

ABU DHABI COMMERCIAL BANK PJSC
AS INVESTMENT AGENT

IN FAVOUR OF

NMC HOLDCO SPV LTD
AS THE COMPANY

SALE UNDERTAKING

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THIS SALE UNDERTAKING is a **DEED** and is made on 25 March 2022

BY:

- (1) **ABU DHABI COMMERCIAL BANK PJSC** as investment agent of the Islamic Financing Parties (the "**Investment Agent**");

in favour of:

- (2) **NMC HOLDCO SPV LTD**, a limited liability company incorporated under the laws of the Abu Dhabi Global Market, United Arab Emirates, with its registered office at c/o Walkers Professional Services (Middle East) Limited, 2462ResCowork01, 24th Floor, Al Sila Tower, Abu Dhabi Global Market Square, Al Maryah Island, Abu Dhabi, United Arab Emirates and company registration number 000005914 (the "**Company**").

THE INVESTMENT AGENT UNDERTAKES as follows:

1. **DEFINITIONS AND INTERPRETATIONS**

1.1 **Definitions**

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

"**Current Market Value**" means:

- (a) in respect of the Relevant Term Assets which are listed on a stock exchange, the official closing price for the Relevant Term Assets on the Relevant Stock Exchange on the trading day immediately prior to the relevant calculation date multiplied by the number of shares comprising the Relevant Term Assets; and
- (b) in respect of the Relevant Term Assets which are not listed on a stock exchange, the fair market value for the Relevant Term Assets based on the net asset value of the NMC Opco Group by reference to the most recent Valuation delivered by the Company to the Investment Agent pursuant to clause 5 (*Valuation*) of the Investment Agency Agreement,

and if any amount to be determined under paragraph (a) above is denominated in a currency other than USD, such amount will be calculated in USD at the spot rate of exchange used by the Investment Agent to convert the currency in which that amount is denominated to USD as at 11:00 a.m. London time on the date on which that amount is to be determined.

"**Exercise Notice**" means a notice substantially in the form of Schedule 1 (*Form of Exercise Notice*).

"**Exercise Price**" means:

- (a) in respect of a Replacement Event Date for a Replacement Event described in paragraphs (a) or (b) of the definition of Replacement Event, an amount equal to the lower of:

- (i) the Current Market Value of the relevant Participant(s) *Pro Rata* Share of the Relevant Term Assets; and
 - (ii) the Participation of the relevant Participant(s) and its *Pro Rata* Share of all other amounts outstanding under the Islamic Financing Transaction Documents; and
- (b) in respect of a Replacement Event Date for a Replacement Event described in paragraph (c) of the definition of Replacement Event, an amount equal to the cancellation amount as calculated pursuant to paragraph (b) of clause 5.2 (*Re-allocation of Commitments*) of the Common Terms Agreement,

in each case, on the relevant Settlement Date.

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

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

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

"Relevant Stock Exchange" means, in respect of any listed shares, the stock exchange on which the shares are primarily listed.

"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 any transfer to the Company pursuant to this Undertaking or the Purchase Undertaking, as applicable.

"Replacement Event" means the Company notifying the Investment Agent in accordance with:

- (a) paragraph (a) of clause 7.4 (*Right of cancellation and early payment in relation to a single Financier*) of the Common Terms Agreement, in circumstances where the Company is, or will be required to pay to a Participant a Tax Payment or Increased Cost;
- (b) paragraph (a) of clause 34.6 (*Replacement of Financier*) of the Common Terms Agreement in respect of a Participant which is a Non-Consenting Financier or in circumstances where the Company is, or will be required to pay to a Participant a Tax Payment or Increased Cost; or
- (c) paragraph (a) of clause 5.2 (*Re-allocation of Commitments*) of the Common Terms Agreement in circumstances where the Islamic Financing Commitments of the Holding Period Trustee will be cancelled pursuant to such clause.

"Replacement Event Date" means the date on which a Replacement Event occurs and, in respect of a Replacement Event described in paragraph (c) of the definition of Replacement Event, means any date determined pursuant to paragraph (b) of clause 5.2 (*Re-allocation of Commitments*) of the Common Terms Agreement to the extent the Re-Allocation Conditions apply.

"Sale Agreement" means a sale agreement substantially in the form of Schedule 2 (*Form of Sale Agreement*).

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

"Settlement Date" means, in respect of an Exercise Notice, the date specified as such in that Exercise Notice.

1.2 **Construction**

- (a) Unless defined in this Agreement or the context otherwise requires, terms defined in the Common Terms Agreement, the Investment Agency Agreement and the Service Agency 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.

