

NMC HOLDCO SPV LTD  
AS THE COMPANY

THE FINANCIAL INSTITUTIONS LISTED IN SCHEDULE 1  
AS ORIGINAL PARTICIPANTS

AND

[•]  
AS INVESTMENT AGENT

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INVESTMENT AGENCY AGREEMENT

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**THIS INVESTMENT AGENCY 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 Schedule 1 (*The Original Participants and Commitments*) (the "**Original Participants**"); and
- (3) [•] as investment agent of the Islamic Financing Parties (the "**Investment Agent**").

**RECITALS:**

- (A) The Participants hereby appoint the Investment Agent to act for them and on their behalf in respect of the Islamic Financing Transaction Documents.
- (B) The Company hereby acknowledges and agrees to the terms of appointment of the Investment Agent set out in this Agreement.

**IT IS AGREED:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

"**Annual Valuation**" has the meaning given to such term in paragraph (a) of Clause 5 (*Valuation*).

"**Common Terms Agreement**" means the common terms agreement dated on or about the date of this Agreement between, amongst others, the Company, the Original Participants and the Investment Agent.

"**Commitment**" means:

- (a) in relation to an Original Participant, the amount set opposite its name in Schedule 1 (*The Original Participants and Commitments*) under the heading "Commitments" and the amount of any other Commitment transferred to it under the Common Terms Agreement or assumed by it pursuant to a Purchase Transaction in relation to any Income PIK Amount; and
- (b) in relation to any other Participant, the amount of any Commitment transferred to it under the Common Terms Agreement or assumed by it pursuant to a Purchase Transaction in relation to any Income PIK Amount,

to the extent not cancelled, reduced or transferred under the Islamic Financing Transaction Documents.

**"Contribution"** means, in relation to a Supplemental Sale and Purchase Agreement, the *Pro Rata* Share of each Participant deemed to have been made available to fund the relevant Purchase Price.

**"Contributions Outstanding"** means the aggregate Contributions minus the aggregate of all Exercise Prices (if any) paid by the Company under the Sale Undertaking or Purchase Undertaking and any Principal Shortfall Amounts paid pursuant to clause 3.4 (*Shari'a compliant hedging strategy*) of the Service Agency Agreement at the time the relevant rights under the Sale Undertaking or Purchase Undertaking are exercised.

**"Current Market Value"** has the meaning given to it in the Purchase Undertaking.

**"Income Amount"** 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.

**"Initial Valuation"** has the meaning given to such term in paragraph (a) of Clause 5 (*Valuation*).

**"Interim Valuation"** has the meaning given to such term in paragraph (b) of Clause 5 (*Valuation*).

**"Islamic Financing Party"** means a Participant or the Investment Agent.

**"Majority Participants"** means a Participant or Participants whose Participations and unutilised Commitments aggregate 66⅔ per cent. or more of the Total Islamic Financing Commitments (or, if the Total Islamic Financing Commitments have been reduced to zero, aggregated 66⅔ per cent. or more of the Total Islamic Financing Commitments immediately prior to that reduction).

**"Master Sale and Purchase Agreement"** means the master sale and purchase agreement dated on or about the date of this Agreement between the Investment Agent and the Company.

**"Participant"** means:

- (a) any Original Participant; or
- (b) any person which becomes a Party as a "Participant" after the date of this Agreement in accordance with 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 and the other Islamic Financing Transaction Documents.

**"Participation"** means in respect of a Participant, its share for the time being in the Contributions Outstanding.

**"Party"** means a Party to this Agreement.

**"Principal Shortfall Amount"** has the meaning given to it in the Service Agency Agreement.

**"Pro Rata Share"** means:

- (a) for the purpose of determining a Participant's Contribution, the proportion which its applicable Commitment bears to the Total Islamic Financing Commitments; and
- (b) for any other purpose on a particular date:
  - (i) the proportion which that Participant's share of the Participations (if any) bears to the Total Participations;
  - (ii) if there is no Contribution Outstanding on that date, the proportion which its aggregate Commitments bears to the Total Islamic Financing Commitments on that date; or
  - (iii) if the Total Islamic Financing Commitments have been reduced to zero, the proportion which its aggregate Commitments bore to the Total Islamic Financing Commitments immediately before the reduction.

