

Heter Iska

Date:

Parties

Investing Partner: PONTIS FINANCE LLP a limited liability partnership incorporated in England and Wales with registered number OC421180 whose registered office is at Berkeley Square, Berkeley Square House, 2nd Floor, London W1J 6BD

Managing Partner: The party/ies referred to and defined in the Security Documents as the Borrower

[Guarantor(s): [The party/ies referred to and defined in the Security Documents as the Guarantor(s)]

BACKGROUND

- A. The Investing Partner and the Managing Partner are parties to a Loan more properly described in and documented by the Security Documents, under the terms of which they are characterised as lender and as borrower respectively, and the Guarantor, should there be such, is the guarantor to the lender of the obligations of the borrower thereunder. For the purposes of this Heter Iska, the Investing Partner and the Managing Partner are treated as partners, and their roles as such are described more fully below. Notwithstanding the treatment of the parties as partners, the Investing Partner shall have no liability whatsoever to the obligations, debts or liabilities of the Managing Partner.
- B. The Investing Partner, on its own account and/or as security trustee and/or agent for its Funders has agreed to provide the Capital to the Managing Partner pursuant to the Security Documents.
- C. This Heter Iska acts as an addendum to the Security Documents that have been entered into on or about the date of this agreement with the sole purpose of achieving compliance with Jewish Law.
- D. Any delineation between Relevant Capital and Non-Relevant Capital is solely to determine whether and to what extent the Capital is governed by this Heter Iska.
- E. Definitions in these Recitals derive from clause 1 of this Heter Iska.

1. Definitions and interpretation

- 1.1 Unless stated otherwise below, the definitions of the Security Documents shall apply to this Heter Iska:

Business Day: means a day, other than a Saturday or Sunday or public holiday, on which banks are ordinarily open for the transaction of business in the United Kingdom,

but shall also exclude Fridays and any days during and immediately prior to the following Jewish holidays which would otherwise be Business Days: Passover, Shavuoth, Tisha B'Av, Rosh Hashana, Yom Kippur, Succoth and Purim. The full list of non-Business Days in each calendar year is available from the offices of the Union of Orthodox Hebrew Congregations upon request.

Capital: the moneys (comprised of Relevant Capital and Non-Relevant Capital) advanced by the Investing Partner to the Managing Partner under the Loan, whether drawn down in one tranche or in multiple tranches, as defined in the Security Documents and as amended from time to time thereafter by written agreement between the Parties.

Capital Ratio: the ratio of Relevant Capital to Non-Relevant Capital from time to time.

Claim Quantum: the amount of Relevant Capital which the Managing Partner claims has been lost under the Investment.

Effective Date: as stated in the Security Documents (also termed Commencement Date).

Exiting Capital: any monies contributed towards the Capital which are reimbursed to a Funder before the Final Repayment Date and replaced with Subsequent Capital.

Exiting Funders: any Funders whose contribution of monies to the Capital becomes Exiting Capital.

Final Repayment Date: the date of final repayment of outstanding Capital by the Managing Partner under the Security Documents.

Funders: Any persons providing moneys to the Investing Partner for it to use to constitute the Capital from time to time, including (but not limited to) the following entities:

- (i) Pontis Investment SARL, registered in Luxembourg under number B235973
- (ii) PCI RAIF S.A., registered in Luxembourg under number B225453
- (iii) Pure Capital S.A., registered in Luxembourg under number B15261
- (iv) Pontis Capital Management LLP, a UK limited liability partnership with number OC420490.

Heter Iska: This addendum to the Security Documents between the Parties (the term being a Hebrew expression that literally means "permitted venture", and which creates a basis under which parties to the Security Documents who are Jewish may contract with each other in circumstances that may otherwise be characterised as the lending and borrowing of money at interest between Jews, which is prohibited in accordance with Jewish Law).

Heter Iska Claim: A claim of Low Return or Loss of Capital supplemented by evidence accepted by the Jewish Orthodox Court of Law under the procedure set out in clause 8.1.

Investment: an investment of the Investment Portion of the Relevant Capital by the Investing Partner in the Investment Portfolio managed on its behalf by the Managing Partner for the purpose of generating profits for both parties, and not to be construed as a loan from the Investing Partner to the Managing Partner.

Investment Portfolio: any and all real property investments within England and Wales held directly or indirectly by the Managing Partner and/or the Owner from time to time which the Managing Partner and/or the Owner reasonably expects to be profitable at the Effective Date, or, if acquired during the term of the Loan, at the date of acquisition.

Investment Portion: the portion of the Relevant Capital which is construed as an Investment pursuant to clause 3.2 of this Heter Iska.

