

# AGREEMENT

DATED 28. May 2020

**NORGES BANK**

and

**NICOLAI TANGEN**

**ALLEN & OVERY**

Allen & Overy LLP

THIS DEED OF UNDERTAKING is made on 28.5.2020

**BY:**

(1) **MR. NICOLAI TANGEN**, the incoming chief executive officer of NBIM (as defined below) with his current address at \_\_\_\_\_;

**IN FAVOUR OF:**

(2) **NORGES BANK**, the central bank of Norway with its registered address at Bankplassen 2, 0151 Oslo, Norway.

**BACKGROUND:**

- (A) This deed is entered into in connection with the appointment of Mr. Nicolai Tangen as chief executive officer of NBIM.
- (B) Mr. Nicolai Tangen hereby agrees to give certain undertakings to Norges Bank.

**NOW THEREFORE THIS DEED WITNESSES** as follows:

**1. DEFINITIONS**

**AKO Fund** means each fund managed or advised by AKO Capital LLP or by any of its affiliates;

**Approved Documents** means the LLP agreement and allocation letter in respect of AKO Capital LLP, the LLP agreement in respect of DSHN Philanthropy LLP, the Deed of Appointment, the Proxy Agreement, the Investment Management Agreement and the Investment Mandate;

**Blind Trust** means the arrangement operated by Gabler under a discretionary mandate with NT pursuant to an investment management agreement (the **Investment Management Agreement**) and an investment mandate (the **Investment Mandate**);

**Claim** means any claim, action, proceeding or demand under or in connection with this deed;

**Close Links** means, in respect of any person, close social, professional (outside AKO Capital LLP) or other links of such person to NT which are likely to result in frequent meeting or frequent communications of such person with NT (and, for the avoidance of doubt, does not bear the meaning that the term "close links" has under the FCA Rules);

**Competent Authority** means any national, state or local governmental authority, any governmental, quasi-governmental, judicial, legislative, regulatory, public or administrative agency, authority or body, any court of competent jurisdiction, any investment exchange, any body regulating takeovers and mergers including the Charity Commission for England and Wales, any local, national, international, federal, European Union or other supranational agency, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) acting within their powers and having jurisdiction over this deed or over any of the parties;

**Deed of Appointment** means the deed of appointment pursuant to which NT appoints the Delegate to cast all votes and exercise all voting rights of NT as a member of DSHN Philanthropy LLP on NT's behalf in the form agreed between NT and Norges Bank and attached to this Deed at Appendix 1;

**Delegate** means a person appointed by NT (with the prior consent of Norges Bank) to cast all votes and exercise all voting rights of NT as a member of DSHN Philanthropy LLP on NT's behalf;

**Family Members** means in relation to an individual such individual's spouse and children, including any non-discretionary trust or similar arrangement of which any of them is a beneficiary;

**Gabler** means Gabler AS and its affiliates (or any entity which succeeds it as trustee and manager of the Blind Trust, with Norges Bank's prior consent);

**Incapacitated** means suffers a physical or mental deterioration which, in the reasonable opinion of NT (taking such advice as he may deem appropriate from an appropriately qualified medical practitioner), seriously prejudices the Delegate's ability to fulfil the role and duty expected of him pursuant to the Deed of Appointment;

**Insolvency Event** in relation to an individual means any of the following events:

(a) a meeting of creditors of that individual being held or an arrangement or composition with or for the benefit of his creditors being proposed by or in relation to that individual;

(b) a chargeholder, receiver, or other similar individual taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of that individual;

(c) that individual having any debt which he appears either to be unable to pay or to have no reasonable prospect of being able to pay;

(d) a petition being presented (and not being withdrawn or discharged within 28 days) or an order being made for the bankruptcy of that individual; or

(e) the happening in relation to that individual of an event analogous to any of the above in any jurisdiction in which he is resident or in which he carries on business or has assets;

**NBIM** means Norges Bank Investment Management, a division of Norges Bank;

**NT** means Mr Nicolai Tangen;

**Portfolio Securities** means securities or financial instruments of any description:

(a) held or entered into by any Relevant Entity; or

(b) over which any Relevant Entity exercises investment discretion or voting or other rights,

whether at the date or after the date of this Deed, but shall exclude any securities, interests or financial instruments issued by (i) a Relevant Entity or (ii) any collective investment scheme;

**Proxy** means a person appointed by NT (with the prior consent of Norges Bank) pursuant to a Proxy Agreement (the **Proxy Agreement**) to act on NT's behalf in respect of the Blind Trust, and in particular give instructions to and receive information from Gabler;

**Relevant Entities** means:

(a) DSHN Philanthropy LLP;

(b) AKO Capital LLP;

(c) AKO General Partner Limited;

(d) each AKO Fund;

(e) any affiliate of AKO Capital LLP which holds or enters into or exercises investment discretion or voting or other rights over any Portfolio Securities (whether at the date or after the date of this Deed) provided for the avoidance of doubt that AKO Foundation shall not be an affiliate of AKO Capital LLP for this purpose.

