

NMC HOLDCO SPV LTD.
AS THE COMPANY

[•]
AS GLOBAL AGENT

[•]
AS CONVENTIONAL FACILITY AGENT

AND

[•]
AS INVESTMENT AGENT

COMMON TERMS AGREEMENT

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THIS COMMON TERMS AGREEMENT is dated [•] 2021

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 registration number [•] (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) [•] as facility agent of the Conventional Finance Parties (other than the Global Agent) (the "**Conventional Facility Agent**");
- (5) [•] as investment agent of the Islamic Financing Parties (other than the Global Agent) (the "**Investment Agent**");
- (6) [•] as global agent of the Finance Parties (the "**Global Agent**"); and
- (7) [•] 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 Holdco Group, including any amounts of VAT or other taxes payable thereon.

"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.

"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 (other than Friday, Saturday or Sunday) on which banks are open for general business in Abu Dhabi, Dubai and London and in relation to a day 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:

- (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 [•] 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.

"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.

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

"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.

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

"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.

"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.

"Group" means the Company and its Subsidiaries.

"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.

"Holdco Group" means Holdco and [orphan trust].

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

"Holding Period Trustee" means [·].

"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 66 $\frac{2}{3}$ per cent. of the Total Reporting Financier Commitments (or, if the Total Reporting Financier Commitments have been reduced to zero, aggregated more than 66 $\frac{2}{3}$ per cent. of the Total Reporting Financier Commitments immediately prior to that reduction).

"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 $66\frac{2}{3}$ per cent. or more of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated $66\frac{2}{3}$ 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 Opco.

"Minimum Cash Balance" means an amount equal to USD[200,000].

"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 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 Opco" means [•], a limited liability company incorporated in the ADGM with registered number [•].

"NMC Opco Default" means a ["Default"] under and as defined in the NMC Opco CTA.

"NMC Opco CTA" means the common terms agreement dated on or about the date of this Agreement between, among others, NMC Opco and [·].

"NMC Opco Facilities" means the ["Facilities"] under and as defined in the NMC Opco CTA.

"NMC Opco Finance Documents" means the ["Finance Documents"] under and as defined in the NMC Opco CTA.

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

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

"NMC Opco 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 Opco.

"NMC Opco Sale" means the sale of all or substantially all of the assets of NMC Opco 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 by notice to the Company, the Global Agent and the relevant Facility Representative,

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 Financiers*).

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

"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 Financiers*).

"Reporting Financier" means any Financier 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.

"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.

"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[·] 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.

"Unrestricted Financier" means any Financier:

- (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 towards the partial settlement and cancellation of the Admitted Group Claims in accordance with the terms of the LTD DOCA and the Related DOCAs in the manner contemplated in the Restructuring Implementation Deed.¹

¹ [Note: A&M Tax/Teneo to confirm this terminology works from a tax perspective.]

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; and
- (the "**Re-Allocation Conditions**"), then the Commitments and corresponding Accruals of the Holding Period Trustee may be re-allocated 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) 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 Opco Default has occurred and is continuing under and in accordance with the NMC Opco Finance Documents; and
 - (ii) such NMC Opco Default can be cured by the provision of additional equity or subordinated loans to NMC Opco, which will then be applied to prepay the NMC Opco Facilities; and
 - (iii) the net proceeds will be applied solely for that purpose,

the Company may, by notice to the Global Agent, request the incurrence of 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;
 - (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.²

² [Note: TBD process if no Supervising Financier wishes to take up debt.]

