of indemnities contemplated by the Transaction Documents to which it is a party.

15.6 Validity and admissibility in evidence

- (a) All Authorisations required or desirable:
- (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
 - (ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect.

- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect.

15.7 Governing law and enforcement

Subject to the Legal Reservations:

- (a) the choice of governing law of the Transaction Documents will be recognised and enforced in its Relevant Jurisdictions; and
- (b) any judgment obtained in relation to a Transaction Document in the jurisdiction of the governing law of that Transaction Document will be recognised and enforced in its Relevant Jurisdictions.

15.8 Insolvency

- (a) No:
- (i) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 18.6 (*Insolvency proceedings*); or
 - (ii) creditors' process described in Clause 18.7 (*Creditors' process*),

has been taken or, to the knowledge of the Company, threatened in relation to a Material Company.

- (b) None of the circumstances described in Clause 18.5 (*Insolvency*) applies to a Material Company.

15.9 No default

- (a) No Event of Default and, on the date of this Agreement, no Default is continuing or is reasonably likely to result from:
 - (i) the making of any Loan, payment of any Purchase Price or the sale by the Company of the Relevant Assets pursuant to the Islamic Financing Transaction Documents; or
 - (ii) the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or NMC Opco or to which its or NMC Opco's assets are subject which has or is reasonably likely to have a Material Adverse Effect.

15.10 No misleading information

Save as disclosed in writing to the Global Agent prior to the date of this Agreement:

- (a) any factual information provided in writing for the purposes of evaluating and entering into this Agreement (the "**Information**") by or on behalf of any member of the Group to any Finance Party including pursuant to the DOCAs was true and accurate in all material respects as at the date of the relevant report or document containing the Information or (as the case may be) as at the date the information is expressed to be given;
- (b) any financial projection or forecast contained in the Information has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;
- (c) the expressions of opinion or intention provided by or on behalf of a member of the Group for the purposes of any Information were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;
- (d) no event or circumstance has occurred or arisen and no information has been omitted from the Information and no information has been given or withheld by or on behalf of any member of the Group that results in that information, opinions, intentions, forecasts or projections contained in the Information being untrue or misleading in any material respect; and
- (e) all other written information provided by any member of the Group (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

15.11 Taxation

- (a) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax where such late filing or late payment could reasonably be expected to have a Material Adverse Effect.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes such that a liability of, or claim against, the Company and which could reasonably be expected to have a Material Adverse Effect, is reasonably likely to arise.
- (c) It is not resident for Tax purposes outside the UAE or the Emirate of Abu Dhabi.
- (d) It is not subject to income Tax in the ADGM and the Emirate of Abu Dhabi.

15.12 Anti-corruption law

Each member of the Group has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

15.13 Security and Financial Indebtedness

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of the Company other than as permitted by this Agreement.
- (b) The Company has no Financial Indebtedness outstanding other than as permitted by this Agreement.

15.14 Ranking

The Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or *pari passu* ranking Security.

15.15 Legal and beneficial ownership

Save as expressly provided for in the Transaction Documents, it and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

15.16 Shares

Save as expressly provided for in the Transaction Documents:

- (a) the shares of NMC Opco which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights;
- (b) the constitutional documents of NMC Opco do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security; and

- (c) there are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of NMC Opc (including any option or right of pre-emption or conversion).

15.17 Holding Company

Except as may arise under or in connection with the Transaction Documents, the Restructuring Implementation Deed or any DOCA, the Company has not traded or incurred any liabilities or commitments (actual or contingent, present or future) other than in the case of the Company acting as a Holding Company of NMC Opc.

15.18 Sanctions

No member of the Group or any of its respective directors or officers or, any of such member of the Group's employees, affiliates, agents or representatives:

- (a) is a Restricted Party;
- (b) has been engaged in any transaction, activity or conduct that would result in it being designated as a Restricted Party;
- (c) is currently engaging in any transaction, activity or conduct that would result in a violation of any Sanctions;
- (d) has received notice of, or is otherwise aware of, any claim, action, suit, proceedings or investigation involving it with respect to any Sanctions; and/or
- (e) is acting on behalf of or at the direction of any Restricted Party in connection with any Facility.

15.19 Shari'a compliance

- (a) It has not relied upon any Finance Party with respect to the compliance of the Islamic Financing Transaction Documents with Shari'a principles.
- (b) To the extent it has considered this necessary, it has sought independent advice from its own advisers specialising in Shari'a principles before entering into the Transaction Documents.

15.20 Times when representations made

All the representations and warranties in this Clause 15 are made by the Company on the date of this Agreement.

16. INFORMATION UNDERTAKINGS

The undertakings in this Clause 16 remain in force from the date of this Agreement for so long as any amount is outstanding under the Transaction Documents or any Commitment is in force.

16.1 Information - miscellaneous

The Company shall supply to the Global Agent (in sufficient copies for all the Financiers, if the Global Agent so requests):

- (a) if at any time there is any material update, change or inaccuracy in relation to the nature, scope or other detail of the Financial Indebtedness incurred by or the Security granted by or in connection with the Company or its assets as set out in the Information or any other information delivered to a Finance Party, details of any such update or change promptly upon becoming aware of them;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it or its assets and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against it and which is reasonably likely to have a Material Adverse Effect; and
- (d) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Company with the terms of any Transaction Security Documents.

16.2 Notification of Default

- (a) The Company shall notify the Global Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly on request by the Global Agent, the Company shall supply to the Global Agent a certificate signed by two members of the board of directors of the Company on its behalf certifying that no Default is continuing (or, if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

16.3 "Know your customer" checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of the Company or the composition of the shareholders of the Company after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Financier of any of its rights and/or obligations under this Agreement to a party that is not a Financier prior to such assignment or transfer,

obliges an Agent or any Financier (or, in the case of paragraph (iii) above, any prospective new Financier) to comply with "know your customer" or similar

identification procedures in circumstances where the necessary information is not already available to it, the Company shall promptly upon the request of an Agent or any Financier supply, or procure the supply of, such documentation and other evidence as is reasonably requested by an Agent (for itself or on behalf of any Financier) or any Financier (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Financier) in order for that Agent, such Financier or, in the case of the event described in paragraph (iii) above, any prospective new Financier to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Transaction Documents.

- (b) Each Financier shall promptly upon the request of an Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by that Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Transaction Documents.

17. GENERAL UNDERTAKING

The undertaking in this Clause 17 remain in force from the date of this Agreement for so long as any amount is outstanding under the Transaction Documents or any Commitment is in force.

- (a) To the extent permitted by law, the Company hereby agrees that it has accepted the Shari'a compliant nature of the Islamic Financing Transaction Documents to which it is a party and further agrees that:
- (i) it shall not claim that any of its obligations under the Islamic Financing Transaction Documents to which it is a party (or any provision thereof) is not compliant with the principles of Shari'a;
 - (ii) it shall not make any claim in any dispute on the basis of Shari'a compliance save where instructed to do so by the Islamic Financing Parties;
 - (iii) it shall not take any steps or bring any proceedings in any forum to challenge the Shari'a compliance of the Islamic Financing Transaction Documents to which it is a party; and
 - (iv) none of its obligations under the Islamic Financing Transaction Documents to which it is a party shall in any way be diminished, abrogated, impaired, invalidated or otherwise adversely affected by any finding, declaration, pronouncement, order or judgment of any court, tribunal or other body that the Islamic Financing Transaction Documents to which it is a party are not compliant with the principles of Shari'a.
- (b) The Company shall notify each Financier of their respective Commitments under the Financier Schedule on the Restructuring Effective Date.

18. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 18 is an Event of Default.

18.1 Non-payment

The Company does not pay on the due date any amount payable pursuant to the Cash Waterfall at the place at and in the currency in which it is expressed to be payable unless:

- (a) the Company has insufficient funds available to pay such amount on its due date in accordance with the Cash Waterfall; or
- (b) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and

payment is made within five Business Days of its due date.

18.2 Anti-corruption law

The Company directly or indirectly uses the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

18.3 Sanctions

The Company:

- (a) lends, contributes or otherwise makes available all or any part of the proceeds of the Facilities, directly or indirectly, to, or for the benefit of, any individual or entity (whether or not related to any member of the Group) for the purpose of funding, financing or facilitating the activities or business of, other transactions with, or investments in, any Restricted Party or in any Sanctioned Country, except to the extent permitted for a person required to comply with Sanctions;
- (b) directly or indirectly funds all or part of any repayment or prepayment of the Facilities out of proceeds derived from any transaction with or action involving a Restricted Party; or
- (c) engages in any transaction, activity or conduct that would violate any Sanctions.

18.4 Cross acceleration

- (a) Any Financial Indebtedness of any Material Company 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).

- (b) Any commitment for any Financial Indebtedness of any Material Company is cancelled or suspended by a creditor of NMC Opco as a result of an event of default (however described).
- (c) No Event of Default will occur under this Clause if the Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (b) above is in aggregate less than US\$10,000,000 (or its equivalent in any other currency or currencies).

18.5 Insolvency

- (a) The Company:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or
 - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness,

provided that, in the case of sub-paragraphs (i) and (ii) above, the Company will not be deemed to be unable to pay their debts as they fall due solely because the Company has insufficient funds available to pay amounts required to be paid on their due date in accordance with the Cash Waterfall.

- (b) The value of the assets of the Company is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Company. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

18.6 Insolvency proceedings

- (a) Any corporate action, legal proceeding or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of the Company;

- (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Company; or
 - (iv) enforcement of any Security over any assets of the Company, or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

18.7 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Company, unless such action is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

18.8 Unlawfulness and invalidity

- (a) It is or becomes unlawful for the Company to perform any of its obligations under the Transaction Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective.
- (b) Any obligation or obligations of the Company under any Transaction Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Financiers under the Transaction Documents.
- (c) Any Transaction Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

18.9 Repudiation and rescission of agreements

The Company (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Transaction Document or any Transaction Security.

18.10 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Global Agent may, and shall if so directed by the Majority Financiers instruct the Conventional Facility Agent and/or the Investment Agent to:

- (a) by notice to the Company:
 - (i) declare that:
 - (A) all or part of the Loans, together with accrued interest and all other amounts accrued or outstanding under the Conventional Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or
 - (B) all or part of the Loans be payable on demand, at which time they shall immediately become payable on demand by the Global Agent on the instructions of the Majority Financiers;
 - (ii) exercise its rights under the Purchase Undertaking in order to declare that all or part of any amounts outstanding under the Islamic Financing Transaction Documents are:
 - (A) immediately due and payable, at which time they shall become immediately due and payable; and/or
 - (B) payable on demand, at which time they shall immediately become payable on demand by the Investment Agent acting on the instructions of the Global Agent on the instructions of the Majority Financiers.
- (b) exercise or direct each Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Transaction Documents.

SECTION 8

CHANGES TO PARTIES

19. CHANGES TO THE FINANCIERS

19.1 Assignments and transfers by the Financiers

Subject to this Clause 19 and to Clause 20 (*Restriction on Participation Purchase Transactions*), a Financier (the "Existing Financier") may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

under any Transaction Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (or, in the case of a transfer by the Holding Period Trustee, to any other Non-Submitting Creditor, Holdback Creditor, Reallocated Group Creditor or to any other party permitted pursuant to the Holding Period Trust Deed) (the "New Financier") if:

- (i) that assignment or transfer is in accordance with the terms of this Clause 19; and
- (ii) the New Financier has acceded to the Governance Agreement as a Financier by executing a Deed of Adherence in accordance with the requirements of the Governance Agreement.

19.2 Company consent

- (a) The consent of the Company is not required for an assignment or transfer by an Existing Financier, unless the assignment or transfer is:
 - (i) to an Industrial Competitor or trade counterparty; or
 - (ii) to a person engaged in any litigation, arbitration or other dispute with a member of the Group or the Old NMC Group which, if adversely determined, is reasonably likely to have a Material Adverse Effect,

unless in each case the assignment or transfer is made by the Holding Period Trustee.

- (b) The consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent 15 Business Days after the Existing Financier has requested it unless consent is expressly refused by the Company within that time.

19.3 Other conditions of assignment or transfer

- (a) Other than assignments or transfers made by the Holding Period Trustee or NMC Health (Jersey) Limited, an assignment or transfer of a Financier's participation in Commitments or Loans (when aggregated with its Affiliates'

and Related Funds' participation being so assigned or transferred at the same time) must be in a minimum amount of USD 1,000,000 or, if less, the Financier's Total Commitments (or such lower amount as the Global Agent may agree in its absolute discretion).

- (b) An assignment will only be effective on:
 - (i) receipt by the Global Agent and, as applicable, the Conventional Facility Agent or the Investment Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Financier (in form and substance satisfactory to the relevant Agents) that the New Financier will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it had been an Original Financier; and
 - (ii) performance by the Global Agent and, as applicable, the Conventional Facility Agent or the Investment Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Financier, the completion of which each Agent shall promptly notify to the Existing Financier and the New Financier.
- (c) A transfer will only be effective if the procedure set out in Clause 19.6 (*Procedure for transfer*) is complied with.
- (d) If:
 - (i) a Financier assigns or transfers any of its rights or obligations under the Transaction Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Company would be obliged to make a payment to the New Financier or Financier acting through its new Facility Office under clause 7 (*Increased Costs*) of the Conventional Facility Agreement and any increased cost provisions in the Islamic Financing Transaction Documents,then the New Financier or Financier acting through its new Facility Office is only entitled to receive payment under those clauses to the same extent as the Existing Financier or Financier acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (d) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of any Facility.
- (e) Each New Financier, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Global Agent and, as applicable, the Conventional Facility Agent or the Investment Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Financier or Financiers in accordance with the Transaction Documents on or prior to the date on which the transfer or assignment becomes effective in accordance with the Transaction

Documents and that it is bound by that decision to the same extent as the Existing Financier would have been had it remained a Financier.

- (f) Each Existing Financier, in connection with an assignment or transfer, confirms that it (i) entered into its participation in Commitments or Loans pursuant to a transaction exempt from registration under the Securities Act and (ii) has at no time engaged in a "general solicitation" or "general advertising" (as such terms are used for purposes of Regulation D promulgated under the Securities Act) or "directed selling efforts" (as that term is defined in Rule 902 of Regulation S promulgated under the Securities Act) with respect to such Commitment or Loan.
- (g) Each New Financier, by executing the relevant Transfer Certificate or Assignment Agreement, confirms that:
 - (i) if it is a US Person or within the United States, (A) it is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act and (B) it is acquiring the Commitment or Loan for its own account, for investment and not with a view to the distribution or resale thereof;
 - (ii) if it is not a US Person, it is not acquiring the Commitment or Loan in the United States or on behalf of a US Person, nor is it funding its acquisition of the Commitment or Loan with funds obtained from a US Person;
 - (iii) it has at no time been the subject of any "general solicitation" or "general advertising" (as such terms are used for purposes of Regulation D promulgated under the Securities Act) or "directed selling efforts" (as that term is defined in Rule 902 of Regulation S promulgated under the Securities Act) with respect to such Commitment or Loan; and
 - (iv) it agrees not to offer, sell, transfer, pledge, hypothecate or otherwise dispose of, directly or indirectly, all or any part of its Commitment or Loan, except in accordance with the registration requirements of the Securities Act and any other applicable securities laws or pursuant to an exemption therefrom.
- (h) Subject to Clause 5.2 (*Re-allocation of Commitments*), any assignment or transfer made by an Participant pursuant to this Clause 19 shall be made:
 - (i) for a price equal to the existing Participant's share in the outstanding Purchase Price; and
 - (ii) on the last day of an Income Period.

19.4 Assignment or transfer fee

- (a) Subject to paragraph (b) below, the New Financier shall, on the date upon which an assignment or transfer takes effect where that New Financier is either a

Conventional Lender or a Participant, pay to the Global Agent (for its own account) a fee of USD3,500.

- (b) No fee is payable pursuant to paragraph (a) above if:
 - (i) the Global Agent agrees that no fee is payable; or
 - (ii) the assignment or transfer is made by an Existing Financier:
 - (A) to an Affiliate of that Existing Financier;
 - (B) to a fund which is a Related Fund of that Existing Financier; or
 - (C) in connection with primary syndication of any Facility;
 - (iii) the assignment or transfer is made by the Holding Period Trustee.

19.5 Limitation of responsibility of Existing Financier

- (a) Unless expressly agreed to the contrary, an Existing Financier makes no representation or warranty and assumes no responsibility to a New Financier for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of the Company;
 - (iii) the performance and observance by the Company of its obligations under the Transaction Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Financier confirms to the Existing Financier and the other Secured Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Company and its related entities in connection with its participation in the Transaction Documents and has not relied exclusively on any information provided to it by the Existing Financier or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of the Company and its related entities whilst any amount is or may be outstanding under the Transaction Documents or any Commitment is in force.

- (c) Nothing in any Transaction Document obliges an Existing Financier to:
 - (i) accept a re-transfer or re-assignment from a New Financier of any of the rights and obligations assigned or transferred under this Clause 19; or
 - (ii) support any losses directly or indirectly incurred by the New Financier by reason of the non-performance by the Company of its obligations under the Transaction Documents or otherwise.

19.6 Procedure for transfer

- (a) Subject to the conditions set out in Clause 19.2 (*Company consent*) and Clause 19.3 (*Other conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Financier and the New Financier. The Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of the Transaction Documents and delivered in accordance with the terms of the Transaction Documents, execute that Transfer Certificate.
- (b) The Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Financier and the New Financier once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Financier.
- (c) Subject to Clause 19.10 (*Pro rata settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Financier seeks to transfer by novation its rights and obligations under the Transaction Documents, the Company and the Existing Financier shall be released from further obligations towards one another under the Transaction Documents and their respective rights against one another under the Transaction Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**");
 - (ii) each of the Company and the New Financier shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Company and the New Financier have assumed and/or acquired the same in place of the Company and the Existing Financier;
 - (iii) each Agent, the Security Agent, the New Financier and the other Financier shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Financier been an Original Financier with the rights and/or obligations acquired or

assumed by it as a result of the transfer, and to that extent each Agent and the Security Agent and the Existing Financier shall each be released from further obligations to each other under the Transaction Documents; and

- (iv) the New Financier shall become a Party as a "Financier".

19.7 Procedure for assignment

- (a) Subject to the conditions set out in Clause 19.2 (*Company consent*) and Clause 19.3 (*Other conditions of assignment or transfer*), an assignment may be effected in accordance with paragraph (c) below when the Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Financier and the New Financier. The Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of the Transaction Documents and delivered in accordance with the terms of the Transaction Documents, execute that Assignment Agreement.
- (b) The Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Financier and the New Financier once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Financier.
- (c) Subject to Clause 19.10 (*Pro rata settlement*), on the Transfer Date:
 - (i) the Existing Financier will assign absolutely to the New Financier its rights under the Transaction Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Financier will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Financier shall become a Party as a "Financier" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Financiers may utilise procedures other than those set out in this Clause 19.7 to assign their rights under the Transaction Documents (but not, without the consent of the Company or unless in accordance with Clause 19.6 (*Procedure for transfer*), to obtain a release by the Company from the obligations owed to the Company by the Financiers nor the assumption of equivalent obligations by a New Financier) **provided that** they comply with the conditions set out in Clause 19.2 (*Company consent*) and Clause 19.3 (*Other conditions of assignment or transfer*).

19.8 Copy of Transfer Certificate or Assignment Agreement to Company

The Global Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Company a copy of that Transfer Certificate or Assignment Agreement.

19.9 Security over Financiers' rights

In addition to the other rights provided to Financiers under this Clause 19, each Financier may, without consulting with or obtaining consent from the Company, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Transaction Document to secure obligations of that Financier including:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Financier as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Financier from any of its obligations under the Transaction Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Financier as a party to any of the Transaction Documents; or
- (ii) require any payments to be made by the Company other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Financier under the Transaction Documents.

19.10 *Pro rata* settlement

- (a) If the Conventional Facility Agent has notified the Conventional Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Financiers and New Financiers then in relation to the Conventional Facility only (in respect of any transfer pursuant to Clause 19.6 (*Procedure for transfer*) or any assignment pursuant to Clause 19.7 (*Procedure for assignment*) by a Conventional Lender, the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Financier up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Financier (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

- (ii) the rights assigned or transferred by the Existing Financier will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Financier; and
 - (B) the amount payable to the New Financier on that date will be the amount which would, but for the application of this Clause 19.10, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 19.10, references to "**Interest Period**" shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Financier which retains the right to the Accrued Amounts pursuant to this Clause 19.10 but which does not have a Commitment shall be deemed not to be a Financier for the purposes of ascertaining whether the agreement of any specified group of Financiers has been obtained to approve any request for a consent, waiver, amendment or other vote of Financiers under the Transaction Documents.

19.11 Terms

In the event of any inconsistency between the provisions of this clause 19 and the provisions of the Holding Period Trust Deed, the provisions of the Holding Period Trust Deed shall prevail.

20. RESTRICTION ON PARTICIPATION PURCHASE TRANSACTIONS

The Company shall not, and shall procure that each other member of the Group shall not, enter into any Participation Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Financier or a party to a Participation Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of "**Participation Purchase Transaction**".

21. CHANGES TO THE COMPANY

The Company may not assign any of its rights or transfer any of its rights or obligations under the Transaction Documents.

SECTION 9 THE FINANCE PARTIES

22. ROLE OF THE GLOBAL AGENT AND OTHERS

22.1 Appointment of the Global Agent

- (a) Each of the Financiers appoints the Global Agent to act as its agent under and in connection with the Transaction Documents.
- (b) Each of the Financiers authorises the Global Agent to:
 - (i) perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Global Agent under or in connection with the Transaction Documents together with any other incidental rights, powers, authorities and discretions; and
 - (ii) execute each Transaction Document expressed to be executed by the Global Agent.
- (c) The Global Agent has only those duties which are expressly specified in the Transaction Documents. Those duties are solely of a mechanical and administrative nature.

22.2 Instructions

- (a) The Global Agent shall:
 - (i) unless a contrary indication appears in a Transaction Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Global Agent in accordance with any instructions given to it by:
 - (A) all Financiers if the relevant Transaction Document stipulates the matter is an all Financier decision;
 - (B) the Majority Reporting Financiers if the relevant Transaction Document stipulates the matter is a Majority Reporting Financier decision;
 - (C) the Increased Majority Reporting Financiers if the relevant Transaction Document stipulates the matter is an Increased Majority Reporting Financier decision;
 - (D) the Super Majority Reporting Financiers if the relevant Transaction Document stipulates the matter is a Super Majority Reporting Financier decision;
 - (E) in all other cases, the Majority Financiers; and

- (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Global Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Financiers (or, if the relevant Transaction Document stipulates the matter is a decision for any other Financier or group of Financiers, from that Financier or group of Financiers) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Global Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Financier or group of Financiers under the relevant Transaction Document and unless a contrary indication appears in a Transaction Document, any instructions given to the Global Agent by the Majority Financiers shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
- (d) The Global Agent may refrain from acting in accordance with any instructions of any Financier or group of Financiers until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Transaction Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Global Agent may act (or refrain from acting) as it considers to be in the best interest of the Financiers.
- (f) The Global Agent is not authorised to act on behalf of a Financier (without first obtaining that Financier's consent) in any legal or arbitration proceedings relating to any Transaction Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

22.3 Duties of the Global Agent

- (a) The Global Agent's duties under the Transaction Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Global Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Global Agent for that Party by any other Party.
- (c) Without prejudice to Clause 19.8 (*Copy of Transfer Certificate or Assignment Agreement to Company*), paragraph (b) above shall not apply to any Transfer Certificate or Assignment Agreement.
- (d) Except where a Transaction Document specifically provides otherwise, the Global Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

- (e) If the Global Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Global Agent is aware of the non-payment of any principal, interest, commission, profit, commitment fee or other fee payable to a Finance Party (other than an Agent or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Global Agent shall have only those duties, obligations and responsibilities expressly specified in the Transaction Documents to which it is expressed to be a party (and no others shall be implied).

22.4 No fiduciary duties

- (a) Nothing in any Transaction Document constitutes the Global Agent as a trustee or fiduciary of any other person.
- (b) Neither the Global Agent shall be bound to account to any Financier for any sum or the profit element of any sum received by it for its own account.

22.5 Business with the Group

The Global Agent may accept deposits from, lend money or provide Islamic facilities to and generally engage in any kind of banking or other business with any member of the Group.

22.6 Rights and discretions

- (a) The Global Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised; and
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Financiers, any Financiers or any group of Financiers are duly given in accordance with the terms of the Transaction Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Global Agent may assume (unless it has received notice to the contrary in its capacity as Global Agent) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 18.1 (*Non-payment*)); and
 - (ii) any right, power, authority or discretion vested in any Party or any group of Financiers has not been exercised.
- (c) The Global Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Global Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Global Agent (and so separate from any lawyers instructed by the Financiers) if the Global Agent in its reasonable opinion deems this to be desirable.
- (e) The Global Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Global Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Global Agent may act in relation to the Transaction Documents through its officers, employees and agents and the Global Agent shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Global Agent's gross negligence or wilful misconduct.
- (g) Unless a Transaction Document expressly provides otherwise the Global Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Global Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Company or the Majority Financiers shall, as soon as reasonably practicable, disclose,
the identity of a Defaulting Financier to the Company and to the other Finance Parties.

- (i) Notwithstanding any other provision of any Transaction Document to the contrary, the Global Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Transaction Document to the contrary, the Global Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

22.7 Responsibility for documentation

The Global Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Global Agent, the Company or any other person in or in connection with any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

22.8 No duty to monitor

The Global Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

22.9 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Transaction Document excluding or limiting the liability of the

Global Agent), the Global Agent will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Transaction Security, unless directly caused by its gross negligence or wilful default;
- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Transaction Security; or
- (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Global Agent) may take any proceedings against any officer, employee or agent of the Global Agent in respect of any claim it might have against the Global Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document and any officer, employee or agent of the Global Agent may rely on this paragraph (b), subject to Clause (i) (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Global Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Transaction Documents to be paid by the Global Agent if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Global Agent for that purpose.

- (d) Nothing in the Transaction Documents shall oblige the Global Agent to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Financier or for any Affiliate of any Financier,

on behalf of any Financier and each Financier confirms to the Global Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Global Agent.

- (e) Without prejudice to any provision of any Transaction Document excluding or limiting the Global Agent's liability, any liability of the Global Agent arising under or in connection with any Transaction Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Global Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Global Agent at any time which increase the amount of that loss. In no event shall the Global Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Global Agent has been advised of the possibility of such loss or damages.

22.10 Financiers' indemnity to the Global Agent

- (a) Each Financier (other than the Holding Period Trustee) shall (in proportion to its share of the Agent Indemnity Commitments or, if the Agent Indemnity Commitments are then zero, to its share of the Agent Indemnity Commitments immediately prior to their reduction to zero) indemnify the Global Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Global Agent (otherwise than by reason of the Global Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 28.11 (*Disruption to payment systems etc.*), notwithstanding the Global Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Global Agent) in acting as the Global Agent under the Transaction Documents (unless the Global Agent has been reimbursed by the Company pursuant to a Transaction Document).
- (b) Subject to paragraph (c) below, the Company shall immediately on demand reimburse any Financier for any payment that Financier makes to the Global Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Financier claims reimbursement relates to a liability of the Global Agent to the Company.

22.11 Resignation of the Global Agent

- (a) The Global Agent may resign and appoint one of its Affiliates as successor by giving notice to the Financiers and the Company.
- (b) Alternatively, the Global Agent may resign by giving 30 days' notice to the Financiers and the Company, in which case the Majority Financiers (after consultation with the Company) may appoint a successor to the Global Agent.
- (c) If the Majority Financiers have not appointed a successor Global Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the resigning Global Agent (after consultation with the Company) may appoint a successor Global Agent.
- (d) If the Global Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Global Agent is entitled to appoint a successor Global Agent under paragraph (c) above, the Global Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Global Agent to become a party to this Agreement as Global Agent) agree with the proposed successor Global Agent amendments to this Clause 22 and any other term of this Agreement dealing with the rights or obligations of the Global Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Global Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Global Agent shall, make available to the successor Global Agent such documents and records and provide such assistance as the successor Global Agent may reasonably request for the purposes of performing its functions as Global Agent under the Transaction Documents. The Company shall, within three Business Days of demand, reimburse the retiring Global Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Global Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Global Agent shall be discharged from any further obligation in respect of the Transaction Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 10.3 (*Indemnity to the Agents*) and this Clause 22 (and any agency fees for the account of the resigning Global Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Global Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Global Agent pursuant to paragraph (c) above) if on or after the date which is

three months before the earliest FATCA Application Date relating to any payment to the Global Agent under the Transaction Documents, either:

- (i) the Global Agent fails to respond to a request under Clause 9.8 (*FATCA information*) and a Financier reasonably believes that the Global Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (ii) the information supplied by the Global Agent pursuant to Clause 9.8 (*FATCA information*) indicates that the Global Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (iii) the Global Agent notifies the Company and the Financiers that the Global Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) a Financier reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Global Agent were a FATCA Exempt Party, and that Financier, by notice to the Global Agent, requires it to resign.

22.12 Replacement of the Global Agent

- (a) After consultation with the Company, the Majority Financiers may, by giving 30 days' notice to the Global Agent (or, at any time the Global Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Financiers) replace the Global Agent by appointing a successor Global Agent.
- (b) The retiring Global Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Financiers) make available to the successor Global Agent such documents and records and provide such assistance as the successor Global Agent may reasonably request for the purposes of performing its functions as Global Agent under the Transaction Documents.
- (c) The appointment of the successor Global Agent shall take effect on the date specified in the notice from the Majority Financiers to the retiring Global Agent. As from this date, the retiring Global Agent shall be discharged from any further obligation in respect of the Transaction Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 10.3 (*Indemnity to the Agents*) and this Clause 22 (and any agency fees for the account of the retiring Global Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Global Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

22.13 Confidentiality

- (a) In acting as agent for the Finance Parties, the Global Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Global Agent, it may be treated as confidential to that division or department and the Global Agent shall not be deemed to have notice of it.

22.14 Relationship with the Financiers

- (a) Subject to Clause 19.10 (*Pro rata settlement*), the Global Agent may treat the person shown in its records as Financier at the opening of business (in the place of the Global Agent's principal office as notified to the Finance Parties from time to time) as the Financier acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Transaction Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Transaction Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Financier to the contrary in accordance with the terms of this Agreement.

- (b) Any Financier may by notice to the Global Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Financier under the Transaction Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 30.6 (*Electronic Communication*) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Financier for the purposes of Clause 30.2 (*Addresses*) and paragraph (a)(i) of Clause 30.6 (*Electronic Communication*) and the Global Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Financier.

22.15 Credit appraisal by the Financiers

Without affecting the responsibility of the Company for information supplied by it or on its behalf in connection with any Transaction Document, each Financier confirms to the Global Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Transaction Document including but not limited to:

- (a) the financial condition, status and nature each member of the Group;

- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;
- (c) whether that Financier has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Transaction Document, the Transaction Security, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Global Agent, any Party or by any other person under or in connection with any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

22.16 Agent's management time

Any amount payable to the Agent under Clause 10.3 (*Indemnity to the Agents*), Clause 12 (*Costs and Expenses*) and Clause 22.10 (*Financiers' indemnity to the Global Agent*) shall include the cost of utilising the Global Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Global Agent may notify to the Company and the Financiers, and is in addition to any fee paid or payable to the Global Agent under Clause 8 (*Fees*).

22.17 Deduction from amounts payable by the Global Agent

If any Party owes an amount to the Global Agent under the Transaction Documents the Global Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Global Agent would otherwise be obliged to make under the Transaction Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Transaction Documents, that Party shall be regarded as having received any amount so deducted.

22.18 Reliance and engagement letters

Each Finance Party and Secured Party confirms that the Global Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Global Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants in connection with the Transaction Documents or the transactions contemplated in the Transaction Documents and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

23. THE SECURITY AGENT

23.1 Security Agent as agent and trustee

- (a) The Security Agent declares that it holds the Transaction Security as trustee and agent for the Secured Parties on the terms contained in the Transaction Documents.
- (b) Each of the Secured Parties authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Transaction Documents together with any other incidental rights, powers, authorities and discretions.

23.2 Parallel debt

- (a) Notwithstanding any other provision of the Transaction Documents, the Company hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Parties, sums equal to and in the currency of each amount payable by the Company to each of the Secured Parties under each of the Transaction Documents as and when that amount falls due for payment under the relevant Transaction Document or would have fallen due but for any discharge resulting from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting the Company, to preserve its entitlement to be paid that amount (such payment undertaking and the obligations and liabilities which are the result thereof the "**Parallel Debt**").
- (b) The Security Agent shall have its own independent right to demand payment of the amounts payable by the Company under this Clause 23.2, irrespective of any discharge of the Company's obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting the Company, to preserve their entitlement to be paid those amounts.
- (c) Any amount due and payable by the Company to the Security Agent under this Clause 23.2 shall be decreased to the extent that the other Secured Parties have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Transaction Documents and any amount due and payable by the Company to the other Secured Parties under those provisions shall be decreased to the extent that the Security Agent has received (and is able to retain) payment in full of the corresponding amount under this Clause 23.2.

23.3 Instructions

- (a) The Security Agent shall:
 - (i) subject to paragraphs (c) and (d) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the

- Global Agent (acting on behalf of the Majority Financiers or, as the case may be, all the Financiers); and
- (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Global Agent as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clause 23.6 (*No duty to account*) to Clause 23.11 (*Exclusion of liability*), Clause 23.14 (*Confidentiality*) to Clause 23.20 (*Custodians and nominees*) and Clause 23.23 (*Acceptance of title*) to Clause 23.25 (*Releases*).
- (d) If giving effect to instructions given by the Global Agent (acting on the instructions of the Majority Financiers) would (in the Security Agent's opinion) have an effect equivalent to an amendment or waiver which is subject to Clause 34 (*Amendments, Waivers and Consents*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (e) In exercising any discretion to exercise a right, power or authority under the Transaction Documents where either:
- (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph (c) above,
- the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (f) The Security Agent may refrain from acting in accordance with any instructions of the Global Agent, the Majority Financiers or any other group of Financiers until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Transaction Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

- (g) Without prejudice to the provisions of the remainder of this Clause 23, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.
- (h) At any time after receipt by the Security Agent of notice from the Global Agent directing the Security Agent to exercise all or any of its rights, remedies, powers or discretions under any of the Transaction Documents, the Security Agent may, and shall if so directed by the Global Agent, take any action as in its sole discretion it thinks fit to enforce the Transaction Security.
- (i) The Secured Parties shall not have any independent power to enforce or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

23.4 Duties of the Security Agent

- (a) The Security Agent's duties under the Transaction Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to the Global Agent a copy of any document received by the Security Agent from the Company under any Transaction Document.
- (c) Except where a Transaction Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Transaction Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Global Agent.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Transaction Documents to which it is expressed to be a party (and no others shall be implied).

23.5 No fiduciary duties to the Company

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of the Company.

23.6 No duty to account

The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

23.7 Business with the Group

The Security Agent may accept deposits from, lend money or provide Islamic facilities to and generally engage in any kind of banking or other business with any member of the Group.

23.8 Rights and discretions

- (a) The Security Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Global Agent, any Financiers or any group of Financiers are duly given in accordance with the terms of the Transaction Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Transaction Documents for so acting have been satisfied; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the Financiers through the Global Agent and may give to the Global Agent any notice or other communication required to be given by the Security Agent to the Financiers.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties) that:
- (i) no Default has occurred; and
 - (ii) any right, power, authority or discretion vested in any Party, any Financiers or any group of Financiers has not been exercised.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (d) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate

from any lawyers instructed by any Finance Party) if the Security Agent in its reasonable opinion deems this to be desirable.

- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (g) The Security Agent, any Receiver and any Delegate may act in relation to the Transaction Documents and the Transaction Security through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (h) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under the Transaction Documents.
 - (i) Notwithstanding any other provision of any Transaction Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty or duty of confidentiality.
 - (j) Notwithstanding any provision of any Transaction Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

23.9 Responsibility for documentation

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, the Company or any other person in or in connection with any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of,

- under or in connection with any Transaction Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

23.10 No duty to monitor

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

23.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Transaction Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Transaction Security unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising or not exercising any right, power, authority or discretion given to it by or in connection with any Transaction Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Transaction Security;
 - (iii) any shortfall which arises on the enforcement or realisation of the Transaction Security; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

(b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Transaction Security and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this paragraph (b), subject to Clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.

(c) Nothing in the Transaction Documents shall oblige the Security Agent to carry out:

- (v) any "know your customer" or other checks in relation to any person; or
- (vi) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Secured Party (other than the Security Agent),

on behalf of any Secured Party (other than the Security Agent) and each Secured Party (other than the Security Agent) confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

(d) Without prejudice to any provision of any Transaction Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Transaction Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

23.12 Financiers' indemnity to the Security Agent

- (a) Each Financier (other than the Holding Period Trustee) shall in proportion to its share of the Agent Indemnity Commitments (or, if the Agent Indemnity Commitments are then zero, to its share of the Agent Indemnity Commitments immediately prior to their reduction to zero), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Transaction Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by the Company pursuant to a Transaction Document).
- (b) Subject to paragraph (c) below, the Company shall immediately on demand reimburse any Financier for any payment that Financier makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Financier claims reimbursement relates to a liability of the Security Agent to the Company.

23.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Company and to the Global Agent on behalf of the Financiers.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the other Parties (or the Global Agent on behalf of the Financiers), in which case the Majority Financiers may appoint a successor Security Agent.
- (c) If the Majority Financiers have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Global Agent) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Transaction Documents. The Company shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (vii) the appointment of a successor; and
 - (viii) the transfer of all the Transaction Security to that successor.

- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Transaction Documents (other than its obligations under paragraph (b) of Clause 23.24 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 23.13 and Clause 10.4 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Financiers may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.

23.14 Confidentiality

- (a) In acting as agent and/or trustee for the Secured Parties, the Security Agent shall be regarded as acting through its agency/trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Transaction Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty.

23.15 Information from the Financiers

Each Financier shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

23.16 Credit appraisal by the Secured Parties

Without affecting the responsibility of the Company for information supplied by it or on its behalf in connection with any Transaction Document, each Secured Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;

- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Transaction Document, the Transaction Security, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

23.17 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 23.12 (*Financiers' indemnity to the Security Agent*), Clause 12 (*Costs and Expenses*) or Clause 10.4 (*Indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Company and the Financiers, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default; or
 - (ii) the Security Agent being requested by the Company or the Financiers to undertake duties which the Security Agent and the Company agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Transaction Documents; or
 - (iii) the Security Agent and the Company agreeing that it is otherwise appropriate in the circumstances,

the Company shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Security Agent and the Company fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Company or, failing approval, nominated (on the application of the Security Agent) by the

President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Company) and the determination of any investment bank shall be final and binding upon the Parties.

23.18 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of the Company to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Transaction Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Transaction Document or of the Transaction Security;
- (d) take, or to require the Company to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Transaction Security Document.

23.19 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Charged Property;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Transaction Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Global Agent requests it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

23.20 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine,

including for the purpose of depositing with a custodian the Transaction Documents or any document relating to the trust or agency created under the Transaction Documents and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under the Transaction Documents or be bound to supervise the proceedings or acts of any person.

23.21 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

23.22 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Company and the Secured Parties of that appointment.

- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Transaction Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of the Transaction Documents, be treated as costs and expenses incurred by the Security Agent.

23.23 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that the Company may have to any of the Charged Property and shall not be liable for, or bound to require the Company to remedy, any defect in its right or title.

23.24 Winding up of trust

If the Security Agent, with the approval of the Majority Financiers, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Transaction Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to the Company pursuant to the Transaction Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Transaction Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 23.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Transaction Security Document.

23.25 Releases

Upon a disposal of any of the Charged Property:

- (a) pursuant to the enforcement of the Transaction Security by a Receiver or the Security Agent; or
- (b) if that disposal is permitted under the Transaction Documents,

the Security Agent shall (at the cost of the Company) release that property from the Transaction Security or the Transaction Security given by the Company and is authorised to execute, without the need for any further authority from the Secured Parties, any release of the Transaction Security or other claim over that asset or entity and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

24. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of any Transaction Document will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

25. SHARING AMONG THE FINANCE PARTIES

25.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from the Company other than in accordance with Clause 28 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Transaction Documents, then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to its Facility Representative and the Global Agent and the Global Agent will promptly notify the other Facility Representative;
- (b) the Global Agent shall, in consultation with the Conventional Facility Agent and the Investment Agent, determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Global Agent and distributed in accordance with Clause 28 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Global Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Global Agent, pay to the Global Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Global Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 28.6 (*Partial payments*).

25.2 Redistribution of payments

The Global Agent shall treat the Sharing Payment as if it had been paid by the Company and distribute it between the Conventional Facility Agent and Investment Agent for the account of the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 28.6 (*Partial payments*) towards the obligations of the Company to the Sharing Finance Parties.

25.3 Recovering Finance Party's rights

On a distribution by the Global Agent under Clause 25.2 (*Redistribution of payments*), of a payment received by a Recovering Finance Party from the Company as between the Company and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Company.

25.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Global Agent, pay to the Global Agent for the account of that Recovering Finance Party (other than the Participants) an amount equal to the appropriate part of its share of the Sharing Payment (together with, in relation to each Finance Party (other than the Participants), an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and
- (b) as between the Company and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Company.

25.5 Exceptions

- (a) This Clause 25 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Company.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of undertaking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable after having received notice and did not undertake separate legal or arbitration proceedings.

25.6 Adjustments

- (a) Notwithstanding anything in this Clause 25 but subject to paragraph (b) below, the Security Agent shall use its reasonable endeavours to avoid applying:
 - (i) any proceeds of sale of the Relevant Term Assets against any interest payable under the Transaction Documents; and
 - (ii) any interest secured under the Transaction Security Documents against any amounts payable under the Islamic Financing Transaction Documents.

- (b) If paragraph (a) above applies, the Security Agent shall (if necessary) adjust the proceeds from other recoveries for application under this Clause 25 in order to maintain the order and ranking of payments provided in this Clause.

26. EQUALISATION

26.1 Equalisation definitions

In this Clause 26:

"Enforcement Date" means the first date on which the Global Agent exercises any of its rights under Clause 18.10 (*Acceleration*) (other than declaring amounts outstanding under the Transaction Documents to be payable on demand).

"Exposure" means, in relation to a Finance Party, the aggregate amount of its Participation outstanding under the Transaction Documents at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date have been actual liabilities at the Enforcement Date) including any capitalised component of such Participation, together with the aggregate amount of all accrued interest or profit (or any other similar or equivalent amount payable under the Transaction Documents), Income Amount (but excluding any Increased Costs component of Income Amount), fees and/or commission (as applicable) owed to it under the Transaction Documents.

26.2 Implementation of equalisation

This Clause 26 shall be applied at such time or times after the Enforcement Date as the Global Agent shall consider appropriate, or following notification by a Facility Representative or the Global Agent that any of the Finance Parties has recovered any payment or amount from the Company following the Enforcement Date. Without prejudice to the generality of the preceding sentence, if the provisions of this Clause 26 have been applied before all the Secured Obligations have matured and/or been finally quantified, the Global Agent may elect to re-apply those provisions on the basis of revised Exposures and the Finance Parties shall make appropriate adjustment payments amongst themselves.

26.3 Equalisation

If, for any reason, any Secured Obligations remain unpaid after the Enforcement Date and the resulting losses are not borne by the Finance Parties in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the Finance Parties at the Enforcement Date, the Finance Parties will make such payments amongst themselves as the Global Agent shall require to put the Finance Parties in such a position that (after taking into account such payments) those losses are borne in those proportions **provided that** no Finance Party shall be obliged to make any payment under this Clause 26 in respect of any amount received by it from a person who is not a member of the Group.

26.4 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this Clause 26, the Global Agent shall send notice to each Facility Representative (on behalf of the

Finance Parties) requesting that they notify it of, respectively, their Exposure and that of each Finance Party (if any).

26.5 Default in payment

If a Finance Party fails to make a payment due from it under this Clause 26, the Global Agent shall be entitled (but not obliged) to take action on behalf of the Finance Parties to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Finance Parties in respect of its actual costs) but shall have no liability or obligation towards such Finance Parties, or any other Parties as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

27. SHARING OF INFORMATION

27.1 Sharing of information by Conventional Facility Agent

- (a) The Conventional Facility Agent shall promptly notify the Global Agent of the following after determining the same under the relevant Conventional Finance Documents:
 - (i) any interest payable under the Conventional Finance Documents;
 - (ii) any payments payable by the Company under the Conventional Facility Agreement;
 - (iii) the amounts outstanding under the Conventional Facility Agreement and the share of each Conventional Lender in the amounts outstanding; and
 - (iv) any Interest Period.
- (b) The Conventional Facility Agent shall promptly provide such other information to the Global Agent as the Global Agent may request at any time in respect of the Conventional Facility, Conventional Finance Documents and/or the Conventional Finance Parties.

27.2 Sharing of information by Investment Agent

- (a) The Investment Agent shall promptly notify the Global Agent of the following after determining the same under the relevant Islamic Financing Transaction Documents:
 - (i) any Income Amount payable under the Islamic Financing Transaction Documents;
 - (ii) any Exercise Price payable as a result of the exercise of the Sale Undertaking or the Purchase Undertaking (as the case may be);
 - (iii) the Contributions Outstanding and the share of each Participant in the Contributions Outstanding; and
 - (iv) any Income Period.

- (b) The Investment Agent shall promptly provide such other information to the Global Agent as the Global Agent may request at any time in respect of the Islamic Financing Facility, Islamic Financing Transaction Documents and/or the Participants.

27.3 Sharing of information

- (a) If a Facility Representative:
- (i) receives notice from a Party referring to the Conventional Facility Agreement or the relevant Islamic Financing Transaction Document, describing a Default and stating that the event is a Default; or
 - (ii) is aware of the non-payment of any principal, Contributions Outstanding, Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents), interest, Income Amount (or any other amount calculated or determined on a similar basis under the Islamic Financing Transaction Documents) or fee payable to a Finance Party (other than the Facility Representatives or the Global Agent) under the Transaction Documents,
- it must promptly notify the Global Agent and the Global Agent shall then promptly notify the other Finance Parties of the same.
- (b) In connection with the matters described in the Transaction Documents, each Facility Representative and the Global Agent agree to cooperate with each other to ensure (so far as is reasonably possible) that:
- (i) any notification, information or other communication received by either of them from the Company shall be shared with each other;
 - (ii) any notification, information or other communication issued by either of them respectively to the Financiers that they represent shall be copied to each other Facility Representative and the Global Agent such that the same notification, request or other communication can be issued to all the Financiers; and
 - (iii) any request by any Facility Representative or the Global Agent for consent, instruction or direction (as applicable) from the Financiers are consistent with each other.
- (c) The Facility Representatives and the Global Agent are authorised to receive from and share such information as they deem necessary with each other in connection with the matters described in each Transaction Document, including, without limitation, to ascertain:
- (i) that the requirements of this Agreement are complied with;
 - (ii) the amount of Commitments held by each Financier giving consent, instruction or direction (as applicable) in relation to any matter or responding to a request for consent, instruction or direction; and

- (iii) the instructions of the Majority Financiers and all the Financiers.
- (d) Each Facility Representative shall co-operate in good faith with the Global Agent and each other to facilitate any voting amongst the Financiers required for the purposes of the Transaction Documents.

SECTION 10 ADMINISTRATION

28. PAYMENT MECHANICS

28.1 Payments to the Global Agent

- (a) On each date on which the Company or a Financier is required to make a payment under a Transaction Document, the Company or Financier shall make the same available to the Global Agent (unless a contrary indication appears in a Transaction Document) for value on the due date at the time and in such funds specified by the Global Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Global Agent specifies.

28.2 Distributions by the Global Agent

- (a) Subject to paragraphs (b) and (c) below, each payment received by the Global Agent under the Transaction Documents for another Party shall, subject to Clause 28.3 (*Distributions to the Company*) and Clause 28.4 (*Clawback*), be made available by the Global Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with the Transaction Documents (in the case of a Financier, for the account of its Facility Office), to such account as that Party may notify to the Global Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.
- (b) If the payment referred to in paragraph (a) above relates to interest, principal, fees and any other costs or expenses payable to the Conventional Finance Parties under the Conventional Finance Documents, the Global Agent shall make that payment available to the Conventional Facility Agent for distribution to the relevant Conventional Finance Parties in accordance with paragraph (a) above.
- (c) If the payment referred to in paragraph (a) above relates to any Exercise Price, Income Amount or any fees and other costs and expenses payable to the Islamic Financing Parties under the Islamic Financing Transaction Documents, the Global Agent shall make that payment available to the Investment Agent for distribution to the relevant Islamic Financing Parties in accordance with paragraph (a) above.

28.3 Distributions to the Company

The Global Agent may (with the consent of the Company or in accordance with Clause 29 (*Set-Off*)) apply any amount received by it for the Company in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Company under the Transaction Documents or in or towards the purchase of any amount of any currency to be so applied.

28.4 Clawback

- (a) Where a sum is to be paid to an Agent under the Transaction Documents for another Party, that Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If an Agent pays an amount to another Party and it proves to be the case that the relevant Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by that Agent shall on demand refund the same to that Agent from the date of payment to the date of receipt by that Agent, calculated by that Agent to reflect its cost of funds or, in the case of the Investment Agent, its actual costs of paying such amount.

28.5 Impaired Agent

- (a) If, at any time, an Agent becomes an Impaired Agent, the Company or a Financier which is required to make a payment under the Transaction Documents to that Agent in accordance with this Clause 28 may instead either:
 - (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to (in relation to the Conventional Facility) an interest bearing account or (in relation to the Islamic Financing Facility) a *Shari'a*-compliant or otherwise non-interest bearing account in each case held with an Acceptable Bank and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Company or the Financier making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Transaction Documents (the "**Recipient Party**" or "**Recipient Parties**").

In each case such payments must be made on the due date for payment under the Transaction Documents.

- (b) All interest or profit accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 28.5 shall be discharged of the relevant payment obligation under the Transaction Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with clause 23.13 (*Replacement of the Global Agent*), clause 9.12 (*Replacement of the Conventional Facility Agent*) of the Conventional Facility Agreement or clause

6.12 (*Replacement of the Investment Agent*) of the Investment Agency Agreement, each Paying Party shall (other than to the extent that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any amounts accrued on that amount) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 28.2 (*Distributions by the Global Agent*).

- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
- (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any amounts accrued on that amount) to that Recipient Party.

28.6 Partial payments

- (a) If any Facility Representative receives a payment for application against amounts due in respect of any Transaction Documents that is insufficient to discharge all the amounts then due and payable by the Company under those Transaction Documents:
- (i) that Facility Representative shall notify the Global Agent and the Global Agent shall notify each other Agent; and
 - (ii) the Facility Representative receiving the payments from the Company shall pay such amount to the Global Agent.
- (b) If the Global Agent receives:
- (i) a payment pursuant to paragraph (a) above; or
 - (ii) any other payment for application against amounts due in respect of any Transaction Documents that is insufficient to discharge all the amounts then due and payable by the Company under those Transaction Documents,

the Global Agent shall apply that payment towards the obligations of the Company under the Transaction Documents in accordance with the Cash Waterfall.

28.7 Set-off by the Company

All payments made by the Company under the Transaction Documents shall be calculated and made without (and free and clear of any deduction for) set-off or counterclaim.

28.8 Business Days

- (a) Any payment under the Transaction Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Exercise Price under the Transaction Documents interest or Income Amount (as applicable) is payable on that principal or the Exercise Price at the rate payable on the original due date.

28.9 Currency of account

- (a) Subject to paragraphs (b) to (e) below, dollars is the currency of account and payment for any sum due from the Company under any Transaction Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum or repayment or an early payment of any Exercise Price shall be made in the currency in which that amount is denominated, pursuant to the Transaction Documents, on its due date.
- (c) Each payment of interest or Income Amount shall be made in the currency in which the sum in respect of which it is payable was denominated, pursuant to the Transaction Documents, when that interest or Income Amount accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

28.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Transaction Documents to, and any obligations arising under the Transaction Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Global Agent (after consultation with the Company, the Conventional Facility Agent and the Investment Agent); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Global Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, the Transaction Documents will, to the extent the Global Agent (acting reasonably and after consultation

with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

28.11 Disruption to payment systems etc.

If an Agent determines (in its discretion) that a Disruption Event has occurred or any Agent is notified by the Company that a Disruption Event has occurred:

- (a) that Agent shall promptly notify the Global Agent;
- (b) the Global Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the relevant Facility as the Global Agent may deem necessary in the circumstances;
- (c) the Global Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (b) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (d) the Global Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (b) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (e) any such changes agreed upon by the Global Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Transaction Documents notwithstanding the provisions of Clause 34 (*Amendments, Waivers and Consents*);
- (f) the Global Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Global Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 28.11; and
- (g) the Global Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (e) above.

29. SET-OFF

A Finance Party may set off any matured obligation due from the Company under the Transaction Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

30. NOTICES

30.1 In writing

Any communication to be made under or in connection with the Transaction Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

30.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Transaction Documents is:

- (a) in the case of the Company, that identified with its name below;
- (b) in the case of each Financier, that notified in writing to the Global Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of an Agent or the Security Agent, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the Global Agent (or the Global Agent may notify to the other Parties, if a change is made by the Global Agent) by not less than five Business Days' notice.

30.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Transaction Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 30.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to an Agent or the Security Agent will be effective only when actually received by that Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Global Agent's or Security Agent's signature below (or any substitute department or officer as that Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to the Company shall be sent through the Global Agent.

- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 12:00 p.m. on a Friday in the UAE shall be deemed only to become effective on the following Business Day.

30.4 Notification of address and fax number

Promptly upon changing its address or fax number, the Agents shall notify the other Parties.

30.5 Communication when Agent is Impaired Agent

If any Agent is an Impaired Agent the Parties in respect of which the Impaired Agent acted as agent may, instead of communicating with each other through the Impaired Agent, communicate with each other directly and (while the relevant Agent is an Impaired Agent) all the provisions of the Transaction Documents which require communications to be made or notices to be given to or by that Agent shall be varied so that communications may be made and notices given to or by the relevant Parties in respect of which that Agent acted as agent directly. This provision shall not operate after a replacement Agent has been appointed.

30.6 Electronic communication

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Transaction Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between the Company and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
- (c) Any electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and, in the case of any electronic communication or document made or delivered by a Party to an Agent or the Security Agent, only if it is addressed in such a manner as the applicable Agent or Security Agent shall specify for this purpose.

- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of the Transaction Documents shall be deemed only to become effective on the following day.
- (e) Any reference in a Transaction Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 30.6.

30.7 Direct electronic delivery by Company

The Company may satisfy its obligation under the Transaction Documents to deliver any information in relation to a Financier by delivering that information directly to that Financier in accordance with Clause 30.6 (*Electronic communication*) to the extent that Financier and the applicable Agent agree to this method of delivery.

30.8 English language

- (a) Any notice given under or in connection with any Transaction Document must be in English.
- (b) All other documents provided under or in connection with any Transaction Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Global Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

31. CALCULATIONS AND CERTIFICATES

31.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Transaction Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

31.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Transaction Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

31.3 Day count convention

Any interest, commission, Income Amount (or any other amount calculated or determined on a similar basis under the Islamic Financing Transaction Documents) or fee accruing under a Transaction Documents accrues from day to day and is calculated

on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the relevant market differs, in accordance with that market practice.

32. PARTIAL INVALIDITY

If, at any time, any provision of a Transaction Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

33. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under a Transaction Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Transaction Document. No election to affirm any Transaction Document on the part of any Finance Party or Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Transaction Document are cumulative and not exclusive of any rights or remedies provided by law.

34. AMENDMENTS, WAIVERS AND CONSENTS

34.1 Required Consents

- (a) Subject to Clause 34.2 (*All Financier matters*) and Clause 34.4 (*Other exceptions*), any term of the Transaction Documents may be amended or waived only with the consent of the Majority Financiers and the Company, and any such amendment or waiver will be binding on all Parties.
- (b) The Global Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 34.
- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 22.6 (*Rights and discretions*), the Global Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under any Transaction Document.
- (d) Notwithstanding paragraph (a) above, any term of a Conventional Finance Document or an Islamic Financing Transaction Document the amendment of which would not alter the *pari passu* treatment of the Facility may be amended or waived:
 - (i) if it is a Conventional Finance Document, with the consent of the Majority Conventional Lenders; and
 - (ii) if it is an Islamic Financing Transaction Document, with the consent of the Majority Participants.

- (e) If the Company:
 - (i) proposes to request any amendment or waiver; or
 - (ii) agrees to any amendment or waiver requested by the Conventional Facility Agent or the Investment Agent (as the case may be) on behalf of the Financiers for and on behalf of which it is agent,

in respect of any provision of the Transaction Documents which is common in substance to the Conventional Finance Documents and the Islamic Financing Transaction Documents, the Company shall request to the Global Agent that any such amendment or waiver be made or granted (as the case may be) to the corresponding provisions of the Conventional Finance Documents or the Islamic Financing Transaction Documents (as applicable) and the Company shall only agree to any such amendment or waiver in accordance with the provisions of this Clause 34.
- (f) Paragraph (c) of Clause 19.10 (*Pro rata settlement*) shall apply to this Clause 34.

34.2 All Financier matters

An amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Transaction Document that has the effect of changing or which relates to:

- (a) the definition of "**Majority Financiers**", "**Majority Reporting Financiers**", "**Increased Majority Reporting Financiers**", "**Super Majority Reporting Financier**", "**Reporting Financier**", "**Nominating Financier**" or "**Supervising Financier**" in Clause 1.1 (*Definitions*);
- (b) other than pursuant to Clause 6.3 (*Extension option*), an extension to the date of payment of any amount under the Transaction Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, Contributions Outstanding, Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents), interest, Income Amount (or any other amount calculated or determined on a similar basis under the Islamic Financing Transaction Documents), commission, fee or other amount payable to a Financier under the Transaction Documents;
- (d) an increase in any Commitment or the Total Commitments (other than pursuant to Clause 5.2 (*Re-allocation of Commitments*)) or any requirement that a cancellation of Commitments under a Facility reduces the Commitments of the Financiers rateably under the relevant Facility;
- (e) a change to the Company;
- (f) any provision which expressly requires the consent of all the Financiers;

- (g) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 7.1 (*Mandatory early payment – illegality*), Clause 13 (*Cash Sweep*), Clause 19 (*Changes to the Financiers*), Clause 26 (*Equalisation*), this Clause 34, the governing law of any Transaction document or Clause 39 (*Governing Law*) and Clause 40 (*Enforcement*);
- (h) (other than as expressly permitted by the provisions of any Transaction Document) the nature or scope of:
 - (i) the Charged Property; or
 - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed,

(except in each case, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Transaction Document); or

- (i) the release of any Transaction Security unless permitted under this Agreement or any other Transaction Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is permitted under this Agreement or any other Transaction Document,

shall not be made, or given, without the prior consent of all the Financiers.

34.3 Governance decisions

- (a) The matters set out in part 1 (*Majority Reporting Financiers' Approval*) of schedule 7 (*Matters requiring Financier Approval under the Holdco Facilities*) of the Governance Agreement shall require the prior approval of the Majority Reporting Financiers.
- (b) The matters set out in part 2 (*Increased Majority Reporting Financiers' Approval*) of schedule 7 (*Matters requiring Financier Approval under the Holdco Facilities*) of the Governance Agreement shall require the prior approval of the Increased Majority Reporting Financiers.
- (c) The matters set out in part 3 (*Super Majority Reporting Financiers' Approval*) of schedule 3 (*Matters requiring Financier Approval under the Holdco Facilities*) of the Governance Agreement shall require the prior approval of the Super Majority Reporting Financiers.

34.4 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of an Agent or the Security Agent (each in their capacity as such) may not be effected without the consent of that Agent or the Security Agent, as the case may be.
- (b) An amendment or waiver which relates to the definition of "**Majority Conventional Lenders**" in the Conventional Facility Agreement shall not be

made without the prior written consent of the Conventional Facility Agent (acting on the instructions of all the Conventional Lenders) and the Company.

- (c) An amendment or waiver which relates to the definition of "**Majority Participants**" in the Investment Agency Agreement shall not be made without the prior written consent of the Investment Agent (acting on the instructions of all the Participants) and the Company.
- (d) An amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Transaction Document that has the effect of changing or which relates to any provision which expressly requires the consent of the Super Majority Reporting Financiers shall not be made, or given, without the prior consent of the Super Majority Reporting Financiers.
- (e) An amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Transaction Document that has the effect of changing or which relates to any provision which expressly requires the consent of the Increased Majority Reporting Financiers shall not be made, or given, without the prior consent of the Increased Majority Reporting Financiers.
- (f) An amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Transaction Document that has the effect of changing or which relates to any provision which expressly requires the consent of the Majority Reporting Financiers shall not be made, or given, without the prior consent of the Majority Reporting Financiers.

34.5 Excluded Commitments

- (a) If:
 - (i) any Defaulting Financier fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Transaction Document or any other vote of Financiers under the terms of any Transaction Document within 8 Business Days of that request being made; or
 - (ii) any Financier which is not a Defaulting Financier fails to respond to such a request or such a vote within 15 Business Days of that request being made,
- (unless, in either case, the Company and the Global Agent agree to a longer time period in relation to any request):
- (A) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and

- (B) its status as a Financier shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Financiers has been obtained to approve that request.
- (b) In respect of any request for a consent, waiver, amendment of or in relation to any term of any Transaction Document or any other vote of Financiers under the terms of any Transaction Document:
 - (i) the Commitments held by the Holding Period Trustee shall not be included for the purpose of calculating the Total Commitments under the relevant Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request;
 - (ii) the Holding Period Trustee's status as a Financier shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Financiers has been obtained to approve that request; and
 - (iii) any consent, amendment or waiver that imposes a more onerous obligation on the Holding Period Trustee than anticipated by this Agreement may not be effected without the prior written consent of the Holding Period Trustee.

34.6 Replacement of Financier

- (a) If:
 - (i) Any Financier becomes a Non-Consenting Financier (as defined in paragraph (d) below); or
 - (ii) the Company becomes obliged to repay any amount in accordance with Clause 7.1 (*Mandatory early payment – illegality*) or to pay additional amounts pursuant to clause 7 (*Increased Costs*) of the Conventional Facility Agreement or any provision relating to increased costs under the Islamic Financing Transaction Documents, Clause 9.2 (*Tax gross-up*) or Clause 9.3 (*Tax indemnity*) to any Financier,

then the Company may, on five Business Days' prior written notice to the Global Agent (with a copy to the Conventional Facility Agent or the Investment Agent, as applicable) and such Financier, replace such Financier by requiring such Financier to (and, to the extent permitted by law, such Financier shall) transfer pursuant to Clause 19 (*Changes to the Financiers*) all (and not part only) of its rights and obligations under the Transaction Documents to an Eligible Institution (a "**Replacement Financier**") which confirms its willingness to assume and does assume all the obligations of the transferring Financier in accordance with Clause 19 (*Changes to the Financiers*) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Financier's participation in the outstanding Loans or Contributions Outstanding and all accrued interest (to the extent that the Global Agent has not given a notification under Clause 19.10 (*Pro rata settlement*)) and other amounts payable in relation thereto under the Transaction Documents.

- (b) The replacement of a Financier pursuant to this Clause 34.6 shall be subject to the following conditions:
 - (i) the Company shall have no right to replace an Agent or Security Agent;
 - (ii) no Agent nor the Financier shall have any obligation to the Company to find a Replacement Financier;
 - (iii) in the event of a replacement of a Non-Consenting Financier such replacement must take place no later than 30 days after the date on which that Financier is deemed a Non-Consenting Financier;
 - (iv) in no event shall the Financier replaced under Clause 34.6 be required to pay or surrender to such Replacement Financier any of the fees received by such Financier pursuant to the Transaction Documents; and
 - (v) the Financier shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) A Financier shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Global Agent (with a copy to the Conventional Facility Agent or the Investment Agent, as applicable) and the Company when it is satisfied that it has complied with those checks.
- (d) In the event that:
 - (i) the Company or the Global Agent (at the request of the Company) has requested the Financiers to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Transaction Documents;
 - (ii) the consent, waiver or amendment in question requires the approval of all the Financiers; and
 - (iii) Financiers whose Commitments aggregate in the case of a consent, waiver or amendment requiring the approval of all the Financiers, more than 80 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 80 per cent. of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,

then any Financier who does not and continues not to consent or agree to such waiver or amendment shall be deemed a "**Non-Consenting Financier**".

34.7 Shari'a

Notwithstanding the other provisions of this Clause 34.7, the Company acknowledges and agrees that it shall not request any amendment or waiver to be made or granted (as the case may be) to any provision of the Transaction Documents which is common in substance to the Conventional Finance Documents and the Islamic Financing

Transaction Documents where such amendment or waiver is repugnant to Shari'a (as determined by the Shari'a supervision committee of the Investment Agent).

35. **CONFIDENTIAL INFORMATION**

35.1 **Confidentiality**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 35.2 (*Disclosure of Confidential Information*), Clause 35.3 (*Disclosure of Enhanced Confidential Information*) and Clause 35.4 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

35.2 **Disclosure of Confidential Information**

Subject to Clause 35.3 (*Disclosure of Enhanced Confidential Information*), any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Transaction Documents or which succeeds (or which may potentially succeed) it as an Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Transaction Documents and/or the Company and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Transaction Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 22.14 (*Relationship with the Financiers*));

- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 19.9 (*Security over Financiers' rights*);
 - (viii) who is a Party; or
 - (ix) with the consent of the Company,
- in each case, such Confidential Information as that Finance Party shall consider appropriate if:
- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information; and
 - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Transaction Documents including,

- without limitation, in relation to the trading of participations in respect of the Transaction Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the Loan Market Association Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Transaction Documents and/or the Company if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

35.3 Disclosure of Enhanced Confidential Information

- (a) A Supervising Financier shall not be permitted to disclose any Enhanced Confidential Information to any person other than:
 - (i) its Affiliates and its Affiliates' officers, employees, professional advisers or auditors if any person to whom the Enhanced Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Enhanced Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Enhanced Confidential Information;
 - (ii) to any person:
 - (A) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (B) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (C) with the consent of the Company,

in each case, such Enhanced Confidential Information as that Supervising Financier shall consider appropriate if the person to whom the Enhanced Confidential Information is to be given is informed of its confidential nature and that some or all of such Enhanced Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if,

in the reasonable opinion of that Finance Party, it is not practicable so to do in the circumstances.

- (b) For the avoidance of doubt, a transferee or assignee of a Supervising Financier or a Financier who elects to become a Supervising Financier after the date of this Agreement shall be entitled to request copies of Enhanced Confidential Information provided to Supervising Financiers prior to the date that that transferee or assignee or Financier (as applicable) so became or elected to become a Supervising Financier.

35.4 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or the Company the following information:
- (i) name of the Company;
 - (ii) country of domicile of the Company;
 - (iii) place of incorporation of the Company;
 - (iv) date of this Agreement;
 - (v) Clause 39 (*Governing Law*);
 - (vi) the names of the Agents;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facilities (and any tranches);
 - (ix) amount of Total Commitments;
 - (x) currencies of the Facilities;
 - (xi) type of the Facilities;
 - (xii) ranking of the Facilities;
 - (xiii) the Final Maturity Date for the Facilities;
 - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
 - (xv) such other information agreed between such Finance Party and the Company,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or the Company by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Global Agent shall notify the Company and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Global Agent in respect of this Agreement, the Facilities and/or the Company; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or the Company by such numbering service provider.

35.5 Entire agreement

This Clause 35 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Transaction Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

35.6 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation, including securities law relating to insider dealing and market abuse, and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

35.7 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Company:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 35.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 35.

35.8 Continuing obligations

The obligations in this Clause 35 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Company under or in connection with the Transaction Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

36. COUNTERPARTS

Each Transaction Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Transaction Document.

37. CONTRACTUAL RECOGNITION OF BAIL-IN

37.1 Bail-in

Notwithstanding any other term of any Transaction Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Transaction Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Transaction Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

37.2 Definitions

In this Clause 37:

"Article 55 BRRD" means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

"Bail-In Action" means the exercise of any Write-down and Conversion Powers.

"Bail-In Legislation" means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to the United Kingdom, the UK Bail In Legislation; and

- (c) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

"EEA Member Country" means any member state of the European Union, Iceland, Liechtenstein and Norway.

"EU Bail-In Legislation Schedule" means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

"Resolution Authority" means any body which has authority to exercise any Write-down and Conversion Powers.

"UK Bail-In Legislation" means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

"Write-down and Conversion Powers" means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to the UK Bail-In Legislation, issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers;
- (c) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

38. LIMITED REOURSE AND NON-PETITION

38.1 Limited Recourse

- (a) Subject to paragraph (b) below, notwithstanding any provision to the contrary in any Transaction Document, the maximum amount which may be recovered from the Company in respect of the Secured Obligations at any time, will be limited to the aggregate amount (without double counting and without any deduction for or on account of any set-off or similar right exercisable against the Company, any administrator or the Finance Parties) of:
 - (i) the whole of the assets from time to time of the Company;
 - (ii) all proceeds generated under or on the enforcement of all Security, guarantees, indemnities and other assurances against financial loss created or evidenced under the Transaction Documents as security for any of the Secured Obligations against the Company or over the Company's assets;
 - (iii) the proceeds of any disposal from time to time by an administrator of all or any part of the Company's assets; and
 - (iv) (to the extent not forming part of those disposal proceeds) any amount determined in accordance with paragraph 100(3) of the ADGM Insolvency Regulations 2015 arising from any such disposal.
- (b) Paragraph (a) shall not apply in circumstances where the Final Maturity Date has passed, no extension has been granted pursuant to Clause 6.3 (*Extension option*) and no Exit has been implemented.

38.2 Non-Petition

Each of the Financiers hereby agrees with the Company that, unless the circumstances described in paragraph (b) of Clause 38.1 (*Limited Recourse*) are subsisting:

- (a) it shall not (and no person acting on its behalf shall) initiate or join any person in initiating any Insolvency Proceedings or the appointment of an Insolvency Officeholder in relation to the Company other than a receiver or an administrator appointed by the Security Agent under the terms of the ADGM Security Agreement;
- (b) it shall not have the right to take or join any person in taking steps against the Company for the purpose of obtaining payment of any amount due from the Company;
- (c) it shall not be entitled to take or join in the taking of any corporate action, legal proceedings or other procedure or steps which would result in the Cash Waterfall not being complied with.

38.3 No personal liability

No Party shall have any recourse against nor shall any personal liability attach to any shareholder, officer, employee, agent or director of the Company in their capacity as such, in respect of any obligation, covenant or agreement of the Company contained in this Agreement.

38.4 Financier consultation

The Financiers (excluding the Holding Period Trustee) shall consult together and act reasonably in considering any Extension Request submitted by the Company, any request to equitise the Facilities or any other steps requested or available with a view to avoiding an insolvent administration or liquidation of the Company.

SECTION 11 **GOVERNING LAW AND ENFORCEMENT**

39. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

40. ENFORCEMENT

40.1 Jurisdiction

- (a) The ADGM Courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Agreement) (a "Dispute").
- (b) The Parties agree that the ADGM Courts are the most appropriate and convenient courts to settle Disputes and accordingly the Parties will not argue to the contrary.
- (c) Notwithstanding paragraphs (a) and (b) above, any Finance Party or Secured Party may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

40.2 Waiver of immunity

The Company irrevocably and unconditionally:

- (a) agrees not to claim any immunity from suits or proceedings brought by a Finance Party against it in relation to a Transaction Document and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings including the making or enforcement of any order or judgment which may be made or given in any proceedings or execution against any property or assets whatsoever (irrespective of its use or intended use); and
- (c) waives all rights of immunity in respect of it or its assets.

40.3 Waiver of interest

- (a) The Parties recognise and agree that the payment of interest in whatever form is repugnant to and not in compliance with the rules and principles of Shari'a and accordingly, to the extent that any legal system would (but for the provisions of this Clause 40.3) impose (whether by contract, statute, regulation, or by any means whatsoever) any obligation to pay interest, each Islamic Financing Party hereby irrevocably and unconditionally expressly waives and rejects any entitlement to recover interest from each other.

- (b) For the avoidance of doubt, nothing in this Clause 40.3 shall be construed as a waiver of rights in respect of any participation amount, Contributions Outstanding, Exercise Price or Income Amount (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents), howsoever such amounts may be described or re-characterised by any court. To the extent that any other amount payable by the Company pursuant to the Islamic Financing Transaction Documents is described or re-characterised as interest, under any applicable law by any court, the Company (in relation to any payment made or to be made under or in connection with the Islamic Financing Transaction Documents) and each Islamic Financing Party hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover such amount.
- (c) The Company represents and warrants that:
 - (i) it has not relied upon any representation made by any other Party as to whether the transactions contemplated by this Agreement comply with the principles of Shari'a; and
 - (ii) it acknowledges that this Agreement and the transactions contemplated herein, have been pronounced compliant with the principles of Shari'a by a Shari'a Board approved by the Investment Agent and it has not disputed or contested, nor will it dispute or contest, that pronouncement or seek to otherwise challenge the validity or enforceability of the Islamic Financing Transaction Documents on the basis of non-compliance with the principles of Shari'a.

41. NO DOUBLE RECOVERY

Notwithstanding any other provision of this Agreement, the Islamic Financing Transaction Documents or any Transaction Document, no party shall be entitled to indemnification or reimbursement, to recover damages, obtain restitution or to claim any other compensation at law or in equity more than once in respect of the same loss suffered (whether pursuant to this Agreement, the Islamic Financing Transaction Documents, any Transaction Document or otherwise).

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 2
FORM OF EXTENSION REQUEST

To: **ABU DHABI COMMERCIAL BANK PJSC** as Global Agent

Copy: **ABU DHABI COMMERCIAL BANK PJSC** as Conventional Facility Agent

ABU DHABI COMMERCIAL BANK PJSC as Investment Agent

From: **NMC Holdco SPV Ltd**

Dated: [•]

NMC Holdco SPV Ltd – Common terms agreement dated [•] 2022 (the "Agreement")

We refer to the Agreement. This is an Extension Request.

Terms defined in the Agreement have the same meaning in this Extension Request.

We hereby give notice that the Final Maturity Date should be extended to [•] (being the date falling twelve months after the current Final Maturity Date).

We confirm that no Event of Default is continuing as at the date of this notice.

NMC HOLDCO SPV LTD

By:.....

SCHEDULE 3
FORM OF TRANSFER CERTIFICATE

To: **ABU DHABI COMMERCIAL BANK PJSC** as Global Agent
ABU DHABI COMMERCIAL BANK PJSC as [Conventional Facility Agent]/[Investment Agent]*

From: [*the Existing Financier*] (the "**Existing Financier**") and [*the New Financier*] (the "**New Financier**")

Dated: []

NMC Holdco SPV Ltd – Common terms agreement dated [•] 2022 (the "Agreement")

1. We refer to the Agreement. This is a Transfer Certificate for the purposes of the Agreement. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 19.6 (*Procedure for transfer*) of the Agreement:
 - (a) [The Existing Financier and the New Financier agree to the Existing Financier transferring to the New Financier by novation and in accordance with Clause 19.6 (*Procedure for transfer*) of the Agreement all or part of the Existing Financier's rights and obligations under the Agreement and the other Transaction Documents and in respect of the Transaction Security which relate to that portion of the Existing Financier's Commitment(s) and participations in Loans under the Conventional Finance Documents as specified in the Schedule.]
 - (b) The proposed Transfer Date is [].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Financier for the purposes of Clause 30.2 (*Addresses*) of the Agreement are set out in the Schedule.]

OR

- (d) [By this Transfer Certificate, the Existing Financier transfers by novation [all] [] per cent. of its *pro rata* ownership rights and benefit in and to the Relevant Term Assets and [all] [*the same percentage*] of its Commitment to the New Financier in accordance with the terms of the Agreement (the "**Transfer**").]
- (e) The consideration for the Transfer is [].
- (f) The proposed Transfer Date is [].

* Delete as appropriate depending on the Facility to which the Transfer Certificate relates.

- (g) The Facility Office and address, fax number and attention details for notices of the New Financier for the purposes of Clause 30.2 (*Addresses*) of the Agreement are set out in the Schedule.]
3. The New Financier expressly acknowledges the limitations on the Existing Financier's obligations set out in paragraph (c) of Clause 19.5 (*Limitation of responsibility of Existing Financier*) of the Agreement.
 4. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
 5. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
 6. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Financier's interest in the Transaction Security. It is the responsibility of the New Financier to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Financier's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[Insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments]

[Existing Financier]

[New Financier]

By:..... By:.....

This Transfer Certificate is accepted for the purposes of the Agreement and the other Transaction Documents by the Global Agent and [the Conventional Facility Agent] / [the Investment Agent]* and the Transfer Date is confirmed as [].

ABU DHABI COMMERCIAL BANK PJSC as Global Agent

By:.....

ABU DHABI COMMERCIAL BANK PJSC as [Conventional Facility Agent / Investment Agent]*

By:.....

SCHEDULE 4
FORM OF ASSIGNMENT AGREEMENT

To: **ABU DHABI COMMERCIAL BANK PJSC** as Global Agent
ABU DHABI COMMERCIAL BANK PJSC as [Conventional Facility Agent]/[Investment Agent]*
NMC Holdco SPV Ltd as the Company

From: [*the Existing Financier*] (the "**Existing Financier**") and [*the New Financier*] (the "**New Financier**")

Dated: []

NMC Holdco SPV Ltd – Common terms agreement dated [•] 2022 (the "Agreement")

1. We refer to the Agreement. This agreement is an Assignment Agreement for the purposes of the Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 19.7 (*Procedure for assignment*) of the Agreement.
 - (a) The Existing Financier assigns absolutely to the New Financier all the rights of the Existing Financier under the Agreement and the other Transaction Documents and in respect of the Transaction Security which correspond to that portion of the Existing Financier's Commitment(s) and participations in [Loans]/[Contributions Outstanding] as specified in the Schedule.
 - (b) The Existing Financier is released from all the obligations of the Existing Financier which correspond to that portion of the Existing Financier's Commitment(s) under [*insert details of Facility*] and participations in [Loans]/[Contributions Outstanding] as specified in the Schedule.
 - (c) The New Financier becomes a Party as a Financier and is bound by obligations equivalent to those from which the Existing Financier is released under paragraph (b) above.
3. The proposed Transfer Date is [].
4. On the Transfer Date the New Financier becomes a Party to the Transaction Documents as a Financier.
5. The Facility Office and address, fax number and attention details for notices of the New Financier for the purposes of Clause 30.2 (*Addresses*) of the Agreement are set out in the Schedule.

* Delete as appropriate depending on the Facility to which the Assignment Agreement relates.

6. The New Financier expressly acknowledges the limitations on the Existing Financier's obligations set out in paragraph (c) of Clause 19.5 (*Limitation of responsibility of Existing Financier*) of the Agreement).
7. This Assignment Agreement acts as notice to the Global Agent (on behalf of each Finance Party) and [the Conventional Facility Agent] / [the Investment Agent]*, upon delivery in accordance with Clause 19.8 (*Copy of Transfer Certificate or Assignment Agreement to Company*) to the Company of the assignment referred to in this Assignment Agreement.
8. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
9. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
10. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Financier's interest in the Transaction Security. It is the responsibility of the New Financier to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Financier's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred by assignment

[Insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments]

[Existing Financier]

[New Financier]

By:..... By:.....

This Assignment Agreement is accepted for the purposes of the Agreement and the other Transaction Documents by the Global Agent and [the Conventional Facility Agent] / [the Investment Agent]* and the Transfer Date is confirmed as [].

Signature of this Assignment Agreement by the Global Agent and [the Conventional Facility Agent] / [the Investment Agent]* constitutes confirmation by the Global Agent and [the Conventional Facility Agent] / [the Investment Agent]* of receipt of notice of the assignment referred to in this Assignment Agreement, which notice the Global Agent and [the Conventional Facility Agent] / [the Investment Agent]* receives on behalf of relevant Finance Parties.

ABU DHABI COMMERCIAL BANK PJSC as Global Agent

By:.....

ABU DHABI COMMERCIAL BANK PJSC as [Conventional Facility Agent / Investment Agent]*

By:.....

Schedule 3
Governance Agreement

EXECUTION VERSION

WALKERS FIDUCIARY LIMITED
FINANCIERS
NMC HOLDCO SPV LTD
NMC OPCO LTD
AND
ABU DHABI COMMERCIAL BANK PJSC (AS GLOBAL AGENT)

GOVERNANCE AGREEMENT

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Agreed Form Documents at Completion

1. Articles of Association of HoldCo
2. Articles of Association of OpCo
3. Delegated Authority Framework

THIS AGREEMENT is made on _____ 2022

BETWEEN:

- (1) **WALKERS FIDUCIARY LIMITED**, a company incorporated in the Cayman Islands, whose registered office is at 190 Elgin Avenue, George Town, Grand Cayman, KY1-9008, Cayman Islands, as the original trustee of the Trust (the "**Trustee**");
- (2) **THE PERSONS** listed in Schedule 1;
- (3) **NMC HOLDCO SPV LTD**, a company incorporated and registered in the Abu Dhabi Global Market with registered number 5914 whose registered office is at 2462ResCowork01, 24th Floor, Al Sila Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates ("**HoldCo**");
- (4) **NMC OPCO LTD**, a private company limited by shares (previously an SPV known as NMC OpCo SPV LTD) incorporated and registered in the Abu Dhabi Global Market with registered number 5918, whose registered office is at 2473ResCo-work07, 24 Sila Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates ("**OpCo**"); and
- (5) **ABU DHABI COMMERCIAL BANK PJSC** as global agent of the Finance Parties (as defined in the HoldCo Common Terms Agreement) (the "**Global Agent**").

