

TERMS AND CONDITIONS – CREDIT FACILITIES AGREEMENTS (APA)

THESE TERMS AND CONDITIONS (the "**Terms and Conditions**") apply to credit facility agreements entered into between (1) **ESKA Finance s.r.o.**, a company incorporated and existing under the laws of the Slovak Republic, with its registered office at Tomášikova 1973/32, Bratislava - mestská časť Ružinov, Postal Code: 83104, Slovak Republic, Identification No. (*IČO*): 54430950, registered in the Commercial Register maintained by the District Court Bratislava I, Section Sro, Insert No.: 162405/B ("**ESKA**") as lender and (2) any other person (the "**Borrower**") as borrower and referring to these Terms & Conditions (each such applicable credit facility agreement (including these Terms and Conditions incorporated thereto by reference) the "**Agreement**").

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Terms and Conditions:

"**APA**" has the meaning ascribed to this term in the Agreement.

"**Arrangement Fee**" has the meaning ascribed to this term in the Agreement.

"**Asset**" has the meaning ascribed to this term in the Agreement.

"**Business Day**" means a day (other than Saturday or Sunday) on which banks are open for general business in:

- (a) Bratislava; and
- (b) in the capital city of the country of incorporation of the Borrower (provided that the Borrower is a corporation) or permanent residence (provided that the Borrower is an individual).

"**Charge**" means the charge (in Slovak: *záložné právo*) created by the Borrower in favour of ESKA under the Charge Agreement.

"**Charge Agreement**" means the charge agreement relating to the Asset between the Borrower as chargor and ESKA as chargee.

"**Communication Language**" has the meaning ascribed to this term in the Agreement.

"**Confidential Information**" means any information:

- (a) contained in the Agreement; and/or
- (b) any information relating to a Party, which has been ascertained by the other Party in relation to the Agreement or its negotiation.

"**Commercial Code**" means Slovak Act No. 513/1991 Coll, the Commercial Code, as amended.

"**Default**" means:

- (a) an Event of Default; and
- (b) each event or situation, which would (following passage of time, delivery of notice, or any other action or omission) become an Event of Default.

"**Discharge Date**" means the date on which:

- (a) all of monetary liabilities of the Borrower vis-à-vis ESKA arising under or in connection with the Finance Documents have been fulfilled or otherwise discharged in full; and
- (b) no other monetary liabilities of the Borrower vis-à-vis ESKA can arise under or in connection with the Finance Documents (and no contingent liabilities of the Borrower vis-à-vis ESKA can become actual under or in connection with the Finance Documents).

"Drop-dead Date" has the meaning ascribed to this term in Clause 20.5 (*Rejection and deemed consent*) below.

"Effective Date" has the meaning ascribed to this term in Clause 20.3 (*Amendment procedure*) below.

"Encumbrance" means any:

- (a) security (in Slovak: *zabezpečenie*), whether *in rem* or *in personam*, and including any charge (in Slovak: *záložné právo*), security transfer (in Slovak: *zabezpečovací prevod*), pre-emption right or option; or
- (b) right of lease, sublease or any other right of a third party, whether *in rem* or *in personam*.

"Event of Default" means each event designated as such in Clause 12 (*Events of Default*) below.

"Finance Documents" means:

- (a) the Agreement;
- (b) the Charge Agreement; and
- (c) any other agreement or document specifically designated as "Finance Document" for the purposes of the Agreement by the Borrower and ESKA.

"Finance Sums" means all sums owed by the Borrower to ESKA under or in connection with the Finance Documents, including (without limitation):

- (a) the Loan and each Instalment;
- (b) each fee (arising under Clause 6 (*Fees*) below or otherwise); and
- (c) each sum due on account of:
 - (i) indemnity obligation (arising under Clause 7 (*Indemnity*) below or otherwise); and
 - (ii) contractual penalty (under Clause 13 (*Contractual penalties*) below or otherwise).

"Handover" means the handover of the Asset to the Borrower by the Vendor based on the Purchase Agreement.

"Handover Protocol" means a written protocol documenting the Handover.

"Insolvency Regulation" means Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast).

"Instalment" has the meaning ascribed to this term in the Agreement.

"Instalment Schedule" has the meaning ascribed to this term in the Agreement.

"**Insurance Policy**" has the meaning ascribed to this term in Clause 8 (*Insurance*) below.

"**Loan**" has the meaning ascribed to this term in the Agreement.

"**Payment Account**" has the meaning ascribed to this term in the Agreement.

"**Party**" has the meaning ascribed to this term in the Agreement.

"**Permitted Security**" has the meaning ascribed to this term in the Agreement.

"**Privacy Notice**" has the meaning ascribed to this term in Clause 17.2 (*Privacy policy*) below.

"**Prepayment Fee**" has the meaning ascribed to this term in the Agreement.

"**Purchase Agreement**" has the meaning ascribed to this term in the Agreement.

"**Road Tax**" means the road tax (if any) payable under the laws of any applicable jurisdiction.

"**Subsidy Agreement**" has the meaning ascribed to this term in the Agreement.

"**Tax**" means any tax or levy imposed anywhere in the world, including the VAT and the Road Tax.

"**Tax Deduction**" means a deduction or withholding for or on account of Tax from a payment under or in connection with the Finance Documents.

"**Technical Documentation**" means the technical documentation relating to the Asset.

"**Transaction Documents**" means:

- (a) the Finance Documents;
- (b) the Purchase Agreement;
- (c) the Subsidy Agreement;
- (d) each document incorporated into the Subsidy Agreement by reference; and
- (e) any other agreement or document specifically designated as "Transaction Document" for the purposes of the Agreement by the Borrower and ESKA.

"**Utilisation Account**" has the meaning ascribed to this term in the Agreement.

"**VAT**" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any similar tax payable under the laws of any applicable jurisdiction.

"**Vehicle Registration Certificate**" means *osvedčenie o evidencii* as this term is used in Slovak Act. No. 8/2009 Coll., on road transport, as amended, or any other similar document issued under the laws of any other applicable jurisdiction.

"**Vendor**" has the meaning ascribed to this term in the Agreement.

