

DATED [•] 2021  
FACILITY AGREEMENT  
FOR  
NMC HOLDCO SPV LTD.  
AS BORROWER

WITH  
[•]  
AS CONVENTIONAL FACILITY AGENT

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CONVENTIONAL FACILITY AGREEMENT

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**THIS CONVENTIONAL FACILITY AGREEMENT** (the "**Agreement**") is dated [•] 2021 and made:

**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 "**Borrower**");
- (2) **THE FINANCIAL INSTITUTIONS** listed in Schedule 1 (*Original Conventional Lenders*) as original lenders (in this capacity the "**Original Conventional Lenders**"); and
- (3) [•], as facility agent of the Conventional Finance Parties (other than the Global Agent) (the "**Conventional Facility Agent**").

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this Agreement:

**"Available Funds"** means, in relation to a Payment Date:

- (a) if no Exit Event has occurred, amounts held by the Company in the Collection Account after all amounts listed under paragraphs (a)(i) to (a)(vii) of clause 13.2 (*Cash Waterfall*) of the Common Terms Agreement have been paid in full; and
- (b) following an Exit Event, amounts held by Company in the Collection Account after all amounts listed under paragraph (b)(i) of clause 13.2 (*Cash Waterfall*) of the Common Terms Agreement have been paid in full.

**"Cash Pay Interest"** has the meaning given to that term in paragraph (a) of Clause 5.1 (*Calculation and payment of Cash Pay Interest*).

**"Cash Margin"** means 0.5 per cent. per annum.

**"Commitment"** means:

- (a) in relation to an Original Conventional Lender, the amount set opposite its name under the heading "Commitments" in Schedule 1 (*Original Conventional Lenders*) and the amount of any other Commitment transferred to it under the Common Terms Agreement or assumed by it in accordance with clause 5.2 (*Re-allocation of Commitments*) of the Common Terms Agreement; and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under the Common Terms Agreement or assumed by it in accordance with clause 5.2 (*Re-allocation of Commitments*) of the Common Terms Agreement,

in each case

- (i) to the extent not cancelled, reduced or transferred by it under this Agreement or the Common Terms Agreement; and
- (ii) as increased in accordance with this Agreement or the Common Terms Agreement.

**"Conventional Share"** means, at any time, the proportion that the Total Conventional Commitments bears to the Total Commitments at that time.

**"Facility"** means the term loan facility made available under this Agreement as described in Clause 2.1 (*The Facility*).

**"First Interest Payment Date"** means the date falling nine Months after the Restructuring Effective Date.

**"First Interest Period"** means the period commencing on the Restructuring Effective Date and ending on the First Interest Payment Date.

**"Interest Payment Date"** means:

- (a) the First Interest Payment Date; and
- (b) each date falling every twelve Months thereafter.

**"Interest Period"** means, in relation to a Loan, each period determined in accordance with Clause 6 (*Interest Periods*).

**"Lender"** means:

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

which, in each case, has not ceased to be a Party as such in accordance with the terms of this Agreement.

**"Loan"** means a loan made or to be made under the Facility or the principal amount outstanding for the time being of that loan.

**"Majority Lenders"** means, at any time, Lenders:

- (a) whose share in the outstanding Utilisations and whose undrawn Commitments then aggregate 66% per cent. or more of the aggregate of all the outstanding Utilisations and the undrawn Commitments of all the Lenders;
- (b) if there is no Utilisation then outstanding, whose Commitments then aggregate 66% per cent. or more of the Total Commitments; or

- (c) if there is no Utilisation then outstanding and the Total Commitments have been reduced to zero, whose Commitments aggregated 66% per cent. or more of the Total Commitments immediately before the reduction.

"Party" means a party to this Agreement.

"PIK Interest" has the meaning given to that term in paragraph (a) of Clause 5.2 (*Calculation and payment of PIK Interest*).

"PIK Margin" means 2.0 per cent. per annum.

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

"Total Conventional Commitments" means the aggregate of the Commitments of the Conventional Lenders, being USD[•] at the date of this Agreement.

"Utilisation" means a utilisation of the Facility.

"Variable Interest" has the meaning given to that term in Clause 5.3 (*Calculation and payment of Variable Interest*).