WHEREAS:

- (A) In connection with the Restructuring, HoldCo has been incorporated as a new private limited holding company under the laws of the ADGM and HoldCo has incorporated a new private limited operating company, OpCo as a wholly and directly owned Subsidiary of HoldCo.
- (B) On Completion, certain assets of NMC Healthcare Ltd (in administration) ("**LTD**") and its subsidiaries will be transferred to OpCo and its Subsidiaries pursuant to the DOCAs (the "**NMC Healthcare Business**").
- (C) On Completion, the Facilities will be made available to HoldCo by the HoldCo Financiers and the OpCo Facilities will be made available to OpCo by the "Financiers" (as defined in the OpCo Facilities Agreement) under the OpCo Facilities Agreement (the "**OpCo Financiers**").
- (D) HoldCo is an orphan entity with its shares held on trust by the Trustee. For as long as the HoldCo Facilities remain outstanding, the beneficiaries of the Trust will be the Financiers. Once the HoldCo Facilities are fully repaid, the residual value in the Trust will be applied for charitable purposes in accordance with, and as more particularly set out in, the Declaration of Trust.
- (E) The Trustee, the Financiers, HoldCo and OpCo have agreed to enter into this Agreement for the purpose of setting out the corporate governance arrangements for the HoldCo Group.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement:

"**Acceptable Bank**" has the meaning given in the HoldCo Common Terms Agreement;

"**Accounting Principles**" means generally accepted accounting principles in the United Arab Emirates, including IFRS;

"**Acquiring Financier**" has the meaning given in clause 11(g);

"**ADGM**" means the Abu Dhabi Global Market, Abu Dhabi, United Arab Emirates;

"**ADGM Courts**" means the courts of the ADGM established pursuant to Abu Dhabi Law No.4 of 2013;

"**Ad Hoc Committee**" means the informal *ad hoc* committee of creditors from time to time formed for the purposes of considering and negotiating the Restructuring, which as at the date of this Agreement comprises of:

- (a) Abu Dhabi Commercial Bank PJSC;
- (b) Barclays Bank PLC;
- (c) Emirates Islamic Bank PJSC;
- (d) Marathon Asset Management, LP;
- (e) Sculptor Capital LP; and
- (f) Silver Point Capital, L.P.,

provided that an entity shall cease to be a member of the *Ad Hoc Committee* (without prejudice to the rights, powers, and discretions of the others) if such entity no longer holds any Commitments;

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

"**All HoldCo Financiers Consent Matter**" means any matter that requires the consent of all the "Financiers" (as defined in the HoldCo Common Terms Agreement) under clause 34.2 (*All Financier matters*) of the HoldCo Common Terms Agreement;

"**All OpCo Financiers Consent Matter**" means any matter that requires the consent of all the "Financiers" (as defined in the OpCo Common Terms Agreement) under clause 36.2 (*All Financier matters*) of the OpCo Common Terms Agreement;

"**Annual Determination Date**" means the Payment Date following each Annual EPM Re-run;

"Annual EPM Re-run" means the EPM re-run carried out on each anniversary of the EPM Run Date;

"Annual EPM Re-run Notice" means a notice from the Global Agent to the Financiers setting out the Financiers' Commitments following the Annual EPM Re-run;

"Annual Outlook" means consolidated financial guidance in respect of the HoldCo Group, in summary form and based on the Budget for the Relevant Accounting Period;

"Anti-Corruption Laws" means, to the extent applicable to the HoldCo Group from time to time, the Bribery Act 2010 of the United Kingdom, the Foreign Corrupt Practices Act of 1977 of the United States of America, any similar laws in any other jurisdiction and any other national and international laws enacted to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

"Applicable Law" means, to the extent applicable to the HoldCo Group from time to time, all civil and common law, statute, subordinate legislation, treaty, regulations, directive, decision, by-law, ordinance, code, order, decree, injunction or judgment of any government, quasi-government, statutory, administrative or regulatory body, court or agency;

"Articles of Association" means the Articles of Association of HoldCo and the Articles of Association of OpCo;

"Articles of Association of HoldCo" means the articles of association of HoldCo in the agreed form at Completion;

"Articles of Association of OpCo" means the articles of association of OpCo in the agreed form at Completion;

"Assignment Agreement" has the meaning given in the HoldCo Common Terms Agreement;

"Audit Committee" has the meaning given in clause 5.7(a);

"Audit Committee Chair" has the meaning given in paragraph 1.3 of Schedule 4;

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

"Best Prior Offer" has the meaning given in clause 11(b)(i);

"Board Appointing Financier" means: (i) a Nominating Financier; (ii) a Deemed Nominating Financier; or (iii) the Minority Reporting Financiers (acting through the Global Agent), as applicable;

"Budget" means: (i) prior to the adoption of the First Budget, the Completion Budget; (ii) following its adoption, the First Budget; or (iii) the operating budget and financial forecast by business unit and region for the HoldCo Group for a Financial Year that is aligned to the Business Plan and that is from time to time prepared and approved in accordance with clause 7 (as the case may be);

"Business" means the business of the HoldCo Group as described in clause 3;

"Business Day" means, unless specified as otherwise in this Agreement, a day (other than a Friday, Saturday or a Sunday) on which banks are open for general business in Abu Dhabi, Dubai and London;

"Business Plan" means the First Business Plan or the business plan for a rolling three (3) year period for the HoldCo Group that is from time to time prepared and approved in accordance with clause 7 (as the case may be);

"Cash Equivalent Instruments" means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the Government of the United States of America, the Government of the United Kingdom, the Government of any member state of the European Economic Area or any participating member state or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:
 - (i) for which a recognised trading market exists;
 - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any participating member state;
 - (iii) which matures within one year after the relevant date of calculation; and
 - (iv) which has a credit rating of either:
 - (A) A-1 or higher by S&P Global Ratings, a division of S&P Global Inc.;
 - (B) F1 or higher by Fitch Ratings Ltd;
 - (C) P-1 or higher by Moody's Investors Service Limited; or
 - (D) if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);

- (e) any investment in money market funds:
 - (i) which have a credit rating of:
 - (A) A-1 or higher by S&P Global Ratings, a division of S&P Global Inc.; or
 - (B) P-1 or higher by Moody's Investors Service Limited;
 - (ii) invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above;
 - (iii) can be turned into cash on not more than 30 days' notice; or
- (f) any other debt security approved by the Majority Financiers,

in each case, to which HoldCo is alone beneficially entitled at that time and which is not issued or guaranteed by HoldCo or subject to any Security (other than the Transaction Security);

"Chair" means:

- (a) as at Completion, the Non-Executive Director appointed to that office by the Nominating Financier which holds the largest Commitment, subject to approval by a Simple Majority of the other Non-executive Directors; or
- (b) any other person appointed to the role of chair of the HoldCo Group from time to time pursuant to clause 4.11(a);

"Chief Executive Officer" means:

- (a) as at Completion, Michael Davis; or
- (b) any other person appointed to the role of chief executive officer of the HoldCo Group from time to time pursuant to clause 10.1;

"Chief Financial Officer" means:

- (a) the person appointed to the role of chief financial officer of the HoldCo Group by the HoldCo Board following Completion; or
- (b) any other person appointed to the role of chief financial officer of the HoldCo Group from time to time pursuant to clause 10.1;

"Chief Transformation Officer" means:

- (a) the person appointed to the role of chief transformation officer of the HoldCo Group by the HoldCo Board following Completion; or
- (b) any other person appointed to the role of chief transformation officer of the HoldCo Group from time to time pursuant to clause 10.1;

"Claims Determination Process" has the meaning given in the DOCA proposed by NMC Healthcare Ltd (in administration);

"Commitment" has the meaning given in the HoldCo Common Terms Agreement read with clause 1.2(o);

"Committee" has the meaning given in clause 5.7(a);

"Completion" means the completion of the Restructuring;

"Completion Budget" means the budget set out in the First Business Plan;

"Compliance Certificate" means a certificate substantially in the form set out in Schedule 10;

"Confidential Information" means all information relating to:

- (a) this Agreement;
- (b) the Transaction Documents;
- (c) in the case of a Financier, HoldCo or any member of the HoldCo Group or a Facility of which it becomes aware in its capacity as, or for the purpose of becoming, a Financier from:
 - (i) any member of the HoldCo Group or any of its advisers; or
 - (ii) another Financier, if the information was obtained by that Financier from any member of the HoldCo Group or any of its advisers; and
- (d) any Financier, its Affiliates and Related Funds or its or their respective business or assets,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (e) is or becomes public information other than as a result of any breach of clause 14;
- (f) is identified in writing at the time of delivery as non-confidential; or
- (g) is known by the recipient before the date the information is disclosed to it or is lawfully obtained after that date from a source which, as far as the recipient is aware, has not been obtained in breach of, and is not otherwise subject to, any obligations of confidentiality; and

for the avoidance of doubt, no information delivered to Unrestricted Financiers shall be deemed to be Confidential Information;

"Control Trigger" has the meaning given in clause 11(a);

"Conventional Facility" has the meaning given in the HoldCo Common Terms Agreement;

"Conventional Finance Party" has the meaning given in the HoldCo Common Terms Agreement;

"Declaration of Trust" means the declaration of trust dated 3 October 2021 pursuant to which the Trustee holds, upon the trusts and in the manner therein declared, the entire share capital of the capital of HoldCo;

"Deed of Adherence" means a deed substantially in the form set out in Schedule 2;

"Deemed Nominating Financier" has the meaning given in clause 4.4(b);

"Delegated Authority Framework" means the framework for delegating authority to the Reporting Financiers, HoldCo Board, OpCo Board, Chief Executive Officer, OpCo Subsidiary boards, Fakih HoldCo and the Fakih CEO (in the agreed form at Completion and which shall, subject to approval by the HoldCo Board acting by simple majority, be adopted on Completion);

"Director Deficit Event" has the meaning given in clause 4.4(b);

"Dispute" has the meaning given in clause 23.1(a);

"Disruption Event" has the meaning given in the HoldCo Common Terms Agreement;

"DOCAs" means the deeds of company arrangement to be proposed by NMC Healthcare Ltd (in administration) and certain of its direct and indirect Subsidiaries pursuant to Chapter 8 of Part 1 of the ADGM Insolvency Regulations 2015 for the purpose of implementing the Restructuring;

"EPM" has the meaning given in the DOCA proposed by NMC Healthcare Ltd (in administration);

"EPM Run Date" has the meaning given in clause 4.3;

"Executive Management Team" means the Chief Executive Officer, the Chief Financial Officer and the Chief Transformation Officer;

"Exit Committee" has the meaning given in clause 5.7(a);

"Exit Committee Chair" has the meaning given in paragraph 1.3 of Schedule 7;

"Exit Event" has the meaning given in the HoldCo Common Terms Agreement;

"External Auditor" means PricewaterhouseCoopers or such other auditor as is appointed as the HoldCo Group's external auditor from time to time;

"Facility" has the meaning given in the HoldCo Common Terms Agreement;

"Fair Value" means the fair value of the relevant Commitments to be transferred pursuant to a Mandatory Offer (in respect of which it is not possible to establish the Best Prior Offer) as determined in accordance with clause 11(c);

"Fakih CEO" means Dr. Michael Fakih or the chief executive officer of Fakih HoldCo appointed in accordance with the Fakih SHA;

"Fakih HoldCo" means Fakih Reproductive Medicine Holding LTD, a company incorporated in the Abu Dhabi Global Market whose registered office is at DD-15-134-004 - 007, Level 15, WeWork Hub71, Al Khatem Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates;

"Fakih SHA" means the shareholders' agreement in respect of Fakih HoldCo made between Dr. Michael Fakih, NMC Healthcare Ltd (in administration) and Fakih HoldCo;

"Finance Documents" has the meaning given in the OpCo Common Terms Agreement and includes this Agreement;

"Financial Indebtedness" has the meaning given in the HoldCo Common Terms Agreement;

"Financial Quarter" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date;

"Financial Year" means the annual accounting period of the HoldCo Group ending on or 31 December in each year (beginning with the financial year commencing on 1 January 2023);

"Financier Group" means the Nominating Financiers, the Deemed Nominating Financiers, the Minority Reporting Financiers, the Reporting Financiers, the Supervising Financiers or the Unrestricted Financiers (as applicable);

"Financiers" means the persons listed in Schedule 1 and any other person to whom Commitments have been transferred in accordance with the HoldCo Facilities and who has executed a Deed of Adherence;

"First Budget" means the operating budget and financial forecast for the HoldCo Group for the period from Completion to 31 December 2022;

"First Business Plan" means the document titled "NMC Healthcare LLC 3-years Business Plan" prepared by NMC Healthcare LLC covering the period from 1 January 2020 to 31 December 2022 and which is dated 31 July 2020 and which shall, subject to approval by the HoldCo Board acting by simple majority, be adopted as the business plan for the HoldCo Group on Completion;

"General Counsel" means the person appointed to the role of general counsel of the HoldCo Group from time to time;

"Holdback Claims" has the meaning given in the LTD DOCA;

"HoldCo Board" means the board of HoldCo Directors from time to time;

"HoldCo Common Terms Agreement" means the common terms agreement dated on or about the date of this Agreement and made between, among others, HoldCo and the Financiers;

"HoldCo Directors" means:

- (a) prior to Completion, such persons as are appointed as directors of HoldCo; and
- (b) on and from Completion, the Non-Executive Directors;

"HoldCo Facilities" means the Conventional Facility and the Islamic Financing Facility;

"HoldCo Financiers" means the Conventional Finance Parties and the Islamic Financing Parties;

"HoldCo Group" means HoldCo and its Subsidiaries from time to time;

"Holding Company" means, in relation to a person, any other person, in respect of which it is a Subsidiary;

"IFRS" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements;

"Increased Majority Reporting Financiers" has the meaning given in the HoldCo Common Terms Agreement;

"Increased Majority Reporting Financiers Consent Matter" means any amendment or waiver under the Transaction Documents that requires the consent of the Increased Majority Reporting Financiers under the HoldCo Common Terms Agreement;

"Indemnity Cover" has the meaning given in the LTD Asset Transfer Agreement;

"Independent Expert" has the meaning given in clause 11(c);

"Industrial Competitor" has the meaning given in the HoldCo Common Terms Agreement;

"Initial Distribution Requirements" has the meaning given in the LTD DOCA;

"Initial Non-Executive Directors" has the meaning given in clause 4.8;

"Interim Period" has the meaning given in clause 4.4(e);

"Internal Auditor" means:

- (a) Santosh Agarwal; or
- (b) any other person appointed to the role of internal auditor of the HoldCo Group from time to time pursuant to clause 10.1;

"Islamic Financing Facility" has the meaning given in the HoldCo Common Terms Agreement;

"Islamic Financing Party" has the meaning given in the HoldCo Common Terms Agreement;

"Key Policies" means the policies and procedures referred to in clause 9.3(b)(ii) and clause 9.13(b)(i);

"Long Accounting Period" means the accounting period of the HoldCo Group commencing on 26 August 2021 and ending on 31 December 2022;

"LTD" has the meaning given in the recitals;

"LTD Asset Transfer Agreement" has the meaning given in the LTD DOCA;

"LTD DOCA" means the DOCA in respect of NMC Healthcare Ltd (in administration);

"Majority Financiers" has the meaning given in the OpCo Common Terms Agreement;

"Majority OpCo Financiers Consent Matter" means any amendment or waiver under the Finance Documents that requires the consent of the Majority Financiers under clause 36.1(a) (*Required consents*) of the OpCo Common Terms Agreement;

"Majority Reporting Financiers" has the meaning given in the HoldCo Common Terms Agreement;

"Majority Reporting Financiers Consent Matter" means any amendment or waiver under the Transaction Documents that requires the consent of the Majority Reporting Financiers in accordance with the HoldCo Common Terms Agreement;

"Management Incentive Plan" means the cash based incentive scheme for the OpCo Board and employees to be established by HoldCo pursuant to clause 10.5;

"Mandatory Offer" has the meaning given in clause 11(a);

"Material Adverse Effect" has the meaning given in the HoldCo Common Terms Agreement;

"Minority Director" has the meaning given in clause 4.7(a)(i);

"Minority Director Short List" has the meaning given in clause 4.7(c)(i);

"Minority Reporting Financiers" has the meaning given in clause 4.7(a);

"NED Appointment Letter" means the letter to be sent from HoldCo to the relevant Non-Executive Director in accordance with paragraph 6.2.4 of Schedule 3;

"Net Cash Proceeds" means the estimated gross proceeds of an Exit Event less:

- (a) any fees, costs, expenses or taxes reasonably estimated by HoldCo to be payable by it or any other member of the HoldCo Group in connection with the Exit Event; and
- (b) the Indemnity Cover to be retained by HoldCo upon the occurrence of the Exit Event,

and in each case as notified to the Financiers together with any request to provide approval for the relevant Exit Event;

"**NMC Healthcare Business**" has the meaning given in the recitals;

"**NMC HoldCo Refinancing**" has the meaning given in the HoldCo Common Terms Agreement;

"**Nominating Financier**" has the meaning given in clause 4.4(a);

"**Nominations Cap**" has the meaning given in clause 4.4(a)(i);

"**Non-Executive Director**" means:

- (a) as at Completion, each 10% Director and the Minority Director appointed on or around Completion; or
- (b) any other person appointed as a non-executive HoldCo Director from time to time pursuant to clause 4.8;

"**Notice**" has the meaning given in clause 21.1;

"**Notified Subparticipant**" has the meaning given in clause 4.4(e);

"**Novation Document**" has the meaning given in the LTD Asset Transfer Agreement;

"**OpCo Board**" means the board of OpCo Directors from time to time;

"**OpCo Common Terms Agreement**" means the common terms agreement dated on or about the effective date of Completion between, among others, OpCo and the Original Financiers (as defined thereunder);

"**OpCo Directors**" means the directors on the OpCo Board from time to time;

"**OpCo Facilities Agreement**" means the primary facilities agreement dated on or around the effective date of Completion between, amongst others, OpCo and the Original Lenders (as defined thereunder);

"**OpCo Finance Documents**" has the meaning given to the term 'Finance Documents' in the OpCo Common Terms Agreement;

"**OpCo Financiers**" has the meaning given in the recitals;

"**OpCo Group**" means OpCo and its Subsidiaries from time to time;

"**OpCo Subsidiaries**" means the Subsidiaries of OpCo from time to time, including the persons whose shares are transferred to OpCo pursuant to the DOCAs;

"**Operational KPIs**" means the following operational information on a consolidated basis and by business unit:

- (a) inpatient and outpatient volume and average revenue by patient;

- (b) number of employees, by doctors, staff nurses, other clinical staffs and non-clinical support staffs; and
- (c) rejections, discount, patient revenue, patient non-cash revenue and rejections percentage;

"Operations and Quality Committee" has the meaning given in clause 5.7(a);

"Operations and Quality Committee Chair" has the meaning given in paragraph 1.3 of Schedule 5;

"Payment Date" has the meaning given in the HoldCo Common Terms Agreement;

"Permitted Security" means:

- (a) any Transaction Security or other Security created or evidenced pursuant to the terms of the Transaction Documents;
- (b) any netting or set off arrangement entered into by any member of the HoldCo Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (c) any lien arising by operation of law and in the ordinary course of trading or in respect of an amount being reserved in respect of taxes being contested in good faith; and
- (d) any Security created over the Acceptable Holding Account pursuant to (and as defined in the LTD Asset Transfer Agreement.

"Priority HoldCo Financial Indebtedness" has the meaning given in the HoldCo Common Terms Agreement;

"Purchase Undertaking" has the meaning given in the HoldCo Common Terms Agreement;

"Purchaser" has the meaning given in clause 11(a);

"Quarter Date" means each of 31 March, 30 June, 30 September and 31 December;

"Quasi Security" means an arrangement or transaction described in clause 9.8(b);

"Record Date" has the meaning given in the LTD DOCA;

"Related Fund" in relation to a fund (the **"First Fund"**), means a fund which is managed or advised by the same investment manager or investment adviser as the First Fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the First Fund;

"Related Party Transaction" means any transaction or arrangement between any member of the HoldCo Group and any Financier;

"Relevant Accounting Period" means:

- (a) prior to 1 January 2023, the Long Accounting Period; and
- (b) on and from 1 January 2023, the relevant Financial Year.

"Relevant Event" has the meaning given in clause 4.6(d);

"Relevant Transfer" has the meaning given in clause 20(b);

"Remuneration and Nominations Committee" has the meaning given in clause 5.7(a);

"Remuneration and Nominations Committee Chair" has the meaning given in paragraph 1.3 of Schedule 3;

"Reporting Financier" has the meaning given in the HoldCo Common Terms Agreement;

"Reporting Financier Information" means the financial statements and other information delivered pursuant to clause 8.2 and clause 8.5;

"Restricted Party" means any individual or entity that is:

- (a) listed on, or owned or controlled (as such terms, including any applicable ownership and control requirements, are defined and construed in the applicable Sanctions laws and regulations or in any official guidance in relation to such Sanctions laws and regulations) by a person listed on, a Sanctions List;
- (b) a government of a Sanctioned Country;
- (c) an agency or instrumentality of, or an entity directly or indirectly owned or controlled by, a government of a Sanctioned Country;
- (d) resident, organised or located in, operating from, or incorporated under the laws of, a Sanctioned Country, or any individual or entity directly or indirectly owned or controlled by that individual or entity;
- (e) otherwise a target of Sanctions, or with whom it would be a breach of any applicable Sanctions for any Financier, its Affiliates and Related Funds to deal; or
- (f) an entity that HoldCo is aware (having made due enquiry) is acting on behalf of any of the persons listed in paragraphs (a) to (e) (inclusive), for the purpose of evading or avoiding, or having the intended effect of or intending to evade or avoid, or facilitating the evasion or avoidance of any Sanctions.

"Restructuring" has the meaning given in the DOCAs;

"Restructuring Committee" has the meaning given in clause 5.7(a);

"Restructuring Committee Chair" has the meaning given in paragraph 1.3 of Schedule 6;

"Restructuring Implementation Deed" means the restructuring implementation deed entered into in connection with the LTD DOCA;

"RID Procedure" has the meaning given in clause 4.7(b);

"Sanctioned Country" means any country, region or other territory that is, or whose government is, subject to a general export, import, financial or investment embargo under any Sanctions, or is the subject of Sanctions broadly prohibiting dealings with such government, country or territory;

"Sanctions" means economic or financial sanctions or trade embargoes or other comprehensive prohibitions against transaction activity pursuant to anti-terrorism laws or export control laws enacted, imposed, administered or enforced from time to time by any Sanctions Authority;

"Sanctions Authority" means:

- (a) the European Union;
- (b) the United Arab Emirates;
- (c) the United Kingdom;
- (d) the United Nations Security Council;
- (e) the United States of America; and
- (f) the respective governmental institutions of those listed in paragraphs (a) to (e) (inclusive);

"Sanctions List" means any of the lists of specifically designated nationals or designated or sanctioned individuals or entities (or equivalent) issued by any Sanctions Authority, each as amended, supplemented or substituted from time to time;

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"Shares" has the meaning given in the Declaration of Trust;

"Shari'a Event" has the meaning given in the Purchase Undertaking;

"Simple Majority" means at least four of the Non-Executive Directors;

"Simple Majority Resolution" means a resolution passed by a Simple Majority voting in favour of the resolution at a quorate meeting of the HoldCo Board;

"Special Purpose Financial Information" has the meaning given in clause 8.4(a)(i);

"Subparticipated Commitment" has the meaning given in clause 4.4(e);

"Subparticipating Financier" has the meaning given in clause 4.4(e);

"Subparticipation Notice" means a notice to the Global Agent in the form set out at Schedule 11;

"Subsidiary" means an entity of which a person has direct or indirect control or owns directly or indirectly more than fifty percent (50%) of the voting capital or similar right of ownership;

"Super Majority" means at least five of the Non-Executive Directors;

"Super Majority Financiers" has the meaning given in the OpCo Common Terms Agreement;

"Super Majority OpCo Financiers Consent Matter" means any matter that requires the consent of the Super Majority Financiers under the OpCo Common Terms Agreement;

"Super Majority Reporting Financiers" has the meaning given in the HoldCo Common Terms Agreement;

"Super Majority Reporting Financiers Consent Matter" means any amendment or waiver under the Transaction Documents that requires the consent of the Super Majority Reporting Financiers under the HoldCo Common Terms Agreement;

"Super Majority Resolution" means a resolution passed by a Super Majority voting in favour of the resolution at a quorate meeting of the HoldCo Board;

"Supervising Financier" has the meaning given in the HoldCo Common Terms Agreement;

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature;

"Terms of Reference" has the meaning given in clause 5.7(a)

"Total Commitments" has the meaning given in the HoldCo Common Terms Agreement;

"Transaction Documents" has the meaning given in the HoldCo Common Terms Agreement and includes this Agreement;

"Transaction Security" has the meaning given in the HoldCo Common Terms Agreement;

"Transfer Certificate" has the meaning given in the HoldCo Common Terms Agreement;

"Transfer Notice" means a Transfer Certificate or an Assignment Agreement;

"Transferring Nominating Financier" has the meaning given in clause 4.5(a);

"Treasury Transaction" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;

"Trust" means the trust constituted by the Declaration of Trust;

"Unrestricted Financier" has the meaning given in the HoldCo Common Terms Agreement;

"Unrestricted Financier Information" means the financial statements and other information delivered pursuant to clause 8.1(a);

"USD" or **"dollars"** means the lawful currency of the United States of America;

"Working Hours" means 9.30am to 5.30pm on a Business Day in the United Arab Emirates; and

"10% Director" has the meaning given in clause 4.4(a)(i).

1.2 **In this Agreement:**

(a) **"acting in concert"** means, a group of persons who, pursuant to:

- (i) an agreement (other than the Transaction Documents), including, without limitation, pursuant to any sub-participation agreement; or
- (ii) understanding (whether formal or informal),

actively co-operate, in connection with the acquisition directly or indirectly of any Commitments or the exercise of any rights, discretions or decisions as a Financier under the Transaction Documents or otherwise seeking to exercise control over the HoldCo Group;

(b) a document in the **"agreed form"** is a reference to a document in a form approved and for the purposes of identification initialled by or on behalf of the Majority Reporting Financiers;

(c) a **"body corporate"** is to be construed in accordance with section 1028(1) of the ADGM Companies Regulations 2020; and references to a **"company"** shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;

(d) **"control"** means, in relation to any person, the power to direct the management and/or policies of such person, directly or indirectly, whether through the ownership of voting securities or similar interests, by contract or otherwise, and the terms controlled, controller and controlling shall be construed accordingly;

(e) a **"party"** is a reference to a party to this Agreement (either by virtue of having executed this Agreement or having entered into a Deed of Adherence) and includes a reference to that party's legal personal representatives, successors and permitted assigns, and **"parties to this Agreement"** and **"parties"** shall be construed accordingly;

(f) a **"person"** includes a reference to any individual, firm, company, corporation or other body corporate, government, state or agency of state, local or municipal

- authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (g) any statute or statutory provision includes a reference to the statute or statutory provision as amended, modified or re-enacted or both from time to time (whether before or after the date of this Agreement) and any subordinate legislation made under the statute or statutory provision (whether before or after the date of this Agreement);
 - (h) a clause or schedule, unless the context otherwise requires, is a reference to a clause of, or schedule to, this Agreement;
 - (i) (unless the context otherwise requires) the singular shall include the plural, and *vice versa*;
 - (j) one gender shall include each gender;
 - (k) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term and a reference to any English statute shall be construed so as to include equivalent or analogous laws of any other jurisdiction;
 - (l) times of the day is to time in the United Arab Emirates;
 - (m) any other document referred to in this Agreement is a reference to that other document as amended, varied, novated, supplemented or replaced from time to time (other than in breach of the provisions of this Agreement);
 - (n) unless otherwise stated in this Agreement or the Articles of Association of HoldCo, decisions taken by the HoldCo Board shall be valid and effective if taken with the approval of a Simple Majority of the HoldCo Board at a quorate meeting of the HoldCo Board; and
 - (o) unless otherwise stated in this Agreement, any reference to a party's Commitments (including where such term is used in relation to a term defined in the HoldCo Common Terms Agreement) shall be construed to include the Commitments of such party's Affiliates and Related Funds and such other persons as are acting in concert with such party.
- 1.3 The *ejusdem generis* principle of construction shall not apply to this Agreement. Accordingly, general words shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class of acts, matters or things or by examples falling within the general words. Any phrase introduced by the terms "other", "including", "include" and "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.4 The Schedules form part of this Agreement and shall have effect accordingly.
- 1.5 The headings in this Agreement do not affect its interpretation or construction.

2. EFFECTIVENESS OF THIS AGREEMENT

This Agreement shall come into effect at Completion save for clauses 1, 2, 3, 4 and 14 to 29 (inclusive) which shall take effect from the date of this Agreement.

3. THE BUSINESS OF THE HOLDCO GROUP

The parties agree that the business of the HoldCo Group shall be to carry on the NMC Healthcare Business from Completion in accordance with:

- (a) this Agreement;
- (b) the Articles of Association of HoldCo;
- (c) the applicable Business Plan and Budget;
- (d) the Accounting Principles;
- (e) the Key Policies of the HoldCo Group as approved by the HoldCo Board in accordance with this Agreement; and
- (f) Applicable Law.

4. CORPORATE GOVERNANCE OF THE HOLDCO GROUP

4.1 The Trustee

- (a) The Trustee shall only exercise its voting rights and other rights as the shareholder of HoldCo in order (insofar as it is able to do so through the exercise of such rights) to:
 - (i) pass the appropriate shareholder resolution to adopt the Articles of Association on Completion and make the relevant filings in respect of the Articles of Association;
 - (ii) procure that HoldCo complies with all of its obligations under this Agreement, the Articles of Association of HoldCo and Applicable Law;
 - (iii) give full effect to the terms of this Agreement and the Articles of Association of HoldCo; and
 - (iv) give full effect to the rights and obligations of the parties as set out in this Agreement and the Articles of Association of HoldCo.
- (b) For the avoidance of doubt, the Trustee shall not exercise its voting rights and other rights as the shareholder of HoldCo contrary to the terms, intent and purpose of this Agreement, as set out in clause 4.1(c).
- (c) Without limiting the generality of the foregoing, provided that, subject always to actions that the Trustee is required to take by Applicable Law, but notwithstanding anything contained in this Agreement, the Trustee shall have no power to:

- (i) sell, dispose of, convert, vary, transpose, assign, pledge, charge, mortgage, hypothecate, encumber or otherwise deal in any manner with all or any of the Shares otherwise than under or pursuant to the provisions of the Transaction Documents;
- (ii) exercise the rights attaching to the Shares in such a way as would, or might reasonably be expected to, result in a breach by HoldCo or any nominee of the Trustee of their respective obligations under or pursuant to the provisions of the Transaction Documents;
- (iii) propose or pass any resolutions to increase or consolidate, divide, cancel, reduce or otherwise alter the issued share capital of HoldCo; or
- (iv) propose or pass any resolutions to commence any proceedings to voluntarily wind up HoldCo.

4.2 The HoldCo Board and the OpCo Board

- (a) The HoldCo Board shall be the governing body of the HoldCo Group, and:
 - (i) the Executive Management Team (through the Chief Executive Officer) shall report to the HoldCo Board; and
 - (ii) the Internal Auditor shall report to both the Chief Executive Officer and the HoldCo Board.
- (b) The OpCo Board shall, subject to clause 10.3, be responsible for the day to day operations and management of the business of the OpCo Group.
- (c) On Completion, the Chief Executive Officer shall be appointed as an OpCo Director. Immediately following the commencement of their employment, the Chief Financial Officer and the Chief Transformation Officer shall each be appointed as OpCo Directors. Subsequently, the appointment and removal of the OpCo Directors shall be approved by the HoldCo Board acting by Simple Majority.
- (d) The appointment and approval of the directors of the OpCo Subsidiaries shall be approved by the HoldCo Board acting by Simple Majority.

4.3 Composition of the HoldCo Board

At Completion, the HoldCo Board shall consist of:

- (a) seven Non-Executive Directors, comprising:
 - (i) six 10% Directors; and
 - (ii) one Minority Director; and
- (b) the Chief Executive Officer, who shall be a non-voting member of the HoldCo Board. For the avoidance of doubt, the Chief Executive Officer shall not be a statutory director of the HoldCo Board or be entitled to vote at or be counted in

the quorum of any meetings of the HoldCo Board but shall have a standing invitation to attend and participate in such meetings (subject to clause 5.1(h) and the provisions of Applicable Law) and receive the same information as sent to the HoldCo Directors pursuant to clause 5.1(c) in respect of such meetings.

The Reporting Financiers' entitlements: (i) to nominate 10% Directors in accordance with clause 4.4; and (ii) for such nominees to be appointed to the HoldCo Board at Completion in accordance with clause 4.8 shall be based on the Financiers' Commitments as determined by the EPM run carried out before Completion in accordance with the LTD DOCA (the date on which the EPM run is carried out being the "**EPM Run Date**"), but provided that: (A) a Reporting Financier must have satisfied the Initial Distribution Requirements on or prior to the Record Date to be eligible to nominate 10% Directors to the HoldCo Board on Completion in accordance with clause 4.4; (B) any provisional allocation of Commitments to a Reporting Financier in respect of any Holdback Claims shall not be taken into account when calculating such Reporting Financier's Commitments for this purpose; and (C) any notified Subparticipated Commitments shall be deemed to be held by the Notified Subparticipant in place of the Subparticipating Financier in accordance with clause 4.4(e).

4.4 Nomination of Non-Executive Directors by the Nominating Financiers

- (a) Subject to clause 4.4(e), for so long as a Reporting Financier holds more than ten percent (10%) of the Commitments from time to time (each such Reporting Financier being a "**Nominating Financier**"), it may (but is not required to), subject to this clause 4.4 and clause 4.6:
 - (i) nominate one HoldCo Director for each ten percent (10%) of the Commitments that it holds up to a maximum of three Non-Executive Directors (the "**Nominations Cap**") (each Non-Executive Director so nominated being a "**10% Director**"); and
 - (ii) from time to time procure the resignation of or remove from office and/or replace any such 10% Director so nominated by it and, upon such resignation or removal may nominate another person for appointment in their place in accordance with this clause 4.4,

it being understood that: (A) a Commitment shall not be counted more than once for the purposes of calculating a nomination or removal right pursuant to this clause 4.4; and (B) the Nominations Cap shall apply such that a Nominating Financier together with its Affiliates and Related Funds and such other persons as are acting in concert with such Nominating Financier shall not, in aggregate, be entitled to nominate more than three Non-Executive Directors.

- (b) Subject to clause 4.4(e), if there are fewer than six Non-Executive Directors because there are too few Nominating Financiers and/or one or more Nominating Financiers chose not to nominate a Non-Executive Director (a "**Director Deficit Event**"), then the Reporting Financier(s) with the next largest holding of Commitments that is prepared to nominate a Non-Executive Director shall be deemed to be a Nominating Financier for the purposes of clause 4.4(a), provided that:

(i) such Reporting Financier has satisfied the Initial Distribution Requirements on or prior to the Record Date to be eligible to nominate 10% Directors to the HoldCo Board in accordance with clause 4.4; and

(ii) any provisional allocation of Commitments to such Reporting Financier in respect of any Holdback Claims shall not be taken into account when calculating such Reporting Financier's Commitments for this purpose,

(each such Reporting Financier being a "**Deemed Nominating Financier**") and, in each case, for so long as the Director Deficit Event continues.

- (c) If the Director Deficit Event ceases to exist, the Deemed Nominating Financiers shall, with effect from the next Annual Determination Date following the date on which the Director Deficit Event ceases to exist, procure the resignations of such number of their nominated Non-Executive Directors as are necessary to ensure that each Nominating Financier (excluding for these purposes any Deemed Nominating Financiers and any Nominating Financiers who have elected not to nominate a Non-Executive Director) shall be entitled to nominate its Non-Executive Directors to the HoldCo Board in accordance with clause 4.4(a), it being acknowledged that the Deemed Nominating Financier with the smallest holding of Commitments (as determined by clause 4.4(b)) shall be required to procure such resignations ahead of any Deemed Nominating Financier with a larger holding of Commitments (as determined by clause 4.4(b)).
- (d) If the Nominating Financiers from time to time are entitled to nominate more than six Non-Executive Directors, the Nominating Financier or Nominating Financiers with the smallest holding of Commitments shall not be entitled to make any such nomination, such that the Nominating Financiers shall in total be entitled to nominate six Non-Executive Directors.
- (e) A Financier that has entered into a *bona fide* subparticipation arrangement (such Financier, the "**Subparticipating Financier**") in respect of its Commitments (including, for the avoidance of doubt, any Commitments that it is prospectively entitled to receive on Completion) (the "**Subparticipated Commitments**") may, together with the relevant subparticipant (the "**Notified Subparticipant**") deliver a Subparticipation Notice to HoldCo and the Global Agent. For the purposes of clauses 4.4(a) and 4.4(b), during the period beginning on Completion and ending three (3) months thereafter (the "**Interim Period**"), any Subparticipated Commitments shall be deemed to be held by the Notified Subparticipant in place of the Subparticipating Financier. As a result, and for the Interim Period only, a Notified Subparticipant may be deemed to be a Nominating Financier for the purposes of this Agreement in place of the Subparticipating Financier, even if they are not a Financier or the Commitments held by them as a Financier would be insufficient for them to be a Nominating Financier provided that (i) the Notified Subparticipant continues to be party to the subparticipation arrangement with the Subparticipating Financier in respect of the Subparticipated Commitments; and (ii) such Subparticipated Commitments would but for this clause 4.4(e) entitle the Subparticipating Financier to be a Nominating Financier for the purposes of clauses 4.4(a) and 4.4(b).

4.5 **Resignation and replacement of Non-Executive Directors following a Relevant Transfer**

- (a) If a Nominating Financier (a "Transferring Nominating Financier") delivers a Transfer Notice to the Global Agent pursuant to clause 19.6 (*Procedure for transfer*) of the HoldCo Common Terms Agreement to effect a Relevant Transfer, the Global Agent shall, on receipt of such Transfer Notice, calculate whether such Transferring Nominating Financier would, following such Relevant Transfer, remain a Nominating Financier or Deemed Nominating Financier pursuant to clause 4.4 and, if such Transferring Nominating Financier would not remain a Nominating Financier or Deemed Nominating Financier, the Global Agent shall, as soon as reasonably practicable:
 - (i) notify the Transferring Nominating Financier and each of the other Nominating Financiers of such change; and
 - (ii) notify each Reporting Financier who on a *pro forma* basis (in accordance with clause 4.5(c)) will become a Nominating Financier or Deemed Nominating Financier (in accordance with clause 4.4) after the Relevant Transfer has taken effect.
- (b) If a Transferring Nominating Financier receives a notice from the Global Agent pursuant to clause 4.5(a)(i), it shall:
 - (i) procure the resignation of such number of its nominated 10% Directors as is necessary to ensure that it has nominated only such number of 10% Directors as it is entitled to nominate, with such resignation(s) to take effect:
 - (A) subject to clause 4.5(b)(i)(B), from the date replacement 10% Directors are appointed in accordance with clauses 4.4 and 4.8; or
 - (B) in the event that the Relevant Transfer would result in the Nominating Financier ceasing to hold any Commitments, with effect from the date of settlement of the Relevant Transfer; and
 - (ii) procure that any resigning 10% Director continues to act reasonably and in good faith in accordance with this Agreement until they are replaced.
- (c) In the event of a Relevant Transfer, and solely for the purposes of determining each of the Reporting Financiers who will become a Nominating Financier or Deemed Nominating Financier (in accordance with clause 4.4) in place of the Transferring Nominating Financier, the Financiers' Commitments shall be assessed by the Global Agent, by reference to its records on the date of the Transfer Notice and after giving *pro forma* effect to the Relevant Transfer and for which purpose any provisional allocation of Commitments to a Financier in respect of any Holdback Claims shall not be taken into account when calculating such Financier's Commitments.

- (d) Each Reporting Financier who on a *pro forma* basis (in accordance with clause 4.5(c)) becomes a Nominating Financier or Deemed Nominating Financier (in accordance with clause 4.4) after a Relevant Transfer has taken effect and has been so notified by the Global Agent pursuant to clause 4.5(a)(ii), shall be entitled to nominate its Non-Executive Director(s) to the HoldCo Board in accordance with (and subject to) clause 4.4(a) immediately after such Relevant Transfer has taken effect.
- (e) Upon the termination of a Subparticipation Notice, and for the purposes of clauses 4.4(a), 4.4(b) and this clause 4.5 (*Resignation and replacement of Non-Executive Directors following a Relevant Transfer*) only:
 - (i) if a Transfer Notice has been delivered to the Global Agent in respect of the applicable Subparticipated Commitments prior to the end of the Interim Period, whereby the Subparticipated Commitments are transferred or assigned to the Notified Subparticipant or any of its Affiliates, no Relevant Transfer shall be deemed to have taken place and the Notified Subparticipant (or its relevant Affiliates that have acquired the Subparticipated Commitments) shall be deemed continue as a Financier holding the Commitments that were formerly subparticipated; or
 - (ii) in any other case, a Relevant Transfer of the Subparticipated Commitments shall be deemed to have occurred from the Notified Subparticipant to the Financier or Financiers who hold those Commitments as at the date of the termination.

4.6 Annual Adjustment of Commitments

- (a) Without prejudice to the provisions of clause 4.5 and other than in respect of the Initial Non-Executive Directors, the entitlement of the Reporting Financiers to nominate 10% Directors in accordance with clause 4.4 shall take effect on each Annual Determination Date, and shall be based on the Financiers' Commitments as set out in the Annual EPM Re-run Notice, such notice to be given to the Financiers by the Global Agent no later than the Annual Determination Date, but provided that:
 - (i) a Reporting Financier must have satisfied the Initial Distribution Requirements on or prior to the Annual Determination Date to be eligible to nominate 10% Directors to the HoldCo Board in accordance with clause 4.4; and
 - (ii) any provisional allocation of Commitments to a Reporting Financier in respect of any Holdback Claims shall not be taken into account when calculating such Reporting Financier's Commitments for this purpose.
- (b) For the avoidance of doubt, the determination of the Reporting Financiers' entitlements to nominate a 10% Director in accordance with clause 4.4 as a result of any Commitments received by a Financier as a result of re-running the EPM (other than as a result of the Annual EPM Re-run) and/or the Claims Determination Process shall take effect on the earliest to occur of:

- (i) the next Annual Determination Date (subject to the Annual EPM Re-run immediately prior to such Annual Determination Date having occurred); and
 - (ii) the date on which the Global Agent assesses the Financiers' Commitments in accordance with clause 4.5(c), provided that this provision shall not require a 10% Director (other than a 10% Director nominated by a Transferring Nominating Financier who is required to resign in accordance with clause 4.5(b)) to resign prior to the end of the tenth (10th) Business Day after the next Annual Determination Date and provided that such resignation shall otherwise take effect in accordance with clause 4.6(c).
- (c) Within ten (10) Business Days of each Annual Determination Date, each Reporting Financier shall:
- (i) procure the resignation of such number of its nominated 10% Directors as is necessary to ensure that it has nominated only such number of 10% Directors as it is entitled to nominate in accordance with clause 4.4, with such resignation(s) to take effect from the date replacement 10% Directors are appointed in accordance with clauses 4.4 and 4.8; and
 - (ii) procure that any resigning 10% Directors continue to act reasonably and in good faith in accordance with this Agreement until they are replaced.
- (d) The Global Agent shall notify HoldCo if (to the best of its knowledge) any person holds or controls twenty five percent (25%) or more of the Commitments following:
- (i) a Relevant Transfer;
 - (ii) an Annual EPM Re-Run; and/or
 - (iii) any other event,
- (each a "**Relevant Event**"), in each case promptly (and in any event within five (5) Business Days of the Relevant Event). Following such notification, HoldCo will promptly (and in any event within 15 days of the Relevant Event) complete and file the required documents in respect of its beneficial owners with the relevant regulators, in accordance with ADGM law.

4.7 Nomination of the Minority Director by the Minority Reporting Financiers

- (a) The Reporting Financiers who do not have an individual entitlement to nominate a Non-Executive Director under clause 4.4(a) (the "**Minority Reporting Financiers**") shall collectively be entitled to:
- (i) nominate one Non-Executive Director (the "**Minority Director**"); and
 - (ii) from time to time by notice in writing to HoldCo from the Global Agent on behalf of the Minority Reporting Financiers procure the resignation of or remove from office and/or replace the Minority Director so

nominated by them, and upon such resignation or removal may nominate another person for appointment in their place in accordance with this clause 4.7.

- (b) The procedure set out in clauses 4.1(c) to 4.1(f) (inclusive) of the Restructuring Implementation Deed ("**RID Procedure**") shall apply to the appointment of the initial Minority Director. Following (and subject to) the completion of the RID Procedure and the Global Agent's receipt of the notice referred to in clause 4.1(f) of the Restructuring Implementation Deed, the Global Agent shall notify HoldCo in writing of the selected nominee for the role of the initial Minority Director. If the proposed initial Minority Director is not appointed as a result of the RID Procedure and clause 4.1(g) of the Restructuring Implementation Deed instead applies, the provisions of clause 4.7(c) below shall apply to the appointment of the initial Minority Director.
- (c) In order to effect the replacement of a Minority Director (or the appointment of the initial Minority Director if clause 4.1(g) of the Restructuring Implementation Deed applies):
 - (i) the Global Agent on behalf of the Minority Reporting Financiers may, through a notice in writing, submit a list of potential candidates to the Remuneration and Nominations Committee from which the Remuneration and Nominations Committee shall produce a shortlist of three names (the "**Minority Director Short List**"), and for which purpose the Remuneration and Nominations Committee shall apply the criteria set out in Schedule 3;
 - (ii) the Minority Director Short List shall thereafter be put to a vote of the Minority Reporting Financiers. The candidate on the Minority Director Short List with the most votes (weighted in accordance with the value of the Commitments of each Minority Reporting Financier), from a vote among all Minority Reporting Financiers, shall be selected as nominee for Minority Director. The Global Agent shall notify HoldCo in writing of the selected nominee.
 - (iii) if the Remuneration and Nominations Committee determines that the list of potential candidates submitted by the Global Agent on behalf of the Minority Reporting Financiers is unsuitable for appointment (having applied the criteria set out in Schedule 3), the Global Agent on behalf of the Minority Reporting Financiers shall through a notice in writing to HoldCo re-submit the list of potential candidates to the Remuneration and Nominations Committee (excluding the candidates previously determined by the Remuneration and Nominations Committee to be unsuitable for appointment) and clauses 4.7(c)(i) and 4.7(c)(ii) shall otherwise apply.
- (d) Any notice given by the Global Agent on behalf of the Minority Reporting Financiers in accordance with this clause 4.7 shall require certification from the Global Agent that the matter which is the subject of the notice has (i) the approval of a simple majority (by value of Commitments) of the Minority Reporting Financiers, or (ii) in the case of the appointment of the initial

Minority Director been approved by the Minority Reporting Financiers in accordance with clause 4.1 of the Restructuring Implementation Deed.

- (e) For the avoidance of doubt, the provisions of clause 34.5 (*Excluded Commitments*) of the HoldCo Common Terms Agreement shall apply to this clause 4.7.

4.8 Appointment of Non-Executive Directors

- (a) Individuals for the role of Non-Executive Director shall be nominated by the Nominating Financiers in accordance with clause 4.4 and by or on behalf of the Minority Reporting Financiers in accordance with clause 4.7:
- (i) in the case of the initial Non-Executive Directors to be appointed at Completion (the "**Initial Non-Executive Directors**"), on or prior to Completion; and
 - (ii) in all other cases, within ten (10) Business Days following the Annual Determination Date unless otherwise set out in this Agreement.
- (b) Any person nominated for appointment pursuant to this Agreement shall be suitably experienced for the role of Non-Executive Director, and shall be subject to the approval of the Remuneration and Nominations Committee in advance of their appointment and for which purpose the Remuneration and Nominations Committee shall apply the criteria set out in Schedule 3. If the Remuneration and Nominations Committee approves the appointment of any person for the role of Non-Executive Director, in accordance with this clause 4.8(b), such person's name shall be presented to:
- (i) the HoldCo Board for approval; or
 - (ii) in the case of the persons approved by the Remuneration and Nominations Committee for appointment as the Initial Non-Executive Directors, the Trustee (in its capacity as a shareholder of HoldCo) for approval.
- (c) If the Remuneration and Nominations Committee determines that any proposed 10% Director is unsuitable for appointment (having applied the criteria set out in Schedule 3), the relevant Nominating Financier shall propose another person to the Remuneration and Nominations Committee for approval.
- (d) The Trustee shall exercise all voting rights and other powers of control available to it in its capacity as a shareholder of HoldCo to ensure that:
- (i) the persons:
 - (A) nominated for appointment and approval by the HoldCo Board as HoldCo Directors (other than the Initial Non-Executive Directors) in accordance with clauses 4.4 to 4.8 (inclusive) are so appointed;

- (B) to be removed as HoldCo Directors in accordance with clauses 4.5 to 4.7 (inclusive) are so removed; and
 - (C) approval and appointment by the Remuneration and Nominations Committee as the Initial Non-Executive Directors in accordance with clauses 4.4 to 4.8 (inclusive) are so appointed with effect from Completion;
- (ii) the resignation of the then existing HoldCo Directors and OpCo Directors is procured with effect from Completion.
- (e) Each subsequent appointment or removal of a Non-Executive Director (in accordance with this Agreement) shall be made by written notice to HoldCo (as the case may be):
- (i) in the case of a 10% Director, from the relevant Nominating Financier (in accordance with this Agreement); or
 - (ii) in the case of the Minority Director, in accordance with clause 4.7(a)(ii).
- (f) Subject to the other provisions of this clause 4, the appointment or removal of a Non-Executive Director shall, to the extent permitted by Applicable Law and unless otherwise specified in this Agreement, take effect upon receipt of the written notice to HoldCo made in accordance with clause 4.8(e) (unless otherwise specified in such written notice).
- (g) In the case of removal of a Non-Executive Director, such Non-Executive Director shall not be entitled to attend, vote at or receive board papers or any information in respect of, any meeting of the HoldCo Board from the later of:
- (i) the date on which written notice to HoldCo made in accordance with clause 4.8(f) is received; and (ii) if the written notice specifies a later date on which the removal is to be effective, such later date.
- (h) The appointment of each Non-Executive Director shall be for an initial term of three years from the date of appointment specified in the relevant NED Appointment Letter. Each such Non-Executive Director may be nominated for re-appointment for subsequent three year terms:
- (i) in the case of a 10% Director, by written notice from the relevant Nominating Financier to HoldCo; or
 - (ii) in the case of the Minority Director, by written notice from the Global Agent (on behalf of the Minority Reporting Financiers) to HoldCo,

and any person nominated for re-appointment in accordance with this clause 4.8(h) shall be subject to the approval of the Remuneration and Nominations Committee in advance of their re-appointment and for which purpose the Remuneration and Nominations Committee shall apply the criteria set out in Schedule 3. If the Remuneration and Nominations Committee approves the re-appointment of any person for the role of Non-Executive Director, in accordance with this clause 4.8(h), such person's name shall be presented to the HoldCo Board for approval.

4.9 *Ad Hoc Committee Role*

- (a) The functions of the Remuneration and Nominations Committee:
- (i) in respect of the nomination of any 10% Director, shall be performed by the *Ad Hoc Committee* (excluding the relevant Nominating Financier that has nominated the 10% Director that is being considered by the *Ad Hoc Committee*); and
 - (ii) in respect of the nomination of the Minority Director, shall be performed by the *Ad Hoc Committee* (excluding the Minority Reporting Financiers),
- until the Remuneration and Nominations Committee is established and all relevant powers have been delegated to it, in accordance with clause 5.7(a), and until such time all references in clauses 4.7 and 4.8 to the "Remuneration and Nominations Committee" shall be construed as references to the "*Ad Hoc Committee*" excluding the relevant Nominating Financier for the purposes of clause 4.9(a)(i) or the Minority Reporting Financiers for the purposes of clause 4.9(a)(ii) (as applicable).
- (b) Each party shall irrevocably and unconditionally, fully and finally, waive, release and discharge forever to the fullest extent permitted by Applicable Law each and every claim which it may have against the *Ad Hoc Committee* (or any of its Affiliates and any of its or their respective officers, directors, employees, partners, shareholders) whatsoever and howsoever arising, in connection with or by reason of or resulting directly or indirectly from any steps, acts or omissions by or on behalf of the *Ad Hoc Committee* in relation to the obligations of the *Ad Hoc Committee* under this Agreement.

4.10 *Global Agent Role*

- (a) The Global Agent is a party to this Agreement solely for the purpose of giving effect to the provisions of clauses 4.5 to 4.8 (inclusive), this clause 4.10, and clauses 8, 12.3, 21.
- (b) The Global Agent will at least annually (and on the occurrence of a Relevant Transfer) determine, and then notify each Financier and HoldCo, which Financier Group such Financier forms part of.
- (c) HoldCo will ensure that any information intended for a particular Financier Group and shared with the Global Agent for onward dissemination to such Financier Group in accordance with this Agreement shall be clearly marked so as to enable the Global Agent to ascertain to which Financier Group the relevant information is to be disseminated.

4.11 *Chair of the HoldCo Board*

- (a) The Nominating Financier which holds the largest Commitment, may nominate the Chair of the HoldCo Board from amongst the Non-Executive Directors, subject to approval by a Simple Majority of each of the other Non-executive Directors (or in the case of the first Chair on Completion, a simple majority of

the HoldCo Board), and may remove from office any such Chair and/or nominate another person for appointment in accordance with this clause 4.11.

- (b) The Chair shall chair meetings of the HoldCo Board at which they are present, but shall not have a casting vote.
- (c) Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the Chair in facilitating board discussion and decision-making, the Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

4.12 Fees and expenses of Non-Executive Directors

- (a) HoldCo shall pay to Non-Executive Directors fees for their services as HoldCo Directors (and for attending HoldCo Board meetings) and their services as Committee members (and for attending Committee meetings) in USD at market rate, such amounts and the structure of such payments to be determined or amended, in each case, by the HoldCo Board acting by a Simple Majority (acting reasonably).
- (b) Any Non-Executive Director who incurs expenses in fulfilling their duties as a Non-Executive Director shall be entitled to have such reasonable expenses reimbursed in USD by HoldCo as provided by the HoldCo Group's expenses policy.

5. PROCEEDINGS OF DIRECTORS

5.1 Meetings of the HoldCo Board

- (a) The HoldCo Board shall meet as necessary to discharge its duties, but in any case no less than monthly for the six month period following Completion and thereafter no less frequently than five times in any one year period.
- (b) At least ten (10) Business Days' notice of each meeting of the HoldCo Board shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.
- (c) Subject to clause 5.5(c) and clause 5.5(d), an agenda and copies of any appropriate supporting papers shall be sent to each HoldCo Director together with the notice of such HoldCo Board meeting referred to in clause 5.1(b) and, unless the HoldCo Board agrees otherwise, no business shall be transacted at the HoldCo Board meeting unless it is specified in the agenda and to the extent that necessary supporting papers have been provided in respect of that business.
- (d) Meetings of the HoldCo Board will be held in the ADGM and conducted in English.
- (e) Meetings of the HoldCo Board may be held by telephone, video conference, or any other suitable means as determined by the HoldCo Board acting by a Simple Majority.

- (f) Subject to clause 5.5(c) and clause 5.5(d), minutes of each HoldCo Board meeting written in English shall be circulated to each HoldCo Director no later than twenty (20) Business Days after the relevant HoldCo Board meeting.
- (g) The information sent to the HoldCo Directors pursuant to clause 5.1(c) shall also be sent to the Chief Financial Officer (in their capacity as an observer) at the same time it is sent to the HoldCo Directors, but any failure to comply with this clause 5.1(g) shall not affect the validity of the relevant HoldCo Board meeting, or of any business conducted at it.
- (h) The Chair shall, at the Chair's discretion (acting reasonably), be entitled to exclude the Chief Executive Officer and the Chief Financial Officer from any meeting of the HoldCo Board (or any part thereof) unless a simple majority of the other HoldCo Directors present at the meeting of the HoldCo Board consider and vote against such exclusion.

5.2 Quorum

- (a) No business shall be transacted at any meeting of the HoldCo Board unless a quorum is present at the time when the meeting proceeds to business and remains present during the transaction of such business.
- (b) The quorum for meetings of the HoldCo Board shall be a Simple Majority.
- (c) If a quorum is not present within 30 minutes of the time when the meeting should have begun or if during the meeting there is no longer a quorum, the Non-Executive Directors present at the meeting shall adjourn the meeting to reconvene the meeting by notice given in accordance with clause 5.1(b).

5.3 Chair

In the event that a Chair has not been appointed from time to time, or is not present at a meeting of the HoldCo Board, the Non-Executive Directors present must appoint a Non-Executive Director to chair the meeting and, if applicable, such appointment must be the first business of such meeting. For the avoidance of doubt, any such person appointed shall not have a casting vote.

5.4 Voting

The Non-Executive Directors shall make all decisions regarding HoldCo and the HoldCo Group by means of resolutions of the HoldCo Board. A resolution of the HoldCo Board is passed if a Simple Majority or a Super Majority (as applicable in accordance with this Agreement) present at a quorate meeting of the HoldCo Board vote in favour of the resolution, where each Non-Executive Director shall have one vote.

5.5 Directors' Duties and Conflicts of Interest

- (a) Each Non-Executive Director shall act in accordance with the directors duties set out in the ADGM Companies Regulations 2020 (as may be amended from time to time).

- (b) Each Financier agrees that a Non-Executive Director shall not be in breach of their duties to HoldCo by reason of their acting in accordance with this clause 5.5 or otherwise in accordance with the terms of this Agreement and the Articles of Association of HoldCo. Accordingly, each Financier authorises each Non-Executive Director:
 - (i) subject to clause 5.5(a), to act as a Non-Executive Director notwithstanding their appointment by a Board Appointing Financier for the purposes of representing such Board Appointing Financier's interests and monitoring and evaluating its financial interests in the HoldCo Group;
 - (ii) subject to clauses 5.5(c) and 5.5(d), to attend and vote at meetings of the HoldCo Board (or any Committee thereof) at which any matter will be discussed in which they have, or may have, a conflict of interest or duty by virtue of their appointment by a Board Appointing Financier and receive board papers relating thereto;
 - (iii) subject to clause 5.5(a), to receive and deal with Confidential Information and other documents and information relating to any member of the HoldCo Group or its business or assets and to use and apply such information in representing the interests of the Board Appointing Financier that appointed them;
 - (iv) except in the case of the Minority Director, notwithstanding clause 14, to disclose any Confidential Information and other documents and information relating to any member of the HoldCo Group or its business or assets to any director, officer or employee of any Board Appointing Financier that appointed them or any director, officer or employee of its Affiliates or Related Funds for the purposes of monitoring and evaluating such Board Appointing Financier's financial interests in the HoldCo Group; and
 - (v) to keep confidential any information relating to the Board Appointing Financier that appointed them or any of its Affiliates or Related Funds that is subject to obligations of confidence and which such Board Appointing Financier is not otherwise obliged to disclose to the other Financiers or any member of the HoldCo Group pursuant to the terms of this Agreement and not to use or apply such information in performing their duties to HoldCo or any other member of the HoldCo Group.
- (c) Except in respect of the matters referred to in clause 5.5(d), and subject where applicable to:
 - (i) disclosure in accordance with Applicable Law and the Articles of Association of HoldCo;
 - (ii) compliance with any provisions of the Articles of Association of HoldCo dealing with conflicts of interest; and

- (iii) any terms imposed by the HoldCo Board in relation to any conflict of interest,

a Non-Executive Director shall be counted in the quorum and entitled to vote at a meeting of the HoldCo Board on any resolution in respect of any matter in which they are interested or where they have, or may have, a conflict of interest that has been authorised under the Articles of Association of HoldCo,

- (A) save that any actual or potential conflict of interest of a Non-Executive Director arising from a Related Party Transaction shall be deemed to be an authorised conflict of interest under the Articles of Association of HoldCo; and
 - (B) where a conflict of interest (other than as it relates to a Related Party Transaction) has not been authorised (or deemed authorised) under the Articles of Association of HoldCo, a Non-Executive Director shall not be entitled to receive board papers, attend or vote at a meeting of the HoldCo Board on any resolution in respect of such matter unless otherwise agreed in writing by the Board Appointing Financiers that did not appoint them and such a meeting of the HoldCo Board will be quorate notwithstanding the absence of any such Non-Executive Director(s).
- (d) In respect of any right of action by HoldCo or any other member of the HoldCo Group against the Board Appointing Financier who appointed them or any of its Affiliates or Related Funds or any right of action by the Board Appointing Financier who appointed them or any of its Affiliates or Related Funds against HoldCo or any other member of the HoldCo Group, a Non-Executive Director shall not be entitled to receive board papers, attend or vote at a meeting of the HoldCo Board on any resolution in respect of any such matters unless otherwise agreed in writing by the Board Appointing Financiers that did not appoint them and such a meeting of the HoldCo Board will be quorate notwithstanding the absence of any such Non-Executive Director(s).

5.6 Observer at Meetings of the HoldCo Board

- (a) The Chief Financial Officer shall have a standing invitation to attend HoldCo Board meetings as an observer.
- (b) In such capacity, the Chief Financial Officer shall have the right to attend any meetings of the HoldCo Board, subject to clause 5.1(h) and the provisions of Applicable Law, but shall not be entitled to vote and shall not be counted in the quorum of any such meeting. HoldCo shall not be required to consult with or consider the availability of the Chief Financial Officer when scheduling meetings of the HoldCo Board.

5.7 The HoldCo Board Committees

- (a) The HoldCo Board may delegate any of the powers which are conferred on it under this Agreement or the Articles of Association of HoldCo to a

remuneration and nominations committee (the "**Remuneration and Nominations Committee**"), an audit committee (the "**Audit Committee**"), an operations and quality committee ("**Operations and Quality Committee**"), a restructuring committee ("**Restructuring Committee**"), an exit committee (the "**Exit Committee**") and such other committees as the HoldCo Board determines (collectively, the "**Committees**") to such an extent and in relation to such matters and on such terms as it thinks fit subject to this clause 5.7 and the terms of reference for the Remuneration and Nominations Committee, the Audit Committee, the Operations and Quality Committee, the Restructuring Committee and the Exit Committee as set out in Schedule 3, Schedule 4, Schedule 5, Schedule 6 and Schedule 7 respectively (each, a "**Terms of Reference**").

- (b) The HoldCo Board shall use all commercially reasonable endeavours to establish and delegate relevant powers to each Committee within three (3) months of the date of Completion.
- (c) The membership of the Remuneration and Nominations Committee and the Audit Committee shall in each case comprise of at least:
 - (i) two 10% Directors appointed by different Financiers; and
 - (ii) the Minority Director.
- (d) The membership of the Operations and Quality Committee and the Restructuring Committee shall in each case comprise of at least three 10% Directors appointed by different Financiers.
- (e) The membership of the Exit Committee shall comprise of at least:
 - (i) one 10% Director from the Nominating Financier which holds the largest Commitment;
 - (ii) two 10% Directors from different Financiers (other than the Nominating Financier which holds the largest Commitment); and
 - (iii) the Minority Director.
- (f) At least ten (10) Business Days' notice of each meeting of each Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.
- (g) The quorum of each Committee shall be a simple majority of the members of the relevant Committee.
- (h) The chairs of the Committees shall be such member of the relevant Committee as the HoldCo Board shall nominate and approve acting by Simple Majority.
- (i) The Committees shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

- (j) Each Committee shall meet as often as its roles and responsibilities reasonably require and:
 - (i) at least once in each Relevant Accounting Period to correspond, in respect of the Remuneration and Nominations Committee, with the HoldCo Group's annual salary review programme; and
 - (ii) at least twice in each Relevant Accounting Period to correspond, in respect of the Audit Committee, with the HoldCo Group's annual audit.

5.8 Meetings of OpCo and the OpCo Subsidiaries

The proceedings of the OpCo Board and the board of each of the OpCo Subsidiaries shall be determined by the HoldCo Board acting by Simple Majority and acting in accordance with Applicable Law.

5.9 Insurance

- (a) HoldCo and OpCo shall maintain adequate directors' and officers' liability insurance for the benefit of the HoldCo Directors and the OpCo Directors respectively.
- (b) HoldCo and OpCo shall provide the HoldCo Directors and the OpCo Directors respectively with the benefit of an indemnity against any liability which they may incur in relation to the HoldCo Group to the extent permitted by and in accordance with Applicable Law and excluding fraud, gross negligence and wilful default.

6. RESERVED MATTERS

6.1 General

- (a) Subject to clause 6.1(c), each party shall procure (so far as it is able) that no action is taken or resolution passed by HoldCo, OpCo or the OpCo Subsidiaries, and HoldCo and OpCo shall not take, and shall procure that no OpCo Subsidiary takes, any action in respect of any matter set out in Schedule 8 or Schedule 9 other than in accordance with this clause 6.
- (b) For the purposes of this clause 6, a series of related transactions shall be construed as a single transaction, and any amounts involved in the related transaction shall be aggregated.
- (c) Notwithstanding clause 6.1(a), Schedule 8 and Schedule 9, the following matters will not be subject to the approvals set out in this clause 6:
 - (i) OpCo and HoldCo entering into and performing their obligations under the OpCo Finance Documents and any other documents entered into on or prior to the Restructuring Effective Date (as defined in the Restructuring Implementation Deed); and
 - (ii) any member of the HoldCo Group exercising its or their rights and performing its or their obligations under the LTD Asset Transfer

Agreement other than those matters set out in paragraph 1.6 of Part 1 of Schedule 8.

- (d) For the period commencing on Completion and ending on 31 December 2022, the financial limits in paragraph 1.1.3 of Part 1 of Schedule 8, paragraphs 1.1.6 and 1.1.7 of Part 2 of Schedule 8 and paragraph 1.1.3 of Part 3 of Schedule 9 shall be pro-rated.

6.2 Approval of the HoldCo Board

- (a) The matters set out in Part 1 of Schedule 8 shall require the prior approval of the HoldCo Board acting by way of a Simple Majority Resolution. Terms used but not otherwise defined in paragraph 1.6 of Part 1 of Schedule 8 shall have the meanings given to them in the LTD Asset Transfer Agreement.
- (b) The matters set out in Part 2 of Schedule 8 shall require the prior approval of the HoldCo Board acting by way of a Super Majority Resolution.
- (c) Where a matter set out in Schedule 8 also requires approval of the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) in accordance with clause 6.3, that matter must be approved by both the HoldCo Board in accordance with this clause 6.2 as well as by the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) in accordance with clause 6.3 (and any such matter shall only be put to the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) after it has been approved by the HoldCo Board in accordance with this clause 6.2).

6.3 Approval by the Financiers

The matters set out in Schedule 9 shall require the prior approval of the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) in accordance with the HoldCo Facilities.

6.4 Approval by the Trustee

Any matter requiring the approval of the Trustee under Applicable Law shall be approved by the Trustee upon request of the HoldCo Directors (acting in accordance with this Agreement) (and any such matter shall only be put to the Trustee after it has been approved under clause 6.2 and clause 6.3 as applicable).

7. BUSINESS PLAN AND BUDGET

- 7.1 At Completion, the Completion Budget shall be adopted by the HoldCo.
- 7.2 Within twelve (12) Business Days of Completion, the Executive Management Team shall submit to the HoldCo Board for consideration the draft First Budget.
- 7.3 The HoldCo Board shall meet to discuss, amend (as required) and approve the draft First Budget submitted to it in accordance with clause 7.2 no later than thirty two (32)

Business Days after its submission (such approval to be given by the HoldCo Board acting by way of a Super Majority Resolution).

- 7.4 Within twelve (12) Business Days of Completion, the Executive Management Team shall submit to the HoldCo Board for consideration a draft Business Plan for the period commencing on 1 January 2022 and ending on 31 December 2024 (with the same level of detail as, and with appropriate adjustments to, the First Business Plan).
- 7.5 The HoldCo Board shall meet to discuss, amend (as required) and approve the draft Business Plan submitted to it in accordance with clause 7.4 no later than forty eight (48) Business Days after its submission (such approval to be given by the HoldCo Board acting by way of a Super Majority Resolution).
- 7.6 At least sixteen (16) Business Days before the beginning of each subsequent Financial Year (beginning with the Financial Year commencing on 1 January 2023), the Executive Management Team shall submit to the HoldCo Board for consideration:
 - (a) a draft Business Plan for the three (3) year period commencing on 1 January of that Financial Year (with the same level of detail as, and with appropriate adjustments to, the then-current Business Plan); and
 - (b) a draft Budget for that Financial Year (based on, with the same level of detail as and with appropriate updates to, the then-current Budget).
- 7.7 The HoldCo Board shall meet to discuss, amend (as required) and approve the draft Business Plan and draft Budget submitted to it in accordance with clause 7.6 no later than four (4) Business Days before the beginning of the relevant Financial Year (such approval to be given by the HoldCo Board acting by way of a Super Majority Resolution).
- 7.8 The Business Plan and Budget as approved in accordance with clause 7.3, clause 7.5 or clause 7.7 (as applicable) shall be adopted by the HoldCo Group as its Business Plan and Budget for the relevant Financial Year.
- 7.9 If the HoldCo Board does not approve a Business Plan and/or Budget under clause 7.3, clause 7.5 or clause 7.7 (as applicable), the then-current Business Plan and/or Budget (as applicable) with such non-material amendments as are required to permit the conduct of the Business in the ordinary course having regard to any change in circumstances shall continue to apply unless and until a new Business Plan and/or Budget (as applicable) are approved.

8. INFORMATION UNDERTAKINGS

The undertakings in this clause 8 remain in force from Completion so long as any amount is outstanding under the Transaction Documents or any Commitment is in force.

8.1 Unrestricted Financier Information

- (a) The Global Agent on behalf of HoldCo shall deliver to each Unrestricted Financier as soon as the same become available but, in any event within one hundred and fifty (150) days after the end of the Relevant Accounting Period:

- (i) HoldCo's audited consolidated financial statements for the Relevant Accounting Period and any supplemental notes to those financial statements;
 - (ii) a statement by the HoldCo Directors commenting on the performance of the HoldCo Group for the Relevant Accounting Period and any material developments or proposals affecting the HoldCo Group or its business;
 - (iii) time for and the dial-in details of a conference call to discuss the performance of the HoldCo Group for the Relevant Accounting Period to be attended by at least one of either the Chief Executive Officer or Chief Financial Officer and held no earlier than the fifth Business Day, and no later than the tenth Business Day, following the date on which the details of the call are delivered to each Unrestricted Financier; and
 - (iv) promptly on request, such further information regarding the financial condition, assets and operations of the HoldCo Group and/or any member of the HoldCo Group (including any requested amplification or explanation of any information provided by HoldCo under this Agreement as any Unrestricted Financier may reasonably request) in relation to any consent or matter requiring consideration under this Agreement.
- (b) The Global Agent on behalf of HoldCo shall deliver to each Unrestricted Financier the Annual Outlook for the immediately following Financial Year as soon as the same becomes available but, in any event, within thirty (30) days after the start of the relevant Financial Year.
 - (c) The Global Agent on behalf of HoldCo shall notify each Unrestricted Financier of any proposed Exit Event as soon as reasonably practicable after binding documentation in connection with such Exit Event is agreed between the relevant parties.
 - (d) Any Unrestricted Financier (provided that it is not an Industrial Competitor, trade counterparty and/or a person engaged in a material dispute with HoldCo or any of its Subsidiaries) may, by written notice to the Global Agent, elect to receive Reporting Financier Information, and all such Reporting Financier Information shall be delivered by the Global Agent on behalf of HoldCo to each such Unrestricted Financier in accordance with clause 8.2 and clause 8.5, and all references to "Reporting Financier" under clause 8.2 and clause 8.5 shall be deemed to include each such Unrestricted Financier.

8.2 Reporting Financier Information

- (a) The Global Agent on behalf of HoldCo shall deliver to each Reporting Financier:
 - (i) as soon as the same become available but, in any event, within the time period specified in clause 8.1(a) all Unrestricted Financier Information;

- (ii) as soon as the same become available but, in any event, within ninety (90) days after the end of each Financial Quarter for the first two full Financial Quarters and, thereafter, within sixty (60) days after the end of each Financial Quarter of each of its Relevant Accounting Periods (other than the first two full Financial Quarters):
 - (A) HoldCo's management accounts for that Financial Quarter;
 - (B) an abridged profit and loss statement in respect of the HoldCo Group for that Financial Quarter including a breakdown by business unit and region and a comparison of actual performance for that Financial Quarter to the actual performance for the corresponding period in the preceding Relevant Accounting Period; and
 - (C) a reconciliation of actual performance to Budget for that Financial Quarter;
- (iii) as soon as the same become available but, in any event, within sixty (60) days after the end of each Financial Quarter of each of its Relevant Accounting Periods:
 - (A) an abridged profit and loss statement in respect of the HoldCo Group for that Financial Quarter; and
 - (B) updates in respect of the leverage and liquidity of the HoldCo Group including any developments or changes thereto, which have occurred in that Financial Quarter;
- (iv) at the same time as the information referred to in clause 8.2(a)(i) to clause 8.2(a)(iii) (inclusive) is delivered to each Reporting Financier, the details of a conference call to be attended by at least one of either the Chief Executive Officer or Chief Financial Officer and held no earlier than the fifth Business Day, and no later than the tenth Business Day, following the date on which the details of the call are delivered to each Reporting Financier;
- (v) promptly on request, such further information regarding the financial condition, assets and operations of the HoldCo Group and/or any member of the HoldCo Group (including any requested amplification or explanation of any information provided by HoldCo under this Agreement as any Reporting Financier may reasonably request) in relation to any consent or matter requiring consideration under this Agreement.

8.3 Supervising Financier Information

- (a) The Global Agent on behalf of HoldCo shall deliver to each Supervising Financier:
- (i) as soon as the same become available but, in any event, within the time periods specified in clause 8.2 and clause 8.5 all Reporting Financier Information;
 - (ii) as soon as the same become available but, in any event, within sixty (60) days after the end of each calendar month for the first two full Financial Quarters and, thereafter, within forty five (45) days after the end of each calendar month in each Financial Quarter of each of its Relevant Accounting Periods (other than the first two full Financial Quarters):
 - (A) HoldCo's management accounts for that calendar month;
 - (B) an abridged profit and loss statement in respect of the HoldCo Group for that calendar month including a breakdown by business unit and region and a comparison of actual performance for that calendar month to the actual performance for the corresponding period in the preceding Relevant Accounting Period; and
 - (C) any updates to the key management information included in the monthly report to be delivered to each Reporting Financier pursuant to paragraph (iii) below;
 - (iii) as soon as the information is available, but in any event, within forty five (45) days after the end of each calendar month ending on or prior to the first two full Financial Quarters and, thereafter, within thirty (30) days after the end of each calendar month (other than the calendar months ending on or prior to the first two full Financial Quarters) a report containing the following key management information in draft form in relation to the HoldCo Group:
 - (A) an abridged profit and loss statement for that calendar month;
 - (B) a summary of any updates in respect of the liquidity of the HoldCo Group including any developments or changes thereto, which have occurred in that calendar month;
 - (C) a report including a comparison of actual performance for that calendar month to the projected performance for that period set out in the most recent Budget; and
 - (D) Operational KPIs;
 - (iv) as soon as reasonably practicable after they are available, a copy of any minutes of meetings of the HoldCo Board and those of any Committees; and

- (v) promptly on request, such further reasonable information regarding the financial condition, assets and operations of the HoldCo Group and/or any member of the HoldCo Group (including any requested amplification or explanation of any information provided by HoldCo under this Agreement as any Supervising Financier may reasonably request) in relation to any consent or matter requiring consideration under this Agreement.
- (b) The Global Agent on behalf of HoldCo shall:
- (i) notify each Supervising Financier of any proposed Exit Event promptly upon becoming aware of such event (and prior to signing any binding documentation); and
 - (ii) as soon as reasonably practicable following material developments in relation to the proposed Exit Event but, in any event, within forty five (45) days after the end of each calendar month provide updates to each Supervising Financier in respect of the status, timing and projected outcome of the proposed Exit Event.

8.4 Requirements as to Financial Statements

- (a) The parties hereby acknowledge and agree:
 - (i) that special purpose consolidated financial information for the HoldCo Group, as agreed with the External Auditor by the Executive Management Team (the "**Special Purpose Financial Information**"), shall be prepared as at the date of Completion and shall be delivered by the Global Agent on behalf of HoldCo to the Reporting Financiers and Supervising Financiers; and
 - (ii) that HoldCo's first set of audited consolidated financial statements shall be for the Long Accounting Period.
- (b) Each set of annual financial statements or accounts delivered pursuant to this clause 8 (other than the Special Purpose Financial Information):
 - (i) shall be certified by a HoldCo Director as fairly presenting its financial condition and operations as at the date as at which those financial statements or accounts were drawn up; and
 - (ii) shall be prepared and audited by a reputable and internationally renowned auditing firm in accordance with the Accounting Principles.
- (c) If any Supervising Financier wishes to discuss the financial position of any member of the HoldCo Group with the auditors of that member of the HoldCo Group, such Supervising Financier may notify HoldCo, stating the questions or issues which such Supervising Financier wishes to discuss with those auditors. In such case, HoldCo must ensure that those auditors are authorised (at the expense of HoldCo):

- (i) to discuss the financial position of the relevant member of the HoldCo Group with the Supervising Financier on request from that Supervising Financier; and
- (ii) to disclose to the Supervising Financier any information which that Supervising Financier may reasonably request.

8.5 Exit Event Information

- (a) The Global Agent on behalf of HoldCo shall:
 - (i) notify each Reporting Financier of any proposed Exit Event promptly upon becoming aware of such event (and prior to signing any binding documentation); and
 - (ii) as soon as reasonably practicable following material developments in relation to the proposed Exit Event but, in any event, within sixty (60) days after the end of each Financial Quarter of each Relevant Accounting Period provide updates to each Reporting Financier in respect of the status, timing and projected outcome of the proposed Exit Event,

except that there shall be no requirement to so inform if, in the opinion of the Global Agent (acting reasonably), such notification might reasonably be expected to compromise the proposed Exit Event.

- (b) By no later than the first, second and third anniversary of Completion, the Global Agent on behalf of HoldCo shall:
 - (i) provide written confirmation to each Reporting Financier that HoldCo has commenced the necessary process to give effect to an Exit Event; or
 - (ii) deliver to each Reporting Financier a report prepared by HoldCo explaining why HoldCo has not commenced the necessary process to give effect to an Exit Event.

9. GENERAL UNDERTAKINGS

The undertakings in this clause 9 remain in force from Completion for so long as any amount is outstanding under the Transaction Documents or any Commitment is in force.

9.1 Authorisations

HoldCo shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

- (b) deliver certified copies to the Global Agent of, any Authorisation required under Applicable Law to:
 - (i) enable it to perform its obligations under the Transaction Documents;
 - (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document; and
 - (iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

9.2 **Compliance with Applicable Law**

HoldCo shall, and shall procure that each member of the HoldCo Group shall, comply in all respects with Applicable Law if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

9.3 **Anti-Corruption Laws**

- (a) HoldCo shall not (and shall ensure that no other member of the HoldCo Group shall) directly or indirectly use the proceeds of the HoldCo Facilities or the OpCo Facilities for any purpose which would breach Anti-Corruption Law.
- (b) HoldCo shall (and shall ensure that each other member of the HoldCo Group shall):
 - (i) conduct its business in compliance with Anti-Corruption Laws; and
 - (ii) maintain and implement policies and procedures designed to promote and achieve compliance with Anti-Corruption Laws.

9.4 **Taxation**

HoldCo shall pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (a) such payment is being contested in good faith;
- (b) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the relevant Financiers under clause 8; and
- (c) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

9.5 **Merger**

HoldCo shall not enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction (unless otherwise authorised in accordance with this Agreement).

9.6 Holding Company

HoldCo shall not trade, carry on any business, own any assets or incur any liabilities, acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) or incorporate a company except for:

- (a) the provision of administrative services (excluding treasury services) to OpCo or other members of the HoldCo Group of a type customarily provided by a Holding Company to its Subsidiaries;
- (b) ownership of shares in OpCo, debit balances and credit balances with OpCo and other credit balances in bank accounts and cash and Cash Equivalent Instruments but only if those shares, credit balances, cash and Cash Equivalent Instruments are subject to the Transaction Security;
- (c) any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a Holding Company.

9.7 Pari Passu Ranking

HoldCo shall ensure that at all times any unsecured and unsubordinated claims of a Financier against it under the Transaction Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by Applicable Laws of general application to companies.

9.8 Negative Pledge

Except as permitted under clause 9.8(c):

- (a) Neither HoldCo nor the Trustee shall create any Security over any of its assets after the date of this Agreement; and
- (b) HoldCo shall not:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any other member of the HoldCo Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- (c) Clause 9.8(a) and clause 9.8(b) do not apply to any Security or (as the case may be) Quasi Security, which is Permitted Security.

9.9 Loans or Credit

- (a) Except as permitted under clause 9.9(b), HoldCo shall not be a creditor in respect of any Financial Indebtedness.
- (b) Clause 9.9(a) shall not apply to the provision of additional equity or subordinated loans by HoldCo to OpCo in accordance with clause 5.3(a)(ii) (*Priority Holdco Financial Indebtedness*) of the HoldCo Common Terms Agreement.

9.10 No Guarantees or Indemnities

HoldCo shall not prior to the completion of an Exit Event incur or allow to remain outstanding any guarantee in respect of any obligation of any person.

9.11 Financial Indebtedness

- (a) Except as permitted under clause 9.11(b), HoldCo shall not incur any Financial Indebtedness after the date of this Agreement.
- (b) Clause 9.11(a) does not apply to Financial Indebtedness which is:
- (i) arising under or in connection with the Transaction Documents; or
 - (ii) the Priority HoldCo Financial Indebtedness.

9.12 Treasury Transactions

HoldCo shall not enter into any Treasury Transaction.

9.13 Sanctions

- (a) HoldCo shall not (and shall ensure that no other member of the HoldCo Group shall):
- (i) lend, contribute or otherwise make available all or any part of the proceeds of the Facilities, directly or indirectly, to, or for the benefit of, any individual or entity (whether or not related to any member of the HoldCo Group) for the purpose of funding, financing or facilitating the activities or business of, other transactions with, or investments in, any Restricted Party or in any Sanctioned Country, except to the extent permitted for a person required to comply with Sanctions;
 - (ii) directly or indirectly fund all or part of any repayment or prepayment of the Facilities out of proceeds derived from any transaction with or action involving a Restricted Party; or
 - (iii) engage in any transaction, activity or conduct that would violate any Sanctions.

- (b) HoldCo shall (and shall ensure that each other member of the HoldCo Group shall):
 - (i) maintain and implement policies and procedures designed to promote and achieve compliance with Sanctions; and
 - (ii) take all reasonable and prudent steps to ensure that each of its agents, directors, employees and officers comply in all respects with Sanctions.

9.14 Shari'a Events Compliance Certificate

- (a) HoldCo shall supply to each Islamic Financing Party, with each set of financial statements delivered pursuant clause 8.1(a)(i), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with the Shari'a Events as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by either the Chief Executive Officer or the Chief Financial Officer.

10. EXECUTIVE MANAGEMENT TEAM

10.1 Appointment by the HoldCo Board

The HoldCo Board may appoint and remove the Chief Executive Officer, the Chief Financial Officer, the Chief Transformation Officer and Internal Auditor. HoldCo shall procure that the Chief Executive Officer, the Chief Financial Officer and the Chief Transformation Officer shall be appointed as OpCo Directors.

10.2 Initial Office Holders

- (a) As at Completion, the Executive Management Team shall comprise:
 - (i) Michael Davis as the Chief Executive Officer; and
 - (ii) the person appointed to the role of Chief Financial Officer by the HoldCo Board pursuant to clause 10.1.

Following the appointment of the Chief Transformation Officer by the HoldCo Board pursuant to clause 10.1, the Executive Management Team shall comprise the Chief Executive Officer, the Chief Financial Officer and the Chief Transformation Officer.

10.3 Responsibilities of the Executive Management Team

The HoldCo Board shall delegate in accordance with the Delegated Authority Framework and subject to this Agreement, the Articles of Association of HoldCo and Applicable Law, to the Chief Executive Officer together with the Chief Financial Officer, the Chief Transformation Officer and the Internal Auditor, the power to manage and administer the day-to-day activities of the HoldCo Group under the overall direction and supervision of the HoldCo Board. For the avoidance of doubt, in the event of a conflict between the Delegated Authority Framework and any other delegation of

authority which relates to the HoldCo Group, the Delegated Authority Framework shall take precedence.

10.4 **Remuneration of the Executive Management Team**

The Remuneration and Nominations Committee shall determine the remuneration of the Executive Management Team.

10.5 **Management Incentive Plan**

- (a) Within sixty (60) Business Days of Completion, the Remuneration and Nominations Committee shall, in consultation with internationally recognised compensation consultants, submit to the HoldCo Board a draft Management Incentive Plan.
- (b) The HoldCo Board shall meet to discuss, amend (as required) and approve the Management Incentive Plan no later than twenty (20) Business Days after the draft Management Incentive Plan is submitted in accordance with clause 10.5(a) (such approval to be given by the HoldCo Board acting by way of a Super Majority Resolution).
- (c) The Management Incentive Plan as approved in accordance with clause 10.5(a) shall be adopted by the HoldCo Group as its Management Incentive Plan, which shall be implemented by the Remuneration and Nominations Committee in consultation with the Chief Executive Officer.

11. **MANDATORY OFFER**

- (a) If a single Financier (the "**Purchaser**") together with its Affiliates, Related Funds and persons acting in concert with such Purchaser acquires, or makes an offer to any other Financier(s) to acquire, more than fifty percent (50%) of the Total Commitments (including for the avoidance of doubt pursuant to a sub-participation agreement or similar arrangement) (the "**Control Trigger**"), the Purchaser must (subject to clause 11(g)) make an offer to all other Financiers under the HoldCo Facilities to acquire the remaining Total Commitments in full within thirty (30) Business Days of the date of the Control Trigger or as soon as reasonably practicable thereafter if there is a requirement to appoint an Independent Expert in accordance with clause 11(c) (a "**Mandatory Offer**").
- (b) The consideration payable under the Mandatory Offer shall be:
 - (i) an amount equal to the highest consideration offered by the Purchaser to any Financier during the twelve (12) month period ending on the date of the Control Trigger (the "**Best Prior Offer**"); and
 - (ii) in the same form and subject to the same payment terms as the Best Prior Offer.
- (c) If it is not possible to establish the Best Prior Offer for any reason (including because the Purchaser made no previous offer to acquire Commitments and the Control Trigger occurred only because it began acting in concert with one or more Financiers), the consideration payable under the Mandatory Offer shall be

an amount in cash determined by an independent investment bank or accounting firm, in either case, of international repute, appointed in accordance with this clause 11 the "**Independent Expert**" to be the Fair Value of the relevant Commitments in accordance with the following procedure:

- (i) the Purchaser shall, as soon as reasonably practicable after the Control Trigger, propose an independent investment bank or accounting firm, in either case, of international repute, to be the Independent Expert and provided that such bank or accounting firm:
 - (A) confirms in writing to HoldCo its willingness to be the Independent Expert and that it has no conflict of interest; and
 - (B) is acceptable to a simple majority by value of the Financiers (excluding for these purposes the Commitments held by the Purchaser);it shall be appointed as the Independent Expert;
- (ii) the Purchaser shall request that the Independent Expert determines the Fair Value of the relevant Commitments as soon as reasonably practicable on the following basis:
 - (A) that the determination be addressed to the Purchaser, HoldCo and the Global Agent, and may be disclosed to the Financiers on a hold harmless basis;
 - (B) that the relevant Commitments are being sold on the basis of arm's length sale between a willing buyer and a willing seller;
 - (C) on the basis of the historical, current and forecast financial performance of the HoldCo Group;
 - (D) not attributing any discount or premium for control of the HoldCo Group;
 - (E) on the assumption that the HoldCo Group will continue to carry on business as a going concern;
 - (F) the sale occurs on the date that the Control Trigger occurred;
 - (G) the relevant Commitments are sold free of all encumbrances;
 - (H) any other factors that the Independent Expert reasonably believes should be taken into account; and
 - (I) the application in all other respects of the Accounting Principles.
- (iii) the Fair Value of the relevant Commitments shall be final and binding on the parties (save in the case of fraud or manifest error in which case a different Independent Expert shall be appointed in accordance with this clause 11 to make the determination);

- (iv) each party shall procure that the Independent Expert has such access to the accounting records and other relevant information and materials relating to the HoldCo Group and access to the Executive Management Team as the Independent Expert may reasonably request for the purposes of the determination of the Fair Value of the relevant Commitments;
 - (v) the Independent Expert shall act as expert and not as arbitrator; and
 - (vi) the fees of the Independent Expert shall be paid by the Purchaser.
- (d) The consideration payable under the Mandatory Offer must be paid promptly by the Purchaser following acceptance of the Mandatory Offer.
- (e) No Financier shall be required to accept a Mandatory Offer.
- (f) Nothing in this Agreement shall prevent a Financier from making any offers to acquire all or any part of the HoldCo Group, financing any such offer or accepting any appointment or role in connection with an Exit Event.
- (g) Notwithstanding clause 11(a), if a Financier (the "**Acquiring Financier**") together with its Affiliates, Related Funds and persons acting in concert with such Acquiring Financier acquires (whether directly or indirectly) more than fifty percent (50%) of the Total Commitments in aggregate as a result of a merger, acquisition or consolidation with another Financier:
- (i) the Acquiring Financier shall have a period of ninety (90) calendar days from completion of such merger, acquisition or consolidation to sell, transfer or novate (or procure the sale, transfer or novation of) such percentage of the Commitments that it (together with its Affiliates, Related Funds and persons acting in concert with it) holds as is necessary to reduce its holding of Commitments to fifty percent (50%) or less of the Total Commitments; and
 - (ii) the Acquiring Financier shall only be required to make a Mandatory Offer in accordance with clause 11(a) if it (together with its Affiliates, Related Funds and persons acting in concert with it) continues to hold more than fifty percent (50%) of the Total Commitments in aggregate following the expiry of the period set out in clause 11(g)(i).