1.2 Construction

- (a) Unless a contrary indication appears, a reference in these Terms and Conditions to:

- (i) "**location**" of storage of the Asset is the address of Your registered office, unless otherwise agreed by ESKA in writing; and
 - (ii) "**wear and tear**" is a reference to wearing of the Asset that normally occurs in the course of proper use of the Asset during a comparable period of time.
- (b) A Default (other than an Event of Default) is "**continuing**" unless it has been remedied or expressly waived by ESKA in writing.
- (c) An Event of Default is "**continuing**" unless it has been expressly waived by ESKA in writing.

2. PAYMENT OBLIGATIONS

2.1 Payment Account

- (a) Each payment of an Instalment, or any other sum payable by the Borrower to ESKA under or in connection with the Finance Documents will be deemed to be paid on the day on which it is credited to the Payment Account.
- (b) The change in the Payment Account details will become effective and binding on the Borrower and ESKA on the sooner of the following days:
- (i) on the day when the Borrower confirms delivery or the notice (whether expressly or tacitly, especially by making a payment in accordance with the new Payment Account details); or
 - (ii) the day falling three (3) Business Days following the date of delivery of the notice to the Borrower.

2.2 Default interest

The Borrower and ESKA expressly agree that a default interest will accrue on each sum payable by the Borrower under or in connection with the Finance Documents that remains outstanding after its due date at a rate of twenty five *per cent. per annum* (25% *p.a.*).

2.3 Application of proceeds

- (a) Provided that any payment received by ESKA is not sufficient to fully discharge outstanding monetary obligations of the Borrower arising under or in connection with the Finance Documents, such payment shall be applied towards satisfaction of such obligations in the following order:
- (i) **firstly**, towards payment of outstanding fees;
 - (ii) **secondly**, towards payment of outstanding indemnity obligations, other than the indemnity obligations referred to under Paragraph (vi) below;
 - (iii) **thirdly**, towards payment of outstanding default interest;
 - (iv) **fourthly**, towards payment of outstanding interest;
 - (v) **fifthly**, towards payment of outstanding principal;
 - (vi) **sixthly**, towards payment of outstanding indemnity obligations relating to damage inflicted on the Asset or theft of the Asset; and

- (vii) **lastly**, towards payment of any other of outstanding monetary obligations of the Borrower arising under or in connection with the Finance Documents.
- (b) The Borrower hereby agrees that the order of application set out in Paragraph (a) above can be changed unilaterally by ESKA.

2.4 Tax gross-up

- (a) The Borrower shall make all payments to be made by the Borrower under or in connection with the Finance Documents without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (c) If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (d) All amounts expressed to be payable under or connection with the Finance Documents are expressed as excluding the VAT which, if chargeable in relation to the respective amount in accordance with the applicable laws, shall be charged in addition to such amounts.

3. INSTALMENT SCHEDULE

3.1 Consensual modification

The Borrower and ESKA may, at any time and repeatedly, modify the Instalment Schedule by a written agreement.

3.2 Unilateral modification

ESKA may unilaterally modify the Instalment Schedule, once or repeatedly, in case of occurrence of a partial prepayment (whether voluntary or mandatory) of the Loan.

3.3 Effect of modification

A modification of the Instalment Schedule becomes effective:

- (a) in relation to modification under Clause 3.1 (*Consensual modification*) above, on:
 - (i) subject to Paragraph (ii) below, the date of the written agreement made between the Borrower and ESKA; or
 - (ii) on such later date as may be stipulated by such written agreement; and
- (b) in relation to modification under Clause 3.2 (*Unilateral modification*) above on the date of delivery or the updated Instalment Schedule to the Borrower.

4. PREPAYMENT

4.1 Prepayment notice

- (a) The Borrower may prepay the Loan in full provided that the Borrower delivers a prepayment notice (such notice the "**Prepayment Notice**") to ESKA in accordance with Paragraph (b) below.
- (b) A Prepayment Notice will not be deemed to be duly made, unless:

- (i) it specifies:
 - (A) the amount of the Loan to be prepaid; and
 - (B) the date on which the prepayment will be made; and
- (ii) it is delivered to ESKA by no later than five (5) Business Days prior to the proposed prepayment date, or in such shorter period as ESKA may agree to in writing.
- (c) Once delivered to ESKA, the Prepayment Notice is binding and cannot be revoked otherwise than with the previous express written consent of ESKA.

4.2 Effects of prepayment

- (a) Unless otherwise agreed by the Borrower and ESKA in writing, each prepayment of the Loan will reduce the Instalments in reverse chronological order (starting with the Instalments with the latest payment date).
- (b) Any prepayment under the Agreement shall be made together with:
 - (i) accrued interest on (and other appurtenances relating to) the amount prepaid; and
 - (ii) the respective Prepayment Fee.
- (c) Unless otherwise agreed by the Borrower and ESKA in writing, repayment of the Loan together with other sums owed by the Borrower under or in connection with the Finance Documents, does not absolve the Borrower from the obligations set out in Clause 7 (*Indemnity*) below, including the obligation to reimburse ESKA for insurance premia paid by ESKA (prior or after such prepayment) under the Insurance Policy under Clause 7.2 (*Insurance indemnity*) below; ESKA shall however:
 - (i) in the case of full prepayment of the Loan, use reasonable endeavours to terminate the Insurance Policy or modify the Insurance Policy so that no more insurance premia need to be reimbursed in accordance with Clause 7.2 (*Insurance indemnity*) below; and
 - (ii) return to the Borrower any reimbursement of insurance premia made by the Borrower under Clause 7.2 (*Insurance indemnity*) below that have been irrevocably refunded to ESKA by the insurer under the Insurance Policy.

5. LIABILITY

5.1 Liability limitation

- (a) The aggregate liability of ESKA for any damage or other harm (in Slovak: *ujma*) arising under or in connection with the Finance Documents shall not exceed the amount of the Arrangement Fee actually received by ESKA.
- (b) The limitation of liability set out in Paragraph (a) above shall not apply in relation to damage or other harm caused intentionally or by gross negligence of ESKA.

6. FEES

6.1 Arrangement Fee

The Borrower shall pay to ESKA the Arrangement Fee, in the amount and at the time set out in the Agreement.

