

WALKERS FIDUCIARY LIMITED

[FINANCIERS]

[NMC HOLDCO SPV LTD]

AND

[NMC OPCO SPV LTD]

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GOVERNANCE AGREEMENT

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## **Agreed Form Documents at Completion**

1. Articles of Association of HoldCo
2. Articles of Association of OpCo
3. First Budget
4. Delegated Authority Framework

**THIS AGREEMENT** is made on \_\_\_\_ [●] 2021

**BETWEEN:**

- (1) **WALKERS FIDUCIARY LIMITED**, a company incorporated in the Cayman Islands, whose registered office is at 190 Elgin Avenue, George Town, Grand Cayman, KY1-9008, Cayman Islands, as the original trustee of the Trust (the "**Trustee**");
- (2) **THE PERSONS** listed in Schedule 1;
- (3) **[NMC HOLDCO SPV LTD]** [●]; and
- (4) **[NMC OPCO SPV LTD]** [●].

**WHEREAS:**

- (A) In connection with the Restructuring, HoldCo has been incorporated as a new private limited holding company under the laws of the ADGM and HoldCo has incorporated a new private limited operating company, OpCo as a wholly and directly owned Subsidiary of HoldCo.
- (B) On Completion, certain assets of NMC Healthcare Ltd (in administration) and its subsidiaries will be transferred to OpCo pursuant to the DOCAs (the "**NMC Healthcare Business**").
- (C) On Completion, the Facilities will be made available to HoldCo by the HoldCo Financiers and the OpCo Facilities will be made available to OpCo by the "Financiers" (as defined in the OpCo Facilities Agreement) under the OpCo Facilities Agreement (the "**OpCo Financiers**").
- (D) HoldCo is an orphan entity with its shares held on trust by the Trustee. For as long as the HoldCo Facilities remain outstanding, the beneficiaries of the Trust will be the Financiers. Once the HoldCo Facilities are fully repaid, the residual value in the Trust will be applied for charitable purposes in accordance with, and as more particularly set out in, the Declaration of Trust.
- (E) The Trustee, the Financiers, HoldCo and OpCo have agreed to enter into this Agreement for the purpose of setting out the corporate governance arrangements for the HoldCo Group.

**IT IS AGREED** as follows:

1. **INTERPRETATION**

1.1 In this Agreement:

"**Acceptable Bank**" has the meaning given in the HoldCo Common Terms Agreement;

"**Accounting Principles**" means generally accepted accounting principles in the United Arab Emirates, including IFRS;

"**Acquiring Financier**" has the meaning given in clause 11(g);

"**ADGM**" means the Abu Dhabi Global Market, Abu Dhabi, United Arab Emirates;

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

"**Ad Hoc Committee**" means the informal ad hoc committee of creditors from time to time formed for the purposes of considering and negotiating the Restructuring, which as at 15 July 2021 comprises of:

- (a) Abu Dhabi Commercial Bank PJSC;
- (b) Abu Dhabi Islamic Bank PJSC;
- (c) Barclays Bank PLC;
- (d) Emirates Islamic Bank PJSC;
- (e) Mizuho Bank, Ltd.;
- (f) Marathon Asset Management, LP;
- (g) Sculptor Capital LP; and
- (h) Silver Point Capital, L.P.,

provided that an entity shall cease to be a member of the Ad Hoc Committee (without prejudice to the rights, powers, and discretions of the others) if such entity no longer holds any Commitments;

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

"**All HoldCo Financiers Consent Matter**" means any matter that requires the consent of all the "Financiers" (as defined in the HoldCo Common Terms Agreement) under clause 35.2 of the Holdco Common Terms Agreement;

"**All OpCo Financiers Consent Matter**" means any matter that requires the consent of all the "Financiers" (as defined in the OpCo Common Terms Agreement) under clause 40.2 of the OpCo Common Terms Agreement;

"**Annual Determination Date**" means the Payment Date following each Annual EPM Re-run;

"**Annual EPM Re-run**" means the EPM re-run carried out on each anniversary of the EPM Run Date;

"**Annual EPM Re-run Notice**" means a notice from the Global Agent to the Financiers setting out the Financiers' Commitments following the Annual EPM Re-run;

"**Annual Outlook**" means consolidated financial guidance in respect of the HoldCo Group, in summary form and based on the Budget for the relevant Financial Year;

**"Anti-Corruption Laws"** means, to the extent applicable to the HoldCo Group from time to time, the Bribery Act 2010 of the United Kingdom, the Foreign Corrupt Practices Act of 1977 of the United States of America, any similar laws in any other jurisdiction and any other national and international laws enacted to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;

**"Applicable Law"** means, to the extent applicable to the HoldCo Group from time to time, all civil and common law, statute, subordinate legislation, treaty, regulations, directive, decision, by-law, ordinance, code, order, decree, injunction or judgment of any government, quasi-government, statutory, administrative or regulatory body, court or agency;

**"Articles of Association"** means the Articles of Association of HoldCo and the Articles of Association of OpCo;

**"Articles of Association of HoldCo"** means the articles of association of HoldCo in the agreed form at Completion;

**"Articles of Association of OpCo"** means the articles of association of OpCo in the agreed form at Completion;

**"Audit Committee"** has the meaning given in clause 5.7(a);

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

**"Best Prior Offer"** has the meaning given in clause 11(b)(i);

**"Board Appointing Financier"** means a Nominating Financier, a Deemed Nominating Financier or the Minority Reporting Financiers (acting through the Global Agent) as applicable;

**"Budget"** means the operating budget and financial forecast by business unit and region for the HoldCo Group for a Financial Year that is aligned to the Business Plan and that is from time to time prepared and approved in accordance with clause 7, such operating budget and financial forecast for the period from Completion to 31 December 2022 ("**First Budget**") being in the agreed form at Completion;

**"Business"** means the business of the HoldCo Group as described in clause 3;

**"Business Day"** means, unless specified as otherwise in this Agreement, a day (other than a Friday, Saturday or a Sunday) on which banks are open for general business in Abu Dhabi, Dubai and London;

**"Business Plan"** means the business plan for a rolling three (3) year period for the HoldCo Group that is from time to time prepared and approved in accordance with clause 7;

**"Cash Equivalent Instruments"** means at any time:

- (a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the Government of the United States of America, the Government of the United Kingdom, the Government of any member state of the European Economic Area or any participating member state or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (c) commercial paper not convertible or exchangeable to any other security:
  - (i) for which a recognised trading market exists;
  - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any participating member state;
  - (iii) which matures within one year after the relevant date of calculation; and
  - (iv) which has a credit rating of either:
    - (A) A-1 or higher by S&P Global Ratings, a division of S&P Global Inc.;
    - (B) F1 or higher by Fitch Ratings Ltd;
    - (C) P-1 or higher by Moody's Investors Service Limited; or
    - (D) if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by an Acceptable Bank (or their dematerialised equivalent);
- (e) any investment in money market funds:
  - (i) which have a credit rating of:
    - (A) A-1 or higher by S&P Global Ratings, a division of S&P Global Inc.; or
    - (B) P-1 or higher by Moody's Investors Service Limited;
  - (ii) invest substantially all their assets in securities of the types described in paragraphs (a) to (d) above;
  - (iii) can be turned into cash on not more than 30 days' notice; or
- (f) any other debt security approved by the Majority Financiers,

in each case, to which HoldCo is alone beneficially entitled at that time and which is not issued or guaranteed by HoldCo or subject to any Security (other than the Transaction Security);

**"Chair"** means:

- (a) as at Completion, the Non-Executive Director appointed to that office by the Nominating Financier which holds the largest Commitment, subject to approval by a Simple Majority of the other Non-executive Directors; or
- (b) any other person appointed to the role of chair of the HoldCo Group from time to time pursuant to clause 4.10(a);

**"Chief Executive Officer"** means:

- (a) as at Completion, Michael Davis; or
- (b) any other person appointed to the role of chief executive officer of the HoldCo Group from time to time pursuant to clause 10.1;

**"Chief Financial Officer"** means:

- (a) the person appointed to the role of chief financial officer of the HoldCo Group by the HoldCo Board immediately following Completion; or
- (b) any other person appointed to the role of chief financial officer of the HoldCo Group from time to time pursuant to clause 10.1;

**"Chief Transformation Officer"** means:

- (a) the person appointed to the role of chief transformation officer of the HoldCo Group by the HoldCo Board immediately following Completion; or
- (b) any other person appointed to the role of chief transformation officer of the HoldCo Group from time to time pursuant to clause 10.1;

**"Claims Determination Process"** has the meaning given in the DOCA proposed by NMC Healthcare Ltd (in administration);

**"Commitment"** has the meaning given in the HoldCo Common Terms Agreement;

**"Committee"** has the meaning given in clause 5.7(a);

**"Completion"** means the completion of the Restructuring;

**"Compliance Certificate"** means a certificate substantially in the form set out in Schedule 8.

**"Confidential Information"** means all information relating to:

- (a) this Agreement;
- (b) the Transaction Documents;

- (c) in the case of a Financier, HoldCo or any member of the HoldCo Group or a Facility of which it becomes aware in its capacity as, or for the purpose of becoming, a Financier from:
  - (i) any member of the HoldCo Group or any of its advisers; or
  - (ii) another Financier, if the information was obtained by that Financier from any member of the HoldCo Group or any of its advisers; and
- (d) any Financier, its Affiliates and Related Funds or its or their respective business or assets,

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

- (e) is or becomes public information other than as a result of any breach of clause 14;
- (f) is identified in writing at the time of delivery as non-confidential; or
- (g) is known by the recipient before the date the information is disclosed to it or is lawfully obtained after that date from a source which, as far as the recipient is aware, has not been obtained in breach of, and is not otherwise subject to, any obligations of confidentiality; and

for the avoidance of doubt, no information delivered to Unrestricted Financiers shall be deemed to be Confidential Information;

**"Control Trigger"** has the meaning given in clause 11(a);

**"Conventional Facility"** has the meaning given in the HoldCo Common Terms Agreement;

**"Conventional Finance Party"** has the meaning given in the HoldCo Common Terms Agreement;

**"Declaration of Trust"** means the declaration of trust dated [●] 2021 pursuant to which the Trustee holds, upon the trusts and in the manner therein declared, the entire share capital of the capital of HoldCo;

**"Deed of Adherence"** means a deed substantially in the form set out in Schedule 2;

**"Deemed Nominating Financier"** has the meaning given in clause 4.4(b);

**"Delegated Authority Framework"** means the framework for delegating authority to the OpCo Board and employees in the agreed form at Completion;

**"Director Deficit Event"** has the meaning given in clause 4.4(b);

**"Dispute"** has the meaning given in clause 23.1(a);

"**DOCA Companies**" means the entities executing DOCAs for the purposes of implementing the Restructuring;

"**DOCAs**" means the deeds of company arrangement to be proposed by NMC Healthcare Ltd (in administration) and certain of its direct and indirect Subsidiaries pursuant to Chapter 8 of Part 1 of the ADGM Insolvency Regulations 2015 for the purpose of implementing the Restructuring;

"**EPM**" has the meaning given in the DOCA proposed by NMC Healthcare Ltd (in administration);

"**EPM Run Date**" has the meaning given in clause 4.3;

"**Executive Management Team**" means the Chief Executive Officer, the Chief Financial Officer and the Chief Transformation Officer;

"**Exit Event**" has the meaning given in the HoldCo Common Terms Agreement;

"**Facility**" has the meaning given in the HoldCo Common Terms Agreement;

"**Fair Value**" means the fair value of the relevant Commitments to be transferred pursuant to a Mandatory Offer (in respect of which it is not possible to establish the Best Prior Offer) as determined in accordance with clause 11(c);

"**Finance Documents**" has the meaning given in the OpCo Common Terms Agreement and includes this Agreement;

"**Financial Indebtedness**" has the meaning given in the HoldCo Common Terms Agreement;

"**Financial Quarter**" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date;

"**Financial Year**" means the annual accounting period of the HoldCo Group ending on or 31 December in each year;

"**Financiers**" means the persons listed in Schedule 1 and any other person to whom Commitments have been transferred in accordance with the HoldCo Facilities and who has executed a Deed of Adherence;

"**First Business Plan**" means the document titled "NMC Healthcare LLC 3-years Business Plan" prepared by NMC Healthcare LLC covering the period from 1 January 2020 to 31 December 2022 and which is dated 31 July 2020;

"**Global Agent**" has the meaning given in the HoldCo Common Terms Agreement;

"**Holdback Claims**" has the meaning given in the LTD DOCA;

"**HoldCo**" means [*corporate details to be inserted following incorporation*];

"**HoldCo Board**" means the board of HoldCo Directors from time to time;

**"HoldCo Common Terms Agreement"** means the common terms agreement dated on or about the date of this Agreement and made between, among others, HoldCo and the Financiers;

**"HoldCo Directors"** means the Non-Executive Directors and the Chief Executive Officer;

**"HoldCo Facilities"** means the Conventional Facility and the Islamic Financing Facility;

**"HoldCo Financiers"** means the Conventional Finance Parties and the Islamic Financing Parties;

**"HoldCo Group"** means HoldCo and its Subsidiaries from time to time;

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

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

**"Increased Majority Reporting Financiers"** has the meaning given in the HoldCo Common Terms Agreement;

**"Increased Majority Reporting Financiers Consent Matter"** means any amendment or waiver under the Transaction Documents that requires the consent of the Increased Majority Reporting Financiers under the HoldCo Common Terms Agreement;

**"Independent Expert"** has the meaning given in clause 11(c);

**"Industrial Competitor"** has the meaning given in the HoldCo Common Terms Agreement;

**"Initial Distribution Requirements"** has the meaning given in the LTD DOCA;

**"Initial Non-Executive Directors"** has the meaning given in clause 4.8;

**"Internal Auditor"** means:

- (a) the person appointed to the role of internal auditor of the HoldCo Group by the HoldCo Board immediately following Completion; or
- (b) any other person appointed to the role of internal auditor of the HoldCo Group from time to time pursuant to clause 10.1;

**"Islamic Financing Facility"** has the meaning given in the HoldCo Common Terms Agreement;

**"Islamic Financing Party"** has the meaning given in the HoldCo Common Terms Agreement;

**"Key Policies"** means the policies and procedures referred to in clause 9.3(b)(ii) and clause 9.12(b)(i);

**"LTD DOCA"** means the DOCA in respect of NMC Healthcare Ltd (in administration);

**"Majority Financiers"** has the meaning given in the OpCo Common Terms Agreement;

**"Majority OpCo Financiers Consent Matter"** means any amendment or waiver under the Finance Documents that requires the consent of the Majority Financiers under clause 40.1(a) of the OpCo Common Terms Agreement;

**"Majority Reporting Financiers"** has the meaning given in the HoldCo Common Terms Agreement;

**"Majority Reporting Financiers Consent Matter"** means any amendment or waiver under the Transaction Documents that requires the consent of the Majority Reporting Financiers in accordance with the HoldCo Common Terms Agreement;

**"Management Incentive Plan"** means the cash based incentive scheme for the OpCo Board and employees to be established by HoldCo pursuant to clause 10.5;

**"Mandatory Offer"** has the meaning given in clause 11(a);

**"Material Adverse Effect"** has the meaning given in the HoldCo Common Terms Agreement;

**"Minority Director"** has the meaning given in clause 4.7(a);

**"Minority Reporting Financiers"** has the meaning given in clause 4.7(a);

**"NMC Healthcare Business"** has the meaning given in the recitals;

**"NMC HoldCo Refinancing"** has the meaning given in the HoldCo Common Terms Agreement;

**"Nominating Financier"** has the meaning given in clause 4.4(a);

**"Nomination Committee"** has the meaning given in clause 5.7(a);

**"Nominations Cap"** has the meaning given in clause 4.4(a)(i);

**"Non-Executive Director"** means:

- (a) as at Completion, each 10% Director and the Minority Director appointed on or around Completion; or
- (b) any other person appointed as a non-executive HoldCo Director from time to time pursuant to clause 4.8;