12. EXIT

12.1 Form of Exit

Any Exit Event shall occur at OpCo level other than a NMC HoldCo Refinancing, and any matters related to any such Exit Event shall be for the HoldCo Board, subject to clause 6.2 to clause 6.4 (inclusive).

12.2 Obligations on an Exit

- (a) Each party to this Agreement acknowledges and agrees that once an Exit Event has been approved in accordance with clause 6.2 to clause 6.4 (inclusive) (and

for the avoidance of doubt, no other provisions in this Agreement require the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) to approve any Exit Event) and has been commenced, their intention is to facilitate an Exit Event which seeks to maximise the Exit Event proceeds realised by the Financiers.

- (b) Each party to this Agreement shall give such co-operation and assistance and shall exercise all such rights and powers as it or he may have in relation to HoldCo as may be reasonably required by HoldCo so as to ensure that the Exit Event is achieved in compliance with Applicable Law.
- 12.3 If HoldCo has not commenced an Exit Event within three (3) years following the date of this Agreement, the Global Agent (acting on the instructions of the Majority Reporting Financiers) may at any time require HoldCo to use commercially reasonable endeavours to pursue an Exit Event by such means as the Majority Reporting Financiers may at that time determine.

13. TERMINATION

- 13.1 Subject to clause 13.2, this Agreement (other than clause 14 to clause 29 (inclusive)) shall terminate:
 - (a) in respect of the rights and obligations of all parties, upon completion of an Exit Event; and
 - (b) in respect of the rights and obligations of a Financier, upon that Financier not holding any amount of the Commitments.
- 13.2 Clause 13.1 shall not affect the rights or obligations of any party which have accrued prior to termination.

14. CONFIDENTIAL INFORMATION

14.1 Confidentiality

Each party agrees to keep all Confidential Information confidential and not to disclose it to any person, save to the extent permitted by this clause 14, and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

14.2 Disclosure of Confidential Information

- (a) The restrictions in clause 14.1 shall not apply to the disclosure of Confidential Information:
 - (i) with the prior written consent of the other parties;
 - (ii) to any person to whom information is required to be disclosed:
 - (A) by any court of competent jurisdiction of any governmental, banking, taxation or other regulatory authority or similar body,

- the rules of any relevant stock exchange or pursuant to Applicable Law; and
- (B) in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (iii) for the purposes of an Exit Event, to *bona fide* potential purchasers or to their professional advisers or finance providers provided that such persons need to know the information for the purposes of considering, evaluating, advising on or furthering the potential purchase and provided that the disclosure is limited to information regarding the Business and assets of the HoldCo Group; and
 - (iv) by a Financier:
 - (A) to any Non-Executive Directors appointed by it; and
 - (B) as otherwise contemplated by clause 35 (*Confidential Information*) of the HoldCo Common Terms Agreement.

15. ANNOUNCEMENTS

- 15.1 Subject to clause 15.2, no announcement, communication or circular in connection with the existence or the subject matter of this Agreement shall be made or issued without the prior written approval of a simple majority by value of the Supervising Financiers.
- 15.2 If a party is required by Applicable Law to make an announcement, communication or circular in connection with the existence or the subject matter of this Agreement or to disclose any Confidential Information, such party shall, where and to the extent not prohibited by such law or regulation, only make such announcement or disclosure after consultation with the Supervising Financiers and after taking into account the Supervising Financier's reasonable requirements as to its timing, content and manner of making. If another party is unable to consult with the Supervising Financiers before the announcement, communication or circular or disclosure is made, it shall inform the Supervising Financiers of the circumstances, timing, content and manner of making of the announcement or disclosure immediately after such announcement or disclosure is made.

16. SUPREMACY OF THIS AGREEMENT

- 16.1 If there is any conflict or inconsistency between the provisions of this Agreement and the Articles of Association of HoldCo, this Agreement shall prevail.
- 16.2 The Trustee shall exercise all voting and other rights and powers available to it so as to give effect to the provisions of this Agreement and, if necessary, to procure (so far as they are able to do so) any required amendment to the Articles of Association of HoldCo.
- 16.3 Nothing in this Agreement shall be deemed to constitute an amendment of the Articles of Association of HoldCo.

17. ENTIRE AGREEMENT AND NON-RELIANCE

- 17.1 This agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement to the exclusion of any terms implied by law to the extent that they may be excluded by contract and supersedes any previous agreements between the parties in relation to the matter dealt with in this Agreement.
- 17.2 Each party acknowledges and agrees that it has not relied on or been induced to enter into this Agreement by a representation, warranty or undertaking (whether contractual or otherwise) that is not expressly set out in this Agreement.
- 17.3 No party is liable to another party (in equity, contract or tort (including negligence), under the Misrepresentation Act 1967 of the United Kingdom or in any other way) for a representation, warranty or undertaking that is not set out expressly in this Agreement.
- 17.4 Nothing in this clause 17 shall have the effect of restricting or limiting any liability arising as a result of any fraud, wilful misrepresentation or wilful concealment.

18. COSTS

OpCo shall pay all costs of the holding and governance structure pursuant to this Agreement (regardless of whether any such costs are set out in the Budget), and undertakes not to enter into any agreement which would restrict its ability to make such payments.

19. GENERAL

19.1 Amends, waivers and consents

- (a) Subject to clauses 19.1(b) and 19.1(c):
 - (i) any term of this Agreement may be amended or waived only with the consent in writing of the Majority Reporting Financiers and HoldCo, and any such amendment or waiver will be binding on all parties; and
 - (ii) the parties agree that equivalent amendments and waivers as are agreed under the HoldCo Common Terms Agreement and the OpCo Common Terms Agreement shall be delivered under this Agreement.
- (b) If the effect of any such amendment or waiver would be to amend or remove any rights of the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers under this Agreement, such amendment or waiver shall require the consent in writing of the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers as applicable.
- (c) Clause 4.4 of this Agreement may only be amended with the consent in writing of all Reporting Financiers and HoldCo and any such amendment or waiver will be binding on all parties.

19.2 Waiver

The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not impair or constitute a waiver of the right or remedy or an impairment of or a waiver of any other rights or remedies. No single or partial exercise of any right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

19.3 Cumulative Rights

The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

19.4 No Partnership

Nothing in this Agreement and no action taken by a party under this Agreement shall be deemed to constitute a partnership between any of the parties or constitute any party the agent of any other party for any purpose.

19.5 Severance

- (a) If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention.
- (b) To the extent it is not possible to delete or modify the provision, in whole or in part, under clause 19.5(a), then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under clause 19.5(a), not be affected.

19.6 Damages Not an Adequate Remedy

Each party acknowledges and agrees that damages alone may not be an adequate remedy for a breach of this Agreement and that each party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Agreement.

19.7 Third Party Rights

No person who is not a party to this Agreement has any right under the Contracts (Rights of Third Parties) Act 1999 of the United Kingdom to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act, save that any person that enters into a Deed of Adherence in accordance with this Agreement may enforce and rely on this Agreement to the same extent as if it were a party to it.

19.8 **Unlawful Fetter**

Neither HoldCo or OpCo shall be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any of its statutory powers, but such provision shall remain valid and binding as regards the Trustee.

19.9 **Further Assurances**

Each party agrees to take all such action or procure that all such action is taken as is reasonable in order to implement the terms of this Agreement or any transaction, matter or thing contemplated by this Agreement.

20. **ASSIGNMENT**

- (a) This Agreement shall be binding on and enure for the benefit of each party's successors in title. No party shall, subject to clause 20(b) without the prior written consent of the other parties, assign, transfer, grant any security interest over or create any trust in respect of, or purport to assign, transfer, grant any security interest over or create any trust in respect of, any of its rights or obligations under this Agreement.
- (b) A Financier may only assign any of its rights or transfer by novation any of its rights and obligations under this Agreement pursuant to an assignment or transfer permitted under the HoldCo Common Terms Agreement (a "**Relevant Transfer**"), and the completion of any such Relevant Transfer shall be made in accordance with the following terms:
 - (i) the terms of clause 19.1 (*Assignments and transfers by the Financiers*) of the HoldCo Common Terms Agreement; and
 - (ii) the assignee or transferee shall (if it is not already a party to this Agreement) enter into a Deed of Adherence.

21. **NOTICES**

- 21.1 A notice under or in connection with this Agreement (a "**Notice**") shall be:

- (a) in writing;
- (b) in the English language; and
- (c) delivered personally or sent by pre-paid recorded delivery or courier using an internationally recognised courier company to the party due to receive the Notice to the address set out in clause 21.4.

- 21.2 A party may change its notice details by giving not less than five (5) Business Days written notice of the change to the other parties received before the Notice was despatched.

- 21.3 Unless there is evidence that it was received earlier, a Notice is deemed given:
- (a) if delivered personally or sent by courier, when left at the address referred to in clause 21.4; and
 - (b) if sent by pre-paid recorded delivery, at 9.30am on the second Business Day after posting it or, if earlier, at the time recorded by the delivery service.

Any Notice given outside Working Hours in the place to which it is addressed shall be deemed to have been given until the start of the next period of Working Hours in such place.

- 21.4 The following notice details apply for the purposes of this Agreement.

In respect of the Financiers:

The Global Agent

Abu Dhabi Commercial Bank PJSC
Sheikh Zayed bin Sultan Street
Agency Desk, IBG
10th Floor, HO Bldg.
Abu Dhabi, UAE

Email: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com

Attention: Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen

In respect of HoldCo:

NMC HoldCo SPV LTD
c/o NMC Healthcare
31st Floor, Etihad Towers 3,
West Corniche
Abu Dhabi

Attention: Chief Executive Officer (with a copy to the General Counsel)

In respect of OpCo:

NMC OpCo LTD
c/o NMC Healthcare
31st Floor, Etihad Towers 3,
West Corniche
Abu Dhabi
UAE

Attention: Chief Executive Officer (with a copy to the General Counsel)

In respect of the Trustee:

Walkers Fiduciary Limited
190 Elgin Avenue
George Town
Grand Cayman KY1-9008
Cayman Islands

Telephone: +1 345 814 7600

E-mail: fiduciary@walkersglobal.com

Attention: The Directors

22. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

23. ENFORCEMENT

23.1 Jurisdiction

- (a) The ADGM Courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Agreement (a "Dispute")).
- (b) The parties agree that the ADGM Courts are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.
- (c) Notwithstanding clause 23.1(a) and clause 23.1(b), any party may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the parties may take concurrent proceedings in any number of jurisdictions.

23.2 Waiver of immunity

- (a) HoldCo, OpCo and each Financier irrevocably and unconditionally:
 - (i) agree not to claim any immunity from suits or proceedings brought by a party against it in relation to a Transaction Document and to ensure that no such claim is made on its behalf;
 - (ii) consents generally to the giving of any relief or the issue of any process in connection with those proceedings including the making or enforcement of any order or judgement which may be made or given in any proceedings or execution against any property or assets whatsoever (irrespective of its use or intended use); and

- (iii) waives all rights of immunity in respect of it or its assets.
- (b) Each Financier acknowledges that it is a commercial entity separate from (and with an identity separate from) its direct or indirect shareholders, is capable of suing and being sued and is entering into the transactions contemplated by the Transaction Documents as private-law commercial transactions that shall not be deemed as being entered into in the exercise of any public function.

24. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement. This Agreement shall not come into effect until each party has executed at least one counterpart.

25. LIMITED RE COURSE TO TRUSTEE

- 25.1 The parties agree that, notwithstanding any other provision of this Agreement, the parties shall not have recourse to any assets of the Trustee (other than the assets subject to the Trust) in respect of any of the obligations under the Transaction Documents and the parties hereby acknowledge and agree that they will have no further claim against, or recourse to, any assets of the Trustee (other than the assets subject to the Trust) in respect of such obligations and no debt shall be owed to the parties by the Trustee for any sum and the parties (and anyone acting on their behalf) shall not be entitled to take any steps against the Trustee to recover any sum and following application of the proceeds of the assets subject to the Trust all claims (if any) against the Trustee will be extinguished and thereafter shall not revive. In addition, where compliance with the conditions imposed on the Trustee under this Agreement would require the expenditure by the Trustee of its own funds, the obligations of the Trustee shall be limited to the extent that it is put in funds to meet such expenditure.
- 25.2 The parties agree that they shall not take any action to commence any case, proceedings, proposal or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, arrangement in the name of insolvency proceedings, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to the Trustee or the debts (if any) of the Trustee.
- 25.3 The parties acknowledge and agree that the Trustees' obligations are corporate obligations of the Trustee and that the parties shall not have any recourse against any of the directors, officers or employees of the Trustee for any claims, losses, damages, liabilities indemnities or other obligations whatsoever in connection with any transactions contemplated by this Agreement or the Transaction Documents, other than in respect of dishonesty or wilful misconduct.

26. EXCULPATION OF TRUSTEE

- 26.1 Notwithstanding any other provisions of this Agreement, the Trustee shall not be liable for any losses whatsoever to the parties at any time from any cause whatsoever unless caused by:
- (a) the Trustee's own wilful neglect or default or that of any of its directors, officers, employees or agents, as the case may be; or
 - (b) any failure by the Trustee to comply with its express obligations hereunder.
- 26.2 Notwithstanding the provisions of clause 26.1, the Trustee shall not be liable for acting upon any consent or instructions given by any person acting or purporting to act on behalf of the parties notwithstanding that such person does not have authority to give such consent, unless at the time such consent was given or purported to be given, the Trustee has actual knowledge that such person had no authority to give such consent.

27. EXCLUSION OF LIABILITY OF GLOBAL AGENT

- 27.1 Without limiting clause 27.2 below (and without prejudice to any other provision of any Transaction Document excluding or limiting the liability of the Global Agent), the Global Agent will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:
- (a) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with this Agreement, unless directly caused by its gross negligence or wilful default;
 - (b) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, this Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, this Agreement; or
 - (c) without prejudice to the generality of clauses 27.1(a) and 27.1(b) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (i) any act, event or circumstance not reasonably within its control; or
 - (ii) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

27.2 No party (other than the Global Agent) may take any proceedings against any officer, employee or agent of the Global Agent in respect of any claim it might have against the Global Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Agreement and any officer, employee or agent of the Global Agent may rely on this clause 27.2, subject to clause 19.7 (*Third Party Rights*) and the provisions of the Contracts (Rights of Third Parties) Act 1999.

27.3 Nothing in this Agreement shall oblige the Global Agent to carry out:

- (a) any "know your customer" or other checks in relation to any person; or
- (b) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Financier or for any Affiliate of any Financier,

on behalf of any Financier and each Financier confirms to the Global Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Global Agent.

27.4 Without prejudice to any provision of this Agreement excluding or limiting the Global Agent's liability, any liability of the Global Agent arising under or in connection with this Agreement shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Global Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Global Agent at any time which increase the amount of that loss. In no event shall the Global Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Global Agent has been advised of the possibility of such loss or damages.

28. FINANCIERS' INDEMNITY TO THE GLOBAL AGENT

- 28.1 Each Financier shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Global Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Global Agent (otherwise than by reason of the Global Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause 28.11 (*Disruption to payment systems etc.*) of the HoldCo Common Terms Agreement, notwithstanding the Global Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Global Agent) in acting as the Global Agent under this Agreement (unless the Global Agent has been reimbursed by HoldCo pursuant to this Agreement).
- 28.2 Subject to clause 28.3 below, HoldCo shall immediately on demand reimburse any Financier for any payment that Financier makes to the Global Agent pursuant to clause 28.1 above.

28.3 Clause 28.2 above shall not apply to the extent that the indemnity payment in respect of which the Financier claims reimbursement relates to a liability of the Global Agent to HoldCo.

29. NO DOUBLE RECOVERY

Notwithstanding any other provision of this Agreement or any Transaction Document, no party shall be entitled to indemnification or reimbursement, to recover damages, obtain restitution or to claim any other compensation at law or in equity more than once in respect of the same loss suffered (whether pursuant to this Agreement, any Transaction Document or otherwise).

IN WITNESS of which this Agreement has been executed and delivered as a deed on the date stated at the beginning of this Agreement.

SCHEDULE 2
DEED OF ADHERENCE

THIS DEED OF ADHERENCE is made on [•]

BY [•], a company incorporated in [•] (registered number [•]), whose registered office is at [•] (the "**New Financier**").

INTRODUCTION:

- (A) The New Financier has agreed to acquire [•] of [•] holding of the Commitments.
- (B) This Deed is made in compliance with clause 20(b)(ii) of the governance agreement dated [•] between the Trustee, the Financiers, HoldCo and OpCo (the "**Governance Agreement**") under which it is a condition of the transaction referred to in (A) above that the New Financier executes a deed of adherence to the Governance Agreement prior to such acquisition.
- (C) Words and expressions defined in the Governance Agreement shall have the same meaning when used in this Deed.

IT IS AGREED as follows:

1. The New Financier confirms that it has been given and has read a copy of the Governance Agreement and covenants with and for the benefit of each person named in the schedule to this Deed and for the benefit of any other person who becomes a party to the Governance Agreement after the date of this Deed to adhere to and be bound by the provisions of the Governance Agreement, and to perform the obligations imposed by the Governance Agreement which are to be performed on or after the date of this Deed, in all respects as if the New Financier were an original party to the Governance Agreement and were named in it as a Financier with the intent that the New Financier shall also be entitled to the benefit of the Governance Agreement as if it had been an original party to the Governance Agreement and was named in it as a Financier.
2. The details of the New Financier for the purposes of clause 21 of the Governance Agreement is set out below:

[•]

3. The terms of clause 22 and clause 23 of the Governance Agreement shall apply to this Deed as if incorporated in full herein.

EXECUTED and **DELIVERED** as a **DEED** on the date set out above.

[Insert parties including those who have executed earlier Deeds of Adherence.]

EXECUTED as a **DEED** by [•])

acting by [•], a director) _____
in the presence of:) Authorised signatory

Witness's Signature: _____

Name: _____

Address: _____

SCHEDULE 3
TERMS OF REFERENCE FOR THE REMUNERATION AND NOMINATIONS COMMITTEE

1. Membership

1.1 The Remuneration and Nominations Committee shall comprise of at least:

- 1.1.1 two 10% Directors from different Financiers; and
- 1.1.2 the Minority Director,

and Remuneration and Nominations Committee members shall be appointed by the HoldCo Board. At least one member of the Remuneration and Nominations Committee shall have recent and relevant financial experience and another recent and relevant healthcare experience. Appointments to the Remuneration and Nominations Committee shall be for a period of up to three (3) years provided the member remains a Non-Executive Director.

1.2 Subject to paragraph 1.1 of this Schedule 3, if any member of the Remuneration and Nominations Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.

1.3 The chair of the Remuneration and Nominations Committee shall be a representative of the Nominating Financier which holds the largest Commitment, if they are a member of the Remuneration and Nominations Committee, or such member of the Remuneration and Nominations Committee as the HoldCo Board shall nominate (the "**Remuneration and Nominations Committee Chair**").

1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the chair in facilitating board discussion and decision-making, the Remuneration and Nominations Committee Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

2. Quorum

The quorum for meetings of the Remuneration and Nominations Committee is a simple majority of the members of the Remuneration and Nominations Committee.

3. Attendance at Meetings

3.1 Subject to paragraph 3.4 of this Schedule 3, persons, including the HoldCo Directors, the Chief Financial Officer and/or experts, may only attend meetings of the Remuneration and Nominations Committee by invitation. The members of the Remuneration and Nominations Committee may call on external experts to attend meetings of the Remuneration and Nominations Committee on an *ad hoc* basis (including but not limited to experts employed by Nominating Financiers), subject to the approval of the Remuneration and Nomination Committee Chair.

3.2 The Chair shall be invited by the Remuneration and Nominations Committee to attend meetings to discuss the performance of the members of Executive Management Team

and to make proposals as necessary. The Remuneration and Nominations Committee may consult the other Non-Executive Directors in its evaluation of the Executive Management Team.

- 3.3 No HoldCo Director or OpCo Director or manager shall be present at any meeting of the Remuneration and Nominations Committee when his or her own remuneration is being discussed. No HoldCo Director or OpCo Director shall be involved in any decision as to his or her own remuneration.
- 3.4 The head of human resources for the HoldCo Group from time to time shall have a standing invitation to attend Remuneration and Nominations Committee meetings.

4. Meetings

- 4.1 The Remuneration and Nominations Committee shall meet as often as its roles and responsibilities reasonably require and at least once in each Relevant Accounting Period to correspond with the HoldCo Group's annual salary review programme.
- 4.2 Any member of the Remuneration and Nominations Committee may request a meeting of the Remuneration and Nominations Committee if he or she considers it necessary, to be arranged by the Remuneration and Nominations Committee Chair.
- 4.3 At least ten (10) Business Days' notice of each meeting of the Remuneration and Nominations Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.
- 4.4 The Remuneration and Nominations Committee shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

5. Authority

- 5.1 The Remuneration and Nominations Committee is authorised by the HoldCo Board:
 - 5.1.1 to investigate any activity within its terms of reference;
 - 5.1.2 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and
 - 5.1.3 to secure the attendance of other persons at its meetings if it considers this necessary.

6. Duties and Responsibilities

- 6.1 The Remuneration and Nominations Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.
- 6.2 The duties of the Remuneration and Nominations Committee shall be to:
 - 6.2.1 lead the process for HoldCo Board and OpCo Board appointments and make recommendations to the HoldCo Board;

- 6.2.2 before any appointment is made by the HoldCo Board:
- (a) consider any conflicts, or possible conflicts, with the interests of the HoldCo Group, as disclosed by candidates;
 - (b) consider any significant commitments that the candidates may have, including the indication of the time involved with such commitments; and
 - (c) evaluate the balance of skills, experience, independence, knowledge and diversity on the HoldCo Board, and the future challenges affecting the HoldCo Group.
- In identifying suitable candidates the committee shall consider candidates on merit and against objective criteria and with due regard for the benefits of diversity on the HoldCo Board, including sector experience and professional background, taking care that appointees have enough time available to devote to the position;
- 6.2.3 produce the Minority Director Short List in accordance with clause 4.7(c)(i) applying the criteria set out in paragraph 6.2.2 of this Schedule 3;
- 6.2.4 arrange for HoldCo Directors and OpCo Directors to receive a formal letter of appointment to the HoldCo Board or OpCo Board (as applicable), on their appointment, setting out the expected time commitment, committee service expected of them and their involvement outside HoldCo Board or OpCo Board meetings (as applicable);
- 6.2.5 review the structure, size and composition of the OpCo Board and the boards of the OpCo Subsidiaries (including skills, experience, independence, knowledge and diversity) and make recommendations to the HoldCo Board with regard to any changes;
- 6.2.6 give full consideration to succession planning for the OpCo Directors, the directors of the OpCo Subsidiaries and members of senior management of the HoldCo Group in the course of its work, taking into account the challenges and opportunities facing the HoldCo Group, and the skills, knowledge, diversity, independence and expertise needed on the OpCo Board and the boards of the OpCo Subsidiaries in the future;
- 6.2.7 keep up to date and fully informed about the HoldCo Group's strategic priorities and the main trends and factors affecting the long-term success and future viability of the HoldCo Group;
- 6.2.8 actively monitor the HoldCo Group's policy on diversity, including gender, sector experience and professional background and any measurable objectives that it has set in implementing the policy, and progress on achieving the objectives;
- 6.2.9 prepare a draft Management Incentive Plan, in consultation with internationally recognised compensation consultants, and submit such plan to the HoldCo Board for consideration;

- 6.2.10 implement any Management Incentive Plan approved by the HoldCo Board pursuant to clause 10.5(b), in consultation with internationally recognised compensation consultants;
- 6.2.11 determine, in conjunction with the HoldCo Group's advisers, whether performance targets of the Executive Management Team have been satisfied;
- 6.2.12 review the ongoing appropriateness and relevance of the remuneration policies to ensure that reward policies across the HoldCo Group work:
 - (a) to ensure, where possible, that a significant proportion of the remuneration of each member of the Executive Management Team is structured to link remuneration to HoldCo Group and individual performance;
 - (b) to ensure that any performance-related elements of any remuneration structure are stretching and rigorously applied; and
 - (c) enable the use of discretion to override formulaic outcomes;
- 6.2.13 ensure that the Management Incentive Plan and related policies enable the use of discretion to override formulaic outcomes and include provisions that enable the HoldCo Group to recover and/or withhold sums and specify the circumstances in which it would be appropriate to do so;
- 6.2.14 agree the policy for authorising claims for expenses from the HoldCo Directors and OpCo Directors;
- 6.2.15 approve any compensation packages or arrangements following the severance of any member of the Executive Management Team's contract, to ensure that it falls within relevant remuneration policies and that the relevant member of the Executive Management Team is treated fairly but that failure is not rewarded and the duty of such member of the Executive Management Team to mitigate any loss suffered by him/her as a result of the severance is fully recognised; and
- 6.2.16 consider any other matters within its responsibility as referred to the Remuneration and Nominations Committee by the HoldCo Board.

6.3 The Remuneration and Nominations Committee shall make recommendations to the HoldCo Board with regard to:

- 6.3.1 plans for succession for the Executive Management Team and in particular the key roles of Chief Executive Officer and Chief Financial Officer;
- 6.3.2 the appointment of the HoldCo Directors and OpCo Directors;
- 6.3.3 membership of the Audit Committee, Operations and Quality Committee, Restructuring Committee, Exit Committee and any other HoldCo Board committees as appropriate, in consultation with the Chair;
- 6.3.4 the HoldCo Group's policy relating to the remuneration of the Executive Management Team and its cost;

- 6.3.5 individual remuneration packages for each member of the Executive Management Team, including pension rights and any compensation payments, including approving the following in respect of each member of the Executive Management Team:
 - (a) a service contract;
 - (b) any benefit, pension and/or incentive scheme entitlement;
 - (c) any other bonuses, fees and expenses; and
 - (d) any compensation payable (including pension contributions) on the termination of a service contract; and
- 6.3.6 the payment of directors' fees to HoldCo Directors, OpCo Directors or the directors of any OpCo Subsidiaries; and
- 6.3.7 the HoldCo Group's annual salary review programme to ensure, amongst other matters, alignment with HoldCo Group remuneration policies.

7. **Reporting Procedures**

- 7.1 The Remuneration and Nominations Committee Chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.
- 7.2 The HoldCo Group secretariat (under the direction of the Remuneration and Nominations Committee Chair) shall:
 - 7.2.1 minute the proceedings and resolutions of all meetings of the Remuneration and Nominations Committee, including recording the names of those present and in attendance;
 - 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and
 - 7.2.3 shall promptly circulate minutes of Remuneration and Nominations Committee meetings to all members of the Remuneration and Nominations Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.

- 7.3 The Remuneration and Nominations Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.

8. **Other matters**

- 8.1 The Remuneration and Nominations Committee shall:
 - 8.1.1 be kept abreast of matters relating to any area within its remit;

- 8.1.2 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
- 8.1.3 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
- 8.1.4 give due consideration to Applicable Laws, regulations and any other applicable rules, as appropriate; and
- 8.1.5 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval.

SCHEDULE 4

TERMS OF REFERENCE FOR THE AUDIT COMMITTEE

1. MEMBERSHIP

1.1 The Audit Committee shall comprise of at least:

1.1.1 two 10% Directors from different Financiers; and

1.1.2 the Minority Director,

and Audit Committee members shall be appointed by the HoldCo Board. At least one member of the Audit Committee shall have recent and relevant financial experience (and a professional accounting and/or financial qualification, where possible) and another recent and relevant healthcare experience. Appointments to the Audit Committee shall be for a period of up to three (3) years, provided the member remains a Non-Executive Director.

1.2 Subject to paragraph 1.1 of this Schedule 4, if any member of the Audit Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.

1.3 The chair of the Audit Committee shall be a representative of the Nominating Financier which holds the largest Commitment, if they are a member of the Audit Committee, or such member of the Audit Committee as the HoldCo Board shall nominate (the "**Audit Committee Chair**").

1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the chair in facilitating board discussion and decision-making, the Audit Committee Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

2. Quorum

The quorum for meetings of the Audit Committee is a simple majority of the members of the Audit Committee.

3. Attendance at Meetings

3.1 Subject to paragraph 3.4 of this Schedule 4, persons, including the HoldCo Directors and/or experts, may only attend meetings of the Audit Committee by invitation. The members of the Audit Committee may call on external experts to attend meetings of the Audit Committee on an *ad hoc* basis (including but not limited to experts employed by Nominating Financiers), subject to the approval of the Audit Committee Chair.

3.2 At least once a year, the Audit Committee must meet the External Auditor and Internal Auditor without any of the Executive Management Team present.

3.3 The External Auditor and Internal Auditor will be invited to attend meetings of the Audit Committee on a regular basis.

3.4 The Chief Financial Officer shall have a standing invitation to attend Audit Committee meetings.

4. **Meetings**

4.1 The Audit Committee shall meet as often as its roles and responsibilities reasonably require and at least twice in each Relevant Accounting Period to correspond with the HoldCo Group's annual audit.

4.2 Any member of the Audit Committee, the Chief Financial Officer, the Internal Auditor or the External Auditor may request a meeting of the Audit Committee if he or she considers it necessary, to be arranged by the Audit Committee Chair.

4.3 At least ten (10) Business Days' notice of each meeting of the Audit Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.

4.4 The Audit Committee shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

5. **Authority**

5.1 The Audit Committee is authorised by the HoldCo Board:

5.1.1 to investigate any activity within its terms of reference;

5.1.2 to seek any information it requires from any employee of the HoldCo Group and to call any employee to be questioned at a meeting of the Audit Committee as and when required (and all employees shall be directed to co-operate with any request made by the Audit Committee);

5.1.3 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and

5.1.4 to secure the attendance of other persons at its meetings if it considers this necessary.

6. **Duties and Responsibilities**

6.1 The Audit Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.

6.2 The duties of the Audit Committee shall be to:

External Audit

6.2.1 consider and make recommendations to the HoldCo Board in relation to the appointment and reappointment of the External Auditor and any question of resignation or dismissal of the External Auditor and to approve the External Auditor's remuneration and terms of engagement. The Audit Committee shall oversee the selection process for new auditors and, if an auditor resigns, the

Audit Committee shall investigate the circumstances leading to such resignation and determine whether any action is required;

- 6.2.2 discuss with the External Auditor before the audit starts the nature and scope of the audit, to ensure co-ordination where more than one firm of auditors is involved and to approve the terms of engagement of the External Auditor whether for audit or non-audit services;
- 6.2.3 keep under review the scope and results of the audit, the audit fee and the appropriateness of the fee for permitting a thorough audit to be undertaken, taking into consideration relevant professional and regulatory requirements;
- 6.2.4 keep under review (and assess annually) the independence and objectivity of the External Auditor taking into account relevant professional and regulatory requirements and the relationship with the External Auditor as a whole, including the provision of any non-audit services;
- 6.2.5 meet regularly with the External Auditor, including once at the planning stage before the audit and once after the audit at the reporting stage;
- 6.2.6 review the findings of the audit with the External Auditor. This shall include, but not be limited to, the following:
 - (a) a discussion of any major issues which arose during the audit;
 - (b) any accounting and audit judgements;
 - (c) level of errors identified during the audit; and
 - (d) the effectiveness of the audit;
- 6.2.7 review:
 - (a) any representation letters requested by the External Auditor before they are signed by management; and
 - (b) the external auditor's management letter and response to the external auditor's findings and recommendations;
- 6.2.8 discuss problems and reservations arising from audits and any matters the External Auditor may wish to discuss (in the absence of the Executive Management Team, where necessary);

Financial statements

- 6.2.9 review and challenge where necessary:
 - (a) the consistency of, and any changes to, accounting policies both on a year-on-year basis and across the HoldCo Group;
 - (b) the methods used to account for significant or unusual transactions where different approaches are possible;

- (c) whether the HoldCo Group has followed appropriate accounting standards and made appropriate estimates and judgements, taking into account the views of the External Auditor; and
 - (d) the clarity of disclosure in the HoldCo Group's financial reports and the context in which statements are made;
- 6.2.10 analyse interim and annual financial statements of the HoldCo Group before presenting them to the HoldCo Board and providing its opinion and recommendations to the HoldCo Board in respect of the same;
- 6.2.11 resolve any disagreements between the Executive Management Team and the Internal Auditor regarding financial reporting in respect of the HoldCo Group;
- 6.2.12 examine accounting estimates for the HoldCo Group in respect of significant matters;
- 6.2.13 review regulatory filings related to financial statements of the HoldCo Group before their release and consider the accuracy and completeness of the information contained therein;
- 6.2.14 provide its technical opinion, at the request of the HoldCo Board, regarding whether the HoldCo Board's report on the HoldCo Group's performance and financial statements and the HoldCo Group's financial statements are fair, balanced, understandable, and contain information that allows any stakeholder to assess the HoldCo Group's financial position, performance, business model, and strategy;

Internal Audit and Risk Management

- 6.2.15 keep under review the adequacy and effectiveness of the HoldCo Group's financial reporting and internal control policies and procedures and risk management systems and to review any statement on internal control and/or risk management to be included in the HoldCo Directors' and OpCo Directors' reports before submission to the HoldCo Board for its approval;
- 6.2.16 monitor, review and approve the internal audit programme in the context of the HoldCo Group's overall risk management system, ensure co-ordination between the Internal Auditor and External Auditor and ensure that the internal audit function is adequately resourced, has appropriate standing within the HoldCo Group and is free from management or other restriction;
- 6.2.17 meet the Internal Auditor at least quarterly, without management being present, to discuss their remit and any issues arising from the internal audits carried out. In addition the Internal Auditor shall be given the right of direct access to the HoldCo Board and to the Audit Committee;
- 6.2.18 establish the HoldCo Group's risk management framework;
- 6.2.19 review the organisational structure for risk management of the HoldCo Group and provide recommendations to the HoldCo Board;

- 6.2.20 ensure the availability of adequate resources and systems for risk management of the HoldCo Group;
- 6.2.21 prepare detailed reports on the HoldCo Group's exposure to risks and the recommended measures to manage such risks and present them to the HoldCo Board;

Right to speak out, compliance and fraud

- 6.2.22 review the HoldCo Group's procedures by which employees and contractors may, in confidence, raise concerns about improprieties in matters of financial reporting or other matters. The Audit Committee shall ensure that these arrangements allow proportionate and independent investigation of such matters and appropriate follow-up action;
- 6.2.23 review the HoldCo Group's procedures for detecting fraud;
- 6.2.24 review the HoldCo Group's systems and controls for the prevention of bribery and receive reports on non-compliance;
- 6.2.25 review the process for communicating the code of conduct and business ethics (or similar code) to the applicable employees of the HoldCo Group and monitor their compliance;
- 6.2.26 review the proposed Related Party Transactions (and the agreements relating thereto) and provide its recommendations to the HoldCo Board in respect thereof;
- 6.2.27 review the effectiveness of the HoldCo Group's system(s) for monitoring compliance with any HoldCo Group policies relating to financial reporting and related matters including the results of the Executive Management Team's investigation of any instances of non-compliance with such policies (inclusive of any disciplinary action taken by the Executive Management Team in this regard);

Recommendations, reports and actions

- 6.2.28 consider the major findings of internal investigations and management's response;
- 6.2.29 make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed;
- 6.2.30 oversee any investigation of activities which are within its terms of reference;
- 6.2.31 at least once a year, review its own performance, constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary for HoldCo Board approval; and
- 6.2.32 consider any other matters within its responsibility as referred to the Audit Committee by the HoldCo Board.

7. Reporting Procedures

- 7.1 The Audit Committee Chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.
- 7.2 The HoldCo Group secretariat (under the direction of the Audit Committee Chair) shall:
 - 7.2.1 minute the proceedings and resolutions of all meetings of the Audit Committee, including recording the names of those present and in attendance;
 - 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and
 - 7.2.3 shall promptly circulate minutes of Audit Committee meetings to all members of the Audit Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.

- 7.3 The Audit Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.

8. Other matters

The Audit Committee shall:

- 8.1.1 be kept abreast of matters relating to any area within its remit;
- 8.1.2 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
- 8.1.3 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
- 8.1.4 give due consideration to Applicable Laws, regulations and any other applicable rules, as appropriate;
- 8.1.5 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval;
- 8.1.6 regard and deal with all Audit Committee findings, recommendations, documents and information received by it with complete confidentiality in accordance with the provisions of clause 14 (*Confidential Information*) of this Agreement which will apply to this Schedule 4 *mutatis mutandis*; and
- 8.1.7 ensure transparency of their findings and recommendations and any other applicable policies, as appropriate, to the HoldCo Board, Internal Auditor and External Auditor with complete confidentiality.

SCHEDULE 5
TERMS OF REFERENCE FOR THE OPERATIONS AND QUALITY COMMITTEE

1. MEMBERSHIP

- 1.1 The Operations and Quality Committee shall comprise of at least three 10% Directors from different Financiers and Operations and Quality Committee members shall be appointed by the HoldCo Board. At least one member of the Operations and Quality Committee shall have recent and relevant financial experience and another recent and relevant healthcare experience. Appointments to the Operations and Quality Committee shall be for an initial period of twelve (12) months provided the member remains a Non-Executive Director.
- 1.2 Subject to paragraph 1.1 of this Schedule 5, if any member of the Operations and Quality Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.
- 1.3 The chair of the Operations and Quality Committee shall be such member of the Operations and Quality Committee as the HoldCo Board shall nominate and approve acting by Simple Majority (the "**Operations and Quality Committee Chair**").
- 1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the chair in facilitating board discussion and decision-making, the Operations and Quality Committee Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

2. Quorum

The quorum for meetings of the Operations and Quality Committee is a simple majority of the members of the Operations and Quality Committee.

3. Attendance at Meetings

- 3.1 Subject to paragraph 3.2 of this Schedule 5, persons, including the HoldCo Directors and/or experts, may only attend meetings of the Operations and Quality Committee by invitation. The members of the Operations and Quality Committee may call on external experts to attend meetings of the Operations and Quality Committee on an *ad hoc* basis (including but not limited to experts employed by Nominating Financiers), subject to the approval of the Operations and Quality Committee Chair.
- 3.2 The Chief Executive Officer and the Chief Financial Officer shall each have standing invitations to attend Operations and Quality Committee meetings.

4. Meetings

- 4.1 The Operations and Quality Committee shall meet as often as its roles and responsibilities reasonably require.
- 4.2 Any member of the Operations and Quality Committee may request a meeting of the Operations and Quality Committee if he or she considers it necessary, to be arranged by the Operations and Quality Committee Chair.

4.3 At least ten (10) Business Days' notice of each meeting of Operations and Quality Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.

4.4 The Operations and Quality Committee shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

5. **Authority**

5.1 The Operations and Quality Committee is authorised by the HoldCo Board:

- 5.1.1 to investigate any activity within its terms of reference;
- 5.1.2 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and
- 5.1.3 to secure the attendance of other persons at its meetings if it considers this necessary.

6. **Duties and Responsibilities**

6.1 The Operations and Quality Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.

6.2 The duties of the Operations and Quality Committee shall be to:

- 6.2.1 monitor and review the operational performance (including but not limited to the quality of service delivery and standards of clinical care) of the HoldCo Group and recommend to the HoldCo Board any improvements to the operations of any member of the HoldCo Group or the HoldCo Group in its entirety;
- 6.2.2 assess areas of potential improvement with regard to the operational and/or financial performance of the HoldCo Group and monitor the implementation of any recommendations that are put in place following approval by the HoldCo Board;
- 6.2.3 discuss and resolve (or recommend for resolution to the relevant senior management members) operational issues of the HoldCo Group;
- 6.2.4 review quality of service data (including clinical reporting data) and external audits or site visits regarding operations to: (i) assess whether appropriate standards are being maintained; (ii) conduct investigations where necessary; and (iii) implement appropriate measures and safeguards to address any issues, should they arise;
- 6.2.5 seek regular updates from the Executive Management Team on clinical reporting to regulators and/or other formal bodies in the relevant jurisdiction(s) and review the results of any external audits and/or site visits that are undertaken;

- 6.2.6 assess Operational KPI data to observe and understand trends that have had or may have a positive or negative impact on the financial and/or operational performance of the HoldCo Group;
- 6.2.7 assess and challenge any growth recommendations in respect of the operational and/or financial performance of the HoldCo Group put forward by the Executive Management Team, with reference to the overall strategic priorities of the HoldCo Group; and
- 6.2.8 consider any other matters within its responsibility as referred to the Operations and Quality Committee by the HoldCo Board.

7. **Reporting Procedures**

- 7.1 The Operations and Quality Committee Chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.
- 7.2 The HoldCo Group secretariat (under the direction of the Operations and Quality Committee Chair) shall:
 - 7.2.1 minute the proceedings and resolutions of all meetings of the Operations and Quality Committee, including recording the names of those present and in attendance;
 - 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and
 - 7.2.3 shall promptly circulate minutes of Operations and Quality Committee meetings to all members of Operations and Quality Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.

- 7.3 The Operations and Quality Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.

8. **Other matters**

- 8.1 The Operations and Quality Committee shall:
 - 8.1.1 be kept abreast of matters relating to any area within its remit;
 - 8.1.2 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
 - 8.1.3 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
 - 8.1.4 give due consideration to Applicable Laws, regulations and any other applicable rules, as appropriate; and

- 8.1.5 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval.

SCHEDULE 6
TERMS OF REFERENCE FOR THE RESTRUCTURING COMMITTEE

1. MEMBERSHIP

- 1.1 The Restructuring Committee shall comprise of at least three 10% Directors from different Financiers and Restructuring Committee members shall be appointed by the HoldCo Board. Appointments to the Restructuring Committee shall be for an initial period of twelve (12) months from Completion provided the member remains a Non-Executive Director.
- 1.2 Subject to paragraph 1.1 of this Schedule 6, if any member of the Restructuring Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.
- 1.3 The chair of the Restructuring Committee shall be a representative of the Nominating Financier holding the largest Commitment, if they are a member of the Restructuring Committee, or such member of the Restructuring Committee as the HoldCo Board shall nominate (the "**Restructuring Committee Chair**").
- 1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the chair in facilitating board discussion and decision-making, the Restructuring Committee Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

2. Quorum

The quorum for meetings of the Restructuring Committee is a simple majority of the members of the Restructuring Committee.

3. Attendance at Meetings

- 3.1 Subject to paragraph 3.2 of this Schedule 6, persons, including the HoldCo Directors, the Chief Financial Officer and/or experts, may only attend meetings of the Restructuring Committee by invitation. The members of the Restructuring Committee may call on external experts to attend meetings of the Restructuring Committee on an *ad hoc* basis (including but not limited to experts employed by Nominating Financiers), subject to the approval of the Restructuring Committee Chair.
- 3.2 The head of legal for the HoldCo Group from time to time shall have a standing invitation to attend Restructuring Committee meetings.

4. Meetings

- 4.1 The Restructuring Committee shall meet as often as its roles and responsibilities reasonably require.
- 4.2 Any member of the Restructuring Committee may request a meeting of the Restructuring Committee if he or she considers it necessary, to be arranged by the Restructuring Committee Chair.

4.3 At least ten (10) Business Days' notice of each meeting of the Restructuring Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.

4.4 The Restructuring Committee shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

5. **Authority**

5.1 The Restructuring Committee is authorised by the HoldCo Board:

- 5.1.1 to investigate any activity within its terms of reference;
- 5.1.2 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and
- 5.1.3 to secure the attendance of other persons at its meetings if it considers this necessary.

6. **Duties and Responsibilities**

6.1 The Restructuring Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.

6.2 The duties of the Restructuring Committee shall be to:

- 6.2.1 oversee any subsisting workstreams in connection with the completion of the Restructuring (including but not limited to: (i) matters referred to in the LTD Asset Transfer Agreement (and in particular those constituting reserved matters pursuant to clause 6, Schedule 8 and Schedule 9); (ii) matters related to ongoing litigation, arbitration or other proceedings; and (iii) corporate structuring, in each case in relation to the HoldCo Group) and make recommendations to the HoldCo Board in respect of the same; and
- 6.2.2 consider any other matters within its responsibility as referred to the Restructuring Committee by the HoldCo Board.

7. **Reporting Procedures**

7.1 The Restructuring Committee Chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.

7.2 The HoldCo Group secretariat (under the direction of the Restructuring Committee Chair) shall:

- 7.2.1 minute the proceedings and resolutions of all meetings of the Restructuring Committee, including recording the names of those present and in attendance;
- 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and

- 7.2.3 shall promptly circulate minutes of Restructuring Committee meetings to all members of the Restructuring Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.
- 7.3 The Restructuring Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.
- 8. Other matters**
- 8.1 The Restructuring Committee shall:
- 8.1.1 be kept abreast of matters relating to any area within its remit;
 - 8.1.2 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
 - 8.1.3 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
 - 8.1.4 give due consideration to Applicable Laws, regulations and any other applicable rules, as appropriate; and
 - 8.1.5 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval.

SCHEDULE 7
TERMS OF REFERENCE FOR THE EXIT COMMITTEE

1. MEMBERSHIP

- 1.1 The Exit Committee shall comprise of at least:
- 1.1.1 one 10% Director from the Nominating Financier which holds the largest Commitment;
 - 1.1.2 two 10% Directors from different Financiers (other than the Nominating Financier which holds the largest Commitment); and
 - 1.1.3 the Minority Director,
- and Exit Committee members shall be appointed by the HoldCo Board. Appointments to the Exit Committee shall be for a period of up to three (3) years from Completion provided the member remains a Non-Executive Director.
- 1.2 Subject to paragraph 1.1 of this Schedule 7, if any member of the Exit Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.
- 1.3 The chair of the Exit Committee shall be such member of the Exit Committee as the HoldCo Board shall nominate and approve acting by Simple Majority (the "**Exit Committee Chair**").
- 1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the chair in facilitating board discussion and decision-making, the Exit Committee Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

2. Quorum

The quorum for meetings of the Exit Committee is a simple majority of the members of the Exit Committee.

3. Attendance at Meetings

- 3.1 Persons, including the HoldCo Directors, the Chief Financial Officer and/or experts, may only attend meetings of the Exit Committee by invitation. The members of the Exit Committee may call on external experts to attend meetings of the Exit Committee on an *ad hoc* basis (including but not limited to experts employed by Nominating Financiers), subject to the approval of the Exit Committee Chair.

4. Meetings

- 4.1 The Exit Committee shall meet as often as its roles and responsibilities reasonably require.
- 4.2 Any member of the Exit Committee may request a meeting of the Exit Committee if he or she considers it necessary, to be arranged by the Exit Committee Chair.

4.3 At least ten (10) Business Days' notice of each meeting of the Exit Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.

4.4 The Exit Committee shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

5. **Authority**

5.1 The Exit Committee is authorised by the HoldCo Board:

- 5.1.1 to investigate any activity within its terms of reference;
- 5.1.2 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and
- 5.1.3 to secure the attendance of other persons at its meetings if it considers this necessary.

6. **Duties and Responsibilities**

6.1 The Exit Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.

6.2 The duties of the Exit Committee shall be to:

- 6.2.1 make recommendations to the HoldCo Board regarding any proposed Exit Events and related strategies, including the amount of Indemnity Cover to be provided in accordance with clause 41.4 (*Indemnity Novation*) of the LTD Asset Transfer Agreement;
- 6.2.2 make recommendations to the HoldCo Board regarding hiring advisers in respect of any proposed Exit Event (including but not limited to mergers and acquisitions advisers);
- 6.2.3 assess any expressions of interest and/or proposals made by third parties regarding any potential Exit Event, in consultation with the HoldCo Board;
- 6.2.4 facilitate and implement the provisions of clause 8.5 of this Agreement and clause 41.4 (*Indemnity Novation*) of the LTD Asset Transfer Agreement, subject to the required HoldCo Board approval; and
- 6.2.5 consider any other matters within its responsibility as referred to the Exit Committee by the HoldCo Board.

7. **Reporting Procedures**

7.1 The Exit Committee Chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.

- 7.2 The HoldCo Group secretariat (under the direction of the Exit Committee Chair) shall:
- 7.2.1 minute the proceedings and resolutions of all meetings of the Exit Committee, including recording the names of those present and in attendance;
 - 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and
 - 7.2.3 shall promptly circulate minutes of Exit Committee meetings to all members of the Exit Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.

- 7.3 The Exit Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.

8. **Other matters**

- 8.1 The Exit Committee shall:

- 8.1.1 be kept abreast of matters relating to any area within its remit;
- 8.1.2 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
- 8.1.3 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
- 8.1.4 give due consideration to Applicable Laws, regulations and any other applicable rules, as appropriate; and
- 8.1.5 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval.

SCHEDULE 8
THE HOLDCO BOARD RESERVED MATTERS

PART 1
THE HOLDCO BOARD SIMPLE MAJORITY RESERVED MATTERS

1. OpCo Level

1.1 Material Corporate Transactions

- 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value less than USD 50,000,000 (but greater than or equal to USD 1,000,000) over the lifetime of the HoldCo Facilities.
- 1.1.2 Acquisitions of any assets, undertakings, business, company or securities of any company, joint ventures, partnerships, profit sharing arrangements, consolidations, amalgamations or collaborations with an aggregate value of less than USD 40,000,000 in a cumulative three year period.
- 1.1.3 Capital expenditure with a value greater than or equal to USD 1,000,000 but less than USD 10,000,000 above the Budget in a Financial Year.
- 1.1.4 Entering into, materially changing, terminating or granting a material waiver under or in respect of any non-financial contract with a value greater than or equal to USD 500,000.
- 1.1.5 Instigation, settlement or compromise of any litigation, arbitration or other proceedings with a value greater than or equal to USD 500,000 excluding any litigation, arbitration or other proceedings commenced prior to Completion unless a member of the HoldCo Group is joined to such litigation or other proceedings following Completion.

1.2 Incurrence of Indebtedness

- 1.2.1 Incurrence of debt with an aggregate value greater than or equal to USD 3,000,000 but less than USD 40,000,000 in a cumulative three-year period.
- 1.2.2 Entry into any hedging agreement or similar arrangement.

1.3 Granting of Security

- 1.3.1 Granting of security or creating a charge over any assets or property in respect of a payment obligation with an aggregate value greater than or equal to USD 2,500,000 (in aggregate) or USD 1,000,000 (in any twelve (12) month period) but less than USD 40,000,000 in a cumulative three year period.

1.4 Waivers and Amendments: OpCo Facilities

- 1.4.1 Any decision to seek a consent or waiver in respect of a Majority OpCo Financiers Consent Matter.

1.5 Personnel and Policies

1.5.1 Appointment and removal of the Chief Executive Officer, the Chief Financial Officer, the Chief Transformation Officer and the Internal Auditor.

1.5.2 Approval of Key Policies.

1.6 LTD Asset Transfer Agreement

1.6.1 Any actions and/or payments required to be made under the guarantee pursuant to clause 22 (*Guarantee*) of the LTD Asset Transfer Agreement.

1.6.2 The commencement and conduct of any disputes under clause 45 (*Law and Jurisdiction*) of the LTD Asset Transfer Agreement.

1.6.3 OpCo electing to exercise the power in paragraph 8 (*Fallback in relation to Delayed Transfer Shares*) and paragraph 22 (*Fallback in relation to Delayed Transfer Assets*) of the Post-Completion Protocol.

1.6.4 OpCo agreeing to extend the time limit for obligations under Section A (*Delayed Transfer Workstreams*) and paragraph 27 (*Expiry*) of the Post-Completion Protocol.

1.6.5 OpCo electing to exercise the power to direct LTD to pursue an alternative SAQ and/or KBB transactions under paragraph 28 (*Pursuit of consensual SAQ/KBB transaction*) or any fallback under paragraph 29 (*Fallback in relation to SAQ/KBB Interests*) of the Post-Completion Protocol.

1.6.6 OpCo electing to exercise the power to direct LTD to pursue an alternative SAZ transaction under paragraph 31.1.2 (*Pursuit of SAZ transaction*) of the Post Completion Protocol.

1.6.7 OpCo electing to exercise the power to direct LTD to pursue an alternative GOSI Sale under paragraph 33.1 (*GOSI Sale*) and 33.10 (*Alternative Sale*) of the Post-Completion Protocol.

1.6.8 OpCo making a decision as to the structure of the GOSI Sale fallback under paragraph 34 (*GOSI Sale Fallbacks*) of the Post-Completion Protocol.

1.6.9 OpCo making a decision as to whether to purchase NMC Oman.

1.6.10 OpCo making a decision as to the structure of the fallback transfer in respect of NMC Fertility Kenya Limited under paragraph 39.4 (*Fallback Transfer of NMC Fertility Kenya Limited*) of the Post-Completion Protocol.

1.6.11 Any variations to the ATA Budget under paragraph 56 (*Variations to the ATA Budget*) of the Post-Completion Protocol which exceed USD 2,000,000.

1.6.12 The commencement and conduct of any disputes in respect of the ATA Budget under paragraph 57 (*Disputes regarding Post-Completion Protocol and ATA Budget*) of the Post-Completion Protocol.

- 1.6.13 Exercising any rights, taking any steps, and/or granting any waivers under the LTD Asset Transfer Agreement (or any Transitional Transfer Documents) that would materially impact (in OpCo's reasonable opinion) OpCo's and/or the HoldCo Group's financial or operational status.
- 1.6.14 Payments under any indemnities in the LTD Asset Transfer Agreement and/or Post-Completion Protocol which exceed USD 10,000,000.

2. **HoldCo Group Level**

2.1 Exit and Maturities

- 2.1.1 Appointment of advisers for an Exit Event.
- 2.1.2 Proposal of the recommended Exit Event strategy.
- 2.1.3 Proposing the extension of the maturity of the HoldCo Facilities by one year.

2.2 Waivers and Amendments: HoldCo Facilities

- 2.2.1 Any decision to seek a consent or waiver in respect of a Majority Reporting Financiers Consent Matter.
- 2.2.2 Any decision to seek a consent or waiver in respect of an Increased Majority Reporting Financiers Consent Matter.

3. **Whole Group Level**

3.1 Policies and Approvals

- 3.1.1 Approval of the financial statements or the accounts.
- 3.1.2 Appointment or removal of the External Auditors.
- 3.1.3 Changes to the accounting policies and principles including adopting any new accounting policies.
- 3.1.4 Constitution of and delegation of powers to the Committees, and any changes to any Terms of Reference.
- 3.1.5 Announcements outside the ordinary course of business.

PART 2
THE HOLDCO BOARD SUPER MAJORITY RESERVED MATTERS

1. OpCo Level

1.1 Material Corporate Transactions

- 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 50,000,000 (but less than USD 100,000,000) over the lifetime of the HoldCo Facilities.
- 1.1.2 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 100,000,000 (but less than USD 250,000,000) over the lifetime of the HoldCo Facilities.
- 1.1.3 Disposals of any assets, undertakings business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 250,000,000 (but less than USD 500,000,000) over the lifetime of the HoldCo Facilities.
- 1.1.4 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 500,000,000 (even if falling short of an Exit Event) over the lifetime of the HoldCo Facilities.
- 1.1.5 Acquisitions of any assets, undertakings, business, company or securities of any company, joint ventures, partnerships, profit sharing arrangements, consolidations, amalgamations or collaborations with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.
- 1.1.6 Capital expenditure with a value greater than or equal to USD 10,000,000 but less than USD 20,000,000 above the Budget in a Financial Year.
- 1.1.7 Capital expenditure with a value greater than or equal to USD 20,000,000 above the Budget in a Financial Year.
- 1.1.8 Altering the capital structure of OpCo or the OpCo Subsidiaries (including issuing or granting any options in respect of, or securities convertible or exchangeable into, shares or a reduction in share capital, the purchase or redemption of any share capital or the consolidation, sub-division, conversion or cancellation of any share capital).
- 1.1.9 Instigation, settlement or compromise of any litigation, arbitration or other proceedings where such litigation, arbitration or other proceedings relate to pre-Completion activities of the NMC Healthcare Business.
- 1.1.10 Entry into any transaction or arrangement of the HoldCo Group which is not on arm's length terms.
- 1.1.11 Entry into any Related Party Transaction which is not on arm's length terms.

1.2 Incurrence of Indebtedness

- 1.2.1 Incurrence of debt with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.

1.3 Granting of Security

- 1.3.1 Granting of security or creating a charge over any assets or property in respect of a payment obligation with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.

1.4 Waivers and Amendments: OpCo Facilities

- 1.4.1 Any decision to seek a consent or waiver in respect of a Super Majority OpCo Financiers Consent Matter.
- 1.4.2 Any decision to seek a consent or waiver in respect of an All OpCo Financiers Consent Matter.

1.5 Personnel and Policies

- 1.5.1 Changes to the Delegated Authority Framework or decisions outside of the Delegated Authority Framework.
- 1.5.2 Approval of the Management Incentive Plan and any changes to the Management Incentive Plan approved under clause 10.5(b).

2. HoldCo Group Level

2.1 Exits and Maturities

- 2.1.1 Exit Event at a valuation which yields Net Cash Proceeds greater than or equal to one hundred percent (100%) for the HoldCo Facilities size.
- 2.1.2 Exit Event at a valuation which yields Net Cash Proceeds greater than or equal to eighty five percent (85%) for the HoldCo Facilities size but below one hundred percent (100%).
- 2.1.3 Exit Event at a valuation which yields Net Cash Proceeds below eighty five percent (85%) for the HoldCo Facilities size.
- 2.1.4 The referral of an Application (as defined in the LTD Asset Transfer Agreement) to Expert Determination (as defined in the LTD Asset Transfer Agreement).
- 2.1.5 The incurrence of guarantees and indemnities by HoldCo pursuant to the terms of the Novation Documents.
- 2.1.6 Exit Event which results in receipt of non-cash consideration without a cash consideration operation of at least equivalent value.

2.1.7 Exit Event at any valuation following the one year extension of the HoldCo Facilities referred to in Part 1 of this Schedule 8, provided an independent fair value assessment has been carried out.

2.1.8 Proposing the extension of the maturity of the HoldCo Facilities by an additional year (beyond the one year extension of the HoldCo Facilities referred to in Part 1 of this Schedule 8).

2.2 Waivers and Amendments: HoldCo Facilities

2.2.1 Any decision to seek a consent or waiver in respect of a Super Majority Reporting Financiers Consent Matter.

2.2.2 Any decision to seek a consent or waiver in respect of an All HoldCo Financiers Consent Matter.

2.2.3 Re-running the EPM more often than annually.

3. Whole Group Level

3.1 Policies and Approvals

3.1.1 Approval of the draft Business Plan, and any changes to a Business Plan approved under clause 7.5 or clause 7.7.

3.1.2 Approval of the draft Budget and any changes to a Budget approved under clause 7.3 or clause 7.7.

3.1.3 Approval of strategy, objectives and any changes to the operating strategy of the Business.

3.2 Restructuring and Insolvency

3.2.1 Changes to domicile, centre of main interests or Tax residency of any member of the HoldCo Group outside the ordinary course of business.

3.2.2 Incorporating any new member of the HoldCo Group outside the ordinary course of business.

3.2.3 Amending in any respect the Articles of Association of OpCo or the Articles of Association of the OpCo Subsidiaries.

3.2.4 Amending in any respect the Articles of Association of HoldCo.

3.2.5 Commencing or consenting to bankruptcy, winding up, administration or dissolution of any member of the HoldCo Group outside the ordinary course of business.

3.2.6 Proposing any scheme of arrangement, company voluntary arrangement, deed of company arrangement or analogous procedure in respect of any member of the HoldCo Group.

SCHEDULE 9
MATTERS REQUIRING FINANCIER APPROVAL UNDER THE HOLDCO
FACILITIES

PART 1
MAJORITY REPORTING FINANCIERS APPROVAL

1. OpCo Level

1.1 Material Corporate Transactions

- 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 100,000,000 (but less than USD 250,000,000) over the lifetime of the HoldCo Facilities.

2. HoldCo Group Level

2.1 Exits and Maturities

- 2.1.1 Extending the maturity of the HoldCo Facilities by one year.

2.2 Waivers and Amendments: HoldCo Facilities

- 2.2.1 Any decision to seek a consent or waiver in respect of a Majority Reporting Financiers Consent Matter.

3. Whole Group Level

3.1 Restructuring and Insolvency

- 3.1.1 Changes to domicile, centre of main interests or Tax residency of any member of the HoldCo Group outside the ordinary course of business.

PART 2
INCREASED MAJORITY REPORTING FINANCIERS APPROVAL

1. OpCo Level

1.1 Material Corporate Transactions

- 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 250,000,000 (but less than USD 500,000,000) over the lifetime of the HoldCo Facilities.

2. HoldCo Group Level

2.1 Exits and Maturities

- 2.1.1 Exit Event at a valuation which yields Net Cash Proceeds greater than or equal to eighty five percent (85%) for the HoldCo Facilities size, but below one hundred percent (100%).

- 2.1.2 The incurrence of guarantees and indemnities by HoldCo under the Novation Documents.

2.2 Waivers and Amendments: HoldCo Facilities

- 2.2.1 Any decision to seek a consent or waiver in respect of an Increased Majority Reporting Financiers Consent Matter.

3. Whole Group Level

3.1 Restructuring and Insolvency

- 3.1.1 Amending in any respect the Articles of Association of HoldCo.

PART 3
SUPER MAJORITY REPORTING FINANCIERS APPROVAL

1. OpCo Level

1.1 Material Corporate Transactions

- 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 500,000,000 (even if falling short of an Exit Event) over the lifetime of the HoldCo Facilities.
- 1.1.2 Acquisitions of any assets, undertakings, business, company or securities of any company, joint ventures, partnerships, profit sharing arrangements, consolidations, amalgamations or collaborations with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.
- 1.1.3 Capital expenditure with a value greater than or equal to USD 20,000,000 above the Budget in a Financial Year.
- 1.1.4 Altering the capital structure of OpCo or the OpCo Subsidiaries (including issuing or granting any options in respect of, or securities convertible or exchangeable into, shares or a reduction in share capital, the purchase or redemption of any share capital or the consolidation, sub-division, conversion or cancellation of any share capital).

1.2 Incurrence of Indebtedness

- 1.2.1 Incurrence of debt with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.

1.3 Granting of Security

- 1.3.1 Granting of security or creating a charge over any assets or property in respect of a payment obligation with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.

2. HoldCo Group Level

2.1 Exits and Maturities

- 2.1.1 Exit Event at a valuation which yields Net Cash Proceeds below eighty five percent (85%) for the HoldCo Facilities size.
- 2.1.2 Exit Event which results in receipt of non-cash consideration without a cash consideration option of at least equivalent value.
- 2.1.3 Extending the maturity of the HoldCo Facilities by an additional year (beyond the one year extension referred to in Part 1 of this Schedule 9).

2.2 Waivers and Amendments: HoldCo Facilities

2.2.1 Any decision to seek a consent or waiver in respect of a Super Majority Reporting Financiers Consent Matter.

3. **Whole Group Level**

3.1 Commencing or consenting to bankruptcy, winding up, administration or dissolution of any member of the HoldCo Group outside the ordinary course of business.

3.2 Proposing any scheme of arrangement, company voluntary arrangement, deed of company arrangement or any analogous procedure in respect of any member of the HoldCo Group.

PART 4
ALL HOLDCO FINANCIERS APPROVAL

1. HoldCo Group Level

1.1 Waivers and Amendments: HoldCo Facilities

1.1.1 Any decision to seek a consent or waiver in respect of an All HoldCo Financiers Consent Matter.

SCHEDULE 10
FORM OF COMPLIANCE CERTIFICATE

To: [Islamic Financing Party]

[Islamic Financing Party]

[Islamic Financing Party]

From: [HoldCo]

Dated:

Dear Sirs

[HoldCo] – [] Governance Agreement
dated [] (the "Governance Agreement")

1. We refer to the Governance Agreement. This is a Compliance Certificate. Terms defined in the Governance Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that: [Insert details of Shari'a Events to be certified]

Signed:

[Chief Executive Officer/Chief Financial Officer]
of
[HoldCo]

SCHEDULE 11
FORM OF SUBPARTICIPATION NOTICE

To: NMC Holdco SPV Limited ("HoldCo")

The Global Agent

From: [Name of Financier] (the "**Subparticipating Financier**")

[Name of Subparticipant] (the "**Notified Subparticipant**")

Date:

Dear Sirs and Mesdames

Governance Agreement dated [•] (the "Governance Agreement") – Subparticipation Notice

1. We refer to the Governance Agreement. Capitalised terms used in this Subparticipation Notice have the meaning given to them in the Governance Agreement unless otherwise defined herein.
2. We hereby notify you that the following Commitments (the "**Subparticipated Commitments**") [prospectively]¹ held by the Subparticipating Financier have been subparticipated with full voting rights to the Notified Subparticipant:

Conventional Facilities: USD [•]

Islamic Facilities: USD [•]

Total: USD [•]

3. The Subparticipating Financier hereby acknowledges and agrees:
 - (a) that any and all rights that may be available to it pursuant to clause 4.4(a) or 4.4(b) shall instead be enjoyed by the Notified Subparticipant, as if it were a Financier holding the Subparticipated Commitments; and
 - (b) that HoldCo and the Global Agent shall provide the Notified Subparticipant with all of the information that it may otherwise have been entitled to receive pursuant to clause 8 (*Information Undertakings*).

4. The Notified Subparticipant hereby agrees to be bound by clause 14 (*Confidential Information*) of the Governance Agreement as if it were a Financier holding the Subparticipated Commitments. This paragraph 4 shall survive termination of this Subparticipation Notice.

¹ Delete if notice delivered after Completion.

5. This Subparticipation Notice shall terminate on the earliest to occur of:
 - (a) the date on which we give you notice that our subparticipation arrangement has come to an end (whether through elevation of the Notified Subparticipant to the status of Financier in respect of the Subparticipated Commitments or otherwise). We shall promptly notify you if our subparticipation arrangement comes to an end; or
 - (b) the expiry of the Interim Period.
6. Clauses 22 (*Governing Law*) and 23 (*Enforcement*) of the Governance Agreement shall apply to this Subparticipation Notice, *mutatis mutandis*.

Signed:
Subparticipating Financier

Signed:
Notified Subparticipant

Schedule 4
Restructuring Effective Date Conditions Precedent

1. Constitutional Documents

The constitutional documents of Holdco and Opco.

2. Corporate approvals

In respect of Holdco and Opco, in each case as applicable and legally required, a resolution of its board of directors and/or its shareholder(s) or any equivalent body:

- (a) approving the terms of, and the transactions contemplated by, the Restructuring Documents to the extent party thereto and resolving that it execute, deliver and perform the Restructuring Documents to which it is a party;
- (b) authorising a specified person or persons to execute the Restructuring Documents to which it is a party on its behalf; and
- (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Restructuring Documents to which it is a party.

In respect of Holdco and Opco:

- (e) if required by law or its constitutional documents a copy of a resolution of its general meeting approving the terms of and the transactions contemplated by the Restructuring Documents to which it is a party;
 - (f) if applicable and required by law or its constitutional documents a copy of a resolution of its supervisory board approving the terms of and the transactions contemplated by the Restructuring Documents to which it is a party;
 - (g) a certificate (signed by an authorised signatory) certifying that each copy document relating to it specified in paragraphs 1 and 2 is correct, complete and (to the extent executed) in full force and effect and has not been amended or superseded prior to the date of this Deed and including specimen signatures of the person(s) authorised in the resolutions referred to above.
3. In respect of Holdco, a specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Restructuring Documents and any related documents.
4. In respect of Holdco, a certificate confirming that the borrowing or securing, as appropriate of the Total Commitments (as defined in the Holdco Common Terms Agreement) would not cause any borrowing, security or other similar limit binding on Holdco to be exceeded.

5. A certificate of Holdco, certifying that each copy document relating to it specified in this Schedule 4 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Holdco Common Terms Agreement.
6. A certificate of Holdco, confirming that the deemed utilisation of the Islamic Financing Facility would not cause the occurrence of a Shari'a Event.

7. **Restructuring Documents**

The following documents:

- (a) each DOCA executed by the parties thereto;
- (b) this Deed executed by the parties thereto;
- (c) a signed and undated copy of the AFF Deed of Release and notarised and dated original of the Spanish Pledge Release Agreement;
- (d) a signed and undated copy of the AFF Payoff Letter;
- (e) the LTD Asset Transfer Agreement executed by the parties thereto;
- (f) the Holdco Valuation;
- (g) the draft Holdco Articles of Association;
- (h) the draft Opcos Articles of Association;
- (i) Completion Budget (as defined in the Governance Agreement);
- (j) Delegated Authority Framework (as defined in the Governance Agreement); and
- (k) a signed and undated copy of each of the Restructuring Documents (other than any document referred to in paragraphs (a) to (j) which is or may be designated as a Restructuring Document).

8. **Legal Opinions**

The following agreed form legal opinions with respect to the Holdco Finance Documents:

- (a) a legal opinion of Clifford Chance LLP addressed to the Holdco Global Facility Agent, as to the laws of the ADGM in respect of the capacity to execute the Holdco Finance Documents and enforceability of the Holdco Finance Documents;
- (b) a legal opinion of Clifford Chance LLP addressed to the Holdco Global Facility Agent, as to the laws of England relating to the enforceability of the Holdco Finance Documents; and

- (c) a legal opinion of Clifford Chance LLP addressed to the Holdco Global Facility Agent, as to the laws of the United Arab Emirates in respect of the capacity to execute the Holdco Finance Documents and enforceability of the Holdco Finance Documents.

9. Other documents and evidence

- (a) a copy of each of:
- (i) the draft Declaratory Order;
 - (ii) the Third Party Shareholder Order; and
 - (iii) the Bankruptcy Order.
- (b) evidence that the Group DOCA Companies have delivered each DOCA to the Registrar in accordance with section 74(5)(b) of the Regulations;
- (c) evidence to the satisfaction of the Joint Administrators that the fees and expenses of the Joint Administrators and the legal and financial advisers to the Joint Administrators, Deed Administrators and the Group DOCA Companies have been paid in full, or will be paid in full, on or shortly following the Restructuring Effective Time;
- (d) evidence to the satisfaction of the Majority RID Financiers that the fees and expenses of the legal and financial advisers to the Ad Hoc Committee have been paid in full, or will be paid in full, on or shortly following the Restructuring Effective Time;
- (e) a copy of a structure chart for the Group pro forma for completion of the Restructuring;
- (f) a copy of the Funds Flow Statement which shall include:
- (i) a statement of sources and uses; and
 - (ii) the proposed movement of funds following the Restructuring Effective Time;
- (g) the Tax Structure Memorandum; and
- (h) the Residual Loan Document executed by the parties thereto.

Schedule 5
NMC VAT Group

No.	Company	Registration No.
1.	NMC Royal Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004197
2.	Aesthetic Skin Care Clinic L.L.C	CN-1127971
3.	Americare L.L.C	CN-1514123
4.	Bait Al Shifaa Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004236
5.	Bareen International Hospital	CN-1471391
6.	Bareen Pharmacy	CN-1472890
7.	Beiersdorf Cosmetics Trading Co. (L.L.C)	590211
8.	BR Medical Suites FZ-LLC	407
9.	Bright Point Pharmacy L.L.C.	CN-1795337
10.	Cosmesurge & Emirates Clinics For One Day Surgery L.L.C	CN-1045650
11.	Cosmesurge Clinics L.L.C	509266
12.	Cosmesurge Investment L.L.C	801368
13.	Cosmesurge Plastic Surgery Hospital And Clinics L.L.C	785984
14.	Cosmesurge Zakher Medical Center L.L.C	CN-2108872
15.	Fakih IVF Fertility Center Ltd (in administration) (subject to a deed of company arrangement)	000004224
16.	Fakih IVF Ltd (in administration) (subject to a deed of company arrangement)	000004220
17.	Fakih Medical Center L.L.C	CN-1660157
18.	Fakih Medical Center Pharmacy L.L.C.	CN-2235922
19.	Fulfil Trading L.L.C.	CN-2092000
20.	Grand Hamad Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004238

No.	Company	Registration No.
21.	Hamad Al Ihterafeya Pharmacy L.L.C	751424
22.	Hamad Al Mumayazah Pharmacy LLC	744681
23.	Hamad Al Oula Pharmacy L.L.C	747559
24.	Hamad Drug Store LLC	569547
25.	Hamad Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004209
26.	Life Wise Home Healthcare L.L.C.	CN-1973131
27.	Lotus Pharmacy L.L.C.	CN-1766692
28.	N M C Medical Professional Training Centre	CN-2417299
29.	N M C Pharmacy	CN-1100258
30.	National Marketing & Trading Co . L.L.C	22325
31.	New Marketing & Trading Co. Ltd	CN-1034929
32.	New Medical Centre	CN-1027342
33.	New Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004214
34.	New Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004216
35.	New Medical Centre Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004255
36.	New Medical Centre Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004253
37.	New Medical Centre Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004228
38.	New Medical Centre Trading (Store) L.L.C	515330
39.	New Medical Centre Trading Ltd (in administration) (subject to a deed of company arrangement)	000004218
40.	New Pharmacy Company Ltd (in administration) (subject to a deed of company arrangement)	000004230
41.	New Sunny Medical Centre Ltd (in administration) (subject to a	000004202

No.	Company	Registration No.
	deed of company arrangement)	
42.	NMC Family Medical Centre Ltd	000004242
43.	NMC Health Investments L.L.C.	CN-2588276
44.	NMC Provita International Medical Center Ltd (in administration) (subject to a deed of company arrangement)	000004240
45.	NMC Royal Dental Center	38678
46.	NMC Royal Family Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004243
47.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004225
48.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004245
49.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement) (formerly Al Zahra Pvt. Hospital Company Limited)	000004237
50.	NMC Royal Medical Center	21518
51.	NMC Royal Medical Clinic LLC	CN-2361988
52.	NMC Royal Pharmacy	21669
53.	NMC Royal Womens Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004235
54.	NMC Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004217
55.	NMC Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004241
56.	NMC Trading Ltd (in administration) (subject to a deed of company arrangement)	000004233
57.	Poly Clinic Aesthetic Dermatology Plastic Surgery Dental LLC	CN-1027668
58.	Premier Care Home Medical And Health Care L.L.C	CN-1783995
59.	Reaya Mumayaza Specialized For Medical Home Care LLC	CN-2157940
60.	Reliance Information Technology Ltd (in administration)	000004234

No.	Company	Registration No.
	(subject to a deed of company arrangement)	
61.	Royal Arsom Wellness Centre L.L.C.	CN-2217742
62.	Sharjah Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004239
63.	Sunny Al Buhairah Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004199
64.	Sunny Al Nahda Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004232
65.	Sunny Dental Centre Ltd (in administration) (subject to a deed of company arrangement)	000004198
66.	Sunny Halwan Speciality Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004204
67.	Sunny Maysloon Speciality Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004205
68.	Sunny Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004231
69.	Sunny Sharqan Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004203
70.	Sunny Specialty Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004200
71.	Taskeen Home Medical And Health care LLC	CN-2019151
72.	The American Surgecenter L.L.C.	CN-1074061
73.	The American Surgecenter Pharmacy - L.L.C.	CN-1077415
74.	Zari Spa & Beauty Centre	CN-1036449
75.	Zari Spa For Men	CN-1238510

Date: 2022

AMENDED AND RESTATED RESTRUCTURING IMPLEMENTATION DEED

between

THE GROUP DOCA COMPANIES

RICHARD DIXON FLEMING AND BENJAMIN THOM CAIRNS
in their capacities as deed administrators and joint administrators

NMC HOLDCO SPV LTD

NMC OPCO LTD

THE GROUP CREDITORS

and

CERTAIN OTHER PARTIES LISTED HEREIN

KIRKLAND & ELLIS INTERNATIONAL LLP

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THIS DEED is made on

2022 between:

- (1) **THE COMPANIES** whose names are set out in Schedule 1 (*The Group DOCA Companies*) (the “**Group DOCA Companies**”);
- (2) **RICHARD DIXON FLEMING AND BENJAMIN THOM CAIRNS**, as joint and several administrators of the DOCAs (the “**Deed Administrators**”) and as joint and several administrators of the Administration Companies (as defined in the Voting Support Agreement) (the “**Joint Administrators**”) each a managing director of Alvarez & Marsal Europe LLP, Park House 16-18 Finsbury Circus, London, EC2M 7EB, United Kingdom, acting as agents only for and on behalf of the Group DOCA Companies and without personal liability;
- (3) **NMC HOLDCO SPV LTD**, a private limited company incorporated in the Abu Dhabi Global Market (licence number 000005914) with registered address at 2462ResCoWork01, 24th Floor; Al Sila Tower; Abu Dhabi Global Market Square; Abu Dhabi (“**Holdco**”);
- (4) **NMC OPCO LTD**, a private limited company incorporated in the Abu Dhabi Global Market (licence number 000005918) with registered address at 2462ResCoWork01, 24th Floor; Al Sila Tower; Abu Dhabi Global Market Square; Abu Dhabi (“**Opcos**”);
- (5) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as global agent under the Holdco Finance Documents (the “**Holdco Global Agent**”);
- (6) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as conventional facility agent under the Holdco Finance Documents (the “**Holdco Conventional Facility Agent**”);
- (7) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as investment agent under the Holdco Finance Documents (the “**Holdco Investment Agent**”);
- (8) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as security agent under the Holdco Finance Documents (the “**Holdco Facilities Security Agent**” and together with the Holdco Global Agent, the Holdco Conventional Facility Agent, the Holdco Investment Agent, the “**Holdco Agents**”);
- (9) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as global facility agent under the Opcos Finance Documents for and on behalf of the Opcos Finance Parties (the “**Opcos Global Facility Agent**”);
- (10) **ABU DHABI COMMERCIAL BANK PJSC**, in its capacity as global facility agent under the AFF Documents (the “**AFF Global Facility Agent**”);
- (11) **EACH OF THE DEED COMPANY CREDITORS (AS DEFINED IN EACH DOCA)**, in each case acting by the LTD Deed Administrators pursuant to the power of attorney granted in the DOCAs; and
- (12) **MOUNT STREET MORTGAGE SERVICING LIMITED**, in its capacity as trustee under the Holding Period Trust Deed (the “**Holding Period Trustee**”).

WHEREAS

- (A) The DOCAs were approved by the requisite majorities of Group Creditors on 15 September 2021 and the applicable DOCAs were executed by each of the parties thereto on 21 September 2021. The DOCAs for LTD and the IVF Operating Companies were subsequently amended and restated. These amendments were approved by the requisite majorities of the applicable Group Creditors on 27 October 2021 and executed on 27 October 2021.
- (B) Each of the DOCAs authorise the implementation of the Restructuring as envisaged by the terms of this Deed and the other Restructuring Documents.
- (C) This Deed gives effect to the terms of the DOCAs, sets out the steps pursuant to which the Restructuring is to be implemented and the actions and other steps required to be taken in relation to such implementation.