6.2 Administrative Fee

- (a) Provide that the Borrower requires:
- (i) issuance of a certificate or other document; or
 - (ii) delivery of a duplicate (including an originally certified copy),
- by ESKA in relation to the Agreement, the Borrower shall pay to ESKA an administrative Fee of EUR 200 for each such document.
- (b) Each fee set out in Paragraph (a) above is payable prior to dispatch of the document, to which it relates.

6.3 Non-refundable nature

The Borrower and ESKA expressly acknowledge and agree that the Arrangement Fee and each other fee paid under the Agreement is non-refundable and ESKA will be under no obligation to refund or otherwise return any such fee to the Borrower or any third party in case of early termination of the Agreement nor in any other event.

7. INDEMNITY

7.1 Damage and breach

- (a) The Borrower shall, within three (3) Business Days of demand, indemnify ESKA against:
- (i) any cost, loss or liability incurred by ESKA as a result of:
 - (A) breach of obligations of the Borrower arising under or in connection with the Finance Documents or applicable law, including fines and any other sanctions applied due to breach of applicable regulations;
 - (B) tolls or other levies that have been incurred by ESKA in relation to operation of the Asset by the Borrower or any person to whom the Borrower allows access to the Asset;
 - (C) fees charged by banks, brokers or professional advisors incurred by ESKA in relation to the Asset or the Finance Documents;
 - (D) occurrence of a Default or its continuing;
 - (E) actions taken by ESKA in accordance with the Finance Documents;
 - (F) relying on a representation or assurance made by the Borrower (or its professional advisors) in relation to the Finance Documents;
 - (G) any damage inflicted onto the Asset (excluding wear and tear);
 - (H) alterations to the Asset made by the Borrower or by any person who gains (whether rightfully or illicitly) access to the Asset, in each case otherwise than with a prior written consent of ESKA; and/or
 - (I) theft or other unauthorised use of the Asset;
 - (ii) any other documented costs incurred by ESKA in relation to the Asset or the Finance Documents; and/or

- (iii) any costs or expenses that, in accordance with the Finance Documents are to be borne by the Borrower but were incurred by ESKA.
- (b) The Borrower shall not be obliged to indemnify ESKA under this Clause 7.1 for any costs or losses, for which ESKA has irrevocably received insurance benefit (in Slovak *poistné plnenie*) under the Insurance Policy.

7.2 Insurance indemnity

- (a) The Borrower specifically undertakes to reimburse to ESKA any insurance premia and other costs (including, without limitation, any reduction in the insurance benefit received by ESKA) incurred by ESKA under or in connection with the Insurance Policy or otherwise in connection with insurance of the Asset.
- (b) Any amounts owed by the Borrower to ESKA under Paragraph (a) above shall be payable by the Borrower based on request of ESKA.

7.3 Increased costs

- (a) The Borrower shall also indemnify ESKA against any cost, loss or liability incurred by ESKA as a result of:
 - (i) increase in the amount of any existing and/or introduction of new taxes, duties, registration fees, and other mandatory payments that directly affect the cost of the Asset and/or the cost of possessing the Asset, and/or the amount of expenses incurred by ESKA during the implementation of such measures or exercising its rights arising under or in connection with the Agreement; or
 - (ii) changes to the legislation that directly affect the costs or losses incurred by ESKA in relation to the Agreement.
- (b) The indemnity payment under Paragraph (a) above shall be made by the Borrower within ten (10) Business Days following delivery to the Borrower of a written notice issued by ESKA stating:
 - (i) the amount to be indemnified; and
 - (ii) reference to the relevant subparagraphs of Paragraph (a) above.

8. INSURANCE

8.1 Loss damage waiver

The Asset will be insured under an insurance policy to be entered into between ESKA as policy holder and an insurer, notified to the Borrower by ESKA without undue delay after the date of the Agreement (such insurance policy, and each insurance policy by which it is replaced, as well as any other insurance policy relating to the Asset and notified to the Borrower by ESKA and expressly designated by ESKA as the "Insurance Policy" for the purposes of the Agreement the "**Insurance Policy**").

8.2 Third party insurance

Unless otherwise agreed between the Borrower and ESKA, insurance of damage caused to third parties by operation of the Asset required under applicable law (if applicable) will be documented by the Insurance Policy.

8.3 Insured events

- (a) Provided that any insurance event (or any event that ESKA determines as potentially constituting an insured event) occurs, the Borrower shall exercise rights under any insurance policy relating to the Asset with expert care.
- (b) Provided that the rights referred to under Paragraph (a) above inure to ESKA, the Borrower shall act as agent of ESKA. Provided that it is necessary for performance of obligations of the Borrower set out in this Clause 8.3, ESKA shall provide the Borrower with a specific power of attorney.

8.4 Immobilisation

- (a) The Borrower shall ensure that each insurance policy entered into by the Borrower or any other party (other than ESKA) with an insurer in relation to the Asset, state ESKA as the sole loss payee in relation to all insurance benefits arising under or in connection with such insurance policy. The obligation in this Paragraph (a) does not apply to:
 - (i) insurance of material damage caused by operation of the Asset; or
 - (ii) other material damage,
caused to third parties.
- (b) Without prejudice to the obligations of the Borrower set out in Paragraph (a) above, provided that the Borrower would otherwise be a loss payee (or person in a similar capacity) under any insurance policy relating to the Asset, the Borrower shall promptly, however in each case by no later than on the day falling ten (10) Business Days from the date of such insurance policy:
 - (i) ensure that the full insurance benefit be immobilised (in Slovak: *vinkulovaný*) for the exclusive benefit of ESKA; and
 - (ii) provide ESKA with evidence of the same in the form and content as may be required by ESKA.

9. REPRESENTATIONS

The Borrower hereby makes the representations set out in Clauses 9.1 (*Consents*) to 9.8 (*COMI*) below, and assures ESKA that all of these representations are true, complete and up-to-date as at the date of the Agreement, until (and including) the Discharge Date.

9.1 Consents

All necessary action (including obtaining approval of relevant corporate bodies of the Borrower (if the Borrower is a legal entity) or a spouse consent (if the Borrower is an individual)) to authorise entry of the Borrower into the Finance Documents and performance of its obligations arising under or in connection with the Finance Documents, has been duly taken.