1.3 **Benefit of Undertaking**

This Undertaking shall take effect as a deed poll for the benefit of the Company.

2. **GRANT OF RIGHTS**

- (a) The Company is hereby granted the right to oblige the Investment Agent (on behalf of the Participants) to sell all or, as the case may be, part of the ownership rights and benefit in and to the Relevant Term Assets held by the Investment Agent (as agent of the Participants) at the relevant Exercise Price upon the Company exercising its right in accordance with Clause 4 (*Exercise*) following the occurrence of a Replacement Event. Upon the exercise of any such right by the Company, the Investment Agent undertakes to sell the relevant proportion of the Relevant Term Assets held by the Investment Agent (as agent of the Participants) at the relevant Exercise Price (on an as is basis, without any warranty express or implied as to condition, fitness for purpose, suitability for use or otherwise and if any warranty is implied by law, it shall be excluded to the full extent permitted by law) on the terms and subject to the conditions of this Undertaking.

- (b) The undertaking in paragraph (a) above is subject to:
 - (i) the Company delivering an Exercise Notice to the Investment Agent in accordance with Clause 4 (*Exercise*); and
 - (ii) the Company paying the relevant Exercise Price in full, without deduction, set-off or counter-claim, into the account specified in the Exercise Notice on the relevant Settlement Date.
- (c) The rights granted to the Company under this Undertaking in respect of the Relevant Term Assets may not be exercised under the Purchase Undertaking.

3. **EXERCISE PRICE**

The Investment Agent expressly declares that:

- (a) the relevant Exercise Price represents a fair price for the ownership rights and benefit in and to the Relevant Term Assets held by the Investment Agent (as agent of the Participants); and
- (b) the Company will receive such ownership rights and benefit in and to the Relevant Term Assets that the Investment Agent (as agent of the Participants) may have in the Relevant Term Assets.

4. **EXERCISE**

- (a) Subject to the terms of the Common Terms Agreement, the Company may exercise its right under paragraph (a) of Clause 2 (*Grant of Rights*), by delivering an Exercise Notice to the Investment Agent in respect of all of the ownership rights and benefit in and to the relevant Participant's *Pro Rata* Share of the Relevant Term Assets held by the Investment Agent (as agent of the Participants):
 - (i) on the last day of the current Income Period; or
 - (ii) if earlier, on the date specified by the Company in its Exercise Notice;
- (b) Following the delivery of an Exercise Notice by the Company in accordance with paragraph (a) above, the Investment Agent shall be obliged to sell all or, as the case may be, part of the Relevant Term Assets held by it (as agent of the Participants), on an as is basis, at the relevant Exercise Price in accordance with this Undertaking as follows:
 - (i) on the relevant Settlement Date, the Company shall pay into an USD account specified by the Investment Agent for this purpose, by wire transfer and in same day, freely transferable, cleared funds, the relevant Exercise Price (plus an amount equal to any Taxes payable (if any) in respect of such sale);
 - (ii) the Investment Agent undertakes (at the cost and expense of the Company) to enter into such documentation and do such other things as reasonably required to give effect to the purchase and sale of the

ownership rights and benefit in and to the Relevant Term Assets held by the Investment Agent (as agent of the Participants) as contemplated hereunder; and

- (iii) promptly following such payment (and in any event on the date of payment), the sale to the Company of all, or as the case may be, part of the ownership rights and benefit in and to the Relevant Term Assets held by the Investment Agent (as agent of the Participants) shall occur by the Company and the Investment Agent executing a Sale Agreement, **provided that** the sale to the Company of all, or as the case may be, part of the ownership rights and benefit in and to the Relevant Term Assets held by the Investment Agent (as agent of the Participants) may occur prior to the relevant Exercise Price being received by the Investment Agent if the Investment Agent, in its absolute discretion, determines that it shall receive that Exercise Price on or prior to the applicable Settlement Date.

- (c) Settlement of the relevant Exercise Price in full in accordance with this Undertaking and the Islamic Financing Transaction Documents shall constitute full discharge of the obligation of the Company to pay the relevant Exercise Price to the Investment Agent hereunder.

5. **REDUCTION OF RELEVANT TERM ASSETS**

This Undertaking shall continue in full force and effect with respect to the Relevant Term Assets that have not been acquired by the Company pursuant to the exercise of this Undertaking or the Purchase Undertaking and no further action shall be required under clause 34 (*Amendments, Waivers and Consents*) of the Common Terms Agreement in order to effect any such change.

6. **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 Undertaking as if set out in full herein.