**"Purchase Price"** 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.

**"Relevant Term Assets"** means all the Relevant Assets purchased by the Investment Agent pursuant to any Supplemental Sale and Purchase Agreement as such assets may be sub-divided or consolidated and as the same may be reduced pursuant to the Purchase Undertaking or the Sale Undertaking, as applicable

**"Saudi JV"** means all of the Company's interests in the joint venture between, amongst others, NMC Health Investments LLC and Gosi Investment Ventures constituted by a joint venture agreement dated 23 May 2019.

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

**"Total Islamic Financing Commitments"** means the aggregate of all the Commitments from time to time, being USD[•] at the date of this Agreement.

**"Total Participations"** means the aggregate for the time being of all the Participations of all Participants.

**"Valuation"** means a report or financial statement showing the net asset value of the NMC Opco Group.

## 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.

## 1.3 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 and any references in the Common Terms Agreement to "this Agreement" are to be construed as references to this Agreement.

## 2. APPOINTMENT OF THE INVESTMENT AGENT

### 2.1 Appointment

Each Islamic Financing Party (other than the Investment Agent) irrevocably appoints the Investment Agent to act as its agent in connection with the Islamic Financing Transaction Documents.

### 2.2 Acceptance by the Investment Agent

The Investment Agent accepts its appointment, and acknowledges the authority conferred on it, as set out in Clause 2.1 (*Appointment*).

## 3. PARTICIPATION IN THE PURCHASE PRICE

### 3.1 Purchase Transaction notification

Pursuant to clause 4.3 (*Purchase Transaction – Islamic Financing Facility*) of the Common Terms Agreement, the Investment Agent shall promptly notify each Participant (a) of the conclusion of the initial Purchase Transaction; and (b) of such Participant's Pro Rata Share (expressed as a percentage) in the Relevant Term Assets .

### 3.2 Contribution

Each Participant shall have deemed to have made available to the Investment Agent its Contribution on each Purchase Transaction Date (other than a Purchase Transaction Date in relation to a Purchase Transaction entered into in connection with an Income PIK Amount) by way of the cancellation of the outstanding financial indebtedness of NMC Healthcare Ltd (in administration) owed to that Participant as at the date of this Agreement.

### 3.3 **Unconditionally**

Each Participant's obligation to make available its Contribution is unconditional in circumstances where the Investment Agent is required to pay the Purchase Price under the relevant Supplemental Sale and Purchase Agreement.

### 3.4 **Islamic Financing Parties' rights and obligations**

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

### 3.5 **Failure to make Contribution available**

In the event of a failure by a Participant to duly perform or comply with its obligation to make available its Contribution under this Agreement, the Company and each Participant irrevocably and unconditionally agree that:

- (a) the Company shall have no recourse to the Investment Agent for such failure by a Participant; and
- (b) the Company shall have recourse only to the non-performing Participant in respect of such failure.

### 3.6 **Relevant Term Assets**

Upon execution of a Supplemental Sale and Purchase Agreement by the parties to it (or on the assignment or transfer to, or assumption by, it of any Participation in accordance with clause 19 (*Changes to the Financiers*) of the Common Terms Agreement, each

Participant will acquire ownership rights and benefit in and to the Relevant Term Assets equal to its *Pro Rata Share* (expressed as a percentage). The Investment Agent shall hold the Relevant Term Assets as agent for the Participants and shall only dispose of them in accordance with the terms of the Islamic Financing Transaction Documents.

#### 4. INCREASED COSTS

##### 4.1 Increased Costs

Subject to Clause 4.3 (*Exceptions*), the Company shall pay for the account of an Islamic Financing Party (in accordance with the terms of the Service Agency Agreement) the amount of any Increased Costs incurred by that Islamic Financing Party or any of its Affiliates as a result of:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation; or
- (b) compliance with any law or regulation made,  
after the date of this Agreement.

##### 4.2 Increased Cost claims

- (a) An Islamic Financing Party intending to make a claim pursuant to Clause 4.1 (*Increased Costs*) shall notify the Investment Agent of the event giving rise to the claim, following which the Investment Agent shall promptly notify the Company.
- (b) Each Islamic Financing Party shall, as soon as practicable after a demand by the Investment Agent, provide a certificate confirming the amount of its Increased Costs.

##### 4.3 Exceptions

Clause 4.1 (*Increased Costs*) does not apply to the extent that any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by the Company;
- (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 Islamic Financing Party or any of its Affiliates of any law or regulation.