9.2 Insolvency

- (a) The Borrower is not insolvent under the laws of any jurisdiction the laws of which may apply onto it or its assets in accordance with the Insolvency Regulation or otherwise and no such insolvency is threatening.
- (b) The Borrower is able to pay its monetary obligations as they fall due.
- (c) The value of assets of the Borrower exceeds the value of its liabilities (including contingent liabilities and other off-balance sheet liabilities).
- (d) If the Borrower is a company incorporated or existing under the laws of the Slovak Republic, the Borrower is not a company in crisis within the meaning of Section 67a of the Commercial Code.

9.3 Insolvency proceedings

- (a) No insolvency or winding-up (whether voluntary or mandatory) proceedings have been initiated against the Borrower and there are no grounds for initiation of such proceedings.
- (b) No insolvency petition has been filed against the Borrower or any of its assets.
- (c) No event that is similar in effect to the events set out in Paragraphs (a) or (b) above has occurred under the laws of any applicable jurisdiction.

9.4 No default

No Default is continuing or threatening.

9.5 No proceedings

No litigation or administrative, criminal or similar investigation or control has been initiated, continues or is threatening in relation to the Borrower or any of its assets and there are no grounds for any such proceedings to be initiated.

9.6 No misleading information

All the information provided by the Borrower to ESKA was correct, complete and up-to-date at the moment of their disclosure to ESKA, and was not misleading in any respect.

9.7 Insurance policy

Immediately after a copy of the Insurance Policy was made available to the Borrower (in a paper or electronic form, including by way of a link to a web or file depository) the Borrower has made itself fully acquainted with its wording, including:

- (a) amount of insurance premia and their payment terms;
- (b) exclusion from insurance; and
- (c) deductibles.

9.8 COMI

For the purposes of the Insolvency Regulation, the centre of main interest (as that term is used in Article 3(1) of the Insolvency Regulation) of the Borrower is situated in the jurisdiction of its incorporation and the Borrower has no "establishment" (as that term is used in Article 2(10) of the Insolvency Regulation) in any other jurisdiction.

9.9 Continuing representations

The Borrower shall ensure that all of the representations made by the Borrower in the Finance Documents (including this Clause 9.9) remain correct, complete and up-to-date and are not misleading in any respect.

10. INFORMATION COVENANTS

Unless the Agreement specifically provides otherwise, the covenants set out in this Clause 10 remain effective until the Discharge Date.

10.1 General duty to inform

The Borrower shall promptly (in each case by no later than within two (2) Business Days following learning the same) inform ESKA in writing of:

- (a) any (actual or threatening):
 - (i) breach of any of obligation of the Borrower arising under or in connection with the Finance Documents; and/or
 - (ii) Default;
- (b) any defects or malfunctions of the Asset;
- (c) any claims made in relation to the Asset by a third party;
- (d) any change of identification details or other details registered in relation to the Borrower in the commercial register, or the register of ultimate beneficial owners (or register of official evidence serving the same or similar purpose under the laws of any applicable jurisdiction);
- (e) any circumstances that may affect the information inscribed in the Vehicle Registration Certificate (if applicable) or in a register in which the Asset is registered (if any);
- (f) any change relating to statutory body or other corporate bodies of the Borrower, or to shareholder structure of the Borrower;
- (g) any change relating to any material information provided by the Borrower to ESKA; and
- (h) any other circumstances that may adversely affect the condition of the Asset or the rights of ESKA arising under or in connection with the Finance Documents.

10.2 Ownership title and Hanover

- (a) Promptly after, however in no event later than on the Business Day immediately following the day on which, the Borrower becomes legal owner of the Asset, the Borrower shall:
 - (i) inform ESKA in writing of the fact that it has become owner of the Asset; and
 - (ii) provide ESKA with any evidence required by ESKA attesting that the Borrower has become exclusive owner of the Asset.

- (b) Without prejudice to general nature of Paragraph (a) above, the Borrower shall provide ESKA with a copy of the handover protocol documenting the Handover promptly, however in no event later than on the day falling two (2) Business Days following the Handover.

10.3 Business change

The Borrower shall notify ESKA in advance before making any substantial change to the general nature of business of the Borrower that is carried out by the Borrower at the date of the Agreement, that can affect the Asset or ability of the Borrower to meet its obligations arising under or in connection with the Finance Documents.

10.4 Reporting

The Borrower shall promptly provide ESKA with:

- (a) any documents issued to the Borrower, or with which the Borrower is otherwise provided, in the course or following such periodic technical checks; and
- (b) other documents or other information relating to the technical condition or location of Asset required by ESKA.

10.5 Location monitoring

- (a) The Borrower hereby grants its express and irrevocable consent to ESKA to monitor the location of the Asset by legally permissible means.
- (b) Without prejudice to Paragraph (a) above, the Borrower shall inform ESKA of:
 - (i) the contemplated location of storage of the Asset, by no later than on the date of the Agreement;
 - (ii) the actual location of storage of the Asset, promptly following a request of ESKA; and
 - (iii) any change in the contemplated or actual location of storage of the Asset, promptly following such change.

10.6 Access

The Borrower shall allow ESKA (and any of its professional advisors, nominees or agents) to conduct inspections of the Asset and compliance of the Borrower with the terms of the Finance Documents, and shall provide ESKA (and any of its professional advisors, nominees or agents) with:

- (a) immediate access to the Asset; and
- (b) with any cooperation they may reasonably require in order to conduct such inspections, promptly following request of ESKA.

10.7 Regulatory information

The Borrower shall provide ESKA promptly, however in each case by no later than within five (5) Business Days, with any information that ESKA may require to comply with *know your customer* checks or anti-money laundering or similar applicable regulation.

10.8 Other information

The Borrower shall also provide ESKA, without undue delay, with any other information that ESKA may reasonably require for the purposes of:

- (a) safeguarding or enforcing its rights under the Finance Documents; and/or

- (b) verifying compliance of the Borrower with the terms of the Finance Documents.

11. GENERAL COVENANTS

Unless the Agreement specifically provides otherwise, the covenants set out in this Clause 11 remain effective until the Discharge Date.