**"Notice"** has the meaning given in clause 21.1;

**"OpCo"** means [*corporate details to be inserted following incorporation*];

**"OpCo Board"** means the board of OpCo Directors from time to time;

**"OpCo Common Terms Agreement"** means the common terms agreement dated on or about the effective date of Completion between, among others, OpCo and the Original Lenders (as defined thereunder);

**"OpCo Directors"** means the directors on the OpCo Board from time to time;

**"OpCo Facilities Agreement"** means the primary facilities agreement dated on or around the effective date of Completion between, amongst others, OpCo and the Original Lenders (as defined thereunder);

**"OpCo Financiers"** has the meaning given in the recitals;

**"OpCo Group"** means OpCo and its Subsidiaries from time to time;

**"OpCo Subsidiaries"** means the Subsidiaries of OpCo from time to time, including the persons whose shares are transferred to OpCo pursuant to the DOCAs;

**"Operational KPIs"** means the following operational information on a consolidated basis and by business unit:

- (a) inpatient and outpatient volume and average revenue by patient;
- (b) number of employees, by doctors, staff nurses, other clinical staffs and non-clinical support staffs; and
- (c) rejections, discount, patient revenue, patient non-cash revenue and rejections percentage;

**"Payment Date"** has the meaning given in the HoldCo Common Terms Agreement;

**"Permitted Security"** means:

- (a) any Transaction Security or other Security created or evidenced pursuant to the terms of the Transaction Documents;
- (b) any netting or set off arrangement entered into by any member of the HoldCo Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances; and
- (c) any lien arising by operation of law and in the ordinary course of trading or in respect of an amount being reserved in respect of taxes being contested in good faith;

**"Priority HoldCo Financial Indebtedness"** has the meaning given in the HoldCo Common Terms Agreement;

**"Purchase Undertaking"** has the meaning given in the HoldCo Common Terms Agreement;

**"Purchaser"** has the meaning given in clause 11(a);

**"Quarter Date"** means each of 31 March, 30 June, 30 September and 31 December;

**"Quasi Security"** means an arrangement or transaction described in clause 9.8(b);

**"Record Date"** has the meaning given in the LTD DOCA;

**"Related Fund"** in relation to a fund (the **"first fund"**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund;

**"Related Party Transaction"** means any transaction or arrangement between any member of the HoldCo Group and any Financier;

**"Relevant Transfer"** has the meaning given in clause 20(b);

**"Remuneration Committee"** has the meaning given in clause 5.7(a);

**"Reporting Financier"** has the meaning given in the HoldCo Common Terms Agreement;

**"Reporting Financier Information"** means the financial statements and other information delivered pursuant to clause 8.2 and clause 8.5;

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

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

**"Restructuring"** has the meaning given in the DOCAs;

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

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

**"Sanctions Authority"** means:

- (a) the European Union;
- (b) the United Arab Emirates;
- (c) the United Kingdom;
- (d) the United Nations Security Council;
- (e) the United States of America; and
- (f) the respective governmental institutions of those listed in paragraphs (a) to (e) (inclusive);

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

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

**"Shares"** has the meaning given in the Declaration of Trust;

**"Shari'a Event"** has the meaning given in the Purchase Undertaking;

**"Simple Majority"** means at least four of the Non-Executive Directors;

**"Simple Majority Resolution"** means a resolution passed by a Simple Majority voting in favour of the resolution at a quorate meeting of the HoldCo Board;

**"Subsidiary"** means an entity of which a person has direct or indirect control or owns directly or indirectly more than fifty percent (50%) of the voting capital or similar right of ownership;

**"Super Majority"** means at least five of the Non-Executive Directors;

**"Super Majority Financiers"** has the meaning given in the OpCo Common Terms Agreement;

**"Super Majority OpCo Financiers Consent Matter"** means any matter that requires the consent of the Super Majority Financiers under the OpCo Common Terms Agreement;

**"Super Majority Reporting Financiers"** has the meaning given in the HoldCo Common Terms Agreement;

**"Super Majority Reporting Financiers Consent Matter"** means any amendment or waiver under the Transaction Documents that requires the consent of the Super Majority Reporting Financiers under the HoldCo Common Terms Agreement;

**"Super Majority Resolution"** means a resolution passed by a Super Majority voting in favour of the resolution at a quorate meeting of the HoldCo Board;

**"Supervising Financier"** has the meaning given in the HoldCo Common Terms Agreement;

**"Tax"** means any tax, levy, impost, duty or other charge or withholding of a similar nature;

**"Terms of Reference"** has the meaning given in clause 5.7(a)

**"Total Commitments"** has the meaning given in the HoldCo Common Terms Agreement;

**"Transaction Documents"** has the meaning given in the HoldCo Common Terms Agreement and includes this Agreement;

**"Transaction Security"** has the meaning given in the HoldCo Common Terms Agreement;

**"Transfer Certificate"** has the meaning given in the HoldCo Common Terms Agreement;

**"Transferring Nominating Financier"** has the meaning given in clause 4.5(a);

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

**"Trust"** means the trust constituted by the Declaration of Trust;

**"Unrestricted Financier"** has the meaning given in the HoldCo Common Terms Agreement;

**"Unrestricted Financier Information"** means the financial statements and other information delivered pursuant to clause 8.1(a);

**"Unsecured Creditor"** has the meaning given in the VSA;

**"USD"** or **"dollars"** means the lawful currency of the United States of America;

**"VSA"** means the Voting Support Agreement dated 16 April 2021;

**"Working Hours"** means 9.30am to 5.30pm on a Business Day in the United Arab Emirates; and

**"10% Director"** has the meaning given in clause 4.4(a)(i).

1.2 In this Agreement:

- (a) **"acting in concert"** means, a group of persons who, pursuant to:
- (i) an agreement (other than the Transaction Documents), including, without limitation, pursuant to any sub-participation agreement; or
  - (ii) understanding (whether formal or informal),  
  
actively co-operate, in connection with the acquisition directly or indirectly of any Commitments or the exercise of any rights, discretions or decisions as a Financier under the Transaction Documents or otherwise seeking to exercise control over the HoldCo Group;
- (b) a document in the **"agreed form"** is a reference to a document in a form approved and for the purposes of identification initialled by or on behalf of the Majority Reporting Financiers;
- (c) a **"body corporate"** is to be construed in accordance with section 1028(1) of the ADGM Companies Regulations 2020; and references to a **"company"** shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (d) **"control"** means, in relation to any person, the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms controlled, controller and controlling shall be construed accordingly;
- (e) a **"party"** is a reference to a party to this Agreement (either by virtue of having executed this Agreement or having entered into a Deed of Adherence) and includes a reference to that party's legal personal representatives, successors and permitted assigns, and **"parties to this Agreement"** and **"parties"** shall be construed accordingly;
- (f) a **"person"** includes a reference to any individual, firm, company, corporation or other body corporate, government, state or agency of state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (g) any statute or statutory provision includes a reference to the statute or statutory provision as amended, modified or re-enacted or both from time to time (whether before or after the date of this Agreement) and any subordinate legislation made under the statute or statutory provision (whether before or after the date of this Agreement);
- (h) a clause or schedule, unless the context otherwise requires, is a reference to a clause of, or schedule to, this Agreement;

- (i) (unless the context otherwise requires) the singular shall include the plural, and vice versa;
- (j) one gender shall include each gender;
- (k) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term and a reference to any English statute shall be construed so as to include equivalent or analogous laws of any other jurisdiction;
- (l) times of the day is to time in the United Arab Emirates;
- (m) any other document referred to in this Agreement is a reference to that other document as amended, varied, novated, supplemented or replaced from time to time (other than in breach of the provisions of this Agreement);
- (n) unless otherwise stated in this Agreement or the Articles of Association of HoldCo, decisions taken by the HoldCo Board shall be valid and effective if taken with the approval of a Simple Majority of the HoldCo Board at a quorate meeting of the HoldCo Board; and
- (o) unless otherwise stated in this Agreement, any reference to a party's Commitments shall be construed to include the Commitments of such party's Affiliates and Related Funds and such other persons as are acting in concert with such party.

1.3 The *ejusdem generis* principle of construction shall not apply to this Agreement. Accordingly, general words shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class of acts, matters or things or by examples falling within the general words. Any phrase introduced by the terms "other", "including", "include" and "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.4 The Schedules form part of this Agreement and shall have effect accordingly.

1.5 The headings in this Agreement do not affect its interpretation or construction.

## 2. **EFFECTIVENESS OF THIS AGREEMENT**

This Agreement shall come into effect at Completion save for clauses 1, 2, 3, 4 and 14 to 26 (inclusive) which shall take effect from the date of this Agreement.

## 3. **THE BUSINESS OF THE HOLDCO GROUP**

The parties agree that the business of the HoldCo Group shall be to carry on the NMC Healthcare Business from Completion in accordance with:

- (a) this Agreement;

- (b) the Articles of Association of HoldCo;
- (c) the applicable Business Plan and Budget;
- (d) the Accounting Principles;
- (e) the Key Policies of the HoldCo Group as approved by the HoldCo Board in accordance with this Agreement; and
- (f) Applicable Law.

#### 4. CORPORATE GOVERNANCE OF THE HOLDCO GROUP

##### 4.1 The Trustee

- (a) The Trustee shall only exercise its voting rights and other rights as the shareholder of HoldCo in order (insofar as it is able to do so through the exercise of such rights) to:
  - (i) pass the appropriate shareholder resolution to adopt the Articles of Association on Completion and make the relevant filings in respect of the Articles of Association;
  - (ii) procure that HoldCo complies with all of its obligations under this Agreement, the Articles of Association of HoldCo and Applicable Law;
  - (iii) give full effect to the terms of this Agreement and the Articles of Association of HoldCo; and
  - (iv) give full effect to the rights and obligations of the parties as set out in this Agreement and the Articles of Association of HoldCo.
- (b) For the avoidance of doubt, the Trustee shall not exercise its voting rights and other rights as the shareholder of HoldCo contrary to the terms, intent and purpose of this Agreement, as set out in clause 4.1(c).
- (c) Without limiting the generality of the foregoing, provided that, subject always to actions that the Trustee is required to take by Applicable Law, but not withstanding anything contained in this Agreement, the Trustee shall have no power to:
  - (i) sell, dispose of, convert, vary, transpose, assign, pledge, charge, mortgage, hypothecate, encumber or otherwise deal in any manner with all or any of the Shares otherwise than under or pursuant to the provisions of the Transaction Documents;
  - (ii) exercise the rights attaching to the Shares in such a way as would, or might reasonably be expected to, result in a breach by HoldCo or any nominee of the Trustee of their respective obligations under or pursuant to the provisions of the Transaction Documents;

- (iii) propose or pass any resolutions to increase or consolidate, divide, cancel, reduce or otherwise alter the issued share capital of HoldCo; or
- (iv) propose or pass any resolutions to commence any proceedings to voluntarily wind up HoldCo.

#### 4.2 The HoldCo Board and the OpCo Board

- (a) The HoldCo Board shall be the governing body of the HoldCo Group, and:
  - (i) the Executive Management Team (through the Chief Executive Officer) shall report to the HoldCo Board; and
  - (ii) the Internal Auditor shall report to both the Chief Executive Officer and the HoldCo Board.
- (b) The OpCo Board shall, subject to clause 10.3, be responsible for the day to day operations and management of the business of the OpCo Group.
- (c) On Completion, the Chief Executive Officer, the Chief Financial Officer and the Chief Transformation Officer shall be appointed as OpCo Directors. Subsequently, the appointment and removal of the OpCo Directors shall be approved by the HoldCo Board acting by Simple Majority.
- (d) The appointment and approval of the directors of the OpCo Subsidiaries shall be approved by the HoldCo Board acting by Simple Majority.

#### 4.3 Composition of the HoldCo Board

At Completion, the HoldCo Board shall consist of:

- (a) seven Non-Executive Directors, comprising:
  - (i) six 10% Directors; and
  - (ii) one Minority Director; and
- (b) the Chief Executive Officer, who shall be a non-voting member of the HoldCo Board.

The Reporting Financiers' entitlements to nominate 10% Directors to the HoldCo Board at Completion in accordance with clause 4.4 shall be based on the Financiers' Commitments as determined by the EPM run carried out before Completion in accordance with the LTD DOCA (the date on which the EPM run is carried out being the "**EPM Run Date**") as notified by the Global Agent to the Financiers within five (5) Business Days of the EPM Run Date, but provided that: (A) a Reporting Financier must have satisfied the Initial Distribution Requirements on or prior to the Record Date to be eligible to nominate 10% Directors to the HoldCo Board on Completion in accordance with clause 4.4; and (B) any provisional allocation of Commitments to a Reporting Financier in respect of any Holdback Claims shall not be taken into account when calculating such Reporting Financier's Commitments for this purpose.

#### 4.4 Nomination of Non-Executive Directors by the Nominating Financiers

- (a) For so long as a Reporting Financier holds more than ten percent (10%) of the Commitments from time to time (each such Reporting Financier being a "**Nominating Financier**"), it may (but is not required to), subject to this clause 4.4 and clause 4.6:
- (i) nominate one HoldCo Director for each ten percent (10%) of the Commitments that it holds up to a maximum of three Non-Executive Directors (the "**Nominations Cap**") (each Non-Executive Director so nominated being a "**10% Director**"); and
  - (ii) from time to time remove from office and replace any such 10% Director so nominated by it and, upon removal may nominate another person for appointment in their place in accordance with this clause 4.4,
- it being understood that: (A) a Commitment shall not be counted more than once for the purposes of calculating a nomination or removal right pursuant to this clause 4; and (B) the Nominations Cap shall apply such that a Nominating Financier together with its Affiliates and Related Funds and such other persons as are acting in concert with such Nominating Financier shall not, in aggregate, be entitled to nominate more than three Non-Executive Directors.
- (b) If there are fewer than six Non-Executive Directors because there are too few Nominating Financiers and/or one or more Nominating Financiers chose not to nominate a Non-Executive Director (a "**Director Deficit Event**"), then the Reporting Financier(s) with the next largest holding of Commitments that is prepared to nominate a Non-Executive Director shall be deemed to be a Nominating Financier for the purposes of clause 4.4(a), provided that:
- (i) such Reporting Financier has satisfied the Initial Distribution Requirements on or prior to the Record Date to be eligible to nominate 10% Directors to the HoldCo Board in accordance with clause 4.4; and
  - (ii) any provisional allocation of Commitments to such Reporting Financier in respect of any Holdback Claims shall not be taken into account when calculating such Reporting Financier's Commitments for this purpose,
- (each such Reporting Financier being a "**Deemed Nominating Financier**") and, in each case, for so long as the Director Deficit Event continues.
- (c) If the Director Deficit Event ceases to exist, the Deemed Nominating Financiers shall, with effect from the next Annual Determination Date following the date on which the Director Deficit Event ceases to exist, procure the resignations of such number of their nominated Non-Executive Directors as are necessary to ensure that each Nominating Financier (excluding for these purposes any Deemed Nominating Financiers and any Nominating Financiers who have elected not to nominate a Non-Executive Director) shall be entitled to nominate its Non-Executive Directors to the HoldCo Board in accordance with clause 4.4(a), it being acknowledged that the Deemed Nominating Financier with the smallest holding of Commitments (as determined by clause 4.4(b)) shall be

required to procure such resignations ahead of any Deemed Nominating Financier with a larger holding of Commitments (as determined by clause 4.4(b)).

- (d) If the Nominating Financiers from time to time are entitled to nominate more than six Non-Executive Directors, the Nominating Financier or Nominating Financiers with the smallest holding of Commitments shall not be entitled to make any such nomination, such that the Nominating Financiers shall in total be entitled to nominate six Non-Executive Directors.