## 1.2 Construction

- (a) Unless defined in this Agreement or the context otherwise requires, terms defined in the Common Terms Agreement have the same meanings in this Agreement or in any notice given under or in connection with this Agreement.
- (b) Except as otherwise expressly provided in this Agreement, the provisions of clause 1.2 (*Construction*) of the Common Terms Agreement apply to this Agreement as if set out in full in this Agreement, and any references in the Common Terms Agreement to "this Agreement" are to be construed as references to this Agreement.
- (c) Except as otherwise expressly provided in this Agreement, a time of day is a reference to time in the United Arab Emirates.
- (d) "\$", "USD" and "dollars" denote the lawful currency of the United States of America.

## 1.3 Conflict

- (a) Subject to paragraph (b) below, this Agreement and the Common Terms Agreement shall, as between the parties to this Agreement, be read and construed together as one agreement.
- (b) In the event of any conflict between the terms of this Agreement and the terms of the Common Terms Agreement, the terms of this Agreement will prevail as between the parties to this Agreement.

#### 1.4 **Third party rights**

Clause 1.3 (*Third party rights*) of the Common Terms Agreement applies to this Agreement as if set out in full in this Agreement, except that any references in the Common Terms Agreement to "this Agreement" are to be construed as references to this Agreement.

### 2. **THE FACILITY**

#### 2.1 **The Facility**

Subject to the terms of this Agreement and the Common Terms Agreement, the Lenders shall be deemed to have made available to the Borrower a dollar term loan facility in an aggregate amount equal to the Total Conventional Commitments.

#### 2.2 **Conventional Finance Party's rights and obligations**

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

### 3. **UTILISATION - LOANS**

#### 3.1 **Deemed Utilisation**

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.

### 3.2 **Lenders' participation**

- (a) Each Lender shall be deemed to have made its participation in each Loan available to the Borrower through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to its Commitments.

## 4. **REPAYMENT**

- (a) The Borrower shall repay the Loans made to it in full on the Final Maturity Date.
- (b) The Borrower may not reborrow any part of the Facility which is repaid.

## 5. **INTEREST**

### 5.1 **Calculation and payment of Cash Pay Interest**

- (a) The rate of cash pay interest (the "**Cash Pay Interest**") on each Loan for each Interest Period is a rate equal to the Cash Margin.
- (b) Cash Pay Interest shall accrue on each Loan in respect of the period since the previous Interest Payment Date (or, in relation to the First Interest Period, the period since the Restructuring Effective Date) and, subject to the Cash Waterfall, the Company shall pay accrued Cash Pay Interest on each Loan on the last day of each Interest Period.

### 5.2 **Calculation and payment of PIK Interest**

- (a) In addition to the Cash Pay Interest payable on each Loan, payment in kind interest (such interest being "**PIK Interest**") shall accrue on each Loan in respect of the period since the previous Payment Date (or, in relation to the First Interest Period, the period since the Restructuring Effective Date), in each case at a rate equal to the PIK Margin.
- (b) Any PIK Interest accrued in accordance with this Clause 5.2 will, at the end of each Interest Period, be capitalised and be added to the principal amount of the Loans outstanding and itself thereafter bear PIK Interest and Cash Pay Interest on the same basis as set out in this Clause 5.
- (c) All amounts of PIK Interest, whether accruing or capitalised, must be paid directly by the Company to the Conventional Facility Agent in full on the Final Maturity Date, or, if earlier:
  - (i) the date of any Acceleration Event; or
  - (ii) any date on which all Loans and all amounts outstanding under the Islamic Financing Transaction Documents have become due for payment or have been paid in full.

### 5.3 Calculation and payment of Variable Interest

- (a) In addition to the Cash Pay Interest and the PIK Interest in respect of each Loan, the Company shall pay a variable interest charge (the "**Variable Interest**") at the times and in the manner contemplated in the Cash Waterfall.
- (b) The Variable Interest payable in respect of the outstanding Loans at such time shall be an amount equal to the Conventional Share of the Company's Available Funds on the relevant Payment Date.

## 6. INTEREST PERIODS

### 6.1 Interest Periods

- (a) Subject to this Clause 6.1, each Interest Period for a Loan shall:
  - (i) start on the Restructuring Effective Date or (thereafter) on the last day of its preceding Interest Period;
  - (ii) end on an Interest Payment Date.
- (b) An Interest Period for a Loan shall not extend beyond the Final Maturity Date.

