

CERTIFIED TRUE COPY


DUNDAS & WILSON C.S.

TERMINATION AND OPTION AGREEMENT

among

MURRAY INTERNATIONAL HOLDINGS LIMITED
THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND
UBERIOR INVESTMENTS PLC
MURRAY BS LIMITED
D.E. MURRAY AND OTHERS

and

NH2 LIMITED

re: Termination of Shareholders Agreement
and Grant of Option.

DUNDAS
&
WILSON
CS
SOLICITORS

Saltire Court
20 Castle Terrace, Edinburgh
EH1 2EN
Telephone 031-228 8000



TERMINATION AND OPTION AGREEMENT

among

MURRAY INTERNATIONAL HOLDINGS LIMITED registered in England with number 1,486,046 and having its Registered Office at Handel House, Ninety five High Street, Edgware (hereinafter referred to as "MIH") OF THE FIRST PART

and

THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND constituted by Act of Parliament and whose Head Office is situated at The Mound, Edinburgh (hereinafter referred to as "BOS") OF THE SECOND PART

and

UBERIOR INVESTMENTS PLC, registered in Scotland with number 73998 and having its Registered Office at The Mound, Edinburgh (hereinafter referred to as "Uberior") OF THE THIRD PART

and

MURRAY BS LIMITED, registered in Scotland with number 100420 and having its Registered Office at Murray House, 4 Redheughs Rigg, South Gyle, Edinburgh, EH12 9DQ (hereinafter referred to as "the Company") OF THE FOURTH PART

and

THOSE PARTIES whose names and addresses are specified in Part 1 of the Schedule hereto (hereinafter referred to as "the Shareholders") OF THE FIFTH PART

and

NH2 LIMITED registered in Scotland with number 139902 and having its Registered Office at Murray House, 4 Redheughs Rigg, South Gyle, Edinburgh EH12 9DQ (hereinafter called "NH2") OF THE SIXTH PART

WHEREAS

(A) MIH and BOS agreed to and co-operated in establishing the Company with a

view to taking advantage of opportunities of property development and together with Uberior and the Company entered into an agreement dated 20th December 1990 ("the Shareholders Agreement") for the purpose, inter alia, of setting out the basis on which the Company had been established and the way in which the business of the Company was to be conducted and setting out the basis of the relationship between MIH and Uberior (a wholly owned subsidiary of BOS) as shareholders in the Company.

- (B) MIH and BOS with the shareholders of MIH have agreed to effect and facilitate a reorganisation of MIH and its subsidiaries such that the Company will become a subsidiary of NH2.
- (C) MIH, BOS, Uberior and the Company accordingly wish to terminate the Shareholders Agreement and Uberior and NH2 have agreed to the grant of options in relation to Uberior's shareholding in the Company all on and subject to the terms and conditions hereinafter contained.

NOW THEREFORE IS IS HEREBY AGREED as follows:-

1. INTERPRETATION

1.1 In this Agreement including the Schedule:

1.1.1 the following words and expressions have the following meanings, unless they are inconsistent with the text:

"Bank's Holding" means the shares in the issued Equity Share Capital of NH2 beneficially owned by and registered in the name of Uberior immediately prior to the enhancement of rights to be effected pursuant to sub-Clause 8.2;

"Board" means the Board of Directors of NH2 as constituted from time to time;

"Business Day" means a weekday which is not a public or local holiday in Edinburgh or London;

"Call Option"	means the right granted pursuant to Clause 4.1;
"Call Option Notice"	means a notice given pursuant to Clause 4.3;
"Call Option Periods"	means the period commencing on 1st April and ending on 30th April in each of the years 1993 and 1994;
"Consideration Shares"	means 111,130 ordinary shares of 10p each in the capital of NH2 ranking <u>pari passu</u> in all respects with the other ordinary shares in the capital of NH2 in issue at the date of issue thereof;
"Equity Share Capital"	shall bear the meaning ascribed thereto in Section 744 of the Companies Act 1985;
"Mr Murray"	means David Edward Murray of 8A Easter Belmont Road, Edinburgh;
"Mr Murray's Associates"	means collectively and individually (1) any wife or issue of Mr Murray; (2) the trustee or trustees of any trust in relation to which Mr Murray, or any of his wife or issue alone is or are a beneficiary or beneficiaries; and (3) any company in which not less than 20% of the equity share capital of which any of Mr Murray, his wife, issue or such trustees either alone or taken together are directly or indirectly interested;
"New Articles"	means the Articles of Association of

the Company in the form comprising Annexure "A" hereto and signed for identification by or on behalf of NH2 and Uberior;

"Option" means the Put Option and/or the Call Option as the case may be;

"Option Notice" means a Call Option Notice or a Put Option Notice as the case may be;

"Option Periods" means the Call Option Periods or the Put Option Period as the case may be;

"Option Shares" means 9,000 B Ordinary Shares of £1 each fully paid in the capital of the Company beneficially owned by and registered in the name of Uberior;

"Put Option" means the right granted pursuant to Clause 3.1;

"Put Option Notice" means a notice given pursuant to Clause 3.3;

"Put Option Period" means the period commencing on 1st February 1993 and ending on 28th February 1993;

"Schedule" means the Schedule annexed and executed as relative hereto.