#### 4.5 **Resignation and replacement of Non-Executive Directors following a Relevant Transfer**

- (a) If a Nominating Financier (a "**Transferring Nominating Financier**") delivers a Transfer Certificate to the Global Agent pursuant to clause 20.6 of the HoldCo Common Terms Agreement to effect a Relevant Transfer, the Global Agent shall, on receipt of such Transfer Certificate, calculate whether such Transferring Nominating Financier would, following such Relevant Transfer, remain a Nominating Financier or Deemed Nominating Financier pursuant to clause 4.4 and, if such Transferring Nominating Financier would not remain a Nominating Financier or Deemed Nominating Financier, the Global Agent shall promptly notify:
  - (i) the Transferring Nominating Financier and each of the other Nominating Financiers of such change; and
  - (ii) each Reporting Financier who on a pro forma basis (in accordance with clause 4.5(c)) will become a Nominating Financier or Deemed Nominating Financier (in accordance with clause 4.4) after the Relevant Transfer has taken effect.
- (b) If a Transferring Nominating Financier receives a notice from the Global Agent pursuant to clause 4.5(a)(i), it shall:
  - (i) procure the resignation of such number of its nominated 10% Directors as is necessary to ensure that it has nominated only such number of 10% Directors as it is entitled to nominate, with such resignation(s) to take effect:
    - (A) subject to (B), from the date replacement 10% Directors are appointed in accordance with clauses 4.4 and 4.8; or
    - (B) in the event that the Relevant Transfer would result in the Nominating Financier ceasing to hold any Commitments, with effect from the date of settlement of the Relevant Transfer; and
  - (ii) procure that any resigning 10% Director continues to act reasonably and in good faith in accordance with this Agreement until they are replaced.
- (c) In the event of a Relevant Transfer, and solely for the purposes of determining each of the Reporting Financiers who will become a Nominating Financier or Deemed Nominating Financier (in accordance with clause 4.4) in place of the

Transferring Nominating Financier, the Financiers' Commitments shall be assessed by the Global Agent, by reference to its records on the date of the Transfer Certificate and after giving pro forma effect to the Relevant Transfer and for which purpose any provisional allocation of Commitments to a Financier in respect of any Holdback Claims shall not be taken into account when calculating such Financier's Commitments.

- (d) Each Reporting Financier who on a pro forma basis (in accordance with clause 4.5(c)) becomes a Nominating Financier or Deemed Nominating Financier (in accordance with clause 4.4) after a Relevant Transfer has taken effect and has been so notified by the Global Agent pursuant to clause 4.5(a)(ii), shall be entitled to nominate its Non-Executive Director(s) to the Holdco Board in accordance with (and subject to) clause 4.4(a) immediately after such Relevant Transfer has taken effect.

#### 4.6 Annual Adjustment of Commitments

- (a) Without prejudice to the provisions of clause 4.5 and other than in respect of the Initial Non-Executive Directors, the entitlement of the Reporting Financiers to nominate 10% Directors in accordance with clause 4.4 shall take effect on each Annual Determination Date, and shall be based on the Financiers' Commitments as set out in the Annual EPM Re-run Notice, such notice to be given to the Financiers by the Global Agent no later than the Annual Determination Date, but provided that:
  - (i) a Reporting Financier must have satisfied the Initial Distribution Requirements on or prior to the Annual Determination Date to be eligible to nominate 10% Directors to the HoldCo Board in accordance with clause 4.4; and
  - (ii) any provisional allocation of Commitments to a Reporting Financier in respect of any Holdback Claims shall not be taken into account when calculating such Reporting Financier's Commitments for this purpose.
- (b) For the avoidance of doubt, the determination of the Reporting Financiers' entitlements to nominate a 10% Director in accordance with clause 4.4 as a result of any Commitments received by a Financier as a result of re-running the EPM (other than as a result of the Annual EPM Re-run) and/or the Claims Determination Process shall take effect on the earliest to occur of:
  - (i) the next Annual Determination Date (subject to the Annual EPM Re-run immediately prior to such Annual Determination Date having occurred); and
  - (ii) the date on which the Global Agent assesses the Financiers' Commitments in accordance with clause 4.5(c), provided that this provision shall not require a 10% Director (other than a 10% Director nominated by a Transferring Nominating Financier who is required to resign in accordance with clause 4.5(b)) to resign prior to the end of the tenth (10th) Business Day after the next Annual Determination Date and

provided that such resignation shall otherwise take effect in accordance with clause 4.6(c).

- (c) Within ten (10) Business Days of each Annual Determination Date, each Reporting Financier shall:
  - (i) procure the resignation of such number of its nominated 10% Directors as is necessary to ensure that it has nominated only such number of 10% Directors as it is entitled to nominate in accordance with clause 4.4, with such resignation(s) to take effect from the date replacement 10% Directors are appointed in accordance with clauses 4.4 and 4.8; and
  - (ii) procure that any resigning 10% Directors continue to act reasonably and in good faith in accordance with this Agreement until they are replaced.

#### 4.7 **Nomination of the Minority Director by the Minority Reporting Financiers**

- (a) The Reporting Financiers who do not have an individual entitlement to nominate a Non-Executive Director under clause 4.4(a) (the "**Minority Reporting Financiers**") shall collectively be entitled to nominate one Non-Executive Director (the "**Minority Director**").
- (b) The Global Agent on behalf of the Minority Reporting Financiers may, through a notice in writing, submit a list of potential candidates to the Nomination Committee from which the Nomination Committee shall produce a shortlist of three names (the "**Minority Director Short List**"), and for which purpose the Nomination Committee shall apply the criteria set out in Schedule 3.
- (c) The Minority Director Short List shall thereafter be put to a vote of the Minority Reporting Financiers. The candidate on the Minority Director Short List with the most votes (weighted in accordance with the value of the Commitments of each Minority Reporting Financier), from a vote among all Minority Reporting Financiers, shall be selected as nominee for Minority Director. The Global Agent shall notify HoldCo in writing of the selected nominee.
- (d) If the Nomination Committee determines that the list of potential candidates submitted by the Global Agent on behalf of the Minority Reporting Financiers is unsuitable for appointment (having applied the criteria set out in Schedule 3), the Global Agent on behalf of the Minority Reporting Financiers shall through a notice in writing to HoldCo re-submit the list of potential candidates to the Nomination Committee (excluding the candidates previously determined by the Nomination Committee to be unsuitable for appointment) and clauses 4.7(b) and 4.7(c) shall otherwise apply.
- (e) The Global Agent on behalf of the Minority Reporting Financiers may, through a notice in writing to HoldCo, remove from office and replace any such Minority Director so nominated by them and, upon removal, may nominate another person for appointment in accordance with this clause 4.7.
- (f) Any notice given by the Global Agent on behalf of the Minority Reporting Financiers in accordance with this clause 4.7 shall require certification from the

Global Agent that the matter which is the subject of the notice has the approval of a Simple Majority (by value of Commitments) of the Minority Reporting Financiers.

#### 4.8 Appointment of Non-Executive Directors

- (a) Individuals for the role of Non-Executive Director shall be nominated by the Nominating Financiers in accordance with clause 4.4 and by the Minority Reporting Financiers in accordance with clause 4.7:
  - (i) in the case of the initial Non-Executive Directors to be appointed at Completion (the "**Initial Non-Executive Directors**"), at least twenty (20) Business Days prior to Completion; and
  - (ii) in all other cases, within ten (10) Business Days following the Annual Determination Date unless otherwise set out in this Agreement.
- (b) In the event that the Global Agent on behalf of the Minority Reporting Financiers fails to nominate a list of potential candidates for consideration by the Nomination Committee within the time periods set out in clause 4.8(a):
  - (i) the Nomination Committee shall be entitled to produce the Minority Director Short List from a list of candidates to be identified by the Nomination Committee and for which purpose the Nomination Committee shall apply the criteria set out in Schedule 3; and
  - (ii) such Minority Director Short List shall be put to a vote of the Minority Reporting Financiers in accordance with clause 4.7(c).
- (c) Any person nominated for appointment pursuant to this Agreement shall be suitably experienced for the role of Non-Executive Director, and shall be subject to the approval of the Nomination Committee in advance of their appointment and for which purpose the Nomination Committee shall apply the criteria set out in Schedule 3. If the Nomination Committee approves the appointment of any person for the role of Non -Executive Director, in accordance with this clause 4.8(c), such person's name shall be presented to:
  - (i) the HoldCo Board for approval; or
  - (ii) in the case of the persons approved by the Nomination Committee for appointment as the Initial Non-Executive Directors, the Trustee (in its capacity as a shareholder of HoldCo) for appointment.
- (d) If the Nomination Committee determines that any proposed 10% Director is unsuitable for appointment (having applied the criteria set out in Schedule 3), the relevant Nominating Financier shall propose another person to the Nomination Committee for approval.
- (e) The Trustee shall exercise all voting rights and other powers of control available to it in its capacity as a shareholder of HoldCo to ensure that:
  - (i) the persons nominated for:

- (A) appointment and approval by the HoldCo Board as HoldCo Directors (other than the Initial Non-Executive Directors) in accordance with clauses 4.4 to 4.8 (inclusive) are so appointed;
  - (B) removal as HoldCo Directors in accordance with clauses 4.5 to 4.7 (inclusive) are so removed; and
  - (C) appointment and approval by the Nomination Committee as the Initial Non-Executive Directors in accordance with clauses 4.4 to 4.8 (inclusive) are so appointed with effect from Completion;
- (ii) the resignation of the then existing HoldCo Directors and OpCo Directors is procured with effect from Completion.
- (f) Each subsequent appointment or removal of a Non-Executive Director (in accordance with this Agreement) shall be made by written notice to HoldCo (as the case may be):
- (i) in the case of a 10% Director, from the relevant Nominating Financier (in accordance with this Agreement); or
  - (ii) in the case of the Minority Director, in accordance with clause 4.7(e).
- (g) Subject to the other provisions of this clause 4, the appointment or removal of Non-Executive Director shall, to the extent permitted by Applicable Law and unless otherwise specified in this Agreement, take effect upon receipt of the written notice to HoldCo made in accordance with clause 4.8(f).

#### 4.9 Ad Hoc Committee Role

- (a) The functions of the Nomination Committee:
- (i) in respect of the nomination of any 10% Director, shall be performed by the Ad Hoc Committee (excluding the relevant Nominating Financier that has nominated the 10% Director that is being considered by the Ad Hoc Committee); and
  - (ii) in respect of the nomination of the Minority Director, shall be performed by the Ad Hoc Committee (excluding the Minority Reporting Financiers),

until the Nomination Committee is established and all relevant powers have been delegated to it, in accordance with clause 5.7(a), and until such time all references in clauses 4.7 and 4.8 to the "Nomination Committee" shall be construed as references to the "Ad Hoc Committee" excluding the relevant Nominating Financier for the purposes of clause 4.9(a)(i) or the Minority Reporting Financiers for the purposes of clause 4.9(a)(ii) (as applicable).

- (b) Each party shall irrevocably and unconditionally, fully and finally, waive, release and discharge forever to the fullest extent permitted by Applicable Law each and every claim which it may have against the Ad Hoc Committee (or any of its Affiliates and any of its or their respective officers, directors, employees,

partners, shareholders) whatsoever and howsoever arising, in connection with or by reason of or resulting directly or indirectly from any steps, acts or omissions by or on behalf of the Ad Hoc Committee in relation to the obligations of the Ad Hoc Committee under this Agreement.

#### **4.10 Chair of the HoldCo Board**

- (a) The Nominating Financier which holds the largest Commitment, may nominate the Chair of the HoldCo Board from amongst the Non-Executive Directors, subject to approval by a Simple Majority of each of the other Non-executive Directors, and may remove from office any such Chair and/or nominate another person for appointment in accordance with this clause 4.10.
- (b) The Chair shall chair meetings of the HoldCo Board at which they are present, but shall not have a casting vote.
- (c) Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the Chair in facilitating board discussion and decision-making, the Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

#### **4.11 Fees and expenses of Non-Executive Directors**

- (a) HoldCo shall pay on a quarterly basis director's fees in USD to each Non-Executive Director at market rate, such amount to be determined, in each case, by the HoldCo Board acting by a Simple Majority (acting reasonably).
- (b) Any Non-Executive Director who incurs expenses in fulfilling their duties as a Non-Executive Director shall be entitled to have such reasonable expenses reimbursed in USD by HoldCo.

### **5. PROCEEDINGS OF DIRECTORS**

#### **5.1 Meetings of the HoldCo Board**

- (a) The HoldCo Board shall meet as necessary to discharge its duties, but in any case no less than monthly for the six month period following Completion and thereafter no less frequently than five times in any one year period.
- (b) At least ten (10) Business Days' notice of each meeting of the HoldCo Board shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.
- (c) Subject to clause 5.5(c) and clause 5.5(d), an agenda and copies of any appropriate supporting papers shall be sent to each HoldCo Director together with the notice of such HoldCo Board meeting referred to in clause 5.1(b) and, unless the HoldCo Board agrees otherwise, no business shall be transacted at the HoldCo Board meeting unless it is specified in the agenda and to the extent that necessary supporting papers have been provided in respect of that business.

- (d) Meetings of the HoldCo Board will be held in the ADGM and conducted in English.
- (e) Meetings of the HoldCo Board may be held by telephone, video conference, or any other suitable means as determined by the HoldCo Board acting by a Simple Majority.
- (f) Subject to clause 5.5(c) and clause 5.5(d), minutes of each HoldCo Board meeting written in English shall be circulated to each HoldCo Director no later than twenty (20) Business Days after the relevant HoldCo Board meeting.
- (g) The information sent to the HoldCo Directors pursuant to clause 5.1(c) shall also be sent to the Chief Financial Officer (in their capacity as an observer) at the same time it is sent to the HoldCo Directors, but any failure to comply with this clause 5.1(g) shall not affect the validity of the relevant HoldCo Board meeting, or of any business conducted at it.
- (h) The Chair shall, at the Chair's discretion (acting reasonably), be entitled to exclude the Chief Executive Officer and the Chief Financial Officer from any meeting of the HoldCo Board (or any part thereof) unless a majority of the other HoldCo Directors present at the meeting of the HoldCo Board consider and vote against such exclusion.

## 5.2 **Quorum**

- (a) No business shall be transacted at any meeting of the HoldCo Board unless a quorum is present at the time when the meeting proceeds to business and remains present during the transaction of such business.
- (b) The quorum for meetings of the HoldCo Board shall be a Simple Majority.
- (c) If a quorum is not present within 30 minutes of the time when the meeting should have begun or if during the meeting there is no longer a quorum, the Non-Executive Directors present at the meeting shall adjourn the meeting to reconvene the meeting by notice given in accordance with clause 5.1(b).

## 5.3 **Chair**

In the event that a Chair has not been appointed from time to time, or is not present at a meeting of the HoldCo Board, the Non-Executive Directors present must appoint a Non-Executive Director to chair the meeting and, if applicable, such appointment must be the first business of such meeting. For the avoidance of doubt, any such person appointed shall not have a casting vote.

## 5.4 **Voting**

The Non-Executive Directors shall make all decisions regarding HoldCo and the HoldCo Group by means of resolutions of the HoldCo Board. A resolution of the HoldCo Board is passed if a Simple Majority or a Super Majority (as applicable in accordance with this Agreement) present at a quorate meeting of the HoldCo Board vote in favour of the resolution, where each Non-Executive Director (but not the Chief Executive Officer) shall have one vote.