11.1 No transfer or Encumbrance

Unless the Borrower receives a written consent of ESKA, the Borrower shall not:

- (a) transfer the Asset; or
- (b) create or permit to subsist any Encumbrance over the Asset, other than the Charge and the Permitted Security.

11.2 Guarantees

The Borrower shall not incur or allow to remain outstanding any guarantee in respect of any obligation of any person, otherwise than with a prior express written consent of ESKA.

11.3 Registration

Without prejudice to obligations of the Borrower under applicable law, the Borrower shall:

- (a) promptly, however in no event later than within three (3) Business Days following the date of the Handover apply for registration of the Borrower as owner and user of the Asset, in any register to registration in which the Asset may be subject in accordance with applicable regulations;
- (b) promptly, however in no event later than within fifteen (15) Business Days following the Handover provide ESKA with:
 - (i) in relation to a Vehicle Registration Certificate issued in the Slovak Republic, or under any other comparable rules of other applicable jurisdiction, an officially certified copy of the long form of the Vehicle Registration Certificate (in relation to a Vehicle Registration Certificate issued in the Slovak Republic, part II of such Vehicle Registration Certificate); and
 - (ii) an original (or, if approved by ESKA, an officially certified copy) of any such other evidence as ESKA may require, attesting compliance of the Borrower with the obligation set out in Paragraph (a) above; and
- (c) promptly notify ESKA in writing in case of any:
 - (i) refusal of the competent authority to carry out such registration; or
 - (ii) other circumstances that may:
 - (A) preclude such registration;
 - (B) limit the scope of such registration; or
 - (C) prolong the registration process.

11.4 Compliance with laws

The Borrower shall comply in all respects with all laws to which the Borrower may be subject.

11.5 Corporate transformation

The Borrower shall only enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction, with a previous express written consent of ESKA.

11.6 Asset modifications

- (a) The Borrower shall not make any modifications to the Asset (including any changes to its unique identifiers, painting, labels, stickers, or any other manner affecting its appearance), otherwise than with a previous express written consent of ESKA.
- (b) If ESKA becomes entitled to enforce the Charge pursuant to the Charge Agreement:
 - (i) and if ESKA so requests, the Borrower shall, by no later than within fifteen (15) days following the delivery of the Enforcement Notice (as this term is defined in the Charge Agreement) to the Borrower, at the expense of the Borrower, fully restore the condition in which the Asset was, subject to wear and tear, at the moment of the Handover; and
 - (ii) all integral alterations (improvements, modifications) of the Asset shall become part of the Asset and neither ESKA nor the person who acquires the Asset based on enforcement of the Charge shall be obliged to pay any compensation to the Borrower on account of such alterations, and the Borrower shall have no right to compensation for such costs.

11.7 Asset maintenance

The Borrower shall:

- (a) maintain the Asset in good working order and condition (subject to wear and tear), in each case in full accordance with the Technical Documentation;
- (b) carry out periodic technical checks and maintenance of the Asset, at least within the times prescribed in the Technical Documentation (and if no such information is provided in the Technical Documentation, then at least once per a calendar year), and provide ESKA evidence that each such action has been duly carried out promptly after its completion;
- (c) ensure that technical checks, repairs and maintenance of the Asset be carried out by a service station authorised or otherwise designated by the manufacturer of the Asset, in each case in accordance with the Technical Documentation and terms of the Insurance Policy (and in no event giving rise to exclusion of insurance or limitation of insurance payments by the insurer under the Insurance Policy) and at the cost of the Borrower; and
- (d) without prejudice to Paragraph (c) above, unless otherwise agreed by ESKA expressly in writing, ensure that any parts of the Asset be only replaced by originally manufactured (and not already used) parts.

11.8 Asset use

The Borrower:

- (a) shall operate and otherwise use the Asset only in accordance with the Technical Documentation;
- (b) comply with the terms relating to operation and storage of the Asset (including any anti-theft and other safety measures) set out in the Technical Documentation and the Insurance

Policy and in each case operate and store the Asset in a manner that might not reasonably be expected to give rise to:

- (i) termination of the Insurance Policy by the insurer; or
 - (ii) reduction of any monetary performance of the insurer under the Insurance Policy;
- (c) shall ensure that no person who:
- (i) does not have authorisation, appropriate professional training, qualification or actual skill to operate or use the Asset;
 - (ii) is under influence of alcohol, drugs, toxic, psychedelic or other similar substances affecting consciousness, perception or concentration,
- be allowed to operate or otherwise use the Asset;
- (d) shall conduct appropriate and periodic training, relating to operation or other use of the Asset, of employees (if any) of the Borrower and other persons who operate or otherwise use the Asset;
- (e) shall not transport the Asset to, or use the Asset:
- (i) outside of the European Union; or
 - (ii) in, territories with increased risk of damage, including zones of military conflict or civil unrest;
- (f) shall not change the actual location (address) in which the Asset is stored, without the prior written consent of ESKA; and
- (g) shall keep fully functional the GPS localisation and track & trace mechanism with which the Asset may be equipped (whether they are in-built or portable (detachable)),

unless the Borrower has obtained a prior express written consent of ESKA permitting the Borrower to act otherwise.

11.9 Asset designation

The Borrower shall clearly state that the Charge has been created over the Asset and is effective (as long as the Charge remains effective).

11.10 Enforcement of rights

- (a) The Borrower shall duly, and with expert care, safeguard and enforce each right that may arise to the Borrower or ESKA under or in connection with the Purchase Agreement vis-à-vis the Vendor or any other third party.
- (b) The Borrower shall enforce the rights referred to in Paragraph (a) above after consultation with ESKA.
- (c) Provided that there is danger in delay, and the Borrower cannot obtain instruction of ESKA in time, the Borrower shall act in the best interests of ESKA that are known to the Borrower or which the Borrower could reasonably assume.
- (d) The Borrower shall promptly:

- (i) inform ESKA of any steps made by the Borrower in relation to matters set out in Paragraph (a) above; and
 - (ii) provide ESKA with any documents relating to the same.
- (e) Provided that it is necessary for performance of the obligations of the Borrower set out in Paragraph (a) above, ESKA shall provide the Borrower with a specific power of attorney allowing the Borrower to act on behalf of ESKA in this respect.