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed capitalised terms used but not defined herein shall have the meaning given to that term in the LTD DOCA. In addition:

"Additional Protocols" means any protocol (other than the Budget and Oversight Protocol) or any other document or agreement designated in writing by LTD and the Majority RID Financiers as an "Additional Protocol Document" and which relates to the pursuit and conduct of disputes, litigation and/or arbitration;

"Ad Hoc Committee" means the informal ad hoc committee of creditors from time to time formed for the purposes of considering and negotiating the Restructuring, which as at date of this Deed comprises of: (i) Abu Dhabi Commercial Bank, (ii) Barclays Bank PLC, (iii) Emirates Islamic Bank PJSC, (iv) Marathon Asset Management, LP, (v) Sculptor Capital LP, and (vi) Silver Point Capital, L.P.;

"Administrative Parties" means the Holding Period Trustee, the Holdco Agents, the Opcos Global Facility Agent and the Opcos Global Security Agent (as defined in the Opcos Common Terms Agreement) and the AFF Global Facility Agent;

"AFF Deed of Release" means the deed of release relating to the AFF Documents between, among others LTD and the AFF Global Facility Agent;

"AFF Finance Documents" means the Finance Documents (as defined in the AFF CTA);

"AFF Payoff Letter" means the payoff letter relating to the AFF Finance Documents between, among others, LTD and the AFF Global Facility Agent;

"Affiliate" means with respect to a person, any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such person and, for the purpose of this definition, "control" shall mean the power, direct or indirect, to (a) vote on more than 50 per cent. of the securities having ordinary

voting power for the election of directors of such person, or (b) direct or cause the direction of the management and policies of such person whether through ownership of voting securities, by contract, or agency or otherwise (and "controlled" shall be construed accordingly);

"Agent Indemnity Commitments" means the Total Commitments excluding any Commitments held by the Holding Period Trustee;

"AHC Financial Adviser" means Lazard & Co., Limited as financial advisers to the Ad Hoc Committee;

"AHC Legal Advisers" means:

- (a) Clifford Chance LLP;
- (b) Walkers (Dubai) LLP; and
- (c) Al Tamimi & Company,

or any successor financial or legal adviser, to the Ad Hoc Committee in respect of the Restructuring;

"ATA Deed of Release" has the meaning given to that term in the LTD Asset Transfer Agreement;

"Bankruptcy Order" means the order of the Abu Dhabi Court permitting the transfer of Saeed Mohamed Butti Mohamed Alqebaisi's interests in the shares of certain of the Related DOCA Companies;

"Break Costs" has the meaning given to that term in the Opcos Common Terms Agreement;

"Closing Time Notice" has the meaning given to that term in the Opcos Common Terms Agreement;

"Completion Action" has the meaning given to that term in the LTD Asset Transfer Agreement;

"Completion Date Transferring Subsidiaries" has the meaning given to that term in the LTD Asset Transfer Agreement;

"Confirmation Parties" means each of the Advisers, the Opcos Financiers Legal Advisers, the Ad Hoc Committee, the Joint Administrators, the Deed Administrators, LTD, Holdco and Opcos, provided that where any of the foregoing parties is providing a confirmation, the reference to Confirmation Parties shall exclude that person;

"Consent Fee" means the fee payable pursuant to clause 5 (*Consent Fee*) of the Voting Support Agreement;

"Consent Fee Creditor" has the meaning given to that term in the Voting Support Agreement;

“Counterindemnity Claims” has the meaning given to that term in each Related DOCA;

“Declaratory Order” means the order of the Court confirming the effect of the DOCAs;

“Deed of Release” means the deed of waiver and release of claims relating to certain Released Parties (as defined therein) to be dated on the Restructuring Effective Date, substantially in the form described in the Revised Administrators' Proposals (which for the avoidance of doubt shall be in addition to the releases and/or discharges set out at Clause 14 (*Release and Discharge of other Claims*) of the LTD DOCA and each Related DOCA);

“Delayed Transfer Entities” has the meaning given to that term in the LTD Asset Transfer Agreement;

“Delayed Transfer Schedule” has the meaning set out in the LTD Asset Transfer Agreement;

“Demand Creditor” has the meaning given to that term in each Related DOCA;

“Disbursements Account” has the meaning given to that term in the Opcos Finance Documents;

“DOCA Commencement Date” means the date on which the Commencement Date (as defined in each DOCA) has occurred and all conditions to the effectiveness of such DOCAs have been satisfied;

“DOCAs” means the deeds of company arrangement, entered into by each Group DOCA Company on the DOCA Commencement Date and as amended and restated from time to time (and a “**DOCA**” means any one of them);

“Excess Cash” shall have the meaning given to it in Clause 5.12(d);

“Fakih ADGM Transaction” means the transfer of the shares in the IVF Operating Companies to Fakih Holdco under and in accordance with the DOCA for each IVF Operating Company;

“Fakih ADGM Transaction Documents” means the share transfer instruments and all other deeds and documents required to implement the Fakih ADGM Transaction;

“Fakih Commitment Agreement” means the commitment agreement entered into between the Deed Administrators, LTD, the IVF Operating Companies and Dr. Michael Hasan Fakih dated 29 September 2021;

“Fakih Holdco” means a special purpose vehicle established in the ADGM with registration number 000006623;

“Fakih Holdco STA” means the share transfer agreement for the Fakih Holdco Transaction in the agreed form, being a form which each of (a) LTD and (b) Dr. Michael Hasan Fakih have confirmed in writing is acceptable to them;

“Fakih Holdco Transaction” means the transfer by LTD of 35% of the issued share capital of Fakih Holdco to Dr. Michael Hasan Fakih in accordance with the terms of the Fakih Commitment Agreement;

“Fakih Holdco Transaction Documents” means each of the Fakih SHA, the New Leases, the Fakih Holdco STA and all deeds and documents as may be necessary to enter into and implement the Fakih SHA, the New Leases and the Fakih Holdco Transaction in the manner contemplated in the Fakih Commitment Agreement;

“Fakih Opcos Transaction” means (i) the transfer by LTD of 65% of the issued share capital of Fakih Holdco to Opcos; and (ii) the accession by Opcos to the Fakih SHA in accordance with the terms of the LTD DOCA and the Fakih Commitment Agreement;

“Fakih Opcos Transaction Documents” means the share transfer instruments and all other deeds and documents required to implement the Fakih Opcos Transaction;

“Fakih SHA” means the shareholders’ agreement to be entered into by Dr. Michael Hasan Fakih, LTD and Fakih Holdco in the form appended to the Fakih Commitment Agreement;

“Financing Fee” means the amount referred to as the “Financing Fee” payable to Perella Weinberg UK Limited as financial adviser to LTD pursuant to the Funds Flow Statement;

“Former Cocom” means the coordinating committee of creditors formed for the purpose of considering and negotiating the Restructuring which was terminated pursuant to a letter dated 26 February 2021;

“Former Cocom Claim” means any claim by the Former Cocom under any fee letter entered into by a member of the Former Cocom and any Group DOCA Company;

“Funds Flow Statement” means the completion funds flow prepared by Alvarez & Marsal Europe LLP and agreed with the AHC Financial Adviser;

“Governance Agreement” means the governance agreement between, among others, Holdco and the Financiers (as defined therein) substantially in the form set out in Schedule 3 (*Governance Agreement*);

“Group Transfer Documents” means:

- (a) the LTD Asset Transfer Agreement;
- (b) the Fakih ADGM Transaction Documents;
- (c) the Fakih Holdco Transaction Documents;
- (d) the Fakih Opcos Transaction Documents;
- (e) the Transitional Transfer Documents;
- (f) the Service Agreements;

- (g) Intra-Group Debt Deed; and
- (h) any other documents required to implement Restructuring Asset Completion pursuant to the terms of the LTD Asset Transfer Agreement and each DOCA;

“Holdco Articles of Association” has the meaning given to the term Articles of Association of Holdco in the Governance Agreement;

“Holdco Claim” means the receivable owing from LTD to Holdco in an amount equal to the value of the Holdco Issuance arising pursuant to clause 13.1(b) of the LTD DOCA;

“Holdco Common Terms Agreement” means the common terms agreement dated on the Restructuring Effective Date between, among others, the Holdco Global Agent, the Holdco Conventional Facility Agent and the Holdco Investment Agent;

“Holdco Conventional Facility” has the meaning given to the term “Conventional Facility” in the Holdco Common Terms Agreement;

“Holdco Conventional Facility Agreement” means the facility agreement between, amongst others, Holdco, the Holdco Conventional Facility Agent and the Original Conventional Lenders (each as defined therein) substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Declaration of Trust” means the declaration of trust in respect of certain shares in Opcos granted by Holdco in favour of the Holdco Investment Agent substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco EPM Value” has the meaning given to that term in each Related DOCA;

“Holdco Facilities” means the facilities to be made available to Holdco on the Restructuring Effective Date pursuant to the terms of the Holdco Finance Documents;

“Holdco Facilities Legal Opinions” means those legal opinions listed in subparagraphs (a), (b) and (c) of paragraph 8 of Schedule 4 (*Restructuring Effective Date Conditions Precedent*);

“Holdco Fee Letters” has the meaning given to the term “Fee Letters” in the Holdco Common Terms Agreement;

“Holdco Finance Documents” means:

- (a) the Holdco Common Terms Agreement;
- (b) the Holdco Conventional Facility Agreement;
- (c) the Holdco Investment Agency Agreement;
- (d) the Holdco Master Sale and Purchase Agreement;
- (e) the Holdco Purchase Undertaking;

- (f) the Holdco Sale Undertaking;
- (g) the Holdco Service Agency Agreement;
- (h) the Holdco Declaration of Trust;
- (i) the Governance Agreement;
- (j) the Holdco First Supplemental Sale and Purchase Agreement;
- (k) the Holdco Fee Letters; and
- (l) the Holdco Security Agreements;

“Holdco First Supplemental Sale and Purchase Agreement” means the Supplemental Sale and Purchase Agreement (as defined in the Holdco Common Terms Agreement) to be delivered on the Restructuring Effective Date;

“Holdco Investment Agency Agreement” means the investment agency agreement between, amongst others, the Holdco Investment Agent, the Original Participants and Holdco substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Master Sale and Purchase Agreement” means the master sale and purchase agreement to be entered into between the Holdco Investment Agent as purchaser and Holdco as seller substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Participations” has the meaning given to the term “Participation” in the Holdco Common Terms Agreement;

“Holdco Purchase Undertaking” means the purchase undertaking to be granted by Holdco in favour of the Holdco Investment Agent substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Sale Undertaking” means the sale undertaking to be granted by the Holdco Investment Agent in favour of Holdco Investment Agent substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Security Agreements” has the meaning given to the term “Transaction Security Documents” in the Holdco Common Terms Agreement;

“Holdco Service Agency Agreement” means the service agency agreement between Holdco as agent and the Holdco Investment Agent substantially in the form posted on the NMC Stakeholder Website on 9 August 2021;

“Holdco Valuation” has the meaning given to the term "Initial Valuation" in the Holdco Investment Agency Agreement;

“Holding Period Trust Deed” means the holding period trust deed to be entered into by, amongst others, the Holding Period Trustee and Holdco substantially in the form described in the Revised Administrators' Proposals;

“Holding Period Trust Documents” means;

- (a) the Holding Period Trust Deed;
- (b) the Holding Period Trust Fee Letter;
- (c) the Holding Period Trust Opcos Accession Letter;

“Holding Period Trust Fee Letter” means the fee letter to be entered into by the Holding Period Trustee and LTD in connection with the Holding Period Trustee’s engagement under the Holding Period Trust Deed;

“Holding Period Trust Opcos Accession Letter” means the accession letter to be entered into by Opcos in connection with the the Holding Period Trust Fee Letter;

“Initial Closing Notice” has the meaning given to that term in the Opcos Common terms Agreement;

“Initial Portfolio” has the meaning given to that term in the Holdco Master Sale and Purchase Agreement;

“Interest” has the meaning given to that term in the Opcos Primary Facilities Agreement;

“Intra-Group Debt Deed” has the meaning given to that term in the LTD Asset Transfer Agreement;

“Islamic Financing Facility” has the meaning given to that term in the Holdco Common Terms Agreement;

“IVF Operating Companies” means Eve Fertility Center Ltd (in administration) (subject to a deed of company arrangement), Fakih IVF Fertility Center Ltd (in administration) (subject to a deed of company arrangement) and Fakih IVF Ltd (in administration) (subject to a deed of company arrangement), each an **“IVF Operating Company”**;

“Longstop Date” means (i) ; or (ii) such later date as may be agreed by LTD and the Majority RID Financiers;

“Losses” means all losses, liabilities (including interest and penalties), costs, charges, expenses, actions, proceedings, claims and demands (together, in each case, with any irrecoverable VAT thereon), and:

- (a) save as set out in paragraph (b) below, includes professional and legal costs and experts’ and consultants’ fees which in each case are reasonably and properly incurred and documented; but
- (b) does not include any amounts (including, for the avoidance of doubt, any professional and legal costs or experts’ or consultants’ fees) which are expressly contemplated in or required to be agreed as part of the ATA Budget (as defined in the Asset Transfer Agreement) (and any variations thereto) or which are to be agreed in accordance with any Protocol (as defined in the

Asset Transfer Agreement) or a Capital Provision Agreement (as defined in the Asset Transfer Agreement));

"LTD" means NMC Healthcare Ltd (in administration) (subject to a deed of company arrangement);

"LTD Cash Reserve" means:

- (a) an amount of \$32,618,509.00 (in any currency or currencies and subject to adjustment in accordance with the Budget and Oversight Protocol) to be retained by LTD following the Restructuring Effective Time to fund ongoing costs;
- (b) an amount of USD 4,260,924 to redeem any Security Interests with a Determined Value; and
- (c) an amount of USD 2,937,521 held by LTD on behalf of Moncatalo S.L.U to satisfy expected tax liabilities of Moncatalo S.L.U incurred prior to the Restructuring,

in each case as set out in the Funds Flow Statement;

"LTD Deed Administrators" means Richard Dixon Fleming and Benjamin Thom Cairns in their capacity as deed administrators under the LTD DOCA;

"LTD DOCA" means the deed of company arrangement by among others LTD and Holdco;

"LTD Legal Adviser" means Kirkland & Ellis International LLP;

"LTD Payoff Amount" means, without double counting, an amount equal to A minus (B + C) provided that where such calculation is a negative amount it shall be zero, where:

A is equal to all of the cash available to LTD including, for these purposes, any amounts standing to the credit of (i) the Mandatory Prepayment Account which are reserved for the repayment of amounts outstanding under the AFF Documents and (ii) any account of any Non-Transferring Subsidiary, excluding any Minimum Cash Balance and excluding any amounts standing to the credit of the LTD Proceeds Pledged Account;

B is equal to the LTD Cash Reserve; and

C is equal to the Transaction Fees

as set out in the Funds Flow Statement.

"LTD Proceeds Pledged Account" means the proceeds pledged account held with Barclays Bank plc in the name of LTD;

"LTD Proceeds Pledged Amount" has the meaning given to it in Clause 4.3(b)(ii);

“Majority RID Financiers” means those Original Financiers who, at the Restructuring Effective Time, will represent a simple majority in value of Total Admitted Commitments, as calculated by the Joint Administrators in consultation with the AHC Financial Adviser pursuant to Clause 1.4 of this Deed;

“Management Deed of Release” means the deed of waiver and release of claims relating to certain managers of the Group to be dated on the Restructuring Effective Date;

“Management Indemnity Agreement” means the indemnity agreement relating to certain managers of the Group to be provided by Opco and dated on the Restructuring Effective Date;

“Mandatory Prepayment Account” has the meaning given to such term in the AFF Documents;

“Minimum Cash Balance” means the minimum cash balance that a Non-Transferring Subsidiary or a Delayed Transfer Entity is required to maintain at all times in a bank account to avoid any charges or penalties being incurred, provided that any such amount shall not exceed AED 100,000 per bank account;

“Minority Director” has the meaning given to such term in the Governance Agreement;

“Minority Reporting Financier” has the meaning given to such term in the Governance Agreement;

“New Leases” means, together, the following leases:

- (a) the lease in respect of the Abu Dhabi Clinic (as defined in the Fakih SHA) made between (1) Dr Amal Moawiyah Saleh Alshunnar and (2) Fakih IVF Fertility Center Ltd (in administration) (subject to a deed of company arrangement), in the form set out in Schedule 7 to the Fakih SHA; and
- (b) the lease in respect of the Dubai Clinic (as defined in the Fakih SHA) made between (1) Dr. Zainab Abdulla Mohd Aqil Kazim and (2) Fakih IVF Ltd (in administration) (subject to a deed of company arrangement) in the form set out in Schedule 7 to the Fakih SHA;

“NMC VAT Group” means the entities set out at Schedule 5 (*NMC VAT Group*);

“Opco Articles of Association” has the meaning given to the term Articles of Association of Opco in the Governance Agreement;

“Opco Common Terms Agreement” means the common terms agreement dated on or around the date of this Deed between, among others, Opco, the Opco Global Facility Agent, and the Opco Primary Facility Agents (each as defined therein);

“Opco Facilities” has the meaning given to the term “Facilities” in the Opco Common Terms Agreement;

“Opco Facility Receivable” has the meaning given in Clause 5.9(c);

“Opcos Fee Letters” has the meaning given to the term “Fee Letters” in the Opcos Common Terms Agreement;

“Opcos Finance Documents” means:

- (a) the Opcos Common Terms Agreement;
- (b) the Opcos Primary Facilities Agreement;
- (c) the Opcos Fee Letters;
- (d) the Opcos Security Agreements; and
- (e) the Opcos Intercreditor Agreement;

“Opcos Finance Party” has the meaning given to the term “Finance Party” in the Opcos Common Terms Agreement;

“Opcos Financier” has the meaning given to the term “Financier” in the Opcos Common Terms Agreement;

“Opcos Financiers Legal Advisers” means Milbank LLP or any successor legal adviser, to the Opcos Financiers in respect of the Restructuring;

“Opcos Funding Amount” means an amount sufficient to meet Opcos funding obligations pursuant to Clause 5.9(b), as set out in the Funds Flow Statement;

“Opcos Intercreditor Agreement” has the meaning given to the term “Intercreditor Agreement” in the Opcos Common Terms Agreement;

“Opcos Legal Opinions” means those legal opinions required to be provided under the Opcos Finance Documents when the RED Guarantors accede to the Opcos Common Terms Agreement and enter into the Opcos Security Agreements;

“Opcos Longstop Date” means the date falling two (2) Business Days after the proposed Utilisation Date (as defined in the Opcos Common Terms Agreement) as set out in the Request (as defined in the Opcos Common Terms Agreement);

“Opcos Payoff Amount” means an amount sufficient to discharge all amounts outstanding pursuant to the AFF Documents (including any AFF Cash Entitlements) after the payment to the AFF Global Facility Agent of the LTD Payoff Amount and the LTD Proceeds Pledged Amount in accordance with Clauses 5.9(a) and 5.9(b), as set out in the Funds Flow Statement;

“Opcos Primary Facilities Agreement” has the meaning given to the term “Primary Facilities Agreement” in the Opcos Common Terms Agreement;

“Opcos Security Agreements” means:

- (a) each Debenture (as defined in the Opcos Common Terms Agreement) to be entered into by Opcos and each RED Guarantor;

- (b) the LTD Account Security Agreement (as defined in the Opcos Common Terms Agreement); and
- (c) the Moveables Security Agreement (as defined in the Opcos Common Terms Agreement) to be entered into by Opcos and each RED Guarantor;

"Opcos Utilisation Request" means the utilisation request delivered by Opcos to the Opcos Global Facility Agent pursuant to the terms of the Opcos Finance Documents;

"Original Financiers" has the meaning given to that term in the Holdco Common Terms Agreement;

"Original Participants" has the meaning given to that term in the Holdco Investment Agency Agreement;

"Party" means a party to this Deed;

"Pre-Commencement Debt Claim/Entitlement Waiver and Release Notice" has the meaning given to that term in AFF CTA;

"Pre-Completion Actions" means the pre-completion actions set out in schedule 1 (*Pre-Completion Actions*) of the LTD Asset Transfer Agreement;

"Post-Completion Filing Actions" means the post-completion filing actions set out in paragraph 4 of Schedule 2 (*Completion Actions*) of the LTD Asset Transfer Agreement;

"Post-Completion Protocol" means the post-completion protocol set out in schedule 3 (*Post-Completion Protocol*) of the LTD Asset Transfer Agreement;

"Post RED Budget" has the meaning given to that term in the Budget and Oversight Protocol, which for the avoidance of doubt does not include:

- (a) any amount agreed by Opcos and LTD to be payable in connection with the LTD Asset Transfer Agreement; and
- (b) the amounts referred to in limbs (b) and (c) of the definition of LTD Cash Reserve;

"Proposed Minority Director" has the meaning given to it in Clause 4.1(c);

"Proposed Minority Director Voting Deadline" has the meaning given to it in Clause 4.1(d);

"Proposed Restructuring Effective Date" means the date notified to Group Creditors pursuant to clause 7.2 of the LTD DOCA;

"RED Guarantors" has the meaning given to it in the Opcos Common Terms Agreement;

"Registrar" has the meaning given to that term in section 298 of the Regulations;

“Related DOCA Assignment Deed” means the assignment deed entered into by each Related DOCA Company on the Restructuring Effective Date and acknowledged by LTD;

“Remuneration and Nomination Committee” has the meaning given to such term in the Governance Agreement;

“Reservations” means the reservations set out in the legal opinions delivered pursuant to paragraph 8 of Schedule 4 (*Restructuring Effective Date Conditions Precedent*);

“Residual Loan” means a loan to be made between Opco (as lender) and LTD (as borrower) which shall be limited in recourse to any proceeds arising from a sale of LTD’s direct or indirect interests in the Saudi JV;

“Residual Loan Document” means the loan agreement between LTD (as borrower) and Opco (as lender) documenting the Residual Loan;

“Restructuring Asset Completion” has the meaning given to the term “Completion” in the LTD Asset Transfer Agreement;

“Restructuring Conditions” means each of the conditions set out in Clause 3.2(a) to 3.2(d) of this Deed (other than the issuance of the Restructuring Conditions Satisfaction Notice and/or the Restructuring Effective Time);

“Restructuring Conditions Satisfaction Notice” means the notice from the LTD Deed Administrators to the Administrative Parties, the Advisers and the Opco Financiers Legal Advisers confirming that each of the Restructuring Conditions have been satisfied or waived (as applicable);

“Restructuring Documents” means:

- (a) this Deed;
- (b) the Group Transfer Documents;
- (c) the Holdco Finance Documents;
- (d) the Opco Finance Documents;
- (e) the Holding Period Trust Documents;
- (f) the Deed of Release;
- (g) the ATA Deed of Release;
- (h) the Management Deed of Release;
- (i) the Management Indemnity Agreement;
- (j) the Additional Protocol Documents;

- (k) any other documents that LTD and the Majority RID Financiers consider to be necessary or desirable (acting reasonably) to give effect to the Restructuring; and
- (l) any instruction letter which an Administrative Party requests to authorise it to enter into any of the above mentioned documents;

“**Restructuring Effective Date**” has the meaning given to it in Clause 4.2(c);

“**Restructuring Effective Date Conditions Precedent**” means the conditions precedent to the Restructuring Effective Date set out in Schedule 4 (*Restructuring Effective Date Conditions Precedent*);

“**Restructuring Effective Time**” means the time at which the last Restructuring Step set out in Clause 5 (*Restructuring Steps*) has been completed;

“**Restructuring Effective Time Actions**” has the meaning given to such term in the LTD Asset Transfer Agreement;

“**Restructuring Steps**” means the steps, transactions, or actions set out in Clause 5 (*Restructuring Steps*) and “**Restructuring Step 1, 2, 3, etc.**” shall refer to the relevant step as further described under that heading in Clause 5 (*Restructuring Steps*);

“**Revised Administrators' Proposals**” means the revised administrators' proposals issued by the Group Company Administrators to the Group Creditors on 9 August 2021;

“**RID Financier**” means a Group Creditor who will or who is likely to be an Original Financier at the Restructuring Effective Time;

“**Saudi JV**” means all of LTD and NMC Health Investments LLC's interests in the joint venture between LTD, NMC Health Investments LLC and GOSI Investment Ventures constituted by a joint venture agreement dated 23 May 2019;

“**Service Agreements**” has the meaning given to that term in the LTD Asset Transfer Agreement;

“**Shari'a Event**” has the meaning given to that term in the Holdco Purchase Undertaking;

“**Share Transfer Companies**” means each Completion Date Transferring Subsidiary and each Delayed Transfer Entity;

“**Spanish Pledge Release Agreement**” means the pledge release agreement dated on or around the date of this Deed between GLAS Trust Corporation Limited (in its capacity as security agent) and Moncatalo, S.L.U;

“**Subsidiary**” has the same meaning as in section 298 of the Regulations;

“**Tax Authority**” means each of (i) the Federal Tax Authority of the United Arab Emirates; (ii) the Oman Tax Authority as part of the Secretariat General for Taxation; or (iii) any governmental, state or municipality or any local, state, federal or other

fiscal, revenue, customs or excise authority, or body competent to impose, administer, levy, assess or collect VAT in any applicable jurisdiction;

“Tax Structure Memorandum” means the final report relating to the Restructuring produced by Alvarez & Marsal Tax and UK LLP addressed to LTD;

“Third Party Shareholder Order” means an order of the Court under Section 81(1) of the Regulations with respect to certain Related DOCA Companies;

“Total Admitted Commitments” means the Total Commitments less the Holdco Facilities Commitments to be issued to the Holding Period Trustee on or around the Restructuring Effective Date;

“Total Commitments” has the meaning given to it in the Holdco Common Terms Agreement;

“Total Conventional Commitments” has the meaning given to it in the Holdco Common Terms Agreement;

“Total Islamic Financing Commitments” has the meaning given to it in the Holdco Common Terms Agreement;

“Transaction Fees” means the fees payable to the AHC Financial Adviser and Perella Weinberg UK Limited as financial adviser to LTD upon completion of the Restructuring;

“Transfer Consideration” has the meaning given to the term "Consideration" in the LTD Asset Transfer Agreement;

“Transitional Transfer Documents” has the meaning given to that term in the LTD Asset Transfer Agreement;

“VAT” means: (i) Tax as defined in the VAT Law; and (ii) any other tax of a similar fiscal nature, whether imposed in the UAE or the Sultanate of Oman in substitution for, or levied in addition to, such Tax, or imposed by any Tax Authority in any other jurisdiction to which the VAT Indemnified Persons or the relevant Share Transfer Companies are subject;

“VAT Claim” means any assessment, notice, demand, letter or other document issued or action taken by or on behalf of any Tax Authority from which it appears that any VAT Indemnified Person is or may be subject to a VAT liability (including interest and penalties) for which the VAT Indemnifying Persons are or may be liable under Clause 6.1;

“VAT Dispute” means any dispute, appeal, negotiations or other proceedings in connection with a VAT Claim;

“VAT Indemnified Persons” means the Joint Administrators, the Deed Administrators, LTD and NMC Holding Ltd (in administration);

“VAT Indemnifying Persons” means Opco and each Related DOCA Company;

“VAT Law” means: (i) UAE Federal Decree-Law No. (8) of 2017 on Value Added Tax and UAE Cabinet Decision No. (52) of 2017 on the Executive Regulations of the Federal Decree- Law No. (8) of 2017 on Value Added Tax; (ii) the Value Added Tax Law as promulgated by Royal Decree No. 121/2020 in the Sultanate of Oman; and (iii) any legislation and regulations supplemental to (i) or (ii);

“VAT Records” means all records of LTD or any of its subsidiaries or other Affiliates which are or have been members of the NMC VAT Group, which are required to be preserved under the VAT Law;

“Voluntary Disclosure” means a voluntary disclosure made to the relevant Tax Authority in relation to a VAT liability (including interest and penalties) of a VAT Indemnified Person for which the VAT Indemnifying Persons are or may be liable under Clause 6.1; and

“Voting Support Agreement” means the voting support agreement, dated 16 April 2021 originally between, among others, LTD, the Joint Administrators and the Group DOCA Companies (as defined therein).

1.2 Interpretation

- (a) Unless otherwise indicated, any reference in this Deed to:
 - (i) “\$”, “USD” and “dollars” denote the lawful currency of the United States of America;
 - (ii) “AED” and “dirham” denote the lawful currency of the United Arab Emirates;
 - (iii) a “Clause” or a “Schedule” is a reference to a clause of, or schedule to, this Deed;
 - (iv) “this Deed” shall include the Schedules to this Deed;
 - (v) a “person” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality) or two or more of the foregoing;
 - (vi) a “regulation” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (vii) any person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (viii) the term “including” shall be without limitation and shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;

- (ix) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
 - (x) any agreement or instrument is a reference to that agreement or instrument as amended, restated, extended, supplemented or novated from time to time;
 - (xi) a provision of law is a reference to that provision as amended or re-enacted from time to time;
 - (xii) a time of day is a reference to Abu Dhabi time;
 - (xiii) any reference to a “**day**” (including within the phrase “**Business Day**”) shall mean a period of 24 hours running from midnight to midnight;
 - (xiv) words importing the singular shall include the plural equivalent and vice versa;
 - (xv) references to a Group Creditor shall be construed to refer to any of its Nominated Recipient(s) where applicable; and
 - (xvi) Clause and Schedule headings are for ease of reference only.
- (b) A reference to a document being “**dated and compiled**” or an authority granted to “**date and compile**” a document will include the insertion in manuscript or otherwise of all missing dates, figures and information required for the relevant document to be completed.
- (c) Unless provided otherwise or agreed between the Parties in connection with the delivery of any document or notice, where this Deed provides for a document or notice to be “**delivered**” to a Party, it is sufficient for that document to be delivered in accordance with Clause 10 (*Notices*).
- 1.3 A reference to a document being “substantially in the form” shall be construed in accordance with clause 1.2(q) of the LTD DOCA.
- 1.4 In calculating the “Majority RID Financiers”, the Joint Administrators shall consult the AHC Financial Advisers and will act reasonably and on the basis of the information available to the Joint Administrators at the relevant time including:
- (a) Admitted Group Creditors’ likely satisfaction of (or failure to satisfy) the Initial Distribution Requirements; and
 - (b) the existence of Holdback Claims in respect of which Holdco Facilities Commitments will be issued to the Holding Period Trustee on or around the Restructuring Effective Date,
- provided that**, on the Holdco Facilities being made available on or about the Restructuring Effective Date in accordance with this Deed, the “Majority RID Financiers” will be calculated in accordance with the Holdco Facilities Commitments

held by Original Financiers, excluding Holdco Facilities Commitments to be issued to the Holding Period Trustee on or around the Restructuring Effective Date.

- 1.5 The Joint Administrators shall upon the request of the AHC Financial Advisers share any information which the AHC Financial Advisers may reasonably require to enable it to calculate whether the approval of the Majority RID Financiers has been obtained or is capable of being reached.
- 1.6 Notwithstanding any provision in this Deed to the contrary, nothing in this Deed shall affect the rights and obligations of Opcos and Holdcos under the Opcos Finance Documents and the Holdco Finance Documents (as applicable).

2. INSTRUCTIONS TO IMPLEMENT THE RESTRUCTURING

- 2.1 Unless otherwise specified in this Deed, each Party's signature page or counterpart to each Restructuring Document shall be released concurrently with the release of all other the signature pages or counterparts to such document (if any).
- 2.2 Each Group Creditor (or, where applicable, each respective Nominated Recipient(s)) hereby authorises and instructs the Holdco Agents and the Holding Period Trustee to undertake such steps as it considers necessary or desirable for it to take for the purposes of facilitating the implementation of the Restructuring, including (without limitation) entering into and executing in its respective capacity the Restructuring Documents to which it is a party and any document that it reasonably considers necessary or advisable to implement the Restructuring.
- 2.3 All grants of authority granted under this Clause 2 shall be treated, for all purposes whatsoever and without limitation, as having been granted by deed.

3. RESTRUCTURING CONDITIONS SATISFACTION NOTICE

- 3.1 Each Party (other than the Opcos Global Facility Agent and the Holding Period Trustee) shall use reasonable endeavours to procure that the Restructuring Conditions are satisfied as soon as reasonably practicable following the execution of this Deed.
- 3.2 The LTD Deed Administrators shall deliver the Restructuring Conditions Satisfaction Notice to the Administrative Parties, the Advisers, and the Opcos Financier Legal Advisers as soon as reasonably practicable on the date on which each of the following conditions have been satisfied:
 - (a) *Confirmations from the LTD Deed Administrators:* the LTD Deed Administrators have confirmed in writing to the Confirmation Parties that:
 - (i) the DOCA Commencement Date has occurred, and (on the date on which the Restructuring Conditions Satisfaction Notice is issued) each DOCA remains in full force and effect;
 - (ii) the conditions precedent at paragraph 9(c) of Schedule 4 (Restructuring Effective Date Conditions Precedent)) is in a form and substance satisfactory to the LTD Deed Administrators or that the requirement to satisfy any such Restructuring Effective Date

Conditions Precedent has been waived by the LTD Deed Administrators; and

- (iii) LTD has:
 - (A) issued the notice required to be provided pursuant to clause 8.4 of the LTD Asset Transfer Agreement; and
 - (B) confirmed that it is satisfied with the notice required to be provided by Opcos pursuant to clause 8.5 of the LTD Asset Transfer Agreement;
- (b) *Confirmations from Opcos:* Opcos have confirmed in writing to the Confirmation Parties that it has:
 - (i) issued the notice required to be provided pursuant to clause 8.5 of the LTD Asset Transfer Agreement;
 - (ii) confirmed that it is satisfied with the notice required to be provided by LTD pursuant to clause 8.4 of the LTD Asset Transfer Agreement; and
- (c) *Confirmation from Clifford Chance LLP as an AHC Legal Adviser:* Clifford Chance LLP as an AHC Legal Adviser has confirmed in writing to the Confirmation Parties that:
 - (i) the Majority RID Financiers have confirmed that the Budget and Oversight Protocol and the Additional Protocol Documents are in form and substance acceptable to the Majority RID Financiers (including, without limitation, any amendments or updates to reflect the situation following the Restructuring Effective Time);
 - (ii) the Majority RID Financiers have confirmed that the Pre-Completion Actions have been completed on terms satisfactory to the Majority RID Financiers or the requirement to complete a Pre-Completion Action has been waived by the Majority RID Financiers; and
 - (iii) the Majority RID Financiers have confirmed that the Restructuring Effective Date Conditions Precedent (other than any Opcos Finance Documents (excluding the Opcos Common Terms Agreement and the Opcos Intercreditor Agreement) referred to in paragraph 7(k) and the conditions precedent at paragraphs 9(c) of Schedule 4 (*Restructuring Effective Date Conditions Precedent*)) are in a form and substance satisfactory to the Majority RID Financiers or that the requirement to satisfy any such Restructuring Effective Date Conditions Precedent has been waived by the Majority RID Financiers;
- (d) *Confirmation from the Opcos Financiers Legal Advisers:* the Opcos Financiers Legal Advisers have confirmed in writing to the Confirmation Parties that:
 - (i) the Opcos Finance Documents have been executed by each of the parties thereto;

- (ii) the Opco Global Facility Agent has issued the Initial Closing Notice confirming that each of the conditions precedent specified in part A (*Initial Conditions Precedent*) of schedule 2 (*Conditions Precedent/Subsequent*) to the Opco Common Terms Agreement are in form and substance satisfactory to the Majority Financiers (as defined in the Opco Common Terms Agreement); and
- (iii) subject to being held in escrow pending release in accordance with the Restructuring Step 6, each of the conditions precedent specified in part B (*Closing Time Conditions Precedent*) of schedule 2 (*Conditions Precedent/Subsequent*) to the Opco Common Terms Agreement are in a form and substance satisfactory to the Majority Financiers (as defined in the Opco Common Terms Agreement) or have been waived by the Majority Financiers (the “**Opco Conditions Precedent**”).

- 3.3 The Administrators shall post the Restructuring Conditions Satisfaction Notice to the NMC Stakeholder Website.
- 3.4 Immediately following the circulation of the Restructuring Conditions Satisfaction Notice:
 - (a) to the extent that they have not already done so, the LTD Deed Administrators shall sign but leave undated all of the Restructuring Documents, including any documents ancillary to the Restructuring Documents which may be required to be delivered thereunder:
 - (i) on their own behalf; and
 - (ii) on behalf of all Group Creditors who are party to them (acting as their attorney pursuant to the terms of the DOCAs),

and return all of the signature pages, together with the full execution versions, to the LTD Legal Adviser, at such address and in such number of copies as the LTD Legal Adviser may reasonably specify; and
 - (b) if it has not already done so each other Party to the Restructuring Documents shall sign but leave undated the Restructuring Documents to which it is a party and shall return all of the signature pages, together with the full execution versions, at such address and in such number of copies as the LTD Legal Adviser may reasonably specify.
- 3.5 For the avoidance of doubt, and notwithstanding any provision of this Deed or any Restructuring Document permitting electronic delivery of documents, all signatures to the Restructuring Documents (other than the Opco Finance Documents) must be provided in physical “wet-ink” form unless otherwise agreed by the Joint Administrators and the AHC Legal Advisers.
- 3.6 Each Party (other than the Opco Global Facility Agent) hereby authorises the LTD Legal Adviser to date, complete and release the Restructuring Documents to which it is a party in accordance with the terms of this Deed. The signatures of each Opco

Financier to any Restructuring Document shall only be released upon express order of the Opcos Financiers Legal Advisers.

- 3.7 Upon receipt by the LTD Legal Adviser of signature pages to each of the Restructuring Documents (other than the Opcos Finance Documents) in accordance with Clause 3.4 above, the Restructuring Documents (other than the Opcos Finance Documents) shall be held in escrow pending their release, completion, dating and delivery in accordance with the Restructuring Steps below.
- 3.8 Each Party acknowledges that in taking the actions set out in Clauses 3.6 and 3.7 above, the LTD Legal Adviser is acting solely in its capacity as legal adviser to LTD and is not acting as agent of, nor shall have any liability to, any other Party to this Deed.

4. PRE-RESTRUCTURING STEPS

4.1 Pre-Steps - Holdco Finance Documents

- (a) Promptly following the Record Date (and in any event no later than two Business Days prior to the Proposed Restructuring Effective Date):
- (i) the Joint Administrators shall confirm to Holdco, the Holdco Global Agent, the Holdco Conventional Facility Agent and the Holdco Investment Agent, the Total Conventional Commitments and the Total Islamic Financing Commitments as well as the Commitments (as defined in the Holdco Common Terms Agreement) of each Original Participant and each Original Conventional Lender (each as defined in the Holdco Common Terms Agreement);
 - (ii) the LTD Legal Adviser shall populate the Holdco Common Terms Agreement, the Holdco Conventional Facility Agreement and the Holdco Investment Agency Agreement with the Total Conventional Commitments, the Total Islamic Financing Commitments and the Total Commitments; and
 - (iii) the LTD Legal Adviser shall populate the Holdco First Supplemental Sale and Purchase Agreement with the details of the Initial Portfolio and the Purchase Price (as defined in the Holdco First Supplemental Sale and Purchase Agreement);
- (b) The Governance Agreement will be signed and dated no later than six Business Days prior to the Proposed Restructuring Effective Date).
- (c) On or before the day falling five Business Days before the Proposed Restructuring Effective Date, Lazard & Co., Limited in consultation with the Ad Hoc Committee (acting as the Renumeralation and Nomination Committee in accordance with the terms of the Governance Agreement, including applying the criteria set out in Schedule 3 of the Governance Agreement) shall notify the Joint Administrators of the proposed candidate for the role of Minority Director (the "**Proposed Minority Director**") and shall provide the Joint Administrators with a copy of the CV of the Proposed Minority Director.

- (d) On or before the day falling four Business Days before the Proposed Restructuring Effective Date, the Joint Administrators shall provide the Minority Reporting Financiers with the name and CV of the Proposed Minority Director and shall ask the Minority Reporting Financiers to confirm on or before 5pm on the day falling two Business Days prior to the Proposed Restructuring Effective Date (the "**Proposed Minority Director Voting Deadline**") if they object to the appointment of the Proposed Minority Director.
- (e) The appointment of the Proposed Minority Director shall be deemed to have been approved by the Minority Reporting Financiers unless Minority Reporting Financiers, holding at least twenty per cent. of the total Holdco Facilities Commitments to be held by Minority Reporting Financiers on the Proposed Restructuring Effective Date have notified the Joint Administrators by the Proposed Minority Director Voting Deadline, that they object to the appointment of the Proposed Minority Director.
- (f) If, the appointment of the Proposed Minority Director is approved, the Joint Administrators shall promptly notify the Holdco Global Agent that the Proposed Minority Director has been appointed in accordance with this clause 4.1.
- (g) If, by the Proposed Minority Director Voting Deadline, the Proposed Minority Director is not approved, the Minority Director shall be appointed following the Proposed Restructuring Effective Date in accordance with the provisions set out in the Governance Agreement.

4.2 Pre-Steps - Opcos Facility Pre-Funding

- (a) For the purposes of this Clause 4.2 and unless otherwise defined in this Deed, capitalised terms used in this Clause shall have the meaning given to them in the applicable Opcos Finance Documents.
- (b) With respect to the Opcos Facilities:
 - (i) no later than the date of this Deed:
 - (A) the executed Opcos Finance Documents will be dated and released by the Opcos Financiers Legal Advisers;
 - (B) Opcos shall deliver an executed Opcos Utilisation Request with respect to an aggregate amount equal to the Total Commitments (as defined in the Opcos Common Terms Agreement) which shall, in each case, specify the date of the Proposed Restructuring Effective Date as the proposed Utilisation Date (as applicable); and
 - (C) the Opcos Global Facility Agent (on behalf of the Opcos Primary Facility Agents) shall notify Opcos of the total aggregate participations of each Financier in the Advances (as defined in the Opcos Common Terms Agreement);

- (D) no later than the day falling three Business Days prior to the Proposed Restructuring Effective Date the Opcos Global Facility Agent (on behalf of the Opcos Primary Facility Agents) shall confirm to Opcos the applicable EIBOR to be used in accordance with the applicable Opcos Finance Documents;
 - (ii) no later than four days prior to the Proposed Restructuring Effective Date, LTD shall transfer the amounts standing to the balance of the LTD Proceeds Pledged Account (the "**LTD Proceeds Pledged Amount**") to the AFF Global Agent;
 - (iii) no later than the day one Business Day prior to the Proposed Restructuring Effective Date, the Opcos Global Facility Agent shall confirm in writing to LTD, the LTD Deed Administrators and the Advisers that it has received the funds required under the Opcos Utilisation Request and shall provide documentary evidence (which may be in the form of a SWIFT or MT confirmation) to LTD or the LTD Deed Administrators (as the case may be) in respect of receipt of funds transferred pursuant to this Clause 4.2(b),

(the period beginning in sub-paragraph (b)(ii) to (b)(iii) inclusive and ending on the Opcos Longstop Date being the "**Pre-Funding Period**");
 - (iv) no later than the day one Business Day prior to the Proposed Restructuring Effective Date and provided that the LTD Payoff Amount is greater than zero, LTD shall submit the debit order to the AFF Global Facility Agent in respect of the LTD Payoff Amount; and the LTD Proceeds Pledged Amount; and
 - (v) no later than the day one Business Day prior to the Proposed Restructuring Effective Date, Opcos shall submit the debit order to the Opcos Global Facility Agent in respect of the Opcos Payoff Amount.
- (c) The "**Restructuring Effective Date**" shall take place on the Business Day following receipt of funds by the Opcos Global Facility Agent with respect to the Facilities (as defined in the Opcos Common Terms Agreement), pursuant to Clause 4.2(b).

5. RESTRUCTURING STEPS

5.1 Order of the Restructuring Steps

- (a) Each Party hereby agrees that:
 - (i) subject to the Restructuring Conditions Satisfaction Notice being issued and the completion of the steps set out in Clauses 4.1 (Pre-Steps - Holdco Finance Documents) and 4.2 (Pre-Steps - Opcos Facility Pre-Funding) above, the Restructuring Steps shall be completed in the order set out in this Clause 5;
 - (ii) each Restructuring Step shall be completed as soon as reasonably practicable following the completion of each action, transaction or

other step to be taken under or pursuant to the previous Restructuring Step;

- (iii) the effectiveness of each Restructuring Step shall be conditional upon each other Restructuring Step becoming effective so that, if any one of the Restructuring Steps does not become effective, none of the other Restructuring Steps shall become effective; and
- (iv) in the event that any Restructuring Step (a “**Relevant Restructuring Step**”) is not completed on the Business Day on which the Restructuring Steps are commenced pursuant to this Clause 5, then:
 - (A) the process of the closing of the Restructuring shall be paused until the date on which the Relevant Restructuring Step and all remaining Restructuring Steps can be completed (on which date all such Restructuring Steps shall be completed);
 - (B) to the fullest extent permitted by law, any Restructuring Step completed before the day on which the Restructuring Effective Time occurs shall be deemed to have occurred on the date of the Restructuring Effective Time;
 - (C) no Party shall be permitted to raise any objection for the purposes of this Deed in connection with the fact that a Restructuring Step has not been completed on the date of the Restructuring Effective Time by reason of the operation of the provisions of this Clause 5.1(a)(iv); and
 - (D) in the event that any Restructuring Step is completed before the date on which the Restructuring Effective Time has occurred and it cannot be treated as having occurred on a subsequent date under the provisions of this Clause 5.1(a)(iv), then the fact of its occurrence on a date prior to the date of the Restructuring Effective Time shall not prevent it from being regarded for the purposes of this Deed as having occurred on the date the Restructuring Effective Time occurs.

5.2 Restructuring Step 1: AFF documents and Holding Period Trust Deed

Promptly on the Restructuring Effective Date:

- (a) the AFF Deed of Release and the AFF Payoff Letter shall be dated; and
- (b) the Holding Period Trust Deed and the Holding Period Trust Fee Letter shall be dated and become effective and the Holding Period Trustee hereby confirms it shall hold any Holdco Facilities Commitments which it receives in accordance with Restructuring Step 5 in accordance with the terms of the Holding Period Trust Deed; and
- (c) the Holding Period Trust Opcos Accession Letter shall be dated and become effective.

5.3 Restructuring Step 2: Demand and Assignment

Immediately following the completion of Restructuring Step 1, each of the steps set out below shall take place in respect of each Related DOCA Company pursuant to clause 10 (*Demand and Claim Assignment*) of each Related DOCA;

- (a) each Demand Creditor (as defined in the applicable Related DOCA) shall:
 - (i) declare that its Deed Company Claims (as defined in the applicable Related DOCA) are immediately due and payable; and
 - (ii) demand that the Related DOCA Company immediately pays its immediately due and payable Deed Company Claims (as defined in the applicable Related DOCA),

and in each case, the aggregate amount of Deed Company Claims (as defined in the applicable Related DOCA) shall be an amount equivalent to the applicable Related DOCA Company's Holdco EPM Value;

- (b) each Demand Creditor shall irrevocably and unconditionally assign all of their rights, title and interests in their Deed Company Claims (as defined in the applicable Related DOCA) to Holdco in consideration for the issuance of Holdco Facilities Commitments pursuant to Restructuring Step 5;
- (c) each Deed Company (as defined in the applicable Related DOCA) shall irrevocably and unconditionally assign all of their rights, title and interests in the Counterindemnity Claims to Holdco; and
- (d) Holdco agrees that the Counterindemnity Claims assigned to it by the Deed Company (as defined in the applicable Related DOCA) shall be subordinated to all other provable debts owed by LTD and/or any Group DOCA Company (as applicable) and that it shall only be entitled to make demand or prove for any Counterindemnity Claim against LTD and/or any Group DOCA Company (as applicable), or to receive any payment in respect thereof, if all such other provable debts owing by LTD and/or such DOCA Group Company have been discharged in full.

5.4 Restructuring Step 3: Assignment of Assigned Related DOCA Claims and provision of the Litigation Undertaking

Immediately following the completion of Restructuring Step 2:

- (a) each Related DOCA Company shall assign the Assigned Related DOCA Claims under each Related DOCA to LTD pursuant to clause 9 (*Assignment of Assigned Claims*) of the applicable Related DOCA;
- (b) the Related DOCA Assignment Deed shall be dated and released; and
- (c) in consideration for the assignments provided under Clauses 5.4(a) and 5.4(b), LTD shall provide the Litigation Undertaking set out in clause 11 (*Litigation Undertaking*) of the LTD DOCA in favour of the Related DOCA Creditors.

5.5 Restructuring Step 4: Group Transfers

Immediately following the completion of Restructuring Step 3:

- (a) LTD shall date and release the Group Transfer Documents (other than the LTD Asset Transfer Agreement, the Fakih ADGM Transaction Documents, the Fakih Holdco Transaction Documents, the Fakih Opco Transaction Documents and any documents signed and delivered as a Pre-Completion Action);
- (b) upon completion of the final Completion Action, Opco shall deliver a notice to LTD confirming that the Completion Actions have been satisfied or waived in accordance with clause 9.4 of the LTD Asset Transfer Agreement and Restructuring Asset Completion shall occur;
- (c) the updated share registers for each Completion Date Transferring Subsidiary (other than Fakih Holdco and the IVF Operating Companies), including the name of Opco and/or its nominee, shall be released; and
- (d) Opco shall promptly notify the Opco Global Facility Agent that this Restructuring Step 4 has occurred.

5.6 Restructuring Step 5: Holdco Facilities made available

Immediately following the completion of Restructuring Step 4:

- (a) each of the Holdco Common Terms Agreement, the Holdco Conventional Facility Agreement, the Holdco Investment Agency Agreement, the Holdco Master Sale and Purchase Agreement, the Holdco Service Agency Agreement, the Holdco Purchase Undertaking and the Holdco Sale Undertaking and the Holdco Fee Letters shall be dated and become effective in accordance with their terms;
- (b) the Holdco Conventional Facility shall be deemed to be fully drawn and the Holdco Facilities Commitments issued by Holdco to the Original Financiers (including the Holding Period Trustee for and on behalf of the Holdback Creditors and the Disqualified Creditors subject to the terms of the LTD DOCA and the Holding Period Trust Deed) in consideration of (i) the transfer of assets by LTD to Opco in accordance with Restructuring Step 4; and (ii) the transfer of the Deed Company Claims in accordance with Restructuring Step 2(b);
- (c) the Original Participants (including the Holding Period Trustee) shall be deemed to have made their Holdco Participations in accordance with the terms of the Holdco Investment Agency Agreement in consideration of:
 - (i) the transfer of assets by LTD to Opco in accordance with Restructuring Step 4;
 - (ii) the transfer of the Deed Company Claims in accordance with Restructuring Step 2(b); and

- (iii) the payment by the Holdco Investment Agent to Opcos of a fee of USD 100;
- (d) Opcos hereby confirms the adequacy of the payment in Clause 5.6(c)(iii);
- (e) the Holdco First Supplemental Sale and Purchase Agreement and the Holdco Declaration of Trust shall be dated and become effective in accordance with their terms;
- (f) the Holdco Security Agreements shall be dated and become effective in accordance with their terms;
- (g) each Holdco Facilities Legal Opinion shall be released; and
- (h) the Pre-Commencement Debt Claim/Entitlement Right Waiver and Release Notices shall become effective.

5.7 Restructuring Step 6: Opcos Facilities released from escrow

Immediately following the completion of Restructuring Step 5:

- (a) the RED Guarantors shall accede to the Opcos Common Terms Agreement as guarantors and Opcos and the RED Guarantors shall enter into the Opcos Security Agreements;
- (b) each Opcos Legal Opinion shall be released;
- (c) the Opcos Global Facility Agent shall issue the Closing Time Notice to Opcos; and
- (d) Opcos hereby represents to the Opcos Global Facility Agent that, upon the occurrence of the Restructuring Effective Date, all statements, representations, deliverables and confirmations provided by it or on its behalf in accordance with the Opcos Conditions Precedent under Clauses 3.2(d)(ii) and 4.2, are accurate and correct in all respects.

Immediately following the completion of the steps set out in sub-paragraph (a) to (d) above, the amount of the Utilisation (as defined in the Opcos Common Terms Agreement) made pursuant to the Utilisation Request (as defined in the Opcos Common Terms Agreement) delivered pursuant to Clause 4.2(b) minus the Opcos Payoff Amount shall be transferred by the Opcos Global Facility Agent to the Disbursement Account. The residual amount of the Utilisation in an amount equivalent to the Opcos Payoff Amount shall be applied in accordance with clause 5.9(b) below.

5.8 Restructuring Step 7: Intercompany balances

Immediately following the completion of Restructuring Step 6:

- (a) Holdco hereby contributes the Holdco Claim to Opcos in consideration for Opcos issuing new shares to Holdco;

- (b) LTD hereby agrees that Opcos obligation to pay the Transfer Consideration under the LTD Asset Transfer Agreement shall be satisfied by the partial release and discharge provided by Opcos; and
- (c) Opcos hereby partially releases and discharges the Holdco Claim with the effect that the amount owed by LTD thereunder shall be reduced to \$155,000,000 and each of Opcos and LTD hereby acknowledge and agree that the remaining balance of the Holdco Claim shall thereafter constitute the Residual Loan and be subject to the terms of the Residual Loan Document which shall, at the same time, be dated and released.

5.9 **Restructuring Step 8: Repayment of the AFF and Payment of Consent Fee**

Immediately following the completion of Restructuring Step 7, the following steps shall occur in the following order:

- (a) the LTD Proceeds Pledged Amount shall be transferred to the AFF Global Facility Agent in accordance with Clause 4.3(b)(ii);
- (b) the LTD Payoff Amount shall be transferred to the AFF Global Facility Agent in accordance with the debit order provided in Clause 4.2(b)(iv);
- (c) the Opcos Global Facility Agent shall transfer the Opcos Payoff Amount to the AFF Global Facility Agent in accordance with the Utilisation Request (as defined in the Opcos Common Terms Agreement) delivered pursuant to clause 4.2(b)(i) and the AFF Payoff Letter;
- (d) the AFF Global Facility Agent shall confirm receipt of the LTD Payoff Amount, the LTD Proceeds Pledged Amount, and the Opcos Payoff Amount, following which the Effective Time (as defined in the AFF Deed of Release) shall occur and a receivable equal to the Opcos Funding Amount shall be outstanding from LTD to Opcos (the “**Opcos Facility Receivable**”);
- (e) the AFF Global Facility Agent shall apply the amounts received pursuant to Clause 5.9(d) to repay the AFF in accordance with the debit orders delivered pursuant to Clauses 4.2(b)(iv) and 4.2(b)(v) and the AFF Payoff Letter;
- (f) The Opcos Global Facility Agent shall, pay:
 - (i) the Former Cocom Fees (to the extent that invoices have been submitted 5 Business Days prior to the Proposed Restructuring Effective Date) in accordance with the Funds Flow Statement;
 - (ii) to each applicable Adviser an amount equal to its outstanding invoices (as set out in the Funds Flow Statement) excluding any Transaction Fees and shall provide evidence of payment of such invoices to the Advisers as soon as available;
 - (iii) to the Group Company Administrators and the Group Company Deed Administrators an amount equal to their outstanding invoices for fees, costs and expenses (as approved in accordance with the AFF Documents and the Budget and Oversight Protocol and as set out in the

- Funds Flow Statement) and shall provide evidence of payment of such invoices to the Group Company Administrators and the Group Company Deed Administrators as soon as available;
- (iv) the processing, arrangement and other fees including the Financing Fee (as set out in the Funds Flow Statement) payable pursuant to the Opcos Finance Documents; and
 - (v) provided that the LTD Payoff Amount is zero, an amount equal to B + C – A (with A, B and C having the meaning given to such terms in the definition of the LTD Payoff Amount) to LTD;
- (g) following the payment of the Opcos Payoff Amount and the amounts specified in Clause 5.9(f), the Opcos Global Facility Agent shall transfer any remaining balance of the Advances to the Central Account (as defined in the Opcos Common Terms Agreement);
- (h) LTD shall pay the Transaction Fees to the AHC Financial Advisers and Perella Weinberg UK Limited;
- (i) as soon as reasonably practicable, the Opcos Global Facility Agent and LTD, as applicable shall provide evidence of the payment of each of the amounts set out in Clauses 5.9(f), (g) and (h); and
- (j) with immediate effect following completion of each of the steps outlined in paragraphs (a) to (h) above, Opcos hereby fully and irrevocably releases and discharges LTD from any and all obligations outstanding in respect of the Opcos Facility Receivable.

5.10 **Restructuring Step 9: Releases and Transfers**

Immediately following completion of Restructuring Step 8, the following shall occur:

- (a) the releases provided pursuant to:
 - (i) clauses 13 (*Release and Discharge of Deed Company Claims*) and 14 (*Release and Discharge of other Claims*) of the LTD DOCA;
 - (ii) clauses 11 (*Release and Discharge of intra-group claims*), 12 (*Release and Discharge of Non-Transferring Subsidiaries*), 13 (*Release and Discharge of Deed Company Claims*) and 14 (*Release and Discharge of other Claims*) of each Related DOCA;
 - (iii) each Group Creditor's Admitted Group Creditor Letter,
 - (iv) clauses 3.3(b) and 4.3(b) of the ATA Deed of Release;
 - (v) clauses 6 of the Intra-Group Debt Deed; and
 - (vi) clause 2 of the Management Debt of Release;

shall become effective in accordance with their terms;

- (b) the Deed of Release shall be dated and become effective in accordance with its terms; and
- (c) the assignments, novations and set offs specified at clauses 3, 4 and 5 of the Intra-Group Debt Deed shall become effective in accordance with their terms.

Immediately following the completion of clauses 5.10(a)-(c), the LTD Legal Advisor shall date and release each of the Additional Protocol Documents.

5.11 Restructuring Effective Time

Immediately following completion of Restructuring Step 9, LTD shall promptly notify the Parties and the Advisers in writing of the occurrence of the Restructuring Effective Time (the “**Restructuring Effective Time Notice**”).

5.12 Steps after the Restructuring Effective Time

Promptly following the delivery of the Restructuring Effective Time Notice, or earlier if required pursuant to the terms of the LTD Asset Transfer Agreement:

- (a) Opco, on behalf of LTD, shall distribute to each Consent Fee Creditor an amount equal to its entitlement to the Consent Fee (provided, in each case an invoice has been issued if applicable), in satisfaction of LTD’s obligation pursuant to clause 5.1 (*Consent Fee*) of the Voting Support Agreement);
- (b) Opco, on behalf of LTD, shall distribute any outstanding Former CoCom Claims that have not been discharged pursuant to Clause 5.9(f)(i) within 5 Business Days of receipt of an invoice;
- (c) Opco shall procure that the fees payable under the Holdco Fee Letters are paid on or before 5 Business Days following the Restructuring Effective Date;
- (d) Holdco and Opco shall reconstitute their respective boards of directors and management teams in accordance with the terms of the Governance Agreement;
- (e) the shareholder resolutions approving the Holdco Articles of Association and the Opco Articles of Association shall be dated and become effective in accordance with their terms and all relevant filings made;
- (f) if and to the extent that (for any reason), the cash balances held by LTD at the Restructuring Effective Time are in excess of the LTD Cash Reserve (the “**Excess Cash**”), LTD shall make a payment to Opco in an amount equal to the Excess Cash;
- (g) the Restructuring Effective Time Actions shall occur and, upon completion of the final Restructuring Effective Time Action, Opco shall deliver a notice to LTD and the OpCo Global Facility Agent confirming that the Restructuring Effective Time Actions have been satisfied pursuant to clause 9.12 of the LTD Asset Transfer Agreement;

- (h) the Post-Completion Filing Actions shall occur and, upon completion of the final Post-Completion Filing Action, Opco shall deliver a notice to LTD and the Opco Global Facility Agent confirming that the Post-Completion Filing Actions have been satisfied pursuant to clause 9.8 of the LTD Asset Transfer Agreement;
- (i) LTD, acting by the LTD Deed Administrators, shall use reasonable endeavours to (A) obtain the Declaratory Order and (B) insofar as the Declaratory Order has been obtained, shall seek the recognition and enforcement of the Declaratory Order, or shall continue to pursue any steps already taken to recognise and enforce the Declaratory Order, in ongoing proceedings with respect to any Group DOCA Company in each applicable jurisdiction;
- (j) as soon as reasonably practicable, all Holdback Claims will be finally determined and DOCA Creditor Entitlements will be allocated accordingly;
- (k) LTD shall use the portion of the LTD Cash Reserve reserved to redeem Security Interests for that purpose (and for the avoidance of doubt, such portion of the LTD Cash Reserve shall not be used for any other purpose);
- (l) LTD and Opco shall comply with their obligations under the Post-Completion Protocol (including the Transitional Transfer Documents) and the Additional Protocols in accordance with the terms of the LTD Asset Transfer Agreement, the Transitional Transfer Documents and the Additional Protocols;
- (m) if LTD, the Joint Administrators or each of their Affiliates are in possession of any amounts retained by LTD pursuant to the LTD Cash Reserve in connection with the Post RED Budget upon a termination of the LTD DOCA or the administration of LTD and which are no longer required to discharge all of its obligations contemplated by the Post RED Budget, the Joint Administrators shall refund such amounts to Opco as soon as reasonably practicable;
- (n) LTD shall use its reasonable endeavours to procure that any notices required to be delivered pursuant to the Spanish Pledge Release Agreement are delivered promptly following the Restructuring Effective Time;
- (o) LTD shall comply with its obligations under paragraph 5.1.6 of Schedule 2 (Completion Actions) to the Asset Transfer Agreement; and
- (p) LTD shall make a payment to each member of the Former Cocom in an amount equal to their Former Cocom Claim, as detailed in the Funds Flow Statement;.

6. VAT INDEMNITY

- 6.1 On and from the Restructuring Effective Date, the VAT Indemnifying Persons shall, subject to the provisions of this Clause 6, indemnify the VAT Indemnified Persons on a full indemnity basis and hold them harmless against (without double counting) all Losses incurred or suffered by any of them as a result of any claim made arising out

of or in connection with any VAT liability (plus any related interest and penalties that may be levied in addition) including, without limitation, which arises as a result of, or in connection with: (i) the LTD Asset Transfer Agreement; (ii) the transactions contemplated by the Restructuring; (iii) any step contemplated by this Deed; (iv) the VAT Indemnified Persons ceasing to have obligations in respect of any intercompany payables transferred to Opcos and its subsidiaries pursuant to the Restructuring; (v) the failure by the VAT Indemnifying Persons and each of their subsidiaries from time to time to discharge any VAT liability which is chargeable directly or primarily against that entity or LTD (in its capacity as the representative member of NMC VAT Group); (vi) any VAT liabilities of any VAT Indemnified Person or any Share Transfer Company arising prior to the date of the Administration Order; or (vii) any Voluntary Disclosure made by any VAT Indemnified Person after the date of this Deed.

- 6.2 LTD shall procure that each of its Affiliates which is or has been a member of the NMC VAT Group shall promptly notify the Joint Administrators in the event that it becomes aware of a VAT Claim or intends to make a Voluntary Disclosure and Opcos shall procure that each Share Transfer Company shall promptly notify Opcos and Holdco in the event that it becomes aware of a VAT Claim.
- 6.3 If any of the Joint Administrators, Opcos or Holdco becomes aware of a VAT Claim or any VAT Indemnified Person intends to submit a Voluntary Disclosure, the Joint Administrators, Opcos or Holdco (as appropriate) shall promptly notify Opcos, Holdco or the Joint Administrators (as appropriate) of: (i) the basis for such liability (with any such supporting documents or other evidence provided by the relevant Tax Authority as is otherwise reasonably necessary); and (ii) the amount of the relevant VAT liability (including interest and penalties howsoever arising) (the “VAT Payment Amount”) or, if the relevant amount has not yet been ascertained, a reasonable estimate thereof.
- 6.4 If Opcos indemnifies the VAT Indemnified Persons to their reasonable satisfaction against all liabilities, costs, damages or expenses that may be incurred by them in relation thereto, the VAT Indemnified Persons shall take into account all reasonable comments (such comments not to be unreasonably withheld or delayed) made by Opcos or Holdco in writing to the Joint Administrators in relation to any Voluntary Disclosure or for the VAT Indemnified Persons to take reasonable actions made to avoid, dispute, defend, resist, appeal or request a Tax Authority review, or compromise any VAT Claim (including, without limitation, initiating a VAT Dispute).
- 6.5 The Parties agree that any Voluntary Disclosure, VAT Claim and related VAT Dispute shall be conducted on the following basis:
 - (a) the Joint Administrators, Opcos and Holdco shall consult with each other in good faith in relation to what actions to take in relation to any Voluntary Disclosure or VAT Claim (including in order to verify the basis on which it is made) and any related VAT Dispute, it being agreed that LTD (acting by the Joint Administrators) shall be primarily responsible for liaising with the relevant Tax Authority in relation to any Voluntary Disclosure, VAT Claim and any related VAT Dispute unless the relevant VAT liability arises in relation to any transaction undertaken by a Share Transfer Company following

- the Restructuring Effective Date and at such time when: (i) it is not or no longer a member of the NMC VAT Group; and (ii) is no longer considered by the relevant Tax Authority as being joint and severally liable for any VAT liability arising from such transaction with members of the NMC VAT Group;
- (b) the Joint Administrators shall continue to retain their existing tax and legal advisers with respect to any Voluntary Disclosures, VAT Claims or VAT Disputes following the Restructuring Effective Date (or otherwise appoint new advisers as they deem necessary from time to time). Opcos and Holdco shall be entitled to appoint their own advisers with respect to such matters, who will be entitled to receive copies of and review any advice provided to the Joint Administrators;
 - (c) in the event that the relevant parties do not agree on what actions to take in relation to any Voluntary Disclosure, VAT Claim or any related VAT Dispute, they shall (at the cost of Opcos and Holdco) jointly instruct an independent and internationally recognised firm of tax advisers with expertise in VAT Law, which shall act as an expert and not as an arbitrator and their determination shall be final and binding on the parties, save in the case of manifest error;
 - (d) the VAT Indemnifying Persons shall (and shall procure that their Affiliates shall) and the VAT Indemnified Persons shall (and shall procure that their Affiliates shall) promptly provide such information within their possession or under their control that is reasonably requested by the other in relation to any Voluntary Disclosure, VAT Claim or VAT Dispute;
 - (e) if the VAT Indemnifying Persons are in possession of any VAT Records, relevant personnel and expertise, they shall preserve such VAT Records for such period as may be required by law and permit the VAT Indemnified Persons reasonable access to (and, where appropriate, copies of) those VAT Records, relevant personnel and expertise. If any VAT Records come into the possession of the VAT Indemnifying Persons which relate solely to LTD or NMC Holding Ltd (in administration), the relevant VAT Indemnifying Person shall promptly notify the Joint Administrators and deliver such VAT Records to the Joint Administrators on demand;
 - (f) the Joint Administrators, Opcos and Holdco shall keep each other fully informed of all material developments in relation to any Voluntary Disclosure, VAT Claim or VAT Dispute and shall provide each other with copies of all material correspondence and records of other material communications with any relevant Tax Authority, court or tribunal in relation to any Voluntary Disclosure, VAT Claim or VAT Dispute unless such disclosure is: (i) not permitted by applicable law; or (ii) restricted for reasons of legal privilege where such disclosure is not reasonably agreed between the relevant parties as being covered by common interest privilege;
 - (g) the Joint Administrators shall submit to Opcos and Holdco correspondence and documents which they or any VAT Indemnified Person (or any of their Affiliates) intend to submit to any relevant Tax Authority, court or tribunal in relation to any Voluntary Disclosure, VAT Claim or VAT Dispute unless such disclosure is: (i) not permitted by applicable law; or (ii) restricted for reasons

of legal privilege where such disclosure is not reasonably agreed between the relevant parties as being covered by common interest privilege and shall take into account all such reasonable comments as Opco and Holdco may make (such comments not to be unreasonably withheld or delayed) and, so far as possible, no VAT Indemnified Person (or any of its Affiliates) shall arrange a meeting or telephone call with the relevant Tax Authority about any such matter without giving the other reasonable notice thereof and the opportunity to attend such meeting or telephone call;

- (h) the Joint Administrators, LTD, Opco and Holdco agree that: (i) no Voluntary Disclosure shall be submitted; and (ii) no appeal against any determination by any Tax Authority that a VAT liability (including any penalties and interest) is payable by a VAT Indemnified Person shall be issued without the prior written consent of Opco and Holdco (subject to paragraph (i) below, such consent not to be unreasonably withheld or delayed, specifically with respect to any deadlines for lodging such an appeal imposed by the applicable Tax Authority);
 - (i) any withholding of or delay in Opco or Holdco's consent to the submission of a Voluntary Disclosure beyond the date (which shall be notified to Opco and Holdco as soon as is reasonably practicable) on which the Joint Administrators and their advisers (acting reasonably and in good faith) consider it necessary and appropriate for such Voluntary Disclosure to be submitted based on their course of dealings with the relevant Tax Authority shall not be considered reasonable for the purposes of paragraph (h) above, provided that the Joint Administrators have otherwise complied with this Clause 6.5 in relation to such Voluntary Disclosure; and
 - (j) no VAT Indemnified Person (or any of its Affiliates) shall make any settlement, admission of liability, agreement or compromise in relation to any VAT Claim without the prior written consent of Opco and Holdco (such consent not to be unreasonably withheld or delayed).

6.6 The VAT Indemnified Persons shall not be obliged to take any action under this Clause 6 in respect of any Voluntary Disclosure, VAT Claim or VAT Dispute if:

- (a) Opco or Holdco does not request the VAT Indemnified Persons to take any action under this Clause 6 or fails to indemnify the VAT Indemnified Persons to their reasonable satisfaction in relation thereto; or
- (b) to do so would in the relevant VAT Indemnified Person's opinion (acting reasonably and in good faith) be materially detrimental to the commercial, financial or tax position of such VAT Indemnified Person.

6.7 The VAT Indemnifying Persons shall pay the applicable VAT Indemnified Persons an amount equal to the VAT Payment Amount by no later than the later of: (i) 15 days before the last date on which the VAT Payment Amount can be paid without incurring interest or penalties (as specified by the Joint Administrators as soon as is reasonably practicable); and (ii) 20 Business Days after receipt of notification by the VAT Indemnifying Persons of the intended Voluntary Disclosure or VAT Claim (setting out details of the VAT Payment Amount and reasonable particulars of the matter to

which it relates) under Clause 6.2 provided that if, in the course of an appeal, a successful application is made to the relevant Tax Authority to postpone the date on which the relevant VAT liability (and any interest and penalties) is due (without any payment on account being required), the due date for paying the VAT Payment Amount shall be the date on which the requirement for payment ceases to be postponed and the VAT liability becomes payable.

- 6.8 The VAT Indemnifying Persons shall pay any VAT Payment Amount directly to the relevant Tax Authority following the reasonable request of the VAT Indemnified Persons and having provided evidence reasonably satisfactory to the VAT Indemnifying Persons that the relevant Tax Authority has agreed to such an arrangement, such payment to be made no earlier than the date on which VAT Payment Amount would have been paid under Clause 6.7.
- 6.9 The indemnity contained in Clause 6.1 shall not cover any liability if and to the extent that:
 - (a) the relevant liability has been satisfied on or before the Restructuring Effective Date;
 - (b) a relief, allowance, credit, exemption or set-off or right to repayment or payment is available to the relevant VAT Indemnified Person in respect of the relevant VAT liability (and any interest and penalty); or
 - (c) the relevant liability is caused by fraud, gross negligence or wilful misconduct of the Joint Administrators or Deed Administrators.
- 6.10 Where any VAT Indemnifying Person has actually paid an amount to any VAT Indemnified Person under Clause 6.1 and any VAT Indemnified Person (or any of its Affiliates) recovers from a person that is not a VAT Indemnified Person (or any of its Affiliates) any amount in respect of the same VAT liability (and any interest and penalty), the Joint Administrators shall notify Opcos and Holdcos as soon as reasonably practicable and account to Opcos for the lesser of: (i) the amount actually recovered less any Losses reasonably suffered or incurred by the VAT Indemnified Persons in recovering such amount; and (ii) the amount paid by the relevant VAT Indemnifying Person under Clause 6.1.
- 6.11 Where a VAT Indemnifying Person has received a refund, relief, allowance, credit, exemption or set off or right to repayment or payment from a Tax Authority which properly relates to a VAT liability (including any interest and penalty) of a VAT Indemnified Person for which the VAT Indemnifying Persons are liable under Clause 6.1 then Opcos shall notify the Joint Administrators as soon as reasonably practicable and (to the extent permitted by law) account to the VAT Indemnified Persons for such amounts, provided that the liability of the VAT Indemnifying Persons under Clause 6.1 shall be reduced accordingly.
- 6.12 On and from the Restructuring Effective Date and for so long as LTD is a member of the NMC VAT Group, if the VAT Indemnifying Persons intend to take any steps to add or remove any entities from the NMC VAT Group, they shall consult with LTD and shall take into account all reasonable comments as LTD may make (such

comments not to be unreasonably withheld or delayed) in deciding what steps (if any) to take in relation thereto.

- 6.13 For the avoidance of doubt, Holdco is only party to the provisions of this Clause 6 in order to benefit from consultation rights in relation to any Voluntary Disclosure, VAT Claim or VAT Dispute and shall have no liability under this Clause 6.

7. REPRESENTATIONS

- 7.1 Each Party other than the Group Creditors represents and warrants to the other Parties on the date of this Deed and as at the Restructuring Effective Time:

- (a) it is duly incorporated (if a corporate person) or duly established and validly existing under the law of its jurisdiction of incorporation or formation;
- (b) it has the power to enter into, exercise its rights under, perform and deliver, and has taken all necessary action to authorize its entry into, performance and delivery of this Deed and other Restructuring Documents to which it is a party;
- (c) the obligations expressed to be assumed by it under the Restructuring Documents to which it is (or will on or before the Restructuring Effective Time be) a party are legal, valid, binding and enforceable obligations subject to the Reservations;
- (d) the entry into and performance by it, and the transactions contemplated by, this Deed and the Restructuring Documents to which it is (or will on or before the Restructuring Effective Time be) a party do not and will not conflict with:
 - (i) any agreement, mortgage, bond or other instrument or treaty to which it is a party, or which is binding upon it or any of its assets;
 - (ii) its constitutional documents; or
 - (iii) any law, regulation or official or judicial order applicable to it; and
- (e) all acts, conditions and things required to be done, fulfilled and performed in order:
 - (i) to enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it in this Deed and the Restructuring Documents to which it is (or will on or before the Restructuring Effective Time) a party;
 - (ii) to ensure that the obligations expressed to be assumed by it in this Deed and the Restructuring Documents to which it is (or will on or before the Restructuring Effective Time be) a party,

have been done, fulfilled and performed and are in full force and effect.

8. PROVISIONS APPLICABLE TO THE RESTRUCTURING

8.1 Termination

- (a) Subject to Clause 8.2 (*Survival*), this Deed shall terminate:
- (i) automatically if the Restructuring Effective Time has not occurred by the Longstop Date;
 - (ii) immediately following notice from the Joint Administrators or the Majority RID Financiers to the other Parties to this Deed where:
 - (A) following good faith discussions between the Joint Administrators, the Majority RID Financiers and the AFF Financiers, it is agreed between such parties that the Restructuring Effective Time cannot reasonably be expected to occur as envisaged by the DOCAs, the Voting Support Agreement and this Deed; or
 - (B) the LTD DOCA is terminated in accordance with its terms prior to the occurrence of the Restructuring Effective Time.
- (b) Subject to Clause 8.2 (*Survival*), in the event that this Deed is terminated the Parties agree:
- (i) this Deed shall be construed as if it had never become effective and the rights and obligations of the Group Creditors under the Restructuring Documents shall not be effective and shall not remain in full force and effect;
 - (ii) that any of the Restructuring Steps contemplated or actions taken under this Deed will be deemed not to have been completed or taken and shall have no legal or binding effect and will be deemed to be null and void and to have never occurred and any cash payments paid by a Party (save for any payments made under the Opcos Finance Documents (all payment obligations or rights thereunder being governed exclusively by the Opcos Finance Documents) shall be promptly returned to that Party; and
 - (iii) following termination, to the extent permitted by law, to take such steps as are necessary or desirable to reverse any Restructuring Steps already taken pursuant to this Deed provided that no Party shall be required to incur any material out-of-pocket costs or expenses,

provided that nothing in this clause (b) shall prejudice any obligations incurred by Opcos or any of its Subsidiaries under the Opcos Finance Documents.

8.2 Survival

The rights and obligations of the Parties under Clauses 8.1(b), 8.3 (*Exclusion of liability*), 10 (*Notices*), 12 (*Parties' Rights and Obligations*), 14 (*Remedies and*

Waivers), 15 (Reservation of Rights) and 21 (Governing Law and Jurisdiction) shall survive the termination of this Deed.

8.3 Exclusion of liability

- (a) No Group Creditor (or its Nominated Recipient(s)) shall be entitled to challenge the validity of any act done or omitted to be done in good faith by any of the Advisers, the Group DOCA Companies, each member of the Group, Holdco, Opco, the Administrative Parties and the Ad Hoc Committee (or any of its Affiliates and any of its or their respective officers, directors, employees, partners, shareholders) (the “**Excluded Persons**”) in connection with their actions or omissions pursuant to the provisions of this Deed or the exercise by any of the Excluded Persons in good faith of any power conferred upon them for the purposes of this Deed if exercised in accordance with the provisions of this Deed.
- (b) Subject to the operation of Clause 8.2, no Excluded Person shall be liable for any cost, loss or liability in connection with the DOCAs or this Deed unless such loss is attributable to its wilful misconduct or fraud.
- (c) With respect to the Group Creditors or any other person affected or bound by the DOCAs or this Deed, the Administrative Parties undertake to perform or to observe only such of its covenants or obligations as are specifically set forth in the DOCAs and this Deed. The Administrative Parties shall have only those duties, obligations and responsibilities expressly specified in this Deed and the Restructuring Documents to which they are party and no others shall be implied.
- (d) Nothing in the Revised Administrators’ Proposals, the DOCAs, or this Deed shall impose any obligation on the Administrative Parties to expend its own funds or pay any amount out of its personal assets with respect to any claims made by a Group Creditor as a result of the Administrative Parties taking any of the steps contemplated by this Deed except to the extent that the same arises from the gross negligence, wilful misconduct or fraud of such Parties (as applicable).
- (e) None of the Administrative Parties and/or their respective directors, officers, employees, agents and advisers shall be personally responsible or accountable in damages or otherwise to any Group Creditor or any other person affected or bound by the DOCA or this Deed for any loss, damage or claim incurred by reason of any act or omission performed or omitted by the Administrative Parties in good faith in accordance with this Deed that it reasonably believes to be within the scope of the authority conferred on it by the Restructuring Documents to which they are party.
- (f) None of the Administrative Parties shall be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any Group Creditors or any other person affected or bound by this Deed, with all such liability, if any, being expressly waived by any such persons claiming by, through or under any of the foregoing.

- (g) The Administrative Parties shall at all times be entitled to and may rely on any document notice, consent, order, opinion or certificate given, issued or granted by any person or court that it reasonably believes to be genuine and correct pursuant to any Restructuring Document to which it is party, without being under any obligation to enquire or otherwise determine whether any such notice, consent, order, opinion or certificate is adequate, accurate and/or complete and has been given or granted in accordance with applicable laws or any contractually binding obligation and without being under any responsibility or being under any obligation to validate the legality, effectiveness, completeness, adequacy or enforceability of the Restructuring that is to be implemented as a consequence of the DOCAs and this Deed.
- (h) Nothing in this Deed shall prejudice the rights and entitlements and protections afforded to the Administrative Parties under the Restructuring Documents to which they are party.
- (i) Nothing in this Deed shall restrict, or attempt to restrict, the Joint Administrators from complying with their duties as the Joint Administrators of the Administration Companies and as officers of the Court.
- (j) The Joint Administrators act as agents for the Group DOCA Companies and neither they nor their representatives shall incur any personal liability in any circumstances whatsoever by virtue of this Deed or in relation to the Restructuring or any related matter, claim or statutory process.
- (k) Mount Street Mortgage Servicing Limited acts solely in its role as Holding Period Trustee pursuant to the terms of the Holding Period Trust Documents. It is not a party to any other Restructuring Document other than this Deed and the Holding Period Trust Documents and, accordingly, shall not be required to exercise any rights or perform any obligations under any other Restructuring Document (notwithstanding the terms of such document or any references to Mount Street Mortgage Servicing Limited in such document).

8.4 Application to the Court for directions

Without prejudice to any rights that the Group DOCA Companies might otherwise have in connection with the DOCAs or this Deed or any aspect of them, the Group DOCA Companies and the Administrators shall be entitled to make an application to the Court for directions at any time in connection with any matter arising under or in relation to the DOCAs or this Deed.

8.5 Exercise of discretion

Where, under or pursuant to any provision of this Deed, a matter is to be determined by the Group DOCA Companies, it shall be determined by the Administrators (acting for and on behalf of each Related DOCA Company) or the LTD Deed Administrators (acting for and on behalf of LTD), in their discretion in such manner as they may consider fair and reasonable.

8.6 Payment of Opco Pre-Funding Costs and Indemnity

- (a) The Opcos Global Facility Agent shall within two Business Days of the earlier of (i) a demand by LTD and (ii) one Business Day prior to the Opcos Longstop Date confirm in writing to Opcos and the LTD the amount of Break Costs, Interest accrued during the Pre-Funding Period (the “**Opcos Pre-Funding Costs**”).
- (b) In the event that the Restructuring Effective Date does not occur by the Opcos Longstop Date and subject to the Opcos Global Facility Agent provided the written confirmation required under paragraph (a) above, LTD shall, within two Business Days of the Opcos Longstop Date, pay to the Opcos Global Facility Agent (for and on behalf of each Opcos Finance Party) the Opcos Pre-Funding Costs.
- (c) In the event that the Opcos Longstop Date does not occur by the Opcos Longstop Date, LTD shall within two Business Days of demand, indemnify Opcos for the amount of Opcos Pre-Funding Costs together with any fees, expenses, costs, losses or liabilities, (including for the avoidance of doubt any penalties, default interest or default income or any amounts payable by Opcos under the Opcos Finance Documents) arising directly or indirectly as a result of a failure by LTD to pay the Opcos Pre-Funding Costs in accordance with paragraph (b) above.
- (d) LTD shall make the payment of the Opcos Pre-Funding Costs and any payments required pursuant to paragraph (c) above in AED. If any deductions or withholdings are required by law, or any payments due from LTD are liable for taxation by Opcos or the Opcos Global Facility Agent (as the case may be), LTD shall be liable to pay to Opcos or the Opcos Global Facility Agent (as the case may be) such further sums as shall be required to ensure that the net amount received by Opcos or the Opcos Global Facility Agent (as the case may be) will equal the full amount which would have been received in the absence of any such deductions or withholdings.

9. PROVISIONAL APPOINTMENT OF CERTAIN ADMINISTRATIVE PARTIES

9.1 Appointment of the Holdco Agents

- (a) The Original Financiers appoint the Holdco Agents to act as their agents under and in connection with this Deed and the draft Holdco Finance Documents up to and including the Restructuring Effective Date on a provisional basis pending the execution of the Holdco Finance Documents.
- (b) Following the occurrence of the Restructuring Effective Date, the terms of the Holdco Finance Documents shall govern the appointment, rights and obligations of the Holdco Agents and the provisions of this Clause 9 (*Provisional Appointment of Certain Administrative Parties*), other than Clause 9.7 (*Indemnity to the Holdco Agents*), shall cease to have any effect on the Parties unless expressly stated otherwise in the Holdco Finance Documents.

9.2 Instructions

- (a) The Holdco Agents shall:
 - (i) unless a contrary indication appears in this Deed or the draft Holdco Finance Documents, exercise or refrain from exercising any right, power, authority or discretion vested in it as agent in accordance with any instructions given to it by the Majority RID Financiers;
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above; and
 - (iii) be entitled to rely on any calculation of the "Majority RID Financiers" provided by the Joint Administrators in accordance with Clause 1.4 and shall not be liable to any party for doing so;
- (b) Each of the Holdco Agents shall be entitled to request instructions, or clarification of any instruction, from the Majority RID Financiers as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Holdco Agents may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) The Holdco Agents may refrain from acting in accordance with any instructions of any of Majority RID Financiers until it has received any indemnification that it may in its discretion require for any cost, loss or liability which it may incur in complying with those instructions.
- (d) In the absence of instructions, the Holdco Agents a may act (or refrain from acting) as it considers to be in the best interest of the Original Financiers.
- (e) The Holdco Agents are not authorised to act on behalf of an Original Financier (without first obtaining that Original Financier's) in any legal or arbitration proceedings relating to this Deed or any Restructuring Document.

9.3 Duties of the Holdco Agents

- (a) The Holdco Agents' duties under this Deed and the Holdco Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Holdco Agents shall promptly forward to a Party the original or a copy of any document which is delivered to them for that Party by any other Party.
- (c) The Holdco Agents:
 - (i) shall not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party or any calculation of the Majority RID Financiers carried by the Joint Administrators in accordance with Clause 1.4; and
 - (ii) shall have only those duties, obligations and responsibilities expressly specified in the Deed to which it is expressed to be a party (and no others shall be implied).

9.4 Rights and Discretions

- (a) The Holdco Agents may:
- (i) rely on any representation, communication, notice or document (including, without limitation, any notice given by an Original Financier believed by it to be genuine, correct and appropriately authorised);
 - (ii) assume that:
 - (A) any instructions received by it from the Majority RID Financiers, any Original Financier or any group of them are duly given in accordance with the terms of this Deed; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked;
 - (iii) rely on a certificate from any person;
 - (iv) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (v) to the effect that such person approves of any particular dealing, transaction, step, action or thing,
- as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Holdco Agents may act in relation to this Deed through its officers, employees and agents and the Holdco Agents shall not:
- (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Holdco Agents' gross negligence or wilful misconduct.
- (c) Notwithstanding any other provision of this Deed to the contrary, none of the Holdco Agents are obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (d) Notwithstanding any provision of this Deed, the Holdco Agents are not obliged to expend or risk their own funds or otherwise incur any financial liability in the performance of their duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

9.5 No duty to monitor

The Holdco Agents shall not be bound to enquire:

- (a) as to the performance, default or any breach by any Party of its obligations under this Deed; or
- (b) whether any other event specified in this Deed has occurred.

9.6 Exclusion of liability

- (a) Without limiting paragraph (b) below and without prejudice to any other provision of this Deed excluding or limiting the liability of the Holdco Agents, none of the Holdco Agents will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with this Deed, unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with this Deed or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with this Deed; or
 - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) Without prejudice to any provision of this Deed excluding or limiting the Holdco Agents' liability, any liability arising under or in connection with this Deed shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Holdco Agents or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to them at any time which increase the amount of that loss. In no event shall the Holdco Agents be liable for any loss

of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Holdco Agents has been advised of the possibility of such loss or damages.

9.7 Indemnity to the Holdco Agents

- (a) The Original Financiers (other than the Holding Period Trustee) shall (in proportion to its shares of the Agent Indemnity Commitments or, if the Agent Indemnity Commitments are then zero, to its shares of the Agent Indemnity Commitments immediately prior to their reduction to zero) indemnify the Holdco Agents, within three Business Days of demand, against any cost, loss or liability incurred by the Holdco Agents (otherwise than by reason of their gross negligence or wilful misconduct) in acting as agents under this Deed.
- (b) Subject to paragraph (c) below, Holdco shall immediately on demand reimburse the relevant Original Financiers respectively for any payment that the Original Financiers make to the Holdco Agents pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the relevant Original Financiers claims reimbursement relates to a liability of the Holdco Agents.

10. NOTICES

- 10.1 Any communication to be made under or in connection with this Deed shall be made in writing in English and may be made by letter or electronic mail (where provided), or, in the case of the Joint Administrators and/ or Deed Administrators, by posting on the NMC Stakeholder Website.
- 10.2 The contact details of the Parties for all communications under or in connection with this Deed are as identified below, or any substitute contact details as a Party may notify the other Parties by not less than four (4) Business Days' notice:
 - (a) **LTD:** Kirkland & Ellis International LLP, marked for the attention of Partha Kar and Lisa Stevens at email address: nmccore@kirkland.com;
 - (b) **Related DOCA Companies prior to the Restructuring Effective Date:** Kirkland & Ellis International LLP, marked for the attention of Partha Kar and Lisa Stevens at email address: nmccore@kirkland.com;
 - (c) **Related DOCA Companies following the Restructuring Effective Date:** For the attention of the Group General Counsel, c/o NMC Healthcare, 31st Floor, Etihad Towers 3, West Corniche, Abu Dhabi, United Arab Emirates;
 - (d) **the Group Creditors and the Majority RID Financiers:** by notice posted on the NMC Stakeholder Website;

With a copy to: ProjectNeptuneCConly@CliffordChance.com, marked for the attention of Iain White and Nicola Reader;

- (e) **AFF Financier:** Milbank LLP marked for the attention of Yushan Ng and Karen McMaster at email address: nmcta@milbank.com;
 - (f) **Joint Administrators and/ or Deed Administrators:** Richard Fleming and Ben Cairns, at email addresses: rleaming@alvarezandmarsal.com; bencairns@alvarezandmarsal.com; INS_NMCADGM@alvarezandmarsal.com.
 - (g) **Holdco Conventional Facility Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com;
 - (h) **Holdco Global Facility Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com;
 - (i) **Holdco Investment Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com;
 - (j) **Holdco Security Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com;
 - (k) **Opcos Global Facility Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com;
 - (l) **AFF Global Facility Agent:** Abu Dhabi Commercial Bank PJSC, marked for the attention of Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen at email address: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com; and
 - (m) **any other person:** via the address set forth for that person in any agreement entered into in connection with the DOCAs or this Deed.
- 10.3 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:
- (a) if by letter:
 - (i) delivered in person, when it has been left at the relevant address;
 - (ii) sent by post, four (4) Business Days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address; or
 - (iii) sent by international priority courier delivery, three days after delivery to such courier,

- and, if a particular department or individual is specified as part of its address details provided above, if addressed to that department or individual;
- (b) if by e-mail, when received in legible form; and
 - (c) if by posting to the NMC Stakeholder Website, when uploaded to the NMC Stakeholder Website.
- 10.4 Any notice, approval, consent or other communication under or in connection with this Deed:
- (a) made by the Ad Hoc Committee Advisers or the AFF Financiers Advisers will be deemed to be validly received as if it had been made by the Majority RID Financiers (or any member thereof) or the AFF Financiers, as applicable;
 - (b) to be made to the Majority RID Financiers will be deemed to have been validly received by the Majority RID Financiers if it is delivered to and actually received by the Ad Hoc Committee Advisers in writing by email to:
Email: ProjectNeptuneCConly@CliffordChance.com;
 - (c) to be made to the AFF Financiers will be deemed to have been validly received by the AFF Financiers if it is delivered to and actually received by the AFF Financiers' advisers in writing by email to:
Email: #NMCLN@milbank.com.
- 10.5 The accidental omission to send any notice, written communication or other document in accordance with this Clause 9, or the non-receipt of any such notice by any Group Creditor, shall not affect the provisions of this Deed.
- ## 11. AMENDMENTS AND WAIVERS
- 11.1 Subject to Clauses 11.2 and 11.3 below, the terms of this Deed, including the terms of any of its Schedules, may be amended or waived only with the prior written consent of the LTD Deed Administrators and the Majority RID Financiers.
- 11.2 This Deed may be amended or waived by:
- (a) the LTD Legal Advisers and the Ad Hoc Committee Advisers in respect of any amendments which are necessary or desirable in order to correct any manifest error, to insert the calculation and completion of any commitments, or complete any blanks (including, without limitation any dates, notice provisions, legal entity names, list of parties or signature blocks);
 - (b) the LTD Deed Administrators, the Majority RID Financiers and the Opco Global Facility Agent, to the extent that such amendment or waiver will impose a new obligation or more onerous obligation on the Opco Global Facility Agent;
 - (c) the Required Parties in respect of any non-material or technical amendments which are necessary for the purpose of reflecting the Restructuring Objectives

or the transactions intended to be entered into in order to reflect the Restructuring;

- (d) the LTD Deed Administrators, the Majority RID Financiers and the Opcos Global Facility Agent, to the extent that such amendment or waiver has an effect on the sequencing for or circumstances surrounding the funding of the Opcos Facilities pursuant to the terms of this Deed, or the satisfaction of the conditions precedent thereto, the Opcos Global Facility Agent (acting on the instruction of the Majority Opcos Financiers);
- (e) the Required Parties in respect of any amendments which are required to implement the Restructuring and which would not have an adverse effect on the interests of the Group DOCA Companies or the Group Creditors;
- (f) the parties specified in the applicable consent threshold for an amendment or waiver under a Restructuring Document in respect of an amendment or waiver which materially alters the economic terms of the Restructuring as set out in the Restructuring Documents;
- (g) the Joint Administrators and/or Deed Administrators to the extent that any amendment or waiver affects the rights of the Joint Administrators or the Deed Administrators;
- (h) the Deed Company Advisers and the Ad Hoc Committee Advisers in respect of any non-material amendments agreed with which are required to ensure that they are legal, valid, binding and enforceable upon the parties thereto, provided that such amendments do not have an adverse effect on the interests of the Deed Company or the Group Creditors;
- (i) the Deed Company Advisers and the Ad Hoc Committee Advisers in respect of any amendments required to ensure compliance with any applicable securities law, rules or regulations or any shari'ah principles; and/or
- (j) an individual Group Creditor where such amendment or waiver would have an adverse and disproportionate effect on that particular Group Creditor (other than pursuant to the Claims Determination Process).