Jewish Law: Jewish law as laid down in rulings in the Talmud, Shulchan Arukh, other codes and responsa and as the same may be interpreted in accordance with the rulings of the Jewish Orthodox Court of Law (and for these purposes “**subject to Jewish Law**” in relation to any party to this Heter Iska means that such party (whether or not openly acknowledged thereby) has obligations to personally abide by the principles of Jewish Law).

Jewish Orthodox Court of Law: The court (Beth Din) of the Union of Orthodox Hebrew Congregations (UOHC), a charitable company registered with the Charity Commission for England and Wales with charity number 1158987 whose registered address is 140 Stamford Hill London N16 6QT.

Loan: The transaction entered into between the Managing Partner and the Investing Partner (and the Guarantor(s) where applicable) as governed by the Security Documents.

Loss of Capital: any loss (actual or potential, to include uncrystallized loss) of the whole or part of the Investment Portion of the Relevant Capital.

Low Return: where the profits from the Investment of the Relevant Capital by the Managing Partner are lower than the Profits Payable.

Market Value: as defined in the Security Documents.

Non-Relevant Capital: that part of the Capital sourced from Funders that may be provided by the Investing Partner to the Managing Partner without in any circumstances violating principles of Jewish Law. (that is to say that part of the Capital which has been provided by such Funders that are not subject to Jewish Law and

therefore to whom the Jewish Law restriction of interest (*ribbis*) does not apply and therefore to which the terms of this Heter Iska are not applicable).

Owner: the person/entity that the Jewish Orthodox of Law holds actually owns the assets secured by the Security Documents under Jewish Law to the extent that Jewish Law ignores or looks through the corporate veil of the Managing Partner.

Relevant Capital: that part of the Capital sourced from Funders that may be provided by the Investing Partner to the Managing Partner only on the basis set out in this Heter Iska, so as not to cause a violation of relevant principles of Jewish Law. To the extent one has been issued the percentage of the Capital which forms the Relevant Capital is set out in a letter dated on or about the date of this Heter Iska from the Jewish Orthodox Court of Law, or indeed any later date. In any event the determination as to the percentage of the Capital which is Relevant Capital will be made by the Jewish Orthodox Court as per clause 2.2.

Payment Date: the dates for payment of the Profits Payable, as set out in the Security Documents.

Profits Payable: all profit return, fees and other payments payable by the Managing Partner to the Investing Partner in respect of the Relevant Capital, pursuant to the Security Documents (including any described in the Security Documents as interest).

Security Documents: all written agreements between the Managing Partner and the Investing Partner (and the Guarantor(s) where applicable) in respect of the Loan dated on or about the date of this Heter Iska, and any security provided for that Loan by the Managing Partner (or, should there be such, the Guarantor).

Solemn Oath: A biblical oath (*shvuah d'oraisah*) as defined in chapter 87 of volume Choshen Mishpat of Shulchan Arukh).

Subsequent Capital: The part of the Capital provided by Subsequent Funders.

Subsequent Funders: Any person providing moneys for or otherwise purchasing any of the debt represented by the Capital in replacement of or supplemental to some or all of the Funders after the Effective Date.

Superseded Terms: Any provisions of the Security Documents which, if unmodified, contradict the purpose of this Heter Iska.

Termination Date: as stated in the Security Documents and adjusted in accordance with any deemed or explicit extensions of the term of the Loan.

Unpreventable Losses: Losses incurred which are categorised under Jewish Law as unpreventable losses (*oness*).

1.2 For the purposes of this Heter Iska and all matters arising from it:

(a) References to “the Talmud” shall be deemed to refer to Talmud Bavli, Friedman Edition, Oz V’Hadar Publishing; and

(b) References to the “Shulchan Arukh” shall be deemed to refer to Friedman Edition, Machon Yerushalayim Publication; and

in either case, where the text exists in translation into English from the original Hebrew and/or Aramaic, the original shall be deemed decisive in case of any dispute.

2. Application

2.1 Such part of the Capital which constitutes Non-Relevant Capital from time to time is deemed to be managed as a loan on the terms of the Security Documents without modification, and the terms of this Heter Iska will not apply to Non-Relevant Capital.

2.2 Such part of the Capital which constitutes Relevant Capital from time to time is deemed to be subject to the terms of this Heter Iska. and will be determined from time to time by the Jewish Orthodox Court of Law.

3. Investment Structure

3.1 The sum of the Relevant Capital and Non-Relevant Capital at all times equals the Capital. The Relevant Capital and Non-Relevant Capital rank *pari passu*.

3.2 Subject to any rules which shall be in issue from the Jewish Orthodox Court of Law at the Effective Date to reflect Jewish law, and/or as ruled otherwise by the Jewish Orthodox Court of Law, the Relevant Capital is deemed to have been provided by the Investing Partner to the Managing Partner 50% as an interest-free loan and 50% as an Investment on the terms contained herein. Where the rules so stipulate, or the Jewish Orthodox Court of Law determines at a hearing that it is preferable under Jewish Law, a percentage of more than 50% and up to and including 100% of the Relevant Capital shall be construed as an Investment.

