

Dated 13 November 2012

**ZHAIKMUNAI INTERNATIONAL B.V.**

as Issuer

and

**ZHAIKMUNAI LLP**

**ZHAIKMUNAI L.P.**

**ZHAIKMUNAI NETHERLANDS B.V.**

**ZHAIKMUNAI FINANCE B.V.**

**CONDENSATE-HOLDING LLP**

**CLAYDON INDUSTRIAL LIMITED**

**JUBILATA INVESTMENTS LIMITED**

as Guarantors

and

**CITIBANK N.A.**

as Trustee, Principal Paying Agent, Paying Agent in New York, Transfer Agent and  
Authenticating Agent

and

**CITIGROUP GLOBAL MARKETS DEUTSCHLAND AG**

as Registrar

## INDENTURE

7.125% Senior Notes due 2019

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**This Indenture**, dated as of 13 November 2012, is among:

- (1) **ZHAIKMUNAI INTERNATIONAL B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) duly incorporated under the laws of The Netherlands, having its seat in Amersfoort, The Netherlands and its registered office at Zuidsingel 1, 3811 HA Amersfoort and registered with the commercial register under number 56250851 (the “**Issuer**”);
- (2) **ZHAIKMUNAI L.P.**, a limited partnership formed under the laws of the Isle of Man and registered with the Companies Registry of the Isle of Man with number 295P and having its principal place of business at 7th Floor Harbour Court, Lord Street, Douglas, Isle of Man IM1 4LN (the “**Parent**”);
- (3) **ZHAIKMUNAI LLP**, a limited liability partnership established under the laws of Kazakhstan. Its registered office is at 59/2 Prospekt Eurasia, Uralsk, West Kazakhstan Oblast, 090000 Kazakhstan (“**Zhaikmunai LLP**”);
- (4) **ZHAIKMUNAI NETHERLANDS B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) duly incorporated under the laws of The Netherlands, having its seat in Amersfoort, The Netherlands and its registered office at Zuidsingel 1, 3811 HA Amersfoort and registered with the commercial register under number 16032335 (“**Zhaikmunai Netherlands**”);
- (5) **ZHAIKMUNAI FINANCE B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) duly incorporated under the laws of The Netherlands, having its seat in Amersfoort, The Netherlands and its registered office at Zuidsingel 1, 3811 HA Amersfoort and registered with the commercial register under number 32171914 (the “**Zhaikmunai Finance**”);
- (6) **CONDENSATE-HOLDING LLP**, a limited liability partnership established under the laws of Kazakhstan with its registered office at 59/2 Prospekt Eurasia, Uralsk, West Kazakhstan Oblast, 090000 Kazakhstan (“**Condensate-Holding**”);
- (7) **CLAYDON INDUSTRIAL LIMITED**, a company limited by shares registered under the BVI Business Companies Act, 2004 incorporated on 8 April 2004 with company number 590631 and having its registered office at PO Box 146, Road Town, Tortola, British Virgin Islands (“**Claydon**”);
- (8) **JUBILATA INVESTMENTS LIMITED**, a company limited by shares registered under the BVI Business Companies Act, 2004 incorporated on 2 January 2001 with company number 423418 and having its registered office at PO Box 146, Road Town, Tortola, British Virgin Islands (“**Jubilata**” and together with the Parent, Zhaikmunai LLP, Zhaikmunai Netherlands, Zhaikmunai Finance, Condensate-Holding and Claydon, the “**Guarantors**”);
- (9) **CITIBANK N.A.**, a national banking association organized under the laws of the United States (the “**Trustee**”, “**Principal Paying Agent**”, “**Paying Agent in New York**”, “**Transfer Agent**” and “**Authenticating Agent**”); and
- (10) **CITIGROUP GLOBAL MARKETS DEUTSCHLAND AG**, a German *Aktiengesellschaft* (the “**Registrar**”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Securityholders (as defined below).

## Article 1

### Definitions and Incorporation by Reference

#### SECTION 1.01. Definitions

**“Acquired Indebtedness”** means Indebtedness of a Person existing at the time such Person becomes a Guarantor or is merged into or consolidated with the Issuer or any Guarantor, or assumed in connection with the acquisition of assets from any such Person; whether or not such Indebtedness was Incurred in connection with, or in contemplation of, such Person becoming a Restricted Subsidiary or such acquisition, as the case may be.

Acquired Indebtedness will be deemed to be Incurred on the date the acquired Person becomes a Guarantor (or is merged into or consolidated with the Issuer or any Guarantor, as the case may be) or the date of the related acquisition of assets from any Person.