- 11.3 If a RID Financier fails to respond to a request for consent pursuant to Clauses 11.1 above within 5 Business Days of that request being made its Holdco Facilities Commitments will not be included (including for the avoidance of doubt in the numerator and denominator) for the purposes of calculating whether the approval of the Majority RID Financiers has been obtained.
- 11.4 The Holdco Global Facility Agent may effect, on behalf of the RID Financiers any amendment or waiver permitted by this Clause 11.

12. PARTIES' RIGHTS AND OBLIGATIONS

- 12.1 The obligations of each Party under this Deed are separate and independent obligations. Failure by a Party to perform its obligations under this Deed shall not affect the obligations of any other Party under this Deed. Unless otherwise provided

in this Deed, no Party is responsible for the obligations of any other Party under this Deed.

- 12.2 If a single legal entity enters into this Deed in more than one capacity, that entity's rights and obligations under this Deed will be separate and independent in each of those capacities. A party may separately enforce its rights under this Deed.
- 12.3 The rights of each Party under or in connection with this Deed are separate and independent rights. Each Party may separately and independently enforce its rights under this Deed.

13. NO DOUBLE RECOVERY

Notwithstanding any other provision of this Deed, the LTD Asset Transfer Agreement or any Restructuring Document, no party shall be entitled to indemnification or reimbursement, to recover damages, obtain restitution or to claim any other compensation at law or in equity more than once in respect of the same loss suffered (whether pursuant to this Deed, the LTD Asset Transfer Agreement or any Restructuring Document).

14. REMEDIES AND WAIVERS

- 14.1 No failure to exercise, nor any delay in exercise, on the part of any Party, any right , power, privilege or remedy under this Deed shall operate as a waiver of any such right, power, privilege or remedy or constitute an election to affirm this Deed.
- 14.2 No election to affirm this Deed on the part of any Party shall be effective unless it is in writing.
- 14.3 No single or partial exercise of any right, power, privilege or remedy shall prevent any further or other exercise of such right, power, privilege or remedy of any other right or remedy.
- 14.4 The rights, power, privilege and remedies provided by this Deed are cumulative and not exclusive of any rights, power, privilege or remedies provided by law.

15. RESERVATION OF RIGHTS

- 15.1 Except as expressly provided in this Deed, this Deed does not modify, amend or waive any Party's rights or obligations under the Voting Support Agreement, any Holdco Finance Document or any other document or agreement, or any Party's rights as creditor of any Group DOCA Company.
- 15.2 The Parties fully reserve any and all of their rights that are unaffected by this Deed.
- 15.3 If this Deed is terminated by any Party for any reason, the rights of that Party against the other Parties to this Deed and those other Parties' rights against the terminating Party shall be fully reserved.

16. SPECIFIC PERFORMANCE

Each Party agrees and acknowledges for the benefit of the other Party that:

- (a) damages may not be an adequate remedy for any breach of the terms of this Deed by any Party; and
- (b) specific performance and/or relief to compel performance are appropriate remedies for any such breach and any such remedies shall not be exclusive but shall be cumulative and in addition to any other remedies available to any Party.

17. FURTHER ASSURANCES

Each Party undertakes to provide such further assistance (at the expense of the Group DOCA Companies) as may be reasonably required to implement the Restructuring (including the transactions contemplated thereunder), provided that any such actions shall be consistent in all material respects with the Restructuring Documents.

18. SUCCESSORS AND ASSIGNS

This Deed is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

19. COUNTERPARTS

This Deed may be executed in any number of counterparts, which may be delivered by electronic mail in portable document format (pdf). This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

20. PARTIAL INVALIDITY

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction:

- (a) neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provisions under the law of any other jurisdiction shall in any way be affected or impaired; and
- (b) the invalid provision shall be deemed to be replaced with a legal provision that is as close as possible to the original.

21. GOVERNING LAW AND JURISDICTION

- 21.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of the Abu Dhabi Global Market.
- 21.2 The courts of the Abu Dhabi Global Market have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed and/or the Restructuring (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a “Dispute”).

21.3 The Parties agree that the courts of the Abu Dhabi Global Market are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

Schedule 1
The Group DOCA Companies

No.	Company	Registration No.
1.	NMC Healthcare Ltd (in administration) (subject to a deed of company arrangement)	000004210
2.	Bait Al Shifaa Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004236
3.	Eve Fertility Center Ltd (in administration) (subject to a deed of company arrangement)	000004206
4.	Fakih IVF Fertility Center Ltd (in administration) (subject to a deed of company arrangement)	000004224
5.	Fakih IVF Ltd (in administration) (subject to a deed of company arrangement)	000004220
6.	Grand Hamad Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004238
7.	Hamad Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004209
8.	NMC Provita International Medical Center Ltd (in administration) (subject to a deed of company arrangement)	000004240
9.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004225
10.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004245
11.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004237
12.	NMC Royal Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004197
13.	NMC Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004217
14.	NMC Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004241
15.	New Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004214

No.	Company	Registration No.
16.	New Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004216
17.	New Medical Centre Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004253
18.	New Medical Centre Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004255
19.	New Medical Centre Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004228
20.	New Medical Centre Trading Ltd (in administration) (subject to a deed of company arrangement)	000004218
21.	NMC Trading Ltd (in administration) (subject to a deed of company arrangement)	000004233
22.	New Pharmacy Company Ltd (in administration) (subject to a deed of company arrangement)	000004230
23.	New Sunny Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004202
24.	NMC Royal Family Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004243
25.	NMC Royal Womens Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004235
26.	Reliance Information Technology Ltd (in administration) (subject to a deed of company arrangement)	000004234
27.	Sharjah Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004239
28.	Sunny Al Buhairah Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004199
29.	Sunny Al Nahda Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004232
30.	Sunny Dental Centre Ltd (in administration) (subject to a deed of company arrangement)	000004198
31.	Sunny Halwan Speciality Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004204

No.	Company	Registration No.
32.	Sunny Maysloon Speciality Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004205
33.	Sunny Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004231
34.	Sunny Sharqan Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004203
35.	Sunny Specialty Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004200

Schedule 2
Holdco Common Terms Agreement

EXECUTION VERSION

**NMC HOLDCO SPV LTD
AS THE COMPANY**

**ABU DHABI COMMERCIAL BANK PJSC
AS GLOBAL AGENT**

**ABU DHABI COMMERCIAL BANK PJSC
AS CONVENTIONAL FACILITY AGENT**

AND

**ABU DHABI COMMERCIAL BANK PJSC
AS INVESTMENT AGENT**

COMMON TERMS AGREEMENT

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THIS COMMON TERMS AGREEMENT is dated _____ 2022

BETWEEN:

- (1) **NMC HOLDCO SPV LTD**, a limited liability company incorporated under the laws of the Abu Dhabi Global Market, United Arab Emirates, with its registered office at c/o Walkers Professional Services (Middle East) Limited, 2462ResCowork01, 24th Floor, Al Sila Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates and company registration number 000005914) (the "**Company**");
- (2) **THE FINANCIAL INSTITUTIONS** listed in Part I (*Original Conventional Lenders*) of Schedule 1 (*The Original Financiers*) (the "**Original Conventional Lenders**");
- (3) **THE FINANCIAL INSTITUTIONS** listed in Part II (*Original Participants*) of Schedule 1 (*The Original Financiers*) (the "**Original Participants**");
- (4) **ABU DHABI COMMERCIAL BANK PJSC** as facility agent of the Conventional Finance Parties (other than the Global Agent) (the "**Conventional Facility Agent**");
- (5) **ABU DHABI COMMERCIAL BANK PJSC** as investment agent of the Islamic Financing Parties (other than the Global Agent) (the "**Investment Agent**");
- (6) **ABU DHABI COMMERCIAL BANK PJSC** as global agent of the Finance Parties (the "**Global Agent**"); and
- (7) **ABU DHABI COMMERCIAL BANK PJSC** as security agent for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

SECTION 1 INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Acceleration Event" means any notification from the Global Agent to the Company in accordance with Clause 18.10 (*Acceleration*).

"Acceptable Bank" means a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB- or higher by S&P Global Ratings, a division of S&P Global Inc. or Fitch Ratings Ltd or Baa3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency.

"Accounting Principles" means generally accepted accounting principles in the UAE, including IFRS.

"Accruals" has the meaning given to it in the Holding Period Trust Deed.

"ADGM" means the Abu Dhabi Global Market, Abu Dhabi, UAE.

"ADGM Courts" means the courts of the ADGM established pursuant to Abu Dhabi Law No.4 of 2013.

"ADGM Security Agreements" means

- (a) the Holdco ADGM Security Agreement; and
- (b) the Investment Agent ADGM Security Agreement.

"Administrative Costs" means any administrative fees, costs or expenses payable by or on behalf of the Company including the amounts payable to any corporate service provider of the Company, any member of the board of directors of the Company, any MIP Payments, any professional advisers or auditors, and, following the occurrence of an Exit Event, any amounts payable in connection with the winding up, liquidation or dissolution of the Company, including any amounts of VAT or other taxes payable thereon.

"Agency Fees" means any fees, costs or expenses payable by or on behalf of the Company to an Agent, the Security Agent or the Holding Period Trustee under the Transaction Documents.

"Admitted Group Claims" has the meaning set out in the LTD DOCA.

"Admitted Group Creditor Letter" has the meaning set out in the LTD DOCA.

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

"Agent" means the Global Agent, the Conventional Facility Agent and the Investment Agent.

"Agent Indemnity Commitments" means the Total Commitments excluding any Commitments held by the Holding Period Trustee.

"Asset Transfer Agreement" has the meaning given to it in the Restructuring Implementation Deed.

"Assignment Agreement" means an agreement substantially in the form set out in Schedule 4 (*Form of Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Business Day" means, unless specified as otherwise in this Agreement, a day on which banks are open for general business in Abu Dhabi, Dubai and London and in relation to a day (other than a Friday) on which payments are to be made in dollars under the Transaction Documents, New York.

"Cash Pay Interest" has the meaning given to it in the Conventional Facility Agreement.

"Charged Property" means all of the assets of the Company which from time to time are, or are expressed to be, the subject of the Transaction Security.

"Cash Waterfall" means the waterfall of payments set out in Clause 13.2 (*Cash Waterfall*).

"Code" means the US Internal Revenue Code of 1986.

"Collection Account" means a Shari'a compliant or non-interest bearing account held in the name of the Company:

- (a) identified in a letter between the Company and the Global Agent as the Collection Account; and
- (b) from which no withdrawals may be made by the Company except as contemplated by the Transaction Documents.

"Commitment" means:

- (a) a Conventional Commitment; and
- (b) an Islamic Financing Commitment.

"Confidential Information" means all information relating to the Company, the Group, the Transaction Documents or a Facility of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Transaction Documents or a Facility from either:

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 35 (*Confidential Information*); or
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

For the avoidance of doubt, no information provided to Unrestricted Financiers shall be deemed to be Confidential Information.

"Confidentiality Undertaking" means a confidentiality undertaking substantially in the current recommended form of the Loan Market Association or in any other form agreed between the Company and the Global Agent.

"Contribution" has the meaning given to it in the Investment Agency Agreement.

"Contributions Outstanding" has the meaning given to it in the Investment Agency Agreement.

"Conventional Commitment" means, in respect of a Conventional Lender, its Commitment under and as defined in the Conventional Facility Agreement.

"Conventional Lender" means:

- (a) an Original Conventional Lender; or
- (b) any person which becomes a Party as a Conventional Lender in accordance with Clause 5.2 (*Re-allocation of Commitments*) or Clause 19 (*Changes to the Financiers*),

which, in each case, has not ceased to be a Conventional Lender or a Party in accordance with the terms of the Conventional Finance Documents.

"Conventional Facility" means the dollar term loan facility made available under the Conventional Finance Documents as described in Clause 2.1 (*The Conventional Facility*).

"Conventional Facility Agreement" means the USD 1,885,747,323 term facility agreement dated on or around the date of this Agreement between, amongst others, the Company, the Conventional Facility Agent and the Original Conventional Lenders.

"Conventional Finance Document" means:

- (a) this Agreement;
- (b) the Conventional Facility Agreement;
- (c) any Fee Letter relating to the Conventional Facility or the Conventional Finance Parties; and
- (d) any other document designated as such by the Conventional Facility Agent and the Company.

"Conventional Finance Party" means the Global Agent, the Conventional Facility Agent and the Conventional Lenders.

"Declaration of Trust" means a declaration of trust dated on or about the date of this Agreement in respect of certain shares in NMC Opco granted by the Company in favour of the Investment Agent.

"Default" means:

- (a) an Event of Default; or
- (b) any event or circumstance specified in Clause 18 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Transaction Documents, or a combination of any of the foregoing) be an Event of Default.

"Defaulting Financier" means any Financier:

- (a) which has otherwise rescinded or repudiated a Transaction Document; or
- (b) with respect to which an Insolvency Event has occurred and is continuing.

"Delegate" means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

"Determined Indemnity Cover" has the meaning given to it in the Asset Transfer Agreement.

"Determined Indemnity Cover Amount" means, in relation to an Indemnity Determination Event, the amount of the "Indemnity Cover" determined pursuant to such Indemnity Determination Event.

"Disruption Event" means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facilities (or otherwise in order for the transactions contemplated by the Transaction Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
 - (i) from performing its payment obligations under the Transaction Documents; or
 - (ii) from communicating with other Parties in accordance with the terms of the Transaction Documents,

and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.

"Distribution Date" has the meaning given to it in paragraph (a) of Clause 13.2 (*Cash Waterfall*) of this Agreement.

"Eligible Institution" means any Financier or other bank, financial institution, trust, fund or other entity selected by the Company.

"End Date" has the meaning given to it in the Asset Transfer Agreement.

"Enhanced Confidential Information" means Confidential Information provided to Supervising Financiers under the terms of any Transaction Document or otherwise other than Reporting Financier Information.

"EPM" has the meaning given to it in the LTD DOCA.

"EPM Administrators" means Richard Fleming and Benjamin Cairns of Alvarez & Marsal Europe LLP.

"EPM Entitlements" has the meaning given to it in the LTD DOCA.

"EPM Re-Run" means each re-run of the EPM pursuant to Clause 5.1 (*EPM Re-Run*).

"Event of Default" means any event or circumstance specified as such in Clause 18 (*Events of Default*).

"Exercise Notice" has the meaning given to it in the Purchase Undertaking or the Sale Undertaking (as applicable).

"Exercise Price" has the meaning given to it in the Purchase Undertaking or the Sale Undertaking (as applicable).

"Exit Event" means the occurrence of an NMC Holdco Refinancing, an NMC Opco Listing, an NMC Opco Merger or an NMC Opco Sale.

"Extension Request" means a request from the Company substantially in the form set out in Schedule 2 (*Form of Extension Request*) in relation to the extension of the Final Maturity Date.

"Facility" means the Conventional Facility or the Islamic Financing Facility.

"Facility Office" means:

- (a) in respect of a Financier, the office or offices notified by that Financier to the Global Agent in writing on or before the date it becomes a Financier (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or
- (b) in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

"Facility Representative" means:

- (a) in respect of the Conventional Facility, the Conventional Facility Agent; and
- (b) in respect of the Islamic Financing Facility, the Investment Agent.

"FATCA" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

- (a) in relation to a "**withholdable payment**" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "**passthru payment**" described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

"FATCA Deduction" means a deduction or withholding from a payment under a Transaction Document required by FATCA.

"FATCA Exempt Party" means a Party that is entitled to receive payments free from any FATCA Deduction.

"Fee Letter" means any fee letter entered into by reference to this Agreement between a Finance Party and the Company setting out any of the fees referred to in Clause 8 (*Fees*).

"Final Maturity Date" means, subject to Clause 6.3 (*Extension option*), the date falling 60 months after the date of this Agreement, provided that, following the occurrence of an Exit Event which is a Novated Exit Event and the application of amounts standing pursuant to the Collection Account in accordance with paragraph (b) of Clause 13.2 (*Cash Waterfall*) of this Agreement, the Final Maturity Date shall be deemed to be the End Date.

"Finance Parties" means the Global Agent, the Security Agent, the Conventional Finance Parties and the Islamic Financing Parties.

"Financial Adviser" means any:

- (a) independent internationally recognised investment bank;
- (b) independent internationally recognised accountancy firm; or
- (c) other independent internationally recognised professional services firm which is regularly engaged in providing valuations of businesses or financial assets or, where applicable, advising on competitive sales processes.

"Financial Indebtedness" means any indebtedness for or in respect of:

- (a) moneys borrowed (and any Shari'a compliant financing arrangement) and debit balances at banks or other financial institutions;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument or any other Shari'a compliant financing arrangement which has the same commercial effect;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with the Accounting Principles, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);

- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Final Maturity Date or are otherwise classified as borrowings under the Accounting Principles;
- (i) any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 180 days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing;
- (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above.

"Financier" means a Conventional Lender or a Participant, as the context requires.

"Financier Schedule" means the certified schedule provided by the Company to the Global Agent, the Conventional Facility Agent and the Investment Agent on the Restructuring Effective Date specifying the Commitments of each Financier.

"Governance Agreement" means the governance agreement dated on or about the date of this Agreement and made between, among others, the Company and the Financiers (other than the Holding Period Trustee).

"Group" means the Company and its Subsidiaries.

"Group DOCA" has the meaning set out in the LTD DOCA.

"Holdback Creditors" has the meaning given to it in the LTD DOCA.

"Holdco ADGM Security Agreement" means the ADGM law governed security agreement dated on or around the date of this Agreement granted by the Company in favour of the Security Agent in respect of all the assets of the Company.

"Holdco First Supplemental Sale and Purchase Agreement" has the meaning given to it in the Restructuring Implementation Deed.

"Holding Period Trust Deed" means the holding period trust deed dated on or about the Restructuring Effective Date, and made between, among others, the Company and the Global Agent.

"Holding Company" means, in relation to a person, any other person, in respect of which it is a Subsidiary.

"Holding Period Trustee" means Mount Street Mortgage Servicing Limited in its capacity as Holding Period Trustee pursuant to the Holding Period Trust Deed.

"IFRS" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

"Impaired Agent" means an Agent at any time when:

- (a) it has failed to make (or has notified a Party that it will not make) a payment required to be made by it under the Transaction Documents by the due date for payment;
- (b) it otherwise rescinds or repudiates a Transaction Document;
- (c) (if it is also a Financier) it is a Defaulting Financier under paragraph (a) of the definition of **"Defaulting Financier"**; or
- (d) an Insolvency Event has occurred and is continuing with respect to that Agent;

unless, in the case of paragraph (a) above:

- (i) its failure to pay is caused by:
 - (A) administrative or technical error; or
 - (B) a Disruption Event; andpayment is made within three Business Days of its due date; or
- (ii) the Agent is disputing in good faith whether it is contractually obliged to make the payment in question.

"Income Amount" means the Income Cash Amount, the Income PIK Amount and the Income Variable Amount.

"Income Cash Amount" has the meaning given to it in the Service Agency Agreement.

"Income Period" has the meaning given to it in the Service Agency Agreement.

"Income PIK Amount" has the meaning given to it in the Service Agency Agreement.

"Income Variable Amount" has the meaning given to it in the Service Agency Agreement.

"Increased Cost" means:

- (a) a reduction in the rate of return from a Facility or on a Finance Party's (or any of its Affiliates') overall capital;
- (b) an additional or increased cost (excluding, in relation to an Islamic Financing Party only, any costs of funding or opportunity costs); or
- (c) a reduction of an amount due and payable under any Transaction Document,

which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Transaction Document.

"Increased Majority Reporting Financiers" means a Reporting Financier or Reporting Financiers whose Participations aggregate more than 66½ per cent. of the Total Reporting Financier Commitments (or, if the Total Reporting Financier Commitments have been reduced to zero, aggregated more than 66½ per cent. of the Total Reporting Financier Commitments immediately prior to that reduction).

"Indemnity Account" means a Shari'a compliant or non-interest bearing account held in the name of the Company:

- (a) identified in a letter between the Company and the Global Agent as the Indemnity Account;
- (b) from which no withdrawals may be made by the Company except as contemplated by the Transaction Documents; and
- (c) is an Acceptable Holding Account (as defined in the Asset Transfer Agreement).

"Indemnity Cover Settlement Process" has the meaning given to it in the Asset Transfer Agreement.

"Indemnity Determination Event" means:

- (a) the determination of the amount of "Determined Indemnity Cover" (as defined in the Asset Transfer Agreement) in accordance with the Indemnity Cover Settlement Process at any time after the date of the Novation Documents; and
- (b) the determination of the amount of the "Updated Determined Indemnity Cover" (as defined in the Asset Transfer Agreement) following the receipt of an Updated Administrators' Proposal in accordance with the terms of the Asset Transfer Agreement.

"Industrial Competitor" means any:

- (a) person whose primary business is substantially similar or in competition to that carried out by the NMC Group (which is the business of the provision of healthcare services);
- (b) any Affiliate of any such person; or
- (c) is otherwise under common control, ownership or management of such a person,

provided that a bank or financial institution or independent debt fund or equivalent investment vehicle falling within paragraphs (b) or (c) above shall be deemed not to be an Industrial Competitor if:

- (i) it is a bank or other financial institution or a bona fide debt fund or investment vehicle that is engaged in making, purchasing, holding or

otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business; and

- (ii) no personnel involved with the equity investments of the relevant Industrial Competitor or Affiliate thereof, as applicable:
 - (A) makes (or has the right to make or participate with others in making) any debt investment decisions; or
 - (B) has access to any information (other than information publicly available) relating to the NMC Group or any entity that forms a part of the NMC Group's business including their subsidiaries.

"Insolvency Officeholder" means a liquidator, provisional liquidator, administrator, administrative receiver, receiver, receiver or manager, compulsory or interim manager, nominee, supervisor, trustee, conservator, guardian or other similar officer in respect of the Company or in respect of any arrangement, compromise or composition with any creditors or any equivalent or analogous officer under the law of any jurisdiction.

"Insolvency Proceedings" means any winding-up, dissolution or administration (whether by court action or otherwise) of the Company and shall be construed so as to include any equivalent or analogous proceedings under the law of any jurisdiction including the seeking of liquidation, winding-up, reorganisation, dissolution, administration (whether by court action or otherwise), arrangement, adjustment, protection or relief of debtors.

"Insolvency Event" in relation to an entity means that the entity:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- (e) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (d) above and:

- (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
- (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof;
- (f) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (d) above);
- (h) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Interest Period" has the meaning given to it in the Conventional Facility Agreement.

"Investment Agency Agreement" means the investment agency agreement dated on or about the date of this Agreement and made between, amongst others, the Investment Agent, the Original Participants and the Company.

"Investment Agent ADGM Security Agreement" means the ADGM law governed security agreement dated on or around the date of this Agreement granted by the Investment Agent in favour of the Security Agent in respect of its interest in the shares in NMC Opco.

"Islamic Financing Commitment" means, in respect of a Participant, its Commitment under and as defined in the Investment Agency Agreement.

"Islamic Financing Facility" means the Islamic facility made available under the Islamic Financing Transaction Documents as described in Clause 2.2 (*The Islamic Financing Facility*).

"Islamic Financing Party" has the meaning given to it in the Investment Agency Agreement.

"Islamic Financing Transaction Document" means:

- (a) this Agreement;

- (b) the Investment Agency Agreement;
- (c) the Master Sale and Purchase Agreement;
- (d) any Supplemental Sale and Purchase Agreement;
- (e) the Service Agency Agreement;
- (f) the Purchase Undertaking;
- (g) the Sale Undertaking;
- (h) a Sale Agreement;
- (i) the Declaration of Trust;
- (j) any Fee Letter relating to the Islamic Financing Facility or the Islamic Financing Parties;
- (k) an Exercise Notice; and
- (l) any other document designated as such by the Investment Agent and the Company.

"Legal Reservations" means

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (b) the time barring of claims under applicable limitation laws (including, without limitation, the Limitation Acts), the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void and defences of set-off or counterclaim;
- (c) similar principles, rights and defences under the laws of any Relevant Jurisdiction; and
- (d) any other matters which are set out as qualifications or reservations as to matters of law of general application in any legal opinion delivered to the Global Agent under Clause 4 (*Deemed Utilisation*).

"Loan" has the meaning given to it in the Conventional Facility Agreement.

"Limitation Acts" means the Limitation Act 1980 and the Foreign Limitation Periods Act 1984.

"LTD Administrators" has the meaning given to it in the Restructuring Implementation Deed.

"LTD DOCA" means the deed of company arrangement executed by NMC Healthcare Ltd (in administration) (subject to deed of company arrangement) pursuant to Chapter

8 of Part 1 of the Insolvency Regulations for the purpose of implementing the Restructuring.

"Majority Conventional Lenders" has the meaning given to the term "Majority Lenders" in the Conventional Facility Agreement.

"Majority Financiers" means a Financier or Financiers whose Participations aggregate 66½ per cent. or more of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated 66½ per cent. or more of the Total Commitments immediately prior to that reduction).

"Majority Participants" has the meaning given to it in the Investment Agency Agreement.

"Majority Reporting Financiers" means a Reporting Financier or Reporting Financiers whose Participations aggregate more than 50 per cent. of the Total Reporting Financier Commitments (or, if the Total Reporting Financier Commitments have been reduced to zero, aggregated more than 50 per cent. of the Total Reporting Financier Commitments immediately prior to that reduction).

"Majority RID Financiers" has the meaning given to it in the Restructuring Implementation Deed.

"Management Incentive Plan" has the meaning given to it in the Governance Agreement.

"Margin" means:

- (a) in relation to Cash Pay Interest or Income Cash Amount, 0.5 per cent. per annum; and
- (b) in relation to PIK Interest or Income PIK Amount, 2.0 per cent. per annum.

"Master Sale and Purchase Agreement" means the master sale and purchase agreement to be entered into between the Investment Agent as purchaser (as agent of the Participants) and the Company as seller.

"Material Adverse Effect" means a material adverse effect on:

- (a) the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole;
- (b) the ability of the Company to perform its obligations under the Transaction Documents; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Transaction Documents or the rights or remedies of any Finance Party under any of the Transaction Documents.

"Material Company" means the Company or NMC Opc.

"Minimum Cash Balance" means an amount equal to USD100,000.

"MIP Payments" means any amounts payable by the Company pursuant to the Management Incentive Plan.

"Month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

- (a) (subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- (c) if an Interest Period or Income Period begins on the last Business Day of a calendar month, that Interest Period or Income Period shall end on the last Business Day in the calendar month in which that Interest Period or Income Period is to end.

The above rules will only apply to the last Month of any period.

"Moveables Security Agreement" means the UAE law governed moveables security agreement dated on or around the date of this Agreement granted by the Company in favour of the Security Agent in respect of certain moveable assets (including the Collections Account) of the Company.

"NMC Holdco Refinancing" means the refinancing, repayment or other replacement in full of the Facilities including the issuance of other Financial Indebtedness in exchange or replacement for the Facilities.

"NMC Opcos" means NMC Opcos Ltd, a private company limited by shares incorporated and registered in the Abu Dhabi Global Market with registered number 5918, whose registered office is at 2473ResCo-work07, 24 Sila Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates.

"NMC Opcos Default" means a "Default" under and as defined in the NMC Opcos CTA.

"NMC Opcos CTA" means the common terms agreement dated on or about the date of this Agreement between, among others, NMC Opcos as the company and Abu Dhabi Commercial Bank PJSC as global agent.

"NMC Opcos Facilities" means the "Facilities" under and as defined in the NMC Opcos CTA.

"NMC Opcos Finance Documents" means the "Finance Documents" under and as defined in the NMC Opcos CTA.

"NMC Opcos Group" means NMC Opcos and each of its Subsidiaries from time to time.

"NMC Opcos Listing" means a successful application being made for the admission of the entire share capital of NMC Opcos to trading on a recognised stock exchange or other similar market.

"NMC Opcos Merger" means an amalgamation, demerger, merger, consolidation or corporate reconstruction where the surviving entity of that amalgamation, demerger, merger, consolidation or corporate reconstruction is NMC Opcos.

"NMC Opcos Sale" means the sale of all or substantially all of the assets of NMC Opcos whether in a single transaction or a series of related transactions.

"Nominating Financier" means each Reporting Financier:

- (a) whose Commitments (when aggregated with the Commitments of its Affiliates and Related Funds) represent more than 10 per cent. of the Total Commitments; and/or
- (b) has elected to nominate one or more directors of the Company in accordance with clause 4.4 of the Governance Agreement,

in each case, to the extent that the Commitments of the Reporting Financier (or its Affiliates or Related Funds) have not been cancelled, reduced or transferred by it under this Agreement such that the Commitments of the Reporting Financier (when aggregated with the Commitments of its Affiliates and Related Funds) fails to meet the relevant threshold.

"Non-Consenting Financier" has the meaning given to it in Clause 34.6 (*Replacement of Financier*).

"Non-Submitting Creditors" has the meaning given to it in the Holding Period Trust Deed.

"Novated Exit Event" means an Exit Event pursuant to which Novation Documents are entered into between the Company and relevant third parties in respect of the Novated Indemnities.

"Novated Indemnities" has the meaning given to it in the Asset Transfer Agreement.

"Novated Indemnity Cover Amount" means, in relation to a Novated Exit Event, the amount of the "Indemnity Cover" (as defined in the Asset Transfer Agreement) set out in the Novation Documents entered into in connection with such Novated Exit Event.

"Novation Documents" has the meaning given to it in the Asset Transfer Agreement.

"Old NMC Group" means the NMC Healthcare Limited (in administration) and its Subsidiaries.

"Original Financier" means the Original Conventional Lenders and the Original Participants.

"Original Jurisdiction" means the jurisdiction under whose laws the Company is incorporated as at the date of this Agreement.

"Participant" means:

- (a) an Original Participant; or
- (b) any person which becomes a Party as an Participant in accordance with Clause 5.2 (*Re-allocation of Commitments*) or Clause 19 (*Changes to the Financiers*),

which, in each case, has not ceased to be a Participant or a Party in accordance with the terms of the Islamic Financing Transaction Document.

"Participation" means:

- (a) in respect of a Conventional Lender, the aggregate for the time being of its share in the Loans; and
- (b) in respect of a Participant, the aggregate for the time being of its share in the Contributions Outstanding.

"Participation Purchase Transaction" means, in relation to a person, a transaction where such person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment, Contribution or amount outstanding under this Agreement.

"Party" means a party to this Agreement.

"Payment Date" means any of:

- (a) the last day of an Interest Period; and
- (b) the last day of an Income Period.

"PIK Interest" has the meaning given to it in the Conventional Facility Agreement.

"Priority Holdco Financial Indebtedness" has the meaning given to it in Clause 5.3 (*Priority Holdco Financial Indebtedness*).

"Purchase Price" has the meaning given to it in the Master Sale and Purchase Agreement.

"Purchase Transaction" has the meaning given to it in the Master Sale and Purchase Agreement.

"Purchase Transaction Date" has the meaning given to it in the Master Sale and Purchase Agreement.

"Purchase Undertaking" means the purchase undertaking dated on or about the Purchase Transaction Date provided by the Company in favour of the Investment Agent.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

"Reallocated Amount" means, on a Payment Date, the difference between:

(a) in respect of the Conventional Commitments:

- (i) the amount of Conventional Commitments held by the Holding Period Trustee on such Payment Date; and
- (ii) the amount of Conventional Commitments which would need to be held by the Holding Period Trustee on that Payment Date in order for it to transfer Conventional Commitments to:
 - (A) each Holdback Creditor and Non-Submitting Creditor which has elected to participate in the Conventional Facilities pursuant to the Admitted Group Creditor Letter signed by it; and/or
 - (B) each Conventional Lender which is a Reallocated Group Creditor,

in accordance with paragraph (d)(ii) of Clause 5.1 (*EPM Re-run*); and

(b) in respect of the Islamic Financing Commitments, the amount calculated pursuant to Clause 5.2(b) of this Agreement.

"Reallocated Group Creditors" has the meaning given to it in the Holding Period Trust Deed.

"Re-Allocation Conditions" has the meaning given to it in Clause 5.1 (*EPM Re-Run*).

"Related DOCAs" has the meaning set out in the LTD DOCA.

"Relevant Assets" has the meaning given to it in the Master Sale and Purchase Agreement.

"Relevant Jurisdiction" means, in relation to the Company:

- (a) its Original Jurisdiction;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated; and
- (c) any jurisdiction where it conducts its business.

"Relevant Term Assets" has the meaning given to it in the Service Agency Agreement.

"Replacement Financier" has the meaning given to it in Clause 34.6 (*Replacement of Financier*).

"Reporting Financier" means any Financier other than the Holding Period Trustee which is not an Unrestricted Financier.

"Reporting Financier Commitment" means the Commitment of a Reporting Financier.

"Reporting Financier Information" has the meaning given to it in the Governance Agreement.

"Representative" means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

"Requisite Determined Indemnity Amount" means, in relation to an Indemnity Determination Event, an amount equal to the Total Commitments outstanding at such time less an amount equal to the Determined Indemnity Cover Amount in respect of such Indemnity Determination Event.

"Requisite Novated Indemnity Amount" means, at the time of a Novated Exit Event, an amount equal to the Total Commitments outstanding at such time less an amount equal to the Novated Indemnity Cover Amount.

"Restricted Party" means any individual or entity that is:

- (a) listed on, or owned or controlled (as such terms, including any applicable ownership and control requirements, are defined and construed in the applicable Sanctions laws and regulations or in any official guidance in relation to such Sanctions laws and regulations) by a person listed on, a Sanctions List;
- (b) a government of a Sanctioned Country;
- (c) an agency or instrumentality of, or an entity directly or indirectly owned or controlled by, a government of a Sanctioned Country;
- (d) resident, organised or located in, operating from, or incorporated under the laws of, a Sanctioned Country, or any individual or entity directly or indirectly owned or controlled by that individual or entity;
- (e) otherwise a target of Sanctions, or with whom it would be a breach of any applicable Sanctions for any Finance Party or any affiliate of a Finance Party to deal; or
- (f) an entity that the Company is aware (having made due enquiry) is acting on behalf of any of the persons listed in paragraphs (a) to (e) above, for the purpose of evading or avoiding, or having the intended effect of or intending to evade or avoid, or facilitating the evasion or avoidance of any Sanctions.

"Restructuring" means the proposed restructuring of the financial indebtedness of NMC Healthcare Ltd (in administration) and certain of its direct and indirect subsidiaries.

"Restructuring Effective Date" has the meaning given to it in the Restructuring Implementation Deed.

"Restructuring Effective Date Conditions Precedent" has the meaning given to it in the Restructuring Implementation Deed.

"Restructuring Implementation Deed" means the restructuring implementation deed entered into in connection with the LTD DOCA.

"Sale Agreement" has the meaning given to it in the Purchase Undertaking or the Sale Undertaking, as the case may be.

"Sale Undertaking" means the sale undertaking dated on or about the Purchase Transaction Date provided by the Investment Agent in favour of the Company.

"Sanctioned Country" means any country, region or other territory that is, or whose government is, subject to a general export, import, financial or investment embargo under any Sanctions, or is the subject of Sanctions broadly prohibiting dealings with such government, country or territory.

"Sanctions" means economic or financial sanctions or trade embargoes or other comprehensive prohibitions against transaction activity pursuant to anti-terrorism laws or export control laws enacted, imposed, administered or enforced from time to time by any Sanctions Authority.

"Sanctions Authority" means: (a) the US government; (b) the United Nations Security Council; (c) the European Union; (d) the United Kingdom; (e) the United Arab Emirates; (f) the respective governmental institutions of any of the foregoing including, without limitation, Her Majesty's Treasury, the Office of Foreign Assets Control of the US Department of the Treasury, the US Department of Commerce, the US Department of State and any other agency of the US government; or (g) any other relevant sanctions authority.

"Sanctions List" means any of the lists of specifically designated nationals or designated or sanctioned individuals or entities (or equivalent) issued by any Sanctions Authority, each as amended, supplemented or substituted from time to time.

"Secured Obligations" means all present and future obligations and liabilities at any time due, owing or incurred by the Company to any Secured Party under the Transaction Documents, whether actual or contingent and whether incurred solely or jointly and as principal or surety or in any other capacity and whether originally incurred by the Company or by some other person, including the obligations set out in Clause 23.2 (*Parallel debt*).

"Secured Parties" means each Finance Party from time to time party to this Agreement and any Receiver or Delegate.

"Securities Act" means the US Securities Act of 1933, as amended.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Service Agency Agreement" means the service agency agreement dated on or about the date of this Agreement and made between the Company as agent and the Investment Agent.

"Shari'a Illegality Event" has the meaning given to it in the Purchase Undertaking.

"Subsidiary" means an entity of which a person has direct or indirect control or owns directly or indirectly more than 50 per cent. of the voting capital or similar right of ownership and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.

"Super Majority Reporting Financiers" means a Reporting Financier or Reporting Financiers whose Participations aggregate more than 75 per cent. of the Total Reporting Financier Commitments (or, if the Total Reporting Financier Commitments have been reduced to zero, aggregated more than 75 per cent. of the Total Reporting Financier Commitments immediately prior to that reduction).

"Supervising Financiers" means any Reporting Financier which:

(a) is not a Nominating Financier and:

- (i) has elected to be Supervising Financier by notice to the Company, the Global Agent and the relevant Facility Representative; and
- (ii) has Commitments which represent 5 per cent. or more of the Total Commitments; and/or has the top 10 largest Commitment of any single Financier; or

(b) is a Nominating Financier,

in each case, to the extent that the Reporting Financier's Commitments have not been cancelled, reduced or transferred by it under this Agreement such that the Commitments of the Reporting Financier fail to meet the relevant threshold.

"Supplemental Sale and Purchase Agreement" means a supplemental sale and purchase agreement to be entered into between the Investment Agent as purchaser (as agent of the Participants) and the Company as seller pursuant to the Master Sale and Purchase Agreement.

"Surplus Cover" has the meaning given to it in the Asset Transfer Agreement.

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including, in relation to the Conventional Facility, any penalty or commission payable in connection with any failure to pay or any delay in paying any of the same).

"Total Commitments" means the Total Conventional Commitments and the Total Islamic Financing Commitments, being USD 364,252,143 as at the date of this Agreement.

"Total Conventional Commitments" has the meaning given to it in the Conventional Facility Agreement.

"Total Islamic Financing Commitments" has the meaning given to it in the Investment Agency Agreement.

"Total Reporting Financier Commitments" means the aggregate of the Reporting Financier Commitments.

"Transaction Documents" means:

- (a) this Agreement;
- (b) the Restructuring Implementation Deed;
- (c) any Conventional Finance Documents;
- (d) any Islamic Financing Transaction Documents;
- (e) the Governance Agreement;
- (f) the Transaction Security Documents; and
- (g) any other document designated as such by the Company and the Global Agent.

"Transaction Security" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Transaction Security Documents.

"Transaction Security Documents" means:

- (a) each ADGM Security Agreement;
- (b) the Moveables Security Agreement; and
- (c) any other document designated as such by the Global Agent, the Security Agent and the Company.

"Transfer Certificate" means a certificate substantially in the form set out in Schedule 3 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Company.

"Transfer Date" means, in relation to an assignment or a transfer, the later of:

- (a) the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and
- (b) the date on which the relevant Agents execute the relevant Assignment Agreement or Transfer Certificate.

"Treasury Transaction" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

"Unpaid Sum" means any sum due and payable but unpaid by the Company under the Transaction Documents.

"Updated Administrators' Proposal" has the meaning given to it in the Asset Transfer Agreement.

"Updated Determined Indemnity Cover" has the meaning given to it in the Asset Transfer Agreement.

"Unrestricted Financier" means any Financier other than the Holding Period Trustee:

- (a) whose Commitments represent less than 0.5 per cent. of the Total Commitments, unless such Financier has elected to become a Reporting Financier by notice to the Company and the Agents and the Company has (in its sole discretion) agreed that such Financier may be a Reporting Financier;
- (b) is an Industrial Competitor, trade counterparty and/or a person engaged in any litigation, arbitration or other dispute with a member of the Group which, if adversely determined, is reasonably likely to have a Material Adverse Effect; and/or
- (c) has elected to be an Unrestricted Financier by notice to the Company, the Global Agent and the relevant Facility Representative,

and, for the avoidance of doubt, a Financier shall be an Unrestricted Financier if it satisfies any one of the above conditions.

"US" means the United States of America, its territories, possessions and other areas subject to the jurisdiction of the United States of America.

"US Person" has the meaning given to it in Rule 902 of Regulation S promulgated under the Securities Act.

"USD" or **"dollars"** means the lawful currency of the US.

"Variable Interest" has the meaning given to it in the Conventional Facility Agreement.

"VAT" means value added tax or any similar tax imposed in any jurisdiction.

1.2 **Construction**

- (a) In each Transaction Document, unless the contrary intention appears, a reference to:
 - (i) an **"Agent"**, the **"Conventional Facility Agent"**, any **"Conventional Lender"**, any **"Finance Party"**, any **"Secured Party"**, any **"Financier"**, the **"Global Agent"**, the **"Investment Agent"**, any **"Participant"**, any **"Party"**, the **"Holding Period Trustee"**, any **"Security Agent"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Transaction Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Transaction Documents;

- (ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of the Company and the Global Agent or, if not so agreed, is in the form specified by the Global Agent;
 - (iii) "**assets**" includes present and future properties, revenues and rights of every description;
 - (iv) a "**Transaction Document**" or any other agreement or instrument is a reference to that Transaction Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - (v) a "**group of Financiers**" includes all the Financiers;
 - (vi) "**guarantee**" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
 - (vii) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (viii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (ix) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (x) any "**cost**" in respect of an Islamic Financing Party shall be calculated on an actual cost basis excluding any interest, opportunity cost and/or cost of funds;
 - (xi) a provision of law is a reference to that provision as amended or re-enacted from time to time; and
 - (xii) a time of day is a reference to time in the United Arab Emirates.
- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period or an Income Period shall disregard any inconsistency arising from the last day of that Interest Period or Income Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only.

- (d) Unless a contrary indication appears, a term used in any other Transaction Document or in any notice given under or in connection with any Transaction Document has the same meaning in that Transaction Document or notice as in this Agreement.
- (e) A Default (including an Event of Default) is "**continuing**" if it has not been remedied or waived.

1.3 Third party rights

Unless expressly provided to the contrary in a Transaction Document, a person who is not a Party to a Transaction Document may not enforce or enjoy the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") and notwithstanding any term of any Transaction Document, no consent of any third party is required for any amendment (including any release or compromise of any liability) or termination of any Transaction Document.

1.4 Relationship with other Transaction Documents

- (a) The terms of this Agreement override anything in any other Transaction Document to the contrary. If there is any inconsistency between the terms of another Transaction Document and this Agreement, that Transaction Document will be construed as if it has been amended to conform with the terms of this Agreement, except that no provision of this Agreement (or any amendment to this Agreement) shall under any circumstances permit any Islamic Financing Party to:
 - (i) pay, receive, claim or demand the payment of, any interest or any other amounts which are prohibited under the AAOIFI Shari'a Standards (as determined by the Shari'a supervisory board of the Investment Agent); or
 - (ii) undertake or perform any activity or participate in or benefit from any right which is prohibited under the AAOIFI Shari'a Standards (as determined by the Shari'a supervisory board of the Investment Agent).
- (b) A Finance Party has the benefit of any term of a Transaction Document expressed to be in its favour notwithstanding that it is not a party to that Transaction Document.
- (c) If a Transaction Document provides that the Global Agent may exercise any rights or discretions or make any determinations under that Transaction Document, then the Global Agent may exercise such right or discretion or make such determination notwithstanding that it is not a party to that Transaction Document.
- (d) If a Transaction Document provides that the Global Agent must take instructions, make a payment to or on behalf of, or otherwise interact with the Financiers then all such references shall be deemed complied with by the Global Agent if it takes such instructions, makes such payments to or on behalf of, or

otherwise interacts with the Financiers through the relevant Facility Representative.

SECTION 2 **THE FACILITIES**

2. THE FACILITIES

2.1 The Conventional Facility

Subject to the terms of the Conventional Finance Documents, the Conventional Lenders shall be deemed to have made available to the Company a term loan facility in an aggregate amount equal to the Total Conventional Commitments.

2.2 The Islamic Financing Facility

Subject to the terms of the Islamic Financing Transaction Documents, the Participants shall be deemed to have made available to the Company the Islamic Financing Facility in an aggregate amount equal to the Total Islamic Financing Commitments.

2.3 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Transaction Documents are several. Failure by a Finance Party to perform its obligations under the Transaction Documents does not affect the obligations of any other Party under the Transaction Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Transaction Documents.
- (b) The rights of each Finance Party under or in connection with the Transaction Documents are separate and independent rights and any debt arising under the Transaction Documents to a Finance Party from the Company is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt or right owing to that Finance Party under the Transaction Documents and, for the avoidance of doubt, any part of a Loan, Contribution, or any other amount owed by the Company which relates to a Finance Party's participation in a Facility or its role under a Transaction Document (including any such amount payable to an Agent on its behalf) is a debt owing to that Finance Party by the Company.
- (c) A Finance Party may, except as specifically provided in the Transaction Documents, separately enforce its rights under or in connection with the Transaction Documents.

3. PURPOSE

3.1 Purpose

The Company shall apply all amounts deemed to have been incurred by it under the Facilities in the manner contemplated in the Restructuring Implementation Deed.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to the Transaction Documents.

4. DEEMED UTILISATION

4.1 Conditions of availability

- (a) The Parties acknowledge that the Restructuring Effective Date Conditions Precedent will be deemed satisfied or waived by the Majority RID Financiers in the manner contemplated in the Restructuring Implementation Deed.
- (b) Once the Majority RID Financiers have confirmed to the Global Agent that the Restructuring Effective Date Conditions Precedent have been satisfied or waived in accordance with the terms of the Restructuring Implementation Deed, the Global Agent shall notify the Company, the Conventional Facility Agent, the Investment Agent, the Financiers and the LTD Administrators promptly in writing upon the Majority RID Financiers providing such confirmation.
- (c) The Financiers authorise (but do not require) the Global Agent to give the notification described in paragraph (b) above. The Global Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

4.2 Utilisation – Conventional Facility

The Conventional Facility shall be deemed fully utilised on the Restructuring Effective Date at the time and in the manner specified in the Restructuring Implementation Deed.

4.3 Purchase Transaction – Islamic Financing Facility

- (a) The Islamic Financing Facility shall be deemed fully utilised on the Restructuring Effective Date following the execution of the Holdco First Supplemental Sale and Purchase Agreement and the Declaration of Trust at the time and in the manner specified in the Restructuring Implementation Deed.
- (b) Following the execution of the Holdco First Supplemental Sale and Purchase Agreement and the Declaration of Trust at the time and in the manner specified in the Restructuring Implementation Deed, the Parties acknowledge that a Purchase Transaction shall be created between the Investment Agent (acting as agent for and on behalf of the Participants) and the Company upon the terms of such Holdco First Supplemental Sale and Purchase Agreement and incorporating the terms and conditions set out in the Islamic Financing Transaction Documents.
- (c) Each Party acknowledges and agrees that time is of the essence in the completion of a Purchase Transaction.

4.4 Right in respect of the Relevant Term Assets

- (a) No Participant nor the Investment Agent shall have any right to cause the sale or other disposition of the Relevant Term Assets other than in accordance with the right given to the Investment Agent in the Purchase Undertaking or Sale Undertaking.

(b) Notwithstanding any term to the contrary in any Islamic Financing Transaction Document, the Investment Agent acknowledges that it, and each Participant acknowledges that the Investment Agent, has no:

- (i) right to exercise any voting rights in respect of the Relevant Term Assets; or
- (ii) right to instructs or require the Company to transfer the registered legal title to the Investment Agent or its nominee,

other than in accordance with this Agreement and the Governance Agreement.

(c) The Company shall re-acquire the Relevant Term Assets in accordance with the terms of the Purchase Undertaking or the Sale Undertaking.

5. EPM

5.1 EPM Re-run

- (a) The Company shall engage the EPM Administrators to re-run the EPM:
 - (i) on the date falling 10 Business Days prior to each of the first, the second and the third anniversary of the Restructuring Effective Date; and
 - (ii) at any other time reasonably requested by the Company.
- (b) The Parties acknowledge that:
 - (i) following each EPM Re-Run, the EPM Entitlements of the Financiers may change;
 - (ii) accordingly the Holding Period Trustee may be required, following such EPM Re-Run, to transfer certain of its Commitments and corresponding Accruals to Holdback Creditors, Non-Submitting Creditors and/or to existing Financiers in their capacity as Reallocated Group Creditors in accordance with the provisions of the Holding Period Trust Deed and the terms of the Transaction Documents; and
 - (iii) in the case of the transfer of Commitments and corresponding Accruals to Holdback Creditors, Non-Submitting Creditors and/or to existing Financiers in their capacity as Reallocated Group Creditors in accordance with paragraph (ii) above, the Holding Period Trustee shall transfer:
 - (A) Conventional Commitments and corresponding Accruals to existing Financiers that are Conventional Lenders; and
 - (B) Islamic Financing Commitments and corresponding Accruals to existing Financiers that are Participants.
- (c) For the avoidance of doubt, none of the Financier's Commitments will be reduced as a result of an EPM Re-Run.

- (d) The Parties further acknowledge that if:
- (i) the Holding Period Trustee is required to transfer a portion of its Commitments and corresponding Accruals pursuant to paragraph (b) above; and
 - (ii) the Conventional Commitments (together with corresponding Accruals) held by the Holding Period Trustee at that time are insufficient to enable the Holding Period Trustee to transfer the requisite amount of Conventional Commitments (together with corresponding Accruals) to:
 - (A) each Holdback Creditor and Non-Submitting Creditor which has elected to participate in the Conventional Facilities pursuant to the Admitted Group Creditor Letter signed by it; and/or
 - (B) each Conventional Lender which is a Reallocated Group Creditor,
- (the "**Re-Allocation Conditions**"), then the Commitments and corresponding Accruals of the Holding Period Trustee may be reallocated in the manner envisaged in Clause 5.2 (*Re-allocation of Commitments*) below.

5.2 Re-allocation of Commitments

- (a) If, following an EPM Re-run, the Holding Period Trustee determines that the Re-Allocation Conditions apply, the Holding Period Trustee shall promptly (and in any event within five Business Days of becoming aware of such Re-Allocation Conditions applying) notify the Global Agent (with a copy to the Conventional Facility Agent and the Investment Agent).
- (b) On the next Payment Date following the notification referred to in paragraph (a) above:
 - (i) the Islamic Financing Commitments of the Holding Period Trustee shall be cancelled in an amount equal to the Reallocated Amount of such Islamic Financing Commitments such that:
 - (A) the Company and the Holding Period Trustee shall no longer be subject to the rights or obligations of a Participant corresponding to the Reallocated Amount of such Islamic Financing Commitments;
 - (B) the Holding Period Trustee shall no longer be (x) a Party as a "Participant" or (y) a party to the Investment Agency Agreement as a "Participant", in each case in respect of such Reallocated Amount of Islamic Financing Commitments, and the Holding Period Trustee and each of the other Finance Parties shall no longer be subject to obligations towards one another and or have the benefit of rights against one another as the Holding Period Trustee and those Finance Parties would have been subject to and/or had the benefit of had the Holding Period Trustee been an

Original Participant in respect of the Reallocated Amount of the Islamic Financing Commitments which are to be cancelled;

- (C) the Commitments of the other Financiers shall continue in full force and effect; and
- (ii) in consideration of the cancellation referred to in paragraph (i) above, the Conventional Commitments of the Holding Period Trustee shall be correspondingly increased in an amount equal to the Reallocated Amount of such Conventional Commitments (the "**Reallocated Commitments**") such that:
 - (A) the Holding Period Trustee shall assume all the obligations of a Conventional Lender corresponding to the Reallocated Commitments;
 - (B) the Company and the Holding Period Trustee shall assume obligations towards one another and/or acquire rights against one another as the Company and the Holding Period Trustee would have assumed and/or acquired had the Holding Period Trustee been an Original Conventional Lender from the Restructuring Effective Date in respect of the Reallocated Amount of the Conventional Commitments that it is to assume;
 - (C) the Holding Period Trustee shall become (x) a Party as a "Conventional Lender" and (y) a party to the Conventional Facility Agreement as a "Lender", in each case in respect of such Reallocated Amount of Conventional Commitments, and the Holding Period Trustee and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as the Holding Period Trustee and those Finance Parties would have assumed and/or acquired had the Holding Period Trustee been an Original Conventional Lender in respect of the Reallocated Amount of the Conventional Commitments which it is to assume;
 - (D) the Commitments of the other Financiers shall continue in full force and effect;
- (iii) the Commitments held by the Holding Period Trustee immediately following the re-allocation pursuant to paragraph (b) above shall be deemed to be fully utilised; and
- (iv) the Accruals corresponding to the Islamic Financing Commitments deemed to have been cancelled pursuant to paragraph (b)(i) above shall be deemed to have accrued in respect of the Reallocated Commitments deemed to have increased pursuant to paragraph (b)(ii) above and shall, for the avoidance of doubt, remain due and payable in accordance with, and subject to, the terms of the Transaction Documents.

- (c) The Parties agree that each of the steps set out in paragraph (b) above shall be deemed to occur simultaneously, such that the Reallocated Amount of Conventional Commitments shall be increased at the same time that the Reallocated Amount of Islamic Financing Commitments is cancelled and no movement of cash shall be required to give effect to such increase and cancellation, which shall instead be effected by way of a series of book entries by the Global Agent and each of the Facility Representatives.
- (d) The Company shall promptly on demand pay the Global Agent, the relevant Facility Representative and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by any of them and, in the case of the Security Agent, by any Receiver or Delegate in connection with any cancellation or increase in Commitments under this Clause.

5.3 Priority Holdco Financial Indebtedness

- (a) If:
 - (i) an NMC Opcos Default has occurred and is continuing under and in accordance with the NMC Opcos Finance Documents; and
 - (ii) such NMC Opcos Default can be cured by the provision of additional equity or subordinated loans to NMC Opcos, which will then be applied to prepay the NMC Opcos Facilities; and
 - (iii) the net proceeds will be applied solely for that purpose,

the Company may, by notice to the Global Agent, incur additional financial indebtedness in a maximum aggregate amount of USD250,000,000 (or such higher amount as the Super Majority Reporting Financiers may agree) (the "**Priority Holdco Financial Indebtedness**").
- (b) The Priority Holdco Financial Indebtedness shall be assumed by one or more Supervising Financiers willing to make available such Priority Holdco Financial Indebtedness, and such Supervising Financiers shall be entitled to a right of first refusal, on a pro rata basis, in respect of the provision of such Priority Holdco Financial Indebtedness, provided that such Supervising Financiers shall be permitted to syndicate the Priority Holdco Financial Indebtedness (and shall be permitted to receive payment of a syndication fee in connection with any such syndication).
- (c) The Priority Holdco Financial Indebtedness shall be subject to the following conditions:
 - (i) the Company shall use all commercially reasonable efforts to ensure that any Priority Holdco Financial Indebtedness made available pursuant to a Priority Holdco Financial Indebtedness Increase is made available under an Islamic Financing Facility and a Conventional Facility (taking into account compliance with the terms of the Islamic Financing Transaction Documents);

- (ii) the amount of profit or interest payable in respect of such Priority Holdco Financial Indebtedness shall be no higher than the aggregate of (i) the amount payable in respect of the NMC Opco Facilities, and (ii) 2.5% p.a. (unless such Priority Holdco Financial Indebtedness is offered to all of the Reporting Financiers as part of the syndication process);
- (iii) the final maturity date of the Priority Holdco Financial Indebtedness shall be the same date as the Final Maturity Date; and
- (iv) the financiers of the Priority Holdco Financial Indebtedness shall have no voting rights under this Agreement, save in respect of any matter directly affecting such Priority Holdco Financial Indebtedness.

SECTION 3

REPAYMENT, PREPAYMENT AND CANCELLATION

6. REPAYMENT

6.1 Repayment of Loans

- (a) The Company shall repay the aggregate Loans in full on the Final Maturity Date.
- (b) The Company may not re-borrow any part of the Conventional Facility which is repaid.

6.2 Payment of Exercise Price

- (a) The Company shall pay the Exercise Price in respect of the Final Maturity Date in accordance with the terms of the Purchase Undertaking.
- (b) The Company may not re-sell to the Investment Agent any part of the Relevant Term Assets which are re-acquired by the Company pursuant to the payment of an Exercise Price other than pursuant to the Transaction Documents.

6.3 Extension option

- (a) The Company may, by delivering an Extension Request in relation to each Facility to the Global Agent (with a copy to the Conventional Facility Agent and the Investment Agent) not less than 20 Business Days prior to the Final Maturity Date, request an extension to the Final Maturity Date, on no more than two occasions, in each case by twelve Months.
- (b) Without prejudice to Clause 38.4 (*Financier consultation*), the Financiers (other than the Holding Period Trustee) shall consult together and act reasonably in considering any Extension Request submitted by the Company with a view to avoiding an insolvent administration or liquidation of the Company, including, without limitation, considering any other steps requested or available for such purposes, including any request to equitise the Facilities.
- (c) The Extension Request shall be unconditional and irrevocable and the extension requested in the Extension Request shall become effective **provided that:**
 - (i) in relation to the first extension, the prior consent of the Majority Reporting Financiers has been obtained (such consent not to be unreasonably withheld); and
 - (ii) in relation to the second extension, the prior consent of the Super Majority Reporting Financiers has been obtained (such consent not to be unreasonably withheld).

7. EARLY PAYMENT AND CANCELLATION

7.1 Mandatory early payment – illegality

- (a) If, in any applicable jurisdiction, it becomes unlawful for a Financier to perform any of its obligations as contemplated by the relevant Transaction Documents or to fund or maintain its participation in any Loan, its Contribution and/or Participation (as applicable) or it becomes unlawful for any Affiliate of a Financier for that Financier to do so:
- (i) that Financier shall (if it is a Conventional Lender) promptly notify the Global Agent (with a copy to the Conventional Facility Agent) upon becoming aware of that event;
 - (ii) that Financier shall (if it is a Participant) promptly notify the Global Agent (with a copy to the Investment Agent) upon becoming aware of that event;
 - (iii) following the notification pursuant to (i) or (ii) above, the Global Agent shall notify the Company of the event; and
 - (iv) to the extent that the Financier's Participation has not been transferred pursuant to Clause 34.6 (*Replacement of Financier*), the Company shall:
 - (A) in the case of Conventional Lender, repay that Conventional Lender's participation in the Loans on the date specified in paragraph (b) below; and
 - (B) in the case of a Participant, prepay that Participant's Participation, on the date specified in paragraph (c) below, by purchasing that Participant's ownership rights and benefit in the Relevant Term Assets pursuant to the terms of the Purchase Undertaking upon exercise by the Investment Agent of its rights under sub-paragraph (b) of clause 2 (*Grant of Rights*) of the Purchase Undertaking.

- (b) The date for repayment or prepayment of a Conventional Lender's share in a Loan under paragraph (a) above will be:
- (i) the last day of the Interest Period of that Loan occurring after the Global Agent has notified the Company pursuant to paragraph (a)(iii) above; or
 - (ii) if earlier, the date specified by the Conventional Lender in the notice delivered to the Global Agent under paragraph (a) above (being no earlier than the last day of any applicable grace period permitted by law) and that Conventional Lender's corresponding Commitment(s) shall be immediately cancelled in the amount of the participations repaid.
- (c) The date for early payment of a Participant's Participation under paragraph (a) above will be:
- (i) the last day of the current Income Period; or

- (ii) if earlier, the date specified by the Participant in the notice delivered to the Global Agent under paragraph (a) above (being no earlier than the last day of any applicable grace period permitted by law) and that Participant's corresponding Commitment(s) shall be immediately cancelled in an amount equal to the early payment.

7.2 Voluntary early payment

The Company shall not be permitted to prepay the whole or any part of any Loan or exercise its rights under the Sale Undertaking to make early payments in whole or in part except as otherwise provided in this Agreement.

7.3 Voluntary cancellation

The Company shall not cancel the whole or any part of the Conventional Facility or the Islamic Financing Facility except as otherwise provided in this Agreement.

7.4 Right of cancellation and early payment in relation to a single Financier

- (a) If:
 - (i) any sum payable to any Financier by the Company is required to be increased under paragraph (c) of Clause 9.2 (*Tax gross-up*); or
 - (ii) any Financier claims indemnification from the Company under Clause 9.3 (*Tax indemnity*), clause 7 (*Increased Costs*) of the Conventional Facility Agreement or any provisions relating to increased costs under the Islamic Financing Transaction Documents,

the Company may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues, give the relevant Facility Representative and the Global Agent notice of cancellation of the Commitment(s) of that Financier and its intention to procure the repayment of that Financier's participation in the Loans or exercise its rights under the Sale undertaking in respect of that Financier (as applicable).

- (b) On the last day of each Interest Period or Income Period (as applicable) which ends after the Company has given notice under paragraph (a) above (or, if earlier, the date specified by the Company in that notice), the Company shall repay or settle that Financier's Participation together with all amounts accrued in respect of that Financier's Participation under the Transaction Documents and that Financier's corresponding Commitment(s) shall be immediately cancelled in the amount of the Participations repaid.
- (c) An early payment of Loans or Contributions Outstanding or cancellation of Commitments made under this Clause 7.4 shall be applied in accordance with Clause 28.6 (*Partial payments*) as if references in that Clause to "amounts due but unpaid under the Transaction Documents" were references to "amounts due but unpaid to a Financier pursuant to Clause 7.4 (*Right of cancellation and early payment in relation to a single Financier*)".

7.5 Miscellaneous provisions

- (a) No prepayment or payment of any Exercise Price (as applicable) or cancellation of all or any part of the Commitments shall be permitted except in accordance with the express terms of the Transaction Documents.
- (b) Subject to Clause 5.2 (*Re-allocation of Commitments*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (c) The Company may not re-borrow any part of the Conventional Facility which is prepaid or re-sell to the Investment Agent any part of the Relevant Term Assets which are the subject of an Exercise Price.

SECTION 4 FEES

8. FEES

8.1 Global Agent fee

The Company shall pay to the Global Agent for its own account an agency fee in the amount and manner agreed in a Fee Letter between the Global Agent and the Company.

8.2 Conventional Facility Agent fee

The Company shall pay to the Conventional Facility Agent for its own account an agency fee in the amount and manner agreed in a Fee Letter between the Conventional Facility Agent and the Company.

8.3 Investment Agent fee

The Company shall pay to the Investment Agent for its own account an agency fee in the amount and manner agreed in a Fee Letter between the Investment Agent and the Company.

8.4 Security Agent fee

The Company shall pay to the Security Agent for its own account an agency fee in the amount and manner agreed in a Fee Letter between the Security Agent and the Company.

SECTION 5 ADDITIONAL PAYMENT OBLIGATIONS

9. TAX GROSS-UP AND INDEMNITIES

9.1 General

(a) In this Clause 9:

"Protected Party" means a Finance Party which is or will be subject to any liability or required to make any payment for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Transaction Document.

"Tax Credit" means a credit against, relief or remission for, or repayment of, any Tax.

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Transaction Document, other than a FATCA Deduction.

"Tax Payment" means either the increase in a payment made by the Company to a Finance Party under Clause 9.2 (*Tax gross-up*) or a payment under Clause 9.3 (*Tax indemnity*).

"UAE Qualifying Financier" means a Financier (other than a Financier which is a Sub-Participant Financier) which is beneficially entitled (in the case of a UAE Treaty Financier, within the meaning of the relevant UAE Treaty) to a commission payable to that Financier in respect of a Transaction Document by the Company domiciled and/or resident for tax purposes in the UAE and is:

- (i) a Financier (other than a UAE Treaty Financier) which has fulfilled any conditions that must be fulfilled (including the completion of procedural formalities) to obtain full exemption from Tax under the laws of the United Arab Emirates, such that any payment under a Transaction Document may be made by the Company to that Financier without a Tax Deduction; or
- (ii) a UAE Treaty Financier.

"UAE Treaty Financier" means, in relation to a payment under a Transaction Document by the Company domiciled and/or resident for tax purposes in the UAE, a Financier which:

- (i) is treated as a resident of a UAE Treaty State for the purposes of the relevant UAE Treaty and is entitled to the benefit of such UAE Treaty;
- (ii) does not carry on a business in the United Arab Emirates through a permanent establishment (as such term is defined for the purposes of the relevant Treaty) with which that Financier's participation in the relevant Loan or Contribution Outstanding is effectively connected; and

- (iii) fulfils any other conditions which must be fulfilled in order to obtain the full exemption from Tax imposed by the United Arab Emirates on any commission payable to that Financier in respect of an advance under a Finance Document under the relevant UAE Treaty and under domestic law (including the completion of procedural requirements necessary for the Company to make such payments to that Financier without a Tax Deduction).

"UAE Treaty State" means a jurisdiction having a double taxation agreement (a "UAE Treaty") with the United Arab Emirates which makes provision for full exemption from Tax imposed by the United Arab Emirates on commission payments.

- (b) Unless a contrary indication appears, in this Clause 9 a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

9.2 Tax gross-up

- (a) The Company shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) If the Company becomes aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) or a Financier becomes so aware in respect of a payment payable to that Financier, the Company or the Financier (as applicable) must promptly notify:
 - (i) in the case of a Tax Deduction relating to the Conventional Facility, the Conventional Facility Agent; and
 - (ii) in the case of a Tax Deduction relating to the Islamic Financing Facility, the Investment Agent.

If the Conventional Facility Agent or the Investment Agent receives such notification, it must promptly notify the Global Agent and the Company. If the Global Agent receives such notification from a Financier it shall notify each other Agent and the Company.

- (c) If a Tax Deduction is required by law to be made by the Company, the amount of the payment due from the Company shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Arab Emirates, if on the date on which the payment falls due:
 - (i) the payment could have been made to the relevant Financier without a Tax Deduction if the Financier had been a UAE Qualifying Financier, but on that date that Financier is not or has ceased to be a UAE Qualifying Financier other than as a result of any change after the date it became a Financier under this Agreement in (or in the interpretation,

- administration, or application of) any law or Treaty or any published practice or published concession of any relevant taxing authority; or
- (ii) the relevant Financier is a UAE Qualifying Financier (or would be a UAE Qualifying Financier following the completion of any relevant procedural formalities) and the Company is able to demonstrate that the payment could have been made to the Financier without the Tax Deduction had that Financier complied with its obligations under paragraph (h) below.
- (e) If the Company is required to make a Tax Deduction, the Company must make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
 - (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company shall deliver to the Global Agent for the Finance Party entitled to the payment a valid original certificate of deduction of tax or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
 - (g) A Financier and the Company shall co-operate in promptly completing or assisting with the completion of any procedural formalities necessary for the Company or to obtain authorisation to make that payment without a Tax Deduction and maintain that authorisation where an authorisation expires or otherwise ceases to have effect.
 - (h) In the event that, as a result of a change in law, any payment by the Company to a Financier hereunder becomes or will become subject to any Tax under the laws of the UAE, such Financier and the Company shall, to the extent legally permissible, enter into good-faith discussions with a view to mitigating or otherwise minimising the impact of such Tax on the arrangements set out herein. Such good-faith discussions shall be concluded within 28 days of the earlier of: (i) the date on which such change in law is proposed in reasonably sufficient detail for mitigating action to be taken; and (ii) the date on which such change becomes law.

9.3 Tax indemnity

- (a) The Company shall (within five Business Days of demand by the Global Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Transaction Document.
- (b) Paragraph (a) above does not apply:
 - (i) with respect to any Tax assessed on a Protected Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in

- which that Finance Party is treated as domiciled and/or resident for tax purposes by the Company (acting reasonably) or (if different), by the relevant tax authority; or
- (B) under the laws of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,
- if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
- (ii) to the extent a loss, liability or cost:
- (A) is compensated for by an increased payment under Clause 9.2 (*Tax gross-up*); or
- (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above must promptly notify the Global Agent of the event which will give, or has given, rise to the claim, following which the Global Agent shall notify the Company.
- (d) A Protected Party shall, on receiving a payment from the Company under this Clause 9.3, notify the Global Agent.

9.4 Tax Credit

If the Company makes a Tax Payment and the relevant Finance Party determines that:

- (a) a Tax Credit is attributable to an increased payment of which that Tax Payment forms part, to that Tax Payment or to a Tax Deduction in consequence of which that Tax Payment was required; and
- (b) that Finance Party has obtained and utilised that Tax Credit,

the Finance Party shall pay an amount to the Company which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment had not been required to be made by the Company.

9.5 Financier status confirmation

- (a) Each Financier, which is not an Original Financier, shall indicate, in the documentation which it executes on becoming a Party as a Financier which of the following categories it falls in:
- (i) not a UAE Qualifying Financier; or
- (ii) a UAE Qualifying Financier (other than a UAE Treaty Financier); or
- (iii) a UAE Treaty Financier.

- (b) If such a Financier fails to indicate its status in accordance with this Clause 9.5 then that Financier shall be treated for the purposes of this Agreement (including by the Company) as if it is not a UAE Qualifying Financier until such time as it notifies the Global Agent which category applies (and the Global Agent, upon receipt of such notification, shall inform the Company). For the avoidance of doubt, the documentation which a Financier executes on becoming a Party as a Financier shall not be invalidated by any failure of a Financier to comply with this Clause 9.5.

9.6 Stamp taxes

The Company shall pay and, within five Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Transaction Document, provided that this Clause 9.6 shall not apply in respect of any stamp duty, registration or other similar Taxes payable:

- (a) in respect of a voluntary assignment or transfer or sub-participation or sub-contract by a Financier (other than the Holding Period Trustee) of any of its rights or obligations under any Facility, not including, for the avoidance of doubt, any such assignment, transfer, sub-participation or sub-contract carried out when an Event of Default is continuing or any such transfer or assignment pursuant to Clause 11.1 (*Mitigation*) or any assignment or transfer made by the Holding Period Trustee; or
- (b) pursuant or to the extent that such stamp duty, registration or other similar Tax becomes payable upon a voluntary registration made by any Party if such registration is not required by any applicable law or not necessary to evidence, prove, maintain, enforce, compel or otherwise assert the rights of such Party or obligations of any Party under a Transaction Document.

9.7 VAT

- (a) All amounts expressed to be payable under a Transaction Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Transaction Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Transaction Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Transaction Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party (other than the Holding Period Trustee) must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Transaction Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) Any reference in this Clause 9.7 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference that group at such time.
- (e) In relation to any supply made by a Finance Party to any Party under a Transaction Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

9.8 FATCA information

- (a) Subject to paragraph (c) below, each Party shall, within ten Business Days of a reasonable request by another Party:
 - (i) confirm to that other Party whether it is:
 - (A) a FATCA Exempt Party; or
 - (B) not a FATCA Exempt Party;
 - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA; and
 - (iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests

for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything, and paragraph (a)(iii) above shall not oblige any other Party to do anything, which would or might in its reasonable opinion constitute a breach of:
 - (i) any law or regulation;
 - (ii) any fiduciary duty; or
 - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (a)(ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Transaction Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) Notwithstanding any other provision of this Agreement, the Company shall not be liable for any loss, liability or cost of a Finance Party which arises as a result of any failure by a Finance Party to comply with its obligations under this Clause 9.8, or otherwise arises to a Finance Party as a result of that Finance Party's failure to comply with any information reporting or exchange of information obligations to which such Finance Party is subject.

9.9 FATCA Deduction

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Company and the Global Agent, and the Global Agent shall notify the other Finance Parties.

10. OTHER INDEMNITIES

10.1 Currency indemnity

- (a) If any sum due from the Company under the Transaction Documents (a "Sum"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "First Currency") in which that Sum is payable into another currency (the "Second Currency") for the purpose of:
 - (i) making or filing a claim or proof against the Company; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Company shall as an independent obligation, within three Business Days of demand, indemnify each Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Company waives any right it may have in any jurisdiction to pay any amount under the Transaction Documents in a currency or currency unit other than that in which it is expressed to be payable.

10.2 Other indemnities

The Company shall, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability incurred by it as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by the Company to pay any amount due under a Transaction Document on its due date, including without limitation any cost, loss or liability arising as a result of Clause 25 (*Sharing among the Finance Parties*);
- (c) other than by reason of default or negligence by the relevant Finance Party alone funding, or making arrangements to fund, its participation in a Loan requested by the Company but not made by reason of the operation of any one or more of the provisions of the Conventional Finance Documents;
- (d) a Loan (or part of a Loan) not being prepaid in accordance with the Conventional Finance Documents; or
- (e) payment of an Exercise Price not being made in accordance with the Islamic Financing Transaction Documents.

10.3 Indemnity to the Agents

The Company shall promptly indemnify each Agent against:

- (a) any cost, loss or liability incurred by that Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes to be a Default;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under the Transaction Documents; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by any Agent (otherwise than by reason of that Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 28.11 (*Disruption to payment systems etc.*) notwithstanding that Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of that Agent) in acting as an Agent under the Transaction Documents.

10.4 Indemnity to the Security Agent

- (a) The Company shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:
 - (i) any failure by the Company to comply with its obligations under Clause 12 (*Costs and expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent and each Receiver and Delegate by the Transaction Documents or by law;
 - (v) any default by the Company in the performance of any of the obligations expressed to be assumed by it in the Transaction Documents; or
 - (vi) acting as Security Agent, Receiver or Delegate under the Transaction Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).

- (b) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 10.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

11. MITIGATION BY THE FINANCIERS

11.1 Mitigation

- (a) Each Finance Party shall, in consultation with the Company, take all reasonable steps to mitigate any circumstances which arise and which would result in any Facility ceasing to be available or any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Mandatory early payment – illegality*), Clause 9 (*Tax Gross-Up and Indemnities*), clause 7 (*Increased Costs*) of the Conventional Facility Agreement and any provision relating to increased costs under the Islamic Financing Transaction Documents including (but not limited to) transferring its rights and obligations under the Transaction Documents to an Affiliate or to another Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Company under the Transaction Documents.

11.2 Limitation of liability

- (a) The Company shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 11.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 11.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

12. COSTS AND EXPENSES

12.1 Transaction expenses

The Company shall, promptly on demand, pay each Agent and the Security Agent the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

- (a) the Transaction Documents and any other documents referred to in the Transaction Documents or in a Transaction Security Document; and
- (b) any other Transaction Documents executed after the date of this Agreement.

12.2 Amendment costs

If:

- (a) the Company requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 28.10 (*Change of currency*),

the Company shall, within three Business Days of demand, reimburse each Agent and the Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by that Agent and the Security Agent (and, in the case of the Security Agent, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

12.3 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 10.4 (*Indemnity to the Security Agent*) and this Clause 12 shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Company and the Financiers, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default;
 - (ii) the Security Agent being requested by the Company or the Majority Financiers to undertake duties which the Security Agent and the Company agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Transaction Documents; or
 - (iii) the Security Agent and the Company agreeing that it is otherwise appropriate in the circumstances,

the Company shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Security Agent and the Company fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Company or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Company) and the determination of any investment bank shall be final and binding upon the Parties.

12.4 Enforcement and preservation costs

The Company shall, within three Business Days of demand, pay to each Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Transaction Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

SECTION 6

CASH WATERFALL AND EXIT

13. CASH SWEEP

13.1 Undertaking to upstream cash

- (a) Subject only to restrictions imposed by applicable law and the terms of the NMC Opco Finance Documents, the Company shall take all steps necessary to procure that all amounts of cash or other monies available to be distributed to the Company from the NMC Opco Group are paid or otherwise distributed to the Company within five Business Days of the date such distribution is declared.
- (b) The Company shall ensure that all amounts of cash received or recovered by it shall be paid into the Collection Account as soon as reasonably practicable after receipt for application in accordance with the Cash Waterfall, provided that the Company shall be permitted to:
 - (i) retain an amount equal to the Minimum Cash Balance in the Collection Account at all times;
 - (ii) access the Collection Account to settle:
 - (A) ad hoc payment obligations incurred by the Company in the ordinary course of its business (including any Administrative Costs and Agency Fees); and
 - (B) any amounts required to settle any payments due to a Financier:
 - (1) pursuant to paragraph (b)(ii) of Clause 7.1 (*Mandatory early payment – illegality*); or
 - (2) following the Investment Agent exercising its rights under the Purchase Undertaking as a result of a Shari'a Illegality Event.

13.2 Cash Waterfall

- (a) Subject to paragraph (b) below, on the first Payment Date after the Restructuring Effective Date and each date falling every three Months thereafter (each, a "**Distribution Date**"), the Company shall, and hereby authorises the Global Agent on its behalf to, apply all amounts of cash held in the Collection Account towards the payment and discharge of the obligations of the Company under the Transaction Documents and the Governance Agreement in the following manner and order of priority:
 - (i) *first*, in or towards payment of all unpaid Administrative Costs;
 - (ii) *secondly*, in or towards payment *pro rata* of any unpaid Agency Fees;
 - (iii) *thirdly*, in or towards payment *pro rata* of any accrued cash interest (including all due and unpaid cash interest, including from previous

interest periods), expected income cash amount (including all due and unpaid income cash amount, including from previous income periods), late payment amount, profit, fee or commission due but unpaid in connection with the Priority Holdco Financial Indebtedness (if any);

- (iv) *fourthly*, if an Acceleration Event is continuing, in or towards payment *pro rata* of any principal amount or exercise price (or any other similar or equivalent amount payable) due but unpaid in connection with the Priority Holdco Financial Indebtedness;
- (v) *fifthly*, in or towards payment *pro rata* of any accrued Cash Pay Interest (including all due and unpaid Cash Pay Interest from previous Interest Periods), Income Cash Amount (including all due and unpaid Income Cash Amount from previous Income Periods), profit, fee or commission due but unpaid under the Transaction Documents, together with all other amounts due and payable under the Transaction Documents at such time;
- (vi) *sixthly*, if no Acceleration Event is continuing, in or towards payment *pro rata* of any principal amount (including any capitalised amounts) or exercise price (or any other similar or equivalent amount payable) due but unpaid in connection with the Priority Holdco Financial Indebtedness;
- (vii) *seventhly*, in or towards prepayment *pro rata* of any principal amount (including any PIK Interest, Income PIK Amount or other capitalised amounts) or Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents) outstanding under the Transaction Documents up to an amount equal to 90 per cent. of the Total Commitments as at the date of such payment; and
- (viii) *eightly*, if no Exit Event has occurred, in or towards payment *pro rata* of any Variable Interest or Income Variable Amount,

provided that, if, following the application of amounts in accordance with paragraph (i) to (a)(iv) above, the amounts standing to the credit of the Collection Account at such time are less than USD 10,000,000, neither the Company nor the Global Agent shall be obliged to apply any further amounts in accordance with paragraph (a)(v) onwards unless the Global Agent determines, in its sole and absolute discretion, that it is not operationally burdensome to make such payment. Any amounts not paid in accordance with this provision shall remain in the Collection Account until the next Distribution Date.

- (b) Promptly following an Exit Event which is a Novated Exit Event, the Company shall, and hereby authorises the Global Agent on its behalf to, apply all amounts standing to the credit of the Collection Account in the following manner and order of priority:

- (i) *first*, in transfer to the Indemnity Account an amount sufficient to ensure that the amount standing to the credit of the Indemnity Account immediately following such transfer is at least equal to the Novated Indemnity Cover Amount;
 - (ii) *secondly*, in accordance with paragraph (a)(i) to (a)(vi) above;
 - (iii) *thirdly*, in or towards prepayment *pro rata* of any principal amount (including any PIK Interest, Income PIK Amount or other capitalised amounts) or Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents) outstanding under the Transaction Documents up to an amount equal to the Requisite Novated Indemnity Amount; and
 - (iv) *fourthly*, in or towards payment *pro rata* of any Variable Interest or Income Variable Amount.
- (c) Following the application of amounts standing to the credit of the Collection Account in accordance with paragraph (b) above, the Company shall not be permitted to access any amounts standing to the credit of the Indemnity Account provided that:
- (i) if an Indemnity Determination Event occurs, the Company shall be permitted to, and hereby authorises the Global Agent on its behalf to, transfer an amount equal to the Surplus Cover in respect of such Indemnity Determination Event to the Collection Account and thereafter apply such amounts in the following manner and order of priority:
 - (A) *firstly*, in accordance with paragraph (a)(i) to (a)(vi) above;
 - (B) *secondly*, in or towards prepayment *pro rata* of any principal amount (including any PIK Interest, Income PIK Amount or other capitalised amounts) or Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents) outstanding under the Transaction Documents up to an amount equal to the Requisite Determined Indemnity Amount; and
 - (C) *thirdly*, in or towards payment *pro rata* of any Variable Interest or Income Variable Amount; and
 - (ii) following the occurrence of the End Date, the Company shall be permitted to, and hereby authorises the Global Agent on its behalf to, transfer all amounts standing to the credit of the Indemnity Account to the Collection Account and thereafter apply such amounts in the following manner and order of priority:
 - (A) *firstly*, in accordance with paragraph (a)(i) to (a)(vi) above;
 - (B) *secondly*, in or towards prepayment *pro rata* of any principal amount (including any PIK Interest, Income PIK Amount or other capitalised amounts) or Exercise Price (or any other similar

- or equivalent amount payable under the Islamic Financing Transaction Documents) outstanding under the Transaction Documents; and
- (C) *thirdly*, in or towards payment *pro rata* of any Variable Interest or Income Variable Amount.
- (d) On an Exit Event which is not a Novated Exit Event, the Company shall, and hereby authorises the Global Agent on its behalf to, apply all amounts standing to the credit of the Collection Account in the following manner and order of priority:
- (i) *first*, in accordance with paragraph (a)(i) to (a)(vi) above;
 - (ii) *secondly*, in or towards prepayment *pro rata* of any principal amount (including any PIK Interest, Income PIK Amount or other capitalised amounts) or Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents) outstanding under the Transaction Documents; and
 - (iii) *thirdly*, in or towards payment *pro rata* of any Variable Interest or Income Variable Amount.
- (e) This Clause will override any appropriation made by the Company.

14. EXIT

14.1 Commencement of Exit process

If the Company has not commenced an Exit within three years following the date of this Agreement, the Global Agent (acting on the instructions of the Majority Reporting Financiers) may at any time require the Company to use commercially reasonable endeavours to pursue an Exit by such means as the Majority Reporting Financiers may at that time determine.

14.2 Consideration on Exit

- (a) Unless the prior written consent of the Global Agent (acting on the instructions of the Super Majority Reporting Financiers) is obtained, the Company shall not (and shall ensure that no other member of the Group will) agree to any Exit Event unless:
- (i) such agreement provides that each Financier is entitled to elect to receive any consideration payable to it following the occurrence of such Exit Event pursuant to the Cash Waterfall in cash (of equivalent value to any non-cash consideration payable, as determined pursuant to paragraph (b) below); and
 - (ii) the cash consideration payable pursuant to such Exit Event is sufficient to discharge all amounts payable pursuant to paragraphs (a)(i) and (a)(ii) of Clause 13.2 (*Cash Waterfall*) and the amounts payable to Financiers who have made the election referred to in paragraph (a)(i) above.

- (b) The cash value of any non-cash consideration shall be determined by reference to a valuation obtained by the Global Agent from a Financial Adviser appointed in connection with such Exit Event.
- (c) If any non-cash consideration is distributed pursuant to Clause 13.2 (*Cash Waterfall*), the extent to which such distribution is treated as discharging the relevant amounts payable in accordance with the Cash Waterfall shall be determined by reference to the cash value of such non-cash consideration determined pursuant to paragraph (b) above.