3.3 The Managing Partner acknowledges that it has effectively and validly transferred title to a portion of its assets at least equal in value to the Relevant Capital (assessed at Market Value) to the Investing Partner, which assets shall be held and managed by the Managing Partner on behalf of the Investing Partner, and without detracting from any rights the Investing Partner might have under the terms of the Security Documents the Investing Partner shall have no management, decision rights or obligations whatsoever in respect of these transferred assets.

3.4 Where some or all of the Capital contributed by the Funders becomes Exiting Capital and is replaced by Subsequent Capital, the contribution of the Subsequent Capital by the Subsequent Funder(s) will be deemed as a repayment of the Exiting Capital by the Managing Partner to the Investing Partner, and an equivalent repayment of the Exiting

Capital by the Investing Partner to the Exiting Funder(s), and in exchange for the foregoing, the Managing Partner shall be deemed to owe, according to the terms of this Heter Iska, an equivalent amount of the Capital to the Investing Partner, who shall, back-to-back, owe that amount of Capital to the Subsequent Funders. In such a case, a portion of the assets of the Managing Partner, at least equal in value to the Subsequent Capital (assessed at Market Value) will have transferred to the Subsequent Funder(s).

4. Interpretation

- 4.1 Any Superseded Terms shall be deemed modified to the minimum extent necessary to uphold the terms set out within this Heter Iska. All other terms of the Security Documents continue to apply without modification. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the validity and enforceability of the rest of the Security Documents.
- 4.2 Except as stated in 4.4 below, this Heter Iska applies only where the Managing Partner and the Investing Partner are both subject to Jewish Law.
- 4.3 The provisions of this Heter Iska shall apply to any Guarantor(s) as though:
- (a) each reference to the Managing Partner is also a reference to the Guarantor(s), in respect of the liability of the Guarantor(s) to assume the obligations of the Managing Partner under the Security Documents; and
 - (b) each reference to the Investing Partner is also a reference to the Guarantor(s), in respect of any monies due to, or actions for recovery taken by, the Guarantor(s) from the Managing Partner in relation to any sums paid by the Guarantor(s) to the Investing Partner under the Security Documents.
- 4.4 Where the Managing Partner is not subject to Jewish Law, but the Guarantor(s) is/are subject to Jewish Law, this Heter Iska shall apply, to the extent that a Guarantor's obligations are enforced, as though the Loan was entered into directly between the Investing Partner and the Guarantor(s), and references to the Managing Partner in this Heter Iska shall mean the Guarantor(s).

5. Management Fee

- 5.1 The Investing Partner shall pay the Managing Partner a fee of £1.00 per calendar month in consideration for its management of the Relevant Capital (plus value added tax at the applicable rate if the Managing Partner is a person registered for the purpose of value added tax).

6. Apportionment of profits and losses

- 6.1 Any profits or Unpreventable Losses made by the Managing Partner from the Investment shall be apportioned between the Managing Partner and the Investing Partner in accordance with the percentage that the Investment Portion bears to the Capital (taken as a whole).

7. Claim of Loss of Capital or Low Return

- 7.1 In the event that the Managing Partner seeks to make a Heter Iska Claim due to a Low Return, the Managing Partner shall remain fully liable for all due payments of Profits Payable and shall not avoid any liability for Profits Payable, unless and until it makes a Heter Iska Claim supported by a Solemn Oath in the Jewish Orthodox Court of Law in compliance with clause 8.1. If the Managing Partner does not make a Heter Iska Claim supported by a Solemn Oath in the Jewish Orthodox Court of Law in compliance with clause 8.1, it is deemed to represent that there are sufficient profits available to it to satisfy its obligations in respect of Profits Payable.
- 7.2 In the event that the Managing Partner seeks to make a Heter Iska Claim due to a Loss of Capital, the Managing Partner shall remain fully liable for repayment of the Relevant Capital under the Security Documents unless and until it makes a Heter Iska Claim which is supported by two witnesses approved by the Jewish Orthodox Court of Law as fit under Jewish Law in the manner indicated at 8.1(f).