**Relevant Personnel** means any employee, member, officer or director of any Relevant Entity;

**Structure Paper** means the document which sets out the proposed ownership, management and operation of the Relevant Entities, a copy of which is attached to this Deed at Appendix 2; and

**Undertaking Entity** means each of NT, DSHN Philanthropy LLP, AKO Capital LLP, each AKO Fund, AKO General Partner Limited, AKO Foundation and the Delegate.

## **2. DURATION**

2.1 This deed and any non-contractual obligations arising out of or in connection with it shall be effective from the commencement date of NT's employment at Norges Bank and will expire upon the termination of NT's employment at Norges Bank (or, if NT is subject to any gardening leave period, upon the termination of such period).

2.2 Notwithstanding the previous sentence, both parties shall remain entitled to exercise any remedies available to them at law or in equity for breaches of this deed that occurred prior to its termination.

## **3. ACKNOWLEDGEMENTS, UNDERTAKINGS AND WARRANTIES**

3.1 NT warrants that he has not entered, and undertakes that without Norges Bank's prior consent he will not enter, into any agreement or arrangement with any person which will give NT:

- (a) the right to appoint or remove a majority of the board of any Relevant Entity;
- (b) control over a majority of the voting rights at meetings of the members of any Relevant Entity; or
- (c) the right to exercise a dominant influence over any Relevant Entity, provided that for the avoidance of doubt the arrangements described in the Structure Paper and/or in the Approved Documents shall not be deemed to give NT the right to exercise such dominant influence.

3.2 NT undertakes that he will not:

- (a) agree to any change to the structure or operation of the Relevant Entities which gives NT control over any Relevant Entity and shall operate within the structure set out in the Structure Paper; or
- (b) take (directly or through another person, including any Relevant Personnel) any action which may influence the operation of any Relevant Entity (including its operating or financial policies).

3.3 NT undertakes that, without prejudice to any insider dealing, conflict management, confidentiality or other compliance obligations to which he will be subject as an employee of Norges Bank) he will not:

- (a) discuss with any Relevant Personnel any matters relating to Portfolio Securities (including the exercise of any voting or other rights in respect of such Portfolio Securities by any Relevant Entity);
- (b) solicit any information about Portfolio Securities from any Relevant Personnel (except investor information received by him from the Blind Trust in respect of his non-management shares in the AKO Funds) and in particular will not use any information rights he may have as a member in DSHN Philanthropy LLP to obtain such information; or
- (c) discuss any matters relating to investments held by NBIM with, or reveal any information about such investments to, any Relevant Personnel.

3.4 NT undertakes to enter into the Deed of Appointment as soon as is practicable after the execution of this deed and in any event no later than commencing his role as chief executive officer of NBIM and not to revoke it for the period of NT's employment with Norges Bank, save that:

- (a) NT shall be permitted to revoke the Deed of Appointment (upon prior notice to but without the consent of Norges Bank):
  - (i) on the death of the Delegate;
  - (ii) where the Delegate becomes Incapacitated;
  - (iii) on an Insolvency Event occurring in relation to the Delegate;
  - (iv) if the Delegate is convicted of any criminal offence or any offence relating to fraud or insider dealing;
  - (v) if the Delegate ceases to be a member of DSHN Philanthropy LLP;
  - (vi) where the Delegate has breached the terms of the Deed of Appointment in a material way or committed fraud, negligence or wilful misconduct in the exercise of the appointment;
- (b) NT shall be permitted to revoke the Deed of Appointment for any reason with the prior written consent of Norges Bank,

provided in each case that NT immediately replaces the Delegate with a suitable alternative approved by Norges Bank pursuant to a deed of appointment on the same terms as the Deed of Appointment in all material respects.

3.5 NT:

- (a) acknowledges that under the Deed of Appointment the Delegate has been appointed to cast all votes and exercise all voting rights in his or her sole discretion and without prior reference to NT or any other person;
- (b) undertakes that he shall not (and shall not encourage or invite any person to) give any instructions or directions to the Delegate in respect of the Delegate casting any votes or exercising any voting rights pursuant to the Deed of Appointment; and
- (c) undertakes that he will not, without Norges Bank's prior consent, agree to any alteration of the Deed of Appointment.