14.3 Competitive bid

No provision of this Agreement or any other Transaction Document shall prevent one or more Financiers from bidding to acquire all or any part of the NMC Opco Group, financing any such bid, or otherwise participating in an Exit in any capacity.

14.4 Facilitation of winding up of the Company post Exit

Each Party agrees to use its reasonable endeavours to take any steps necessary to facilitate the release of any residual amounts outstanding under the Transaction Documents following an Exit to be released in a tax-efficient manner in order to permit the solvent and timely winding up of the Company.

SECTION 7 **REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

15. REPRESENTATIONS

15.1 General

The Company on behalf of itself makes the representations and warranties set out in this Clause 15 to each Finance Party.

15.2 Status

- (a) It is a private company limited by shares, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) Each of its Subsidiaries is a private company limited by shares, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (c) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

15.3 Binding obligations

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

15.4 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the Transaction Security do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of the Company; or
- (c) any agreement or instrument binding upon it or NMC Opco or any of its of NMC Opco's assets or constitute a default or termination event (however described) under any such agreement or instrument.

15.5 Power and authority

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction

Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.

- (b) No limit on its powers will be exceeded as a result of the borrowing, or otherwise assuming payment obligations under the Islamic Financing Transaction Documents, grant of Security or giving of indemnities contemplated by the Transaction Documents to which it is a party.

15.6 Validity and admissibility in evidence

- (a) All Authorisations required or desirable:
- (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
 - (ii) to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect.

- (b) All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect.

15.7 Governing law and enforcement

Subject to the Legal Reservations:

- (a) the choice of governing law of the Transaction Documents will be recognised and enforced in its Relevant Jurisdictions; and
- (b) any judgment obtained in relation to a Transaction Document in the jurisdiction of the governing law of that Transaction Document will be recognised and enforced in its Relevant Jurisdictions.

15.8 Insolvency

- (a) No:
- (i) corporate action, legal proceeding or other procedure or step described in paragraph (a) of Clause 18.6 (*Insolvency proceedings*); or
 - (ii) creditors' process described in Clause 18.7 (*Creditors' process*),

has been taken or, to the knowledge of the Company, threatened in relation to a Material Company.

- (b) None of the circumstances described in Clause 18.5 (*Insolvency*) applies to a Material Company.

15.9 No default

- (a) No Event of Default and, on the date of this Agreement, no Default is continuing or is reasonably likely to result from:
 - (i) the making of any Loan, payment of any Purchase Price or the sale by the Company of the Relevant Assets pursuant to the Islamic Financing Transaction Documents; or
 - (ii) the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or NMC Opco or to which its or NMC Opco's assets are subject which has or is reasonably likely to have a Material Adverse Effect.

15.10 No misleading information

Save as disclosed in writing to the Global Agent prior to the date of this Agreement:

- (a) any factual information provided in writing for the purposes of evaluating and entering into this Agreement (the "**Information**") by or on behalf of any member of the Group to any Finance Party including pursuant to the DOCAs was true and accurate in all material respects as at the date of the relevant report or document containing the Information or (as the case may be) as at the date the information is expressed to be given;
- (b) any financial projection or forecast contained in the Information has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;
- (c) the expressions of opinion or intention provided by or on behalf of a member of the Group for the purposes of any Information were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;
- (d) no event or circumstance has occurred or arisen and no information has been omitted from the Information and no information has been given or withheld by or on behalf of any member of the Group that results in that information, opinions, intentions, forecasts or projections contained in the Information being untrue or misleading in any material respect; and
- (e) all other written information provided by any member of the Group (including its advisers) to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

15.11 Taxation

- (a) It is not materially overdue in the filing of any Tax returns and it is not overdue in the payment of any amount in respect of Tax where such late filing or late payment could reasonably be expected to have a Material Adverse Effect.
- (b) No claims or investigations are being, or are reasonably likely to be, made or conducted against it with respect to Taxes such that a liability of, or claim against, the Company and which could reasonably be expected to have a Material Adverse Effect, is reasonably likely to arise.
- (c) It is not resident for Tax purposes outside the UAE or the Emirate of Abu Dhabi.
- (d) It is not subject to income Tax in the ADGM and the Emirate of Abu Dhabi.

15.12 Anti-corruption law

Each member of the Group has conducted its businesses in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

15.13 Security and Financial Indebtedness

- (a) No Security or Quasi-Security exists over all or any of the present or future assets of the Company other than as permitted by this Agreement.
- (b) The Company has no Financial Indebtedness outstanding other than as permitted by this Agreement.

15.14 Ranking

The Transaction Security has or will have the ranking in priority which it is expressed to have in the Transaction Security Documents and it is not subject to any prior ranking or *pari passu* ranking Security.

15.15 Legal and beneficial ownership

Save as expressly provided for in the Transaction Documents, it and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

15.16 Shares

Save as expressly provided for in the Transaction Documents:

- (a) the shares of NMC Opco which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights;
- (b) the constitutional documents of NMC Opco do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security; and

- (c) there are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of NMC Opc (including any option or right of pre-emption or conversion).

15.17 Holding Company

Except as may arise under or in connection with the Transaction Documents, the Restructuring Implementation Deed or any DOCA, the Company has not traded or incurred any liabilities or commitments (actual or contingent, present or future) other than in the case of the Company acting as a Holding Company of NMC Opc.

15.18 Sanctions

No member of the Group or any of its respective directors or officers or, any of such member of the Group's employees, affiliates, agents or representatives:

- (a) is a Restricted Party;
- (b) has been engaged in any transaction, activity or conduct that would result in it being designated as a Restricted Party;
- (c) is currently engaging in any transaction, activity or conduct that would result in a violation of any Sanctions;
- (d) has received notice of, or is otherwise aware of, any claim, action, suit, proceedings or investigation involving it with respect to any Sanctions; and/or
- (e) is acting on behalf of or at the direction of any Restricted Party in connection with any Facility.

15.19 Shari'a compliance

- (a) It has not relied upon any Finance Party with respect to the compliance of the Islamic Financing Transaction Documents with Shari'a principles.
- (b) To the extent it has considered this necessary, it has sought independent advice from its own advisers specialising in Shari'a principles before entering into the Transaction Documents.

15.20 Times when representations made

All the representations and warranties in this Clause 15 are made by the Company on the date of this Agreement.

16. INFORMATION UNDERTAKINGS

The undertakings in this Clause 16 remain in force from the date of this Agreement for so long as any amount is outstanding under the Transaction Documents or any Commitment is in force.

16.1 Information - miscellaneous

The Company shall supply to the Global Agent (in sufficient copies for all the Financiers, if the Global Agent so requests):

- (a) if at any time there is any material update, change or inaccuracy in relation to the nature, scope or other detail of the Financial Indebtedness incurred by or the Security granted by or in connection with the Company or its assets as set out in the Information or any other information delivered to a Finance Party, details of any such update or change promptly upon becoming aware of them;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it or its assets and which, if adversely determined, are reasonably likely to have a Material Adverse Effect;
- (c) promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral body or agency which is made against it and which is reasonably likely to have a Material Adverse Effect; and
- (d) promptly, such information as the Security Agent may reasonably require about the Charged Property and compliance of the Company with the terms of any Transaction Security Documents.

16.2 Notification of Default

- (a) The Company shall notify the Global Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly on request by the Global Agent, the Company shall supply to the Global Agent a certificate signed by two members of the board of directors of the Company on its behalf certifying that no Default is continuing (or, if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

16.3 "Know your customer" checks

- (a) If:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
 - (ii) any change in the status of the Company or the composition of the shareholders of the Company after the date of this Agreement; or
 - (iii) a proposed assignment or transfer by a Financier of any of its rights and/or obligations under this Agreement to a party that is not a Financier prior to such assignment or transfer,

obliges an Agent or any Financier (or, in the case of paragraph (iii) above, any prospective new Financier) to comply with "know your customer" or similar

identification procedures in circumstances where the necessary information is not already available to it, the Company shall promptly upon the request of an Agent or any Financier supply, or procure the supply of, such documentation and other evidence as is reasonably requested by an Agent (for itself or on behalf of any Financier) or any Financier (for itself or, in the case of the event described in paragraph (iii) above, on behalf of any prospective new Financier) in order for that Agent, such Financier or, in the case of the event described in paragraph (iii) above, any prospective new Financier to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Transaction Documents.

- (b) Each Financier shall promptly upon the request of an Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by that Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Transaction Documents.

17. GENERAL UNDERTAKING

The undertaking in this Clause 17 remain in force from the date of this Agreement for so long as any amount is outstanding under the Transaction Documents or any Commitment is in force.

- (a) To the extent permitted by law, the Company hereby agrees that it has accepted the Shari'a compliant nature of the Islamic Financing Transaction Documents to which it is a party and further agrees that:
- (i) it shall not claim that any of its obligations under the Islamic Financing Transaction Documents to which it is a party (or any provision thereof) is not compliant with the principles of Shari'a;
 - (ii) it shall not make any claim in any dispute on the basis of Shari'a compliance save where instructed to do so by the Islamic Financing Parties;
 - (iii) it shall not take any steps or bring any proceedings in any forum to challenge the Shari'a compliance of the Islamic Financing Transaction Documents to which it is a party; and
 - (iv) none of its obligations under the Islamic Financing Transaction Documents to which it is a party shall in any way be diminished, abrogated, impaired, invalidated or otherwise adversely affected by any finding, declaration, pronouncement, order or judgment of any court, tribunal or other body that the Islamic Financing Transaction Documents to which it is a party are not compliant with the principles of Shari'a.
- (b) The Company shall notify each Financier of their respective Commitments under the Financier Schedule on the Restructuring Effective Date.

18. EVENTS OF DEFAULT

Each of the events or circumstances set out in this Clause 18 is an Event of Default.

18.1 Non-payment

The Company does not pay on the due date any amount payable pursuant to the Cash Waterfall at the place at and in the currency in which it is expressed to be payable unless:

- (a) the Company has insufficient funds available to pay such amount on its due date in accordance with the Cash Waterfall; or
- (b) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and

payment is made within five Business Days of its due date.

18.2 Anti-corruption law

The Company directly or indirectly uses the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

18.3 Sanctions

The Company:

- (a) lends, contributes or otherwise makes available all or any part of the proceeds of the Facilities, directly or indirectly, to, or for the benefit of, any individual or entity (whether or not related to any member of the Group) for the purpose of funding, financing or facilitating the activities or business of, other transactions with, or investments in, any Restricted Party or in any Sanctioned Country, except to the extent permitted for a person required to comply with Sanctions;
- (b) directly or indirectly funds all or part of any repayment or prepayment of the Facilities out of proceeds derived from any transaction with or action involving a Restricted Party; or
- (c) engages in any transaction, activity or conduct that would violate any Sanctions.

18.4 Cross acceleration

- (a) Any Financial Indebtedness of any Material Company 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).

- (b) Any commitment for any Financial Indebtedness of any Material Company is cancelled or suspended by a creditor of NMC Opco as a result of an event of default (however described).
- (c) No Event of Default will occur under this Clause if the Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (b) above is in aggregate less than US\$10,000,000 (or its equivalent in any other currency or currencies).

18.5 Insolvency

- (a) The Company:
 - (i) is unable or admits inability to pay its debts as they fall due;
 - (ii) is deemed to, or is declared to, be unable to pay its debts under applicable law;
 - (iii) suspends or threatens to suspend making payments on any of its debts; or
 - (iv) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness,

provided that, in the case of sub-paragraphs (i) and (ii) above, the Company will not be deemed to be unable to pay their debts as they fall due solely because the Company has insufficient funds available to pay amounts required to be paid on their due date in accordance with the Cash Waterfall.

- (b) The value of the assets of the Company is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Company. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

18.6 Insolvency proceedings

- (a) Any corporate action, legal proceeding or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company;
 - (ii) a composition, compromise, assignment or arrangement with any creditor of the Company;

- (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Company; or
 - (iv) enforcement of any Security over any assets of the Company, or any analogous procedure or step is taken in any jurisdiction.
- (b) Paragraph (a) shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

18.7 Creditors' process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Company, unless such action is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement.

18.8 Unlawfulness and invalidity

- (a) It is or becomes unlawful for the Company to perform any of its obligations under the Transaction Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective.
- (b) Any obligation or obligations of the Company under any Transaction Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Financiers under the Transaction Documents.
- (c) Any Transaction Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

18.9 Repudiation and rescission of agreements

The Company (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Transaction Document or any Transaction Security.

18.10 Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the Global Agent may, and shall if so directed by the Majority Financiers instruct the Conventional Facility Agent and/or the Investment Agent to:

- (a) by notice to the Company:
 - (i) declare that:
 - (A) all or part of the Loans, together with accrued interest and all other amounts accrued or outstanding under the Conventional Finance Documents be immediately due and payable, at which time they shall become immediately due and payable; and/or
 - (B) all or part of the Loans be payable on demand, at which time they shall immediately become payable on demand by the Global Agent on the instructions of the Majority Financiers;
 - (ii) exercise its rights under the Purchase Undertaking in order to declare that all or part of any amounts outstanding under the Islamic Financing Transaction Documents are:
 - (A) immediately due and payable, at which time they shall become immediately due and payable; and/or
 - (B) payable on demand, at which time they shall immediately become payable on demand by the Investment Agent acting on the instructions of the Global Agent on the instructions of the Majority Financiers.
- (b) exercise or direct each Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Transaction Documents.

SECTION 8

CHANGES TO PARTIES

19. CHANGES TO THE FINANCIERS

19.1 Assignments and transfers by the Financiers

Subject to this Clause 19 and to Clause 20 (*Restriction on Participation Purchase Transactions*), a Financier (the "Existing Financier") may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

under any Transaction Document to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (or, in the case of a transfer by the Holding Period Trustee, to any other Non-Submitting Creditor, Holdback Creditor, Reallocated Group Creditor or to any other party permitted pursuant to the Holding Period Trust Deed) (the "New Financier") if:

- (i) that assignment or transfer is in accordance with the terms of this Clause 19; and
- (ii) the New Financier has acceded to the Governance Agreement as a Financier by executing a Deed of Adherence in accordance with the requirements of the Governance Agreement.

19.2 Company consent

- (a) The consent of the Company is not required for an assignment or transfer by an Existing Financier, unless the assignment or transfer is:
 - (i) to an Industrial Competitor or trade counterparty; or
 - (ii) to a person engaged in any litigation, arbitration or other dispute with a member of the Group or the Old NMC Group which, if adversely determined, is reasonably likely to have a Material Adverse Effect,

unless in each case the assignment or transfer is made by the Holding Period Trustee.

- (b) The consent of the Company to an assignment or transfer must not be unreasonably withheld or delayed. The Company will be deemed to have given its consent 15 Business Days after the Existing Financier has requested it unless consent is expressly refused by the Company within that time.

19.3 Other conditions of assignment or transfer

- (a) Other than assignments or transfers made by the Holding Period Trustee or NMC Health (Jersey) Limited, an assignment or transfer of a Financier's participation in Commitments or Loans (when aggregated with its Affiliates'

and Related Funds' participation being so assigned or transferred at the same time) must be in a minimum amount of USD 1,000,000 or, if less, the Financier's Total Commitments (or such lower amount as the Global Agent may agree in its absolute discretion).

- (b) An assignment will only be effective on:
 - (i) receipt by the Global Agent and, as applicable, the Conventional Facility Agent or the Investment Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Financier (in form and substance satisfactory to the relevant Agents) that the New Financier will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it had been an Original Financier; and
 - (ii) performance by the Global Agent and, as applicable, the Conventional Facility Agent or the Investment Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Financier, the completion of which each Agent shall promptly notify to the Existing Financier and the New Financier.
- (c) A transfer will only be effective if the procedure set out in Clause 19.6 (*Procedure for transfer*) is complied with.
- (d) If:
 - (i) a Financier assigns or transfers any of its rights or obligations under the Transaction Documents or changes its Facility Office; and
 - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, the Company would be obliged to make a payment to the New Financier or Financier acting through its new Facility Office under clause 7 (*Increased Costs*) of the Conventional Facility Agreement and any increased cost provisions in the Islamic Financing Transaction Documents,then the New Financier or Financier acting through its new Facility Office is only entitled to receive payment under those clauses to the same extent as the Existing Financier or Financier acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred. This paragraph (d) shall not apply in respect of an assignment or transfer made in the ordinary course of the primary syndication of any Facility.
- (e) Each New Financier, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Global Agent and, as applicable, the Conventional Facility Agent or the Investment Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Financier or Financiers in accordance with the Transaction Documents on or prior to the date on which the transfer or assignment becomes effective in accordance with the Transaction

Documents and that it is bound by that decision to the same extent as the Existing Financier would have been had it remained a Financier.

- (f) Each Existing Financier, in connection with an assignment or transfer, confirms that it (i) entered into its participation in Commitments or Loans pursuant to a transaction exempt from registration under the Securities Act and (ii) has at no time engaged in a "general solicitation" or "general advertising" (as such terms are used for purposes of Regulation D promulgated under the Securities Act) or "directed selling efforts" (as that term is defined in Rule 902 of Regulation S promulgated under the Securities Act) with respect to such Commitment or Loan.
- (g) Each New Financier, by executing the relevant Transfer Certificate or Assignment Agreement, confirms that:
 - (i) if it is a US Person or within the United States, (A) it is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act and (B) it is acquiring the Commitment or Loan for its own account, for investment and not with a view to the distribution or resale thereof;
 - (ii) if it is not a US Person, it is not acquiring the Commitment or Loan in the United States or on behalf of a US Person, nor is it funding its acquisition of the Commitment or Loan with funds obtained from a US Person;
 - (iii) it has at no time been the subject of any "general solicitation" or "general advertising" (as such terms are used for purposes of Regulation D promulgated under the Securities Act) or "directed selling efforts" (as that term is defined in Rule 902 of Regulation S promulgated under the Securities Act) with respect to such Commitment or Loan; and
 - (iv) it agrees not to offer, sell, transfer, pledge, hypothecate or otherwise dispose of, directly or indirectly, all or any part of its Commitment or Loan, except in accordance with the registration requirements of the Securities Act and any other applicable securities laws or pursuant to an exemption therefrom.
- (h) Subject to Clause 5.2 (*Re-allocation of Commitments*), any assignment or transfer made by an Participant pursuant to this Clause 19 shall be made:
 - (i) for a price equal to the existing Participant's share in the outstanding Purchase Price; and
 - (ii) on the last day of an Income Period.

19.4 Assignment or transfer fee

- (a) Subject to paragraph (b) below, the New Financier shall, on the date upon which an assignment or transfer takes effect where that New Financier is either a

Conventional Lender or a Participant, pay to the Global Agent (for its own account) a fee of USD3,500.

- (b) No fee is payable pursuant to paragraph (a) above if:
 - (i) the Global Agent agrees that no fee is payable; or
 - (ii) the assignment or transfer is made by an Existing Financier:
 - (A) to an Affiliate of that Existing Financier;
 - (B) to a fund which is a Related Fund of that Existing Financier; or
 - (C) in connection with primary syndication of any Facility;
 - (iii) the assignment or transfer is made by the Holding Period Trustee.

19.5 Limitation of responsibility of Existing Financier

- (a) Unless expressly agreed to the contrary, an Existing Financier makes no representation or warranty and assumes no responsibility to a New Financier for:
 - (i) the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
 - (ii) the financial condition of the Company;
 - (iii) the performance and observance by the Company of its obligations under the Transaction Documents or any other documents; or
 - (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document,
- and any representations or warranties implied by law are excluded.
- (b) Each New Financier confirms to the Existing Financier and the other Secured Parties that it:
 - (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of the Company and its related entities in connection with its participation in the Transaction Documents and has not relied exclusively on any information provided to it by the Existing Financier or any other Finance Party in connection with any Transaction Document or the Transaction Security; and
 - (ii) will continue to make its own independent appraisal of the creditworthiness of the Company and its related entities whilst any amount is or may be outstanding under the Transaction Documents or any Commitment is in force.

- (c) Nothing in any Transaction Document obliges an Existing Financier to:
 - (i) accept a re-transfer or re-assignment from a New Financier of any of the rights and obligations assigned or transferred under this Clause 19; or
 - (ii) support any losses directly or indirectly incurred by the New Financier by reason of the non-performance by the Company of its obligations under the Transaction Documents or otherwise.

19.6 Procedure for transfer

- (a) Subject to the conditions set out in Clause 19.2 (*Company consent*) and Clause 19.3 (*Other conditions of assignment or transfer*), a transfer is effected in accordance with paragraph (c) below when the Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Financier and the New Financier. The Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of the Transaction Documents and delivered in accordance with the terms of the Transaction Documents, execute that Transfer Certificate.
- (b) The Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Financier and the New Financier once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Financier.
- (c) Subject to Clause 19.10 (*Pro rata settlement*), on the Transfer Date:
 - (i) to the extent that in the Transfer Certificate the Existing Financier seeks to transfer by novation its rights and obligations under the Transaction Documents, the Company and the Existing Financier shall be released from further obligations towards one another under the Transaction Documents and their respective rights against one another under the Transaction Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**");
 - (ii) each of the Company and the New Financier shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Company and the New Financier have assumed and/or acquired the same in place of the Company and the Existing Financier;
 - (iii) each Agent, the Security Agent, the New Financier and the other Financier shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Financier been an Original Financier with the rights and/or obligations acquired or

assumed by it as a result of the transfer, and to that extent each Agent and the Security Agent and the Existing Financier shall each be released from further obligations to each other under the Transaction Documents; and

- (iv) the New Financier shall become a Party as a "Financier".

19.7 Procedure for assignment

- (a) Subject to the conditions set out in Clause 19.2 (*Company consent*) and Clause 19.3 (*Other conditions of assignment or transfer*), an assignment may be effected in accordance with paragraph (c) below when the Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Financier and the New Financier. The Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of the Transaction Documents and delivered in accordance with the terms of the Transaction Documents, execute that Assignment Agreement.
- (b) The Global Agent and, as applicable, the Conventional Facility Agent or Investment Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Financier and the New Financier once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assignment to such New Financier.
- (c) Subject to Clause 19.10 (*Pro rata settlement*), on the Transfer Date:
 - (i) the Existing Financier will assign absolutely to the New Financier its rights under the Transaction Documents expressed to be the subject of the assignment in the Assignment Agreement;
 - (ii) the Existing Financier will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and
 - (iii) the New Financier shall become a Party as a "Financier" and will be bound by obligations equivalent to the Relevant Obligations.
- (d) Financiers may utilise procedures other than those set out in this Clause 19.7 to assign their rights under the Transaction Documents (but not, without the consent of the Company or unless in accordance with Clause 19.6 (*Procedure for transfer*), to obtain a release by the Company from the obligations owed to the Company by the Financiers nor the assumption of equivalent obligations by a New Financier) **provided that** they comply with the conditions set out in Clause 19.2 (*Company consent*) and Clause 19.3 (*Other conditions of assignment or transfer*).

19.8 Copy of Transfer Certificate or Assignment Agreement to Company

The Global Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Company a copy of that Transfer Certificate or Assignment Agreement.

19.9 Security over Financiers' rights

In addition to the other rights provided to Financiers under this Clause 19, each Financier may, without consulting with or obtaining consent from the Company, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Transaction Document to secure obligations of that Financier including:

- (a) any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and
- (b) any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Financier as security for those obligations or securities,

except that no such charge, assignment or Security shall:

- (i) release a Financier from any of its obligations under the Transaction Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Financier as a party to any of the Transaction Documents; or
- (ii) require any payments to be made by the Company other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Financier under the Transaction Documents.

19.10 *Pro rata* settlement

- (a) If the Conventional Facility Agent has notified the Conventional Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Financiers and New Financiers then in relation to the Conventional Facility only (in respect of any transfer pursuant to Clause 19.6 (*Procedure for transfer*) or any assignment pursuant to Clause 19.7 (*Procedure for assignment*) by a Conventional Lender, the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Financier up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Financier (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

- (ii) the rights assigned or transferred by the Existing Financier will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Financier; and
 - (B) the amount payable to the New Financier on that date will be the amount which would, but for the application of this Clause 19.10, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 19.10, references to "**Interest Period**" shall be construed to include a reference to any other period for accrual of fees.
- (c) An Existing Financier which retains the right to the Accrued Amounts pursuant to this Clause 19.10 but which does not have a Commitment shall be deemed not to be a Financier for the purposes of ascertaining whether the agreement of any specified group of Financiers has been obtained to approve any request for a consent, waiver, amendment or other vote of Financiers under the Transaction Documents.

19.11 Terms

In the event of any inconsistency between the provisions of this clause 19 and the provisions of the Holding Period Trust Deed, the provisions of the Holding Period Trust Deed shall prevail.

20. RESTRICTION ON PARTICIPATION PURCHASE TRANSACTIONS

The Company shall not, and shall procure that each other member of the Group shall not, enter into any Participation Purchase Transaction or beneficially own all or any part of the share capital of a company that is a Financier or a party to a Participation Purchase Transaction of the type referred to in paragraphs (b) or (c) of the definition of "**Participation Purchase Transaction**".

21. CHANGES TO THE COMPANY

The Company may not assign any of its rights or transfer any of its rights or obligations under the Transaction Documents.

SECTION 9 THE FINANCE PARTIES

22. ROLE OF THE GLOBAL AGENT AND OTHERS

22.1 Appointment of the Global Agent

- (a) Each of the Financiers appoints the Global Agent to act as its agent under and in connection with the Transaction Documents.
- (b) Each of the Financiers authorises the Global Agent to:
 - (i) perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Global Agent under or in connection with the Transaction Documents together with any other incidental rights, powers, authorities and discretions; and
 - (ii) execute each Transaction Document expressed to be executed by the Global Agent.
- (c) The Global Agent has only those duties which are expressly specified in the Transaction Documents. Those duties are solely of a mechanical and administrative nature.

22.2 Instructions

- (a) The Global Agent shall:
 - (i) unless a contrary indication appears in a Transaction Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Global Agent in accordance with any instructions given to it by:
 - (A) all Financiers if the relevant Transaction Document stipulates the matter is an all Financier decision;
 - (B) the Majority Reporting Financiers if the relevant Transaction Document stipulates the matter is a Majority Reporting Financier decision;
 - (C) the Increased Majority Reporting Financiers if the relevant Transaction Document stipulates the matter is an Increased Majority Reporting Financier decision;
 - (D) the Super Majority Reporting Financiers if the relevant Transaction Document stipulates the matter is a Super Majority Reporting Financier decision;
 - (E) in all other cases, the Majority Financiers; and

- (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Global Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Financiers (or, if the relevant Transaction Document stipulates the matter is a decision for any other Financier or group of Financiers, from that Financier or group of Financiers) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Global Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Financier or group of Financiers under the relevant Transaction Document and unless a contrary indication appears in a Transaction Document, any instructions given to the Global Agent by the Majority Financiers shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Agent.
- (d) The Global Agent may refrain from acting in accordance with any instructions of any Financier or group of Financiers until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Transaction Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Global Agent may act (or refrain from acting) as it considers to be in the best interest of the Financiers.
- (f) The Global Agent is not authorised to act on behalf of a Financier (without first obtaining that Financier's consent) in any legal or arbitration proceedings relating to any Transaction Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

22.3 Duties of the Global Agent

- (a) The Global Agent's duties under the Transaction Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Global Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Global Agent for that Party by any other Party.
- (c) Without prejudice to Clause 19.8 (*Copy of Transfer Certificate or Assignment Agreement to Company*), paragraph (b) above shall not apply to any Transfer Certificate or Assignment Agreement.
- (d) Except where a Transaction Document specifically provides otherwise, the Global Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

- (e) If the Global Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Global Agent is aware of the non-payment of any principal, interest, commission, profit, commitment fee or other fee payable to a Finance Party (other than an Agent or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Global Agent shall have only those duties, obligations and responsibilities expressly specified in the Transaction Documents to which it is expressed to be a party (and no others shall be implied).

22.4 No fiduciary duties

- (a) Nothing in any Transaction Document constitutes the Global Agent as a trustee or fiduciary of any other person.
- (b) Neither the Global Agent shall be bound to account to any Financier for any sum or the profit element of any sum received by it for its own account.

22.5 Business with the Group

The Global Agent may accept deposits from, lend money or provide Islamic facilities to and generally engage in any kind of banking or other business with any member of the Group.

22.6 Rights and discretions

- (a) The Global Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised; and
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Financiers, any Financiers or any group of Financiers are duly given in accordance with the terms of the Transaction Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Global Agent may assume (unless it has received notice to the contrary in its capacity as Global Agent) that:
 - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 18.1 (*Non-payment*)); and
 - (ii) any right, power, authority or discretion vested in any Party or any group of Financiers has not been exercised.
- (c) The Global Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Global Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Global Agent (and so separate from any lawyers instructed by the Financiers) if the Global Agent in its reasonable opinion deems this to be desirable.
- (e) The Global Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Global Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Global Agent may act in relation to the Transaction Documents through its officers, employees and agents and the Global Agent shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Global Agent's gross negligence or wilful misconduct.
- (g) Unless a Transaction Document expressly provides otherwise the Global Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Global Agent:
 - (i) may disclose; and
 - (ii) on the written request of the Company or the Majority Financiers shall, as soon as reasonably practicable, disclose,
the identity of a Defaulting Financier to the Company and to the other Finance Parties.

- (i) Notwithstanding any other provision of any Transaction Document to the contrary, the Global Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (j) Notwithstanding any provision of any Transaction Document to the contrary, the Global Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

22.7 Responsibility for documentation

The Global Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Global Agent, the Company or any other person in or in connection with any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

22.8 No duty to monitor

The Global Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

22.9 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Transaction Document excluding or limiting the liability of the

Global Agent), the Global Agent will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:

- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Transaction Security, unless directly caused by its gross negligence or wilful default;
- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Transaction Security; or
- (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Global Agent) may take any proceedings against any officer, employee or agent of the Global Agent in respect of any claim it might have against the Global Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document and any officer, employee or agent of the Global Agent may rely on this paragraph (b), subject to Clause (i) (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Global Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Transaction Documents to be paid by the Global Agent if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Global Agent for that purpose.

- (d) Nothing in the Transaction Documents shall oblige the Global Agent to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Financier or for any Affiliate of any Financier,

on behalf of any Financier and each Financier confirms to the Global Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Global Agent.

- (e) Without prejudice to any provision of any Transaction Document excluding or limiting the Global Agent's liability, any liability of the Global Agent arising under or in connection with any Transaction Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Global Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Global Agent at any time which increase the amount of that loss. In no event shall the Global Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Global Agent has been advised of the possibility of such loss or damages.

22.10 Financiers' indemnity to the Global Agent

- (a) Each Financier (other than the Holding Period Trustee) shall (in proportion to its share of the Agent Indemnity Commitments or, if the Agent Indemnity Commitments are then zero, to its share of the Agent Indemnity Commitments immediately prior to their reduction to zero) indemnify the Global Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Global Agent (otherwise than by reason of the Global Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 28.11 (*Disruption to payment systems etc.*), notwithstanding the Global Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Global Agent) in acting as the Global Agent under the Transaction Documents (unless the Global Agent has been reimbursed by the Company pursuant to a Transaction Document).
- (b) Subject to paragraph (c) below, the Company shall immediately on demand reimburse any Financier for any payment that Financier makes to the Global Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Financier claims reimbursement relates to a liability of the Global Agent to the Company.

22.11 Resignation of the Global Agent

- (a) The Global Agent may resign and appoint one of its Affiliates as successor by giving notice to the Financiers and the Company.
- (b) Alternatively, the Global Agent may resign by giving 30 days' notice to the Financiers and the Company, in which case the Majority Financiers (after consultation with the Company) may appoint a successor to the Global Agent.
- (c) If the Majority Financiers have not appointed a successor Global Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the resigning Global Agent (after consultation with the Company) may appoint a successor Global Agent.
- (d) If the Global Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Global Agent is entitled to appoint a successor Global Agent under paragraph (c) above, the Global Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Global Agent to become a party to this Agreement as Global Agent) agree with the proposed successor Global Agent amendments to this Clause 22 and any other term of this Agreement dealing with the rights or obligations of the Global Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Global Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Global Agent shall, make available to the successor Global Agent such documents and records and provide such assistance as the successor Global Agent may reasonably request for the purposes of performing its functions as Global Agent under the Transaction Documents. The Company shall, within three Business Days of demand, reimburse the retiring Global Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Global Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Global Agent shall be discharged from any further obligation in respect of the Transaction Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 10.3 (*Indemnity to the Agents*) and this Clause 22 (and any agency fees for the account of the resigning Global Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) The Global Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Global Agent pursuant to paragraph (c) above) if on or after the date which is

three months before the earliest FATCA Application Date relating to any payment to the Global Agent under the Transaction Documents, either:

- (i) the Global Agent fails to respond to a request under Clause 9.8 (*FATCA information*) and a Financier reasonably believes that the Global Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
- (ii) the information supplied by the Global Agent pursuant to Clause 9.8 (*FATCA information*) indicates that the Global Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
- (iii) the Global Agent notifies the Company and the Financiers that the Global Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and (in each case) a Financier reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Global Agent were a FATCA Exempt Party, and that Financier, by notice to the Global Agent, requires it to resign.

22.12 Replacement of the Global Agent

- (a) After consultation with the Company, the Majority Financiers may, by giving 30 days' notice to the Global Agent (or, at any time the Global Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Financiers) replace the Global Agent by appointing a successor Global Agent.
- (b) The retiring Global Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Financiers) make available to the successor Global Agent such documents and records and provide such assistance as the successor Global Agent may reasonably request for the purposes of performing its functions as Global Agent under the Transaction Documents.
- (c) The appointment of the successor Global Agent shall take effect on the date specified in the notice from the Majority Financiers to the retiring Global Agent. As from this date, the retiring Global Agent shall be discharged from any further obligation in respect of the Transaction Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 10.3 (*Indemnity to the Agents*) and this Clause 22 (and any agency fees for the account of the retiring Global Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Global Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

22.13 Confidentiality

- (a) In acting as agent for the Finance Parties, the Global Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Global Agent, it may be treated as confidential to that division or department and the Global Agent shall not be deemed to have notice of it.

22.14 Relationship with the Financiers

- (a) Subject to Clause 19.10 (*Pro rata settlement*), the Global Agent may treat the person shown in its records as Financier at the opening of business (in the place of the Global Agent's principal office as notified to the Finance Parties from time to time) as the Financier acting through its Facility Office:
 - (i) entitled to or liable for any payment due under any Transaction Document on that day; and
 - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Transaction Document made or delivered on that day,

unless it has received not less than five Business Days' prior notice from that Financier to the contrary in accordance with the terms of this Agreement.

- (b) Any Financier may by notice to the Global Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Financier under the Transaction Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 30.6 (*Electronic Communication*) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address (or such other information), department and officer by that Financier for the purposes of Clause 30.2 (*Addresses*) and paragraph (a)(i) of Clause 30.6 (*Electronic Communication*) and the Global Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Financier.

22.15 Credit appraisal by the Financiers

Without affecting the responsibility of the Company for information supplied by it or on its behalf in connection with any Transaction Document, each Financier confirms to the Global Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Transaction Document including but not limited to:

- (a) the financial condition, status and nature each member of the Group;

- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;
- (c) whether that Financier has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Transaction Document, the Transaction Security, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Global Agent, any Party or by any other person under or in connection with any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

22.16 Agent's management time

Any amount payable to the Agent under Clause 10.3 (*Indemnity to the Agents*), Clause 12 (*Costs and Expenses*) and Clause 22.10 (*Financiers' indemnity to the Global Agent*) shall include the cost of utilising the Global Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Global Agent may notify to the Company and the Financiers, and is in addition to any fee paid or payable to the Global Agent under Clause 8 (*Fees*).

22.17 Deduction from amounts payable by the Global Agent

If any Party owes an amount to the Global Agent under the Transaction Documents the Global Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Global Agent would otherwise be obliged to make under the Transaction Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Transaction Documents, that Party shall be regarded as having received any amount so deducted.

22.18 Reliance and engagement letters

Each Finance Party and Secured Party confirms that the Global Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Global Agent) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants in connection with the Transaction Documents or the transactions contemplated in the Transaction Documents and to bind it in respect of those reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

23. THE SECURITY AGENT

23.1 Security Agent as agent and trustee

- (a) The Security Agent declares that it holds the Transaction Security as trustee and agent for the Secured Parties on the terms contained in the Transaction Documents.
- (b) Each of the Secured Parties authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Transaction Documents together with any other incidental rights, powers, authorities and discretions.

23.2 Parallel debt

- (a) Notwithstanding any other provision of the Transaction Documents, the Company hereby irrevocably and unconditionally undertakes to pay to the Security Agent, as creditor in its own right and not as representative of the other Secured Parties, sums equal to and in the currency of each amount payable by the Company to each of the Secured Parties under each of the Transaction Documents as and when that amount falls due for payment under the relevant Transaction Document or would have fallen due but for any discharge resulting from failure of another Secured Party to take appropriate steps, in insolvency proceedings affecting the Company, to preserve its entitlement to be paid that amount (such payment undertaking and the obligations and liabilities which are the result thereof the "**Parallel Debt**").
- (b) The Security Agent shall have its own independent right to demand payment of the amounts payable by the Company under this Clause 23.2, irrespective of any discharge of the Company's obligation to pay those amounts to the other Secured Parties resulting from failure by them to take appropriate steps, in insolvency proceedings affecting the Company, to preserve their entitlement to be paid those amounts.
- (c) Any amount due and payable by the Company to the Security Agent under this Clause 23.2 shall be decreased to the extent that the other Secured Parties have received (and are able to retain) payment in full of the corresponding amount under the other provisions of the Transaction Documents and any amount due and payable by the Company to the other Secured Parties under those provisions shall be decreased to the extent that the Security Agent has received (and is able to retain) payment in full of the corresponding amount under this Clause 23.2.

23.3 Instructions

- (a) The Security Agent shall:
 - (i) subject to paragraphs (c) and (d) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the

- Global Agent (acting on behalf of the Majority Financiers or, as the case may be, all the Financiers); and
- (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Global Agent as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clause 23.6 (*No duty to account*) to Clause 23.11 (*Exclusion of liability*), Clause 23.14 (*Confidentiality*) to Clause 23.20 (*Custodians and nominees*) and Clause 23.23 (*Acceptance of title*) to Clause 23.25 (*Releases*).
- (d) If giving effect to instructions given by the Global Agent (acting on the instructions of the Majority Financiers) would (in the Security Agent's opinion) have an effect equivalent to an amendment or waiver which is subject to Clause 34 (*Amendments, Waivers and Consents*), the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that amendment or waiver.
- (e) In exercising any discretion to exercise a right, power or authority under the Transaction Documents where either:
- (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph (c) above,
- the Security Agent shall do so having regard to the interests of all the Secured Parties.
- (f) The Security Agent may refrain from acting in accordance with any instructions of the Global Agent, the Majority Financiers or any other group of Financiers until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Transaction Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

- (g) Without prejudice to the provisions of the remainder of this Clause 23, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.
- (h) At any time after receipt by the Security Agent of notice from the Global Agent directing the Security Agent to exercise all or any of its rights, remedies, powers or discretions under any of the Transaction Documents, the Security Agent may, and shall if so directed by the Global Agent, take any action as in its sole discretion it thinks fit to enforce the Transaction Security.
- (i) The Secured Parties shall not have any independent power to enforce or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents except through the Security Agent.

23.4 Duties of the Security Agent

- (a) The Security Agent's duties under the Transaction Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to the Global Agent a copy of any document received by the Security Agent from the Company under any Transaction Document.
- (c) Except where a Transaction Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Security Agent receives notice from a Party referring to any Transaction Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Global Agent.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Transaction Documents to which it is expressed to be a party (and no others shall be implied).

23.5 No fiduciary duties to the Company

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of the Company.

23.6 No duty to account

The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

23.7 Business with the Group

The Security Agent may accept deposits from, lend money or provide Islamic facilities to and generally engage in any kind of banking or other business with any member of the Group.

23.8 Rights and discretions

- (a) The Security Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Global Agent, any Financiers or any group of Financiers are duly given in accordance with the terms of the Transaction Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Transaction Documents for so acting have been satisfied; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent shall be entitled to carry out all dealings with the Financiers through the Global Agent and may give to the Global Agent any notice or other communication required to be given by the Security Agent to the Financiers.
- (c) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties) that:
- (i) no Default has occurred; and
 - (ii) any right, power, authority or discretion vested in any Party, any Financiers or any group of Financiers has not been exercised.
- (d) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (e) Without prejudice to the generality of paragraph (d) above or paragraph (f) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate

from any lawyers instructed by any Finance Party) if the Security Agent in its reasonable opinion deems this to be desirable.

- (f) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
 - (g) The Security Agent, any Receiver and any Delegate may act in relation to the Transaction Documents and the Transaction Security through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (h) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under the Transaction Documents.
 - (i) Notwithstanding any other provision of any Transaction Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty or duty of confidentiality.
 - (j) Notwithstanding any provision of any Transaction Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

23.9 Responsibility for documentation

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, the Company or any other person in or in connection with any Transaction Document or the transactions contemplated in the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of,

- under or in connection with any Transaction Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

23.10 No duty to monitor

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Transaction Document; or
- (c) whether any other event specified in any Transaction Document has occurred.

23.11 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Transaction Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document or the Transaction Security unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising or not exercising any right, power, authority or discretion given to it by or in connection with any Transaction Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document or the Transaction Security;
 - (iii) any shortfall which arises on the enforcement or realisation of the Transaction Security; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

(b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Transaction Document or any Transaction Security and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this paragraph (b), subject to Clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.

(c) Nothing in the Transaction Documents shall oblige the Security Agent to carry out:

- (v) any "know your customer" or other checks in relation to any person; or
- (vi) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Secured Party (other than the Security Agent),

on behalf of any Secured Party (other than the Security Agent) and each Secured Party (other than the Security Agent) confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

(d) Without prejudice to any provision of any Transaction Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Transaction Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

23.12 Financiers' indemnity to the Security Agent

- (a) Each Financier (other than the Holding Period Trustee) shall in proportion to its share of the Agent Indemnity Commitments (or, if the Agent Indemnity Commitments are then zero, to its share of the Agent Indemnity Commitments immediately prior to their reduction to zero), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Transaction Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by the Company pursuant to a Transaction Document).
- (b) Subject to paragraph (c) below, the Company shall immediately on demand reimburse any Financier for any payment that Financier makes to the Security Agent pursuant to paragraph (a) above.
- (c) Paragraph (b) above shall not apply to the extent that the indemnity payment in respect of which the Financier claims reimbursement relates to a liability of the Security Agent to the Company.

23.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Company and to the Global Agent on behalf of the Financiers.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the other Parties (or the Global Agent on behalf of the Financiers), in which case the Majority Financiers may appoint a successor Security Agent.
- (c) If the Majority Financiers have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Global Agent) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Transaction Documents. The Company shall, within three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (vii) the appointment of a successor; and
 - (viii) the transfer of all the Transaction Security to that successor.

- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Transaction Documents (other than its obligations under paragraph (b) of Clause 23.24 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 23.13 and Clause 10.4 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Financiers may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.

23.14 Confidentiality

- (a) In acting as agent and/or trustee for the Secured Parties, the Security Agent shall be regarded as acting through its agency/trustee division which shall be treated as a separate entity from any of its other divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Transaction Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty.

23.15 Information from the Financiers

Each Financier shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

23.16 Credit appraisal by the Secured Parties

Without affecting the responsibility of the Company for information supplied by it or on its behalf in connection with any Transaction Document, each Secured Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Transaction Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document, the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;

- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Transaction Document, the Transaction Security, the transactions contemplated by the Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Transaction Document, the transactions contemplated by any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Transaction Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

23.17 Security Agent's management time and additional remuneration

- (a) Any amount payable to the Security Agent under Clause 23.12 (*Financiers' indemnity to the Security Agent*), Clause 12 (*Costs and Expenses*) or Clause 10.4 (*Indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Company and the Financiers, and is in addition to any other fee paid or payable to the Security Agent.
- (b) Without prejudice to paragraph (a) above, in the event of:
 - (i) a Default; or
 - (ii) the Security Agent being requested by the Company or the Financiers to undertake duties which the Security Agent and the Company agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Transaction Documents; or
 - (iii) the Security Agent and the Company agreeing that it is otherwise appropriate in the circumstances,

the Company shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (c) below.

- (c) If the Security Agent and the Company fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Company or, failing approval, nominated (on the application of the Security Agent) by the

President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Company) and the determination of any investment bank shall be final and binding upon the Parties.

23.18 No responsibility to perfect Transaction Security

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of the Company to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Transaction Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Transaction Document or of the Transaction Security;
- (d) take, or to require the Company to take, any step to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Transaction Security Document.

23.19 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:
 - (i) to insure any of the Charged Property;
 - (ii) to require any other person to maintain any insurance; or
 - (iii) to verify any obligation to arrange or maintain insurance contained in any Transaction Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Global Agent requests it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

23.20 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine,

including for the purpose of depositing with a custodian the Transaction Documents or any document relating to the trust or agency created under the Transaction Documents and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under the Transaction Documents or be bound to supervise the proceedings or acts of any person.

23.21 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

23.22 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Company and the Secured Parties of that appointment.

- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Transaction Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of the Transaction Documents, be treated as costs and expenses incurred by the Security Agent.

23.23 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that the Company may have to any of the Charged Property and shall not be liable for, or bound to require the Company to remedy, any defect in its right or title.

23.24 Winding up of trust

If the Security Agent, with the approval of the Majority Financiers, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Transaction Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to the Company pursuant to the Transaction Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Transaction Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 23.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Transaction Security Document.

23.25 Releases

Upon a disposal of any of the Charged Property:

- (a) pursuant to the enforcement of the Transaction Security by a Receiver or the Security Agent; or
- (b) if that disposal is permitted under the Transaction Documents,

the Security Agent shall (at the cost of the Company) release that property from the Transaction Security or the Transaction Security given by the Company and is authorised to execute, without the need for any further authority from the Secured Parties, any release of the Transaction Security or other claim over that asset or entity and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

24. CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of any Transaction Document will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

25. SHARING AMONG THE FINANCE PARTIES

25.1 Payments to Finance Parties

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from the Company other than in accordance with Clause 28 (*Payment Mechanics*) (a "**Recovered Amount**") and applies that amount to a payment due under the Transaction Documents, then:

- (a) the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery to its Facility Representative and the Global Agent and the Global Agent will promptly notify the other Facility Representative;
- (b) the Global Agent shall, in consultation with the Conventional Facility Agent and the Investment Agent, determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Global Agent and distributed in accordance with Clause 28 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Global Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three Business Days of demand by the Global Agent, pay to the Global Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Global Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 28.6 (*Partial payments*).

25.2 Redistribution of payments

The Global Agent shall treat the Sharing Payment as if it had been paid by the Company and distribute it between the Conventional Facility Agent and Investment Agent for the account of the Finance Parties (other than the Recovering Finance Party) (the "**Sharing Finance Parties**") in accordance with Clause 28.6 (*Partial payments*) towards the obligations of the Company to the Sharing Finance Parties.

25.3 Recovering Finance Party's rights

On a distribution by the Global Agent under Clause 25.2 (*Redistribution of payments*), of a payment received by a Recovering Finance Party from the Company as between the Company and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by the Company.

25.4 Reversal of redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Global Agent, pay to the Global Agent for the account of that Recovering Finance Party (other than the Participants) an amount equal to the appropriate part of its share of the Sharing Payment (together with, in relation to each Finance Party (other than the Participants), an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the "**Redistributed Amount**"); and
- (b) as between the Company and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by the Company.

25.5 Exceptions

- (a) This Clause 25 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Company.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of undertaking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
 - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable after having received notice and did not undertake separate legal or arbitration proceedings.

25.6 Adjustments

- (a) Notwithstanding anything in this Clause 25 but subject to paragraph (b) below, the Security Agent shall use its reasonable endeavours to avoid applying:
 - (i) any proceeds of sale of the Relevant Term Assets against any interest payable under the Transaction Documents; and
 - (ii) any interest secured under the Transaction Security Documents against any amounts payable under the Islamic Financing Transaction Documents.

- (b) If paragraph (a) above applies, the Security Agent shall (if necessary) adjust the proceeds from other recoveries for application under this Clause 25 in order to maintain the order and ranking of payments provided in this Clause.

26. EQUALISATION

26.1 Equalisation definitions

In this Clause 26:

"Enforcement Date" means the first date on which the Global Agent exercises any of its rights under Clause 18.10 (*Acceleration*) (other than declaring amounts outstanding under the Transaction Documents to be payable on demand).

"Exposure" means, in relation to a Finance Party, the aggregate amount of its Participation outstanding under the Transaction Documents at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date have been actual liabilities at the Enforcement Date) including any capitalised component of such Participation, together with the aggregate amount of all accrued interest or profit (or any other similar or equivalent amount payable under the Transaction Documents), Income Amount (but excluding any Increased Costs component of Income Amount), fees and/or commission (as applicable) owed to it under the Transaction Documents.

26.2 Implementation of equalisation

This Clause 26 shall be applied at such time or times after the Enforcement Date as the Global Agent shall consider appropriate, or following notification by a Facility Representative or the Global Agent that any of the Finance Parties has recovered any payment or amount from the Company following the Enforcement Date. Without prejudice to the generality of the preceding sentence, if the provisions of this Clause 26 have been applied before all the Secured Obligations have matured and/or been finally quantified, the Global Agent may elect to re-apply those provisions on the basis of revised Exposures and the Finance Parties shall make appropriate adjustment payments amongst themselves.

26.3 Equalisation

If, for any reason, any Secured Obligations remain unpaid after the Enforcement Date and the resulting losses are not borne by the Finance Parties in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the Finance Parties at the Enforcement Date, the Finance Parties will make such payments amongst themselves as the Global Agent shall require to put the Finance Parties in such a position that (after taking into account such payments) those losses are borne in those proportions **provided that** no Finance Party shall be obliged to make any payment under this Clause 26 in respect of any amount received by it from a person who is not a member of the Group.

26.4 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this Clause 26, the Global Agent shall send notice to each Facility Representative (on behalf of the

Finance Parties) requesting that they notify it of, respectively, their Exposure and that of each Finance Party (if any).

26.5 Default in payment

If a Finance Party fails to make a payment due from it under this Clause 26, the Global Agent shall be entitled (but not obliged) to take action on behalf of the Finance Parties to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Finance Parties in respect of its actual costs) but shall have no liability or obligation towards such Finance Parties, or any other Parties as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

27. SHARING OF INFORMATION

27.1 Sharing of information by Conventional Facility Agent

- (a) The Conventional Facility Agent shall promptly notify the Global Agent of the following after determining the same under the relevant Conventional Finance Documents:
 - (i) any interest payable under the Conventional Finance Documents;
 - (ii) any payments payable by the Company under the Conventional Facility Agreement;
 - (iii) the amounts outstanding under the Conventional Facility Agreement and the share of each Conventional Lender in the amounts outstanding; and
 - (iv) any Interest Period.
- (b) The Conventional Facility Agent shall promptly provide such other information to the Global Agent as the Global Agent may request at any time in respect of the Conventional Facility, Conventional Finance Documents and/or the Conventional Finance Parties.

27.2 Sharing of information by Investment Agent

- (a) The Investment Agent shall promptly notify the Global Agent of the following after determining the same under the relevant Islamic Financing Transaction Documents:
 - (i) any Income Amount payable under the Islamic Financing Transaction Documents;
 - (ii) any Exercise Price payable as a result of the exercise of the Sale Undertaking or the Purchase Undertaking (as the case may be);
 - (iii) the Contributions Outstanding and the share of each Participant in the Contributions Outstanding; and
 - (iv) any Income Period.

- (b) The Investment Agent shall promptly provide such other information to the Global Agent as the Global Agent may request at any time in respect of the Islamic Financing Facility, Islamic Financing Transaction Documents and/or the Participants.

27.3 Sharing of information

- (a) If a Facility Representative:
- (i) receives notice from a Party referring to the Conventional Facility Agreement or the relevant Islamic Financing Transaction Document, describing a Default and stating that the event is a Default; or
 - (ii) is aware of the non-payment of any principal, Contributions Outstanding, Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents), interest, Income Amount (or any other amount calculated or determined on a similar basis under the Islamic Financing Transaction Documents) or fee payable to a Finance Party (other than the Facility Representatives or the Global Agent) under the Transaction Documents,
- it must promptly notify the Global Agent and the Global Agent shall then promptly notify the other Finance Parties of the same.
- (b) In connection with the matters described in the Transaction Documents, each Facility Representative and the Global Agent agree to cooperate with each other to ensure (so far as is reasonably possible) that:
- (i) any notification, information or other communication received by either of them from the Company shall be shared with each other;
 - (ii) any notification, information or other communication issued by either of them respectively to the Financiers that they represent shall be copied to each other Facility Representative and the Global Agent such that the same notification, request or other communication can be issued to all the Financiers; and
 - (iii) any request by any Facility Representative or the Global Agent for consent, instruction or direction (as applicable) from the Financiers are consistent with each other.
- (c) The Facility Representatives and the Global Agent are authorised to receive from and share such information as they deem necessary with each other in connection with the matters described in each Transaction Document, including, without limitation, to ascertain:
- (i) that the requirements of this Agreement are complied with;
 - (ii) the amount of Commitments held by each Financier giving consent, instruction or direction (as applicable) in relation to any matter or responding to a request for consent, instruction or direction; and

- (iii) the instructions of the Majority Financiers and all the Financiers.
- (d) Each Facility Representative shall co-operate in good faith with the Global Agent and each other to facilitate any voting amongst the Financiers required for the purposes of the Transaction Documents.

SECTION 10 ADMINISTRATION

28. PAYMENT MECHANICS

28.1 Payments to the Global Agent

- (a) On each date on which the Company or a Financier is required to make a payment under a Transaction Document, the Company or Financier shall make the same available to the Global Agent (unless a contrary indication appears in a Transaction Document) for value on the due date at the time and in such funds specified by the Global Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency and with such bank as the Global Agent specifies.

28.2 Distributions by the Global Agent

- (a) Subject to paragraphs (b) and (c) below, each payment received by the Global Agent under the Transaction Documents for another Party shall, subject to Clause 28.3 (*Distributions to the Company*) and Clause 28.4 (*Clawback*), be made available by the Global Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with the Transaction Documents (in the case of a Financier, for the account of its Facility Office), to such account as that Party may notify to the Global Agent by not less than five Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency.
- (b) If the payment referred to in paragraph (a) above relates to interest, principal, fees and any other costs or expenses payable to the Conventional Finance Parties under the Conventional Finance Documents, the Global Agent shall make that payment available to the Conventional Facility Agent for distribution to the relevant Conventional Finance Parties in accordance with paragraph (a) above.
- (c) If the payment referred to in paragraph (a) above relates to any Exercise Price, Income Amount or any fees and other costs and expenses payable to the Islamic Financing Parties under the Islamic Financing Transaction Documents, the Global Agent shall make that payment available to the Investment Agent for distribution to the relevant Islamic Financing Parties in accordance with paragraph (a) above.

28.3 Distributions to the Company

The Global Agent may (with the consent of the Company or in accordance with Clause 29 (*Set-Off*)) apply any amount received by it for the Company in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Company under the Transaction Documents or in or towards the purchase of any amount of any currency to be so applied.

28.4 Clawback

- (a) Where a sum is to be paid to an Agent under the Transaction Documents for another Party, that Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If an Agent pays an amount to another Party and it proves to be the case that the relevant Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by that Agent shall on demand refund the same to that Agent from the date of payment to the date of receipt by that Agent, calculated by that Agent to reflect its cost of funds or, in the case of the Investment Agent, its actual costs of paying such amount.

28.5 Impaired Agent

- (a) If, at any time, an Agent becomes an Impaired Agent, the Company or a Financier which is required to make a payment under the Transaction Documents to that Agent in accordance with this Clause 28 may instead either:
 - (i) pay that amount direct to the required recipient(s); or
 - (ii) if in its absolute discretion it considers that it is not reasonably practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to (in relation to the Conventional Facility) an interest bearing account or (in relation to the Islamic Financing Facility) a *Shari'a*-compliant or otherwise non-interest bearing account in each case held with an Acceptable Bank and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Company or the Financier making the payment (the "**Paying Party**") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Transaction Documents (the "**Recipient Party**" or "**Recipient Parties**").

In each case such payments must be made on the due date for payment under the Transaction Documents.

- (b) All interest or profit accrued on the amount standing to the credit of the trust account shall be for the benefit of the Recipient Parties *pro rata* to their respective entitlements.
- (c) A Party which has made a payment in accordance with this Clause 28.5 shall be discharged of the relevant payment obligation under the Transaction Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.
- (d) Promptly upon the appointment of a successor Agent in accordance with clause 23.13 (*Replacement of the Global Agent*), clause 9.12 (*Replacement of the Conventional Facility Agent*) of the Conventional Facility Agreement or clause

6.12 (*Replacement of the Investment Agent*) of the Investment Agency Agreement, each Paying Party shall (other than to the extent that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any amounts accrued on that amount) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 28.2 (*Distributions by the Global Agent*).

- (e) A Paying Party shall, promptly upon request by a Recipient Party and to the extent:
- (i) that it has not given an instruction pursuant to paragraph (d) above; and
 - (ii) that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any amounts accrued on that amount) to that Recipient Party.

28.6 Partial payments

- (a) If any Facility Representative receives a payment for application against amounts due in respect of any Transaction Documents that is insufficient to discharge all the amounts then due and payable by the Company under those Transaction Documents:
- (i) that Facility Representative shall notify the Global Agent and the Global Agent shall notify each other Agent; and
 - (ii) the Facility Representative receiving the payments from the Company shall pay such amount to the Global Agent.
- (b) If the Global Agent receives:
- (i) a payment pursuant to paragraph (a) above; or
 - (ii) any other payment for application against amounts due in respect of any Transaction Documents that is insufficient to discharge all the amounts then due and payable by the Company under those Transaction Documents,

the Global Agent shall apply that payment towards the obligations of the Company under the Transaction Documents in accordance with the Cash Waterfall.

28.7 Set-off by the Company

All payments made by the Company under the Transaction Documents shall be calculated and made without (and free and clear of any deduction for) set-off or counterclaim.

28.8 Business Days

- (a) Any payment under the Transaction Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Exercise Price under the Transaction Documents interest or Income Amount (as applicable) is payable on that principal or the Exercise Price at the rate payable on the original due date.

28.9 Currency of account

- (a) Subject to paragraphs (b) to (e) below, dollars is the currency of account and payment for any sum due from the Company under any Transaction Document.
- (b) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum or repayment or an early payment of any Exercise Price shall be made in the currency in which that amount is denominated, pursuant to the Transaction Documents, on its due date.
- (c) Each payment of interest or Income Amount shall be made in the currency in which the sum in respect of which it is payable was denominated, pursuant to the Transaction Documents, when that interest or Income Amount accrued.
- (d) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (e) Any amount expressed to be payable in a currency other than dollars shall be paid in that other currency.

28.10 Change of currency

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Transaction Documents to, and any obligations arising under the Transaction Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Global Agent (after consultation with the Company, the Conventional Facility Agent and the Investment Agent); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Global Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, the Transaction Documents will, to the extent the Global Agent (acting reasonably and after consultation

with the Company) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

28.11 Disruption to payment systems etc.

If an Agent determines (in its discretion) that a Disruption Event has occurred or any Agent is notified by the Company that a Disruption Event has occurred:

- (a) that Agent shall promptly notify the Global Agent;
- (b) the Global Agent may, and shall if requested to do so by the Company, consult with the Company with a view to agreeing with the Company such changes to the operation or administration of the relevant Facility as the Global Agent may deem necessary in the circumstances;
- (c) the Global Agent shall not be obliged to consult with the Company in relation to any changes mentioned in paragraph (b) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (d) the Global Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (b) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (e) any such changes agreed upon by the Global Agent and the Company shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Transaction Documents notwithstanding the provisions of Clause 34 (*Amendments, Waivers and Consents*);
- (f) the Global Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation, for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Global Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 28.11; and
- (g) the Global Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (e) above.

29. SET-OFF

A Finance Party may set off any matured obligation due from the Company under the Transaction Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

30. NOTICES

30.1 In writing

Any communication to be made under or in connection with the Transaction Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

30.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Transaction Documents is:

- (a) in the case of the Company, that identified with its name below;
- (b) in the case of each Financier, that notified in writing to the Global Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of an Agent or the Security Agent, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the Global Agent (or the Global Agent may notify to the other Parties, if a change is made by the Global Agent) by not less than five Business Days' notice.

30.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Transaction Documents will only be effective:
 - (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 30.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to an Agent or the Security Agent will be effective only when actually received by that Agent or Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Global Agent's or Security Agent's signature below (or any substitute department or officer as that Agent or Security Agent shall specify for this purpose).
- (c) All notices from or to the Company shall be sent through the Global Agent.

- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 12:00 p.m. on a Friday in the UAE shall be deemed only to become effective on the following Business Day.

30.4 Notification of address and fax number

Promptly upon changing its address or fax number, the Agents shall notify the other Parties.

30.5 Communication when Agent is Impaired Agent

If any Agent is an Impaired Agent the Parties in respect of which the Impaired Agent acted as agent may, instead of communicating with each other through the Impaired Agent, communicate with each other directly and (while the relevant Agent is an Impaired Agent) all the provisions of the Transaction Documents which require communications to be made or notices to be given to or by that Agent shall be varied so that communications may be made and notices given to or by the relevant Parties in respect of which that Agent acted as agent directly. This provision shall not operate after a replacement Agent has been appointed.

30.6 Electronic communication

- (a) Any communication or document to be made or delivered by one Party to another under or in connection with the Transaction Documents may be made or delivered by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or delivery as specified in paragraph (a) above to be made between the Company and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication or delivery.
- (c) Any electronic communication or document as specified in paragraph (a) above made or delivered by one Party to another will be effective only when actually received (or made available) in readable form and, in the case of any electronic communication or document made or delivered by a Party to an Agent or the Security Agent, only if it is addressed in such a manner as the applicable Agent or Security Agent shall specify for this purpose.

- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of the Transaction Documents shall be deemed only to become effective on the following day.
- (e) Any reference in a Transaction Document to a communication being sent or received or a document being delivered shall be construed to include that communication or document being made available in accordance with this Clause 30.6.

30.7 Direct electronic delivery by Company

The Company may satisfy its obligation under the Transaction Documents to deliver any information in relation to a Financier by delivering that information directly to that Financier in accordance with Clause 30.6 (*Electronic communication*) to the extent that Financier and the applicable Agent agree to this method of delivery.

30.8 English language

- (a) Any notice given under or in connection with any Transaction Document must be in English.
- (b) All other documents provided under or in connection with any Transaction Document must be:
 - (i) in English; or
 - (ii) if not in English, and if so required by the Global Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

31. CALCULATIONS AND CERTIFICATES

31.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Transaction Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

31.2 Certificates and determinations

Any certification or determination by a Finance Party of a rate or amount under any Transaction Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

31.3 Day count convention

Any interest, commission, Income Amount (or any other amount calculated or determined on a similar basis under the Islamic Financing Transaction Documents) or fee accruing under a Transaction Documents accrues from day to day and is calculated

on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the relevant market differs, in accordance with that market practice.

32. PARTIAL INVALIDITY

If, at any time, any provision of a Transaction Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

33. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under a Transaction Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Transaction Document. No election to affirm any Transaction Document on the part of any Finance Party or Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Transaction Document are cumulative and not exclusive of any rights or remedies provided by law.

34. AMENDMENTS, WAIVERS AND CONSENTS

34.1 Required Consents

- (a) Subject to Clause 34.2 (*All Financier matters*) and Clause 34.4 (*Other exceptions*), any term of the Transaction Documents may be amended or waived only with the consent of the Majority Financiers and the Company, and any such amendment or waiver will be binding on all Parties.
- (b) The Global Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 34.
- (c) Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 22.6 (*Rights and discretions*), the Global Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under any Transaction Document.
- (d) Notwithstanding paragraph (a) above, any term of a Conventional Finance Document or an Islamic Financing Transaction Document the amendment of which would not alter the *pari passu* treatment of the Facility may be amended or waived:
 - (i) if it is a Conventional Finance Document, with the consent of the Majority Conventional Lenders; and
 - (ii) if it is an Islamic Financing Transaction Document, with the consent of the Majority Participants.

- (e) If the Company:
 - (i) proposes to request any amendment or waiver; or
 - (ii) agrees to any amendment or waiver requested by the Conventional Facility Agent or the Investment Agent (as the case may be) on behalf of the Financiers for and on behalf of which it is agent,

in respect of any provision of the Transaction Documents which is common in substance to the Conventional Finance Documents and the Islamic Financing Transaction Documents, the Company shall request to the Global Agent that any such amendment or waiver be made or granted (as the case may be) to the corresponding provisions of the Conventional Finance Documents or the Islamic Financing Transaction Documents (as applicable) and the Company shall only agree to any such amendment or waiver in accordance with the provisions of this Clause 34.
- (f) Paragraph (c) of Clause 19.10 (*Pro rata settlement*) shall apply to this Clause 34.

34.2 All Financier matters

An amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Transaction Document that has the effect of changing or which relates to:

- (a) the definition of "**Majority Financiers**", "**Majority Reporting Financiers**", "**Increased Majority Reporting Financiers**", "**Super Majority Reporting Financier**", "**Reporting Financier**", "**Nominating Financier**" or "**Supervising Financier**" in Clause 1.1 (*Definitions*);
- (b) other than pursuant to Clause 6.3 (*Extension option*), an extension to the date of payment of any amount under the Transaction Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, Contributions Outstanding, Exercise Price (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents), interest, Income Amount (or any other amount calculated or determined on a similar basis under the Islamic Financing Transaction Documents), commission, fee or other amount payable to a Financier under the Transaction Documents;
- (d) an increase in any Commitment or the Total Commitments (other than pursuant to Clause 5.2 (*Re-allocation of Commitments*)) or any requirement that a cancellation of Commitments under a Facility reduces the Commitments of the Financiers rateably under the relevant Facility;
- (e) a change to the Company;
- (f) any provision which expressly requires the consent of all the Financiers;

- (g) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 7.1 (*Mandatory early payment – illegality*), Clause 13 (*Cash Sweep*), Clause 19 (*Changes to the Financiers*), Clause 26 (*Equalisation*), this Clause 34, the governing law of any Transaction document or Clause 39 (*Governing Law*) and Clause 40 (*Enforcement*);
- (h) (other than as expressly permitted by the provisions of any Transaction Document) the nature or scope of:
 - (i) the Charged Property; or
 - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed,

(except in each case, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Transaction Document); or

- (i) the release of any Transaction Security unless permitted under this Agreement or any other Transaction Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is permitted under this Agreement or any other Transaction Document,

shall not be made, or given, without the prior consent of all the Financiers.

34.3 Governance decisions

- (a) The matters set out in part 1 (*Majority Reporting Financiers' Approval*) of schedule 7 (*Matters requiring Financier Approval under the Holdco Facilities*) of the Governance Agreement shall require the prior approval of the Majority Reporting Financiers.
- (b) The matters set out in part 2 (*Increased Majority Reporting Financiers' Approval*) of schedule 7 (*Matters requiring Financier Approval under the Holdco Facilities*) of the Governance Agreement shall require the prior approval of the Increased Majority Reporting Financiers.
- (c) The matters set out in part 3 (*Super Majority Reporting Financiers' Approval*) of schedule 3 (*Matters requiring Financier Approval under the Holdco Facilities*) of the Governance Agreement shall require the prior approval of the Super Majority Reporting Financiers.

34.4 Other exceptions

- (a) An amendment or waiver which relates to the rights or obligations of an Agent or the Security Agent (each in their capacity as such) may not be effected without the consent of that Agent or the Security Agent, as the case may be.
- (b) An amendment or waiver which relates to the definition of "**Majority Conventional Lenders**" in the Conventional Facility Agreement shall not be

made without the prior written consent of the Conventional Facility Agent (acting on the instructions of all the Conventional Lenders) and the Company.

- (c) An amendment or waiver which relates to the definition of "**Majority Participants**" in the Investment Agency Agreement shall not be made without the prior written consent of the Investment Agent (acting on the instructions of all the Participants) and the Company.
- (d) An amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Transaction Document that has the effect of changing or which relates to any provision which expressly requires the consent of the Super Majority Reporting Financiers shall not be made, or given, without the prior consent of the Super Majority Reporting Financiers.
- (e) An amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Transaction Document that has the effect of changing or which relates to any provision which expressly requires the consent of the Increased Majority Reporting Financiers shall not be made, or given, without the prior consent of the Increased Majority Reporting Financiers.
- (f) An amendment, waiver or (in the case of a Transaction Security Document) a consent of, or in relation to, any term of any Transaction Document that has the effect of changing or which relates to any provision which expressly requires the consent of the Majority Reporting Financiers shall not be made, or given, without the prior consent of the Majority Reporting Financiers.

34.5 Excluded Commitments

- (a) If:
 - (i) any Defaulting Financier fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Transaction Document or any other vote of Financiers under the terms of any Transaction Document within 8 Business Days of that request being made; or
 - (ii) any Financier which is not a Defaulting Financier fails to respond to such a request or such a vote within 15 Business Days of that request being made,
- (unless, in either case, the Company and the Global Agent agree to a longer time period in relation to any request):
- (A) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and

- (B) its status as a Financier shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Financiers has been obtained to approve that request.
- (b) In respect of any request for a consent, waiver, amendment of or in relation to any term of any Transaction Document or any other vote of Financiers under the terms of any Transaction Document:
 - (i) the Commitments held by the Holding Period Trustee shall not be included for the purpose of calculating the Total Commitments under the relevant Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request;
 - (ii) the Holding Period Trustee's status as a Financier shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Financiers has been obtained to approve that request; and
 - (iii) any consent, amendment or waiver that imposes a more onerous obligation on the Holding Period Trustee than anticipated by this Agreement may not be effected without the prior written consent of the Holding Period Trustee.

34.6 Replacement of Financier

- (a) If:
 - (i) Any Financier becomes a Non-Consenting Financier (as defined in paragraph (d) below); or
 - (ii) the Company becomes obliged to repay any amount in accordance with Clause 7.1 (*Mandatory early payment – illegality*) or to pay additional amounts pursuant to clause 7 (*Increased Costs*) of the Conventional Facility Agreement or any provision relating to increased costs under the Islamic Financing Transaction Documents, Clause 9.2 (*Tax gross-up*) or Clause 9.3 (*Tax indemnity*) to any Financier,

then the Company may, on five Business Days' prior written notice to the Global Agent (with a copy to the Conventional Facility Agent or the Investment Agent, as applicable) and such Financier, replace such Financier by requiring such Financier to (and, to the extent permitted by law, such Financier shall) transfer pursuant to Clause 19 (*Changes to the Financiers*) all (and not part only) of its rights and obligations under the Transaction Documents to an Eligible Institution (a "**Replacement Financier**") which confirms its willingness to assume and does assume all the obligations of the transferring Financier in accordance with Clause 19 (*Changes to the Financiers*) for a purchase price in cash payable at the time of transfer in an amount equal to the outstanding principal amount of such Financier's participation in the outstanding Loans or Contributions Outstanding and all accrued interest (to the extent that the Global Agent has not given a notification under Clause 19.10 (*Pro rata settlement*)) and other amounts payable in relation thereto under the Transaction Documents.

- (b) The replacement of a Financier pursuant to this Clause 34.6 shall be subject to the following conditions:
 - (i) the Company shall have no right to replace an Agent or Security Agent;
 - (ii) no Agent nor the Financier shall have any obligation to the Company to find a Replacement Financier;
 - (iii) in the event of a replacement of a Non-Consenting Financier such replacement must take place no later than 30 days after the date on which that Financier is deemed a Non-Consenting Financier;
 - (iv) in no event shall the Financier replaced under Clause 34.6 be required to pay or surrender to such Replacement Financier any of the fees received by such Financier pursuant to the Transaction Documents; and
 - (v) the Financier shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.
- (c) A Financier shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Global Agent (with a copy to the Conventional Facility Agent or the Investment Agent, as applicable) and the Company when it is satisfied that it has complied with those checks.
- (d) In the event that:
 - (i) the Company or the Global Agent (at the request of the Company) has requested the Financiers to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Transaction Documents;
 - (ii) the consent, waiver or amendment in question requires the approval of all the Financiers; and
 - (iii) Financiers whose Commitments aggregate in the case of a consent, waiver or amendment requiring the approval of all the Financiers, more than 80 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 80 per cent. of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,

then any Financier who does not and continues not to consent or agree to such waiver or amendment shall be deemed a "**Non-Consenting Financier**".

34.7 Shari'a

Notwithstanding the other provisions of this Clause 34.7, the Company acknowledges and agrees that it shall not request any amendment or waiver to be made or granted (as the case may be) to any provision of the Transaction Documents which is common in substance to the Conventional Finance Documents and the Islamic Financing

Transaction Documents where such amendment or waiver is repugnant to Shari'a (as determined by the Shari'a supervision committee of the Investment Agent).

35. **CONFIDENTIAL INFORMATION**

35.1 **Confidentiality**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 35.2 (*Disclosure of Confidential Information*), Clause 35.3 (*Disclosure of Enhanced Confidential Information*) and Clause 35.4 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

35.2 **Disclosure of Confidential Information**

Subject to Clause 35.3 (*Disclosure of Enhanced Confidential Information*), any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Transaction Documents or which succeeds (or which may potentially succeed) it as an Agent or Security Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Transaction Documents and/or the Company and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to receive communications, notices, information or documents delivered pursuant to the Transaction Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 22.14 (*Relationship with the Financiers*));

- (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 19.9 (*Security over Financiers' rights*);
 - (viii) who is a Party; or
 - (ix) with the consent of the Company,
- in each case, such Confidential Information as that Finance Party shall consider appropriate if:
- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
 - (B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information; and
 - (C) in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Transaction Documents including,

- without limitation, in relation to the trading of participations in respect of the Transaction Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the Loan Market Association Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Transaction Documents and/or the Company if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

35.3 Disclosure of Enhanced Confidential Information

- (a) A Supervising Financier shall not be permitted to disclose any Enhanced Confidential Information to any person other than:
 - (i) its Affiliates and its Affiliates' officers, employees, professional advisers or auditors if any person to whom the Enhanced Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Enhanced Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Enhanced Confidential Information;
 - (ii) to any person:
 - (A) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (B) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (C) with the consent of the Company,

in each case, such Enhanced Confidential Information as that Supervising Financier shall consider appropriate if the person to whom the Enhanced Confidential Information is to be given is informed of its confidential nature and that some or all of such Enhanced Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if,

in the reasonable opinion of that Finance Party, it is not practicable so to do in the circumstances.

- (b) For the avoidance of doubt, a transferee or assignee of a Supervising Financier or a Financier who elects to become a Supervising Financier after the date of this Agreement shall be entitled to request copies of Enhanced Confidential Information provided to Supervising Financiers prior to the date that that transferee or assignee or Financier (as applicable) so became or elected to become a Supervising Financier.

35.4 Disclosure to numbering service providers

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or the Company the following information:
- (i) name of the Company;
 - (ii) country of domicile of the Company;
 - (iii) place of incorporation of the Company;
 - (iv) date of this Agreement;
 - (v) Clause 39 (*Governing Law*);
 - (vi) the names of the Agents;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facilities (and any tranches);
 - (ix) amount of Total Commitments;
 - (x) currencies of the Facilities;
 - (xi) type of the Facilities;
 - (xii) ranking of the Facilities;
 - (xiii) the Final Maturity Date for the Facilities;
 - (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
 - (xv) such other information agreed between such Finance Party and the Company,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or the Company by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) The Global Agent shall notify the Company and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Global Agent in respect of this Agreement, the Facilities and/or the Company; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or the Company by such numbering service provider.

35.5 Entire agreement

This Clause 35 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Transaction Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

35.6 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation, including securities law relating to insider dealing and market abuse, and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

35.7 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Company:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 35.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 35.

35.8 Continuing obligations

The obligations in this Clause 35 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- (a) the date on which all amounts payable by the Company under or in connection with the Transaction Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

36. COUNTERPARTS

Each Transaction Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Transaction Document.

37. CONTRACTUAL RECOGNITION OF BAIL-IN

37.1 Bail-in

Notwithstanding any other term of any Transaction Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Transaction Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
 - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
 - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
 - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Transaction Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

37.2 Definitions

In this Clause 37:

"Article 55 BRRD" means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

"Bail-In Action" means the exercise of any Write-down and Conversion Powers.

"Bail-In Legislation" means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to the United Kingdom, the UK Bail In Legislation; and

- (c) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

"EEA Member Country" means any member state of the European Union, Iceland, Liechtenstein and Norway.

"EU Bail-In Legislation Schedule" means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

"Resolution Authority" means any body which has authority to exercise any Write-down and Conversion Powers.

"UK Bail-In Legislation" means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

"Write-down and Conversion Powers" means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to the UK Bail-In Legislation, issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers;
- (c) in relation to any other applicable Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
 - (ii) any similar or analogous powers under that Bail-In Legislation.

38. LIMITED REOURSE AND NON-PETITION

38.1 Limited Recourse

- (a) Subject to paragraph (b) below, notwithstanding any provision to the contrary in any Transaction Document, the maximum amount which may be recovered from the Company in respect of the Secured Obligations at any time, will be limited to the aggregate amount (without double counting and without any deduction for or on account of any set-off or similar right exercisable against the Company, any administrator or the Finance Parties) of:
 - (i) the whole of the assets from time to time of the Company;
 - (ii) all proceeds generated under or on the enforcement of all Security, guarantees, indemnities and other assurances against financial loss created or evidenced under the Transaction Documents as security for any of the Secured Obligations against the Company or over the Company's assets;
 - (iii) the proceeds of any disposal from time to time by an administrator of all or any part of the Company's assets; and
 - (iv) (to the extent not forming part of those disposal proceeds) any amount determined in accordance with paragraph 100(3) of the ADGM Insolvency Regulations 2015 arising from any such disposal.
- (b) Paragraph (a) shall not apply in circumstances where the Final Maturity Date has passed, no extension has been granted pursuant to Clause 6.3 (*Extension option*) and no Exit has been implemented.

38.2 Non-Petition

Each of the Financiers hereby agrees with the Company that, unless the circumstances described in paragraph (b) of Clause 38.1 (*Limited Recourse*) are subsisting:

- (a) it shall not (and no person acting on its behalf shall) initiate or join any person in initiating any Insolvency Proceedings or the appointment of an Insolvency Officeholder in relation to the Company other than a receiver or an administrator appointed by the Security Agent under the terms of the ADGM Security Agreement;
- (b) it shall not have the right to take or join any person in taking steps against the Company for the purpose of obtaining payment of any amount due from the Company;
- (c) it shall not be entitled to take or join in the taking of any corporate action, legal proceedings or other procedure or steps which would result in the Cash Waterfall not being complied with.

38.3 No personal liability

No Party shall have any recourse against nor shall any personal liability attach to any shareholder, officer, employee, agent or director of the Company in their capacity as such, in respect of any obligation, covenant or agreement of the Company contained in this Agreement.

38.4 Financier consultation

The Financiers (excluding the Holding Period Trustee) shall consult together and act reasonably in considering any Extension Request submitted by the Company, any request to equitise the Facilities or any other steps requested or available with a view to avoiding an insolvent administration or liquidation of the Company.

SECTION 11 **GOVERNING LAW AND ENFORCEMENT**

39. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

40. ENFORCEMENT

40.1 Jurisdiction

- (a) The ADGM Courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Agreement) (a "Dispute").
- (b) The Parties agree that the ADGM Courts are the most appropriate and convenient courts to settle Disputes and accordingly the Parties will not argue to the contrary.
- (c) Notwithstanding paragraphs (a) and (b) above, any Finance Party or Secured Party may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

40.2 Waiver of immunity

The Company irrevocably and unconditionally:

- (a) agrees not to claim any immunity from suits or proceedings brought by a Finance Party against it in relation to a Transaction Document and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings including the making or enforcement of any order or judgment which may be made or given in any proceedings or execution against any property or assets whatsoever (irrespective of its use or intended use); and
- (c) waives all rights of immunity in respect of it or its assets.

40.3 Waiver of interest

- (a) The Parties recognise and agree that the payment of interest in whatever form is repugnant to and not in compliance with the rules and principles of Shari'a and accordingly, to the extent that any legal system would (but for the provisions of this Clause 40.3) impose (whether by contract, statute, regulation, or by any means whatsoever) any obligation to pay interest, each Islamic Financing Party hereby irrevocably and unconditionally expressly waives and rejects any entitlement to recover interest from each other.

- (b) For the avoidance of doubt, nothing in this Clause 40.3 shall be construed as a waiver of rights in respect of any participation amount, Contributions Outstanding, Exercise Price or Income Amount (or any other similar or equivalent amount payable under the Islamic Financing Transaction Documents), howsoever such amounts may be described or re-characterised by any court. To the extent that any other amount payable by the Company pursuant to the Islamic Financing Transaction Documents is described or re-characterised as interest, under any applicable law by any court, the Company (in relation to any payment made or to be made under or in connection with the Islamic Financing Transaction Documents) and each Islamic Financing Party hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover such amount.
- (c) The Company represents and warrants that:
 - (i) it has not relied upon any representation made by any other Party as to whether the transactions contemplated by this Agreement comply with the principles of Shari'a; and
 - (ii) it acknowledges that this Agreement and the transactions contemplated herein, have been pronounced compliant with the principles of Shari'a by a Shari'a Board approved by the Investment Agent and it has not disputed or contested, nor will it dispute or contest, that pronouncement or seek to otherwise challenge the validity or enforceability of the Islamic Financing Transaction Documents on the basis of non-compliance with the principles of Shari'a.

41. NO DOUBLE RECOVERY

Notwithstanding any other provision of this Agreement, the Islamic Financing Transaction Documents or any Transaction Document, no party shall be entitled to indemnification or reimbursement, to recover damages, obtain restitution or to claim any other compensation at law or in equity more than once in respect of the same loss suffered (whether pursuant to this Agreement, the Islamic Financing Transaction Documents, any Transaction Document or otherwise).

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 2
FORM OF EXTENSION REQUEST

To: **ABU DHABI COMMERCIAL BANK PJSC** as Global Agent

Copy: **ABU DHABI COMMERCIAL BANK PJSC** as Conventional Facility Agent

ABU DHABI COMMERCIAL BANK PJSC as Investment Agent

From: **NMC Holdco SPV Ltd**

Dated: [•]

NMC Holdco SPV Ltd – Common terms agreement dated [•] 2022 (the "Agreement")

We refer to the Agreement. This is an Extension Request.

Terms defined in the Agreement have the same meaning in this Extension Request.

We hereby give notice that the Final Maturity Date should be extended to [•] (being the date falling twelve months after the current Final Maturity Date).

We confirm that no Event of Default is continuing as at the date of this notice.

NMC HOLDCO SPV LTD

By:.....

SCHEDULE 3
FORM OF TRANSFER CERTIFICATE

To: **ABU DHABI COMMERCIAL BANK PJSC** as Global Agent
ABU DHABI COMMERCIAL BANK PJSC as [Conventional Facility Agent]/[Investment Agent]*

From: [*the Existing Financier*] (the "**Existing Financier**") and [*the New Financier*] (the "**New Financier**")

Dated: []

NMC Holdco SPV Ltd – Common terms agreement dated [•] 2022 (the "Agreement")

1. We refer to the Agreement. This is a Transfer Certificate for the purposes of the Agreement. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 19.6 (*Procedure for transfer*) of the Agreement:
 - (a) [The Existing Financier and the New Financier agree to the Existing Financier transferring to the New Financier by novation and in accordance with Clause 19.6 (*Procedure for transfer*) of the Agreement all or part of the Existing Financier's rights and obligations under the Agreement and the other Transaction Documents and in respect of the Transaction Security which relate to that portion of the Existing Financier's Commitment(s) and participations in Loans under the Conventional Finance Documents as specified in the Schedule.]
 - (b) The proposed Transfer Date is [].
 - (c) The Facility Office and address, fax number and attention details for notices of the New Financier for the purposes of Clause 30.2 (*Addresses*) of the Agreement are set out in the Schedule.]

OR

- (d) [By this Transfer Certificate, the Existing Financier transfers by novation [all] [] per cent. of its *pro rata* ownership rights and benefit in and to the Relevant Term Assets and [all] [*the same percentage*] of its Commitment to the New Financier in accordance with the terms of the Agreement (the "**Transfer**").]
- (e) The consideration for the Transfer is [].
- (f) The proposed Transfer Date is [].

* Delete as appropriate depending on the Facility to which the Transfer Certificate relates.

- (g) The Facility Office and address, fax number and attention details for notices of the New Financier for the purposes of Clause 30.2 (*Addresses*) of the Agreement are set out in the Schedule.]
3. The New Financier expressly acknowledges the limitations on the Existing Financier's obligations set out in paragraph (c) of Clause 19.5 (*Limitation of responsibility of Existing Financier*) of the Agreement.
 4. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
 5. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.
 6. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Financier's interest in the Transaction Security. It is the responsibility of the New Financier to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Financier's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred

[Insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments]

[Existing Financier]

[New Financier]

By:..... By:.....

This Transfer Certificate is accepted for the purposes of the Agreement and the other Transaction Documents by the Global Agent and [the Conventional Facility Agent] / [the Investment Agent]* and the Transfer Date is confirmed as [].

ABU DHABI COMMERCIAL BANK PJSC as Global Agent

By:.....

ABU DHABI COMMERCIAL BANK PJSC as [Conventional Facility Agent / Investment Agent]*

By:.....