**“Additional Assets”** means:

- (1) any properties or assets to be used by the Parent or a Restricted Subsidiary in the Oil and Gas Business;
- (2) capital expenditures by the Parent or a Restricted Subsidiary in the Oil and Gas Business;
- (3) the Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Parent or a Restricted Subsidiary; or
- (4) Capital Stock constituting a minority interest in any Person that at such time is a Restricted Subsidiary;

*provided, however*, that, in the case of Clauses (3) and (4), such Restricted Subsidiary is primarily engaged in the Oil and Gas Business.

**“Additional Notes”** means Notes issued under this Indenture after the Issue Date and in compliance with Sections 2.13 and 4.03.

**“Affiliate”** of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. “Affiliate” shall also mean any beneficial owner of Capital Stock representing 10% or more of the total voting power of the Voting Stock (on a fully diluted basis) of the Parent or of rights or warrants to purchase such Capital Stock (whether or not currently exercisable).

**“Agent”** means any Authenticating Agent, any Paying Agent, the Principal Paying Agent and any Registrar.

**“Applicable Premium”** means, with respect to any Note on any applicable redemption date, the greater of:

- (1) 1.0% of the principal amount of such Note at such redemption date; and
- (2) the excess, if any, of:
  - (a) the present value at such redemption date of (i) the redemption price of such Note at 13 November 2016 (such redemption price being described in paragraph 5(b) of the

Notes) plus (ii) all required interest payments (excluding accrued and unpaid interest to such redemption date) due on such Note through 13 November 2016, computed using a discount rate equal to the Treasury Rate as of such redemption date plus 0.50%, over

(b) the principal amount of such Note on such redemption date.

**“Asset Disposition”** means any direct or indirect sale, lease (other than an operating lease entered into in the ordinary course of the Oil and Gas Business), transfer, issuance or other disposition, or a series of related sales, leases, transfers, issuances or dispositions that are part of a common plan, of (A) shares of Capital Stock of a Restricted Subsidiary (other than Preferred Stock of Restricted Subsidiaries issued in compliance with Section 4.03 and directors’ qualifying shares or shares required by applicable law to be held by a Person other than the Parent or a Restricted Subsidiary), (B) all or substantially all the assets of any division or line of business of the Parent or any Restricted Subsidiary or (C) any other assets of the Parent or any Restricted Subsidiary outside of the ordinary course of business of the Parent or such Restricted Subsidiary (each referred to for the purposes of this definition as a **“disposition”**), in each case by the Parent or any of its Restricted Subsidiaries, including any disposition by means of a merger, consolidation or similar transaction.

Notwithstanding the preceding, the following items shall not be deemed to be Asset Dispositions:

- (1) a disposition by a Restricted Subsidiary to the Parent or by the Parent or a Restricted Subsidiary to a Guarantor or the Issuer;
- (2) the sale of cash and Cash Equivalents;
- (3) a disposition of Hydrocarbons or mineral products inventory in the ordinary course of business;
- (4) a disposition of damaged, unserviceable, obsolete or worn out equipment or equipment that is no longer necessary for the proper conduct of the business of the Parent and its Restricted Subsidiaries and that is disposed of in each case in the ordinary course of business (including the abandonment or other disposition of property that is, in the reasonable judgment of the Parent, no longer economically practicable to maintain or useful in the conduct of the business of the Parent and its Restricted Subsidiaries taken as whole);
- (5) transactions in accordance with Section 5.01;
- (6) an issuance, sale, lease, assignment, conveyance or other disposition of Capital Stock by a Restricted Subsidiary to the Parent or to a Guarantor or the Issuer;
- (7) the making of a Restricted Payment (or a disposition that would constitute a Restricted Payment but for the exclusions from the definition thereof) permitted by Section 4.04 or a Permitted Investment;
- (8) an Asset Swap;
- (9) any single disposition or a series of related dispositions of assets with a Fair Market Value of less than \$2 million;
- (10) Liens permitted under this Indenture (but not the sale or other disposition of the property subject to such Lien);



- (11) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements;
- (12) the licensing or sublicensing of intellectual property (including, without limitation, the licensing of seismic data) or other general intangibles in the ordinary course of business which do not materially interfere with the business of the Parent and its Restricted Subsidiaries;
- (13) foreclosure on assets;
- (14) surrender or waiver of contract rights, oil and gas leases, or the settlement, release or surrender of contract, tort or other claims of any kind;
- (15) the sale or transfer (whether or not in the ordinary course of business) of any Oil and Gas Property or interest therein to which no proved reserves are attributable at the time of such sale or transfer; and
- (16) the primary issuance of Capital Stock by an Unrestricted Subsidiary so long as the Parent, directly or indirectly, retains a majority interest in such Unrestricted Subsidiary's Capital Stock (including Voting Stock) after giving effect to such issuance.