7. **GOVERNING LAW**

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

8. **WAIVER OF INTEREST**

The Investment Agent acknowledges and agrees 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 Investment Agent hereby irrevocably and unconditionally, expressly waives and rejects any entitlement to recover interest.

THIS UNDERTAKING is entered into as a deed by the Investment Agent on the date stated at the beginning of this Undertaking.

**SCHEDULE 1
FORM OF EXERCISE NOTICE**

From: NMC HOLDCO SPV LTD

To: ABU DHABI COMMERCIAL BANK PJSC as Investment Agent

Date:

Sale Undertaking dated [_____] 2022 (the "Undertaking")

Unless the context does not so admit, terms defined, and the construction given to them, in the Undertaking have the same meaning and construction when used herein.

This is an Exercise Notice. We hereby exercise our right under Clause 4 (*Exercise*) of the Undertaking to oblige you to sell to us at the Exercise Price all of the ownership rights and benefit in and to [all of]/[insert the relevant proportion of] the Relevant Term Assets held by you (as agent of [the Participants]/[*] as Participant).

We certify that:

- (a) the Exercise Price (inclusive of all Taxes) is USD [*amount*] and shall be paid into the following account;

[insert account details]

- (b) the Settlement Date is [_____].

Clause 6 (*Other provisions*) of the Undertaking applies to this Exercise Notice, *mutatis mutandis*, as if expressly incorporated herein.

This Exercise Notice and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

.....
Authorised signatory
NMC HOLDCO SPV LTD

** Insert details of relevant Participants where Sale Undertaking is being exercised to replace a single Participant*

SCHEDULE 2
FORM OF SALE AGREEMENT

[_____]

ABU DHABI COMMERCIAL BANK PJSC
AS INVESTMENT AGENT

AND

NMC HOLDCO SPV LTD

SALE UNDERTAKING

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THIS SALE AGREEMENT is made on [•]:

BETWEEN:

- (1) **ABU DHABI COMMERCIAL BANK PJSC** as seller (the "**Investment Agent**" and "**Seller**"); and
- (2) **NMC HOLDCO SPV LTD** as purchaser (the "**Company**" and "**Purchaser**").

RECITALS

- (A) Pursuant to a sale undertaking deed dated [] 2022 from the Investment Agent in favour of the Company (the "**Sale Undertaking**"), the Company issued an Exercise Notice dated [] 20[•].
- (B) The Parties are entering into this Agreement to complete such exercise.

IT IS AGREED as follows:

1. Definitions and Interpretations

Unless otherwise stated or the context does not so admit, terms defined in the Sale Undertaking have the same meaning when used in this Agreement.

2. Construction

The rules of construction and interpretation set out in Clause 1.2 (*Construction*) of the Sale Undertaking apply to this Agreement as though they were set out in full in this Agreement, except that references to the Sale Undertaking are to be construed as references to this Agreement.

3. Sale

- (a) Pursuant to the terms and conditions of the Sale Undertaking and the Exercise Notice referred to in Recital (A), on the date of this Agreement the Investment Agent hereby sells, and the Company hereby purchases the ownership rights and benefit in and to [all]/[insert the relevant proportion] of the Relevant Term Assets held by the Investment Agent (as agent of the Participants) in consideration for [USD [•]] (inclusive of all Taxes), receipt of which the Investment Agent acknowledges.
- (b) This sale is on an as is basis (without any warranty express or implied as to condition, fitness for purpose, suitability for use or otherwise and if any warranty is implied by law, it shall be excluded to the full extent permitted by law).
- (c) This Agreement is an Islamic Financing Transaction Document.

4. Other provisions

Clause 6 (*Other provisions*) of the Sale Undertaking applies to this Agreement, *mutatis mutandis*, as if expressly incorporated herein

5. Governing law

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by ADGM law (including all regulations of the ADGM).

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

Execution Page of Sale Agreement

Seller

Signed by
ABU DHABI COMMERCIAL BANK
PJSC, acting in its capacity as Seller, acting
by

Name:

Title:

Date:

Purchaser

Signed by Michael Davis as attorney for
NMC HOLDCO SPV LTD, a company
incorporated in the ADGM

EXECUTION PAGE OF SALE UNDERTAKING

The Investment Agent

Executed as a deed by
**ABU DHABI COMMERCIAL BANK
PJSC**, acting in its capacity as Investment
Agent, acting by

(PRINT NAME

and

(PRINT NAME

.....
Authoris

.....
Authoris

SIGNATURE PAGE TO SALE UNDERTAKING