## 5.5 Directors' Duties and Conflicts of Interest

- (a) Each Non-Executive Director shall act in accordance with the directors duties set out in the ADGM Companies Regulations 2020 (as may be amended from time to time).
- (b) Each Financier agrees that a Non-Executive Director shall not be in breach of their duties to HoldCo by reason of their acting in accordance with this clause 5.5 or otherwise in accordance with the terms of this Agreement and the Articles of Association of HoldCo. Accordingly, each Financier authorises each Non-Executive Director:
  - (i) subject to clause 5.5(a), to act as a Non-Executive Director notwithstanding their appointment by a Board Appointing Financier for the purposes of representing such Board Appointing Financier's interests and monitoring and evaluating its financial interests in the HoldCo Group;
  - (ii) subject to clauses 5.5(c) and 5.5(d), to attend and vote at meetings of the HoldCo Board (or any Committee thereof) at which any matter will be discussed in which they have, or may have, a conflict of interest or duty by virtue of their appointment by a Board Appointing Financier and receive board papers relating thereto;
  - (iii) subject to clause 5.5(a), to receive and deal with Confidential Information and other documents and information relating to any member of the HoldCo Group or its business or assets and to use and apply such information in representing the interests of the Board Appointing Financier that appointed them;
  - (iv) subject to clause 14, to disclose any Confidential Information and other documents and information relating to any member of the HoldCo Group or its business or assets to any director, officer or employee of any Board Appointing Financier that appointed them or any director, officer or employee of its Affiliates or Related Funds for the purposes of monitoring and evaluating such Board Appointing Financier's financial interests in the HoldCo Group; and
  - (v) to keep confidential any information relating to the Board Appointing Financier that appointed them or any of its Affiliates or Related Funds that is subject to obligations of confidence and which such Board Appointing Financier is not otherwise obliged to disclose to the other Financiers or any member of the HoldCo Group pursuant to the terms of this Agreement and not to use or apply such information in performing their duties to HoldCo or any other member of the HoldCo Group.
- (c) Except in respect of the matters referred to in clause 5.5(d), and subject where applicable to:

- (i) disclosure in accordance with Applicable Law and the Articles of Association of HoldCo;
- (ii) compliance with any provisions of the Articles of Association of HoldCo dealing with conflicts of interest; and
- (iii) any terms imposed by the HoldCo Board in relation to any conflict of interest,

a Non-Executive Director shall be counted in the quorum and entitled to vote at a meeting of the HoldCo Board on any resolution in respect of any matter in which they are interested or where they have, or may have, a conflict of interest that has been authorised under the Articles of Association of HoldCo,

- (A) save that any actual or potential conflict of interest of a Non-Executive Director arising from a Related Party Transaction shall be deemed to be an authorised conflict of interest under the Articles of Association of HoldCo; and
  - (B) where a conflict of interest (other than as it relates to a Related Party Transaction) has not been authorised (or deemed authorised) under the Articles of Association of HoldCo, a Non-Executive Director shall not be entitled to receive board papers, attend or vote at a meeting of the HoldCo Board on any resolution in respect of such matter unless otherwise agreed in writing by the Board Appointing Financiers that did not appoint them and such a meeting of the HoldCo Board will be quorate notwithstanding the absence of any such Non-Executive Director(s).
- (d) In respect of any right of action by HoldCo or any other member of the HoldCo Group against the Board Appointing Financier who appointed them or any of its Affiliates or Related Funds or any right of action by the Board Appointing Financier who appointed them or any of its Affiliates or Related Funds against HoldCo or any other member of the HoldCo Group, a Non-Executive Director shall not be entitled to receive board papers, attend or vote at a meeting of the HoldCo Board on any resolution in respect of any such matters unless otherwise agreed in writing by the Board Appointing Financiers that did not appoint them and such a meeting of the HoldCo Board will be quorate notwithstanding the absence of any such Non-Executive Director(s).

## 5.6 Observer at Meetings of the HoldCo Board

- (a) The Chief Financial Officer shall have a standing invitation to attend HoldCo Board meetings as an observer.
- (b) In such capacity, the Chief Financial Officer shall have the right to attend any meetings of the HoldCo Board, subject to clause 5.1(h) and the provisions of Applicable Law, but shall not be entitled to vote and shall not be counted in the quorum of any such meeting. HoldCo shall not be required to consult with or

consider the availability of the Chief Financial Officer when scheduling meetings of the HoldCo Board.

## 5.7 The HoldCo Board Committees

- (a) The HoldCo Board may delegate any of the powers which are conferred on it under this Agreement or the Articles of Association of HoldCo to an audit committee (the "**Audit Committee**"), a remuneration committee (the "**Remuneration Committee**"), a nomination committee (the "**Nomination Committee**") and such other committees as the HoldCo Board determines (collectively, the "**Committees**") to such an extent and in relation to such matters and on such terms as it thinks fit subject to this clause 5.7 and the terms of reference for the Nomination Committee, the Audit Committee and the Remuneration Committee as set out in Schedule 3, Schedule 4 and Schedule 5 respectively (each, a "**Terms of Reference**").
- (b) The HoldCo Board shall use all commercially reasonable endeavours to establish and delegate relevant powers to the Nomination Committee within three (3) months of the date of Completion.
- (c) The membership of each such Committee shall comprise of at least:
  - (i) two 10% Directors appointed by different Financiers and
  - (ii) the Minority Director.
- (d) At least ten (10) Business Days' notice of each meeting of each Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.
- (e) The quorum of each Committee shall be two HoldCo Directors.
- (f) The chair of each Committee shall be the Chair, if they are a member of such Committee, or such member of the Committee as the HoldCo Board shall nominate.
- (g) The Committees shall act by majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.
- (h) Each Committee shall meet as often as its roles and responsibilities reasonably require and:
  - (i) at least once in each Financial Year to correspond, in respect of the Remuneration Committee, with the HoldCo Group's annual salary review programme; and
  - (ii) as least twice in each Financial Year to correspond, in respect of the Audit Committee, with the HoldCo Group's annual audit.

## 5.8 Meetings of OpCo and the OpCo Subsidiaries

The proceedings of the OpCo Board and the board of each of the OpCo Subsidiaries shall be determined by the HoldCo Board acting by Simple Majority and acting in accordance with Applicable Law.

## 5.9 Insurance

- (a) HoldCo and OpCo shall maintain adequate directors' and officers' liability insurance for the benefit of the HoldCo Directors and the OpCo Directors respectively.
- (b) HoldCo and OpCo shall provide the HoldCo Directors and the OpCo Directors respectively with the benefit of an indemnity against any liability which they may incur in relation to the HoldCo Group to the extent permitted by and in accordance with Applicable Law and excluding fraud, gross negligence and wilful default.

## 6. RESERVED MATTERS

### 6.1 General

- (a) Each party shall procure (so far it is able) that no action is taken or resolution passed by HoldCo, OpCo or the OpCo Subsidiaries, and HoldCo and OpCo shall not take, and shall procure that no OpCo Subsidiary takes, any action in respect of any matter set out in Schedule 6 or Schedule 7 other than in accordance with this clause 6.
- (b) For the purposes of this clause 6, a series of related transactions shall be construed as a single transaction, and any amounts involved in the related transaction shall be aggregated.

### 6.2 Approval of the HoldCo Board

- (a) The matters set out in Part 1 of Schedule 6 shall require the prior approval of the HoldCo Board acting by way of a Simple Majority Resolution.
- (b) The matters set out in Part 2 of Schedule 6 shall require the prior approval of the HoldCo Board acting by way of a Super Majority Resolution.
- (c) Where a matter set out in Schedule 6 also requires approval of the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) in accordance with clause 6.3, that matter must be approved by both the HoldCo Board in accordance with this clause 6.2 as well as by the Majority Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) in accordance with clause 6.3 (and any such matter shall only be put to the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) after it has been approved by the HoldCo Board in accordance with this clause 6.2).

### 6.3 Approval by the Financiers

The matters set out in Schedule 7 shall require the prior approval of the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) in accordance with the HoldCo Facilities.

#### **6.4 Approval by the Trustee**

Any matter requiring the approval of the Trustee under Applicable Law shall be approved by the Trustee upon request of the HoldCo Directors (acting in accordance with this Agreement) (and any such matter shall only be put to the Trustee after it has been approved under clause 6.2 and clause 6.3 as applicable).

### **7. BUSINESS PLAN AND BUDGET**

7.1 At Completion, the First Budget and the First Business Plan shall be adopted by the HoldCo Group as its Business Plan and Budget.

7.2 Within twelve (12) Business Days of Completion or on 15 December 2021 (whichever is later), the Executive Management Team shall submit to the HoldCo Board for consideration a draft Business Plan for the period commencing on 1 January 2022 and ending on 31 December 2024 (with the same level of detail as, and with appropriate adjustments to, the First Business Plan).

7.3 The HoldCo Board shall meet to discuss, amend (as required) and approve the draft Business Plan submitted to it in accordance with clause 7.2 no later than twelve (12) Business Days after its submission (such approval to be given by the HoldCo Board acting by way of a Super Majority Resolution).

7.4 At least sixteen (16) Business Days before the beginning of each subsequent Financial Year (beginning with the Financial Year commencing on 1 January 2023), the Executive Management Team shall submit to the HoldCo Board for consideration:

(a) a draft Business Plan for the three (3) year period commencing on 1 January of that Financial Year (with the same level of detail as, and with appropriate adjustments to, the then-current Business Plan); and

(b) a draft Budget for that Financial Year (based on, with the same level of detail as and with appropriate updates to, the then-current Budget).

7.5 The HoldCo Board shall meet to discuss, amend (as required) and approve the draft Business Plan and draft Budget submitted to it in accordance with clause 7.4 no later than four (4) Business Days before the beginning of the Financial Year (such approval to be given by the HoldCo Board acting by way of a Super Majority Resolution).

7.6 The Business Plan and Budget as approved in accordance with clause 7.3 or clause 7.5 (as applicable) shall be adopted by the HoldCo Group as its Business Plan and Budget for the relevant Financial Year.

7.7 If the HoldCo Board does not approve a Business Plan and/or Budget under clause 7.3 or clause 7.5 (as applicable), the then-current Business Plan and/or Budget (as applicable) with such non-material amendments as are required to permit the conduct of the Business in the ordinary course having regard to any change in circumstances

shall continue to apply unless and until a new Business Plan and/or Budget (as applicable) are approved.

## 8. INFORMATION UNDERTAKINGS

The undertakings in this clause 8 remain in force from Completion so long as any amount is outstanding under the Transaction Documents or any Commitment is in force.

### 8.1 Unrestricted Financier Information

- (a) HoldCo shall deliver to each Unrestricted Financier as soon as the same become available but, in any event, within 180 days after the end of its Financial Year ending December 2021 and within 150 days after the end of each of its Financial Years (other than the Financial Year ending December 2021):
  - (i) its audited consolidated financial statements for that Financial Year and any supplemental notes to those financial statements;
  - (ii) a statement by the HoldCo Directors commenting on the performance of the HoldCo Group for that Financial Year and any material developments or proposals affecting the HoldCo Group or its business;
  - (iii) time for and the dial-in details of a conference call to discuss the performance of the HoldCo Group for that Financial Year to be attended by at least one of either the Chief Executive Officer or Chief Financial Officer and held no earlier than the fifth Business Day, and no later than the tenth Business Day, following the date on which the details of the call are delivered to each Unrestricted Financier; and
  - (iv) promptly on request, such further information regarding the financial condition, assets and operations of the HoldCo Group and/or any member of the HoldCo Group (including any requested amplification or explanation of any information provided by HoldCo under this Agreement as any Unrestricted Financier may reasonably request) in relation to any consent or matter requiring consideration under this Agreement.
- (b) HoldCo shall deliver to each Unrestricted Financier the Annual Outlook for the immediately following Financial Year as soon as the same becomes available but, in any event, within 30 days after the start of the relevant Financial Year.
- (c) HoldCo shall notify each Unrestricted Financier of any proposed Exit Event as soon as reasonably practicable after binding documentation in connection with such Exit Event is agreed between the relevant parties.
- (d) Any Unrestricted Financier (provided that it is not an Industrial Competitor, trade counterparty and/or a person engaged in a material dispute with HoldCo or any of its Subsidiaries) may, by written notice to HoldCo, elect to receive Reporting Financier Information, and all such Reporting Financier Information shall be delivered by HoldCo to each such Unrestricted Financier in accordance with clause 8.2 and clause 8.5, and all references to "Reporting Financier" under

clause 8.2 and clause 8.5 shall be deemed to include each such Unrestricted Financier.

## 8.2 Reporting Financier Information

- (a) HoldCo shall deliver to each Reporting Financier:
  - (i) as soon as the same become available but, in any event, within the time periods specified in clause 8.1(a) all Unrestricted Financier Information;
  - (ii) as soon as the same become available but, in any event, within 90 days after the end of each Financial Quarter for the first two full Financial Quarters and, thereafter, within 60 days after the end of each Financial Quarter of each of its Financial Years (other than the first two full Financial Quarters):
    - (A) its management accounts for that Financial Quarter;
    - (B) an abridged profit and loss statement in respect of the HoldCo Group for that Financial Quarter including a breakdown by business unit and region and a comparison of actual performance for that Financial Quarter to the actual performance for the corresponding period in the preceding Financial Year; and
    - (C) a reconciliation of actual performance to Budget for that Financial Quarter;
  - (iii) as soon as the same become available but, in any event, within 60 days after the end of each Financial Quarter of each of its Financial Years:
    - (A) an abridged profit and loss statement in respect of the HoldCo Group for that Financial Quarter; and
    - (B) updates in respect of the leverage and liquidity of the HoldCo Group including any developments or changes thereto, which have occurred in that Financial Quarter;
  - (iv) at the same time as the information referred to in clause 8.2(a)(i) to clause 8.2(a)(iii) (inclusive) is delivered to each Reporting Financier, the details of a conference call to be attended by at least one of either the Chief Executive Officer or Chief Financial Officer and held no earlier than the fifth Business Day, and no later than the tenth Business Day, following the date on which the details of the call are delivered to each Reporting Financier;
  - (v) promptly on request, such further information regarding the financial condition, assets and operations of the HoldCo Group and/or any member of the HoldCo Group (including any requested amplification or explanation of any information provided by HoldCo under this Agreement as any Reporting Financier may reasonably request) in relation to any consent or matter requiring consideration under this Agreement.

### 8.3 Supervising Financier Information

- (a) HoldCo shall deliver to each Supervising Financier:
  - (i) as soon as the same become available but, in any event, within the time periods specified in clause 8.2 and clause 8.5 all Reporting Financier Information;
  - (ii) as soon as the same become available but, in any event, within sixty (60) days after the end of each calendar month for the first two full Financial Quarters and, thereafter, within forty five (45) days after the end of each calendar month in each Financial Quarter of each of its Financial Years (other than the first two full Financial Quarters):
    - (A) its management accounts for that calendar month;
    - (B) an abridged profit and loss statement in respect of the HoldCo Group for that calendar month including a breakdown by business unit and region and a comparison of actual performance for that that calendar month to the actual performance for the corresponding period in the preceding Financial Year; and
    - (C) any updates to the key management information included in the monthly report to be delivered to each Reporting Financier pursuant to paragraph (iii) below;
  - (iii) as soon as the information is available, but in any event, within 45 days after the end of each calendar month ending on or prior to the first two full Financial Quarters and, thereafter, within 30 days after the end of each calendar month (other than the calendar months ending on or prior to the first two full Financial Quarters) a report containing the following key management information in draft form in relation to the HoldCo Group:
    - (A) an abridged profit and loss statement for that calendar month;
    - (B) a summary of any updates in respect of the liquidity of the HoldCo Group including any developments or changes thereto, which have occurred in that calendar month;
    - (C) a report including a comparison of actual performance for that calendar month to the projected performance for that period set out in the most recent Budget; and
    - (D) Operational KPIs;
  - (iv) as soon as reasonably practicable after they are available, a copy of any minutes of meetings of the HoldCo Board and those of any Committees; and
  - (v) promptly on request, such further reasonable information regarding the financial condition, assets and operations of the HoldCo Group and/or

any member of the HoldCo Group (including any requested amplification or explanation of any information provided by HoldCo under this Agreement as any Supervising Financier may reasonably request) in relation to any consent or matter requiring consideration under this Agreement.