**“Asset Swap”** means any substantially contemporaneous (and in any event occurring within 90 days of each other) purchase and sale or exchange of any Oil or Gas Properties or assets or interest therein between the Parent or any of its Restricted Subsidiaries and another Person; provided that any cash received must be applied in accordance with Section 4.06 as if the Asset Swap were an Asset Disposition.

**“Attributable Debt”** in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate implicit in such lease determination in accordance with GAAP) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended) after excluding from such rental payments all amounts required to be paid on account of maintenance and repairs, insurance, taxes, assessments, and similar charges; *provided, however*, that if such Sale/Leaseback Transaction results in a Capitalized Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of “Capitalized Lease Obligation”.

**“Average Life”** means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the quotient obtained by dividing (1) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Indebtedness or Preferred Stock multiplied by the amount of such payment by (2) the sum of all such payments.

**“Bankruptcy Law”** means any law relating to bankruptcy, insolvency, receivership, winding-up, administration, liquidation, examinership, reorganization or relief of debtors or impairment of creditors or any amendment to, succession to or change in any such law.

**“Board of Directors”** means:

- (1) with respect to a corporation, the board of directors (or analogous governing body) of the corporation or any committee thereof duly authorized to act on behalf of such board;
- (2) with respect to a partnership, the Board of Directors of the general partner of the partnership;

- (3) with respect to a limited liability company, the managing member or members (or analogous governing body) or any controlling committee of managing members thereof; and
- (4) with respect to any other Person, the board or committee of such Person serving a similar function.

“**Business Day**” means each day which is not a Legal Holiday.

“**Capital Stock**” of any Person means any and all shares, units, interests (including limited partnership interests and participatory interests), rights to purchase, warrants, options, participation or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

“**Capitalized Lease Obligation**” means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination thereof is to be made as determined in accordance with GAAP, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty. A Capitalized Lease Obligation will be deemed to be secured by a Lien on the property being leased.

“**Cash Equivalents**” means:

- (1) securities issued or directly and fully guaranteed or insured by the Government or any agency or instrumentality of any member state of the European Union, Switzerland, Canada or the United States, (*provided* that the full faith and credit of such member state of the European Union, Switzerland, Canada or the United States is pledged in support thereof), having maturities of not more than one year from the date of acquisition;
- (2) marketable general obligations issued by any member state of the European Union, Switzerland, Canada or the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition (*provided* that the full faith and credit of such member state of the European Union, Switzerland, Canada or the United States is pledged in support thereof) and, at the time of acquisition, having a credit rating of “A” (or the equivalent thereof) or better from either S&P or Moody’s;
- (3) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits, money market deposits or bankers’ acceptances having maturities of not more than one year from the date of acquisition thereof issued by any commercial bank the short-term deposit of which is rated at the time of acquisition thereof at least “A2” or the equivalent thereof by S&P, or “P-2” or the equivalent thereof by Moody’s, and having combined capital and surplus in excess of U.S.\$250.0 million;
- (4) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in Clauses (1), (2) and (3) entered into with any bank meeting the qualifications specified in Clause (3) above;
- (5) commercial paper rated at the time of acquisition thereof at least “A-2” or the equivalent thereof by S&P or “P-2” or the equivalent thereof by Moody’s, or carrying an equivalent rating by an internationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of investments, and in any case maturing within one year after the date of acquisition thereof; and

- (6) interests in any investment company or money market fund which invests 95% or more of its assets in instruments of the type specified in Clauses (1) through (5) above and/or cash.

**“Change of Control”** means the occurrence of any of the following events:

- (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger, consolidation or transfer permitted or not otherwise prohibited under the terms of this Indenture), in one or a series of related transactions, of all or substantially all of the assets of the Parent and its Restricted Subsidiaries, taken as a whole, to any Person (including any “person” (as that term is used in Section 13(d)(3) of the Exchange Act)) other than a Permitted Holder;
- (2) any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) other than a Permitted Holder is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (2) such person shall be deemed to have “beneficial ownership” of all securities that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of Voting Stock representing 50% or more of the voting power of the total outstanding Voting Stock of the Parent; or
- (3) the adoption by the holders of Capital Stock of the Parent of a voluntary plan relating to the liquidation or dissolution of the Parent.