### 6.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

## 7. INCREASED COSTS

### 7.1 Increased Costs

Subject to Clause 7.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Conventional Facility Agent, pay for the account of a Conventional Finance Party the amount of any Increased Costs incurred by that Conventional Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

### 7.2 Increased Cost claims

- (a) A Conventional Finance Party intending to make a claim pursuant to Clause 7.1 (*Increased Costs*) shall notify the Conventional Facility Agent of the event giving rise to the claim, following which the Conventional Facility Agent shall promptly notify the Borrower.
- (b) Each Conventional Finance Party shall, as soon as practicable after a demand by the Conventional Facility Agent, provide a certificate confirming the amount of its Increased Costs.

### 7.3 **Exceptions**

Clause 7.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by the Borrower;
- (b) attributable to a FATCA Deduction required to be made by a Party;
- (c) compensated for by clause 9.3 (Tax indemnity) of the Common Terms Agreement (or would have been compensated for under clause 9.3 (Tax indemnity) of the Common Terms Agreement but was not so compensated solely because any of the exclusions in paragraph (b) of clause 9.3 (Tax indemnity) of the Common Terms Agreement applied); or
- (d) attributable to the wilful breach by the relevant Conventional Finance Party or its Affiliates of any law or regulation.

## 8. **PAYMENT MECHANICS**

### 8.1 **Payments to the Conventional Facility Agent**

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Conventional Finance Document, the Borrower or Lender shall make the same available to the Conventional Facility Agent (unless a contrary indication appears in a Conventional Finance Document) for value on the due date at the time and in such funds specified by the Conventional Facility 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 Conventional Facility Agent specifies.
- (c) Without prejudice to the provisions of paragraph (a) above, on each date on which the Borrower or a Lender is required to make a payment under a Conventional Finance Document, the Borrower or Lender shall make the same available in accordance with clause 28 (*Payment Mechanics*) of the Common Terms Agreement.

### 8.2 **Distributions by the Conventional Facility Agent**

Each payment received by the Conventional Facility Agent under the Conventional Finance Documents for another Conventional Finance Party shall, subject to clause 28.3 (*Distributions to the Company*) and clause 28.4 (*Clawback*) of the Common Terms Agreement, be made available by the Conventional Facility Agent as soon as practicable after receipt to the Conventional Finance Party entitled to receive payment in accordance with this Agreement and the Common Terms Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Conventional Finance Party may notify to the Conventional Facility Agent by not less than five (5) Business Days' notice with a bank specified by that Conventional Finance Party in the principal financial centre of the country of that currency.

### 8.3 Distributions to the Borrower

The Conventional Facility Agent may (with the consent of the Borrower or in accordance with clause 29 (*Set-Off*) of the Common Terms Agreement) apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Conventional Finance Documents or in or towards the purchase of any amount of any currency to be so applied.

## 9. ROLE OF THE CONVENTIONAL FACILITY AGENT

### 9.1 Appointment of the Conventional Facility Agent

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

### 9.2 Instructions

- (a) The Conventional Facility Agent shall:
  - (i) unless a contrary indication appears in a Conventional Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Conventional Facility Agent in accordance with any instructions given to it by:
    - (A) all Lenders if the relevant Conventional Finance Document stipulates the matter is an all Lender decision; and
    - (B) in all other cases, the Majority Lenders; 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 Conventional Facility Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Conventional Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether,

and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Conventional Facility 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 Lender or group of Lenders under the relevant Conventional Finance Document and unless a contrary indication appears in a Conventional Finance Document, any instructions given to the Conventional Facility Agent by the Majority Lenders 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 Conventional Facility Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders 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 Conventional Finance 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 Conventional Facility Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Conventional Facility Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Conventional Finance 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.

### 9.3 Duties of the Conventional Facility Agent

- (a) The Conventional Facility Agent's duties under the Conventional Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Conventional Facility Agent shall promptly forward to a Conventional Finance Party the original or a copy of any document which is delivered to the Conventional Facility Agent for that Conventional Finance Party by any other Conventional Finance Party.
- (c) Without prejudice to clause 19.8 (*Copy of Transfer Certificate or Assignment Agreement to Company*) of the Common Terms Agreement, paragraph (b) above shall not apply to any Transfer Certificate or Assignment Agreement.
- (d) Except where a Conventional Finance Document specifically provides otherwise, the Conventional Facility Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Conventional Facility Agent receives notice from a Conventional Finance Party referring to this Agreement, describing a Default and stating that the

circumstance described is a Default, it shall promptly notify the other Conventional Finance Parties.