- (b) HoldCo shall:
  - (i) notify each Supervising Financier of any proposed Exit Event promptly upon becoming aware of such event (and prior to signing any binding documentation); and
  - (ii) as soon as reasonably practicable following material developments in relation to the proposed Exit Event but, in any event, within 45 days after the end of each calendar month provide updates to each Supervising Financier in respect of the status, timing and projected outcome of the proposed Exit Event.

#### 8.4 Requirements as to Financial Statements

- (a) Each set of annual financial statements or accounts delivered pursuant to this clause 8:
  - (i) shall be certified by a HoldCo Director as fairly presenting its financial condition and operations as at the date as at which those financial statements or accounts were drawn up; and
  - (ii) shall be prepared and audited by a reputable and internationally renowned auditing firm in accordance with the Accounting Principles.
- (b) If any Supervising Financier wishes to discuss the financial position of any member of the HoldCo Group with the auditors of that member of the HoldCo Group, such Supervising Financier may notify HoldCo, stating the questions or issues which such Supervising Financier wishes to discuss with those auditors. In such case, HoldCo must ensure that those auditors are authorised (at the expense of HoldCo):
  - (i) to discuss the financial position of the relevant member of the HoldCo Group with the Supervising Financier on request from that Supervising Financier; and
  - (ii) to disclose to the Supervising Financier any information which that Supervising Financier may reasonably request.

#### 8.5 Exit Event Information

- (a) HoldCo shall:
  - (i) notify each Reporting Financier of any proposed Exit Event promptly upon becoming aware of such event (and prior to signing any binding documentation); and

- (ii) as soon as reasonably practicable following material developments in relation to the proposed Exit Event but, in any event, within 60 days after the end of each Financial Quarter of each of its Financial Years provide updates to each Reporting Financier in respect of the status, timing and projected outcome of the proposed Exit Event,

except that there shall be no requirement to so inform if, in the opinion of HoldCo (acting reasonably), such notification might reasonably be expected to compromise the proposed Exit Event.

- (b) By no later than the first, second and third anniversary of Completion, HoldCo shall:
  - (i) provide written confirmation to each Reporting Financier that it has commenced the necessary process to give effect to an Exit Event; or
  - (ii) deliver to each Reporting Financier a report explaining why it has not commenced the necessary process to give effect to an Exit Event.

## 9. GENERAL UNDERTAKINGS

The undertakings in this clause 9 remain in force from Completion for so long as any amount is outstanding under the Transaction Documents or any Commitment is in force.

### 9.1 Authorisations

HoldCo shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) deliver certified copies to the Global Agent of,  
any Authorisation required under Applicable Law to:
  - (c) enable it to perform its obligations under the Transaction Documents;
  - (d) ensure the legality, validity, enforceability or admissibility in evidence of any Transaction Document; and
  - (e) carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

### 9.2 Compliance with Applicable Law

HoldCo shall, and shall procure that each member of the HoldCo Group shall, comply in all respects with Applicable Law if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

### 9.3 Anti-Corruption Laws

- (a) HoldCo shall not (and shall ensure that no other member of the HoldCo Group shall) directly or indirectly use the proceeds of the HoldCo Facilities or the OpCo Facilities for any purpose which would breach Anti-Corruption Law.
- (b) HoldCo shall (and shall ensure that each other member of the HoldCo Group shall):
  - (i) conduct its business in compliance with Anti-Corruption Laws; and
  - (ii) maintain and implement policies and procedures designed to promote and achieve compliance with Anti-Corruption Laws.

#### 9.4 **Taxation**

HoldCo shall pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

- (a) such payment is being contested in good faith;
- (b) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the relevant Financiers under clause 8; and
- (c) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

#### 9.5 **Merger**

HoldCo shall not enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction (unless otherwise authorised in accordance with this Agreement).

#### 9.6 **Holding Company**

HoldCo shall not trade, carry on any business, own any assets or incur any liabilities, acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) or incorporate a company except for:

- (a) the provision of administrative services (excluding treasury services) to OpCo or other members of the HoldCo Group of a type customarily provided by a Holding Company to its Subsidiaries;
- (b) ownership of shares in OpCo, debit balances and credit balances with OpCo and other credit balances in bank accounts and cash and Cash Equivalent Instruments but only if those shares, credit balances, cash and Cash Equivalent Instruments are subject to the Transaction Security;
- (c) any liabilities under the Transaction Documents to which it is a party and professional fees and administration costs in the ordinary course of business as a Holding Company.

#### 9.7 ***Pari Passu* Ranking**

HoldCo shall ensure that at all times any unsecured and unsubordinated claims of a Financier against it under the Transaction Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by Applicable Laws of general application to companies.

## 9.8 Negative Pledge

Except as permitted under clause 9.8(c):

- (a) Neither HoldCo nor the Trustee shall create any Security over any of its assets after the date of this Agreement; and
- (b) HoldCo shall not:
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any other member of the HoldCo Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- (c) Clause 9.8(a) and clause 9.8(b) do not apply to any Security or (as the case may be) Quasi Security, which is Permitted Security.

## 9.9 Loans or Credit

- (a) Except as permitted under clause 9.9(b), HoldCo shall not be a creditor in respect of any Financial Indebtedness.
- (b) Clause 9.9(a) shall not apply to the provision of additional equity or subordinated loans by HoldCo to OpCo in accordance with clause 5.3(a)(ii) of the HoldCo Common Terms Agreement.

## 9.10 No Guarantees or Indemnities

HoldCo shall not incur or allow to remain outstanding any guarantee in respect of any obligation of any person.

### 9.11 **Financial Indebtedness**

- (a) Except as permitted under clause 9.11(b), HoldCo shall not incur any Financial Indebtedness after the date of this Agreement.
- (b) Clause 9.11(a) does not apply to Financial Indebtedness which is:
  - (i) arising under or in connection with the Transaction Documents; or
  - (ii) the Priority HoldCo Financial Indebtedness.

### 9.12 **Treasury Transactions**

HoldCo shall not enter into any Treasury Transaction.

### 9.13 **Sanctions**

- (a) HoldCo shall not (and shall ensure that no other member of the HoldCo Group shall):
  - (i) lend, contribute or otherwise make available all or any part of the proceeds of the Facilities, directly or indirectly, to, or for the benefit of, any individual or entity (whether or not related to any member of the HoldCo Group) for the purpose of funding, financing or facilitating the activities or business of, other transactions with, or investments in, any Restricted Party or in any Sanctioned Country, except to the extent permitted for a person required to comply with Sanctions;
  - (ii) directly or indirectly fund all or part of any repayment or prepayment of the Facilities out of proceeds derived from any transaction with or action involving a Restricted Party; or
  - (iii) engage in any transaction, activity or conduct that would violate any Sanctions.
- (b) HoldCo shall (and shall ensure that each other member of the HoldCo Group shall):
  - (i) maintain and implement policies and procedures designed to promote and achieve compliance with Sanctions; and
  - (ii) take all reasonable and prudent steps to ensure that each of its agents, directors, employees and officers comply in all respects with Sanctions.

### 9.14 **Shari'a Events Compliance Certificate**

- (a) HoldCo shall supply to each Islamic Financing Party, with each set of financial statements delivered pursuant clause 8.1(a)(i), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with the Shari'a Events as at the date as at which those financial statements were drawn up.

- (b) Each Compliance Certificate shall be signed by either the Chief Executive Officer or the Chief Financial Officer.

## **10. EXECUTIVE MANAGEMENT TEAM**

### **10.1 Appointment by the HoldCo Board**

The HoldCo Board may appoint and remove the Chief Executive Officer, the Chief Financial Officer, the Chief Transformation Officer and Internal Auditor. HoldCo shall procure that the Chief Executive Officer, the Chief Financial Officer and the Chief Transformation Officer shall be appointed as OpCo Directors.

### **10.2 Initial Office Holders**

As at Completion, the Executive Management Team shall comprise:

- (a) Michael Davis as the Chief Executive Officer;
- (b) the person appointed to the role of Chief Financial Officer by the HoldCo Board pursuant to clause 10.1; and
- (c) the person appointed to the role of Chief Transformation Officer by the HoldCo Board pursuant to clause 10.1.

### **10.3 Responsibilities of the Executive Management Team**

The HoldCo Board shall delegate in accordance with the Delegated Authority Framework and subject to this Agreement, the Articles of Association of HoldCo and Applicable Law, to the Chief Executive Officer together with the Chief Financial Officer, the Chief Transformation Officer and the Internal Auditor, the power to manage and administer the day-to-day activities of the HoldCo Group under the overall direction and supervision of the HoldCo Board.

### **10.4 Remuneration of the Executive Management Team**

The Remuneration Committee shall determine the remuneration of the Executive Management Team.

### **10.5 Management Incentive Plan**

- (a) Within sixty (60) Business Days of Completion, the Remuneration Committee shall, in consultation with internationally recognised compensation consultants, submit to the HoldCo Board a draft Management Incentive Plan.
- (b) The HoldCo Board shall meet to discuss, amend (as required) and approve the Management Incentive Plan no later than twenty (20) Business Days after the draft Management Incentive Plan is submitted in accordance with clause 10.5(a) (such approval to be given by the HoldCo Board acting by way of a Super Majority Resolution).
- (c) The Management Incentive Plan as approved in accordance with clause 10.5(a) shall be adopted by the HoldCo Group as its Management Incentive Plan, which

shall be implemented by the Remuneration Committee in consultation with the Chief Executive Officer.

## 11. MANDATORY OFFER

- (a) If a single Financier (the "**Purchaser**") together with its Affiliates, Related Funds and persons acting in concert with such Purchaser acquires, or makes an offer to any other Financier(s) to acquire, more than fifty percent (50%) of the Total Commitments (including for the avoidance of doubt pursuant to a sub-participation agreement or similar arrangement) (the "**Control Trigger**"), the Purchaser must (subject to clause 11(g)) make an offer to all other Financiers under the HoldCo Facilities to acquire the remaining Total Commitments in full within thirty (30) Business Days of the date of the Control Trigger or as soon as reasonably practicable thereafter if there is a requirement to appoint an Independent Expert in accordance with clause 11(c) (a "**Mandatory Offer**").
- (b) The consideration payable under the Mandatory Offer shall be:
  - (i) an amount equal to the highest consideration offered by the Purchaser to any Financier during the 12 month period ending on the date of the Control Trigger (the "**Best Prior Offer**"); and
  - (ii) in the same form and subject to the same payment terms as the Best Prior Offer.
- (c) If it is not possible to establish the Best Prior Offer for any reason (including because the Purchaser made no previous offer to acquire Commitments and the Control Trigger occurred only because it began acting in concert with one or more Financiers), the consideration payable under the Mandatory Offer shall be an amount in cash determined by an independent investment bank or accounting firm, in either case, of international repute, appointed in accordance with this clause 11(c) the "**Independent Expert**" to be the Fair Value of the relevant Commitments in accordance with the following procedure:
  - (i) the Purchaser shall, as soon as reasonably practicable after the Control Trigger, propose an independent investment bank or accounting firm, in either case, of international repute, to be the Independent Expert and provided that such bank or accounting firm:
    - (A) confirms in writing to HoldCo its willingness to be the Independent Expert and that it has no conflict of interest; and
    - (B) is acceptable to a majority by value of the Financiers (excluding for these purposes the Commitments held by the Purchaser);it shall be appointed as the Independent Expert;
  - (ii) the Purchaser shall request that the Independent Expert determines the Fair Value of the relevant Commitments as soon as reasonably practicable on the following basis:

- (A) that the determination be addressed to the Purchaser, HoldCo and the Global Agent, and may be disclosed to the Financiers on a hold harmless basis;
  - (B) that the relevant Commitments are being sold on the basis of arms' length sale between a willing buyer and a willing seller;
  - (C) on the basis of the historical, current and forecast financial performance of the HoldCo Group;
  - (D) not attributing any discount or premium for control of the HoldCo Group;
  - (E) on the assumption that the HoldCo Group will continue to carry on business as a going concern;
  - (F) the sale occurs on the date that the Control Trigger occurred;
  - (G) the relevant Commitments are sold free of all encumbrances;
  - (H) any other factors that the Independent Expert reasonably believes should be taken into account; and
  - (I) the application in all other respects of the Accounting Principles.
- (iii) the Fair Value of the relevant Commitments shall be final and binding on the parties (save in the case of fraud or manifest error in which case a different Independent Expert shall be appointed in accordance with this clause 11 to make the determination);
  - (iv) each party shall procure that the Independent Expert has such access to the accounting records and other relevant information and materials relating to the HoldCo Group and access to the Executive Management Team as the Independent Expert may reasonably request for the purposes of the determination of the Fair Value of the relevant Commitments;
  - (v) the Independent Expert shall act as expert and not as arbitrator; and
  - (vi) the fees of the Independent Expert shall be paid by the Purchaser.
- (d) The consideration payable under the Mandatory Offer must be paid promptly by the Purchaser following acceptance of the Mandatory Offer.
  - (e) No Financier shall be required to accept a Mandatory Offer.
  - (f) Nothing in this Agreement shall prevent a Financier from making any offers to acquire all or any part of the HoldCo Group, financing any such offer or accepting any appointment or role in connection with an Exit Event.
  - (g) Notwithstanding clause 11(a), if a Financier (the "**Acquiring Financier**") together with its Affiliates, Related Funds and persons acting in concert with

such Acquiring Financier acquires (whether directly or indirectly) more than fifty percent (50%) of the Total Commitments in aggregate as a result of a merger, acquisition or consolidation with another Financier:

- (i) the Acquiring Financier shall have a period of ninety (90) calendar days from completion of such merger, acquisition or consolidation to sell, transfer or novate (or procure the sale, transfer or novation of) such percentage of the Commitments that it (together with its Affiliates, Related Funds and persons acting in concert with it) holds as is necessary to reduce its holding of Commitments to fifty percent (50%) or less of the Total Commitments; and
- (ii) the Acquiring Financier shall only be required to make a Mandatory Offer in accordance with clause 11(a) if it (together with its Affiliates, Related Funds and persons acting in concert with it) continues to hold more than fifty percent (50%) of the Total Commitments in aggregate following the expiry of the period set out in clause 11(g)(i).

## 12. EXIT

### 12.1 Form of Exit

Any Exit Event shall occur at OpCo level other than a NMC HoldCo Refinancing, and any matters related to any such Exit Event shall be for the HoldCo Board, subject to clause 6.2 to clause 6.4 (inclusive).

### 12.2 Obligations on an Exit

- (a) Each party to this Agreement acknowledges and agrees that once an Exit Event has been approved in accordance with clause 6.2 to clause 6.4 (inclusive) (and for the avoidance of doubt, nothing in this Agreement requires the Majority Reporting Financiers, the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers (as applicable) to approve any Exit Event) and has been commenced, their intention is to facilitate an Exit Event which seeks to maximise the Exit Event proceeds realised by the Financiers.
- (b) Each party to this Agreement shall give such co-operation and assistance and shall exercise all such rights and powers as it or he may have in relation to HoldCo as may be reasonably required by HoldCo so as to ensure that the Exit Event is achieved in compliance with Applicable Law.

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

## 13. TERMINATION

13.1 Subject to clause 13.2, this Agreement (other than clause 14 to clause 26 (inclusive)) shall terminate:

- (a) in respect of the rights and obligations of all parties, upon completion of an Exit Event; and
  - (b) in respect of the rights and obligations of a Financier, upon that Financier not holding any amount of the Commitments.
- 13.2 Clause 13.1 shall not affect the rights or obligations of any party which have accrued prior to termination.