SCHEDULE 4
FORM OF ASSIGNMENT AGREEMENT

To: **ABU DHABI COMMERCIAL BANK PJSC** as Global Agent
ABU DHABI COMMERCIAL BANK PJSC as [Conventional Facility Agent]/[Investment Agent]*
NMC Holdco SPV Ltd as the Company

From: [*the Existing Financier*] (the "**Existing Financier**") and [*the New Financier*] (the "**New Financier**")

Dated: []

NMC Holdco SPV Ltd – Common terms agreement dated [•] 2022 (the "Agreement")

1. We refer to the Agreement. This agreement is an Assignment Agreement for the purposes of the Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to Clause 19.7 (*Procedure for assignment*) of the Agreement.
 - (a) The Existing Financier assigns absolutely to the New Financier all the rights of the Existing Financier under the Agreement and the other Transaction Documents and in respect of the Transaction Security which correspond to that portion of the Existing Financier's Commitment(s) and participations in [Loans]/[Contributions Outstanding] as specified in the Schedule.
 - (b) The Existing Financier is released from all the obligations of the Existing Financier which correspond to that portion of the Existing Financier's Commitment(s) under [*insert details of Facility*] and participations in [Loans]/[Contributions Outstanding] as specified in the Schedule.
 - (c) The New Financier becomes a Party as a Financier and is bound by obligations equivalent to those from which the Existing Financier is released under paragraph (b) above.
3. The proposed Transfer Date is [].
4. On the Transfer Date the New Financier becomes a Party to the Transaction Documents as a Financier.
5. The Facility Office and address, fax number and attention details for notices of the New Financier for the purposes of Clause 30.2 (*Addresses*) of the Agreement are set out in the Schedule.

* Delete as appropriate depending on the Facility to which the Assignment Agreement relates.

6. The New Financier expressly acknowledges the limitations on the Existing Financier's obligations set out in paragraph (c) of Clause 19.5 (*Limitation of responsibility of Existing Financier*) of the Agreement).
7. This Assignment Agreement acts as notice to the Global Agent (on behalf of each Finance Party) and [the Conventional Facility Agent] / [the Investment Agent]*, upon delivery in accordance with Clause 19.8 (*Copy of Transfer Certificate or Assignment Agreement to Company*) to the Company of the assignment referred to in this Assignment Agreement.
8. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
9. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
10. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

Note: The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Financier's interest in the Transaction Security. It is the responsibility of the New Financier to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Financier's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

THE SCHEDULE

Commitment/rights and obligations to be transferred by assignment

[Insert relevant details]

[Facility Office address, fax number and attention details for notices and account details for payments]

[Existing Financier]

[New Financier]

By:..... By:.....

This Assignment Agreement is accepted for the purposes of the Agreement and the other Transaction Documents by the Global Agent and [the Conventional Facility Agent] / [the Investment Agent]* and the Transfer Date is confirmed as [].

Signature of this Assignment Agreement by the Global Agent and [the Conventional Facility Agent] / [the Investment Agent]* constitutes confirmation by the Global Agent and [the Conventional Facility Agent] / [the Investment Agent]* of receipt of notice of the assignment referred to in this Assignment Agreement, which notice the Global Agent and [the Conventional Facility Agent] / [the Investment Agent]* receives on behalf of relevant Finance Parties.

ABU DHABI COMMERCIAL BANK PJSC as Global Agent

By:.....

ABU DHABI COMMERCIAL BANK PJSC as [Conventional Facility Agent / Investment Agent]*

By:.....

Schedule 3
Governance Agreement

EXECUTION VERSION

WALKERS FIDUCIARY LIMITED
FINANCIERS
NMC HOLDCO SPV LTD
NMC OPCO LTD
AND
ABU DHABI COMMERCIAL BANK PJSC (AS GLOBAL AGENT)

GOVERNANCE AGREEMENT

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Agreed Form Documents at Completion

1. Articles of Association of HoldCo
2. Articles of Association of OpCo
3. Delegated Authority Framework

THIS AGREEMENT is made on _____ 2022

BETWEEN:

- (1) **WALKERS FIDUCIARY LIMITED**, a company incorporated in the Cayman Islands, whose registered office is at 190 Elgin Avenue, George Town, Grand Cayman, KY1-9008, Cayman Islands, as the original trustee of the Trust (the "**Trustee**");
- (2) **THE PERSONS** listed in Schedule 1;
- (3) **NMC HOLDCO SPV LTD**, a company incorporated and registered in the Abu Dhabi Global Market with registered number 5914 whose registered office is at 2462ResCowork01, 24th Floor, Al Sila Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates ("**HoldCo**");
- (4) **NMC OPCO LTD**, a private company limited by shares (previously an SPV known as NMC OpCo SPV LTD) incorporated and registered in the Abu Dhabi Global Market with registered number 5918, whose registered office is at 2473ResCo-work07, 24 Sila Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates ("**OpCo**"); and
- (5) **ABU DHABI COMMERCIAL BANK PJSC** as global agent of the Finance Parties (as defined in the HoldCo Common Terms Agreement) (the "**Global Agent**").

WHEREAS:

- (A) In connection with the Restructuring, HoldCo has been incorporated as a new private limited holding company under the laws of the ADGM and HoldCo has incorporated a new private limited operating company, OpCo as a wholly and directly owned Subsidiary of HoldCo.
- (B) On Completion, certain assets of NMC Healthcare Ltd (in administration) ("**LTD**") and its subsidiaries will be transferred to OpCo and its Subsidiaries pursuant to the DOCAs (the "**NMC Healthcare Business**").
- (C) On Completion, the Facilities will be made available to HoldCo by the HoldCo Financiers and the OpCo Facilities will be made available to OpCo by the "Financiers" (as defined in the OpCo Facilities Agreement) under the OpCo Facilities Agreement (the "**OpCo Financiers**").
- (D) HoldCo is an orphan entity with its shares held on trust by the Trustee. For as long as the HoldCo Facilities remain outstanding, the beneficiaries of the Trust will be the Financiers. Once the HoldCo Facilities are fully repaid, the residual value in the Trust will be applied for charitable purposes in accordance with, and as more particularly set out in, the Declaration of Trust.
- (E) The Trustee, the Financiers, HoldCo and OpCo have agreed to enter into this Agreement for the purpose of setting out the corporate governance arrangements for the HoldCo Group.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement:

"**Acceptable Bank**" has the meaning given in the HoldCo Common Terms Agreement;

"**Accounting Principles**" means generally accepted accounting principles in the United Arab Emirates, including IFRS;

"**Acquiring Financier**" has the meaning given in clause 11(g);

"**ADGM**" means the Abu Dhabi Global Market, Abu Dhabi, United Arab Emirates;

"**ADGM Courts**" means the courts of the ADGM established pursuant to Abu Dhabi Law No.4 of 2013;

"**Ad Hoc Committee**" means the informal *ad hoc* committee of creditors from time to time formed for the purposes of considering and negotiating the Restructuring, which as at the date of this Agreement comprises of:

- (a) Abu Dhabi Commercial Bank PJSC;
- (b) Barclays Bank PLC;
- (c) Emirates Islamic Bank PJSC;
- (d) Marathon Asset Management, LP;
- (e) Sculptor Capital LP; and
- (f) Silver Point Capital, L.P.,

provided that an entity shall cease to be a member of the *Ad Hoc Committee* (without prejudice to the rights, powers, and discretions of the others) if such entity no longer holds any Commitments;

"**Affiliate**" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

"**All HoldCo Financiers Consent Matter**" means any matter that requires the consent of all the "Financiers" (as defined in the HoldCo Common Terms Agreement) under clause 34.2 (*All Financier matters*) of the HoldCo Common Terms Agreement;

"**All OpCo Financiers Consent Matter**" means any matter that requires the consent of all the "Financiers" (as defined in the OpCo Common Terms Agreement) under clause 36.2 (*All Financier matters*) of the OpCo Common Terms Agreement;

"**Annual Determination Date**" means the Payment Date following each Annual EPM Re-run;

"Annual EPM Re-run" means the EPM re-run carried out on each anniversary of the EPM Run Date;

"Annual EPM Re-run Notice" means a notice from the Global Agent to the Financiers setting out the Financiers' Commitments following the Annual EPM Re-run;

"Annual Outlook" means consolidated financial guidance in respect of the HoldCo Group, in summary form and based on the Budget for the Relevant Accounting Period;

"Anti-Corruption Laws" means, to the extent applicable to the HoldCo Group from time to time, the Bribery Act 2010 of the United Kingdom, the Foreign Corrupt Practices Act of 1977 of the United States of America, any similar laws in any other jurisdiction and any other national and international laws enacted to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

"Applicable Law" means, to the extent applicable to the HoldCo Group from time to time, all civil and common law, statute, subordinate legislation, treaty, regulations, directive, decision, by-law, ordinance, code, order, decree, injunction or judgment of any government, quasi-government, statutory, administrative or regulatory body, court or agency;

"Articles of Association" means the Articles of Association of HoldCo and the Articles of Association of OpCo;

"Articles of Association of HoldCo" means the articles of association of HoldCo in the agreed form at Completion;

"Articles of Association of OpCo" means the articles of association of OpCo in the agreed form at Completion;

"Assignment Agreement" has the meaning given in the HoldCo Common Terms Agreement;

"Audit Committee" has the meaning given in clause 5.7(a);

"Audit Committee Chair" has the meaning given in paragraph 1.3 of Schedule 4;

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

"Best Prior Offer" has the meaning given in clause 11(b)(i);

"Board Appointing Financier" means: (i) a Nominating Financier; (ii) a Deemed Nominating Financier; or (iii) the Minority Reporting Financiers (acting through the Global Agent), as applicable;

"Budget" means: (i) prior to the adoption of the First Budget, the Completion Budget; (ii) following its adoption, the First Budget; or (iii) the operating budget and financial forecast by business unit and region for the HoldCo Group for a Financial Year that is aligned to the Business Plan and that is from time to time prepared and approved in accordance with clause 7 (as the case may be);

"Business" means the business of the HoldCo Group as described in clause 3;

"Business Day" means, unless specified as otherwise in this Agreement, a day (other than a Friday, Saturday or a Sunday) on which banks are open for general business in Abu Dhabi, Dubai and London;

"Business Plan" means the First Business Plan or the business plan for a rolling three (3) year period for the HoldCo Group that is from time to time prepared and approved in accordance with clause 7 (as the case may be);

"Cash Equivalent Instruments" means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the Government of the United States of America, the Government of the United Kingdom, the Government of any member state of the European Economic Area or any participating member state or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:
 - (i) for which a recognised trading market exists;
 - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any participating member state;
 - (iii) which matures within one year after the relevant date of calculation; and
 - (iv) which has a credit rating of either:
 - (A) A-1 or higher by S&P Global Ratings, a division of S&P Global Inc.;
 - (B) F1 or higher by Fitch Ratings Ltd;
 - (C) P-1 or higher by Moody's Investors Service Limited; or
 - (D) if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);

- (e) any investment in money market funds:
 - (i) which have a credit rating of:
 - (A) A-1 or higher by S&P Global Ratings, a division of S&P Global Inc.; or
 - (B) P-1 or higher by Moody's Investors Service Limited;
 - (ii) invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above;
 - (iii) can be turned into cash on not more than 30 days' notice; or
- (f) any other debt security approved by the Majority Financiers,

in each case, to which HoldCo is alone beneficially entitled at that time and which is not issued or guaranteed by HoldCo or subject to any Security (other than the Transaction Security);

"Chair" means:

- (a) as at Completion, the Non-Executive Director appointed to that office by the Nominating Financier which holds the largest Commitment, subject to approval by a Simple Majority of the other Non-executive Directors; or
- (b) any other person appointed to the role of chair of the HoldCo Group from time to time pursuant to clause 4.11(a);

"Chief Executive Officer" means:

- (a) as at Completion, Michael Davis; or
- (b) any other person appointed to the role of chief executive officer of the HoldCo Group from time to time pursuant to clause 10.1;

"Chief Financial Officer" means:

- (a) the person appointed to the role of chief financial officer of the HoldCo Group by the HoldCo Board following Completion; or
- (b) any other person appointed to the role of chief financial officer of the HoldCo Group from time to time pursuant to clause 10.1;

"Chief Transformation Officer" means:

- (a) the person appointed to the role of chief transformation officer of the HoldCo Group by the HoldCo Board following Completion; or
- (b) any other person appointed to the role of chief transformation officer of the HoldCo Group from time to time pursuant to clause 10.1;

"Claims Determination Process" has the meaning given in the DOCA proposed by NMC Healthcare Ltd (in administration);

"Commitment" has the meaning given in the HoldCo Common Terms Agreement read with clause 1.2(o);

"Committee" has the meaning given in clause 5.7(a);

"Completion" means the completion of the Restructuring;

"Completion Budget" means the budget set out in the First Business Plan;

"Compliance Certificate" means a certificate substantially in the form set out in Schedule 10;

"Confidential Information" means all information relating to:

- (a) this Agreement;
- (b) the Transaction Documents;
- (c) in the case of a Financier, HoldCo or any member of the HoldCo Group or a Facility of which it becomes aware in its capacity as, or for the purpose of becoming, a Financier from:
 - (i) any member of the HoldCo Group or any of its advisers; or
 - (ii) another Financier, if the information was obtained by that Financier from any member of the HoldCo Group or any of its advisers; and
- (d) any Financier, its Affiliates and Related Funds or its or their respective business or assets,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (e) is or becomes public information other than as a result of any breach of clause 14;
- (f) is identified in writing at the time of delivery as non-confidential; or
- (g) is known by the recipient before the date the information is disclosed to it or is lawfully obtained after that date from a source which, as far as the recipient is aware, has not been obtained in breach of, and is not otherwise subject to, any obligations of confidentiality; and

for the avoidance of doubt, no information delivered to Unrestricted Financiers shall be deemed to be Confidential Information;

"Control Trigger" has the meaning given in clause 11(a);

"Conventional Facility" has the meaning given in the HoldCo Common Terms Agreement;

"Conventional Finance Party" has the meaning given in the HoldCo Common Terms Agreement;

"Declaration of Trust" means the declaration of trust dated 3 October 2021 pursuant to which the Trustee holds, upon the trusts and in the manner therein declared, the entire share capital of the capital of HoldCo;

"Deed of Adherence" means a deed substantially in the form set out in Schedule 2;

"Deemed Nominating Financier" has the meaning given in clause 4.4(b);

"Delegated Authority Framework" means the framework for delegating authority to the Reporting Financiers, HoldCo Board, OpCo Board, Chief Executive Officer, OpCo Subsidiary boards, Fakih HoldCo and the Fakih CEO (in the agreed form at Completion and which shall, subject to approval by the HoldCo Board acting by simple majority, be adopted on Completion);

"Director Deficit Event" has the meaning given in clause 4.4(b);

"Dispute" has the meaning given in clause 23.1(a);

"Disruption Event" has the meaning given in the HoldCo Common Terms Agreement;

"DOCAs" means the deeds of company arrangement to be proposed by NMC Healthcare Ltd (in administration) and certain of its direct and indirect Subsidiaries pursuant to Chapter 8 of Part 1 of the ADGM Insolvency Regulations 2015 for the purpose of implementing the Restructuring;

"EPM" has the meaning given in the DOCA proposed by NMC Healthcare Ltd (in administration);

"EPM Run Date" has the meaning given in clause 4.3;

"Executive Management Team" means the Chief Executive Officer, the Chief Financial Officer and the Chief Transformation Officer;

"Exit Committee" has the meaning given in clause 5.7(a);

"Exit Committee Chair" has the meaning given in paragraph 1.3 of Schedule 7;

"Exit Event" has the meaning given in the HoldCo Common Terms Agreement;

"External Auditor" means PricewaterhouseCoopers or such other auditor as is appointed as the HoldCo Group's external auditor from time to time;

"Facility" has the meaning given in the HoldCo Common Terms Agreement;

"Fair Value" means the fair value of the relevant Commitments to be transferred pursuant to a Mandatory Offer (in respect of which it is not possible to establish the Best Prior Offer) as determined in accordance with clause 11(c);

"Fakih CEO" means Dr. Michael Fakih or the chief executive officer of Fakih HoldCo appointed in accordance with the Fakih SHA;

"Fakih HoldCo" means Fakih Reproductive Medicine Holding LTD, a company incorporated in the Abu Dhabi Global Market whose registered office is at DD-15-134-004 - 007, Level 15, WeWork Hub71, Al Khatem Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates;

"Fakih SHA" means the shareholders' agreement in respect of Fakih HoldCo made between Dr. Michael Fakih, NMC Healthcare Ltd (in administration) and Fakih HoldCo;

"Finance Documents" has the meaning given in the OpCo Common Terms Agreement and includes this Agreement;

"Financial Indebtedness" has the meaning given in the HoldCo Common Terms Agreement;

"Financial Quarter" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date;

"Financial Year" means the annual accounting period of the HoldCo Group ending on or 31 December in each year (beginning with the financial year commencing on 1 January 2023);

"Financier Group" means the Nominating Financiers, the Deemed Nominating Financiers, the Minority Reporting Financiers, the Reporting Financiers, the Supervising Financiers or the Unrestricted Financiers (as applicable);

"Financiers" means the persons listed in Schedule 1 and any other person to whom Commitments have been transferred in accordance with the HoldCo Facilities and who has executed a Deed of Adherence;

"First Budget" means the operating budget and financial forecast for the HoldCo Group for the period from Completion to 31 December 2022;

"First Business Plan" means the document titled "NMC Healthcare LLC 3-years Business Plan" prepared by NMC Healthcare LLC covering the period from 1 January 2020 to 31 December 2022 and which is dated 31 July 2020 and which shall, subject to approval by the HoldCo Board acting by simple majority, be adopted as the business plan for the HoldCo Group on Completion;

"General Counsel" means the person appointed to the role of general counsel of the HoldCo Group from time to time;

"Holdback Claims" has the meaning given in the LTD DOCA;

"HoldCo Board" means the board of HoldCo Directors from time to time;

"HoldCo Common Terms Agreement" means the common terms agreement dated on or about the date of this Agreement and made between, among others, HoldCo and the Financiers;

"HoldCo Directors" means:

- (a) prior to Completion, such persons as are appointed as directors of HoldCo; and
- (b) on and from Completion, the Non-Executive Directors;

"HoldCo Facilities" means the Conventional Facility and the Islamic Financing Facility;

"HoldCo Financiers" means the Conventional Finance Parties and the Islamic Financing Parties;

"HoldCo Group" means HoldCo and its Subsidiaries from time to time;

"Holding Company" means, in relation to a person, any other person, in respect of which it is a Subsidiary;

"IFRS" means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements;

"Increased Majority Reporting Financiers" has the meaning given in the HoldCo Common Terms Agreement;

"Increased Majority Reporting Financiers Consent Matter" means any amendment or waiver under the Transaction Documents that requires the consent of the Increased Majority Reporting Financiers under the HoldCo Common Terms Agreement;

"Indemnity Cover" has the meaning given in the LTD Asset Transfer Agreement;

"Independent Expert" has the meaning given in clause 11(c);

"Industrial Competitor" has the meaning given in the HoldCo Common Terms Agreement;

"Initial Distribution Requirements" has the meaning given in the LTD DOCA;

"Initial Non-Executive Directors" has the meaning given in clause 4.8;

"Interim Period" has the meaning given in clause 4.4(e);

"Internal Auditor" means:

- (a) Santosh Agarwal; or
- (b) any other person appointed to the role of internal auditor of the HoldCo Group from time to time pursuant to clause 10.1;

"Islamic Financing Facility" has the meaning given in the HoldCo Common Terms Agreement;

"Islamic Financing Party" has the meaning given in the HoldCo Common Terms Agreement;

"Key Policies" means the policies and procedures referred to in clause 9.3(b)(ii) and clause 9.13(b)(i);

"Long Accounting Period" means the accounting period of the HoldCo Group commencing on 26 August 2021 and ending on 31 December 2022;

"LTD" has the meaning given in the recitals;

"LTD Asset Transfer Agreement" has the meaning given in the LTD DOCA;

"LTD DOCA" means the DOCA in respect of NMC Healthcare Ltd (in administration);

"Majority Financiers" has the meaning given in the OpCo Common Terms Agreement;

"Majority OpCo Financiers Consent Matter" means any amendment or waiver under the Finance Documents that requires the consent of the Majority Financiers under clause 36.1(a) (*Required consents*) of the OpCo Common Terms Agreement;

"Majority Reporting Financiers" has the meaning given in the HoldCo Common Terms Agreement;

"Majority Reporting Financiers Consent Matter" means any amendment or waiver under the Transaction Documents that requires the consent of the Majority Reporting Financiers in accordance with the HoldCo Common Terms Agreement;

"Management Incentive Plan" means the cash based incentive scheme for the OpCo Board and employees to be established by HoldCo pursuant to clause 10.5;

"Mandatory Offer" has the meaning given in clause 11(a);

"Material Adverse Effect" has the meaning given in the HoldCo Common Terms Agreement;

"Minority Director" has the meaning given in clause 4.7(a)(i);

"Minority Director Short List" has the meaning given in clause 4.7(c)(i);

"Minority Reporting Financiers" has the meaning given in clause 4.7(a);

"NED Appointment Letter" means the letter to be sent from HoldCo to the relevant Non-Executive Director in accordance with paragraph 6.2.4 of Schedule 3;

"Net Cash Proceeds" means the estimated gross proceeds of an Exit Event less:

- (a) any fees, costs, expenses or taxes reasonably estimated by HoldCo to be payable by it or any other member of the HoldCo Group in connection with the Exit Event; and
- (b) the Indemnity Cover to be retained by HoldCo upon the occurrence of the Exit Event,

and in each case as notified to the Financiers together with any request to provide approval for the relevant Exit Event;

"**NMC Healthcare Business**" has the meaning given in the recitals;

"**NMC HoldCo Refinancing**" has the meaning given in the HoldCo Common Terms Agreement;

"**Nominating Financier**" has the meaning given in clause 4.4(a);

"**Nominations Cap**" has the meaning given in clause 4.4(a)(i);

"**Non-Executive Director**" means:

- (a) as at Completion, each 10% Director and the Minority Director appointed on or around Completion; or
- (b) any other person appointed as a non-executive HoldCo Director from time to time pursuant to clause 4.8;

"**Notice**" has the meaning given in clause 21.1;

"**Notified Subparticipant**" has the meaning given in clause 4.4(e);

"**Novation Document**" has the meaning given in the LTD Asset Transfer Agreement;

"**OpCo Board**" means the board of OpCo Directors from time to time;

"**OpCo Common Terms Agreement**" means the common terms agreement dated on or about the effective date of Completion between, among others, OpCo and the Original Financiers (as defined thereunder);

"**OpCo Directors**" means the directors on the OpCo Board from time to time;

"**OpCo Facilities Agreement**" means the primary facilities agreement dated on or around the effective date of Completion between, amongst others, OpCo and the Original Lenders (as defined thereunder);

"**OpCo Finance Documents**" has the meaning given to the term 'Finance Documents' in the OpCo Common Terms Agreement;

"**OpCo Financiers**" has the meaning given in the recitals;

"**OpCo Group**" means OpCo and its Subsidiaries from time to time;

"**OpCo Subsidiaries**" means the Subsidiaries of OpCo from time to time, including the persons whose shares are transferred to OpCo pursuant to the DOCAs;

"**Operational KPIs**" means the following operational information on a consolidated basis and by business unit:

- (a) inpatient and outpatient volume and average revenue by patient;

- (b) number of employees, by doctors, staff nurses, other clinical staffs and non-clinical support staffs; and
- (c) rejections, discount, patient revenue, patient non-cash revenue and rejections percentage;

"Operations and Quality Committee" has the meaning given in clause 5.7(a);

"Operations and Quality Committee Chair" has the meaning given in paragraph 1.3 of Schedule 5;

"Payment Date" has the meaning given in the HoldCo Common Terms Agreement;

"Permitted Security" means:

- (a) any Transaction Security or other Security created or evidenced pursuant to the terms of the Transaction Documents;
- (b) any netting or set off arrangement entered into by any member of the HoldCo Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (c) any lien arising by operation of law and in the ordinary course of trading or in respect of an amount being reserved in respect of taxes being contested in good faith; and
- (d) any Security created over the Acceptable Holding Account pursuant to (and as defined in the LTD Asset Transfer Agreement.

"Priority HoldCo Financial Indebtedness" has the meaning given in the HoldCo Common Terms Agreement;

"Purchase Undertaking" has the meaning given in the HoldCo Common Terms Agreement;

"Purchaser" has the meaning given in clause 11(a);

"Quarter Date" means each of 31 March, 30 June, 30 September and 31 December;

"Quasi Security" means an arrangement or transaction described in clause 9.8(b);

"Record Date" has the meaning given in the LTD DOCA;

"Related Fund" in relation to a fund (the **"First Fund"**), means a fund which is managed or advised by the same investment manager or investment adviser as the First Fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the First Fund;

"Related Party Transaction" means any transaction or arrangement between any member of the HoldCo Group and any Financier;

"Relevant Accounting Period" means:

- (a) prior to 1 January 2023, the Long Accounting Period; and
- (b) on and from 1 January 2023, the relevant Financial Year.

"Relevant Event" has the meaning given in clause 4.6(d);

"Relevant Transfer" has the meaning given in clause 20(b);

"Remuneration and Nominations Committee" has the meaning given in clause 5.7(a);

"Remuneration and Nominations Committee Chair" has the meaning given in paragraph 1.3 of Schedule 3;

"Reporting Financier" has the meaning given in the HoldCo Common Terms Agreement;

"Reporting Financier Information" means the financial statements and other information delivered pursuant to clause 8.2 and clause 8.5;

"Restricted Party" means any individual or entity that is:

- (a) listed on, or owned or controlled (as such terms, including any applicable ownership and control requirements, are defined and construed in the applicable Sanctions laws and regulations or in any official guidance in relation to such Sanctions laws and regulations) by a person listed on, a Sanctions List;
- (b) a government of a Sanctioned Country;
- (c) an agency or instrumentality of, or an entity directly or indirectly owned or controlled by, a government of a Sanctioned Country;
- (d) resident, organised or located in, operating from, or incorporated under the laws of, a Sanctioned Country, or any individual or entity directly or indirectly owned or controlled by that individual or entity;
- (e) otherwise a target of Sanctions, or with whom it would be a breach of any applicable Sanctions for any Financier, its Affiliates and Related Funds to deal; or
- (f) an entity that HoldCo is aware (having made due enquiry) is acting on behalf of any of the persons listed in paragraphs (a) to (e) (inclusive), for the purpose of evading or avoiding, or having the intended effect of or intending to evade or avoid, or facilitating the evasion or avoidance of any Sanctions.

"Restructuring" has the meaning given in the DOCAs;

"Restructuring Committee" has the meaning given in clause 5.7(a);

"Restructuring Committee Chair" has the meaning given in paragraph 1.3 of Schedule 6;

"Restructuring Implementation Deed" means the restructuring implementation deed entered into in connection with the LTD DOCA;

"RID Procedure" has the meaning given in clause 4.7(b);

"Sanctioned Country" means any country, region or other territory that is, or whose government is, subject to a general export, import, financial or investment embargo under any Sanctions, or is the subject of Sanctions broadly prohibiting dealings with such government, country or territory;

"Sanctions" means economic or financial sanctions or trade embargoes or other comprehensive prohibitions against transaction activity pursuant to anti-terrorism laws or export control laws enacted, imposed, administered or enforced from time to time by any Sanctions Authority;

"Sanctions Authority" means:

- (a) the European Union;
- (b) the United Arab Emirates;
- (c) the United Kingdom;
- (d) the United Nations Security Council;
- (e) the United States of America; and
- (f) the respective governmental institutions of those listed in paragraphs (a) to (e) (inclusive);

"Sanctions List" means any of the lists of specifically designated nationals or designated or sanctioned individuals or entities (or equivalent) issued by any Sanctions Authority, each as amended, supplemented or substituted from time to time;

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"Shares" has the meaning given in the Declaration of Trust;

"Shari'a Event" has the meaning given in the Purchase Undertaking;

"Simple Majority" means at least four of the Non-Executive Directors;

"Simple Majority Resolution" means a resolution passed by a Simple Majority voting in favour of the resolution at a quorate meeting of the HoldCo Board;

"Special Purpose Financial Information" has the meaning given in clause 8.4(a)(i);

"Subparticipated Commitment" has the meaning given in clause 4.4(e);

"Subparticipating Financier" has the meaning given in clause 4.4(e);

"Subparticipation Notice" means a notice to the Global Agent in the form set out at Schedule 11;

"Subsidiary" means an entity of which a person has direct or indirect control or owns directly or indirectly more than fifty percent (50%) of the voting capital or similar right of ownership;

"Super Majority" means at least five of the Non-Executive Directors;

"Super Majority Financiers" has the meaning given in the OpCo Common Terms Agreement;

"Super Majority OpCo Financiers Consent Matter" means any matter that requires the consent of the Super Majority Financiers under the OpCo Common Terms Agreement;

"Super Majority Reporting Financiers" has the meaning given in the HoldCo Common Terms Agreement;

"Super Majority Reporting Financiers Consent Matter" means any amendment or waiver under the Transaction Documents that requires the consent of the Super Majority Reporting Financiers under the HoldCo Common Terms Agreement;

"Super Majority Resolution" means a resolution passed by a Super Majority voting in favour of the resolution at a quorate meeting of the HoldCo Board;

"Supervising Financier" has the meaning given in the HoldCo Common Terms Agreement;

"Tax" means any tax, levy, impost, duty or other charge or withholding of a similar nature;

"Terms of Reference" has the meaning given in clause 5.7(a)

"Total Commitments" has the meaning given in the HoldCo Common Terms Agreement;

"Transaction Documents" has the meaning given in the HoldCo Common Terms Agreement and includes this Agreement;

"Transaction Security" has the meaning given in the HoldCo Common Terms Agreement;

"Transfer Certificate" has the meaning given in the HoldCo Common Terms Agreement;

"Transfer Notice" means a Transfer Certificate or an Assignment Agreement;

"Transferring Nominating Financier" has the meaning given in clause 4.5(a);

"Treasury Transaction" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;

"Trust" means the trust constituted by the Declaration of Trust;

"Unrestricted Financier" has the meaning given in the HoldCo Common Terms Agreement;

"Unrestricted Financier Information" means the financial statements and other information delivered pursuant to clause 8.1(a);

"USD" or **"dollars"** means the lawful currency of the United States of America;

"Working Hours" means 9.30am to 5.30pm on a Business Day in the United Arab Emirates; and

"10% Director" has the meaning given in clause 4.4(a)(i).

1.2 **In this Agreement:**

(a) **"acting in concert"** means, a group of persons who, pursuant to:

- (i) an agreement (other than the Transaction Documents), including, without limitation, pursuant to any sub-participation agreement; or
- (ii) understanding (whether formal or informal),

actively co-operate, in connection with the acquisition directly or indirectly of any Commitments or the exercise of any rights, discretions or decisions as a Financier under the Transaction Documents or otherwise seeking to exercise control over the HoldCo Group;

(b) a document in the **"agreed form"** is a reference to a document in a form approved and for the purposes of identification initialled by or on behalf of the Majority Reporting Financiers;

(c) a **"body corporate"** is to be construed in accordance with section 1028(1) of the ADGM Companies Regulations 2020; and references to a **"company"** shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;

(d) **"control"** means, in relation to any person, the power to direct the management and/or policies of such person, directly or indirectly, whether through the ownership of voting securities or similar interests, by contract or otherwise, and the terms controlled, controller and controlling shall be construed accordingly;

(e) a **"party"** is a reference to a party to this Agreement (either by virtue of having executed this Agreement or having entered into a Deed of Adherence) and includes a reference to that party's legal personal representatives, successors and permitted assigns, and **"parties to this Agreement"** and **"parties"** shall be construed accordingly;

(f) a **"person"** includes a reference to any individual, firm, company, corporation or other body corporate, government, state or agency of state, local or municipal

- authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (g) any statute or statutory provision includes a reference to the statute or statutory provision as amended, modified or re-enacted or both from time to time (whether before or after the date of this Agreement) and any subordinate legislation made under the statute or statutory provision (whether before or after the date of this Agreement);
 - (h) a clause or schedule, unless the context otherwise requires, is a reference to a clause of, or schedule to, this Agreement;
 - (i) (unless the context otherwise requires) the singular shall include the plural, and *vice versa*;
 - (j) one gender shall include each gender;
 - (k) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term and a reference to any English statute shall be construed so as to include equivalent or analogous laws of any other jurisdiction;
 - (l) times of the day is to time in the United Arab Emirates;
 - (m) any other document referred to in this Agreement is a reference to that other document as amended, varied, novated, supplemented or replaced from time to time (other than in breach of the provisions of this Agreement);
 - (n) unless otherwise stated in this Agreement or the Articles of Association of HoldCo, decisions taken by the HoldCo Board shall be valid and effective if taken with the approval of a Simple Majority of the HoldCo Board at a quorate meeting of the HoldCo Board; and
 - (o) unless otherwise stated in this Agreement, any reference to a party's Commitments (including where such term is used in relation to a term defined in the HoldCo Common Terms Agreement) shall be construed to include the Commitments of such party's Affiliates and Related Funds and such other persons as are acting in concert with such party.
- 1.3 The *ejusdem generis* principle of construction shall not apply to this Agreement. Accordingly, general words shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class of acts, matters or things or by examples falling within the general words. Any phrase introduced by the terms "other", "including", "include" and "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.4 The Schedules form part of this Agreement and shall have effect accordingly.
- 1.5 The headings in this Agreement do not affect its interpretation or construction.

2. EFFECTIVENESS OF THIS AGREEMENT

This Agreement shall come into effect at Completion save for clauses 1, 2, 3, 4 and 14 to 29 (inclusive) which shall take effect from the date of this Agreement.

3. THE BUSINESS OF THE HOLDCO GROUP

The parties agree that the business of the HoldCo Group shall be to carry on the NMC Healthcare Business from Completion in accordance with:

- (a) this Agreement;
- (b) the Articles of Association of HoldCo;
- (c) the applicable Business Plan and Budget;
- (d) the Accounting Principles;
- (e) the Key Policies of the HoldCo Group as approved by the HoldCo Board in accordance with this Agreement; and
- (f) Applicable Law.

4. CORPORATE GOVERNANCE OF THE HOLDCO GROUP

4.1 The Trustee

- (a) The Trustee shall only exercise its voting rights and other rights as the shareholder of HoldCo in order (insofar as it is able to do so through the exercise of such rights) to:
 - (i) pass the appropriate shareholder resolution to adopt the Articles of Association on Completion and make the relevant filings in respect of the Articles of Association;
 - (ii) procure that HoldCo complies with all of its obligations under this Agreement, the Articles of Association of HoldCo and Applicable Law;
 - (iii) give full effect to the terms of this Agreement and the Articles of Association of HoldCo; and
 - (iv) give full effect to the rights and obligations of the parties as set out in this Agreement and the Articles of Association of HoldCo.
- (b) For the avoidance of doubt, the Trustee shall not exercise its voting rights and other rights as the shareholder of HoldCo contrary to the terms, intent and purpose of this Agreement, as set out in clause 4.1(c).
- (c) Without limiting the generality of the foregoing, provided that, subject always to actions that the Trustee is required to take by Applicable Law, but notwithstanding anything contained in this Agreement, the Trustee shall have no power to:

- (i) sell, dispose of, convert, vary, transpose, assign, pledge, charge, mortgage, hypothecate, encumber or otherwise deal in any manner with all or any of the Shares otherwise than under or pursuant to the provisions of the Transaction Documents;
- (ii) exercise the rights attaching to the Shares in such a way as would, or might reasonably be expected to, result in a breach by HoldCo or any nominee of the Trustee of their respective obligations under or pursuant to the provisions of the Transaction Documents;
- (iii) propose or pass any resolutions to increase or consolidate, divide, cancel, reduce or otherwise alter the issued share capital of HoldCo; or
- (iv) propose or pass any resolutions to commence any proceedings to voluntarily wind up HoldCo.

4.2 The HoldCo Board and the OpCo Board

- (a) The HoldCo Board shall be the governing body of the HoldCo Group, and:
 - (i) the Executive Management Team (through the Chief Executive Officer) shall report to the HoldCo Board; and
 - (ii) the Internal Auditor shall report to both the Chief Executive Officer and the HoldCo Board.
- (b) The OpCo Board shall, subject to clause 10.3, be responsible for the day to day operations and management of the business of the OpCo Group.
- (c) On Completion, the Chief Executive Officer shall be appointed as an OpCo Director. Immediately following the commencement of their employment, the Chief Financial Officer and the Chief Transformation Officer shall each be appointed as OpCo Directors. Subsequently, the appointment and removal of the OpCo Directors shall be approved by the HoldCo Board acting by Simple Majority.
- (d) The appointment and approval of the directors of the OpCo Subsidiaries shall be approved by the HoldCo Board acting by Simple Majority.

4.3 Composition of the HoldCo Board

At Completion, the HoldCo Board shall consist of:

- (a) seven Non-Executive Directors, comprising:
 - (i) six 10% Directors; and
 - (ii) one Minority Director; and
- (b) the Chief Executive Officer, who shall be a non-voting member of the HoldCo Board. For the avoidance of doubt, the Chief Executive Officer shall not be a statutory director of the HoldCo Board or be entitled to vote at or be counted in

the quorum of any meetings of the HoldCo Board but shall have a standing invitation to attend and participate in such meetings (subject to clause 5.1(h) and the provisions of Applicable Law) and receive the same information as sent to the HoldCo Directors pursuant to clause 5.1(c) in respect of such meetings.

The Reporting Financiers' entitlements: (i) to nominate 10% Directors in accordance with clause 4.4; and (ii) for such nominees to be appointed to the HoldCo Board at Completion in accordance with clause 4.8 shall be based on the Financiers' Commitments as determined by the EPM run carried out before Completion in accordance with the LTD DOCA (the date on which the EPM run is carried out being the "**EPM Run Date**"), but provided that: (A) a Reporting Financier must have satisfied the Initial Distribution Requirements on or prior to the Record Date to be eligible to nominate 10% Directors to the HoldCo Board on Completion in accordance with clause 4.4; (B) any provisional allocation of Commitments to a Reporting Financier in respect of any Holdback Claims shall not be taken into account when calculating such Reporting Financier's Commitments for this purpose; and (C) any notified Subparticipated Commitments shall be deemed to be held by the Notified Subparticipant in place of the Subparticipating Financier in accordance with clause 4.4(e).

4.4 Nomination of Non-Executive Directors by the Nominating Financiers

- (a) Subject to clause 4.4(e), for so long as a Reporting Financier holds more than ten percent (10%) of the Commitments from time to time (each such Reporting Financier being a "**Nominating Financier**"), it may (but is not required to), subject to this clause 4.4 and clause 4.6:
 - (i) nominate one HoldCo Director for each ten percent (10%) of the Commitments that it holds up to a maximum of three Non-Executive Directors (the "**Nominations Cap**") (each Non-Executive Director so nominated being a "**10% Director**"); and
 - (ii) from time to time procure the resignation of or remove from office and/or replace any such 10% Director so nominated by it and, upon such resignation or removal may nominate another person for appointment in their place in accordance with this clause 4.4,

it being understood that: (A) a Commitment shall not be counted more than once for the purposes of calculating a nomination or removal right pursuant to this clause 4.4; and (B) the Nominations Cap shall apply such that a Nominating Financier together with its Affiliates and Related Funds and such other persons as are acting in concert with such Nominating Financier shall not, in aggregate, be entitled to nominate more than three Non-Executive Directors.

- (b) Subject to clause 4.4(e), if there are fewer than six Non-Executive Directors because there are too few Nominating Financiers and/or one or more Nominating Financiers chose not to nominate a Non-Executive Director (a "**Director Deficit Event**"), then the Reporting Financier(s) with the next largest holding of Commitments that is prepared to nominate a Non-Executive Director shall be deemed to be a Nominating Financier for the purposes of clause 4.4(a), provided that:

(i) such Reporting Financier has satisfied the Initial Distribution Requirements on or prior to the Record Date to be eligible to nominate 10% Directors to the HoldCo Board in accordance with clause 4.4; and

(ii) any provisional allocation of Commitments to such Reporting Financier in respect of any Holdback Claims shall not be taken into account when calculating such Reporting Financier's Commitments for this purpose,

(each such Reporting Financier being a "**Deemed Nominating Financier**") and, in each case, for so long as the Director Deficit Event continues.

- (c) If the Director Deficit Event ceases to exist, the Deemed Nominating Financiers shall, with effect from the next Annual Determination Date following the date on which the Director Deficit Event ceases to exist, procure the resignations of such number of their nominated Non-Executive Directors as are necessary to ensure that each Nominating Financier (excluding for these purposes any Deemed Nominating Financiers and any Nominating Financiers who have elected not to nominate a Non-Executive Director) shall be entitled to nominate its Non-Executive Directors to the HoldCo Board in accordance with clause 4.4(a), it being acknowledged that the Deemed Nominating Financier with the smallest holding of Commitments (as determined by clause 4.4(b)) shall be required to procure such resignations ahead of any Deemed Nominating Financier with a larger holding of Commitments (as determined by clause 4.4(b)).
- (d) If the Nominating Financiers from time to time are entitled to nominate more than six Non-Executive Directors, the Nominating Financier or Nominating Financiers with the smallest holding of Commitments shall not be entitled to make any such nomination, such that the Nominating Financiers shall in total be entitled to nominate six Non-Executive Directors.
- (e) A Financier that has entered into a *bona fide* subparticipation arrangement (such Financier, the "**Subparticipating Financier**") in respect of its Commitments (including, for the avoidance of doubt, any Commitments that it is prospectively entitled to receive on Completion) (the "**Subparticipated Commitments**") may, together with the relevant subparticipant (the "**Notified Subparticipant**") deliver a Subparticipation Notice to HoldCo and the Global Agent. For the purposes of clauses 4.4(a) and 4.4(b), during the period beginning on Completion and ending three (3) months thereafter (the "**Interim Period**"), any Subparticipated Commitments shall be deemed to be held by the Notified Subparticipant in place of the Subparticipating Financier. As a result, and for the Interim Period only, a Notified Subparticipant may be deemed to be a Nominating Financier for the purposes of this Agreement in place of the Subparticipating Financier, even if they are not a Financier or the Commitments held by them as a Financier would be insufficient for them to be a Nominating Financier provided that (i) the Notified Subparticipant continues to be party to the subparticipation arrangement with the Subparticipating Financier in respect of the Subparticipated Commitments; and (ii) such Subparticipated Commitments would but for this clause 4.4(e) entitle the Subparticipating Financier to be a Nominating Financier for the purposes of clauses 4.4(a) and 4.4(b).

4.5 **Resignation and replacement of Non-Executive Directors following a Relevant Transfer**

- (a) If a Nominating Financier (a "Transferring Nominating Financier") delivers a Transfer Notice to the Global Agent pursuant to clause 19.6 (*Procedure for transfer*) of the HoldCo Common Terms Agreement to effect a Relevant Transfer, the Global Agent shall, on receipt of such Transfer Notice, calculate whether such Transferring Nominating Financier would, following such Relevant Transfer, remain a Nominating Financier or Deemed Nominating Financier pursuant to clause 4.4 and, if such Transferring Nominating Financier would not remain a Nominating Financier or Deemed Nominating Financier, the Global Agent shall, as soon as reasonably practicable:
- (i) notify the Transferring Nominating Financier and each of the other Nominating Financiers of such change; and
 - (ii) notify each Reporting Financier who on a *pro forma* basis (in accordance with clause 4.5(c)) will become a Nominating Financier or Deemed Nominating Financier (in accordance with clause 4.4) after the Relevant Transfer has taken effect.
- (b) If a Transferring Nominating Financier receives a notice from the Global Agent pursuant to clause 4.5(a)(i), it shall:
- (i) procure the resignation of such number of its nominated 10% Directors as is necessary to ensure that it has nominated only such number of 10% Directors as it is entitled to nominate, with such resignation(s) to take effect:
 - (A) subject to clause 4.5(b)(i)(B), from the date replacement 10% Directors are appointed in accordance with clauses 4.4 and 4.8; or
 - (B) in the event that the Relevant Transfer would result in the Nominating Financier ceasing to hold any Commitments, with effect from the date of settlement of the Relevant Transfer; and
 - (ii) procure that any resigning 10% Director continues to act reasonably and in good faith in accordance with this Agreement until they are replaced.
- (c) In the event of a Relevant Transfer, and solely for the purposes of determining each of the Reporting Financiers who will become a Nominating Financier or Deemed Nominating Financier (in accordance with clause 4.4) in place of the Transferring Nominating Financier, the Financiers' Commitments shall be assessed by the Global Agent, by reference to its records on the date of the Transfer Notice and after giving *pro forma* effect to the Relevant Transfer and for which purpose any provisional allocation of Commitments to a Financier in respect of any Holdback Claims shall not be taken into account when calculating such Financier's Commitments.

- (d) Each Reporting Financier who on a *pro forma* basis (in accordance with clause 4.5(c)) becomes a Nominating Financier or Deemed Nominating Financier (in accordance with clause 4.4) after a Relevant Transfer has taken effect and has been so notified by the Global Agent pursuant to clause 4.5(a)(ii), shall be entitled to nominate its Non-Executive Director(s) to the HoldCo Board in accordance with (and subject to) clause 4.4(a) immediately after such Relevant Transfer has taken effect.
- (e) Upon the termination of a Subparticipation Notice, and for the purposes of clauses 4.4(a), 4.4(b) and this clause 4.5 (*Resignation and replacement of Non-Executive Directors following a Relevant Transfer*) only:
 - (i) if a Transfer Notice has been delivered to the Global Agent in respect of the applicable Subparticipated Commitments prior to the end of the Interim Period, whereby the Subparticipated Commitments are transferred or assigned to the Notified Subparticipant or any of its Affiliates, no Relevant Transfer shall be deemed to have taken place and the Notified Subparticipant (or its relevant Affiliates that have acquired the Subparticipated Commitments) shall be deemed continue as a Financier holding the Commitments that were formerly subparticipated; or
 - (ii) in any other case, a Relevant Transfer of the Subparticipated Commitments shall be deemed to have occurred from the Notified Subparticipant to the Financier or Financiers who hold those Commitments as at the date of the termination.

4.6 Annual Adjustment of Commitments

- (a) Without prejudice to the provisions of clause 4.5 and other than in respect of the Initial Non-Executive Directors, the entitlement of the Reporting Financiers to nominate 10% Directors in accordance with clause 4.4 shall take effect on each Annual Determination Date, and shall be based on the Financiers' Commitments as set out in the Annual EPM Re-run Notice, such notice to be given to the Financiers by the Global Agent no later than the Annual Determination Date, but provided that:
 - (i) a Reporting Financier must have satisfied the Initial Distribution Requirements on or prior to the Annual Determination Date to be eligible to nominate 10% Directors to the HoldCo Board in accordance with clause 4.4; and
 - (ii) any provisional allocation of Commitments to a Reporting Financier in respect of any Holdback Claims shall not be taken into account when calculating such Reporting Financier's Commitments for this purpose.
- (b) For the avoidance of doubt, the determination of the Reporting Financiers' entitlements to nominate a 10% Director in accordance with clause 4.4 as a result of any Commitments received by a Financier as a result of re-running the EPM (other than as a result of the Annual EPM Re-run) and/or the Claims Determination Process shall take effect on the earliest to occur of:

- (i) the next Annual Determination Date (subject to the Annual EPM Re-run immediately prior to such Annual Determination Date having occurred); and
 - (ii) the date on which the Global Agent assesses the Financiers' Commitments in accordance with clause 4.5(c), provided that this provision shall not require a 10% Director (other than a 10% Director nominated by a Transferring Nominating Financier who is required to resign in accordance with clause 4.5(b)) to resign prior to the end of the tenth (10th) Business Day after the next Annual Determination Date and provided that such resignation shall otherwise take effect in accordance with clause 4.6(c).
- (c) Within ten (10) Business Days of each Annual Determination Date, each Reporting Financier shall:
- (i) procure the resignation of such number of its nominated 10% Directors as is necessary to ensure that it has nominated only such number of 10% Directors as it is entitled to nominate in accordance with clause 4.4, with such resignation(s) to take effect from the date replacement 10% Directors are appointed in accordance with clauses 4.4 and 4.8; and
 - (ii) procure that any resigning 10% Directors continue to act reasonably and in good faith in accordance with this Agreement until they are replaced.
- (d) The Global Agent shall notify HoldCo if (to the best of its knowledge) any person holds or controls twenty five percent (25%) or more of the Commitments following:
- (i) a Relevant Transfer;
 - (ii) an Annual EPM Re-Run; and/or
 - (iii) any other event,
- (each a "**Relevant Event**"), in each case promptly (and in any event within five (5) Business Days of the Relevant Event). Following such notification, HoldCo will promptly (and in any event within 15 days of the Relevant Event) complete and file the required documents in respect of its beneficial owners with the relevant regulators, in accordance with ADGM law.

4.7 Nomination of the Minority Director by the Minority Reporting Financiers

- (a) The Reporting Financiers who do not have an individual entitlement to nominate a Non-Executive Director under clause 4.4(a) (the "**Minority Reporting Financiers**") shall collectively be entitled to:
- (i) nominate one Non-Executive Director (the "**Minority Director**"); and
 - (ii) from time to time by notice in writing to HoldCo from the Global Agent on behalf of the Minority Reporting Financiers procure the resignation of or remove from office and/or replace the Minority Director so

nominated by them, and upon such resignation or removal may nominate another person for appointment in their place in accordance with this clause 4.7.

- (b) The procedure set out in clauses 4.1(c) to 4.1(f) (inclusive) of the Restructuring Implementation Deed ("**RID Procedure**") shall apply to the appointment of the initial Minority Director. Following (and subject to) the completion of the RID Procedure and the Global Agent's receipt of the notice referred to in clause 4.1(f) of the Restructuring Implementation Deed, the Global Agent shall notify HoldCo in writing of the selected nominee for the role of the initial Minority Director. If the proposed initial Minority Director is not appointed as a result of the RID Procedure and clause 4.1(g) of the Restructuring Implementation Deed instead applies, the provisions of clause 4.7(c) below shall apply to the appointment of the initial Minority Director.
- (c) In order to effect the replacement of a Minority Director (or the appointment of the initial Minority Director if clause 4.1(g) of the Restructuring Implementation Deed applies):
 - (i) the Global Agent on behalf of the Minority Reporting Financiers may, through a notice in writing, submit a list of potential candidates to the Remuneration and Nominations Committee from which the Remuneration and Nominations Committee shall produce a shortlist of three names (the "**Minority Director Short List**"), and for which purpose the Remuneration and Nominations Committee shall apply the criteria set out in Schedule 3;
 - (ii) the Minority Director Short List shall thereafter be put to a vote of the Minority Reporting Financiers. The candidate on the Minority Director Short List with the most votes (weighted in accordance with the value of the Commitments of each Minority Reporting Financier), from a vote among all Minority Reporting Financiers, shall be selected as nominee for Minority Director. The Global Agent shall notify HoldCo in writing of the selected nominee.
 - (iii) if the Remuneration and Nominations Committee determines that the list of potential candidates submitted by the Global Agent on behalf of the Minority Reporting Financiers is unsuitable for appointment (having applied the criteria set out in Schedule 3), the Global Agent on behalf of the Minority Reporting Financiers shall through a notice in writing to HoldCo re-submit the list of potential candidates to the Remuneration and Nominations Committee (excluding the candidates previously determined by the Remuneration and Nominations Committee to be unsuitable for appointment) and clauses 4.7(c)(i) and 4.7(c)(ii) shall otherwise apply.
- (d) Any notice given by the Global Agent on behalf of the Minority Reporting Financiers in accordance with this clause 4.7 shall require certification from the Global Agent that the matter which is the subject of the notice has (i) the approval of a simple majority (by value of Commitments) of the Minority Reporting Financiers, or (ii) in the case of the appointment of the initial

Minority Director been approved by the Minority Reporting Financiers in accordance with clause 4.1 of the Restructuring Implementation Deed.

- (e) For the avoidance of doubt, the provisions of clause 34.5 (*Excluded Commitments*) of the HoldCo Common Terms Agreement shall apply to this clause 4.7.

4.8 Appointment of Non-Executive Directors

- (a) Individuals for the role of Non-Executive Director shall be nominated by the Nominating Financiers in accordance with clause 4.4 and by or on behalf of the Minority Reporting Financiers in accordance with clause 4.7:
- (i) in the case of the initial Non-Executive Directors to be appointed at Completion (the "**Initial Non-Executive Directors**"), on or prior to Completion; and
 - (ii) in all other cases, within ten (10) Business Days following the Annual Determination Date unless otherwise set out in this Agreement.
- (b) Any person nominated for appointment pursuant to this Agreement shall be suitably experienced for the role of Non-Executive Director, and shall be subject to the approval of the Remuneration and Nominations Committee in advance of their appointment and for which purpose the Remuneration and Nominations Committee shall apply the criteria set out in Schedule 3. If the Remuneration and Nominations Committee approves the appointment of any person for the role of Non-Executive Director, in accordance with this clause 4.8(b), such person's name shall be presented to:
- (i) the HoldCo Board for approval; or
 - (ii) in the case of the persons approved by the Remuneration and Nominations Committee for appointment as the Initial Non-Executive Directors, the Trustee (in its capacity as a shareholder of HoldCo) for approval.
- (c) If the Remuneration and Nominations Committee determines that any proposed 10% Director is unsuitable for appointment (having applied the criteria set out in Schedule 3), the relevant Nominating Financier shall propose another person to the Remuneration and Nominations Committee for approval.
- (d) The Trustee shall exercise all voting rights and other powers of control available to it in its capacity as a shareholder of HoldCo to ensure that:
- (i) the persons:
 - (A) nominated for appointment and approval by the HoldCo Board as HoldCo Directors (other than the Initial Non-Executive Directors) in accordance with clauses 4.4 to 4.8 (inclusive) are so appointed;

- (B) to be removed as HoldCo Directors in accordance with clauses 4.5 to 4.7 (inclusive) are so removed; and
 - (C) approval and appointment by the Remuneration and Nominations Committee as the Initial Non-Executive Directors in accordance with clauses 4.4 to 4.8 (inclusive) are so appointed with effect from Completion;
- (ii) the resignation of the then existing HoldCo Directors and OpCo Directors is procured with effect from Completion.
- (e) Each subsequent appointment or removal of a Non-Executive Director (in accordance with this Agreement) shall be made by written notice to HoldCo (as the case may be):
- (i) in the case of a 10% Director, from the relevant Nominating Financier (in accordance with this Agreement); or
 - (ii) in the case of the Minority Director, in accordance with clause 4.7(a)(ii).
- (f) Subject to the other provisions of this clause 4, the appointment or removal of a Non-Executive Director shall, to the extent permitted by Applicable Law and unless otherwise specified in this Agreement, take effect upon receipt of the written notice to HoldCo made in accordance with clause 4.8(e) (unless otherwise specified in such written notice).
- (g) In the case of removal of a Non-Executive Director, such Non-Executive Director shall not be entitled to attend, vote at or receive board papers or any information in respect of, any meeting of the HoldCo Board from the later of:
- (i) the date on which written notice to HoldCo made in accordance with clause 4.8(f) is received; and (ii) if the written notice specifies a later date on which the removal is to be effective, such later date.
- (h) The appointment of each Non-Executive Director shall be for an initial term of three years from the date of appointment specified in the relevant NED Appointment Letter. Each such Non-Executive Director may be nominated for re-appointment for subsequent three year terms:
- (i) in the case of a 10% Director, by written notice from the relevant Nominating Financier to HoldCo; or
 - (ii) in the case of the Minority Director, by written notice from the Global Agent (on behalf of the Minority Reporting Financiers) to HoldCo,

and any person nominated for re-appointment in accordance with this clause 4.8(h) shall be subject to the approval of the Remuneration and Nominations Committee in advance of their re-appointment and for which purpose the Remuneration and Nominations Committee shall apply the criteria set out in Schedule 3. If the Remuneration and Nominations Committee approves the re-appointment of any person for the role of Non-Executive Director, in accordance with this clause 4.8(h), such person's name shall be presented to the HoldCo Board for approval.

4.9 *Ad Hoc Committee Role*

- (a) The functions of the Remuneration and Nominations Committee:
- (i) in respect of the nomination of any 10% Director, shall be performed by the *Ad Hoc Committee* (excluding the relevant Nominating Financier that has nominated the 10% Director that is being considered by the *Ad Hoc Committee*); and
 - (ii) in respect of the nomination of the Minority Director, shall be performed by the *Ad Hoc Committee* (excluding the Minority Reporting Financiers),
- until the Remuneration and Nominations Committee is established and all relevant powers have been delegated to it, in accordance with clause 5.7(a), and until such time all references in clauses 4.7 and 4.8 to the "Remuneration and Nominations Committee" shall be construed as references to the "*Ad Hoc Committee*" excluding the relevant Nominating Financier for the purposes of clause 4.9(a)(i) or the Minority Reporting Financiers for the purposes of clause 4.9(a)(ii) (as applicable).
- (b) Each party shall irrevocably and unconditionally, fully and finally, waive, release and discharge forever to the fullest extent permitted by Applicable Law each and every claim which it may have against the *Ad Hoc Committee* (or any of its Affiliates and any of its or their respective officers, directors, employees, partners, shareholders) whatsoever and howsoever arising, in connection with or by reason of or resulting directly or indirectly from any steps, acts or omissions by or on behalf of the *Ad Hoc Committee* in relation to the obligations of the *Ad Hoc Committee* under this Agreement.

4.10 *Global Agent Role*

- (a) The Global Agent is a party to this Agreement solely for the purpose of giving effect to the provisions of clauses 4.5 to 4.8 (inclusive), this clause 4.10, and clauses 8, 12.3, 21.
- (b) The Global Agent will at least annually (and on the occurrence of a Relevant Transfer) determine, and then notify each Financier and HoldCo, which Financier Group such Financier forms part of.
- (c) HoldCo will ensure that any information intended for a particular Financier Group and shared with the Global Agent for onward dissemination to such Financier Group in accordance with this Agreement shall be clearly marked so as to enable the Global Agent to ascertain to which Financier Group the relevant information is to be disseminated.

4.11 *Chair of the HoldCo Board*

- (a) The Nominating Financier which holds the largest Commitment, may nominate the Chair of the HoldCo Board from amongst the Non-Executive Directors, subject to approval by a Simple Majority of each of the other Non-executive Directors (or in the case of the first Chair on Completion, a simple majority of

the HoldCo Board), and may remove from office any such Chair and/or nominate another person for appointment in accordance with this clause 4.11.

- (b) The Chair shall chair meetings of the HoldCo Board at which they are present, but shall not have a casting vote.
- (c) Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the Chair in facilitating board discussion and decision-making, the Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

4.12 Fees and expenses of Non-Executive Directors

- (a) HoldCo shall pay to Non-Executive Directors fees for their services as HoldCo Directors (and for attending HoldCo Board meetings) and their services as Committee members (and for attending Committee meetings) in USD at market rate, such amounts and the structure of such payments to be determined or amended, in each case, by the HoldCo Board acting by a Simple Majority (acting reasonably).
- (b) Any Non-Executive Director who incurs expenses in fulfilling their duties as a Non-Executive Director shall be entitled to have such reasonable expenses reimbursed in USD by HoldCo as provided by the HoldCo Group's expenses policy.

5. PROCEEDINGS OF DIRECTORS

5.1 Meetings of the HoldCo Board

- (a) The HoldCo Board shall meet as necessary to discharge its duties, but in any case no less than monthly for the six month period following Completion and thereafter no less frequently than five times in any one year period.
- (b) At least ten (10) Business Days' notice of each meeting of the HoldCo Board shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.
- (c) Subject to clause 5.5(c) and clause 5.5(d), an agenda and copies of any appropriate supporting papers shall be sent to each HoldCo Director together with the notice of such HoldCo Board meeting referred to in clause 5.1(b) and, unless the HoldCo Board agrees otherwise, no business shall be transacted at the HoldCo Board meeting unless it is specified in the agenda and to the extent that necessary supporting papers have been provided in respect of that business.
- (d) Meetings of the HoldCo Board will be held in the ADGM and conducted in English.
- (e) Meetings of the HoldCo Board may be held by telephone, video conference, or any other suitable means as determined by the HoldCo Board acting by a Simple Majority.

- (f) Subject to clause 5.5(c) and clause 5.5(d), minutes of each HoldCo Board meeting written in English shall be circulated to each HoldCo Director no later than twenty (20) Business Days after the relevant HoldCo Board meeting.
- (g) The information sent to the HoldCo Directors pursuant to clause 5.1(c) shall also be sent to the Chief Financial Officer (in their capacity as an observer) at the same time it is sent to the HoldCo Directors, but any failure to comply with this clause 5.1(g) shall not affect the validity of the relevant HoldCo Board meeting, or of any business conducted at it.
- (h) The Chair shall, at the Chair's discretion (acting reasonably), be entitled to exclude the Chief Executive Officer and the Chief Financial Officer from any meeting of the HoldCo Board (or any part thereof) unless a simple majority of the other HoldCo Directors present at the meeting of the HoldCo Board consider and vote against such exclusion.

5.2 Quorum

- (a) No business shall be transacted at any meeting of the HoldCo Board unless a quorum is present at the time when the meeting proceeds to business and remains present during the transaction of such business.
- (b) The quorum for meetings of the HoldCo Board shall be a Simple Majority.
- (c) If a quorum is not present within 30 minutes of the time when the meeting should have begun or if during the meeting there is no longer a quorum, the Non-Executive Directors present at the meeting shall adjourn the meeting to reconvene the meeting by notice given in accordance with clause 5.1(b).

5.3 Chair

In the event that a Chair has not been appointed from time to time, or is not present at a meeting of the HoldCo Board, the Non-Executive Directors present must appoint a Non-Executive Director to chair the meeting and, if applicable, such appointment must be the first business of such meeting. For the avoidance of doubt, any such person appointed shall not have a casting vote.

5.4 Voting

The Non-Executive Directors shall make all decisions regarding HoldCo and the HoldCo Group by means of resolutions of the HoldCo Board. A resolution of the HoldCo Board is passed if a Simple Majority or a Super Majority (as applicable in accordance with this Agreement) present at a quorate meeting of the HoldCo Board vote in favour of the resolution, where each Non-Executive Director shall have one vote.

5.5 Directors' Duties and Conflicts of Interest

- (a) Each Non-Executive Director shall act in accordance with the directors duties set out in the ADGM Companies Regulations 2020 (as may be amended from time to time).

- (b) Each Financier agrees that a Non-Executive Director shall not be in breach of their duties to HoldCo by reason of their acting in accordance with this clause 5.5 or otherwise in accordance with the terms of this Agreement and the Articles of Association of HoldCo. Accordingly, each Financier authorises each Non-Executive Director:
 - (i) subject to clause 5.5(a), to act as a Non-Executive Director notwithstanding their appointment by a Board Appointing Financier for the purposes of representing such Board Appointing Financier's interests and monitoring and evaluating its financial interests in the HoldCo Group;
 - (ii) subject to clauses 5.5(c) and 5.5(d), to attend and vote at meetings of the HoldCo Board (or any Committee thereof) at which any matter will be discussed in which they have, or may have, a conflict of interest or duty by virtue of their appointment by a Board Appointing Financier and receive board papers relating thereto;
 - (iii) subject to clause 5.5(a), to receive and deal with Confidential Information and other documents and information relating to any member of the HoldCo Group or its business or assets and to use and apply such information in representing the interests of the Board Appointing Financier that appointed them;
 - (iv) except in the case of the Minority Director, notwithstanding clause 14, to disclose any Confidential Information and other documents and information relating to any member of the HoldCo Group or its business or assets to any director, officer or employee of any Board Appointing Financier that appointed them or any director, officer or employee of its Affiliates or Related Funds for the purposes of monitoring and evaluating such Board Appointing Financier's financial interests in the HoldCo Group; and
 - (v) to keep confidential any information relating to the Board Appointing Financier that appointed them or any of its Affiliates or Related Funds that is subject to obligations of confidence and which such Board Appointing Financier is not otherwise obliged to disclose to the other Financiers or any member of the HoldCo Group pursuant to the terms of this Agreement and not to use or apply such information in performing their duties to HoldCo or any other member of the HoldCo Group.
- (c) Except in respect of the matters referred to in clause 5.5(d), and subject where applicable to:
 - (i) disclosure in accordance with Applicable Law and the Articles of Association of HoldCo;
 - (ii) compliance with any provisions of the Articles of Association of HoldCo dealing with conflicts of interest; and

- (iii) any terms imposed by the HoldCo Board in relation to any conflict of interest,

a Non-Executive Director shall be counted in the quorum and entitled to vote at a meeting of the HoldCo Board on any resolution in respect of any matter in which they are interested or where they have, or may have, a conflict of interest that has been authorised under the Articles of Association of HoldCo,

- (A) save that any actual or potential conflict of interest of a Non-Executive Director arising from a Related Party Transaction shall be deemed to be an authorised conflict of interest under the Articles of Association of HoldCo; and
 - (B) where a conflict of interest (other than as it relates to a Related Party Transaction) has not been authorised (or deemed authorised) under the Articles of Association of HoldCo, a Non-Executive Director shall not be entitled to receive board papers, attend or vote at a meeting of the HoldCo Board on any resolution in respect of such matter unless otherwise agreed in writing by the Board Appointing Financiers that did not appoint them and such a meeting of the HoldCo Board will be quorate notwithstanding the absence of any such Non-Executive Director(s).
- (d) In respect of any right of action by HoldCo or any other member of the HoldCo Group against the Board Appointing Financier who appointed them or any of its Affiliates or Related Funds or any right of action by the Board Appointing Financier who appointed them or any of its Affiliates or Related Funds against HoldCo or any other member of the HoldCo Group, a Non-Executive Director shall not be entitled to receive board papers, attend or vote at a meeting of the HoldCo Board on any resolution in respect of any such matters unless otherwise agreed in writing by the Board Appointing Financiers that did not appoint them and such a meeting of the HoldCo Board will be quorate notwithstanding the absence of any such Non-Executive Director(s).

5.6 Observer at Meetings of the HoldCo Board

- (a) The Chief Financial Officer shall have a standing invitation to attend HoldCo Board meetings as an observer.
- (b) In such capacity, the Chief Financial Officer shall have the right to attend any meetings of the HoldCo Board, subject to clause 5.1(h) and the provisions of Applicable Law, but shall not be entitled to vote and shall not be counted in the quorum of any such meeting. HoldCo shall not be required to consult with or consider the availability of the Chief Financial Officer when scheduling meetings of the HoldCo Board.

5.7 The HoldCo Board Committees

- (a) The HoldCo Board may delegate any of the powers which are conferred on it under this Agreement or the Articles of Association of HoldCo to a

remuneration and nominations committee (the "**Remuneration and Nominations Committee**"), an audit committee (the "**Audit Committee**"), an operations and quality committee ("**Operations and Quality Committee**"), a restructuring committee ("**Restructuring Committee**"), an exit committee (the "**Exit Committee**") and such other committees as the HoldCo Board determines (collectively, the "**Committees**") to such an extent and in relation to such matters and on such terms as it thinks fit subject to this clause 5.7 and the terms of reference for the Remuneration and Nominations Committee, the Audit Committee, the Operations and Quality Committee, the Restructuring Committee and the Exit Committee as set out in Schedule 3, Schedule 4, Schedule 5, Schedule 6 and Schedule 7 respectively (each, a "**Terms of Reference**").

- (b) The HoldCo Board shall use all commercially reasonable endeavours to establish and delegate relevant powers to each Committee within three (3) months of the date of Completion.
- (c) The membership of the Remuneration and Nominations Committee and the Audit Committee shall in each case comprise of at least:
 - (i) two 10% Directors appointed by different Financiers; and
 - (ii) the Minority Director.
- (d) The membership of the Operations and Quality Committee and the Restructuring Committee shall in each case comprise of at least three 10% Directors appointed by different Financiers.
- (e) The membership of the Exit Committee shall comprise of at least:
 - (i) one 10% Director from the Nominating Financier which holds the largest Commitment;
 - (ii) two 10% Directors from different Financiers (other than the Nominating Financier which holds the largest Commitment); and
 - (iii) the Minority Director.
- (f) At least ten (10) Business Days' notice of each meeting of each Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.
- (g) The quorum of each Committee shall be a simple majority of the members of the relevant Committee.
- (h) The chairs of the Committees shall be such member of the relevant Committee as the HoldCo Board shall nominate and approve acting by Simple Majority.
- (i) The Committees shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

- (j) Each Committee shall meet as often as its roles and responsibilities reasonably require and:
 - (i) at least once in each Relevant Accounting Period to correspond, in respect of the Remuneration and Nominations Committee, with the HoldCo Group's annual salary review programme; and
 - (ii) at least twice in each Relevant Accounting Period to correspond, in respect of the Audit Committee, with the HoldCo Group's annual audit.

5.8 Meetings of OpCo and the OpCo Subsidiaries

The proceedings of the OpCo Board and the board of each of the OpCo Subsidiaries shall be determined by the HoldCo Board acting by Simple Majority and acting in accordance with Applicable Law.

5.9 Insurance

- (a) HoldCo and OpCo shall maintain adequate directors' and officers' liability insurance for the benefit of the HoldCo Directors and the OpCo Directors respectively.
- (b) HoldCo and OpCo shall provide the HoldCo Directors and the OpCo Directors respectively with the benefit of an indemnity against any liability which they may incur in relation to the HoldCo Group to the extent permitted by and in accordance with Applicable Law and excluding fraud, gross negligence and wilful default.

6. RESERVED MATTERS

6.1 General

- (a) Subject to clause 6.1(c), each party shall procure (so far as it is able) that no action is taken or resolution passed by HoldCo, OpCo or the OpCo Subsidiaries, and HoldCo and OpCo shall not take, and shall procure that no OpCo Subsidiary takes, any action in respect of any matter set out in Schedule 8 or Schedule 9 other than in accordance with this clause 6.
- (b) For the purposes of this clause 6, a series of related transactions shall be construed as a single transaction, and any amounts involved in the related transaction shall be aggregated.
- (c) Notwithstanding clause 6.1(a), Schedule 8 and Schedule 9, the following matters will not be subject to the approvals set out in this clause 6:
 - (i) OpCo and HoldCo entering into and performing their obligations under the OpCo Finance Documents and any other documents entered into on or prior to the Restructuring Effective Date (as defined in the Restructuring Implementation Deed); and
 - (ii) any member of the HoldCo Group exercising its or their rights and performing its or their obligations under the LTD Asset Transfer

Agreement other than those matters set out in paragraph 1.6 of Part 1 of Schedule 8.

- (d) For the period commencing on Completion and ending on 31 December 2022, the financial limits in paragraph 1.1.3 of Part 1 of Schedule 8, paragraphs 1.1.6 and 1.1.7 of Part 2 of Schedule 8 and paragraph 1.1.3 of Part 3 of Schedule 9 shall be pro-rated.

6.2 Approval of the HoldCo Board

- (a) The matters set out in Part 1 of Schedule 8 shall require the prior approval of the HoldCo Board acting by way of a Simple Majority Resolution. Terms used but not otherwise defined in paragraph 1.6 of Part 1 of Schedule 8 shall have the meanings given to them in the LTD Asset Transfer Agreement.
- (b) The matters set out in Part 2 of Schedule 8 shall require the prior approval of the HoldCo Board acting by way of a Super Majority Resolution.
- (c) Where a matter set out in Schedule 8 also requires approval of the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) in accordance with clause 6.3, that matter must be approved by both the HoldCo Board in accordance with this clause 6.2 as well as by the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) in accordance with clause 6.3 (and any such matter shall only be put to the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) after it has been approved by the HoldCo Board in accordance with this clause 6.2).

6.3 Approval by the Financiers

The matters set out in Schedule 9 shall require the prior approval of the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) in accordance with the HoldCo Facilities.

6.4 Approval by the Trustee

Any matter requiring the approval of the Trustee under Applicable Law shall be approved by the Trustee upon request of the HoldCo Directors (acting in accordance with this Agreement) (and any such matter shall only be put to the Trustee after it has been approved under clause 6.2 and clause 6.3 as applicable).

7. BUSINESS PLAN AND BUDGET

- 7.1 At Completion, the Completion Budget shall be adopted by the HoldCo.
- 7.2 Within twelve (12) Business Days of Completion, the Executive Management Team shall submit to the HoldCo Board for consideration the draft First Budget.
- 7.3 The HoldCo Board shall meet to discuss, amend (as required) and approve the draft First Budget submitted to it in accordance with clause 7.2 no later than thirty two (32)

Business Days after its submission (such approval to be given by the HoldCo Board acting by way of a Super Majority Resolution).

- 7.4 Within twelve (12) Business Days of Completion, the Executive Management Team shall submit to the HoldCo Board for consideration a draft Business Plan for the period commencing on 1 January 2022 and ending on 31 December 2024 (with the same level of detail as, and with appropriate adjustments to, the First Business Plan).
- 7.5 The HoldCo Board shall meet to discuss, amend (as required) and approve the draft Business Plan submitted to it in accordance with clause 7.4 no later than forty eight (48) Business Days after its submission (such approval to be given by the HoldCo Board acting by way of a Super Majority Resolution).
- 7.6 At least sixteen (16) Business Days before the beginning of each subsequent Financial Year (beginning with the Financial Year commencing on 1 January 2023), the Executive Management Team shall submit to the HoldCo Board for consideration:
 - (a) a draft Business Plan for the three (3) year period commencing on 1 January of that Financial Year (with the same level of detail as, and with appropriate adjustments to, the then-current Business Plan); and
 - (b) a draft Budget for that Financial Year (based on, with the same level of detail as and with appropriate updates to, the then-current Budget).
- 7.7 The HoldCo Board shall meet to discuss, amend (as required) and approve the draft Business Plan and draft Budget submitted to it in accordance with clause 7.6 no later than four (4) Business Days before the beginning of the relevant Financial Year (such approval to be given by the HoldCo Board acting by way of a Super Majority Resolution).
- 7.8 The Business Plan and Budget as approved in accordance with clause 7.3, clause 7.5 or clause 7.7 (as applicable) shall be adopted by the HoldCo Group as its Business Plan and Budget for the relevant Financial Year.
- 7.9 If the HoldCo Board does not approve a Business Plan and/or Budget under clause 7.3, clause 7.5 or clause 7.7 (as applicable), the then-current Business Plan and/or Budget (as applicable) with such non-material amendments as are required to permit the conduct of the Business in the ordinary course having regard to any change in circumstances shall continue to apply unless and until a new Business Plan and/or Budget (as applicable) are approved.

8. INFORMATION UNDERTAKINGS

The undertakings in this clause 8 remain in force from Completion so long as any amount is outstanding under the Transaction Documents or any Commitment is in force.

8.1 Unrestricted Financier Information

- (a) The Global Agent on behalf of HoldCo shall deliver to each Unrestricted Financier as soon as the same become available but, in any event within one hundred and fifty (150) days after the end of the Relevant Accounting Period:

- (i) HoldCo's audited consolidated financial statements for the Relevant Accounting Period and any supplemental notes to those financial statements;
 - (ii) a statement by the HoldCo Directors commenting on the performance of the HoldCo Group for the Relevant Accounting Period and any material developments or proposals affecting the HoldCo Group or its business;
 - (iii) time for and the dial-in details of a conference call to discuss the performance of the HoldCo Group for the Relevant Accounting Period to be attended by at least one of either the Chief Executive Officer or Chief Financial Officer and held no earlier than the fifth Business Day, and no later than the tenth Business Day, following the date on which the details of the call are delivered to each Unrestricted Financier; and
 - (iv) promptly on request, such further information regarding the financial condition, assets and operations of the HoldCo Group and/or any member of the HoldCo Group (including any requested amplification or explanation of any information provided by HoldCo under this Agreement as any Unrestricted Financier may reasonably request) in relation to any consent or matter requiring consideration under this Agreement.
- (b) The Global Agent on behalf of HoldCo shall deliver to each Unrestricted Financier the Annual Outlook for the immediately following Financial Year as soon as the same becomes available but, in any event, within thirty (30) days after the start of the relevant Financial Year.
 - (c) The Global Agent on behalf of HoldCo shall notify each Unrestricted Financier of any proposed Exit Event as soon as reasonably practicable after binding documentation in connection with such Exit Event is agreed between the relevant parties.
 - (d) Any Unrestricted Financier (provided that it is not an Industrial Competitor, trade counterparty and/or a person engaged in a material dispute with HoldCo or any of its Subsidiaries) may, by written notice to the Global Agent, elect to receive Reporting Financier Information, and all such Reporting Financier Information shall be delivered by the Global Agent on behalf of HoldCo to each such Unrestricted Financier in accordance with clause 8.2 and clause 8.5, and all references to "Reporting Financier" under clause 8.2 and clause 8.5 shall be deemed to include each such Unrestricted Financier.

8.2 Reporting Financier Information

- (a) The Global Agent on behalf of HoldCo shall deliver to each Reporting Financier:
 - (i) as soon as the same become available but, in any event, within the time period specified in clause 8.1(a) all Unrestricted Financier Information;

- (ii) as soon as the same become available but, in any event, within ninety (90) days after the end of each Financial Quarter for the first two full Financial Quarters and, thereafter, within sixty (60) days after the end of each Financial Quarter of each of its Relevant Accounting Periods (other than the first two full Financial Quarters):
 - (A) HoldCo's management accounts for that Financial Quarter;
 - (B) an abridged profit and loss statement in respect of the HoldCo Group for that Financial Quarter including a breakdown by business unit and region and a comparison of actual performance for that Financial Quarter to the actual performance for the corresponding period in the preceding Relevant Accounting Period; and
 - (C) a reconciliation of actual performance to Budget for that Financial Quarter;
- (iii) as soon as the same become available but, in any event, within sixty (60) days after the end of each Financial Quarter of each of its Relevant Accounting Periods:
 - (A) an abridged profit and loss statement in respect of the HoldCo Group for that Financial Quarter; and
 - (B) updates in respect of the leverage and liquidity of the HoldCo Group including any developments or changes thereto, which have occurred in that Financial Quarter;
- (iv) at the same time as the information referred to in clause 8.2(a)(i) to clause 8.2(a)(iii) (inclusive) is delivered to each Reporting Financier, the details of a conference call to be attended by at least one of either the Chief Executive Officer or Chief Financial Officer and held no earlier than the fifth Business Day, and no later than the tenth Business Day, following the date on which the details of the call are delivered to each Reporting Financier;
- (v) promptly on request, such further information regarding the financial condition, assets and operations of the HoldCo Group and/or any member of the HoldCo Group (including any requested amplification or explanation of any information provided by HoldCo under this Agreement as any Reporting Financier may reasonably request) in relation to any consent or matter requiring consideration under this Agreement.

8.3 Supervising Financier Information

- (a) The Global Agent on behalf of HoldCo shall deliver to each Supervising Financier:
- (i) as soon as the same become available but, in any event, within the time periods specified in clause 8.2 and clause 8.5 all Reporting Financier Information;
 - (ii) as soon as the same become available but, in any event, within sixty (60) days after the end of each calendar month for the first two full Financial Quarters and, thereafter, within forty five (45) days after the end of each calendar month in each Financial Quarter of each of its Relevant Accounting Periods (other than the first two full Financial Quarters):
 - (A) HoldCo's management accounts for that calendar month;
 - (B) an abridged profit and loss statement in respect of the HoldCo Group for that calendar month including a breakdown by business unit and region and a comparison of actual performance for that calendar month to the actual performance for the corresponding period in the preceding Relevant Accounting Period; and
 - (C) any updates to the key management information included in the monthly report to be delivered to each Reporting Financier pursuant to paragraph (iii) below;
 - (iii) as soon as the information is available, but in any event, within forty five (45) days after the end of each calendar month ending on or prior to the first two full Financial Quarters and, thereafter, within thirty (30) days after the end of each calendar month (other than the calendar months ending on or prior to the first two full Financial Quarters) a report containing the following key management information in draft form in relation to the HoldCo Group:
 - (A) an abridged profit and loss statement for that calendar month;
 - (B) a summary of any updates in respect of the liquidity of the HoldCo Group including any developments or changes thereto, which have occurred in that calendar month;
 - (C) a report including a comparison of actual performance for that calendar month to the projected performance for that period set out in the most recent Budget; and
 - (D) Operational KPIs;
 - (iv) as soon as reasonably practicable after they are available, a copy of any minutes of meetings of the HoldCo Board and those of any Committees; and

- (v) promptly on request, such further reasonable information regarding the financial condition, assets and operations of the HoldCo Group and/or any member of the HoldCo Group (including any requested amplification or explanation of any information provided by HoldCo under this Agreement as any Supervising Financier may reasonably request) in relation to any consent or matter requiring consideration under this Agreement.
- (b) The Global Agent on behalf of HoldCo shall:
- (i) notify each Supervising Financier of any proposed Exit Event promptly upon becoming aware of such event (and prior to signing any binding documentation); and
 - (ii) as soon as reasonably practicable following material developments in relation to the proposed Exit Event but, in any event, within forty five (45) days after the end of each calendar month provide updates to each Supervising Financier in respect of the status, timing and projected outcome of the proposed Exit Event.

8.4 Requirements as to Financial Statements

- (a) The parties hereby acknowledge and agree:
 - (i) that special purpose consolidated financial information for the HoldCo Group, as agreed with the External Auditor by the Executive Management Team (the "**Special Purpose Financial Information**"), shall be prepared as at the date of Completion and shall be delivered by the Global Agent on behalf of HoldCo to the Reporting Financiers and Supervising Financiers; and
 - (ii) that HoldCo's first set of audited consolidated financial statements shall be for the Long Accounting Period.
- (b) Each set of annual financial statements or accounts delivered pursuant to this clause 8 (other than the Special Purpose Financial Information):
 - (i) shall be certified by a HoldCo Director as fairly presenting its financial condition and operations as at the date as at which those financial statements or accounts were drawn up; and
 - (ii) shall be prepared and audited by a reputable and internationally renowned auditing firm in accordance with the Accounting Principles.
- (c) If any Supervising Financier wishes to discuss the financial position of any member of the HoldCo Group with the auditors of that member of the HoldCo Group, such Supervising Financier may notify HoldCo, stating the questions or issues which such Supervising Financier wishes to discuss with those auditors. In such case, HoldCo must ensure that those auditors are authorised (at the expense of HoldCo):

- (i) to discuss the financial position of the relevant member of the HoldCo Group with the Supervising Financier on request from that Supervising Financier; and
- (ii) to disclose to the Supervising Financier any information which that Supervising Financier may reasonably request.

8.5 Exit Event Information

- (a) The Global Agent on behalf of HoldCo shall:
 - (i) notify each Reporting Financier of any proposed Exit Event promptly upon becoming aware of such event (and prior to signing any binding documentation); and
 - (ii) as soon as reasonably practicable following material developments in relation to the proposed Exit Event but, in any event, within sixty (60) days after the end of each Financial Quarter of each Relevant Accounting Period provide updates to each Reporting Financier in respect of the status, timing and projected outcome of the proposed Exit Event,

except that there shall be no requirement to so inform if, in the opinion of the Global Agent (acting reasonably), such notification might reasonably be expected to compromise the proposed Exit Event.

- (b) By no later than the first, second and third anniversary of Completion, the Global Agent on behalf of HoldCo shall:
 - (i) provide written confirmation to each Reporting Financier that HoldCo has commenced the necessary process to give effect to an Exit Event; or
 - (ii) deliver to each Reporting Financier a report prepared by HoldCo explaining why HoldCo has not commenced the necessary process to give effect to an Exit Event.

9. GENERAL UNDERTAKINGS

The undertakings in this clause 9 remain in force from Completion for so long as any amount is outstanding under the Transaction Documents or any Commitment is in force.

9.1 Authorisations

HoldCo shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and

- (b) deliver certified copies to the Global Agent of, any Authorisation required under Applicable Law to:
 - (i) enable it to perform its obligations under the Transaction Documents;
 - (ii) ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document; and
 - (iii) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

9.2 **Compliance with Applicable Law**

HoldCo shall, and shall procure that each member of the HoldCo Group shall, comply in all respects with Applicable Law if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

9.3 **Anti-Corruption Laws**

- (a) HoldCo shall not (and shall ensure that no other member of the HoldCo Group shall) directly or indirectly use the proceeds of the HoldCo Facilities or the OpCo Facilities for any purpose which would breach Anti-Corruption Law.
- (b) HoldCo shall (and shall ensure that each other member of the HoldCo Group shall):
 - (i) conduct its business in compliance with Anti-Corruption Laws; and
 - (ii) maintain and implement policies and procedures designed to promote and achieve compliance with Anti-Corruption Laws.

9.4 **Taxation**

HoldCo shall pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (a) such payment is being contested in good faith;
- (b) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the relevant Financiers under clause 8; and
- (c) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

9.5 **Merger**

HoldCo shall not enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction (unless otherwise authorised in accordance with this Agreement).

9.6 Holding Company

HoldCo shall not trade, carry on any business, own any assets or incur any liabilities, acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) or incorporate a company except for:

- (a) the provision of administrative services (excluding treasury services) to OpCo or other members of the HoldCo Group of a type customarily provided by a Holding Company to its Subsidiaries;
- (b) ownership of shares in OpCo, debit balances and credit balances with OpCo and other credit balances in bank accounts and cash and Cash Equivalent Instruments but only if those shares, credit balances, cash and Cash Equivalent Instruments are subject to the Transaction Security;
- (c) any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a Holding Company.