1.1.2 except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders; words denoting persons shall include bodies corporate, unincorporated associations and, partnerships and vice versa;

1.1.3 unless otherwise stated, a reference to a clause, sub-clause, or Schedule is a reference to a clause or sub-clause of, or the

Schedule to, this Agreement;

1.1.4 clause headings are for ease of reference only and do not affect the construction of this Agreement;

1.1.5 "writing" and "written" include any form of visible reproduction.

2. TERMINATION OF SHAREHOLDERS AGREEMENT

2.1 Notwithstanding anything to the contrary in the Shareholders Agreement each of MIH, BOS, Uberior and the Company hereby agree that with effect from the date hereof the Shareholders Agreement shall terminate and cease to have effect;

2.2 Each of MIH, BOS, Uberior and the Company hereby releases the others of them from all obligations and liabilities arising under or by virtue of the Shareholders Agreement whether or not any claim which might otherwise be competent under the Shareholders Agreement arises in respect of a matter before or after the date hereof;

2.3 None of MIH, BOS, Uberior and the Company shall have any right to compensation or the like arising out of or in connection with the termination of the Shareholders Agreement pursuant to the provisions of clause 2.1;

2.4 Each of Uberior and NH2 undertakes to the other to procure forthwith:-

2.4.1 the adoption by the Company of the New Articles in substitution for the existing Articles of Association of the Company;

2.4.2 the revocation of all existing authorities to BOS relating to bank accounts and the substitution of new authorities in favour of such persons as the Company may nominate;

2.4.3 the resignation of the B Directors (as that term is defined in the Shareholders Agreement) as directors of

the Company;

2.4.4 the cessation of the Company's use of the logo "BOS" on its letter heading and promotional material;

2.4.5 the change of name of the Company so as to exclude the letters "BS" therefrom.

3. PUT OPTION

3.1 In consideration of the sum of one pound paid by Uberior (receipt of which is acknowledged by NH2), NH2 hereby irrevocably grants to Uberior the right exercisable at any time during the Put Option Period to require NH2 to purchase the Option Shares in return for the issue and allotment to Uberior of the Consideration Shares credited as fully paid up all upon the terms and subject to the conditions of this Agreement.

3.2 The Put Option shall be exercisable only in respect of all the Option Shares.

3.3 The Put Option shall be exercisable only at any time during the Put Option Period, or at such other time as is specified by Clause 3.4, by notice in writing in the form set out in Part 2 of the Schedule served upon NH2.

3.4 If any offer or invitation is made by any third party to purchase shares in the capital of NH2 which, if accepted, would result in Mr Murray and Mr Murray's Associates ceasing to hold or own beneficially 51% of the issued share capital of NH2, Uberior shall be entitled to exercise the Put Option at any time up to the last Business Day before the expiration of the offer or intimation and NH2 shall, immediately upon the offer or intimation being made, give notice to Uberior of its right to exercise the Put Option. In the event of Uberior exercising the Put Option in accordance with the terms of this Agreement, each of NH2 and Uberior shall, so far as they are respectively able, procure that a like offer is

extended to Uberior in respect of the Consideration Shares (whether or not the same have been issued by the expiration of the offer or invitation).

4. CALL OPTION

- 4.1 In consideration of the sum of one pound paid by NH2 (receipt of which is hereby acknowledged by Uberior), Uberior hereby irrevocably grants to NH2 the right exercisable at any time during the Call Option Periods to purchase the Option Shares in return for the issue and allotment to Uberior of the Consideration Shares credited as fully paid up all upon the terms and subject to the conditions of this Agreement.
- 4.2 The Call Option shall be exercisable only in respect of all the Option Shares.
- 4.3 The Call Option shall be exercisable at any time during the Call Option Periods by notice in writing in the form set out in Part 3 of the Schedule served upon Uberior.