- (f) If the Conventional Facility Agent is aware of the non-payment of any principal, interest, commission, profit, commitment fee or other fee payable to a Conventional Finance Party (other than an Agent or the Security Agent) under this Agreement it shall promptly notify the other Conventional Finance Parties.
- (g) The Conventional Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Conventional Finance Documents to which it is expressed to be a party (and no others shall be implied).

#### 9.4 **No fiduciary duties**

- (a) Nothing in any Conventional Finance Document constitutes the Conventional Facility Agent as a trustee or fiduciary of any other person.
- (b) The Conventional Facility Agent shall not be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

#### 9.5 **Business with the Group**

The Conventional Facility 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.

#### 9.6 **Rights and discretions**

- (a) The Conventional Facility 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 Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Conventional Finance 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 Conventional Facility Agent may assume (unless it has received notice to the contrary in its capacity as Conventional Facility Agent) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under clause 18.1 (*Non-payment*) of the Common Terms Agreement); and
  - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised.
- (c) The Conventional Facility Agent may engage and pay for the advice or services of 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 Conventional Facility Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Conventional Facility Agent (and so separate from any lawyers instructed by the Lenders) if the Conventional Facility Agent in its reasonable opinion deems this to be desirable.
- (e) The Conventional Facility 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 Conventional Facility 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 Conventional Facility Agent may act in relation to the Conventional Finance Documents through its officers, employees and agents and the Conventional Facility 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 Conventional Facility Agent's gross negligence or wilful misconduct.
- (g) Unless a Conventional Finance Document expressly provides otherwise the Conventional Facility 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 Conventional Facility Agent:
  - (i) may disclose; and
  - (ii) on the written request of the Borrower or the Majority Lenders shall, as soon as reasonably practicable, disclose,

the identity of a Defaulting Financier to the Borrower and to the other Conventional Finance Parties.

- (i) Notwithstanding any other provision of any Conventional Finance Document to the contrary, the Conventional Facility 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 Conventional Finance Document to the contrary, the Conventional Facility 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.

### **9.7 Responsibility for documentation**

The Conventional Facility Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Conventional Facility Agent, the Borrower or any other person in or in connection with any Conventional Finance Document or the transactions contemplated in the Conventional Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Conventional Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Conventional Finance 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 Conventional Finance 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.

### **9.8 No duty to monitor**

The Conventional Facility 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 Conventional Finance Document; or
- (c) whether any other event specified in any Conventional Finance Document has occurred.

## 9.9 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Conventional Finance Document excluding or limiting the liability of the Conventional Facility Agent), the Conventional Facility 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 Conventional Finance 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 Conventional Finance 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 Conventional Finance 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 Conventional Facility Agent) may take any proceedings against any officer, employee or agent of the Conventional Facility Agent in respect of any claim it might have against the Conventional Facility Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Conventional Finance Document and any officer, employee or agent of the Conventional Facility Agent may rely on this paragraph (b), subject to Clause 1.4 (*Third party rights*) of this Agreement and the provisions of the Third Parties Act.

- (c) The Conventional Facility Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Conventional Finance Documents to be paid by the Conventional Facility 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 Conventional Facility Agent for that purpose.
- (d) Nothing in the Conventional Finance Documents shall oblige the Conventional Facility 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 Lender or for any Affiliate of any Lender,

on behalf of any Lender and each Lender confirms to the Conventional Facility 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 Conventional Facility Agent.

- (e) Without prejudice to any provision of any Conventional Finance Document excluding or limiting the Conventional Facility Agent's liability, any liability of the Conventional Facility Agent arising under or in connection with any Conventional Finance 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 Conventional Facility 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 Conventional Facility Agent at any time which increase the amount of that loss. In no event shall the Conventional Facility 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 Conventional Facility Agent has been advised of the possibility of such loss or damages.