**“Claydon”** has the meaning assigned to that term in the introduction to this Indenture.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Commodity Agreement”** means, in respect of any Person, any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement in respect of Hydrocarbons used, produced, processed or sold by such Person that are customary in the Oil and Gas Business and designed to protect such Person against fluctuation in Hydrocarbon prices.

**“Condensate-Holding”** has the meaning assigned to that term in the introduction to this Indenture.

**“Consolidated Coverage Ratio”** means, as of any date of determination, the ratio of (x) the aggregate amount of Consolidated EBITDAX for the period of the most recent four consecutive fiscal quarters ending prior to the date of such determination for which financial statements are available to (y) Consolidated Interest Expense for such four fiscal quarters, *provided, however*, that:

- (1) if the Parent or any Restricted Subsidiary:
  - (a) has Incurred any Indebtedness since the beginning of such period that remains outstanding on such date of determination or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, Consolidated EBITDAX and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis (as determined in good faith by the Parent’s Chief Financial Officer or a responsible financial or accounting officer of the Parent) to such Indebtedness and the use of proceeds thereof as if such Indebtedness had been Incurred on the first day of such period and such proceeds had been applied as of such date (except that in making such computation, the amount of Indebtedness under any revolving Credit Facility outstanding on the date of such calculation shall be deemed to be (i) the average daily balance of such Indebtedness during such four fiscal quarters or such shorter period for which such

facility was outstanding or (ii) if such revolving Credit Facility was created after the end of such four fiscal quarters, the average daily balance of such Indebtedness during the period from the date of creation of such revolving Credit Facility to the date of such calculation, in each case, *provided* that such average daily balance shall take into account any repayment of Indebtedness under such revolving Credit Facility as provided in Clause (b)); or

- (b) has repaid, repurchased, defeased, redeemed or otherwise discharged any Indebtedness since the beginning of the period, including with the proceeds of such new Indebtedness, that is no longer outstanding on such date of determination or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio involves a discharge of Indebtedness (in each case other than Indebtedness Incurred under any revolving Credit Facility unless such Indebtedness has been permanently repaid and the related commitment terminated), Consolidated EBITDAX and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis (as determined in good faith by the Parent's Chief Financial Officer or a responsible financial or accounting officer of the Parent) to such discharge of such Indebtedness as if such discharge had occurred on the first day of such period and as if the Parent or such Restricted Subsidiary had not earned the interest income actually earned during such period in respect of cash or Cash Equivalents used to repay, repurchase, defease, redeem or otherwise discharge such Indebtedness;
- (2) if, since the beginning of such period, the Parent or any Restricted Subsidiary shall have made any Asset Disposition or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is such an Asset Disposition, the Consolidated EBITDAX for such period shall be reduced by an amount equal to the Consolidated EBITDAX (if positive) directly attributable to the assets which are the subject of such Asset Disposition for such period or increased by an amount equal to the Consolidated EBITDAX (if negative) directly attributable thereto for such period and Consolidated Interest Expense for such period shall be reduced by an amount equal to the Consolidated Interest Expense directly attributable to any Indebtedness of the Parent or any Restricted Subsidiary repaid, repurchased, defeased or otherwise discharged with respect to the Parent and its continuing Restricted Subsidiaries in connection with or with the proceeds from such Asset Disposition for such period (or, if the Capital Stock of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period directly attributable to the Indebtedness of such Restricted Subsidiary to the extent the Parent and its continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such sale);
- (3) if, since the beginning of such period, the Parent or any Restricted Subsidiary (by merger or otherwise) shall have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary or is merged with or into the Parent or a Restricted Subsidiary) or an acquisition (or will have received a contribution) of assets, including any acquisition or contribution of assets occurring in connection with a transaction causing a calculation to be made hereunder, which constitutes all or substantially all of a company, division, operating unit, segment, business, group of related assets or line of business, Consolidated EBITDAX and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect (as determined in good faith by the Parent's Chief Financial Officer or a responsible financial or accounting officer of the Parent) thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition or contribution had occurred on the first day of such period; and

- (4) if, since the beginning of such period, any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Parent or any Restricted Subsidiary since the beginning of such period) shall have made any Asset Disposition or any Investment or acquisition of assets that would have required an adjustment pursuant to Clause (2) or (3) above if made by the Parent or a Restricted Subsidiary during such period, Consolidated EBITDAX and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect (as determined in good faith by the Parent's Chief Financial Officer or a responsible financial or accounting officer of the Parent) thereto (including the Incurrence of any Indebtedness) as if such Asset Disposition or Investment or acquisition of assets had occurred on the first day of such period.