11.11 *Pari passu* ranking

The Borrower shall ensure that at all times any receivables of ESKA under the Finance Documents rank at least *pari passu* with the receivables of all other unsecured and unsubordinated creditors of the Borrower except those creditors whose receivables are mandatorily preferred by laws of general application.

11.12 Cooperation

The Borrower shall provide ESKA with any cooperation that ESKA may require in order to give effect or enforce its rights arising under or in connection with the Finance Documents.

12. EVENTS OF DEFAULT

Each of the following circumstances set out in this Clause 12 (except for Clause 12.13 (*Rights of ESKA*) below) constitutes an Event of Default, regardless whether these events occurred as a result of wilful misconduct or negligence of the Borrower, or whether they were within control of the Borrower or control of any other person:

12.1 Payment default

The Borrower does not pay on the due date any amount payable pursuant to the Transaction Documents at the place at and in the currency in which it is expressed to be payable unless such payment:

- (a) was not made solely due to an administrative error; and
- (b) is made by no later than within three (3) Business Days of its due date.

12.2 Handover failure

- (a) The Borrower does not:
 - (i) accept or fail to accept into its possession the Asset at the time set out in, and otherwise in accordance with, the Agreement or the Purchase Agreement, or at the time agreed with ESKA;
 - (ii) duly execute the Handover Protocol in accordance with, and at the time prescribed by, the Purchase Agreement and/or the Finance Documents; or
 - (iii) ensure that the Vendor duly execute the Handover Protocol.
- (b) The Handover Protocol contains any reservation or qualifications (however described) other than those, with which ESKA expressed its prior written consent.
- (c) At the time of the Handover the Asset does not conform to the requirements set out in the Purchase Agreement, the Finance Documents and/or mandatory applicable law.

12.3 Non-payment default

- (a) The Borrower breaches any of its obligations arising under or in connection with a Transaction Document (other than the obligations set out in Clauses 12.1 (*Payment default*) or 12.2 (*Handover failure*) above.
- (b) No Event of Default will occur under this Clause 12.2, provide that the relevant Default is capable of remedy and is fully remedied by the Borrower on the sooner of the following days:
 - (i) the day falling ten (10) Business Days from the day on which the Borrower became aware, or would have become aware, if acting with due care, of occurrence of such Default; or
 - (ii) the day falling ten (10) Business Days from the day on which ESKA informed the Borrower of occurrence of such Default in writing.

12.4 Misrepresentation

Any representation made by the Borrower in the Transaction Documents is, or was at the moment when it was made or deemed to be repeated, untrue, incomplete or misleading in any respect.

12.5 Ownership title

- (a) The Borrower does not become exclusive owner of the Asset by no later than at the moment of the Handover.
- (b) At any time following the sooner of the following events:
 - (i) the moment of transfer of ownership title to the Asset to the Borrower from the Vendor; or
 - (ii) the Handover;any Encumbrance (other than the Permitted Security or other Encumbrance specifically permitted by the Finance Documents) weights on the Asset.

12.6 Damage

- (a) Any damage is inflicted on the Asset, or material damage to the Asset is threatening.
- (b) The Asset is stolen, otherwise misappropriated.
- (c) The Borrower or ESKA are unable to locate the Asset for a period of time exceeding twenty four (24) hours.

12.7 APA audit

Any audit or other review or inquiry conducted by the APA or any other public authority in relation to the Subsidy Agreement identifies any shortcomings or inconsistencies.

12.8 Cessation of business

The Borrower ceases to carry on its business activity which the Borrower carries out on the date of the Agreement, otherwise than with a prior written consent of ESKA.

12.9 Change of control

Provided that the Borrower is a corporation or other legal entity (in Slovak: *právnická osoba*), any:

- (a) of the persons who are ultimate beneficial owners of the Borrower as of the date of the Agreement ceases to be its beneficial owner (otherwise than due to death or severe illness); or
- (b) person, who was not ultimate beneficial owner of the Borrower at the date of the Agreement becomes its ultimate beneficial owner,

in each case otherwise that with the prior written consent of ESKA.

12.10 Sanctions

The Borrower, or any of its directors, other members of its corporate bodies, its shareholders, ultimate beneficial owners or other controlling entities or other affiliates, becomes subject to sanctions applied by the Slovak Republic, the Czech Republic, any other member state of the European Union, the United Kingdom, the United States of America or Ukraine.

12.11 Insurance policy

- (a) The Insurance Policy:
 - (i) is terminated by the insurer; or
 - (ii) is or becomes unenforceable.
- (b) A payment obligation of the insurer under the Insurance Policy is:
 - (i) reduced;
 - (ii) excluded;
 - (iii) made conditional; or
 - (iv) deferred.
- (c) No Event of Default will arise under this Clause 12.11, if the circumstance, that would otherwise give rise to such Event of Default is a consequence directly and solely of breach of obligations of ESKA.

12.12 Insolvency and corporate restructuring

- (a) The Borrower becomes insolvent under laws of any applicable jurisdiction.
- (b) Any action or other procedure or step is taken in relation to the Borrower or its assets concerning:
 - (i) winding-up, dissolution (whether with liquidation or not) or asset reorganisation or transformation, unless otherwise than with a prior written consent of ESKA;
 - (ii) commencement of insolvency proceedings, (including filing of the petition for insolvency proceedings by any person); or
 - (iii) any other similar proceedings under laws of any applicable jurisdiction.

12.13 Cross Default

- (a) A default or termination event (however described) occurs under any contractual relationship between the Borrower and any of its creditors (including ESKA itself).

- (b) Any creditor of the Borrower (including ESKA itself) becomes entitled to accelerate, or otherwise cause premature payment of, a loan, debt security, guarantee, deferred purchase price or similar obligation of the Borrower (other than the financial indebtedness of the Borrower under the Agreement).
- (c) APA:
 - (i) becomes entitled to request any refund or return (whether wholly or in part) of a subsidy or any similar financial performance advanced to the Borrower under the Subsidy Agreement; or
 - (ii) withholds or suspends utilisation of any subsidy or any similar financial performance to be provided to the Borrower under the Subsidy Agreement

12.14 Invalidity

- (a) A Transaction Document, or any of the rights of ESKA arising under or in connection with any of these agreements:
 - (i) is or becomes invalid or unenforceable;
 - (ii) is terminated; or
 - (iii) is repudiated by the Borrower.
- (b) The Charge is or becomes invalid or unenforceable.