- 3.6 NT:
- (a) confirms that in his reasonable opinion David Woodburn, Nicola Staples and Henrik Syse are the only Relevant Personnel with Close Links; and
  - (b) shall promptly notify Norges Bank if any other Relevant Personnel develops Close Links.
- 3.7 NT undertakes that he shall:
- (a) not acquire any direct voting rights or indirect voting rights (other than those held through DSHN Philanthropy LLP) in AKO Capital LLP;
  - (b) not increase his indirect voting rights in AKO Capital LLP held through DSHN Philanthropy LLP so that his indirect votes together with any direct or indirect votes of Persons with Close Links exceed 45% of member voting rights in AKO Capital LLP;
  - (c) cease to have any direct or indirect voting rights (other than those held through DSHN Philanthropy LLP) in AKO General Partner Limited after commencing his role as chief executive officer of NBIM; and
  - (d) following the disposal of AKO General Partner Limited by DSHN Philanthropy LLP in accordance with the Structure Paper, ensure that his indirect votes (if any) together with any direct or indirect votes of Persons with Close Links do not exceed 45% of voting rights in AKO General Partner Limited.
- 3.8 NT undertakes:
- (a) to submit requests to the relevant AKO Funds to switch his shares in all AKO Funds to non-management ordinary shares and hold them through the Blind Trust;
  - (b) not to (i) increase his shareholding in any AKO Fund such that he ceases to be a minority shareholder in such AKO Fund; (ii) hold shares in any AKO Fund other than non-management ordinary shares held through the Blind Trust. Norges Bank agrees that NT shall not be in breach of this provision if solely as a result of the redemption of shares in any AKO Fund by other shareholders NT becomes by default the majority shareholder;
  - (c) not to seek any information or reports from the AKO Funds except those provided to him by the Blind Trust.
- 3.9 NT undertakes that, other than as may be expressly agreed by NBIM, neither he nor his Family Members will:
- (a) hold (legally or beneficially) or exercise voting rights in any securities or financial instruments except in accordance with NBIM's PA dealing policy as in force from time to time; or
  - (b) participate in or control any investment management entity other than NT's indirect interest in AKO Capital LLP.
- 3.10 NT will appoint:
- (a) Gabler on the terms of the Investment Management Agreement and the Investment Mandate (copies of which are attached to this deed at Appendices 3 and 4) and shall not terminate

them, other than pursuant to the terms of the relevant agreement, without Norges Bank's prior consent; and

- (b) the Proxy on the terms of the Proxy Agreement (a copy of which is attached to this deed at Appendix 5) and shall not terminate it, other than pursuant to the terms of the Proxy Agreement, without Norges Bank's prior consent.

#### **4. LIMITATIONS**

- 4.1 A breach of any Warranty or Undertaking which is remediable shall not entitle Norges Bank to make a Claim against NT unless NT is given written notice of the breach and it is not remedied within 30 days after the date of receipt of the notice.
- 4.2 NT shall notify Norges Bank upon becoming aware that he has breached any Warranty or Undertaking, provided that NT shall not be required to make such notification where doing so would be a breach of applicable laws.
- 4.3 Nothing in this clause shall prevent a party from seeking a remedy other than monetary damages and a party shall therefore be entitled to seek specific performance or an injunction.
- 4.4 Norges Bank shall not be entitled to recover damages, or obtain payment, reimbursement or restitution from any Undertaking Entity more than once in respect of the same loss, shortfall, damage, deficiency, breach or other event or circumstance.
- 4.5 NT shall not be liable in respect of any Claim to the extent the matter or circumstance giving rise to such Claim arises, occurs or is otherwise attributable to any voluntary act, omission, transaction or arrangement carried out at the request or with the consent of Norges Bank.
- 4.6 NT shall not be liable in respect of any Claim for breach of any Undertaking or Warranty if he has exercised all its rights and powers of legal control available to it to prevent such a breach. For the avoidance of doubt, NT will not therefore be liable for any breach outside his control or where he does not have the power or authority to take any action or prevent any action.
- 4.7 Any matter contained or referred to in any Approved Document or in the Structure Paper shall not constitute a breach of any Warranty or Undertaking (however, the foregoing shall not operate so as to exclude any breach of Warranty or Undertaking which has arisen due to the exercise of any factual control or dominant influence which has been exercised by NT in contravention of the terms of any Approved Document or the Structure Paper).
- 4.8 NT shall not be liable in respect of any Claim to the extent the matter or circumstance giving rise to such Claim arises, occurs or is otherwise attributable to any action required by, or in order to prevent breach of, any applicable law or required by any Competent Authority.
- 4.9 NT shall have no liability for breach of Warranty or Undertaking in respect of any matter of which Norges Bank has actual knowledge. Norges Bank confirms that as at the date of this deed:
  - (a) it has no actual knowledge of any matter or circumstance which might lead to a Claim;
  - (b) the terms of the Approved Documents do not constitute a breach of any of the Warranties or Undertakings (however, the foregoing shall not operate so as to exclude any breach of Warranty or Undertaking which has arisen due to the exercise of any factual control or dominant influence which has been exercised by NT in contravention of the terms of any Approved Document or the Structure Paper).

**5. GOVERNING LAW AND SUBMISSION TO JURISDICTION**

- 5.1 This deed and any non-contractual obligations arising out of or in connection with it shall be governed by, and interpreted in accordance with, Norwegian law.
- 5.2 The Norwegian courts have exclusive jurisdiction to settle any disputes including a dispute relating to non-contractual obligations arising out of or in connection with this deed.

**THIS DEED** has been executed and delivered as a deed on the date stated at the beginning of this deed.

EXECUTED by **Mr. Nicolai Tangen**

)  
) Nicolai Tangen  
)

EXECUTED by **Norges Bank**  
acting by \_\_\_\_\_, its authorised  
signatory

)  
) Oyvind Olsen  
) Authorised signatory