If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Interest Rate Agreement applicable to such Indebtedness). If any Indebtedness is incurred under a revolving credit facility and is being given pro forma effect, the interest on such Indebtedness shall be calculated based on the average daily balance of such Indebtedness for the four fiscal quarters subject to the pro forma calculation to the extent that such Indebtedness was incurred solely for working capital purposes.

**"Consolidated EBITDAX"** of the Parent and its Restricted Subsidiaries for any period means the Consolidated Net Income for such period, plus the following, without duplication and to the extent deducted in calculating such Consolidated Net Income:

- (1) Consolidated Interest Expense;
- (2) Consolidated Income Taxes;
- (3) consolidated depletion, amortization and depreciation expense of the Parent and its Restricted Subsidiaries;
- (4) other non-cash charges and expenses of the Parent and its Restricted Subsidiaries (excluding any such non-cash charge or expense to the extent it represents an accrual of or reserve for cash charges or expenses in any future period or amortization of a prepaid cash charge or expense that was paid in a prior period not included in the calculation) less all non-cash items increasing such Consolidated Net Income of the Parent and its Restricted Subsidiaries (other than accruals of revenue or the reversal of a reserve for cash charges in a future period by the Parent and its Restricted Subsidiaries in the ordinary course of business); and
- (5) consolidated exploration expense of the Parent and its Restricted Subsidiaries,

if applicable for such period (determined in accordance with GAAP).

Notwithstanding the foregoing, Clauses (2) through (5) above relating to amounts of a Restricted Subsidiary of a Person shall be added to Consolidated Net Income to compute Consolidated EBITDAX of such Person only to the extent (and in the same proportion) that the net income (loss) of such Restricted Subsidiary was included in calculating the Consolidated Net Income of such Person and only if a corresponding amount would be permitted at the date of determination to be dividended to the Parent by such Restricted Subsidiary without prior approval (that has not been obtained), pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Restricted Subsidiary or its stockholders.

**“Consolidated Income Taxes”** means, with respect to the Parent and its Restricted Subsidiaries for any period, taxes imposed upon such Person or other payments required to be made by such Person to any governmental authority which taxes or other payments are calculated by reference to the income, profits or capital of such Person or such Person and its Restricted Subsidiaries (to the extent such income or profits were included in computing Consolidated Net Income for such period), regardless of whether such taxes or payments are required to be remitted to any governmental authority.

**“Consolidated Interest Expense”** means, for any period, the total consolidated interest expense of the Parent and its Restricted Subsidiaries, whether paid or accrued, plus, to the extent not included in such interest expense and without duplication:

- (1) interest expense attributable to Capitalized Lease Obligations and Attributable Debt and the interest component of any deferred payment obligations;
- (2) amortization of debt discount and debt issuance cost;
- (3) non-cash interest expense;
- (4) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing;
- (5) the interest expense on Indebtedness of another Person that is Guaranteed by the Parent or one of its Restricted Subsidiaries or secured by a Lien on assets of the Parent or one of its Restricted Subsidiaries;
- (6) costs associated with Interest Rate Agreements (including amortization of fees); *provided, however,* that if Interest Rate Agreements result in net benefits rather than costs, such benefits shall be credited to reduce Consolidated Interest Expense unless, pursuant to GAAP, such net benefits are otherwise reflected in Consolidated Net Income;
- (7) the consolidated interest expense of the Parent and its Restricted Subsidiaries that was capitalized during such period; and
- (8) all dividends (other than dividends payable solely in Capital Stock (other than Disqualified Stock) of the Parent) accrued during such period on any series of Disqualified Stock of the Parent or on Preferred Stock of its Restricted Subsidiaries payable to a party other than the Parent or a Restricted Subsidiary;

*provided* that Consolidated Interest Expense shall include any withholding taxes payable in respect of any of the amounts described in Clauses (1) through (8) of this definition.