8. Procedure for Heter Iska Claim

- 8.1 Where the Managing Partner becomes aware of a Low Return or of a Loss of Capital and seeks to implement a claim under the Heter Iska, the Managing Partner shall, as soon as reasonably practicable:
- (a) In the case of a Low Return, notify the Investing Partner in writing that the Investment returns may be insufficient to cover the payment of the Profits Payable and supply evidence of the same;
 - (b) In the case of a Loss of Capital, notify the Investing Partner in writing that part or the whole of the Relevant Capital may be lost and supply evidence of the same;
 - (c) Submit a Heter Iska Claim in the Jewish Orthodox Court of Law by e-mail to ggbeisdin@uohc.co.uk within one Business Day of making the notification under 8.1(a) or (b) in the form appended hereto;
 - (d) Attend the hearing at the Jewish Orthodox Court of Law at the time it specifies within 3 Business Days of submitting the Heter Iska Claim together with all evidence of the Low Return or Loss of Capital as the case may be;
 - (e) In the case of a Low Return, make a Solemn Oath during the hearing at the Jewish Orthodox Court of Law declaring the level of the returns from the Investment, and setting out all its assets falling within its Investment Portfolio under Jewish Law and their locations; and

- (f) In the case of a Loss of Capital, bring two witnesses approved by the Jewish Orthodox Court of Law as fit under strict Jewish Law (as set out in Shulkhan Aruch, Choshen Mishpat, Chapters 34-37) to support the claim as to the Loss of Capital, and make a Solemn Oath setting out all its assets within its Investment Portfolio under Jewish Law and their locations.
- (g) The Managing Partner shall submit and present to the Jewish Orthodox Court of Law all its evidence and witnesses under this clause within 10 Business Days of the hearing under clause 8.1(d); any such evidence submitted or presented thereafter shall be invalid and ruled to be void by the Jewish Orthodox Court of Law.

8.2 On each consecutive day from the Effective Date any failure of the Managing Partner to:

- (a) notify the Investing Partner of any Loss of Capital; or
- (b) notify the Investing Partner of a Low Return; or
- (c) provide to the Investing Partner evidence of a Low Return in accordance with Clause 8.1 above; or
- (d) provide to the Investing Partner evidence of the Loss of Capital in accordance with clause 8.1; or
- (e) failing to comply with clause 9.1

shall be deemed to be an irrevocable admission by the Managing Partner that:

- (i) no Loss of Capital has been incurred from the Effective Date of the Loan until the date that is 30 days prior to the current day;
- (ii) there have been sufficient returns from the Effective Date of the Loan until the date that is 30 days prior to the current day to pay the Profits Payable;

For the avoidance of any doubt, on each day from the Effective Date that the Managing Partner fails to comply with any or all of the requirements of clause 8.1, it shall be deemed to waive any claim, whether in the Jewish Orthodox Court of Law or within another forum for dispute resolution, that any Loss of Capital was incurred or that there was a Low Return on the same day.

8.3 The Jewish Orthodox Court of Law shall have sole jurisdiction to adjudicate a Heter Iska Claim and shall issue its ruling as to whether a Heter Iska Claim is approved as soon as reasonably practicable after the hearing under clause 8.1(d).

9. Return of Relevant Capital

9.1 The Managing Partner shall liquidate the Investment and return the Relevant Capital to the Investing Partner on the Termination Date or as otherwise agreed.

9.2 Notwithstanding Clause 9.1 above, in the event of:

- (a) a claim of Loss of Capital or Low Return being submitted by the Managing Partner under clause 8.1, the Investing Partner shall continue to have the right to appoint receivers and/or implement applicable provisions relating to enforcement of security or clawback set out in the Security Documents in order to recover the Non-Relevant Capital and Relevant Capital, whilst the Managing Partner shall be required to deposit a sum equal to the Claim Quantum into the client account of the Investing Partner's solicitors (or in the event that this is not possible, into the account of an escrow agent nominated by such solicitor at the expense of the Managing Partner) held to the order of the Jewish Orthodox Court of Law pending resolution of the Heter Iska Claim in the Jewish Orthodox Court of Law.
- (b) a claim of Loss of Capital, the remaining Relevant Capital which is excess to the claim of the Loss of Capital shall immediately be liquidated by the Managing Partner and returned to the Investing Partner, notwithstanding any steps taken by the Investing Partner to enforce its security.
- (c) a Low Return, then the whole Capital shall immediately be liquidated by the Managing Partner and repaid to the Investing Partner, notwithstanding any steps taken by the Investing Partner to enforce its security.

10. Further claim to Investment returns

- 10.1 If the Managing Partner fulfils all repayments of the Relevant Capital and all Profits Payable, or the Investing Partner otherwise waives its rights to the same by written notification to the Managing Partner, then the Investing Partner shall have no further claim as to any share of returns from the Investment, and the management fees due under clause 5.1 shall be deemed to have been paid in full.

11. Arbitration

- 11.1 Any dispute arising out of or in connection with this Heter Iska, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under Jewish Law at the Jewish Orthodox Court of Law, according to the rules of procedure customarily employed in arbitrations before the Jewish Orthodox Court of Law, and according to principles of Jewish Law (utilising the principle of *din* and not *pshara*) and/or general principles of equity customarily employed in arbitrations before the Jewish Orthodox Court of Law, and/or English law where applicable as decided by the Jewish Orthodox Court of Law.