## 14. CONFIDENTIAL INFORMATION

### 14.1 Confidentiality

Each party agrees to keep all Confidential Information confidential and not to disclose it to any person, save to the extent permitted by this clause 14, and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### 14.2 Disclosure of Confidential Information

- (a) The restrictions in clause 14.1 shall not apply to the disclosure of Confidential Information:
  - (i) with the prior written consent of the other parties;
  - (ii) to any person to whom information is required to be disclosed:
    - (A) by any court of competent jurisdiction of any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to Applicable Law; and
    - (B) in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
  - (iii) for the purposes of an Exit Event, to bona fide potential purchasers or to their professional advisers or finance providers provided that such persons need to know the information for the purposes of considering, evaluating, advising on or furthering the potential purchase and provided that the disclosure is limited to information regarding the Business and assets of the HoldCo Group; and
  - (iv) by a Financier:
    - (A) to any Non-Executive Directors appointed by it; and
    - (B) as otherwise contemplated by clause 36 of the HoldCo Common Terms Agreement.

## **15. ANNOUNCEMENTS**

- 15.1 Subject to clause 15.2, no announcement, communication or circular in connection with the existence or the subject matter of this Agreement shall be made or issued without the prior written approval of a majority by value of the Supervising Financiers.
- 15.2 If a party is required by Applicable Law to make an announcement, communication or circular in connection with the existence or the subject matter of this Agreement or to disclose any Confidential Information, such party shall, where and to the extent not prohibited by such law or regulation, only make such announcement or disclosure after consultation with the Supervising Financiers and after taking into account the Supervising Financier's reasonable requirements as to its timing, content and manner of making. If another party is unable to consult with the Supervising Financiers before the announcement, communication or circular or disclosure is made, it shall inform the Supervising Financiers of the circumstances, timing, content and manner of making of the announcement or disclosure immediately after such announcement or disclosure is made.

## **16. SUPREMACY OF THIS AGREEMENT**

- 16.1 If there is any conflict or inconsistency between the provisions of this Agreement and the Articles of Association of HoldCo, this Agreement shall prevail.
- 16.2 The Trustee shall exercise all voting and other rights and powers available to it so as to give effect to the provisions of this Agreement and, if necessary, to procure (so far as they are able to do so) any required amendment to the Articles of Association of HoldCo.
- 16.3 Nothing in this Agreement shall be deemed to constitute an amendment of the Articles of Association of HoldCo.

## **17. ENTIRE AGREEMENT AND NON-RELIANCE**

- 17.1 This agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement to the exclusion of any terms implied by law to the extent that they may be excluded by contract and supersedes any previous agreements between the parties in relation to the matter dealt with in this Agreement.
- 17.2 Each party acknowledges and agrees that it has not relied on or been induced to enter into this Agreement by a representation, warranty or undertaking (whether contractual or otherwise) that is not expressly set out in this Agreement.
- 17.3 No party is liable to another party (in equity, contract or tort (including negligence), under the Misrepresentation Act 1967 of the United Kingdom or in any other way) for a representation, warranty or undertaking that is not set out expressly in this Agreement.
- 17.4 Nothing in this clause 17 shall have the effect of restricting or limiting any liability arising as a result of any fraud, wilful misrepresentation or wilful concealment.

## 18. COSTS

OpCo shall pay all costs of the holding and governance structure pursuant to this Agreement (regardless of whether any such costs are set out in the Budget), and undertakes not to enter into any agreement which would restrict its ability to make such payments.

## 19. GENERAL

### 19.1 Amends, waivers and consents

- (a) Subject to clause 19.1(b) and (c):
  - (i) any term of this Agreement may be amended or waived only with the consent in writing of the Majority Reporting Financiers and HoldCo, and any such amendment or waiver will be binding on all parties; and
  - (ii) the parties agree that equivalent amendments and waivers as are agreed under the HoldCo Common Terms Agreement and the OpCo Common Terms Agreement shall be delivered under this Agreement.
- (b) If the effect of any such amendment or waiver would be to amend or remove any rights of the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers under this Agreement, such amendment or waiver shall require the consent in writing of the Increased Majority Reporting Financiers or the Super Majority Reporting Financiers as applicable.
- (c) Clause 4.4 of this Agreement may only be amended with the consent in writing of all Reporting Financiers and HoldCo and any such amendment or waiver will be binding on all parties.

### 19.2 Waiver

The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not impair or constitute a waiver of the right or remedy or an impairment of or a waiver of any other rights or remedies. No single or partial exercise of any right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

### 19.3 Cumulative Rights

The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### 19.4 No Partnership

Nothing in this Agreement and no action taken by a party under this Agreement shall be deemed to constitute a partnership between any of the parties or constitute any party the agent of any other party for any purpose.

### 19.5 Severance

- (a) If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention.
- (b) To the extent it is not possible to delete or modify the provision, in whole or in part, under clause 19.5(a), then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under clause 19.5(a), not be affected.

#### 19.6 **Damages Not an Adequate Remedy**

Each party acknowledges and agrees that damages alone may not be an adequate remedy for a breach of this Agreement and that each party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Agreement.

#### 19.7 **Third Party Rights**

No person who is not a party to this Agreement has any right under the Contracts (Rights of Third Parties) Act 1999 of the United Kingdom to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act, save that any person that enters into a Deed of Adherence in accordance with this Agreement may enforce and rely on this Agreement to the same extent as if it were a party to it.

#### 19.8 **Unlawful Fetters**

Neither HoldCo or OpCo shall be bound by any provision of this Agreement to the extent that it would constitute an unlawful fetter on any of its statutory powers, but such provision shall remain valid and binding as regards the Trustee.

#### 19.9 **Further Assurances**

Each party agrees to take all such action or procure that all such action is taken as is reasonable in order to implement the terms of this Agreement or any transaction, matter or thing contemplated by this Agreement.

#### 20. **ASSIGNMENT**

- (a) This Agreement shall be binding on and enure for the benefit of each party's successors in title. No party shall, subject to clause 20(b) without the prior written consent of the other parties, assign, transfer, grant any security interest over or create any trust in respect of, or purport to assign, transfer, grant any security interest over or create any trust in respect of, any of its rights or obligations under this Agreement.
- (b) A Financier may only assign any of its rights or transfer by novation any of its rights and obligations under this Agreement pursuant to an assignment or transfer permitted under the HoldCo Common Terms Agreement (a "**Relevant**

**Transfer**"), and the completion of any such Relevant Transfer shall be made in accordance with the following terms:

- (i) the terms of clause 20 of the HoldCo Common Terms Agreement; and
- (ii) the assignee or transferee shall (if it is not already a party to this Agreement) enter into a Deed of Adherence.

## 21. NOTICES

21.1 A notice under or in connection with this Agreement (a "**Notice**") shall be:

- (a) in writing;
- (b) in the English language; and
- (c) delivered personally or sent by pre-paid recorded delivery or courier using an internationally recognised courier company to the party due to receive the Notice to the address set out in clause 21.3

A party may change its notice details by giving not less than five (5) Business Days written notice of the change to the other parties received before the Notice was despatched.

21.2 Unless there is evidence that it was received earlier, a Notice is deemed given:

- (a) if delivered personally or sent by courier, when left at the address referred to in clause 21.3; and
- (b) if sent by pre-paid recorded delivery, at 9.30am on the second Business Day after posting it or, if earlier, at the time recorded by the delivery service.

Any Notice given outside Working Hours in the place to which it is addressed shall be deemed to have been given until the start of the next period of Working Hours in such place.

21.3 [*Notice details to be inserted*]

In respect of the Trustee:

Walkers Fiduciary Limited

190 Elgin Avenue

George Town

Grand Cayman KY1-9008

Cayman Islands

Telephone: +1 345 814 7600

E-mail: [fiduciary@walkersglobal.com](mailto:fiduciary@walkersglobal.com)

Attention: The Directors

## 22. GOVERNING LAW

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

## 23. ENFORCEMENT

### 23.1 Jurisdiction

- (a) The ADGM Courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity or any non-contractual obligation arising out of or in connection with this Agreement (a "**Dispute**")).
- (b) The parties agree that the ADGM Courts are the most appropriate and convenient courts to settle Disputes and accordingly they will not argue to the contrary.
- (c) Notwithstanding clause 23.1(a) and clause 23.1(b), any party may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the parties may take concurrent proceedings in any number of jurisdictions.

### 23.2 Waiver of immunity

- (a) HoldCo, OpCo and each Financier irrevocably and unconditionally:
  - (i) agree not to claim any immunity from suits or proceedings brought by a party against it in relation to a Transaction Document and to ensure that no such claim is made on its behalf;
  - (ii) consents generally to the giving of any relief or the issue of any process in connection with those proceedings including the making or enforcement of any order or judgement which may be made or given in any proceedings or execution against any property or assets whatsoever (irrespective of its use or intended use); and
  - (iii) waives all rights of immunity in respect of it or its assets.
- (b) Each Financier acknowledges that it is a commercial entity separate from (and with an identity separate from) its direct or indirect shareholders, is capable of suing and being sued and is entering into the transactions contemplated by the Transaction Documents as private-law commercial transactions that shall not be deemed as being entered into in the exercise of any public function.

## 24. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement. This Agreement shall not come into effect until each party has executed at least one counterpart.

## 25. LIMITED RECOURSE

- 25.1 The parties agree that, notwithstanding any other provision of this Agreement, the parties shall not have recourse to any assets of the Trustee (other than the assets subject to the Trust) in respect of any of the obligations under the Transaction Documents and the parties hereby acknowledge and agree that they will have no further claim against, or recourse to, any assets of the Trustee (other than the assets subject to the Trust) in respect of such obligations and no debt shall be owed to the parties by the Trustee for any sum and the parties (and anyone acting on their behalf) shall not be entitled to take any steps against the Trustee to recover any sum and following application of the proceeds of the assets subject to the Trust all claims (if any) against the Trustee will be extinguished and thereafter shall not revive. In addition, where compliance with the conditions imposed on the Trustee under this Agreement would require the expenditure by the Trustee of its own funds, the obligations of the Trustee shall be limited to the extent that it is put in funds to meet such expenditure.
- 25.2 The parties agree that they shall not take any action to commence any case, proceedings, proposal or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, arrangement in the name of insolvency proceedings, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to the Trustee or the debts (if any) of the Trustee.
- 25.3 The parties acknowledge and agree that the Trustees' obligations are corporate obligations of the Trustee and that the parties shall not have any recourse against any of the directors, officers or employees of the Trustee for any claims, losses, damages, liabilities indemnities or other obligations whatsoever in connection with any transactions contemplated by this Agreement or the Transaction Documents, other than in respect of dishonesty or wilful misconduct.

## 26. EXCULPATION

- 26.1 Notwithstanding any other provisions of this Agreement, the Trustee shall not be liable for any losses whatsoever to the parties at any time from any cause whatsoever unless caused by:
- (a) the Trustee's own wilful neglect or default or that of any of its directors, officers, employees or agents, as the case may be; or
  - (b) any failure by the Trustee to comply with its express obligations hereunder.
- 26.2 Notwithstanding the provisions of clause 26.1, the Trustee shall not be liable for acting upon any consent or instructions given by any person acting or purporting to act on behalf of the parties notwithstanding that such person does not have authority to give

such consent, unless at the time such consent was given or purported to be given, the Trustee has actual knowledge that such person had no authority to give such consent.

**IN WITNESS** of which this Agreement has been executed and delivered as a deed on the date stated at the beginning of this Agreement.

**SCHEDULE 1  
THE FINANCIERS**

<b>Name</b>	<b>Address</b>	<b>Percentage holding of Commitments (%) as at Completion</b>
[●]	[●]	[●]
[●]	[●]	[●]
[●]	[●]	[●]

**SCHEDULE 2  
DEED OF ADHERENCE**

**THIS DEED OF ADHERENCE** is made on [●]

BY [●], a company incorporated in [●] (registered number [●]), whose registered office is at [●] (the "**New Financier**").

**INTRODUCTION:**

- (A) The New Financier has agreed to acquire [●] of [●] holding of the Commitments.
- (B) This Deed is made in compliance with clause 20(b)(ii) of the governance agreement dated [●] between the Trustee, the Financiers, HoldCo and OpCo (the "**Governance Agreement**") under which it is a condition of the transaction referred to in (A) above that the New Financier executes a deed of adherence to the Governance Agreement prior to such acquisition.
- (C) Words and expressions defined in the Governance Agreement shall have the same meaning when used in this Deed.

**IT IS AGREED** as follows:

1. The New Financier confirms that it has been given and has read a copy of the Governance Agreement and covenants with and for the benefit of each person named in the schedule to this Deed and for the benefit of any other person who becomes a party to the Governance Agreement after the date of this Deed to adhere to and be bound by the provisions of the Governance Agreement, and to perform the obligations imposed by the Governance Agreement which are to be performed on or after the date of this Deed, in all respects as if the New Financier were an original party to the Governance Agreement and were named in it as a Financier with the intent that the New Financier shall also be entitled to the benefit of the Governance Agreement as if it had been an original party to the Governance Agreement and was named in it as a Financier.
2. The details of the New Financier for the purposes of clause 21 of the Governance Agreement is set out below:  
  
[●]
3. The terms of clause 22 and clause 23 shall apply to this Deed as if incorporated in full herein.

**EXECUTED** and **DELIVERED** as a **DEED** on the date set out above.

[Insert parties including those who have executed earlier Deeds of Adherence.]

**EXECUTED** as a **DEED** by [•] )  
acting by [•], a director ) \_\_\_\_\_  
in the presence of: ) Authorised signatory

Witness's Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**SCHEDULE 3**  
**TERMS OF REFERENCE FOR THE NOMINATION COMMITTEE**

**1. MEMBERSHIP**

1.1 The Nomination Committee shall comprise of at least:

1.1.1 two 10% Directors from different Financiers; and

1.1.2 the Minority Director,

and Nomination Committee members shall be appointed by the HoldCo Board. Appointments to the Nomination Committee shall be for a period of up to three (3) years provided the member remains a Non-Executive Director.

1.2 Subject to paragraph 1.1 of this Schedule 3, if any member of the Nomination Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.

1.3 The chair of the Nomination Committee shall be the Chair, if they are a member of the Nomination Committee, or such member of the Nomination Committee as the HoldCo Board shall nominate.

1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the Chair in facilitating board discussion and decision-making, the Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

**2. QUORUM**

The quorum for meetings of the Nomination Committee is two members of the Nomination Committee.

**3. ATTENDANCE AT MEETINGS**

Persons, including the HoldCo Directors, may only attend meetings of the Nomination Committee by invitation.

**4. MEETINGS**

4.1 The Nomination Committee shall meet as often as its roles and responsibilities reasonably require.

4.2 Any member of the Nomination Committee may request a meeting of the Nomination Committee if he or she considers it necessary, to be arranged by the chair of the Nomination Committee.

4.3 At least ten (10) Business Days' notice of each meeting of the Nomination Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.

4.4 The Nomination Committee shall act by majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

## 5. **AUTHORITY**

5.1 The Nomination Committee is authorised by the HoldCo Board:

5.1.1 to investigate any activity within its terms of reference;

5.1.2 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and

5.1.3 to secure the attendance of other persons at its meetings if it considers this necessary.

## 6. **DUTIES AND RESPONSIBILITIES**

6.1 The Nomination Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.

6.2 The duties of the Nomination Committee shall be to:

6.2.1 lead the process for HoldCo Board and OpCo Board appointments and make recommendations to the HoldCo Board;

6.2.2 before any appointment is made by the HoldCo Board:

(a) consider any conflicts, or possible conflicts, with the interests of the HoldCo Group, as disclosed by candidates;

(b) consider any significant commitments that the candidates may have, including the indication of the time involved with such commitments; and

(c) evaluate the balance of skills, experience, independence, knowledge and diversity on the HoldCo Board, and the future challenges affecting the HoldCo Group.