**“Consolidated Net Income”** means, for any period, the consolidated net income (loss) of the Parent and its Restricted Subsidiaries determined in accordance with GAAP; *provided, however,* that there shall not be included (to the extent otherwise included therein) in such Consolidated Net Income:

- (1) any net income (loss) of any Person (other than the Parent) if such Person is not a Restricted Subsidiary, except that:
  - (a) subject to the limitations contained in Clauses (3) and (4) below, the Parent's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such period to the Parent or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in Clause (2) below); and

- (b) the Parent's equity in a net loss of any such Person for such period shall be included in determining such Consolidated Net Income to the extent such loss has been funded from the Parent or a Restricted Subsidiary during such period;
- (2) any net income (loss) of any Restricted Subsidiary if such Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions by such Restricted Subsidiary, directly or indirectly, to the Parent, except that:
  - (a) subject to the limitations contained in Clauses (3) and (4) below, the Parent's equity in the net income of any such Restricted Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash that could have been distributed by such Restricted Subsidiary during such period to the Parent or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution paid to another Restricted Subsidiary, to the limitation contained in this Clause); and
  - (b) the Parent's equity in a net loss of any such Restricted Subsidiary for such period shall be included in determining such Consolidated Net Income;
- (3) any gain (loss) realized upon the sale or other disposition of any property, plant or equipment of the Parent or its Restricted Subsidiaries (including pursuant to any Sale/Leaseback Transaction) which is not sold or otherwise disposed of in the ordinary course of business and any gain (loss) realized upon the sale or other disposition of any securities;
- (4) (a) any extraordinary, exceptional or unusual gain, loss or charge (together with any related provision for taxes on such gain, loss or charge), and (b) any asset impairment writedowns on Oil and Gas Properties under GAAP, or the financial impacts of natural disasters (including fire, flood, storm and related events);
- (5) all deferred financing costs written off and premium paid or other expenses incurred directly in connection with any early extinguishment of Indebtedness and any net gain (loss) from any write-off or forgiveness of Indebtedness;
- (6) any unrealized foreign currency translation or transaction gains or losses in respect of Indebtedness of any Person denominated in a currency other than the functional currency of such Person;
- (7) any unrealized gains or losses in respect of Hedging Obligations or any ineffectiveness recognized in earnings related to qualifying hedge transactions or the fair value or changes therein recognized in earnings for derivatives that do not qualify as hedge transactions, in each case, in respect of Hedging Obligations;
- (8) the cumulative effect of a change in accounting principles; and
- (9) any non-cash compensation charge arising from any grant of stock, stock options or other equity based awards.

**“Credit Facilities”** means one or more debt facilities or arrangements, commercial paper facilities, notes, debentures, indentures, or overdraft facilities with banks or other institutional lenders, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such institutions or to special purpose entities formed to borrow from such institutions against such receivables) or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced or refinanced, in whole or in part from time to time (whether or not with the original administrative agent and lenders or another administrative agent or agents

or other banks or institutions and whether provided under one or more other credit or other agreements, indentures, financing agreements or otherwise) and, in each case, including all agreements, instruments and documents executed and delivered pursuant to or in connection with the foregoing. Without limiting the generality of the foregoing, the term “**Credit Facilities**” shall include any agreement or instrument (1) changing the maturity of any Indebtedness incurred thereunder or contemplated thereby, (2) adding Subsidiaries of the Parent as additional borrowers or guarantors thereunder, (3) increasing the amount of Indebtedness incurred thereunder or available to be borrowed thereunder subject to compliance with Section 4.03 or (4) otherwise altering the terms and conditions thereof.

“**Currency Agreement**” means in respect of a Person any foreign exchange contract, currency swap agreement, futures contract, option contract or other similar agreement as to which such Person is a party or a beneficiary.

“**Custodian**” means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

“**Default**” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“**Definitive Note**” means a definitive registered Note in the form of the Note attached hereto as Exhibit A.

“**Depository**” means The Depository Trust Company, its nominees and their respective successors.

“**Disqualified Stock**” means, with respect to any Person, any Capital Stock of such Person which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder of the Capital Stock) or upon the happening of any event:

- (1) matures or is mandatorily redeemable (other than redeemable only for Capital Stock of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise;
- (2) is convertible or exchangeable for Indebtedness or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Parent or a Restricted Subsidiary); or
- (3) is redeemable at the option of the holder of the Capital Stock in whole or in part,

in each case on or prior to the date that is six months after the earlier of the date (a) of the Stated Maturity of the Notes or (b) on which there are no Notes outstanding; *provided* that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; *provided further*, that any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Parent to repurchase such Capital Stock upon the occurrence of a change of control or asset disposition (each defined in a substantially identical manner to the corresponding definitions in this Indenture) shall not constitute Disqualified Stock if the terms of such Capital Stock (and all such securities into which it is convertible or for which it is exchangeable) provide that (i) the Parent may not repurchase or redeem any such Capital Stock (and all such securities into which it is convertible or for which it is exchangeable) pursuant to such provision prior to compliance by the Parent with Sections 4.06 and 4.10 and (ii) such repurchase or redemption shall be permitted solely to the extent also permitted in accordance with Section 4.04.