## 5. VALUATION

- (a) The Company shall procure that a Valuation is delivered to the Investment Agent on or before the first Purchase Transaction Date (the "**Initial Valuation**") and on each anniversary of that first Purchase Transaction Date (each, an "**Annual Valuation**").
- (b) Without prejudice to paragraph (a) above, the Company shall supply an additional Valuation (each, an "**Interim Valuation**") to the Investment Agent as soon as it is available, but in any event within 30 calendar days after:
  - (i) the disposal of any assets, undertakings, business, company or securities of any member of the NMC Opco Group (or the closing down of any business operation of any member of the NMC Opco Group) with an aggregate value in excess of USD 50,000,000 over the term of this Agreement; or
  - (ii) the acquisition of any assets, undertakings, business, company or securities of any company (other than of assets not transferred as a result of a failed DOCA) or the entry into any joint ventures, partnerships, profit sharing arrangements, consolidations, amalgamations or collaborations with an aggregate value in excess of USD40,000,000 in a cumulative three year period.
- (c) The Initial Valuation shall include:
  - (i) the net asset value of the NMC Opco Group including the Saudi JV; and
  - (ii) the net asset value of the NMC Opco Group excluding the Saudi JV.
- (d) The costs of each Valuation delivered to the Investment Agent pursuant to this Clause 5 shall be borne by the Company.
- (e)
  - (i) the Initial Valuation may be satisfied by delivery of unaudited consolidated annual financial statements of the Company;
  - (ii) each Interim Valuation may be satisfied by delivery of unaudited consolidated annual financial statements of the Company; and
  - (iii) each Annual Valuation (other than the Initial Valuation) may be satisfied by delivery of audited consolidated annual financial statements of the Company,

provided that, in each case, such financial statements include the net asset value of the NMC Opco Group.

## 6. **ROLE OF THE INVESTMENT AGENT**

### 6.1 **Appointment of the Investment Agent**

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

### 6.2 **Instructions**

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

Majority Participants shall override any conflicting instructions given by any other Parties and will be binding on all Islamic Financing Parties save for the Security Agent **provided that** under no circumstances will any Party be permitted to undertake or perform any activity or participate in or benefit from any right which is prohibited under the AAOIFII Shari'a Standards (as determined by the *Shari'a* board of the Investment Agent).

- (d) The Investment Agent may refrain from acting in accordance with any instructions of any Participant or group of Participants 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 Islamic Financing Transaction Documents and which may include payment in advance) for any cost, loss or liability (excluding interest cost of funds and opportunity costs), which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Investment Agent may act (or refrain from acting) as it considers to be in the best interest of the Participants.
- (f) The Investment Agent is not authorised to act on behalf of a Participant (without first obtaining that Participant's consent) in any legal or arbitration proceedings relating to any Islamic Financing 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.

### 6.3 Duties of the Investment Agent

- (a) The Investment Agent's duties under the Islamic Financing Transaction Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Investment Agent shall promptly forward to an Islamic Financing Party the original or a copy of any document which is delivered to the Investment Agent for that Islamic Financing Party by any other Islamic Financing 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 an Islamic Financing Transaction Document specifically provides otherwise, the Investment Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Investment Agent receives notice from an Islamic Financing Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Islamic Financing Parties.
- (f) If the Investment Agent is aware of the non-payment of any Purchase Price, Exercise Price, profit, Income Amount or fee payable to an Islamic Financing

Party (other than an Agent or the Security Agent) under this Agreement it shall promptly notify the other Islamic Financing Parties.

- (g) The Investment Agent shall have only those duties, obligations and responsibilities expressly specified in the Islamic Financing Transaction Documents to which it is expressed to be a party (and no others shall be implied).

#### 6.4 **No fiduciary duties**

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

#### 6.5 **Business with the Group**

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

#### 6.6 **Rights and discretions**

- (a) The Investment 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 Participants, any Participants or any group of Participants are duly given in accordance with the terms of the Islamic Financing 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 Investment Agent may assume (unless it has received notice to the contrary in its capacity as Investment 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 Participants has not been exercised.
- (c) The Investment 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 Investment Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Investment Agent (and so separate from any lawyers instructed by the Participants) if the Investment Agent in its reasonable opinion deems this to be desirable.
- (e) The Investment 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 Investment 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 Investment Agent may act in relation to the Islamic Financing Transaction Documents through its officers, employees and agents and the Investment 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 Investment Agent's gross negligence or wilful misconduct.
- (g) Unless an Islamic Financing Transaction Document expressly provides otherwise the Investment 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 Investment Agent:
- (i) may disclose; and
  - (ii) on the written request of the Company or the Majority Participants shall, as soon as reasonably practicable, disclose,
- the identity of a Defaulting Financier to the Company and to the other Islamic Financing Parties.