12.15 Rights of ESKA

At any time when an Event of Default is continuing, ESKA may (acting in its sole discretion):

- (a) request immediate payment of the Finance Sums, in full, by which each Finance Sum will immediately become payable by the Borrower in full;
- (b) request full payment of each and any Finance Sum on the day determined by ESKA, by which each such Finance Sum will become payable by the Borrower on such date in full; and/or
- (c) unilaterally terminate the Agreement under Clause 14.1 (*Unilateral termination by ESKA*) below.

13. CONTRACTUAL PENALTIES

13.1 Covenant to pay

Provided that the Borrower breaches any of the following obligations:

- (a) any obligation set out in Clause 9.9 (*Continuing representations*) above;
- (b) any obligation set out in Clause 10 (*Information covenants*) above; or
- (c) any obligation set out in Clause 11 (*General covenants*) above,

The Borrower shall pay to ESKA a contractual penalty of EUR 700 for each such breach.

13.2 Common provisions

- (a) Each contractual penalty becomes payable on the day falling ten (10) Business Days following the delivery of a written request of ESKA to the Borrower for its payment.

- (b) Payment of a contractual penalty does not:
 - (i) absolve the Borrower from, reduce, or defer, the obligation secured by such contractual penalty; or
 - (ii) affect the right of ESKA to claim damages or compensation of other harm caused by breach of the obligation secured by such contractual penalty.

14. TERMINATION

14.1 Unilateral termination by ESKA

Without prejudice to its right of termination under the statutory law, ESKA may terminate the Agreement unilaterally by a termination notice delivered to the Borrower at any time when an Event of Default is continuing.

14.2 Unilateral termination by Borrower

The rights of the Borrower to unilaterally terminate any Finance Document are hereby, to the largest extent permitted under the applicable law, expressly excluded.

14.3 Consensual termination

The Borrower and ESKA may terminate any Finance Document by way of a written mutual agreement on termination of such Finance Document at any time.

14.4 Effect of termination

- (a) Unless the Borrower and ESKA explicitly agree otherwise in writing:
 - (i) unilateral termination of a Finance Document becomes effective on the Business Day immediately following the day on which the termination notice is delivered by the terminating Party to the receiving Party; and
 - (ii) consensual termination of a Finance Document becomes effective:
 - (A) on the day set out in the document documenting such consensual termination;
or
 - (B) in the absence of a date referred to under Paragraph (A) above, on the Business Day immediately following the day of such consensual termination.
- (b) Unless the Borrower and ESKA agree explicitly otherwise in writing:
 - (i) Clauses 15 (*Communication*) to (and including) 20 (*Final provisions*) will not be affected by, and will survive, termination of the Agreement; and
 - (ii) termination:
 - (A) will not give rise to the obligation of ESKA towards the Borrower to return or refund to the Borrower of the Arrangement Fee or any other fee paid under the Agreement; and
 - (B) does not affect monetary obligations of a Party (including obligations of the Borrower under Clauses 7 (*Indemnity*) or 13 (*Contractual penalties*) above), that have arisen prior to termination becoming effective.

15. COMMUNICATION

15.1 Notices

Any and all notices, statements, instructions or documents to be delivered between the Borrower and ESKA under or in connection with the Finance Documents must be delivered:

- (a) by hand;
- (b) by a courier service;
- (c) by registered letter; or
- (d) by email,

to the address indicated for communication in the Agreement; or to such other addresses as may be notified by the Parties to each other in accordance with this Clause 15 at least five (5) Business Days in advance.

15.2 Deemed delivery

Any and all notices, statements, instructions or documents to be delivered between the Parties pursuant to the Finance Documents shall be deemed delivered:

- (a) if delivered by hand or by a courier service, upon delivery or refusal to receive delivery; or
- (b) if sent by post, 3 (three) Business Days from the day when the consignment is left at a post office in an envelope bearing the address pursuant to this Clause 15, with postage prepaid,

or, in each case, on such a sooner day on which the receiving Party confirms the receipt, or on which it becomes otherwise apparent that the delivery has occurred.

15.3 Language

Any and all notices, statements, instructions or documents to be delivered between the Borrower and ESKA pursuant to the Finance Documents shall be in a Communication Language. If a notice or document cannot be delivered in a Communication Language and the receiving Party so requires, it shall be accompanied by an official (certified) translation to a Communication Language determined by the receiving Party.

15.4 Electronic communication and signatures

- (a) Any communication to be made in connection with the Finance Documents may be made by electronic mail.
- (b) Any such electronic communication as specified in paragraph (a) above will be effective only when actually received (or made available) in readable form.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5:00 p.m. shall be deemed only to become effective on the following Business Day.
- (d) Without prejudice to validity of other forms of signature admissible under applicable law, the Borrower and ESKA expressly agree that any documents or communication relating to the Finance Documents may also be signed by a digital signature, in each case provided that such signature meets the minimal requirements imposed under the law governing the respective Finance Document on a signature in relation to the respective document.

16. CONFIDENTIALITY

16.1 Confidentiality undertaking

Neither Party shall provide to a third party any Confidential Information relating to the other Party otherwise than in accordance with the provisions of this Clause 16.

16.2 Permitted disclosures

Each Party may disclose Confidential Information relating to the other Party:

- (a) to its professional advisors, employees and directors bound by a confidentiality obligation not less stringent than the confidentiality undertaking contained in this Clause 16 and in each case on a need-to-know basis and only after making them acquainted with the fact that such information is of confidential nature;
- (b) to its auditors or auditors of its controlling entity;
- (c) in relation to disclosure by ESKA:
 - (i) to its existing or prospective lenders, investors or other providers of capital; and/or
 - (ii) to any party with whom ESKA discusses assignment of rights and/or transfer of obligations of ESKA arising under or in connection with the Agreement; and
- (d) state or other public authorities and courts in situations when disclosure is required by applicable law or decision of public authority, in each case to the minimum extent permitted and after notifying the other Party of such disclosure in writing (to the extent legally permissible).