5. COMPLETION

Subject to Clause 8:-

- 5.1 Uberior and NH2 shall be bound to complete the sale and purchase of the Option Shares 14 days after the date of service of an Option Notice (or on the next succeeding Business Day if completion would otherwise fall on a non-Business Day) or, if earlier, on the Business Day preceding the expiration of the offer if the provisions of Clause 3.4 apply.
- 5.2 Completion of the sale and purchase of the Option Shares shall take place at the registered office of NH2 or at such other place as the parties shall mutually agree not later than 3.00 p.m. on the relevant day.
- 5.3 Uberior shall deliver to NH2:-
- 5.3.1 a duly executed transfer of the Option Shares accompanied by the relative share certificate(s); and

5.3.2 such other deeds and documents as may be necessary to transfer to NH2 or as it may direct the unencumbered beneficial ownership of the Option Shares.

5.4 Against compliance with the foregoing provisions of Clause 5.3, NH2 shall deliver to Uberior:-

5.4.1 a share certificate for the Consideration Shares; and

5.4.2 certified copy Board Minutes of NH2 approving the issue and the allotment of the Consideration Shares.

6. OPTION SHARES

All rights attached to the Option Shares shall accrue to NH2 on the date of service of an Option Notice exercising the Option and, following the exercise of the Option, Uberior shall account to NH2 for all dividends or other distributions of the Company declared or paid by reference to a record date which is subsequent to the date of service and shall exercise all voting and other rights at the direction of NH2.

7. WARRANTIES AND UNDERTAKINGS

7.1 Uberior hereby warrants to NH2 that it is at the date of Uberior's execution hereof and will remain until the exercise or expiry of the Option Periods the beneficial owner of the Option Shares, subject only to the Options.

7.2 Uberior shall not prior to the exercise or expiry of the Option transfer, dispose of, charge, pledge or encumber in any way its interest in all or any of the Option Shares and the Option Shares shall upon completion be sold free of any liens, charges or encumbrances.

7.3 NH2 undertakes to procure that while the Options are exercisable the number of authorised but unissued ordinary shares of the Company will not be less than the aggregate number of Consideration Shares which may be allotted to Uberior in terms of this Agreement and that the directors of the Company shall be

entitled to allot and issue the Consideration Shares without the consent of any person or persons.

7.4 The Company undertakes to BOS, and each of Uberior and NH2 undertakes to BOS to procure, that until the exercise or expiry of the Option (excepting with the written consent of BOS), the Company :-

7.4.1 shall not make any substantial change in the nature of its business;

7.4.2 except in the ordinary course of business and on arm's length terms, shall not enter into any new development work nor enter into any new obligations; and

7.4.3 shall not declare or pay any dividend or distribution on or in respect of any of its share capital.

8. ENHANCEMENT

8.1 If the issue and the allotment of the Consideration Shares by NH2 would, in the Board's opinion, constitute an allotment at a discount in contravention of Section 100(1) of the Companies Act 1985 then the Board shall forthwith notify the Shareholders and Uberior thereof in writing.

8.2 The Shareholders and Uberior undertake to each other to procure within 45 days of the date of issue of such notification (or such longer period as NH2 and Uberior shall agree) that the rights attaching to the Bank's Holding shall be enhanced so that the result of such enhancement will be that Uberior, notwithstanding the nominal value of the Bank's Holding, will forthwith have the same rights attaching to the shares comprising the Bank's Holding as would be attached if the Bank's Holding comprised 11½ per cent. of the total Equity Share Capital of NH2 in issue immediately following the enhancement.

9. MISCELLANEOUS

9.1 This Agreement shall be binding upon each party's successors and assignees and personal representatives (as the case may be) but, except as expressly provided above, none of the rights of the parties under this Agreement may be assigned or transferred.

9.2 Any notice required to be given by any of the parties under this Agreement shall be in writing and shall be sent by post to the address of the addressee as set out in this Agreement or to such other address as the addressee may from time to time have notified for the purpose of this clause. Communications sent by post shall be deemed to have been received forty-eight hours after posting. In proving service by post it shall only be necessary to prove that the communication was contained in an envelope which was duly addressed and posted by pre-paid post in accordance with this clause.

9.3 No public announcements shall be made by a party hereto either before or after Completion in relation to the matters contemplated by this Agreement.

9.4 This Agreement constitutes the entire agreement between the parties hereto relating to the termination of the Shareholders Agreement and the grant of the Option to the exclusion of any other agreements or understandings between any of them however constituted.