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 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 an 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 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 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 such amount to settle:
 - (A) ad hoc payment obligations incurred by the Company in the ordinary course of its business; 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 each date falling every three Months after the Restructuring Effective Date, the Company shall apply all amounts of cash held in the Collection Account in excess of the Minimum Cash Balance 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 amount owing to an Agent, the Security Agent or the Holding Period Trustee under the Transaction Documents;
 - (iii) *thirdly*, in or towards payment *pro rata* of any accrued cash interest, expected income cash amount, 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, Income Cash Amount, 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 payment *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) due but unpaid 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) *eighthly*, if no Exit Event has occurred, in or towards payment *pro rata* of any Variable Interest or Income Variable Amount.
- (b) On an Exit Event, the Company shall apply all amounts standing to the credit of the Collection Account in accordance with paragraph (a) above. Following application of the amounts standing to the credit of the Collection Account in accordance with paragraph (a) above, any remaining amounts shall be applied:
- (i) in or towards payment *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) due but unpaid under the Transaction Documents; then
 - (ii) in or towards payment *pro rata* of any Variable Interest or Income Variable Amount.
- (c) 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.³
- (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.⁴

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.

³ Note: mechanics to be confirmed.

⁴ CC Note: conflict of interest provisions TBC

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 any member of the Holdco Group; 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 Opco (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 Opco.

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.

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:

- (a) 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;
- (b) 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;
- (c) 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
- (d) 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.

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).

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.
- (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; or
- (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 or Reallocated Group Creditor) (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.
- (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) 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.

- (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 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:
 - (i) where that New Financier is either a Conventional Lender or a Participant, pay to the Global Agent (for its own account) a fee of USD [•];
 - (ii) where that New Financier is a Conventional Lender, pay to the Conventional Facility Agent (for its own account) a fee of USD [•]; and

- (iii) where that New Financier is a Participant, pay to the Investment Agent (for its own account) a fee of USD [•].
- (b) No fee is payable pursuant to paragraph (a) above if:
 - (i) the relevant Agent agrees that no fee is payable;
 - (ii) the amount of the Commitment assigned or transferred is less than [•]; or
 - (iii) 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;
 - (iv) the assignment or transfer is made by the Holding Period Trustee to:
 - (A) a Non-Submitting Creditor;
 - (B) a Holdback Creditor; or
 - (C) a Reallocated Group Creditor.

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.

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 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.*), 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)(iv) 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 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 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.

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; and
- (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.

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 RECOURSE 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 clause [·] 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 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.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement.

**SCHEDULE 1
THE ORIGINAL FINANCIERS**

**PART I
ORIGINAL CONVENTIONAL LENDERS**

<u>Original Conventional Lenders</u>	<u>Commitment (USD)</u>
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
TOTAL	[•]

**PART II
ORIGINAL PARTICIPANTS**

<u>Original Participant</u>	<u>Commitment (USD)</u>
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
[•]	[•]
TOTAL	[•]

**SCHEDULE 2
FORM OF EXTENSION REQUEST**

To: [•] as Global Agent

Copy: [•] as Conventional Facility Agent

[•] as Investment Agent

From: [Holdco]

Dated: [•]

[Holdco] – Common terms agreement dated [•] 2021 (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.

[HOLDCO]

By:.....

SCHEDULE 3
FORM OF TRANSFER CERTIFICATE

To: [•] as Global Agent

[•] as [Conventional Facility Agent]/[Investment Agent]*

From: [*the Existing Financier*] (the "**Existing Financier**") and [*the New Financier*] (the "**New Financier**")

Dated: []

[Holdco] – Common terms agreement dated [•] 2021 (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 [].

[•] as Global Agent

By:.....

[•] as [Conventional Facility Agent / Investment Agent]*

By:.....

SCHEDULE 4
FORM OF ASSIGNMENT AGREEMENT

To: [•] as Global Agent

[•] as [Conventional Facility Agent]/[Investment Agent]*

[Holdco] as the Company

From: [*the Existing Financier*] (the "**Existing Financier**") and [*the New Financier*] (the "**New Financier**")

Dated: []

[Holdco] – Common terms agreement dated [•] 2021 (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.

[•] as Global Agent

By:.....

[•] as [Conventional Facility Agent / Investment Agent]*

By:.....

SIGNATURE PAGES