The amount of any Disqualified Stock that does not have a fixed redemption, repayment or repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were redeemed, repaid or repurchased on any date on which the amount of such Disqualified Stock is to be determined pursuant to this Indenture; *provided, however*, that if such Disqualified Stock could not be required to be redeemed, repaid or repurchased at the time of such determination, the redemption, repayment or repurchase price will be the book value of such Disqualified Stock as reflected in the most recent financial statements of such Person.

**“Dutch Guarantor”** means any Guarantor organized under the laws of the Netherlands.

**“Enforcement Event”** means an Event of Default which has resulted in the principal of, premium, if any, and accrued and unpaid interest, if any, on all the Notes becoming immediately due and payable pursuant to Section 6.02.

**“Equity Offering”** means a public or private offering for cash by the Parent of Capital Stock (other than Disqualified Stock).

**“European Union”** means the European Union as of 1 January 2004, including the countries of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom, but not including any country which becomes a member of the European Union after 1 January 2004.

**“Exchange Act”** means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

**“Fair Market Value”** means (unless otherwise provided in this Indenture) the value that would be paid by a willing buyer to an unaffiliated willing seller in an arm’s length transaction not involving distress or necessity of either party, determined in good faith by (i) an Officer and certified in an Officer’s Certificate, and (ii) with respect to any such transaction (other than any sale or other disposition in the ordinary course of business) involving aggregate consideration in excess of \$10 million, a majority of the members of the Board of Directors of the Parent who are disinterested with respect to the transaction for which Fair Market Value is to be determined have considered and accepted such Officer’s Certificate.

**“GAAP”** means International Financial Reporting Standards as issued by the IASB as in effect from time to time. All ratios and computations based on GAAP contained in this Indenture will be computed in conformity with GAAP.

**“General Partner”** means Zhaikmunai Group Limited, a private limited company incorporated and registered under the laws of the Isle of Man, with company registration number 121213C, having its registered office at 7th Floor, Harbour Court, Lord Street, Douglas, Isle of Man, IM1 4LN and any replacement general partner of the Parent so long as the sole member of such successor entity is a Permitted Holder.

**“GTF 2”** means the additional gas treatment facility to be constructed following the first gas treatment facility.

**“Guarantee”** means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or

- (2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

*provided, however,* that the term “**Guarantee**” shall not include endorsements for collection or deposit in the ordinary course of business or any obligation to the extent it is payable only in Capital Stock of the Guarantor that is not Disqualified Stock. The term “Guarantee” used as a verb has a corresponding meaning.

“**Guarantor Subordinated Obligation**” means, with respect to a Guarantor, any Indebtedness of such Guarantor (whether outstanding on the Issue Date or thereafter Incurred) which is expressly subordinate in right of payment to the obligations of such Guarantor under its Notes Guarantee pursuant to a written agreement.

“**Guarantors**” means the Parent and the Subsidiary Guarantors.

“**Hedging Obligations**” of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Agreement.

“**holder**” or “**Securityholder**” means a Person in whose name a Note is registered on the registrar’s books.

“**Hydrocarbons**” means oil, natural gas, casing head gas, drip gasoline, natural gasoline, condensate, distillate, liquid hydrocarbons, gaseous hydrocarbons and all constituents, elements or compounds thereof and products refined or processed therefrom.

“**Incur**” means issue, create, assume, Guarantee, incur or otherwise become directly or indirectly liable for, contingently or otherwise; *provided, however,* that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Restricted Subsidiary at the time it becomes a Restricted Subsidiary; and the terms “**Incurred**” and “**Incurrence**” have meanings correlative to the foregoing.

“**Indebtedness**” means, with respect to any Person on any date of determination (without duplication, whether or not contingent):

- (1) the principal of and premium (if any) in respect of indebtedness of such Person for borrowed money;
- (2) the principal of and premium (if any) in respect of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) the principal component of all obligations of such Person in respect of letters of credit, bankers’ acceptances or other similar instruments (including reimbursement obligations with respect thereto except to the extent such reimbursement obligation relates to a trade payable, to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such obligation is satisfied within 30 days of payment on the letter of credit);
- (4) the principal component of all obligations of such Person (other than obligations payable solely in Capital Stock that is not Disqualified Stock) to pay the deferred and unpaid purchase price of property (except as described in Clause (3) of the last paragraph of this definition of Indebtedness), which purchase price is due more than six months after such property is acquired, of such Person in accordance with GAAP;
- (5) Capitalized Lease Obligations of such Person and all Attributable Debt in respect of Sale/Leaseback Transactions entered into by such Person;