#### **9.10 Lenders' indemnity to the Conventional Facility Agent**

- (a) Each Lender shall (in proportion to its share of the Total Conventional Commitments or, if the Total Conventional Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Conventional Facility Agent, within three (3) 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 Conventional Facility Agent (otherwise than by reason of the Conventional Facility Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to clause 28.11 (*Disruption to payment systems etc.*) of the Common Terms Agreement, notwithstanding the Conventional Facility Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Conventional Facility Agent) in acting as the Conventional Facility Agent under the

Conventional Finance Documents (unless the Conventional Facility Agent has been reimbursed by the Borrower pursuant to a Conventional Finance Document).

- (b) Subject to paragraph (c) below, the Borrower shall immediately on demand reimburse any Lender for any payment that Lender makes to the Conventional Facility 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 Lender claims reimbursement relates to a liability of the Conventional Facility Agent to the Borrower.

#### **9.11 Resignation of the Conventional Facility Agent**

- (a) The Conventional Facility Agent may resign and appoint one of its Affiliates as successor by giving [10 days'] notice to the Lenders and the Borrower.
- (b) Alternatively the Conventional Facility Agent may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor to the Conventional Facility Agent.
- (c) If the Majority Lenders have not appointed a successor Conventional Facility Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the resigning Conventional Facility Agent (after consultation with the Borrower) may appoint a successor Conventional Facility Agent.
- (d) If the Conventional Facility Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Conventional Facility Agent is entitled to appoint a successor Conventional Facility Agent under paragraph (c) above, the Conventional Facility Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Conventional Facility Agent to become a party to this Agreement as Conventional Facility Agent) agree with the proposed successor Conventional Facility Agent amendments to this Clause 9 and any other term of this Agreement dealing with the rights or obligations of the Conventional Facility 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 Conventional Facility Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Conventional Facility Agent shall, make available to the successor Conventional Facility Agent such documents and records and provide such assistance as the successor Conventional Facility Agent may reasonably request for the purposes of performing its functions as Conventional Facility Agent under the Conventional Finance Documents. The Borrower shall, within three Business Days of demand, reimburse the retiring Conventional Facility 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 Conventional Facility Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Conventional Facility Agent shall be discharged from any further obligation in respect of the Conventional Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 9.10 (*Lenders' indemnity to the Conventional Facility Agents*) and this Clause 9.11 (and any agency fees for the account of the resigning Conventional Facility 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 Conventional Facility Agent shall resign in accordance with paragraphs (a) or (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Conventional Facility 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 Conventional Facility Agent under the Conventional Finance Documents, either:
  - (i) the Conventional Facility Agent fails to respond to a request under clause 9.8 (*FATCA information*) of the Common Terms Agreement and a Lender reasonably believes that the Conventional Facility 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 Conventional Facility Agent pursuant to clause 9.8 (*FATCA information*) of the Common Terms Agreement indicates that the Conventional Facility Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Conventional Facility Agent notifies the Borrower and the Lenders that the Conventional Facility 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 Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Conventional Facility Agent were a FATCA Exempt Party, and that Lender, by notice to the Conventional Facility Agent, requires it to resign.

## 9.12 Replacement of the Conventional Facility Agent

- (a) After consultation with the Borrower, the Majority Lenders may, by giving 30 days' notice to the Conventional Facility Agent (or, at any time the Conventional Facility Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Conventional Facility Agent by appointing a successor Conventional Facility Agent.

- (b) The retiring Conventional Facility Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Conventional Facility Agent such documents and records and provide such assistance as the successor Conventional Facility Agent may reasonably request for the purposes of performing its functions as Conventional Facility Agent under the Conventional Finance Documents.
- (c) The appointment of the successor Conventional Facility Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Conventional Facility Agent. As from this date, the retiring Conventional Facility Agent shall be discharged from any further obligation in respect of the Conventional Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 9.10 (*Lenders' indemnity to the Conventional Facility Agents*) and this Clause 9.12 (and any agency fees for the account of the retiring Conventional Facility Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Conventional Facility 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.

#### 9.13 Confidentiality

- (a) In acting as agent for the Finance Parties, the Conventional Facility 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 Conventional Facility Agent, it may be treated as confidential to that division or department and the Conventional Facility Agent shall not be deemed to have notice of it.