9.7 Pari Passu Ranking

HoldCo shall ensure that at all times any unsecured and unsubordinated claims of a Financier against it under the Transaction Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by Applicable Laws of general application to companies.

9.8 Negative Pledge

Except as permitted under clause 9.8(c):

- (a) Neither HoldCo nor the Trustee shall create any Security over any of its assets after the date of this Agreement; and
- (b) HoldCo shall not:
 - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any other member of the HoldCo Group;
 - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
 - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
 - (iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- (c) Clause 9.8(a) and clause 9.8(b) do not apply to any Security or (as the case may be) Quasi Security, which is Permitted Security.

9.9 Loans or Credit

- (a) Except as permitted under clause 9.9(b), HoldCo shall not be a creditor in respect of any Financial Indebtedness.
- (b) Clause 9.9(a) shall not apply to the provision of additional equity or subordinated loans by HoldCo to OpCo in accordance with clause 5.3(a)(ii) (*Priority Holdco Financial Indebtedness*) of the HoldCo Common Terms Agreement.

9.10 No Guarantees or Indemnities

HoldCo shall not prior to the completion of an Exit Event incur or allow to remain outstanding any guarantee in respect of any obligation of any person.

9.11 Financial Indebtedness

- (a) Except as permitted under clause 9.11(b), HoldCo shall not incur any Financial Indebtedness after the date of this Agreement.
- (b) Clause 9.11(a) does not apply to Financial Indebtedness which is:
- (i) arising under or in connection with the Transaction Documents; or
 - (ii) the Priority HoldCo Financial Indebtedness.

9.12 Treasury Transactions

HoldCo shall not enter into any Treasury Transaction.

9.13 Sanctions

- (a) HoldCo shall not (and shall ensure that no other member of the HoldCo Group shall):
- (i) lend, contribute or otherwise make available all or any part of the proceeds of the Facilities, directly or indirectly, to, or for the benefit of, any individual or entity (whether or not related to any member of the HoldCo Group) for the purpose of funding, financing or facilitating the activities or business of, other transactions with, or investments in, any Restricted Party or in any Sanctioned Country, except to the extent permitted for a person required to comply with Sanctions;
 - (ii) directly or indirectly fund all or part of any repayment or prepayment of the Facilities out of proceeds derived from any transaction with or action involving a Restricted Party; or
 - (iii) engage in any transaction, activity or conduct that would violate any Sanctions.

- (b) HoldCo shall (and shall ensure that each other member of the HoldCo Group shall):
- (i) maintain and implement policies and procedures designed to promote and achieve compliance with Sanctions; and
 - (ii) take all reasonable and prudent steps to ensure that each of its agents, directors, employees and officers comply in all respects with Sanctions.

9.14 Shari'a Events Compliance Certificate

- (a) HoldCo shall supply to each Islamic Financing Party, with each set of financial statements delivered pursuant clause 8.1(a)(i), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with the Shari'a Events as at the date as at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by either the Chief Executive Officer or the Chief Financial Officer.

10. EXECUTIVE MANAGEMENT TEAM

10.1 Appointment by the HoldCo Board

The HoldCo Board may appoint and remove the Chief Executive Officer, the Chief Financial Officer, the Chief Transformation Officer and Internal Auditor. HoldCo shall procure that the Chief Executive Officer, the Chief Financial Officer and the Chief Transformation Officer shall be appointed as OpCo Directors.

10.2 Initial Office Holders

- (a) As at Completion, the Executive Management Team shall comprise:
 - (i) Michael Davis as the Chief Executive Officer; and
 - (ii) the person appointed to the role of Chief Financial Officer by the HoldCo Board pursuant to clause 10.1.

Following the appointment of the Chief Transformation Officer by the HoldCo Board pursuant to clause 10.1, the Executive Management Team shall comprise the Chief Executive Officer, the Chief Financial Officer and the Chief Transformation Officer.

10.3 Responsibilities of the Executive Management Team

The HoldCo Board shall delegate in accordance with the Delegated Authority Framework and subject to this Agreement, the Articles of Association of HoldCo and Applicable Law, to the Chief Executive Officer together with the Chief Financial Officer, the Chief Transformation Officer and the Internal Auditor, the power to manage and administer the day-to-day activities of the HoldCo Group under the overall direction and supervision of the HoldCo Board. For the avoidance of doubt, in the event of a conflict between the Delegated Authority Framework and any other delegation of

authority which relates to the HoldCo Group, the Delegated Authority Framework shall take precedence.

10.4 **Remuneration of the Executive Management Team**

The Remuneration and Nominations Committee shall determine the remuneration of the Executive Management Team.

10.5 **Management Incentive Plan**

- (a) Within sixty (60) Business Days of Completion, the Remuneration and Nominations Committee shall, in consultation with internationally recognised compensation consultants, submit to the HoldCo Board a draft Management Incentive Plan.
- (b) The HoldCo Board shall meet to discuss, amend (as required) and approve the Management Incentive Plan no later than twenty (20) Business Days after the draft Management Incentive Plan is submitted in accordance with clause 10.5(a) (such approval to be given by the HoldCo Board acting by way of a Super Majority Resolution).
- (c) The Management Incentive Plan as approved in accordance with clause 10.5(a) shall be adopted by the HoldCo Group as its Management Incentive Plan, which shall be implemented by the Remuneration and Nominations Committee in consultation with the Chief Executive Officer.

11. **MANDATORY OFFER**

- (a) If a single Financier (the "**Purchaser**") together with its Affiliates, Related Funds and persons acting in concert with such Purchaser acquires, or makes an offer to any other Financier(s) to acquire, more than fifty percent (50%) of the Total Commitments (including for the avoidance of doubt pursuant to a sub-participation agreement or similar arrangement) (the "**Control Trigger**"), the Purchaser must (subject to clause 11(g)) make an offer to all other Financiers under the HoldCo Facilities to acquire the remaining Total Commitments in full within thirty (30) Business Days of the date of the Control Trigger or as soon as reasonably practicable thereafter if there is a requirement to appoint an Independent Expert in accordance with clause 11(c) (a "**Mandatory Offer**").
- (b) The consideration payable under the Mandatory Offer shall be:
 - (i) an amount equal to the highest consideration offered by the Purchaser to any Financier during the twelve (12) month period ending on the date of the Control Trigger (the "**Best Prior Offer**"); and
 - (ii) in the same form and subject to the same payment terms as the Best Prior Offer.
- (c) If it is not possible to establish the Best Prior Offer for any reason (including because the Purchaser made no previous offer to acquire Commitments and the Control Trigger occurred only because it began acting in concert with one or more Financiers), the consideration payable under the Mandatory Offer shall be

an amount in cash determined by an independent investment bank or accounting firm, in either case, of international repute, appointed in accordance with this clause 11 the "**Independent Expert**" to be the Fair Value of the relevant Commitments in accordance with the following procedure:

- (i) the Purchaser shall, as soon as reasonably practicable after the Control Trigger, propose an independent investment bank or accounting firm, in either case, of international repute, to be the Independent Expert and provided that such bank or accounting firm:
 - (A) confirms in writing to HoldCo its willingness to be the Independent Expert and that it has no conflict of interest; and
 - (B) is acceptable to a simple majority by value of the Financiers (excluding for these purposes the Commitments held by the Purchaser);it shall be appointed as the Independent Expert;
- (ii) the Purchaser shall request that the Independent Expert determines the Fair Value of the relevant Commitments as soon as reasonably practicable on the following basis:
 - (A) that the determination be addressed to the Purchaser, HoldCo and the Global Agent, and may be disclosed to the Financiers on a hold harmless basis;
 - (B) that the relevant Commitments are being sold on the basis of arm's length sale between a willing buyer and a willing seller;
 - (C) on the basis of the historical, current and forecast financial performance of the HoldCo Group;
 - (D) not attributing any discount or premium for control of the HoldCo Group;
 - (E) on the assumption that the HoldCo Group will continue to carry on business as a going concern;
 - (F) the sale occurs on the date that the Control Trigger occurred;
 - (G) the relevant Commitments are sold free of all encumbrances;
 - (H) any other factors that the Independent Expert reasonably believes should be taken into account; and
 - (I) the application in all other respects of the Accounting Principles.
- (iii) the Fair Value of the relevant Commitments shall be final and binding on the parties (save in the case of fraud or manifest error in which case a different Independent Expert shall be appointed in accordance with this clause 11 to make the determination);

- (iv) each party shall procure that the Independent Expert has such access to the accounting records and other relevant information and materials relating to the HoldCo Group and access to the Executive Management Team as the Independent Expert may reasonably request for the purposes of the determination of the Fair Value of the relevant Commitments;
 - (v) the Independent Expert shall act as expert and not as arbitrator; and
 - (vi) the fees of the Independent Expert shall be paid by the Purchaser.
- (d) The consideration payable under the Mandatory Offer must be paid promptly by the Purchaser following acceptance of the Mandatory Offer.
- (e) No Financier shall be required to accept a Mandatory Offer.
- (f) Nothing in this Agreement shall prevent a Financier from making any offers to acquire all or any part of the HoldCo Group, financing any such offer or accepting any appointment or role in connection with an Exit Event.
- (g) Notwithstanding clause 11(a), if a Financier (the "**Acquiring Financier**") together with its Affiliates, Related Funds and persons acting in concert with such Acquiring Financier acquires (whether directly or indirectly) more than fifty percent (50%) of the Total Commitments in aggregate as a result of a merger, acquisition or consolidation with another Financier:
- (i) the Acquiring Financier shall have a period of ninety (90) calendar days from completion of such merger, acquisition or consolidation to sell, transfer or novate (or procure the sale, transfer or novation of) such percentage of the Commitments that it (together with its Affiliates, Related Funds and persons acting in concert with it) holds as is necessary to reduce its holding of Commitments to fifty percent (50%) or less of the Total Commitments; and
 - (ii) the Acquiring Financier shall only be required to make a Mandatory Offer in accordance with clause 11(a) if it (together with its Affiliates, Related Funds and persons acting in concert with it) continues to hold more than fifty percent (50%) of the Total Commitments in aggregate following the expiry of the period set out in clause 11(g)(i).

12. EXIT

12.1 Form of Exit

Any Exit Event shall occur at OpCo level other than a NMC HoldCo Refinancing, and any matters related to any such Exit Event shall be for the HoldCo Board, subject to clause 6.2 to clause 6.4 (inclusive).

12.2 Obligations on an Exit

- (a) Each party to this Agreement acknowledges and agrees that once an Exit Event has been approved in accordance with clause 6.2 to clause 6.4 (inclusive) (and

for the avoidance of doubt, no other provisions in this Agreement require the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) to approve any Exit Event) and has been commenced, their intention is to facilitate an Exit Event which seeks to maximise the Exit Event proceeds realised by the Financiers.

- (b) Each party to this Agreement shall give such co-operation and assistance and shall exercise all such rights and powers as it or he may have in relation to HoldCo as may be reasonably required by HoldCo so as to ensure that the Exit Event is achieved in compliance with Applicable Law.
- 12.3 If HoldCo has not commenced an Exit Event within three (3) years following the date of this Agreement, the Global Agent (acting on the instructions of the Majority Reporting Financiers) may at any time require HoldCo to use commercially reasonable endeavours to pursue an Exit Event by such means as the Majority Reporting Financiers may at that time determine.

13. TERMINATION

- 13.1 Subject to clause 13.2, this Agreement (other than clause 14 to clause 29 (inclusive)) shall terminate:
 - (a) in respect of the rights and obligations of all parties, upon completion of an Exit Event; and
 - (b) in respect of the rights and obligations of a Financier, upon that Financier not holding any amount of the Commitments.
- 13.2 Clause 13.1 shall not affect the rights or obligations of any party which have accrued prior to termination.

14. CONFIDENTIAL INFORMATION

14.1 Confidentiality

Each party agrees to keep all Confidential Information confidential and not to disclose it to any person, save to the extent permitted by this clause 14, and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

14.2 Disclosure of Confidential Information

- (a) The restrictions in clause 14.1 shall not apply to the disclosure of Confidential Information:
 - (i) with the prior written consent of the other parties;
 - (ii) to any person to whom information is required to be disclosed:
 - (A) by any court of competent jurisdiction of any governmental, banking, taxation or other regulatory authority or similar body,

- the rules of any relevant stock exchange or pursuant to Applicable Law; and
- (B) in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (iii) for the purposes of an Exit Event, to *bona fide* potential purchasers or to their professional advisers or finance providers provided that such persons need to know the information for the purposes of considering, evaluating, advising on or furthering the potential purchase and provided that the disclosure is limited to information regarding the Business and assets of the HoldCo Group; and
 - (iv) by a Financier:
 - (A) to any Non-Executive Directors appointed by it; and
 - (B) as otherwise contemplated by clause 35 (*Confidential Information*) of the HoldCo Common Terms Agreement.

15. ANNOUNCEMENTS

- 15.1 Subject to clause 15.2, no announcement, communication or circular in connection with the existence or the subject matter of this Agreement shall be made or issued without the prior written approval of a simple majority by value of the Supervising Financiers.
- 15.2 If a party is required by Applicable Law to make an announcement, communication or circular in connection with the existence or the subject matter of this Agreement or to disclose any Confidential Information, such party shall, where and to the extent not prohibited by such law or regulation, only make such announcement or disclosure after consultation with the Supervising Financiers and after taking into account the Supervising Financier's reasonable requirements as to its timing, content and manner of making. If another party is unable to consult with the Supervising Financiers before the announcement, communication or circular or disclosure is made, it shall inform the Supervising Financiers of the circumstances, timing, content and manner of making of the announcement or disclosure immediately after such announcement or disclosure is made.

16. SUPREMACY OF THIS AGREEMENT

- 16.1 If there is any conflict or inconsistency between the provisions of this Agreement and the Articles of Association of HoldCo, this Agreement shall prevail.
- 16.2 The Trustee shall exercise all voting and other rights and powers available to it so as to give effect to the provisions of this Agreement and, if necessary, to procure (so far as they are able to do so) any required amendment to the Articles of Association of HoldCo.
- 16.3 Nothing in this Agreement shall be deemed to constitute an amendment of the Articles of Association of HoldCo.

17. ENTIRE AGREEMENT AND NON-RELIANCE

- 17.1 This agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement to the exclusion of any terms implied by law to the extent that they may be excluded by contract and supersedes any previous agreements between the parties in relation to the matter dealt with in this Agreement.
- 17.2 Each party acknowledges and agrees that it has not relied on or been induced to enter into this Agreement by a representation, warranty or undertaking (whether contractual or otherwise) that is not expressly set out in this Agreement.
- 17.3 No party is liable to another party (in equity, contract or tort (including negligence), under the Misrepresentation Act 1967 of the United Kingdom or in any other way) for a representation, warranty or undertaking that is not set out expressly in this Agreement.
- 17.4 Nothing in this clause 17 shall have the effect of restricting or limiting any liability arising as a result of any fraud, wilful misrepresentation or wilful concealment.

18. COSTS

OpCo shall pay all costs of the holding and governance structure pursuant to this Agreement (regardless of whether any such costs are set out in the Budget), and undertakes not to enter into any agreement which would restrict its ability to make such payments.

19. GENERAL

19.1 Amends, waivers and consents

- (a) Subject to clauses 19.1(b) and 19.1(c):
 - (i) any term of this Agreement may be amended or waived only with the consent in writing of the Majority Reporting Financiers and HoldCo, and any such amendment or waiver will be binding on all parties; and
 - (ii) the parties agree that equivalent amendments and waivers as are agreed under the HoldCo Common Terms Agreement and the OpCo Common Terms Agreement shall be delivered under this Agreement.
- (b) If the effect of any such amendment or waiver would be to amend or remove any rights of the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers under this Agreement, such amendment or waiver shall require the consent in writing of the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers as applicable.
- (c) Clause 4.4 of this Agreement may only be amended with the consent in writing of all Reporting Financiers and HoldCo and any such amendment or waiver will be binding on all parties.

19.2 Waiver

The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not impair or constitute a waiver of the right or remedy or an impairment of or a waiver of any other rights or remedies. No single or partial exercise of any right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

19.3 Cumulative Rights

The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

19.4 No Partnership

Nothing in this Agreement and no action taken by a party under this Agreement shall be deemed to constitute a partnership between any of the parties or constitute any party the agent of any other party for any purpose.

19.5 Severance

- (a) If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention.
- (b) To the extent it is not possible to delete or modify the provision, in whole or in part, under clause 19.5(a), then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under clause 19.5(a), not be affected.

19.6 Damages Not an Adequate Remedy

Each party acknowledges and agrees that damages alone may not be an adequate remedy for a breach of this Agreement and that each party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Agreement.

19.7 Third Party Rights

No person who is not a party to this Agreement has any right under the Contracts (Rights of Third Parties) Act 1999 of the United Kingdom to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act, save that any person that enters into a Deed of Adherence in accordance with this Agreement may enforce and rely on this Agreement to the same extent as if it were a party to it.

19.8 **Unlawful Fetter**

Neither HoldCo or OpCo shall be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any of its statutory powers, but such provision shall remain valid and binding as regards the Trustee.

19.9 **Further Assurances**

Each party agrees to take all such action or procure that all such action is taken as is reasonable in order to implement the terms of this Agreement or any transaction, matter or thing contemplated by this Agreement.

20. **ASSIGNMENT**

- (a) This Agreement shall be binding on and enure for the benefit of each party's successors in title. No party shall, subject to clause 20(b) without the prior written consent of the other parties, assign, transfer, grant any security interest over or create any trust in respect of, or purport to assign, transfer, grant any security interest over or create any trust in respect of, any of its rights or obligations under this Agreement.
- (b) A Financier may only assign any of its rights or transfer by novation any of its rights and obligations under this Agreement pursuant to an assignment or transfer permitted under the HoldCo Common Terms Agreement (a "**Relevant Transfer**"), and the completion of any such Relevant Transfer shall be made in accordance with the following terms:
 - (i) the terms of clause 19.1 (*Assignments and transfers by the Financiers*) of the HoldCo Common Terms Agreement; and
 - (ii) the assignee or transferee shall (if it is not already a party to this Agreement) enter into a Deed of Adherence.

21. **NOTICES**

- 21.1 A notice under or in connection with this Agreement (a "**Notice**") shall be:

- (a) in writing;
- (b) in the English language; and
- (c) delivered personally or sent by pre-paid recorded delivery or courier using an internationally recognised courier company to the party due to receive the Notice to the address set out in clause 21.4.

- 21.2 A party may change its notice details by giving not less than five (5) Business Days written notice of the change to the other parties received before the Notice was despatched.

- 21.3 Unless there is evidence that it was received earlier, a Notice is deemed given:
- (a) if delivered personally or sent by courier, when left at the address referred to in clause 21.4; and
 - (b) if sent by pre-paid recorded delivery, at 9.30am on the second Business Day after posting it or, if earlier, at the time recorded by the delivery service.

Any Notice given outside Working Hours in the place to which it is addressed shall be deemed to have been given until the start of the next period of Working Hours in such place.

- 21.4 The following notice details apply for the purposes of this Agreement.

In respect of the Financiers:

The Global Agent

Abu Dhabi Commercial Bank PJSC
Sheikh Zayed bin Sultan Street
Agency Desk, IBG
10th Floor, HO Bldg.
Abu Dhabi, UAE

Email: Sritanu.Chakrabarti@adcb.com / rupa.a@adcb.com / Jacob.Nielsen@adcb.com

Attention: Sritanu Chakrabarti / Rupa Anto / Jacob Nielsen

In respect of HoldCo:

NMC HoldCo SPV LTD
c/o NMC Healthcare
31st Floor, Etihad Towers 3,
West Corniche
Abu Dhabi

Attention: Chief Executive Officer (with a copy to the General Counsel)

In respect of OpCo:

NMC OpCo LTD
c/o NMC Healthcare
31st Floor, Etihad Towers 3,
West Corniche
Abu Dhabi
UAE

Attention: Chief Executive Officer (with a copy to the General Counsel)

In respect of the Trustee:

Walkers Fiduciary Limited
190 Elgin Avenue
George Town
Grand Cayman KY1-9008
Cayman Islands

Telephone: +1 345 814 7600

E-mail: fiduciary@walkersglobal.com

Attention: The Directors

22. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by English law.

23. ENFORCEMENT

23.1 Jurisdiction

- (a) The ADGM Courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Agreement (a "Dispute")).
- (b) The parties agree that the ADGM Courts are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.
- (c) Notwithstanding clause 23.1(a) and clause 23.1(b), any party may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the parties may take concurrent proceedings in any number of jurisdictions.

23.2 Waiver of immunity

- (a) HoldCo, OpCo and each Financier irrevocably and unconditionally:
 - (i) agree not to claim any immunity from suits or proceedings brought by a party against it in relation to a Transaction Document and to ensure that no such claim is made on its behalf;
 - (ii) consents generally to the giving of any relief or the issue of any process in connection with those proceedings including the making or enforcement of any order or judgement which may be made or given in any proceedings or execution against any property or assets whatsoever (irrespective of its use or intended use); and

- (iii) waives all rights of immunity in respect of it or its assets.
- (b) Each Financier acknowledges that it is a commercial entity separate from (and with an identity separate from) its direct or indirect shareholders, is capable of suing and being sued and is entering into the transactions contemplated by the Transaction Documents as private-law commercial transactions that shall not be deemed as being entered into in the exercise of any public function.

24. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement. This Agreement shall not come into effect until each party has executed at least one counterpart.

25. LIMITED RE COURSE TO TRUSTEE

- 25.1 The parties agree that, notwithstanding any other provision of this Agreement, the parties shall not have recourse to any assets of the Trustee (other than the assets subject to the Trust) in respect of any of the obligations under the Transaction Documents and the parties hereby acknowledge and agree that they will have no further claim against, or recourse to, any assets of the Trustee (other than the assets subject to the Trust) in respect of such obligations and no debt shall be owed to the parties by the Trustee for any sum and the parties (and anyone acting on their behalf) shall not be entitled to take any steps against the Trustee to recover any sum and following application of the proceeds of the assets subject to the Trust all claims (if any) against the Trustee will be extinguished and thereafter shall not revive. In addition, where compliance with the conditions imposed on the Trustee under this Agreement would require the expenditure by the Trustee of its own funds, the obligations of the Trustee shall be limited to the extent that it is put in funds to meet such expenditure.
- 25.2 The parties agree that they shall not take any action to commence any case, proceedings, proposal or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, arrangement in the name of insolvency proceedings, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to the Trustee or the debts (if any) of the Trustee.
- 25.3 The parties acknowledge and agree that the Trustees' obligations are corporate obligations of the Trustee and that the parties shall not have any recourse against any of the directors, officers or employees of the Trustee for any claims, losses, damages, liabilities indemnities or other obligations whatsoever in connection with any transactions contemplated by this Agreement or the Transaction Documents, other than in respect of dishonesty or wilful misconduct.

26. EXCULPATION OF TRUSTEE

- 26.1 Notwithstanding any other provisions of this Agreement, the Trustee shall not be liable for any losses whatsoever to the parties at any time from any cause whatsoever unless caused by:
- (a) the Trustee's own wilful neglect or default or that of any of its directors, officers, employees or agents, as the case may be; or
 - (b) any failure by the Trustee to comply with its express obligations hereunder.
- 26.2 Notwithstanding the provisions of clause 26.1, the Trustee shall not be liable for acting upon any consent or instructions given by any person acting or purporting to act on behalf of the parties notwithstanding that such person does not have authority to give such consent, unless at the time such consent was given or purported to be given, the Trustee has actual knowledge that such person had no authority to give such consent.

27. EXCLUSION OF LIABILITY OF GLOBAL AGENT

- 27.1 Without limiting clause 27.2 below (and without prejudice to any other provision of any Transaction Document excluding or limiting the liability of the Global Agent), the Global Agent will not be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:
- (a) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with this Agreement, unless directly caused by its gross negligence or wilful default;
 - (b) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, this Agreement or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, this Agreement; or
 - (c) without prejudice to the generality of clauses 27.1(a) and 27.1(b) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
 - (i) any act, event or circumstance not reasonably within its control; or
 - (ii) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

27.2 No party (other than the Global Agent) may take any proceedings against any officer, employee or agent of the Global Agent in respect of any claim it might have against the Global Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Agreement and any officer, employee or agent of the Global Agent may rely on this clause 27.2, subject to clause 19.7 (*Third Party Rights*) and the provisions of the Contracts (Rights of Third Parties) Act 1999.

27.3 Nothing in this Agreement shall oblige the Global Agent to carry out:

- (a) any "know your customer" or other checks in relation to any person; or
- (b) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Financier or for any Affiliate of any Financier,

on behalf of any Financier and each Financier confirms to the Global Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Global Agent.

27.4 Without prejudice to any provision of this Agreement excluding or limiting the Global Agent's liability, any liability of the Global Agent arising under or in connection with this Agreement shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Global Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Global Agent at any time which increase the amount of that loss. In no event shall the Global Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Global Agent has been advised of the possibility of such loss or damages.

28. FINANCIERS' INDEMNITY TO THE GLOBAL AGENT

- 28.1 Each Financier shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Global Agent, within three Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Global Agent (otherwise than by reason of the Global Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause 28.11 (*Disruption to payment systems etc.*) of the HoldCo Common Terms Agreement, notwithstanding the Global Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Global Agent) in acting as the Global Agent under this Agreement (unless the Global Agent has been reimbursed by HoldCo pursuant to this Agreement).
- 28.2 Subject to clause 28.3 below, HoldCo shall immediately on demand reimburse any Financier for any payment that Financier makes to the Global Agent pursuant to clause 28.1 above.

28.3 Clause 28.2 above shall not apply to the extent that the indemnity payment in respect of which the Financier claims reimbursement relates to a liability of the Global Agent to HoldCo.

29. NO DOUBLE RECOVERY

Notwithstanding any other provision of this Agreement or any Transaction Document, no party shall be entitled to indemnification or reimbursement, to recover damages, obtain restitution or to claim any other compensation at law or in equity more than once in respect of the same loss suffered (whether pursuant to this Agreement, any Transaction Document or otherwise).

IN WITNESS of which this Agreement has been executed and delivered as a deed on the date stated at the beginning of this Agreement.

SCHEDULE 2
DEED OF ADHERENCE

THIS DEED OF ADHERENCE is made on [•]

BY [•], a company incorporated in [•] (registered number [•]), whose registered office is at [•] (the "**New Financier**").

INTRODUCTION:

- (A) The New Financier has agreed to acquire [•] of [•] holding of the Commitments.
- (B) This Deed is made in compliance with clause 20(b)(ii) of the governance agreement dated [•] between the Trustee, the Financiers, HoldCo and OpCo (the "**Governance Agreement**") under which it is a condition of the transaction referred to in (A) above that the New Financier executes a deed of adherence to the Governance Agreement prior to such acquisition.
- (C) Words and expressions defined in the Governance Agreement shall have the same meaning when used in this Deed.

IT IS AGREED as follows:

1. The New Financier confirms that it has been given and has read a copy of the Governance Agreement and covenants with and for the benefit of each person named in the schedule to this Deed and for the benefit of any other person who becomes a party to the Governance Agreement after the date of this Deed to adhere to and be bound by the provisions of the Governance Agreement, and to perform the obligations imposed by the Governance Agreement which are to be performed on or after the date of this Deed, in all respects as if the New Financier were an original party to the Governance Agreement and were named in it as a Financier with the intent that the New Financier shall also be entitled to the benefit of the Governance Agreement as if it had been an original party to the Governance Agreement and was named in it as a Financier.
2. The details of the New Financier for the purposes of clause 21 of the Governance Agreement is set out below:

[•]

3. The terms of clause 22 and clause 23 of the Governance Agreement shall apply to this Deed as if incorporated in full herein.

EXECUTED and **DELIVERED** as a **DEED** on the date set out above.

[Insert parties including those who have executed earlier Deeds of Adherence.]

EXECUTED as a **DEED** by [•])

acting by [•], a director) _____
in the presence of:) Authorised signatory

Witness's Signature: _____

Name: _____

Address: _____

SCHEDULE 3
TERMS OF REFERENCE FOR THE REMUNERATION AND NOMINATIONS COMMITTEE

1. Membership

1.1 The Remuneration and Nominations Committee shall comprise of at least:

- 1.1.1 two 10% Directors from different Financiers; and
- 1.1.2 the Minority Director,

and Remuneration and Nominations Committee members shall be appointed by the HoldCo Board. At least one member of the Remuneration and Nominations Committee shall have recent and relevant financial experience and another recent and relevant healthcare experience. Appointments to the Remuneration and Nominations Committee shall be for a period of up to three (3) years provided the member remains a Non-Executive Director.

1.2 Subject to paragraph 1.1 of this Schedule 3, if any member of the Remuneration and Nominations Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.

1.3 The chair of the Remuneration and Nominations Committee shall be a representative of the Nominating Financier which holds the largest Commitment, if they are a member of the Remuneration and Nominations Committee, or such member of the Remuneration and Nominations Committee as the HoldCo Board shall nominate (the "**Remuneration and Nominations Committee Chair**").

1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the chair in facilitating board discussion and decision-making, the Remuneration and Nominations Committee Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

2. Quorum

The quorum for meetings of the Remuneration and Nominations Committee is a simple majority of the members of the Remuneration and Nominations Committee.

3. Attendance at Meetings

3.1 Subject to paragraph 3.4 of this Schedule 3, persons, including the HoldCo Directors, the Chief Financial Officer and/or experts, may only attend meetings of the Remuneration and Nominations Committee by invitation. The members of the Remuneration and Nominations Committee may call on external experts to attend meetings of the Remuneration and Nominations Committee on an *ad hoc* basis (including but not limited to experts employed by Nominating Financiers), subject to the approval of the Remuneration and Nomination Committee Chair.

3.2 The Chair shall be invited by the Remuneration and Nominations Committee to attend meetings to discuss the performance of the members of Executive Management Team

and to make proposals as necessary. The Remuneration and Nominations Committee may consult the other Non-Executive Directors in its evaluation of the Executive Management Team.

- 3.3 No HoldCo Director or OpCo Director or manager shall be present at any meeting of the Remuneration and Nominations Committee when his or her own remuneration is being discussed. No HoldCo Director or OpCo Director shall be involved in any decision as to his or her own remuneration.
- 3.4 The head of human resources for the HoldCo Group from time to time shall have a standing invitation to attend Remuneration and Nominations Committee meetings.

4. Meetings

- 4.1 The Remuneration and Nominations Committee shall meet as often as its roles and responsibilities reasonably require and at least once in each Relevant Accounting Period to correspond with the HoldCo Group's annual salary review programme.
- 4.2 Any member of the Remuneration and Nominations Committee may request a meeting of the Remuneration and Nominations Committee if he or she considers it necessary, to be arranged by the Remuneration and Nominations Committee Chair.
- 4.3 At least ten (10) Business Days' notice of each meeting of the Remuneration and Nominations Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.
- 4.4 The Remuneration and Nominations Committee shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

5. Authority

- 5.1 The Remuneration and Nominations Committee is authorised by the HoldCo Board:
 - 5.1.1 to investigate any activity within its terms of reference;
 - 5.1.2 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and
 - 5.1.3 to secure the attendance of other persons at its meetings if it considers this necessary.

6. Duties and Responsibilities

- 6.1 The Remuneration and Nominations Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.
- 6.2 The duties of the Remuneration and Nominations Committee shall be to:
 - 6.2.1 lead the process for HoldCo Board and OpCo Board appointments and make recommendations to the HoldCo Board;

- 6.2.2 before any appointment is made by the HoldCo Board:
- (a) consider any conflicts, or possible conflicts, with the interests of the HoldCo Group, as disclosed by candidates;
 - (b) consider any significant commitments that the candidates may have, including the indication of the time involved with such commitments; and
 - (c) evaluate the balance of skills, experience, independence, knowledge and diversity on the HoldCo Board, and the future challenges affecting the HoldCo Group.
- In identifying suitable candidates the committee shall consider candidates on merit and against objective criteria and with due regard for the benefits of diversity on the HoldCo Board, including sector experience and professional background, taking care that appointees have enough time available to devote to the position;
- 6.2.3 produce the Minority Director Short List in accordance with clause 4.7(c)(i) applying the criteria set out in paragraph 6.2.2 of this Schedule 3;
- 6.2.4 arrange for HoldCo Directors and OpCo Directors to receive a formal letter of appointment to the HoldCo Board or OpCo Board (as applicable), on their appointment, setting out the expected time commitment, committee service expected of them and their involvement outside HoldCo Board or OpCo Board meetings (as applicable);
- 6.2.5 review the structure, size and composition of the OpCo Board and the boards of the OpCo Subsidiaries (including skills, experience, independence, knowledge and diversity) and make recommendations to the HoldCo Board with regard to any changes;
- 6.2.6 give full consideration to succession planning for the OpCo Directors, the directors of the OpCo Subsidiaries and members of senior management of the HoldCo Group in the course of its work, taking into account the challenges and opportunities facing the HoldCo Group, and the skills, knowledge, diversity, independence and expertise needed on the OpCo Board and the boards of the OpCo Subsidiaries in the future;
- 6.2.7 keep up to date and fully informed about the HoldCo Group's strategic priorities and the main trends and factors affecting the long-term success and future viability of the HoldCo Group;
- 6.2.8 actively monitor the HoldCo Group's policy on diversity, including gender, sector experience and professional background and any measurable objectives that it has set in implementing the policy, and progress on achieving the objectives;
- 6.2.9 prepare a draft Management Incentive Plan, in consultation with internationally recognised compensation consultants, and submit such plan to the HoldCo Board for consideration;

- 6.2.10 implement any Management Incentive Plan approved by the HoldCo Board pursuant to clause 10.5(b), in consultation with internationally recognised compensation consultants;
- 6.2.11 determine, in conjunction with the HoldCo Group's advisers, whether performance targets of the Executive Management Team have been satisfied;
- 6.2.12 review the ongoing appropriateness and relevance of the remuneration policies to ensure that reward policies across the HoldCo Group work:
 - (a) to ensure, where possible, that a significant proportion of the remuneration of each member of the Executive Management Team is structured to link remuneration to HoldCo Group and individual performance;
 - (b) to ensure that any performance-related elements of any remuneration structure are stretching and rigorously applied; and
 - (c) enable the use of discretion to override formulaic outcomes;
- 6.2.13 ensure that the Management Incentive Plan and related policies enable the use of discretion to override formulaic outcomes and include provisions that enable the HoldCo Group to recover and/or withhold sums and specify the circumstances in which it would be appropriate to do so;
- 6.2.14 agree the policy for authorising claims for expenses from the HoldCo Directors and OpCo Directors;
- 6.2.15 approve any compensation packages or arrangements following the severance of any member of the Executive Management Team's contract, to ensure that it falls within relevant remuneration policies and that the relevant member of the Executive Management Team is treated fairly but that failure is not rewarded and the duty of such member of the Executive Management Team to mitigate any loss suffered by him/her as a result of the severance is fully recognised; and
- 6.2.16 consider any other matters within its responsibility as referred to the Remuneration and Nominations Committee by the HoldCo Board.

6.3 The Remuneration and Nominations Committee shall make recommendations to the HoldCo Board with regard to:

- 6.3.1 plans for succession for the Executive Management Team and in particular the key roles of Chief Executive Officer and Chief Financial Officer;
- 6.3.2 the appointment of the HoldCo Directors and OpCo Directors;
- 6.3.3 membership of the Audit Committee, Operations and Quality Committee, Restructuring Committee, Exit Committee and any other HoldCo Board committees as appropriate, in consultation with the Chair;
- 6.3.4 the HoldCo Group's policy relating to the remuneration of the Executive Management Team and its cost;

- 6.3.5 individual remuneration packages for each member of the Executive Management Team, including pension rights and any compensation payments, including approving the following in respect of each member of the Executive Management Team:
 - (a) a service contract;
 - (b) any benefit, pension and/or incentive scheme entitlement;
 - (c) any other bonuses, fees and expenses; and
 - (d) any compensation payable (including pension contributions) on the termination of a service contract; and
- 6.3.6 the payment of directors' fees to HoldCo Directors, OpCo Directors or the directors of any OpCo Subsidiaries; and
- 6.3.7 the HoldCo Group's annual salary review programme to ensure, amongst other matters, alignment with HoldCo Group remuneration policies.

7. **Reporting Procedures**

- 7.1 The Remuneration and Nominations Committee Chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.
- 7.2 The HoldCo Group secretariat (under the direction of the Remuneration and Nominations Committee Chair) shall:
 - 7.2.1 minute the proceedings and resolutions of all meetings of the Remuneration and Nominations Committee, including recording the names of those present and in attendance;
 - 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and
 - 7.2.3 shall promptly circulate minutes of Remuneration and Nominations Committee meetings to all members of the Remuneration and Nominations Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.

- 7.3 The Remuneration and Nominations Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.

8. **Other matters**

- 8.1 The Remuneration and Nominations Committee shall:
 - 8.1.1 be kept abreast of matters relating to any area within its remit;

- 8.1.2 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
- 8.1.3 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
- 8.1.4 give due consideration to Applicable Laws, regulations and any other applicable rules, as appropriate; and
- 8.1.5 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval.

SCHEDULE 4

TERMS OF REFERENCE FOR THE AUDIT COMMITTEE

1. MEMBERSHIP

1.1 The Audit Committee shall comprise of at least:

1.1.1 two 10% Directors from different Financiers; and

1.1.2 the Minority Director,

and Audit Committee members shall be appointed by the HoldCo Board. At least one member of the Audit Committee shall have recent and relevant financial experience (and a professional accounting and/or financial qualification, where possible) and another recent and relevant healthcare experience. Appointments to the Audit Committee shall be for a period of up to three (3) years, provided the member remains a Non-Executive Director.

1.2 Subject to paragraph 1.1 of this Schedule 4, if any member of the Audit Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.

1.3 The chair of the Audit Committee shall be a representative of the Nominating Financier which holds the largest Commitment, if they are a member of the Audit Committee, or such member of the Audit Committee as the HoldCo Board shall nominate (the "**Audit Committee Chair**").

1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the chair in facilitating board discussion and decision-making, the Audit Committee Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

2. Quorum

The quorum for meetings of the Audit Committee is a simple majority of the members of the Audit Committee.

3. Attendance at Meetings

3.1 Subject to paragraph 3.4 of this Schedule 4, persons, including the HoldCo Directors and/or experts, may only attend meetings of the Audit Committee by invitation. The members of the Audit Committee may call on external experts to attend meetings of the Audit Committee on an *ad hoc* basis (including but not limited to experts employed by Nominating Financiers), subject to the approval of the Audit Committee Chair.

3.2 At least once a year, the Audit Committee must meet the External Auditor and Internal Auditor without any of the Executive Management Team present.

3.3 The External Auditor and Internal Auditor will be invited to attend meetings of the Audit Committee on a regular basis.

3.4 The Chief Financial Officer shall have a standing invitation to attend Audit Committee meetings.

4. Meetings

4.1 The Audit Committee shall meet as often as its roles and responsibilities reasonably require and at least twice in each Relevant Accounting Period to correspond with the HoldCo Group's annual audit.

4.2 Any member of the Audit Committee, the Chief Financial Officer, the Internal Auditor or the External Auditor may request a meeting of the Audit Committee if he or she considers it necessary, to be arranged by the Audit Committee Chair.

4.3 At least ten (10) Business Days' notice of each meeting of the Audit Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.

4.4 The Audit Committee shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

5. Authority

5.1 The Audit Committee is authorised by the HoldCo Board:

5.1.1 to investigate any activity within its terms of reference;

5.1.2 to seek any information it requires from any employee of the HoldCo Group and to call any employee to be questioned at a meeting of the Audit Committee as and when required (and all employees shall be directed to co-operate with any request made by the Audit Committee);

5.1.3 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and

5.1.4 to secure the attendance of other persons at its meetings if it considers this necessary.

6. Duties and Responsibilities

6.1 The Audit Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.

6.2 The duties of the Audit Committee shall be to:

External Audit

6.2.1 consider and make recommendations to the HoldCo Board in relation to the appointment and reappointment of the External Auditor and any question of resignation or dismissal of the External Auditor and to approve the External Auditor's remuneration and terms of engagement. The Audit Committee shall oversee the selection process for new auditors and, if an auditor resigns, the

Audit Committee shall investigate the circumstances leading to such resignation and determine whether any action is required;

- 6.2.2 discuss with the External Auditor before the audit starts the nature and scope of the audit, to ensure co-ordination where more than one firm of auditors is involved and to approve the terms of engagement of the External Auditor whether for audit or non-audit services;
- 6.2.3 keep under review the scope and results of the audit, the audit fee and the appropriateness of the fee for permitting a thorough audit to be undertaken, taking into consideration relevant professional and regulatory requirements;
- 6.2.4 keep under review (and assess annually) the independence and objectivity of the External Auditor taking into account relevant professional and regulatory requirements and the relationship with the External Auditor as a whole, including the provision of any non-audit services;
- 6.2.5 meet regularly with the External Auditor, including once at the planning stage before the audit and once after the audit at the reporting stage;
- 6.2.6 review the findings of the audit with the External Auditor. This shall include, but not be limited to, the following:
 - (a) a discussion of any major issues which arose during the audit;
 - (b) any accounting and audit judgements;
 - (c) level of errors identified during the audit; and
 - (d) the effectiveness of the audit;
- 6.2.7 review:
 - (a) any representation letters requested by the External Auditor before they are signed by management; and
 - (b) the external auditor's management letter and response to the external auditor's findings and recommendations;
- 6.2.8 discuss problems and reservations arising from audits and any matters the External Auditor may wish to discuss (in the absence of the Executive Management Team, where necessary);

Financial statements

- 6.2.9 review and challenge where necessary:
 - (a) the consistency of, and any changes to, accounting policies both on a year-on-year basis and across the HoldCo Group;
 - (b) the methods used to account for significant or unusual transactions where different approaches are possible;

- (c) whether the HoldCo Group has followed appropriate accounting standards and made appropriate estimates and judgements, taking into account the views of the External Auditor; and
 - (d) the clarity of disclosure in the HoldCo Group's financial reports and the context in which statements are made;
- 6.2.10 analyse interim and annual financial statements of the HoldCo Group before presenting them to the HoldCo Board and providing its opinion and recommendations to the HoldCo Board in respect of the same;
- 6.2.11 resolve any disagreements between the Executive Management Team and the Internal Auditor regarding financial reporting in respect of the HoldCo Group;
- 6.2.12 examine accounting estimates for the HoldCo Group in respect of significant matters;
- 6.2.13 review regulatory filings related to financial statements of the HoldCo Group before their release and consider the accuracy and completeness of the information contained therein;
- 6.2.14 provide its technical opinion, at the request of the HoldCo Board, regarding whether the HoldCo Board's report on the HoldCo Group's performance and financial statements and the HoldCo Group's financial statements are fair, balanced, understandable, and contain information that allows any stakeholder to assess the HoldCo Group's financial position, performance, business model, and strategy;

Internal Audit and Risk Management

- 6.2.15 keep under review the adequacy and effectiveness of the HoldCo Group's financial reporting and internal control policies and procedures and risk management systems and to review any statement on internal control and/or risk management to be included in the HoldCo Directors' and OpCo Directors' reports before submission to the HoldCo Board for its approval;
- 6.2.16 monitor, review and approve the internal audit programme in the context of the HoldCo Group's overall risk management system, ensure co-ordination between the Internal Auditor and External Auditor and ensure that the internal audit function is adequately resourced, has appropriate standing within the HoldCo Group and is free from management or other restriction;
- 6.2.17 meet the Internal Auditor at least quarterly, without management being present, to discuss their remit and any issues arising from the internal audits carried out. In addition the Internal Auditor shall be given the right of direct access to the HoldCo Board and to the Audit Committee;
- 6.2.18 establish the HoldCo Group's risk management framework;
- 6.2.19 review the organisational structure for risk management of the HoldCo Group and provide recommendations to the HoldCo Board;

- 6.2.20 ensure the availability of adequate resources and systems for risk management of the HoldCo Group;
- 6.2.21 prepare detailed reports on the HoldCo Group's exposure to risks and the recommended measures to manage such risks and present them to the HoldCo Board;

Right to speak out, compliance and fraud

- 6.2.22 review the HoldCo Group's procedures by which employees and contractors may, in confidence, raise concerns about improprieties in matters of financial reporting or other matters. The Audit Committee shall ensure that these arrangements allow proportionate and independent investigation of such matters and appropriate follow-up action;
- 6.2.23 review the HoldCo Group's procedures for detecting fraud;
- 6.2.24 review the HoldCo Group's systems and controls for the prevention of bribery and receive reports on non-compliance;
- 6.2.25 review the process for communicating the code of conduct and business ethics (or similar code) to the applicable employees of the HoldCo Group and monitor their compliance;
- 6.2.26 review the proposed Related Party Transactions (and the agreements relating thereto) and provide its recommendations to the HoldCo Board in respect thereof;
- 6.2.27 review the effectiveness of the HoldCo Group's system(s) for monitoring compliance with any HoldCo Group policies relating to financial reporting and related matters including the results of the Executive Management Team's investigation of any instances of non-compliance with such policies (inclusive of any disciplinary action taken by the Executive Management Team in this regard);

Recommendations, reports and actions

- 6.2.28 consider the major findings of internal investigations and management's response;
- 6.2.29 make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed;
- 6.2.30 oversee any investigation of activities which are within its terms of reference;
- 6.2.31 at least once a year, review its own performance, constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary for HoldCo Board approval; and
- 6.2.32 consider any other matters within its responsibility as referred to the Audit Committee by the HoldCo Board.

7. Reporting Procedures

- 7.1 The Audit Committee Chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.
- 7.2 The HoldCo Group secretariat (under the direction of the Audit Committee Chair) shall:
 - 7.2.1 minute the proceedings and resolutions of all meetings of the Audit Committee, including recording the names of those present and in attendance;
 - 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and
 - 7.2.3 shall promptly circulate minutes of Audit Committee meetings to all members of the Audit Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.

- 7.3 The Audit Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.

8. Other matters

The Audit Committee shall:

- 8.1.1 be kept abreast of matters relating to any area within its remit;
- 8.1.2 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
- 8.1.3 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
- 8.1.4 give due consideration to Applicable Laws, regulations and any other applicable rules, as appropriate;
- 8.1.5 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval;
- 8.1.6 regard and deal with all Audit Committee findings, recommendations, documents and information received by it with complete confidentiality in accordance with the provisions of clause 14 (*Confidential Information*) of this Agreement which will apply to this Schedule 4 *mutatis mutandis*; and
- 8.1.7 ensure transparency of their findings and recommendations and any other applicable policies, as appropriate, to the HoldCo Board, Internal Auditor and External Auditor with complete confidentiality.

SCHEDULE 5
TERMS OF REFERENCE FOR THE OPERATIONS AND QUALITY COMMITTEE

1. MEMBERSHIP

- 1.1 The Operations and Quality Committee shall comprise of at least three 10% Directors from different Financiers and Operations and Quality Committee members shall be appointed by the HoldCo Board. At least one member of the Operations and Quality Committee shall have recent and relevant financial experience and another recent and relevant healthcare experience. Appointments to the Operations and Quality Committee shall be for an initial period of twelve (12) months provided the member remains a Non-Executive Director.
- 1.2 Subject to paragraph 1.1 of this Schedule 5, if any member of the Operations and Quality Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.
- 1.3 The chair of the Operations and Quality Committee shall be such member of the Operations and Quality Committee as the HoldCo Board shall nominate and approve acting by Simple Majority (the "**Operations and Quality Committee Chair**").
- 1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the chair in facilitating board discussion and decision-making, the Operations and Quality Committee Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

2. Quorum

The quorum for meetings of the Operations and Quality Committee is a simple majority of the members of the Operations and Quality Committee.

3. Attendance at Meetings

- 3.1 Subject to paragraph 3.2 of this Schedule 5, persons, including the HoldCo Directors and/or experts, may only attend meetings of the Operations and Quality Committee by invitation. The members of the Operations and Quality Committee may call on external experts to attend meetings of the Operations and Quality Committee on an *ad hoc* basis (including but not limited to experts employed by Nominating Financiers), subject to the approval of the Operations and Quality Committee Chair.
- 3.2 The Chief Executive Officer and the Chief Financial Officer shall each have standing invitations to attend Operations and Quality Committee meetings.

4. Meetings

- 4.1 The Operations and Quality Committee shall meet as often as its roles and responsibilities reasonably require.
- 4.2 Any member of the Operations and Quality Committee may request a meeting of the Operations and Quality Committee if he or she considers it necessary, to be arranged by the Operations and Quality Committee Chair.

4.3 At least ten (10) Business Days' notice of each meeting of Operations and Quality Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.

4.4 The Operations and Quality Committee shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

5. **Authority**

5.1 The Operations and Quality Committee is authorised by the HoldCo Board:

- 5.1.1 to investigate any activity within its terms of reference;
- 5.1.2 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and
- 5.1.3 to secure the attendance of other persons at its meetings if it considers this necessary.

6. **Duties and Responsibilities**

6.1 The Operations and Quality Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.

6.2 The duties of the Operations and Quality Committee shall be to:

- 6.2.1 monitor and review the operational performance (including but not limited to the quality of service delivery and standards of clinical care) of the HoldCo Group and recommend to the HoldCo Board any improvements to the operations of any member of the HoldCo Group or the HoldCo Group in its entirety;
- 6.2.2 assess areas of potential improvement with regard to the operational and/or financial performance of the HoldCo Group and monitor the implementation of any recommendations that are put in place following approval by the HoldCo Board;
- 6.2.3 discuss and resolve (or recommend for resolution to the relevant senior management members) operational issues of the HoldCo Group;
- 6.2.4 review quality of service data (including clinical reporting data) and external audits or site visits regarding operations to: (i) assess whether appropriate standards are being maintained; (ii) conduct investigations where necessary; and (iii) implement appropriate measures and safeguards to address any issues, should they arise;
- 6.2.5 seek regular updates from the Executive Management Team on clinical reporting to regulators and/or other formal bodies in the relevant jurisdiction(s) and review the results of any external audits and/or site visits that are undertaken;

- 6.2.6 assess Operational KPI data to observe and understand trends that have had or may have a positive or negative impact on the financial and/or operational performance of the HoldCo Group;
- 6.2.7 assess and challenge any growth recommendations in respect of the operational and/or financial performance of the HoldCo Group put forward by the Executive Management Team, with reference to the overall strategic priorities of the HoldCo Group; and
- 6.2.8 consider any other matters within its responsibility as referred to the Operations and Quality Committee by the HoldCo Board.

7. **Reporting Procedures**

- 7.1 The Operations and Quality Committee Chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.
- 7.2 The HoldCo Group secretariat (under the direction of the Operations and Quality Committee Chair) shall:
 - 7.2.1 minute the proceedings and resolutions of all meetings of the Operations and Quality Committee, including recording the names of those present and in attendance;
 - 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and
 - 7.2.3 shall promptly circulate minutes of Operations and Quality Committee meetings to all members of Operations and Quality Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.

- 7.3 The Operations and Quality Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.

8. **Other matters**

- 8.1 The Operations and Quality Committee shall:
 - 8.1.1 be kept abreast of matters relating to any area within its remit;
 - 8.1.2 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
 - 8.1.3 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
 - 8.1.4 give due consideration to Applicable Laws, regulations and any other applicable rules, as appropriate; and

- 8.1.5 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval.

SCHEDULE 6
TERMS OF REFERENCE FOR THE RESTRUCTURING COMMITTEE

1. MEMBERSHIP

- 1.1 The Restructuring Committee shall comprise of at least three 10% Directors from different Financiers and Restructuring Committee members shall be appointed by the HoldCo Board. Appointments to the Restructuring Committee shall be for an initial period of twelve (12) months from Completion provided the member remains a Non-Executive Director.
- 1.2 Subject to paragraph 1.1 of this Schedule 6, if any member of the Restructuring Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.
- 1.3 The chair of the Restructuring Committee shall be a representative of the Nominating Financier holding the largest Commitment, if they are a member of the Restructuring Committee, or such member of the Restructuring Committee as the HoldCo Board shall nominate (the "**Restructuring Committee Chair**").
- 1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the chair in facilitating board discussion and decision-making, the Restructuring Committee Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

2. Quorum

The quorum for meetings of the Restructuring Committee is a simple majority of the members of the Restructuring Committee.

3. Attendance at Meetings

- 3.1 Subject to paragraph 3.2 of this Schedule 6, persons, including the HoldCo Directors, the Chief Financial Officer and/or experts, may only attend meetings of the Restructuring Committee by invitation. The members of the Restructuring Committee may call on external experts to attend meetings of the Restructuring Committee on an *ad hoc* basis (including but not limited to experts employed by Nominating Financiers), subject to the approval of the Restructuring Committee Chair.
- 3.2 The head of legal for the HoldCo Group from time to time shall have a standing invitation to attend Restructuring Committee meetings.

4. Meetings

- 4.1 The Restructuring Committee shall meet as often as its roles and responsibilities reasonably require.
- 4.2 Any member of the Restructuring Committee may request a meeting of the Restructuring Committee if he or she considers it necessary, to be arranged by the Restructuring Committee Chair.

4.3 At least ten (10) Business Days' notice of each meeting of the Restructuring Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.

4.4 The Restructuring Committee shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

5. **Authority**

5.1 The Restructuring Committee is authorised by the HoldCo Board:

- 5.1.1 to investigate any activity within its terms of reference;
- 5.1.2 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and
- 5.1.3 to secure the attendance of other persons at its meetings if it considers this necessary.

6. **Duties and Responsibilities**

6.1 The Restructuring Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.

6.2 The duties of the Restructuring Committee shall be to:

- 6.2.1 oversee any subsisting workstreams in connection with the completion of the Restructuring (including but not limited to: (i) matters referred to in the LTD Asset Transfer Agreement (and in particular those constituting reserved matters pursuant to clause 6, Schedule 8 and Schedule 9); (ii) matters related to ongoing litigation, arbitration or other proceedings; and (iii) corporate structuring, in each case in relation to the HoldCo Group) and make recommendations to the HoldCo Board in respect of the same; and
- 6.2.2 consider any other matters within its responsibility as referred to the Restructuring Committee by the HoldCo Board.

7. **Reporting Procedures**

7.1 The Restructuring Committee Chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.

7.2 The HoldCo Group secretariat (under the direction of the Restructuring Committee Chair) shall:

- 7.2.1 minute the proceedings and resolutions of all meetings of the Restructuring Committee, including recording the names of those present and in attendance;
- 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and

- 7.2.3 shall promptly circulate minutes of Restructuring Committee meetings to all members of the Restructuring Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.
 - 7.3 The Restructuring Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.
8. **Other matters**
- 8.1 The Restructuring Committee shall:
 - 8.1.1 be kept abreast of matters relating to any area within its remit;
 - 8.1.2 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
 - 8.1.3 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
 - 8.1.4 give due consideration to Applicable Laws, regulations and any other applicable rules, as appropriate; and
 - 8.1.5 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval.

SCHEDULE 7
TERMS OF REFERENCE FOR THE EXIT COMMITTEE

1. MEMBERSHIP

- 1.1 The Exit Committee shall comprise of at least:
- 1.1.1 one 10% Director from the Nominating Financier which holds the largest Commitment;
 - 1.1.2 two 10% Directors from different Financiers (other than the Nominating Financier which holds the largest Commitment); and
 - 1.1.3 the Minority Director,
- and Exit Committee members shall be appointed by the HoldCo Board. Appointments to the Exit Committee shall be for a period of up to three (3) years from Completion provided the member remains a Non-Executive Director.
- 1.2 Subject to paragraph 1.1 of this Schedule 7, if any member of the Exit Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.
- 1.3 The chair of the Exit Committee shall be such member of the Exit Committee as the HoldCo Board shall nominate and approve acting by Simple Majority (the "**Exit Committee Chair**").
- 1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the chair in facilitating board discussion and decision-making, the Exit Committee Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

2. Quorum

The quorum for meetings of the Exit Committee is a simple majority of the members of the Exit Committee.

3. Attendance at Meetings

- 3.1 Persons, including the HoldCo Directors, the Chief Financial Officer and/or experts, may only attend meetings of the Exit Committee by invitation. The members of the Exit Committee may call on external experts to attend meetings of the Exit Committee on an *ad hoc* basis (including but not limited to experts employed by Nominating Financiers), subject to the approval of the Exit Committee Chair.

4. Meetings

- 4.1 The Exit Committee shall meet as often as its roles and responsibilities reasonably require.
- 4.2 Any member of the Exit Committee may request a meeting of the Exit Committee if he or she considers it necessary, to be arranged by the Exit Committee Chair.

4.3 At least ten (10) Business Days' notice of each meeting of the Exit Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.

4.4 The Exit Committee shall act by simple majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

5. **Authority**

5.1 The Exit Committee is authorised by the HoldCo Board:

- 5.1.1 to investigate any activity within its terms of reference;
- 5.1.2 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and
- 5.1.3 to secure the attendance of other persons at its meetings if it considers this necessary.

6. **Duties and Responsibilities**

6.1 The Exit Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.

6.2 The duties of the Exit Committee shall be to:

- 6.2.1 make recommendations to the HoldCo Board regarding any proposed Exit Events and related strategies, including the amount of Indemnity Cover to be provided in accordance with clause 41.4 (*Indemnity Novation*) of the LTD Asset Transfer Agreement;
- 6.2.2 make recommendations to the HoldCo Board regarding hiring advisers in respect of any proposed Exit Event (including but not limited to mergers and acquisitions advisers);
- 6.2.3 assess any expressions of interest and/or proposals made by third parties regarding any potential Exit Event, in consultation with the HoldCo Board;
- 6.2.4 facilitate and implement the provisions of clause 8.5 of this Agreement and clause 41.4 (*Indemnity Novation*) of the LTD Asset Transfer Agreement, subject to the required HoldCo Board approval; and
- 6.2.5 consider any other matters within its responsibility as referred to the Exit Committee by the HoldCo Board.

7. **Reporting Procedures**

7.1 The Exit Committee Chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.

- 7.2 The HoldCo Group secretariat (under the direction of the Exit Committee Chair) shall:
- 7.2.1 minute the proceedings and resolutions of all meetings of the Exit Committee, including recording the names of those present and in attendance;
 - 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and
 - 7.2.3 shall promptly circulate minutes of Exit Committee meetings to all members of the Exit Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.

- 7.3 The Exit Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.

8. **Other matters**

- 8.1 The Exit Committee shall:

- 8.1.1 be kept abreast of matters relating to any area within its remit;
- 8.1.2 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
- 8.1.3 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
- 8.1.4 give due consideration to Applicable Laws, regulations and any other applicable rules, as appropriate; and
- 8.1.5 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval.

SCHEDULE 8
THE HOLDCO BOARD RESERVED MATTERS

PART 1
THE HOLDCO BOARD SIMPLE MAJORITY RESERVED MATTERS

1. OpCo Level

1.1 Material Corporate Transactions

- 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value less than USD 50,000,000 (but greater than or equal to USD 1,000,000) over the lifetime of the HoldCo Facilities.
- 1.1.2 Acquisitions of any assets, undertakings, business, company or securities of any company, joint ventures, partnerships, profit sharing arrangements, consolidations, amalgamations or collaborations with an aggregate value of less than USD 40,000,000 in a cumulative three year period.
- 1.1.3 Capital expenditure with a value greater than or equal to USD 1,000,000 but less than USD 10,000,000 above the Budget in a Financial Year.
- 1.1.4 Entering into, materially changing, terminating or granting a material waiver under or in respect of any non-financial contract with a value greater than or equal to USD 500,000.
- 1.1.5 Instigation, settlement or compromise of any litigation, arbitration or other proceedings with a value greater than or equal to USD 500,000 excluding any litigation, arbitration or other proceedings commenced prior to Completion unless a member of the HoldCo Group is joined to such litigation or other proceedings following Completion.

1.2 Incurrence of Indebtedness

- 1.2.1 Incurrence of debt with an aggregate value greater than or equal to USD 3,000,000 but less than USD 40,000,000 in a cumulative three-year period.
- 1.2.2 Entry into any hedging agreement or similar arrangement.

1.3 Granting of Security

- 1.3.1 Granting of security or creating a charge over any assets or property in respect of a payment obligation with an aggregate value greater than or equal to USD 2,500,000 (in aggregate) or USD 1,000,000 (in any twelve (12) month period) but less than USD 40,000,000 in a cumulative three year period.

1.4 Waivers and Amendments: OpCo Facilities

- 1.4.1 Any decision to seek a consent or waiver in respect of a Majority OpCo Financiers Consent Matter.

1.5 Personnel and Policies

1.5.1 Appointment and removal of the Chief Executive Officer, the Chief Financial Officer, the Chief Transformation Officer and the Internal Auditor.

1.5.2 Approval of Key Policies.

1.6 LTD Asset Transfer Agreement

1.6.1 Any actions and/or payments required to be made under the guarantee pursuant to clause 22 (*Guarantee*) of the LTD Asset Transfer Agreement.

1.6.2 The commencement and conduct of any disputes under clause 45 (*Law and Jurisdiction*) of the LTD Asset Transfer Agreement.

1.6.3 OpCo electing to exercise the power in paragraph 8 (*Fallback in relation to Delayed Transfer Shares*) and paragraph 22 (*Fallback in relation to Delayed Transfer Assets*) of the Post-Completion Protocol.

1.6.4 OpCo agreeing to extend the time limit for obligations under Section A (*Delayed Transfer Workstreams*) and paragraph 27 (*Expiry*) of the Post-Completion Protocol.

1.6.5 OpCo electing to exercise the power to direct LTD to pursue an alternative SAQ and/or KBB transactions under paragraph 28 (*Pursuit of consensual SAQ/KBB transaction*) or any fallback under paragraph 29 (*Fallback in relation to SAQ/KBB Interests*) of the Post-Completion Protocol.

1.6.6 OpCo electing to exercise the power to direct LTD to pursue an alternative SAZ transaction under paragraph 31.1.2 (*Pursuit of SAZ transaction*) of the Post Completion Protocol.

1.6.7 OpCo electing to exercise the power to direct LTD to pursue an alternative GOSI Sale under paragraph 33.1 (*GOSI Sale*) and 33.10 (*Alternative Sale*) of the Post-Completion Protocol.

1.6.8 OpCo making a decision as to the structure of the GOSI Sale fallback under paragraph 34 (*GOSI Sale Fallbacks*) of the Post-Completion Protocol.

1.6.9 OpCo making a decision as to whether to purchase NMC Oman.

1.6.10 OpCo making a decision as to the structure of the fallback transfer in respect of NMC Fertility Kenya Limited under paragraph 39.4 (*Fallback Transfer of NMC Fertility Kenya Limited*) of the Post-Completion Protocol.

1.6.11 Any variations to the ATA Budget under paragraph 56 (*Variations to the ATA Budget*) of the Post-Completion Protocol which exceed USD 2,000,000.

1.6.12 The commencement and conduct of any disputes in respect of the ATA Budget under paragraph 57 (*Disputes regarding Post-Completion Protocol and ATA Budget*) of the Post-Completion Protocol.

- 1.6.13 Exercising any rights, taking any steps, and/or granting any waivers under the LTD Asset Transfer Agreement (or any Transitional Transfer Documents) that would materially impact (in OpCo's reasonable opinion) OpCo's and/or the HoldCo Group's financial or operational status.
- 1.6.14 Payments under any indemnities in the LTD Asset Transfer Agreement and/or Post-Completion Protocol which exceed USD 10,000,000.

2. **HoldCo Group Level**

2.1 Exit and Maturities

- 2.1.1 Appointment of advisers for an Exit Event.
- 2.1.2 Proposal of the recommended Exit Event strategy.
- 2.1.3 Proposing the extension of the maturity of the HoldCo Facilities by one year.

2.2 Waivers and Amendments: HoldCo Facilities

- 2.2.1 Any decision to seek a consent or waiver in respect of a Majority Reporting Financiers Consent Matter.
- 2.2.2 Any decision to seek a consent or waiver in respect of an Increased Majority Reporting Financiers Consent Matter.

3. **Whole Group Level**

3.1 Policies and Approvals

- 3.1.1 Approval of the financial statements or the accounts.
- 3.1.2 Appointment or removal of the External Auditors.
- 3.1.3 Changes to the accounting policies and principles including adopting any new accounting policies.
- 3.1.4 Constitution of and delegation of powers to the Committees, and any changes to any Terms of Reference.
- 3.1.5 Announcements outside the ordinary course of business.

PART 2
THE HOLDCO BOARD SUPER MAJORITY RESERVED MATTERS

1. OpCo Level

1.1 Material Corporate Transactions

- 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 50,000,000 (but less than USD 100,000,000) over the lifetime of the HoldCo Facilities.
- 1.1.2 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 100,000,000 (but less than USD 250,000,000) over the lifetime of the HoldCo Facilities.
- 1.1.3 Disposals of any assets, undertakings business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 250,000,000 (but less than USD 500,000,000) over the lifetime of the HoldCo Facilities.
- 1.1.4 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 500,000,000 (even if falling short of an Exit Event) over the lifetime of the HoldCo Facilities.
- 1.1.5 Acquisitions of any assets, undertakings, business, company or securities of any company, joint ventures, partnerships, profit sharing arrangements, consolidations, amalgamations or collaborations with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.
- 1.1.6 Capital expenditure with a value greater than or equal to USD 10,000,000 but less than USD 20,000,000 above the Budget in a Financial Year.
- 1.1.7 Capital expenditure with a value greater than or equal to USD 20,000,000 above the Budget in a Financial Year.
- 1.1.8 Altering the capital structure of OpCo or the OpCo Subsidiaries (including issuing or granting any options in respect of, or securities convertible or exchangeable into, shares or a reduction in share capital, the purchase or redemption of any share capital or the consolidation, sub-division, conversion or cancellation of any share capital).
- 1.1.9 Instigation, settlement or compromise of any litigation, arbitration or other proceedings where such litigation, arbitration or other proceedings relate to pre-Completion activities of the NMC Healthcare Business.
- 1.1.10 Entry into any transaction or arrangement of the HoldCo Group which is not on arm's length terms.
- 1.1.11 Entry into any Related Party Transaction which is not on arm's length terms.

1.2 Incurrence of Indebtedness

- 1.2.1 Incurrence of debt with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.

1.3 Granting of Security

- 1.3.1 Granting of security or creating a charge over any assets or property in respect of a payment obligation with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.

1.4 Waivers and Amendments: OpCo Facilities

- 1.4.1 Any decision to seek a consent or waiver in respect of a Super Majority OpCo Financiers Consent Matter.
- 1.4.2 Any decision to seek a consent or waiver in respect of an All OpCo Financiers Consent Matter.

1.5 Personnel and Policies

- 1.5.1 Changes to the Delegated Authority Framework or decisions outside of the Delegated Authority Framework.
- 1.5.2 Approval of the Management Incentive Plan and any changes to the Management Incentive Plan approved under clause 10.5(b).

2. HoldCo Group Level

2.1 Exits and Maturities

- 2.1.1 Exit Event at a valuation which yields Net Cash Proceeds greater than or equal to one hundred percent (100%) for the HoldCo Facilities size.
- 2.1.2 Exit Event at a valuation which yields Net Cash Proceeds greater than or equal to eighty five percent (85%) for the HoldCo Facilities size but below one hundred percent (100%).
- 2.1.3 Exit Event at a valuation which yields Net Cash Proceeds below eighty five percent (85%) for the HoldCo Facilities size.
- 2.1.4 The referral of an Application (as defined in the LTD Asset Transfer Agreement) to Expert Determination (as defined in the LTD Asset Transfer Agreement).
- 2.1.5 The incurrence of guarantees and indemnities by HoldCo pursuant to the terms of the Novation Documents.
- 2.1.6 Exit Event which results in receipt of non-cash consideration without a cash consideration operation of at least equivalent value.

2.1.7 Exit Event at any valuation following the one year extension of the HoldCo Facilities referred to in Part 1 of this Schedule 8, provided an independent fair value assessment has been carried out.

2.1.8 Proposing the extension of the maturity of the HoldCo Facilities by an additional year (beyond the one year extension of the HoldCo Facilities referred to in Part 1 of this Schedule 8).

2.2 Waivers and Amendments: HoldCo Facilities

2.2.1 Any decision to seek a consent or waiver in respect of a Super Majority Reporting Financiers Consent Matter.

2.2.2 Any decision to seek a consent or waiver in respect of an All HoldCo Financiers Consent Matter.

2.2.3 Re-running the EPM more often than annually.

3. Whole Group Level

3.1 Policies and Approvals

3.1.1 Approval of the draft Business Plan, and any changes to a Business Plan approved under clause 7.5 or clause 7.7.

3.1.2 Approval of the draft Budget and any changes to a Budget approved under clause 7.3 or clause 7.7.

3.1.3 Approval of strategy, objectives and any changes to the operating strategy of the Business.

3.2 Restructuring and Insolvency

3.2.1 Changes to domicile, centre of main interests or Tax residency of any member of the HoldCo Group outside the ordinary course of business.

3.2.2 Incorporating any new member of the HoldCo Group outside the ordinary course of business.

3.2.3 Amending in any respect the Articles of Association of OpCo or the Articles of Association of the OpCo Subsidiaries.

3.2.4 Amending in any respect the Articles of Association of HoldCo.

3.2.5 Commencing or consenting to bankruptcy, winding up, administration or dissolution of any member of the HoldCo Group outside the ordinary course of business.

3.2.6 Proposing any scheme of arrangement, company voluntary arrangement, deed of company arrangement or analogous procedure in respect of any member of the HoldCo Group.

SCHEDULE 9
MATTERS REQUIRING FINANCIER APPROVAL UNDER THE HOLDCO
FACILITIES

PART 1
MAJORITY REPORTING FINANCIERS APPROVAL

1. OpCo Level

1.1 Material Corporate Transactions

- 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 100,000,000 (but less than USD 250,000,000) over the lifetime of the HoldCo Facilities.

2. HoldCo Group Level

2.1 Exits and Maturities

- 2.1.1 Extending the maturity of the HoldCo Facilities by one year.

2.2 Waivers and Amendments: HoldCo Facilities

- 2.2.1 Any decision to seek a consent or waiver in respect of a Majority Reporting Financiers Consent Matter.

3. Whole Group Level

3.1 Restructuring and Insolvency

- 3.1.1 Changes to domicile, centre of main interests or Tax residency of any member of the HoldCo Group outside the ordinary course of business.

PART 2
INCREASED MAJORITY REPORTING FINANCIERS APPROVAL

1. OpCo Level

1.1 Material Corporate Transactions

- 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 250,000,000 (but less than USD 500,000,000) over the lifetime of the HoldCo Facilities.

2. HoldCo Group Level

2.1 Exits and Maturities

- 2.1.1 Exit Event at a valuation which yields Net Cash Proceeds greater than or equal to eighty five percent (85%) for the HoldCo Facilities size, but below one hundred percent (100%).

- 2.1.2 The incurrence of guarantees and indemnities by HoldCo under the Novation Documents.

2.2 Waivers and Amendments: HoldCo Facilities

- 2.2.1 Any decision to seek a consent or waiver in respect of an Increased Majority Reporting Financiers Consent Matter.

3. Whole Group Level

3.1 Restructuring and Insolvency

- 3.1.1 Amending in any respect the Articles of Association of HoldCo.

PART 3
SUPER MAJORITY REPORTING FINANCIERS APPROVAL

1. OpCo Level

1.1 Material Corporate Transactions

- 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value greater than or equal to USD 500,000,000 (even if falling short of an Exit Event) over the lifetime of the HoldCo Facilities.
- 1.1.2 Acquisitions of any assets, undertakings, business, company or securities of any company, joint ventures, partnerships, profit sharing arrangements, consolidations, amalgamations or collaborations with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.
- 1.1.3 Capital expenditure with a value greater than or equal to USD 20,000,000 above the Budget in a Financial Year.
- 1.1.4 Altering the capital structure of OpCo or the OpCo Subsidiaries (including issuing or granting any options in respect of, or securities convertible or exchangeable into, shares or a reduction in share capital, the purchase or redemption of any share capital or the consolidation, sub-division, conversion or cancellation of any share capital).

1.2 Incurrence of Indebtedness

- 1.2.1 Incurrence of debt with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.

1.3 Granting of Security

- 1.3.1 Granting of security or creating a charge over any assets or property in respect of a payment obligation with an aggregate value greater than or equal to USD 40,000,000 in a cumulative three year period.

2. HoldCo Group Level

2.1 Exits and Maturities

- 2.1.1 Exit Event at a valuation which yields Net Cash Proceeds below eighty five percent (85%) for the HoldCo Facilities size.
- 2.1.2 Exit Event which results in receipt of non-cash consideration without a cash consideration option of at least equivalent value.
- 2.1.3 Extending the maturity of the HoldCo Facilities by an additional year (beyond the one year extension referred to in Part 1 of this Schedule 9).

2.2 Waivers and Amendments: HoldCo Facilities

2.2.1 Any decision to seek a consent or waiver in respect of a Super Majority Reporting Financiers Consent Matter.

3. **Whole Group Level**

3.1 Commencing or consenting to bankruptcy, winding up, administration or dissolution of any member of the HoldCo Group outside the ordinary course of business.

3.2 Proposing any scheme of arrangement, company voluntary arrangement, deed of company arrangement or any analogous procedure in respect of any member of the HoldCo Group.

PART 4
ALL HOLDCO FINANCIERS APPROVAL

1. HoldCo Group Level

1.1 Waivers and Amendments: HoldCo Facilities

1.1.1 Any decision to seek a consent or waiver in respect of an All HoldCo Financiers Consent Matter.

SCHEDULE 10
FORM OF COMPLIANCE CERTIFICATE

To: [Islamic Financing Party]

[Islamic Financing Party]

[Islamic Financing Party]

From: [HoldCo]

Dated:

Dear Sirs

[HoldCo] – [] Governance Agreement
dated [] (the "Governance Agreement")

1. We refer to the Governance Agreement. This is a Compliance Certificate. Terms defined in the Governance Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that: [Insert details of Shari'a Events to be certified]

Signed:

[Chief Executive Officer/Chief Financial Officer]
of
[HoldCo]

SCHEDULE 11
FORM OF SUBPARTICIPATION NOTICE

To: NMC Holdco SPV Limited ("HoldCo")

The Global Agent

From: [Name of Financier] (the "**Subparticipating Financier**")

[Name of Subparticipant] (the "**Notified Subparticipant**")

Date:

Dear Sirs and Mesdames

Governance Agreement dated [•] (the "Governance Agreement") – Subparticipation Notice

1. We refer to the Governance Agreement. Capitalised terms used in this Subparticipation Notice have the meaning given to them in the Governance Agreement unless otherwise defined herein.
2. We hereby notify you that the following Commitments (the "**Subparticipated Commitments**") [prospectively]¹ held by the Subparticipating Financier have been subparticipated with full voting rights to the Notified Subparticipant:

Conventional Facilities: USD [•]

Islamic Facilities: USD [•]

Total: USD [•]

3. The Subparticipating Financier hereby acknowledges and agrees:
 - (a) that any and all rights that may be available to it pursuant to clause 4.4(a) or 4.4(b) shall instead be enjoyed by the Notified Subparticipant, as if it were a Financier holding the Subparticipated Commitments; and
 - (b) that HoldCo and the Global Agent shall provide the Notified Subparticipant with all of the information that it may otherwise have been entitled to receive pursuant to clause 8 (*Information Undertakings*).

4. The Notified Subparticipant hereby agrees to be bound by clause 14 (*Confidential Information*) of the Governance Agreement as if it were a Financier holding the Subparticipated Commitments. This paragraph 4 shall survive termination of this Subparticipation Notice.

¹ Delete if notice delivered after Completion.

5. This Subparticipation Notice shall terminate on the earliest to occur of:
 - (a) the date on which we give you notice that our subparticipation arrangement has come to an end (whether through elevation of the Notified Subparticipant to the status of Financier in respect of the Subparticipated Commitments or otherwise). We shall promptly notify you if our subparticipation arrangement comes to an end; or
 - (b) the expiry of the Interim Period.
6. Clauses 22 (*Governing Law*) and 23 (*Enforcement*) of the Governance Agreement shall apply to this Subparticipation Notice, *mutatis mutandis*.

Signed:
Subparticipating Financier

Signed:
Notified Subparticipant

Schedule 4
Restructuring Effective Date Conditions Precedent

1. Constitutional Documents

The constitutional documents of Holdco and Opco.

2. Corporate approvals

In respect of Holdco and Opco, in each case as applicable and legally required, a resolution of its board of directors and/or its shareholder(s) or any equivalent body:

- (a) approving the terms of, and the transactions contemplated by, the Restructuring Documents to the extent party thereto and resolving that it execute, deliver and perform the Restructuring Documents to which it is a party;
- (b) authorising a specified person or persons to execute the Restructuring Documents to which it is a party on its behalf; and
- (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Restructuring Documents to which it is a party.

In respect of Holdco and Opco:

- (e) if required by law or its constitutional documents a copy of a resolution of its general meeting approving the terms of and the transactions contemplated by the Restructuring Documents to which it is a party;
 - (f) if applicable and required by law or its constitutional documents a copy of a resolution of its supervisory board approving the terms of and the transactions contemplated by the Restructuring Documents to which it is a party;
 - (g) a certificate (signed by an authorised signatory) certifying that each copy document relating to it specified in paragraphs 1 and 2 is correct, complete and (to the extent executed) in full force and effect and has not been amended or superseded prior to the date of this Deed and including specimen signatures of the person(s) authorised in the resolutions referred to above.
3. In respect of Holdco, a specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above in relation to the Restructuring Documents and any related documents.
4. In respect of Holdco, a certificate confirming that the borrowing or securing, as appropriate of the Total Commitments (as defined in the Holdco Common Terms Agreement) would not cause any borrowing, security or other similar limit binding on Holdco to be exceeded.

5. A certificate of Holdco, certifying that each copy document relating to it specified in this Schedule 4 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Holdco Common Terms Agreement.
6. A certificate of Holdco, confirming that the deemed utilisation of the Islamic Financing Facility would not cause the occurrence of a Shari'a Event.

7. **Restructuring Documents**

The following documents:

- (a) each DOCA executed by the parties thereto;
- (b) this Deed executed by the parties thereto;
- (c) a signed and undated copy of the AFF Deed of Release and notarised and dated original of the Spanish Pledge Release Agreement;
- (d) a signed and undated copy of the AFF Payoff Letter;
- (e) the LTD Asset Transfer Agreement executed by the parties thereto;
- (f) the Holdco Valuation;
- (g) the draft Holdco Articles of Association;
- (h) the draft Opcos Articles of Association;
- (i) Completion Budget (as defined in the Governance Agreement);
- (j) Delegated Authority Framework (as defined in the Governance Agreement); and
- (k) a signed and undated copy of each of the Restructuring Documents (other than any document referred to in paragraphs (a) to (j) which is or may be designated as a Restructuring Document).

8. **Legal Opinions**

The following agreed form legal opinions with respect to the Holdco Finance Documents:

- (a) a legal opinion of Clifford Chance LLP addressed to the Holdco Global Facility Agent, as to the laws of the ADGM in respect of the capacity to execute the Holdco Finance Documents and enforceability of the Holdco Finance Documents;
- (b) a legal opinion of Clifford Chance LLP addressed to the Holdco Global Facility Agent, as to the laws of England relating to the enforceability of the Holdco Finance Documents; and

- (c) a legal opinion of Clifford Chance LLP addressed to the Holdco Global Facility Agent, as to the laws of the United Arab Emirates in respect of the capacity to execute the Holdco Finance Documents and enforceability of the Holdco Finance Documents.

9. Other documents and evidence

- (a) a copy of each of:
- (i) the draft Declaratory Order;
 - (ii) the Third Party Shareholder Order; and
 - (iii) the Bankruptcy Order.
- (b) evidence that the Group DOCA Companies have delivered each DOCA to the Registrar in accordance with section 74(5)(b) of the Regulations;
- (c) evidence to the satisfaction of the Joint Administrators that the fees and expenses of the Joint Administrators and the legal and financial advisers to the Joint Administrators, Deed Administrators and the Group DOCA Companies have been paid in full, or will be paid in full, on or shortly following the Restructuring Effective Time;
- (d) evidence to the satisfaction of the Majority RID Financiers that the fees and expenses of the legal and financial advisers to the Ad Hoc Committee have been paid in full, or will be paid in full, on or shortly following the Restructuring Effective Time;
- (e) a copy of a structure chart for the Group pro forma for completion of the Restructuring;
- (f) a copy of the Funds Flow Statement which shall include:
- (i) a statement of sources and uses; and
 - (ii) the proposed movement of funds following the Restructuring Effective Time;
- (g) the Tax Structure Memorandum; and
- (h) the Residual Loan Document executed by the parties thereto.

Schedule 5
NMC VAT Group

No.	Company	Registration No.
1.	NMC Royal Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004197
2.	Aesthetic Skin Care Clinic L.L.C	CN-1127971
3.	Americare L.L.C	CN-1514123
4.	Bait Al Shifaa Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004236
5.	Bareen International Hospital	CN-1471391
6.	Bareen Pharmacy	CN-1472890
7.	Beiersdorf Cosmetics Trading Co. (L.L.C)	590211
8.	BR Medical Suites FZ-LLC	407
9.	Bright Point Pharmacy L.L.C.	CN-1795337
10.	Cosmesurge & Emirates Clinics For One Day Surgery L.L.C	CN-1045650
11.	Cosmesurge Clinics L.L.C	509266
12.	Cosmesurge Investment L.L.C	801368
13.	Cosmesurge Plastic Surgery Hospital And Clinics L.L.C	785984
14.	Cosmesurge Zakher Medical Center L.L.C	CN-2108872
15.	Fakih IVF Fertility Center Ltd (in administration) (subject to a deed of company arrangement)	000004224
16.	Fakih IVF Ltd (in administration) (subject to a deed of company arrangement)	000004220
17.	Fakih Medical Center L.L.C	CN-1660157
18.	Fakih Medical Center Pharmacy L.L.C.	CN-2235922
19.	Fulfil Trading L.L.C.	CN-2092000
20.	Grand Hamad Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004238

No.	Company	Registration No.
21.	Hamad Al Ihterafeya Pharmacy L.L.C	751424
22.	Hamad Al Mumayazah Pharmacy LLC	744681
23.	Hamad Al Oula Pharmacy L.L.C	747559
24.	Hamad Drug Store LLC	569547
25.	Hamad Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004209
26.	Life Wise Home Healthcare L.L.C.	CN-1973131
27.	Lotus Pharmacy L.L.C.	CN-1766692
28.	N M C Medical Professional Training Centre	CN-2417299
29.	N M C Pharmacy	CN-1100258
30.	National Marketing & Trading Co . L.L.C	22325
31.	New Marketing & Trading Co. Ltd	CN-1034929
32.	New Medical Centre	CN-1027342
33.	New Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004214
34.	New Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004216
35.	New Medical Centre Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004255
36.	New Medical Centre Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004253
37.	New Medical Centre Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004228
38.	New Medical Centre Trading (Store) L.L.C	515330
39.	New Medical Centre Trading Ltd (in administration) (subject to a deed of company arrangement)	000004218
40.	New Pharmacy Company Ltd (in administration) (subject to a deed of company arrangement)	000004230
41.	New Sunny Medical Centre Ltd (in administration) (subject to a	000004202

No.	Company	Registration No.
	deed of company arrangement)	
42.	NMC Family Medical Centre Ltd	000004242
43.	NMC Health Investments L.L.C.	CN-2588276
44.	NMC Provita International Medical Center Ltd (in administration) (subject to a deed of company arrangement)	000004240
45.	NMC Royal Dental Center	38678
46.	NMC Royal Family Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004243
47.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004225
48.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004245
49.	NMC Royal Hospital Ltd (in administration) (subject to a deed of company arrangement) (formerly Al Zahra Pvt. Hospital Company Limited)	000004237
50.	NMC Royal Medical Center	21518
51.	NMC Royal Medical Clinic LLC	CN-2361988
52.	NMC Royal Pharmacy	21669
53.	NMC Royal Womens Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004235
54.	NMC Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004217
55.	NMC Specialty Hospital Ltd (in administration) (subject to a deed of company arrangement)	000004241
56.	NMC Trading Ltd (in administration) (subject to a deed of company arrangement)	000004233
57.	Poly Clinic Aesthetic Dermatology Plastic Surgery Dental LLC	CN-1027668
58.	Premier Care Home Medical And Health Care L.L.C	CN-1783995
59.	Reaya Mumayaza Specialized For Medical Home Care LLC	CN-2157940
60.	Reliance Information Technology Ltd (in administration)	000004234

No.	Company	Registration No.
	(subject to a deed of company arrangement)	
61.	Royal Arsom Wellness Centre L.L.C.	CN-2217742
62.	Sharjah Pharmacy Ltd (in administration) (subject to a deed of company arrangement)	000004239
63.	Sunny Al Buhairah Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004199
64.	Sunny Al Nahda Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004232
65.	Sunny Dental Centre Ltd (in administration) (subject to a deed of company arrangement)	000004198
66.	Sunny Halwan Speciality Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004204
67.	Sunny Maysloon Speciality Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004205
68.	Sunny Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004231
69.	Sunny Sharqan Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004203
70.	Sunny Specialty Medical Centre Ltd (in administration) (subject to a deed of company arrangement)	000004200
71.	Taskeen Home Medical And Health care LLC	CN-2019151
72.	The American Surgecenter L.L.C.	CN-1074061
73.	The American Surgecenter Pharmacy - L.L.C.	CN-1077415
74.	Zari Spa & Beauty Centre	CN-1036449
75.	Zari Spa For Men	CN-1238510