10. GOVERNING LAW

This Agreement shall be governed by and interpreted according to the law of Scotland which shall apply to the whole terms and provisions hereof and each of the parties hereby prorogates the non-exclusive jurisdiction

of the Scottish Courts: IN WITNESS WHEREOF these presents consisting of this and the preceding ten pages and the Schedule in three parts annexed hereto are executed as follows: For and on behalf of the said NH2 LIMITED by David Edward Murray and George Keith Freeland (signing as "George Freeland"), two of its Directors; for and on behalf of the said MURRAY BS LIMITED by James MacDonald and Ian Barclay Tudhope, two of its Directors; for and on behalf of the said MURRAY INTERNATIONAL HOLDINGS LIMITED by James MacDonald and George Keith Freeland, two of its Directors; by Andrew Cubie as Attorney for the said NOBLE GROSSART INVESTMENTS LIMITED acting under a Power of Attorney dated 20th November 1992; by Douglas Andrew Connell as Attorney for the said DAVID EDWARD MURRAY acting under a Power of Attorney dated 23rd November 1992; by James MacDonald as Attorney for the said JOHN MCDAID PATTISON acting under a Power of Attorney dated 13th November 1992; by James MacDonald as Attorney for the said ANDREW JOHN DOUGLAS MURRAY acting under a Power of Attorney dated 20th November 1992; by Alisdair Dewar MacDonald as Attorney for the said BANK OF SCOTLAND TRUST COMPANY NOMINEES LIMITED acting under a Power of Attorney dated 20th October 1992; for and on behalf of the said 3i PLC by Robert Iain Christopher Hankin as its authorised signatory in terms of Board Minute dated 18th November 1992; by Michael Thomas Struthers as Attorney for the said UBERIOR INVESTMENTS plc acting under a Power of Attorney dated 23rd November 1992; by Graham Fraser Sturrock as Attorney for the said THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND acting under a Power of Attorney dated 18th November 1992 and by the said JAMES MACDONALD all together at Edinburgh on the Twenty fourth day of November Nineteen hundred and Ninety two before these witnesses: Kenneth Charles Rose (subscribing as "Kenneth Rose") and Christian Robert MacNachtan Hook, both Solicitors of 4th Floor, Saltire Court, 20 Castle Terrace, Edinburgh.

[Handwritten signatures and notes follow the typed text. On the left side, there are several signatures, some with the word "Attorney" written below them. In the center, there are more signatures, including one that appears to be "Robert Iain Christopher Hankin". On the right side, there are several more signatures, some with the word "Attorney" written below them. At the bottom left, there is a signature that appears to be "Michael Thomas Struthers". At the bottom right, there is a signature that appears to be "Graham Fraser Sturrock".]

THE SCHEDULE

Part 1

The Shareholders

Shareholder

Noble Grossart Investments Limited
48 Queen Street
Edinburgh

A J D Murray
Crinan
2 Cammo Gardens
Barnton
Edinburgh

J M Pattison
6 St Andrews Close
Darlington
County Durham

D.E. Murray
8a Easter Belmont Road
Edinburgh

3i plc
91 Waterloo Road
London

Bank of Scotland Trust Company Nominees Limited
Eagle House
4 Don Road
St. Helier
Jersey

James MacDonald
175 Whitehouse Road
Edinburgh

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Part 2

Put Option Notice

To: The Directors
NH2 Limited
Murray House
4 Redheughs Rigg
South Gyle
EDINBURGH

Dear Sirs

We refer to the Agreement dated 19[92] and made among our respective Companies and others ("the Agreement"). Words and expressions used in this notice shall have the same meaning ascribed thereto in the Agreement.

In terms of Clause 3.3 of the Agreement, we give you notice that we wish to exercise the rights granted to us in respect of the Option Shares by virtue of the said Clause 3.1. Completion of the sale and purchase of the Option Shares will take place in accordance with the provisions of Clause 5 of the Agreement.

Yours faithfully

.....
for and on behalf of
Uberior Investments PLC

Part 3

Call Option Notice

To: The Directors
Superior Investments PLC
The Mound
Edinburgh

Dear Sirs

We refer to the Option Agreement dated 19[92] and made among our respective Companies and others ("the Agreement"). Words and expressions used in this notice shall have the meanings ascribed thereto in the Agreement.

In terms of Clause 4.3 of the Agreement, we give you notice that we wish to exercise the rights granted to us in respect of the Option Shares by virtue of the said Clause 4.1. Completion of the purchase and sale of the Option Shares will take place in accordance with the provisions of Clause 5 of the Agreement.

Yours faithfully

.....
for and on behalf of
NH2 Limited

A.A. Gwill
Attorney
Approved
Approved
Robert H. Hume
Attorney
G. J. Hume
Attorney

Al Murray
Gordon
Approved
Approved
Approved
Approved
Approved

TERMINATION AND OPTION AGREEMENT

among

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LIMITED
THE GOVERNOR AND COMPANY OF THE
BANK OF SCOTLAND
UBERIOR INVESTMENTS PLC
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