#### 9.14 Relationship with the Lenders

- (a) Subject to clause 19.10 (*Pro rata settlement*) of the Common Terms Agreement, the Conventional Facility Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Conventional Facility Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:
  - (i) entitled to or liable for any payment due under any Conventional Finance 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 Conventional Finance Document made or delivered on that day,unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.
- (b) Any Lender may by notice to the Conventional Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents

to be made or despatched to that Lender under the Conventional Finance 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*) of the Common Terms Agreement 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 Lender for the purposes of clause 30.2 (*Addresses*) and paragraph (a)(ii) of clause 30.6 (*Electronic Communication*) of the Common Terms Agreement, and the Conventional Facility 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 Lender.

#### 9.15 Credit appraisal by the Lenders

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Conventional Finance Document, each Lender confirms to the Conventional Facility 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 Conventional Finance Document including but not limited to:

- (a) the financial condition, status and nature the Borrower;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Conventional Finance 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 Conventional Finance Document or the Transaction Security;
- (c) whether that Lender 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 Conventional Finance Document, the Transaction Security, the transactions contemplated by the Conventional Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Conventional Finance Document or the Transaction Security;
- (d) the adequacy, accuracy or completeness of any information provided by the Conventional Facility Agent, any Party or by any other person under or in connection with any Conventional Finance Document, the transactions contemplated by any Conventional Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Conventional Finance 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.

#### **9.16 Conventional Facility Agent's management time**

Any amount payable to the Conventional Facility Agent under Clause 9.10 (*Lenders' indemnity to the Conventional Facility Agents*) and clause 12 (*Costs and Expenses*) of the Common Terms Agreement shall include the cost of utilising the Conventional Facility Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Conventional Facility Agent may notify to the Borrower and the Lenders, and is in addition to any fee paid or payable to the Conventional Facility Agent under clause 8 (*Fees*) of the Common Terms Agreement.

#### **9.17 Deduction from amounts payable by the Conventional Facility Agent**

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

### **10. REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

#### **10.1 Representations**

The Company makes the representations and warranties set out in clause 15 (*Representations*) of the Common Terms Agreement to each Conventional Finance Party on the date of this Agreement.

#### **10.2 Undertakings**

The Company undertakes to each Conventional Finance Party that shall comply with each of the covenants set out in clauses 16 (*Information Undertakings*) and 17 (*General Undertaking*) of the Common Terms Agreement.

#### **10.3 Events of Default**

- (a) The events and circumstances set out in clause 18 (*Events of Default*) of the Common Terms Agreement shall each constitute an Event of Default under this Agreement.
- (b) Subject to the terms of the Common Terms Agreement, on and at any time after the occurrence of an Event of Default, the Conventional Facility Agent may, and shall if so directed by the Majority Conventional Lenders, require the Global Facility Agent to instruct the Borrower to repay the Loans in accordance with clause 18.10 (*Acceleration*) of the Common Terms Agreement.

### **11. AMENDMENTS AND WAIVERS**

- (a) Any term of this Agreement may be amended or waived only in accordance with clause 34 (*Amendments, Waivers and Consents*) of the Common Terms Agreement and any such amendment or waiver will be binding on all Parties.

- (b) The Conventional Facility Agent may effect, on behalf of any Conventional Finance Party, any amendment or waiver permitted by this Clause 10.

## 12. **INCORPORATION OF TERMS**

The provisions of clauses 29 (*Set-Off*), 30 (*Notices*), 31 (*Calculations and Certificates*), 32 (*Partial Invalidity*), 33 (*Remedies and Waivers*) and 38 (*Limited Recourse and Non-Petition*) of the Common Terms Agreement are incorporated into this Agreement, *mutatis mutandis*, as if set out in full herein.

## 13. **COUNTERPARTS**

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

## 14. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

## 15. **ENFORCEMENT**

### 15.1 **Jurisdiction**

- (a) The parties agree, for the sole benefit of each of the Conventional Finance Parties, that subject to paragraph (c) below, the ADGM Courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or 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 no Party will argue to the contrary.
- (c) Notwithstanding paragraph (a) above, no Conventional Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, any Conventional Finance Party may take concurrent proceedings in any number of jurisdictions.

### 15.2 **Waiver of immunity**

The Borrower irrevocably and unconditionally:

- (a) agrees not to claim any immunity from suits or proceedings brought by a Conventional Finance Party against it in relation to a Conventional Finance 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.

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

**SCHEDULE 1  
ORIGINAL CONVENTIONAL LENDERS**

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

**[SIGNATURE PAGES FOLLOW]**

***[Signing mechanics TBD]***