- (i) Notwithstanding any other provision of any Islamic Financing Transaction Document to the contrary, the Investment 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 Islamic Financing Transaction Document to the contrary, the Investment 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.

#### **6.7 Responsibility for documentation**

The Investment Agent is not responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Investment Agent, the Company or any other person in or in connection with any Islamic Financing Transaction Document or the transactions contemplated in the Islamic Financing Transaction Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Islamic Financing Transaction Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Islamic Financing 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 Islamic Financing Transaction Document or the Transaction Security; or
- (c) any determination as to whether any information provided or to be provided to any Islamic Financing 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.

#### **6.8 No duty to monitor**

The Investment 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 Islamic Financing Transaction Document; or
- (c) whether any other event specified in any Islamic Financing Transaction Document has occurred.

#### **6.9 Exclusion of liability**

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

the liability of the Investment Agent), the Investment 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 Islamic Financing 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 Islamic Financing 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 Islamic Financing 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 Investment Agent) may take any proceedings against any officer, employee or agent of the Investment Agent in respect of any claim it might have against the Investment Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Islamic Financing Transaction Document and any officer, employee or agent of the Investment Agent may rely on this paragraph (b), subject to Clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) The Investment Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Islamic Financing Transaction Documents to be paid by the Investment 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 Investment Agent for that purpose.

- (d) Nothing in the Islamic Financing Transaction Documents shall oblige the Investment 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 Participant or for any Affiliate of any Participant,

on behalf of any Participant and each Participant confirms to the Investment 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 Investment Agent.

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

#### 6.10 Participants' indemnity to the Investment Agent

- (a) Each Participant shall (in proportion to its share of the Total Islamic Financing Commitments or, if the Total Islamic Financing Commitments are then zero, to its share of the Total Islamic Financing Commitments immediately prior to their reduction to zero) indemnify the Investment Agent, within three Business Days of demand, against any actual cost (excluding opportunity cost and cost of fund), loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Investment Agent (otherwise than by reason of the Investment 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 Investment Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Investment Agent) in acting as the Investment Agent under the Islamic Financing Transaction Documents (unless the Investment Agent has been reimbursed by the Company pursuant to an Islamic Financing Transaction Document).
- (b) Subject to paragraph (c) below, the Company shall immediately on demand reimburse any Participant for any payment that Participant makes to the Investment 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 Participant claims reimbursement relates to a liability of the Investment Agent to the Company.

#### 6.11 Resignation of the Investment Agent

- (a) The Investment Agent may resign and appoint one of its Affiliates as successor by giving notice to the Participants and the Company.
- (b) Alternatively the Investment Agent may resign by giving 30 days' notice to the Participants and the Company, in which case the Majority Participants (after consultation with the Company) may appoint a successor to the Investment Agent.
- (c) If the Majority Participants have not appointed a successor Investment Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the resigning Investment Agent (after consultation with the Company) may appoint a successor Investment Agent.
- (d) If the Investment Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Investment Agent is entitled to appoint a successor Investment Agent under paragraph (c) above, the Investment Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Investment Agent to become a party to this Agreement as Investment Agent) agree with the proposed successor Investment Agent amendments to this Clause 6 and any other term of this Agreement dealing with the rights or obligations of the Investment 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 Investment Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Investment Agent shall, make available to the successor Investment Agent such documents and records and provide such assistance as the successor Investment Agent may reasonably request for the purposes of performing its functions as Investment Agent under the Islamic Financing Transaction Documents. The Company shall, within three Business Days of demand, reimburse the retiring Investment Agent for the amount of all actual costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (f) The Investment Agent's resignation notice shall only take effect upon the appointment of a successor and the entry into a replacement Transaction Security Document or security confirmation in relation to the Security over the Relevant Term Assets by such successor Investment Agent.
- (g) Upon the appointment of a successor, the retiring Investment Agent shall be discharged from any further obligation in respect of the Islamic Financing 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*)

of the Common Terms Agreement and this Clause 6 (and any agency fees for the account of the resigning Investment Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other parties to the Transaction Documents shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original party to such Transaction Documents.

- (h) The Investment Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Investment 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 Investment Agent under the Islamic Financing Transaction Documents, either:
  - (i) the Investment Agent fails to respond to a request under clause 9.8 (*FATCA information*) of the Common Terms Agreement and a Participant reasonably believes that the Investment 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 Investment Agent pursuant to clause 9.8 (*FATCA information*) of the Common Terms Agreement indicates that the Investment Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Investment Agent notifies the Company and the Participants that the Investment 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 Participant reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Investment Agent were a FATCA Exempt Party, and that Participant, by notice to the Investment Agent, requires it to resign.