In identifying suitable candidates the committee shall consider candidates on merit and against objective criteria and with due regard for the benefits of diversity on the HoldCo Board, including sector experience and professional background, taking care that appointees have enough time available to devote to the position;

6.2.3 produce the Minority Director Short List in accordance with clauses 4.7(b) or 4.7(d) (as applicable) applying the criteria set out in paragraph 6.2.2 of this Schedule 3;

6.2.4 arrange for HoldCo Directors and OpCo Directors to receive a formal letter of appointment to the HoldCo Board or OpCo Board (as applicable), on their appointment, setting out the expected time commitment, committee service

expected of them and their involvement outside HoldCo Board or OpCo Board meetings (as applicable);

- 6.2.5 review the structure, size and composition of the OpCo Board and the boards of the OpCo Subsidiaries (including skills, experience, independence, knowledge and diversity) and make recommendations to the HoldCo Board with regard to any changes;
  - 6.2.6 give full consideration to succession planning for the OpCo Directors, the directors of the OpCo Subsidiaries and members of senior management of the HoldCo Group in the course of its work, taking into account the challenges and opportunities facing the HoldCo Group, and the skills, knowledge, diversity, independence and expertise needed on the OpCo Board and the boards of the OpCo Subsidiaries in the future;
  - 6.2.7 keep up to date and fully informed about the HoldCo Group's strategic priorities and the main trends and factors affecting the long-term success and future viability of the HoldCo Group; and
  - 6.2.8 actively monitor the HoldCo Group's policy on diversity, including gender, sector experience and professional background and any measurable objectives that it has set in implementing the policy, and progress on achieving the objectives.
- 6.3 The Nomination Committee shall make recommendations to the HoldCo Board with regard to:
- 6.3.1 plans for succession for the Executive Management Team and in particular the key roles of Chief Executive Officer and Chief Financial Officer;
  - 6.3.2 the appointment of the HoldCo Directors and OpCo Directors; and
  - 6.3.3 membership of the Audit Committee and Remuneration Committee, and any other HoldCo Board committees as appropriate, in consultation with the Chair.

## 7. **REPORTING PROCEDURES**

- 7.1 The Nomination Committee's chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.
- 7.2 The HoldCo Group secretariat (under the direction of the chair of the Nomination Committee) shall:
  - 7.2.1 minute the proceedings and resolutions of all meetings of the Nomination Committee, including recording the names of those present and in attendance;
  - 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and
  - 7.2.3 shall promptly circulate minutes of Nomination Committee meetings to all members of the Nomination Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.

7.3 The Nomination Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.

## 8. **OTHER MATTERS**

8.1 The Nomination Committee shall:

8.1.1 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;

8.1.2 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;

8.1.3 give due consideration to laws, regulations and any other applicable rules, as appropriate; and

8.1.4 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval.

**SCHEDULE 4**  
**TERMS OF REFERENCE FOR THE AUDIT COMMITTEE**

**1. MEMBERSHIP**

1.1 The Audit Committee shall comprise of at least:

1.1.1 two 10% Directors from different Financiers; and

1.1.2 the Minority Director,

and Audit Committee members shall be appointed by the HoldCo Board. At least one member of the Audit Committee shall have recent and relevant financial experience. Appointments to the Audit Committee shall be for a period of up to three (3) years, provided the member remains a Non-Executive Director.

1.2 Subject to paragraph 1.1 of this Schedule 4, if any member of the Audit Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.

1.3 The chair of the Audit Committee shall be the Chair, if they are a member of the Audit Committee, or such member of the Audit Committee as the HoldCo Board shall nominate.

1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the Chair in facilitating board discussion and decision-making, the Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

**2. QUORUM**

The quorum for meetings of the Audit Committee is two members of the Audit Committee.

**3. ATTENDANCE AT MEETINGS**

3.1 Persons, including the HoldCo Directors, may only attend meetings of the Audit Committee by invitation.

3.2 At least once a year, the Audit Committee must meet the HoldCo Group's external auditors and Internal Auditor without any of the Executive Management Team present.

3.3 The external auditors and Internal Auditor will be invited to attend meetings of the Audit Committee on a regular basis.

**4. MEETINGS**

4.1 The Audit Committee shall meet as often as its roles and responsibilities reasonably require and at least twice in each Financial Year to correspond with the HoldCo Group's annual audit.

- 4.2 Any member of the Audit Committee, the Chief Financial Officer, the Internal Auditor or the external auditors may request a meeting of the Audit Committee if he or she considers it necessary, to be arranged by the chair of the Audit Committee.
- 4.3 At least ten (10) Business Days' notice of each meeting of the Audit Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.
- 4.4 The Audit Committee shall act by majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

## 5. **AUTHORITY**

- 5.1 The Audit Committee is authorised by the HoldCo Board:
- 5.1.1 to investigate any activity within its terms of reference;
- 5.1.2 to seek any information it requires from any employee of the HoldCo Group and to call any employee to be questioned at a meeting of the Audit Committee as and when required (and all employees shall be directed to co-operate with any request made by the Audit Committee);
- 5.1.3 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and
- 5.1.4 to secure the attendance of other persons at its meetings if it considers this necessary.

## 6. **DUTIES AND RESPONSIBILITIES**

- 6.1 The Audit Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.
- 6.2 The duties of the Audit Committee shall be to:

### **External Audit**

- 6.2.1 consider and make recommendations to the HoldCo Board in relation to the appointment and reappointment of the external auditors and any question of resignation or dismissal of the external auditors and to approve the external auditors' remuneration and terms of engagement. The Audit Committee shall oversee the selection process for new auditors and, if an auditor resigns, the Audit Committee shall investigate the circumstances leading to such resignation and determine whether any action is required;
- 6.2.2 discuss with the external auditors before the audit starts the nature and scope of the audit, to ensure co-ordination where more than one firm of auditors is involved and to approve the terms of engagement of the external auditors whether for audit or non-audit services;

- 6.2.3 keep under review the scope and results of the audit, the audit fee and the appropriateness of the fee for permitting a thorough audit to be undertaken, taking into consideration relevant professional and regulatory requirements;
- 6.2.4 keep under review (and assess annually) the independence and objectivity of the external auditors taking into account relevant professional and regulatory requirements and the relationship with the external auditors as a whole, including the provision of any non-audit services;
- 6.2.5 meet regularly with the external auditors, including once at the planning stage before the audit and once after the audit at the reporting stage;
- 6.2.6 review the findings of the audit with the external auditors. This shall include, but not be limited to, the following:
  - (a) a discussion of any major issues which arose during the audit;
  - (b) any accounting and audit judgements;
  - (c) level of errors identified during the audit; and
  - (d) the effectiveness of the audit.
- 6.2.7 review:
  - (a) any representation letters requested by the external auditors before they are signed by management; and
  - (b) the external auditor's management letter and response to the external auditor's findings and recommendations;
- 6.2.8 discuss problems and reservations arising from audits and any matters the external auditors may wish to discuss (in the absence of the Executive Management Team, where necessary).

### **Financial statements**

- 6.2.9 the Audit Committee shall review and challenge where necessary:
  - (a) the consistency of, and any changes to, accounting policies both on a year-on-year basis and across the HoldCo Group;
  - (b) the methods used to account for significant or unusual transactions where different approaches are possible;
  - (c) whether the HoldCo Group has followed appropriate accounting standards and made appropriate estimates and judgements, taking into account the views of the external auditors; and
  - (d) the clarity of disclosure in the HoldCo Group's financial reports and the context in which statements are made;

## **Internal Audit and Risk Management**

- 6.2.10 keep under review the adequacy and effectiveness of the HoldCo Group's financial reporting and internal control policies and procedures and risk management systems and to review any statement on internal control and/or risk management to be included in the HoldCo Directors' and OpCo Directors' reports before submission to the HoldCo Board for its approval;
- 6.2.11 monitor, review and approve the internal audit programme in the context of the HoldCo Group's overall risk management system, ensure co-ordination between the Internal Auditor and external auditors and ensure that the internal audit function is adequately resourced, has appropriate standing within the HoldCo Group and is free from management or other restriction;
- 6.2.12 meet the Internal Auditor at least quarterly, without management being present, to discuss their remit and any issues arising from the internal audits carried out. In addition the Internal Auditor shall be given the right of direct access to the HoldCo Board and to the Audit Committee.

## **Whistleblowing, compliance and fraud**

- 6.2.13 review the HoldCo Group's procedures by which employees and contractors may, in confidence, raise concerns about improprieties in matters of financial reporting or other matters. The Audit Committee shall ensure that these arrangements allow proportionate and independent investigation of such matters and appropriate follow-up action;
- 6.2.14 review the HoldCo Group's procedures for detecting fraud;
- 6.2.15 review the HoldCo Group's systems and controls for the prevention of bribery and receive reports on non-compliance;

## **Recommendations, reports and actions**

- 6.2.16 consider the major findings of internal investigations and management's response;
- 6.2.17 make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed;
- 6.2.18 oversee any investigation of activities which are within its terms of reference;
- 6.2.19 at least once a year, review its own performance, constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary for HoldCo Board approval; and
- 6.2.20 consider any other matters within its responsibility as referred to the Audit Committee by the HoldCo Board.

## 7. **REPORTING PROCEDURES**

- 7.1 The Audit Committee's chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.
- 7.2 The HoldCo Group secretariat (under the direction of the chair of the Audit Committee) shall:
- 7.2.1 minute the proceedings and resolutions of all meetings of the Audit Committee, including recording the names of those present and in attendance;
  - 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and
  - 7.2.3 shall promptly circulate minutes of Audit Committee meetings to all members of the Audit Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.
- 7.3 The Audit Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.

## 8. **OTHER MATTERS**

The Audit Committee shall:

- 8.1.1 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
- 8.1.2 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
- 8.1.3 give due consideration to laws, regulations and any other applicable rules, as appropriate; and
- 8.1.4 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval.

**SCHEDULE 5**  
**TERMS OF REFERENCE FOR THE REMUNERATION COMMITTEE**

**1. MEMBERSHIP**

1.1 The Remuneration Committee shall comprise of at least:

1.1.1 two 10% Directors from different Financiers; and

1.1.2 the Minority Director,

and Remuneration Committee members shall be appointed by the HoldCo Board. Appointments to the Remuneration Committee shall be for a period of up to three (3) years provided the member remains a Non-Executive Director.

1.2 Subject to paragraph 1.1 of this Schedule 5, if any member of the Remuneration Committee is unable to act for any reason, the HoldCo Board may appoint any other HoldCo Director to act as his or her alternate.

1.3 The chair of the Remuneration Committee shall be the Chair, if they are a member of the Remuneration Committee, or such member of the Remuneration Committee as the HoldCo Board shall nominate.

1.4 Other than as set out in this Agreement and the Articles of Association of HoldCo and without prejudice to the customary role of the Chair in facilitating board discussion and decision-making, the Chair shall have no rights and powers of decision-making in respect of the HoldCo Group over and above those of a HoldCo Director.

**2. QUORUM**

The quorum for meetings of the Remuneration Committee is two members of the Remuneration Committee.

**3. ATTENDANCE AT MEETINGS**

3.1 Persons, including the HoldCo Directors, may only attend meetings of the Remuneration Committee by invitation.

3.2 The Chair shall be invited by the Remuneration Committee to attend meetings to discuss the performance of the members of Executive Management Team and to make proposals as necessary. The Remuneration Committee may consult the other Non-Executive Directors in its evaluation of the Executive Management Team.

3.3 No HoldCo Director or OpCo Director or manager shall be present at any meeting of the Remuneration Committee when his or her own remuneration is being discussed. No HoldCo Director or OpCo Director shall be involved in any decision as to his or her own remuneration.

#### 4. **MEETINGS**

- 4.1 The Remuneration Committee shall meet as often as its roles and responsibilities reasonably require and at least once in each Financial Year to correspond with the HoldCo Group's annual salary review programme.
- 4.2 Any member of the Remuneration Committee may request a meeting of the Remuneration Committee if he or she considers it necessary, to be arranged by the chair of the Remuneration Committee.
- 4.3 At least ten (10) Business Days' notice of each meeting of the Remuneration Committee shall be given to all HoldCo Directors or such shorter period as all HoldCo Directors agree in writing.
- 4.4 The Remuneration Committee shall act by majority decision, and any such decision shall not take effect until ratified by a Simple Majority Resolution of the HoldCo Board.

#### 5. **AUTHORITY**

- 5.1 The Remuneration Committee is authorised by the HoldCo Board:
  - 5.1.1 to investigate any activity within its terms of reference;
  - 5.1.2 to obtain, at the HoldCo Group's expense, such legal or other independent professional advice as it deems necessary to fulfil its responsibilities; and
  - 5.1.3 to secure the attendance of other persons at its meetings if it considers this necessary.

#### 6. **DUTIES AND RESPONSIBILITIES**

- 6.1 The Remuneration Committee should carry out the duties set out below for the HoldCo Group, acting at all times in the performance of their duties and roles and exercising their discretions and rights reasonably and in good faith.
- 6.2 The duties of the Remuneration Committee shall be to:
  - 6.2.1 make recommendations to the HoldCo Board regarding the HoldCo Group's policy relating to the remuneration of the Executive Management Team and its cost;
  - 6.2.2 make recommendations to the HoldCo Board regarding individual remuneration packages for each member of the Executive Management Team, including pension rights and any compensation payments, including approving the following in respect of each member of the Executive Management Team:
    - (a) a service contract;
    - (b) any benefit, pension and/or incentive scheme entitlement;
    - (c) any other bonuses, fees and expenses; and

- (d) any compensation payable (including pension contributions) on the termination of a service contract;
- 6.2.3 prepare a draft Management Incentive Plan, in consultation with internationally recognised compensation consultants, and submit such plan to the HoldCo Board for consideration;
- 6.2.4 implement any Management Incentive Plan approved by the HoldCo Board pursuant to clause 10.5(b), in consultation with internationally recognised compensation consultants;
- 6.2.5 determine, in conjunction with the HoldCo Group's advisers, whether performance targets of the Executive Management Team have been satisfied;
- 6.2.6 make recommendations to the HoldCo Board regarding the HoldCo Group's annual salary review programme to ensure, amongst other matters, alignment with HoldCo Group remuneration policies;
- 6.2.7 review the ongoing appropriateness and relevance of the remuneration policies to ensure that reward policies across the HoldCo Group work:
  - (a) to ensure, where possible, that a significant proportion of the remuneration of each member of the Executive Management Team is structured to link remuneration to HoldCo Group and individual performance;
  - (b) to ensure that any performance-related elements of any remuneration structure are stretching and rigorously applied; and
  - (c) enable the use of discretion to override formulaic outcomes.
- 6.2.8 ensure that the Management Incentive Plan and related policies enable the use of discretion to override formulaic outcomes and include provisions that enable the HoldCo Group to recover and/or withhold sums and specify the circumstances in which it would be appropriate to do so;
- 6.2.9 agree the policy for authorising claims for expenses from the HoldCo Directors and OpCo Directors;
- 6.2.10 approve any compensation packages or arrangements following the severance of any member of the Executive Management Team's contract, to ensure that it falls within relevant remuneration policies and that the relevant member of the Executive Management Team is treated fairly but that failure is not rewarded and the duty of such member of the Executive Management Team to mitigate any loss suffered by him/her as a result of the severance is fully recognised; and
- 6.2.11 consider any other matters within its responsibility as referred to the Remuneration Committee by the HoldCo Board.