16.3 Announcements

Save for the law or appropriate regulatory requirements, no Party shall, without the prior written consent of other Party, directly or indirectly, make any public comment, statement or announcement with respect to the Confidential Information.

17. DATA PROTECTION

17.1 Data processing

In order to perform its rights and obligation arising under or in connection with the Finance Documents and to check performance of obligations of the Borrower arising under or in connection with the Finance Documents, ESKA will process certain personal data of:

- (a) the Borrower (provided that the Borrower is an individual);
- (b) the persons acting on behalf of the Borrower; and
- (c) the contact persons of the Borrower.

17.2 Privacy policy

- (a) Detailed information concerning processing of personal data is contained in privacy notice issued by ESKA available at <https://eskafinance.com/terms-and-conditions/gdpr/> as amended from time to time (the "**Privacy Notice**").
- (b) The Borrower hereby confirms that it has made itself acquainted with the Privacy Notice.
- (c) The Borrower shall also ensure that the persons acting on its behalf and its contact persons make themselves acquainted with the Privacy Notice on the date of the Agreement.

18. ASSIGNMENTS AND TRANSFERS

18.1 Assignment by Borrower

The Borrower shall not assign, transfer, or create charge (in Slovak: *záložné právo*) or any other Encumbrance over, its receivables or other rights arising under or in connection with a Finance Document, in its entirety or in part, without the prior express written consent of ESKA.

18.2 Assignment by ESKA

The Borrower expressly agrees that ESKA may, at any time:

- (a) create charge (in Slovak: *záložné právo*); and/or
- (b) assign,

its receivables or other rights arising under or in connection with any Finance Document to any party.

19. SET-OFF

19.1 Set-off by Borrower

The Borrower may only set off its receivables vis-à-vis ESKA against the receivables of ESKA vis-à-vis the Borrower arising under or in connection with the Finance Documents, by way of a written agreement with ESKA.

19.2 Set-off by ESKA

The Borrower agrees that ESKA may unilaterally set off its receivables vis-à-vis the Borrower (whether mature or not yet mature) against receivables of the Borrower vis-a-vis ESKA (whether mature or not yet mature) arising under or in connection with any Finance Document.

20. AMENDMENTS

20.1 Amendments

The Borrower and ESKA may change the Agreement at any time by way of a written amendment made in writing and duly signed by each Party.

20.2 Changes

ESKA may unilaterally change these Terms and Conditions (once or repeatedly) provided that ESKA considers such change necessary:

- (a) for it to fully comply with *know your customer*, anti-money-laundering or other applicable regulation;
- (b) to reflect changes in applicable laws or practice of public authorities;
- (c) to correct manifest errors; or
- (d) for it to protect its rights and rightful interests.

20.3 Amendment procedure

- (a) Provided that ESKA contemplates to change these Terms and Conditions in accordance with Clause 20.1 (*Changes*) above, ESKA shall:
 - (i) provide the Borrower with a consolidated updated wording of these Terms and Conditions incorporating such change; and
 - (ii) inform the Borrower of the effective date of such change (the "**Effective Date**").

- (b) ESKA shall take reasonable endeavours to ensure that the Effective Date occur at least twenty (20) Business Days following the dispatch of the notice referred to under Paragraph (a) above.

20.4 Amendment effect

Subject to Clause 20.5 (*Rejection and deemed consent*) below, as of the Effective Date:

- (a) these Terms and Conditions will be amended and replaced by; and
- (b) any reference in the Agreement (including in the Terms and Conditions) to "Terms and Conditions" will be construed as references to,

the new consolidated version of these Terms and Conditions sent to the Borrower by ESKA in accordance with Clause 20.3 (*Amendment procedure*) above.

20.5 Rejection and deemed consent

- (a) Provided that the Borrower does not agree with the proposed change to the Terms & Conditions, the Borrower shall notify ESKA of the same in writing, by no later than on the day (the "**Drop-dead Date**") falling ten (10) Business Days from the date on which the Borrower was notified of such change to the Terms & Conditions by ESKA.
- (b) Provided that the Borrower, in each case prior to the Drop-dead Date:
 - (i) notifies ESKA in writing that the Borrower consents to the proposed change to the Terms & Conditions, such proposed change to the Terms & Conditions will be accepted by the Borrower on the day of delivery of such notification to ESKA;
 - (ii) notifies ESKA of disapproval of the Borrower of the proposed change to the Terms & Conditions in accordance with Paragraph (a) above:
 - (A) such proposed change to the Terms & Conditions will not apply onto the Agreement; and
 - (B) the Finance Sums will become payable by the Borrower in full on the Drop-dead Date; and
 - (iii) do not notify ESKA under Paragraphs (i) or (ii) above, the Borrower shall be deemed to have accepted the proposed change to the Terms & Conditions on the Drop-dead Date.

21. FINAL PROVISIONS

21.1 Waiver

- (a) Any waiver by ESKA of its rights arising under or in connection with the a Finance Documents, will only be effective if made in writing and duly signed by a person authorized to act on behalf of ESKA.
- (b) If ESKA waives a breach of any provision of a Finance Document, such waiver shall not operate (and shall not be interpreted) as a waiver of performance or compliance with any other provision of such a Finance Document.
- (c) No extension by ESKA of any term for the payment of any debt or satisfaction of any obligation under the a Finance Documents shall be deemed to constitute any extension of

the term for the payment of any other debt or waiver or deemed satisfaction of any obligation.

21.2 Severability

In the event that any provision of a Finance Document is found to be unlawful, putative, invalid or unenforceable pursuant to any existing or future legal regulation, then the Borrower undertakes to enter into an amendment to such Finance Document (or, if, based on reasoned request by ESKA, it is necessary or desirable, into an agreement that replaces such Finance Document) that replaces such unlawful, putative, invalid or unenforceable provision with a lawful, valid and enforceable provision, as close as possible to the terms and conditions set down by the relevant unlawful, putative, invalid or unenforceable provision.

21.3 Nature of contract

The Agreement is a credit facility agreement entered into in accordance with Sections 497 *et seq.* of the Commercial Code.

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