#### **6.12 Replacement of the Investment Agent**

- (a) After consultation with the Company, the Majority Participants may, by giving 30 days' notice to the Investment Agent (or, at any time the Investment Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Participants) replace the Investment Agent by appointing a successor Investment Agent.
- (b) The retiring Investment Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Participants) make available to the successor Investment Agent such documents and records and provide such assistance as the successor Investment Agent may reasonably request for the purposes of performing its functions as Investment Agent under the Islamic Financing Transaction Documents.
- (c) The appointment of the successor Investment Agent shall take effect on the date specified in the notice from the Majority Participants to the retiring Investment

Agent. As from this date, the retiring Investment Agent shall be discharged from any further obligation in respect of the Islamic Financing 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*) of the Common Terms Agreement and this Clause 6 (and any agency fees for the account of the retiring Investment Agent shall cease to accrue from (and shall be payable on) that date).

- (d) Any successor Investment Agent shall enter into a replacement Transaction Security Document or security confirmation in relation to the Security over the Relevant Term Assets on the same date as its appointment as successor Investment Agreement.
- (e) Any successor Investment Agent and each of the other parties to the Transaction Documents shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original party to such Transaction Documents.

### 6.13 Confidentiality

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

### 6.14 Relationship with the Participants

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

#### 6.15 **Credit appraisal by the Participants**

Without affecting the responsibility of the Company for information supplied by it or on its behalf in connection with any Islamic Financing Transaction Document, each Participant confirms to the Investment 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 Islamic Financing Transaction Document including but not limited to:

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

## 6.16 Investment Agent's management time

Any amount payable to the Investment Agent under clause 10.3 (*Indemnity to the Agents*) and clause 12 (*Costs and Expenses*) of the Common Terms Agreement and Clause 6.10 (*Participants' indemnity to the Investment Agent*) shall include the cost of utilising the Investment Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Investment Agent may notify to the Company and the Participants, and is in addition to any fee paid or payable to the Investment Agent under clause 8 (*Fees*) of the Common Terms Agreement.

## 6.17 Deduction from amounts payable by the Investment Agent

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

## 7. PAYMENT MECHANICS

### 7.1 Distributions by the Investment Agent

Each payment received by the Investment Agent under the Islamic Financing Transaction Documents for another Party shall, subject to Clause 7.2 (*Distributions to the Company*) and clause 28.4 (*Clawback*) of the Common Terms Agreement, be made available by the Investment Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with the Islamic Financing Transaction Documents (in the case of a Participant, for the account of its Facility Office), to such account as that Party may notify to the Investment 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.

### 7.2 Distributions to the Company

The Investment Agent may (with the consent of the Company or in accordance with clause 29 (*Set-Off*) of the Common Terms Agreement) 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 Islamic Financing Transaction Documents or in or towards the purchase of any amount of any currency to be so applied.

## 8. 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 Investment Agent may effect, on behalf of any Islamic Financing Party, any amendment or waiver permitted by this Clause 8.

9. **OTHER PROVISIONS**

Clauses 30 (*Notices*), 32 (*Partial Invalidity*), 34 (*Amendments, Waivers and Consents*), 36 (*Counterparts*) and 40 (*Enforcement*) of the Common Terms Agreement shall apply *mutatis mutandis* to this Agreement as if set out in full herein.

10. **GOVERNING LAW**

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

11. **WAIVER OF INTEREST**

The Parties acknowledge and agree that the principle of the payment of interest is repugnant to the principles of Shari'a and accordingly, to the extent that any legal system would impose (whether by contract, statute or court order) any obligation to pay interest, the Parties hereby irrevocably and unconditionally, expressly waive and reject any entitlement to recover interest from each other.

**THIS AGREEMENT** is entered into by the Parties on the date stated at the beginning of this Agreement.

**SCHEDULE 1  
THE ORIGINAL PARTICIPANTS AND COMMITMENTS**

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

**SIGNATURE PAGES**

**The Company**

SIGNED by )

duly authorised for and on behalf of )

**NMC HOLDCO SPV LTD** )

**Original Participant**

SIGNED by )

duly authorised for and on behalf of )

[•] )

**Original Participant**

SIGNED by )

duly authorised for and on behalf of )

[•] )

**Original Participant**

SIGNED by )

duly authorised for and on behalf of )

[•] )

**Investment Agent**

SIGNED by )

duly authorised for and on behalf of )

[•] )