## 7. **REPORTING PROCEDURES**

- 7.1 The Remuneration Committee's chair shall report formally to the HoldCo Board on its proceedings after each meeting on all matters within its duties and responsibilities.
- 7.2 The HoldCo Group secretariat (under the direction of the chair of the Remuneration Committee) shall:
- 7.2.1 minute the proceedings and resolutions of all meetings of the Remuneration Committee, including recording the names of those present and in attendance;
  - 7.2.2 ascertain, at the beginning of each meeting the existence of any conflicts of interest and minute them accordingly; and
  - 7.2.3 shall promptly circulate minutes of Remuneration Committee meetings to all members of the Remuneration Committee and, once agreed, to all members of the HoldCo Board, unless a conflict of interest exists.
- 7.3 The Remuneration Committee shall make whatever recommendations to the HoldCo Board it deems appropriate on any area within its remit where action or improvement is needed.

## 8. **OTHER MATTERS**

The Remuneration Committee shall:

- 8.1.1 have access to sufficient resources in order to carry out its duties, including access to the HoldCo Group secretariat for assistance as required;
- 8.1.2 be provided with appropriate and timely training, both in the form of an induction programme for new members and on an ongoing basis for all members;
- 8.1.3 give due consideration to laws, regulations and any other applicable rules, as appropriate; and
- 8.1.4 arrange for periodic reviews of its own performance and, at least annually, review its constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the HoldCo Board for approval.

**SCHEDULE 6**  
**THE HOLDCO BOARD RESERVED MATTERS**

**PART 1**  
**THE HOLDCO BOARD SIMPLE MAJORITY RESERVED MATTERS**

**1. OpCo Level**

**1.1 Material Corporate Transactions**

1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value less than USD 50,000,000 (but in excess of USD 5,000,000) over the lifetime of the HoldCo Facilities.

1.1.2 Acquisition of any assets, undertakings, business, company or securities of any company not acquired by HoldCo, OpCo or the OpCo Subsidiaries, owing to a failed DOCA, funded by Commitments that are less than or equal to the Commitments that would have been available to the Unsecured Creditors of a DOCA Company had the relevant DOCA been approved.

1.1.3 Acquisitions of any assets, undertakings, business, company or securities of any company (other than of assets not transferred as a result of a failed DOCA), joint ventures, partnerships, profit sharing arrangements, consolidations, amalgamations or collaborations with an aggregate value in excess of USD 20,000,000 but less than USD 40,000,000 in a cumulative three year period.

1.1.4 Capital expenditure with a value in excess of USD 5,000,000 but less than USD 10,000,000 above the Budget in a Financial Year.

1.1.5 Entering into, materially changing, terminating or granting a material waiver under or in respect of any non-financial contract with a value in excess of USD 10,000,000.

1.1.6 Instigation, settlement or compromise of any litigation, arbitration or other proceedings with a value in excess of USD 5,000,000 excluding any litigation, arbitration or other proceedings commenced prior to Completion unless a member of the HoldCo Group is joined to such litigation or other proceedings following Completion.

**1.2 Incurrence of Indebtedness**

1.2.1 Incurrence of debt with an aggregate value in excess of USD 20,000,000 but less than USD 40,000,000 in a cumulative three year period.

1.2.2 Entry into any hedging agreement or similar arrangement.

**1.3 Granting of Security**

1.3.1 Granting of security or creating a charge over any assets or property in respect of a payment obligation with an aggregate value in excess of USD 20,000,000 but less than USD 40,000,000 in a cumulative three year period.

- 1.4 Waivers and Amendments: OpCo Facilities
  - 1.4.1 Any decision to seek a consent or waiver in respect of a Majority OpCo Financiers Consent Matter.
- 1.5 Personnel and Policies
  - 1.5.1 Appointment and removal of the Chief Executive Officer, the Chief Financial Officer, the Chief Transformation Officer and the Internal Auditor.
  - 1.5.2 Approval of Key Policies.
- 2. **HoldCo Group Level**
  - 2.1 Exit and Maturities
    - 2.1.1 Appointment of advisers for an Exit Event.
    - 2.1.2 Proposal of the recommended Exit Event strategy.
    - 2.1.3 Proposing the extension of the maturity of the HoldCo Facilities by one year.
  - 2.2 Waivers and Amendments: HoldCo Facilities
    - 2.2.1 Any decision to seek a consent or waiver in respect of a Majority Reporting Financiers Consent Matter.
    - 2.2.2 Any decision to seek a consent or waiver in respect of a Super Majority Reporting Financiers Consent Matter.
- 3. **Whole Group Level**
  - 3.1 Policies and Approvals
    - 3.1.1 Approval of the financial statements or the accounts.
    - 3.1.2 Appointment or removal of the auditors.
    - 3.1.3 Changes to the accounting policies including adopting any new accounting policies.
    - 3.1.4 Constitution of and delegation of powers to the Committees, and any changes to any Terms of Reference.
    - 3.1.5 Announcements outside the ordinary course of business.
  - 3.2 Restructuring and Insolvency
    - 3.2.1 Incorporating any new member of the HoldCo Group outside the ordinary course of business.

**PART 2**  
**THE HOLDCO BOARD SUPER MAJORITY RESERVED MATTERS**

**1. OpCo Level**

**1.1 Material Corporate Transactions**

- 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value in excess of USD 50,000,000 (but less than USD 100,000,000) over the lifetime of the HoldCo Facilities.
- 1.1.2 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value in excess of USD 100,000,000 (but less than USD 250,000,000) over the lifetime of the HoldCo Facilities.
- 1.1.3 Disposals of any assets, undertakings business, company or securities of any company or closing down any business operation, in any case having a value in excess of USD 250,000,000 (but less than USD 500,000,000) over the lifetime of the HoldCo Facilities.
- 1.1.4 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value in excess of USD 500,000,000 (even if falling short of an Exit Event) over the lifetime of the HoldCo Facilities.
- 1.1.5 Acquisition of any assets, undertakings, business, company or securities of any company not acquired by HoldCo, OpCo or the OpCo Subsidiaries owing to a failed DOCA, funded by Commitments that are greater than the Commitments that would have been available to the Unsecured Creditors of a DOCA Company had the relevant DOCA been approved.
- 1.1.6 Acquisitions of any assets, undertakings, business, company or securities of any company (other than of assets not transferred as a result of a failed DOCA), joint ventures, partnerships, profit sharing arrangements, consolidations, amalgamations or collaborations with an aggregate value in excess of USD 40,000,000 in a cumulative three year period.
- 1.1.7 Capital expenditure with a value in excess of USD 10,000,000 but less than USD 20,000,000 above the Budget in a Financial Year.
- 1.1.8 Capital expenditure with a value in excess of USD 20,000,000 above the Budget in a Financial Year.
- 1.1.9 Altering the capital structure of OpCo or the OpCo Subsidiaries (including issuing or granting any options in respect of, or securities convertible or exchangeable into, shares or a reduction in share capital, the purchase or redemption of any share capital or the consolidation, sub-division, conversion or cancellation of any share capital).

- 1.1.10 Instigation, settlement or compromise of any litigation, arbitration or other proceedings with a value in excess of USD 5,000,000 where such litigation, arbitration or other proceedings relate to pre-Completion activities of the NMC Healthcare Business.
- 1.1.11 Entry into any transaction or arrangement of the HoldCo Group which is not on arms' length terms.
- 1.1.12 Entry into any Related Party Transaction which is not on arms' length terms.
- 1.2 Incurrence of Indebtedness
  - 1.2.1 Incurrence of debt with an aggregate value in excess of USD 40,000,000 in a cumulative three year period.
- 1.3 Granting of Security
  - 1.3.1 Granting of security or creating a charge over any assets or property in respect of a payment obligation with an aggregate value in excess of USD 40,000,000 in a cumulative three year period.
- 1.4 Waivers and Amendments: OpCo Facilities
  - 1.4.1 Any decision to seek a consent or waiver in respect of a Super Majority OpCo Financiers Consent Matter.
  - 1.4.2 Any decision to seek a consent or waiver in respect of an All OpCo Financiers Consent Matter.
- 1.5 Personnel and Policies
  - 1.5.1 Changes to the Delegated Authority Framework or decisions outside of the Delegated Authority Framework.
  - 1.5.2 Approval of the Management Incentive Plan and any changes to the Management Incentive Plan approved under clause 10.5(b).
- 2. **HoldCo Group Level**
  - 2.1 Exits and Maturities
    - 2.1.1 Exit Event at a valuation which yields estimated net cash proceeds higher than one hundred percent (100%) for the HoldCo Facilities size.
    - 2.1.2 Exit Event at a valuation which yields estimated net cash proceeds above eighty five percent (85%) for the HoldCo Facilities size but below one hundred percent (100%).
    - 2.1.3 Exit Event which yields net cash proceeds below eighty five percent (85%) for the HoldCo Facilities size.

- 2.1.4 Exit Event which results in receipt of non-cash consideration without a cash consideration operation of at least equivalent value.
  - 2.1.5 Exit Event at any valuation following the one year extension of the HoldCo Facilities referred to in Part 1 of this Schedule 6, provided an independent fair value assessment has been carried out.
  - 2.1.6 Proposing the extension of the maturity of the HoldCo Facilities by an additional year (beyond the one year extension of the HoldCo Facilities referred to in Part 1 of this Schedule 6).
- 2.2 Waivers and Amendments: HoldCo Facilities
- 2.2.1 Any decision to seek a consent or waiver in respect of a Super Majority Reporting Financiers Consent Matter.
  - 2.2.2 Any decision to seek a consent or waiver in respect of an All HoldCo Financiers Consent Matter.
  - 2.2.3 Re-running the EPM more often than annually.
3. **Whole Group Level**
- 3.1 Policies and Approvals
- 3.1.1 Approval of the draft Business Plan, and any changes to a Business Plan approved under clause 7.3 or clause 7.5.
  - 3.1.2 Approval of the draft Budget and any changes to a Budget approved under clause 7.3 or clause 7.5.
  - 3.1.3 Approval of any changes to the operating strategy of the Business.
- 3.2 Restructuring and Insolvency
- 3.2.1 Changes to domicile, centre of main interests or Tax residency of any member of the HoldCo Group outside the ordinary course of business.
  - 3.2.2 Incorporating any new member of the HoldCo Group outside the ordinary course of business.
  - 3.2.3 Amending in any respect the Articles of Association of OpCo or the Articles of Association of the OpCo Subsidiaries.
  - 3.2.4 Commencing or consenting to bankruptcy, winding up or dissolution of any member of the HoldCo Group outside the ordinary course of business.
  - 3.2.5 Proposing any scheme of arrangement, company voluntary arrangement, deed of company arrangement or analogous procedure in respect of any member of the HoldCo Group.

**SCHEDULE 7**  
**MATTERS REQUIRING FINANCIER APPROVAL UNDER THE HOLDCO**  
**FACILITIES**

**PART 1**  
**MAJORITY REPORTING FINANCIERS APPROVAL**

**1. OpCo Level**

**1.1 Material Corporate Transactions**

1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value in excess of USD 100,000,000 (but less than USD 250,000,000) over the lifetime of the HoldCo Facilities.

**2. HoldCo Group Level**

**2.1 Exits and Maturities**

2.1.1 Extending the maturity of the HoldCo Facilities by one year.

**2.2 Waivers and Amendments: HoldCo Facilities**

2.2.1 Any decision to seek a consent or waiver in respect of a Majority Reporting Financiers Consent Matter.

**3. Whole Group Level**

**3.1 Restructuring and Insolvency**

3.1.1 Changes to domicile, centre of main interests or Tax residency of any member of the HoldCo Group outside the ordinary course of business.

**PART 2**  
**INCREASED MAJORITY REPORTING FINANCIERS APPROVAL**

**1. OpCo Level**

**1.1 Material Corporate Transactions**

1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value in excess of USD 250,000,000 (but less than USD 500,000,000) over the lifetime of the HoldCo Facilities.

**2. HoldCo Group Level**

**2.1 Exits and Maturities**

2.1.1 Exit Event at a valuation which yields estimate net cash proceeds above eighty five percent (85%) for the HoldCo Facilities size, but below one hundred percent (100%).

- 2.2 Waivers and Amendments: HoldCo Facilities
  - 2.2.1 Any decision to seek a consent or waiver in respect of an Increased Majority Reporting Financiers Consent Matter.

### 3. **Whole Group Level**

- 3.1 Restructuring and Insolvency
  - 3.1.1 Amending in any respect the Articles of Association of HoldCo.

## **PART 3 SUPER MAJORITY REPORTING FINANCIERS APPROVAL**

### 1. **OpCo Level**

- 1.1 Material Corporate Transactions
  - 1.1.1 Disposals of any assets, undertakings, business, company or securities of any company or closing down any business operation, in any case having a value in excess of USD 500,000,000 (even if falling short of an Exit Event) over the lifetime of the HoldCo Facilities.
  - 1.1.2 Acquisition of any assets undertakings, business, company or securities of any company not acquired by the HoldCo, OpCo or the OpCo Subsidiaries (from time to time), owing to a failed DOCA, funded by Commitments that are greater than the Commitments that would have been available to the Unsecured Creditors of a DOCA Company had the relevant DOCA been approved.
  - 1.1.3 Acquisitions of any assets, undertakings, business, company or securities of any company (other than of assets not transferred as a result of a failed DOCA), joint ventures, partnerships, profit sharing arrangements, consolidations, amalgamations or collaborations with an aggregate value in excess of USD 40,000,000 in a cumulative three year period.
  - 1.1.4 Capital expenditure with a value in excess of USD 20,000,000 above the Budget in a Financial Year.
  - 1.1.5 Altering the capital structure of OpCo or the OpCo Subsidiaries (including issuing or granting any options in respect of, or securities convertible or exchangeable into, shares or a reduction in share capital, the purchase or redemption of any share capital or the consolidation, sub-division, conversion or cancellation of any share capital).
- 1.2 Incurrence of Indebtedness
  - 1.2.1 Incurrence of debt with an aggregate value in excess of USD 40,000,000 in a cumulative three year period.

- 1.3 Granting of Security
  - 1.3.1 Granting of security or creating a charge over any assets or property in respect of a payment obligation with an aggregate value in excess of USD 40,000,000 in a cumulative three year period.
2. **HoldCo Group Level**
  - 2.1 Exits and Maturities
    - 2.1.1 Exit Event at a valuation which yields net cash proceeds below eighty five percent (85%) for the HoldCo Facilities size.
    - 2.1.2 Exit Event which results in receipt of non-cash consideration without a cash consideration option of at least equivalent value.
    - 2.1.3 Extending the maturity of the HoldCo Facilities by an additional year (beyond the one year extension referred to in Part 1 of this Schedule 7.
  - 2.2 Waivers and Amendments: HoldCo Facilities
    - 2.2.1 Any decision to seek a consent or waiver in respect of a Super Majority Reporting Financiers Consent Matter.
3. **Whole Group Level**
  - 3.1 Commencing or consenting to bankruptcy, winding up or dissolution of any member of the HoldCo Group outside the ordinary course of business.
  - 3.2 Proposing any scheme of arrangement, company voluntary arrangement, deed of company arrangement or any analogous procedure in respect of any member of the HoldCo Group.

**PART 4**  
**ALL HOLDCO FINANCIERS APPROVAL**

1. **HoldCo Group Level**
  - 1.1 Waivers and Amendments: HoldCo Facilities
    - 1.1.1 Any decision to seek a consent or waiver in respect of an All HoldCo Financiers Consent Matter.

**SCHEDULE 8  
COMPLIANCE CERTIFICATE**

To: [Islamic Financing Party]

[Islamic Financing Party]

[Islamic Financing Party]

From: [HoldCo]

Dated:

Dear Sirs

**[HoldCo] – [ ] Governance Agreement  
dated [ ] (the " Governance Agreement")**

1. We refer to the Governance Agreement. This is a Compliance Certificate. Terms defined in the Governance Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that: [*Insert details of Shari'a Events to be certified*]

Signed: .....  
[Chief Executive Officer/Chief Financial Officer]  
of  
[HoldCo]

## SIGNATORIES<sup>1</sup>

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<sup>1</sup> Note to Draft: Signature blocks to be inserted.