- (6) the principal component or liquidation preference of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock or, with respect to any Subsidiary of the Parent, any Preferred Stock (but excluding, in each case, any accrued dividends);
- (7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; *provided, however*, that the amount of such Indebtedness will be the lesser of (a) the Fair Market Value of such asset at such date of determination and (b) the amount of such Indebtedness of such other Persons;
- (8) the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person; and
- (9) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Obligations (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such obligation that would be payable by such Person at such time),

if and to the extent any of the preceding items (other than Indebtedness described in Clauses (3), (6), (7) and (8) above) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of the specified Person prepared in accordance with GAAP; *provided, however*, that any Indebtedness which has been defeased pursuant to the deposit of cash or Cash Equivalents (in an amount sufficient to satisfy all such indebtedness obligations at maturity or redemption, as applicable, and all payments of interest and premium, if any) in a trust or account created or pledged for the sole benefit of the holders of such indebtedness, and subject to no other Liens, shall not constitute "Indebtedness."

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date.

Notwithstanding the preceding, "Indebtedness" shall not include:

- (1) any obligation arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, *provided* that such Indebtedness is extinguished within five Business Days of Incurrence;
- (2) in-kind obligations relating to net oil or natural gas balancing positions arising in the ordinary course of business;
- (3) accrued expenses and trade payables and other accrued liabilities arising in the ordinary course of business unless they are overdue by 90 days or more past the date for payment (other than those that are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted); and
- (4) any lease of property which would be considered an operating lease under GAAP.

"**Indenture**" means this Indenture as amended or supplemented from time to time.

"**Independent Financial Advisor**" means an investment banking firm, bank, accounting firm or third party appraiser, in any such case, of international standing; *provided* that such firm is not an Affiliate of the Parent.

**“Initial Purchasers”** means (1) with respect to the Notes issued on the Issue Date, Citigroup Global Markets Limited, Merrill Lynch, Pierce, Fenner & Smith Incorporated, VTB Capital plc, JSC Halyk Finance, GMP Securities Europe LLP, Mirabaud Securities LLP and Standard Bank Plc, and (2) with respect to each issuance of Additional Notes, the Persons purchasing such Additional Notes under the related Purchase Agreement.

**“Initial Notes”** means the Notes issued on the Issue Date.

**“Interest Rate Agreement”** means with respect to any Person any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement as to which such Person is party or a beneficiary.

**“Investment”** means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect advance, loan or other extensions of credit (including by way of Guarantee or similar arrangement, but excluding any debt or extension of credit represented by a bank deposit (other than a time deposit) and advances or extensions of credit to customers in the ordinary course of business) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments (excluding any interest in a crude oil or natural gas leasehold to the extent constituting a security under applicable law) issued or Incurred by, such other Person and all other items that are or would be classified as investments on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP.

If the Parent or any Restricted Subsidiary issues, sells or otherwise disposes of any Capital Stock of a Person that is a Restricted Subsidiary such that, after giving effect thereto, such Person is no longer a Restricted Subsidiary, any Investment by the Parent or any Restricted Subsidiary in such Person remaining after giving effect thereto will be deemed to be a new Investment at such time. The acquisition by the Parent or any Restricted Subsidiary of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Parent or such Restricted Subsidiary in such third Person at such time. Except as otherwise provided for herein, the amount of an Investment shall be its Fair Market Value at the time the Investment is made and without giving effect to subsequent changes in value.

For purposes of the definition of “Unrestricted Subsidiary”, the definition of “Restricted Payment” and Section 4.04:

- (1) “Investment” shall include the portion (proportionate to the Parent’s equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the Fair Market Value of the net assets of such Restricted Subsidiary at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary; *provided, however*, that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Parent will be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary in an amount (if positive) equal to (a) the Parent’s “Investment” in such Subsidiary at the time of such redesignation less (b) the portion (proportionate to the Parent’s equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time that such Subsidiary is so redesignated as a Restricted Subsidiary; and
- (2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value at the time of such transfer.

**“Issue Date”** means the first date on which Notes are issued.

**“Issuer”** means the Person named as such in this Indenture until a successor replaces it and, thereafter, means the successor.

**“Jubilata”** has the meaning assigned to that term in the introduction to this Indenture.

**“Kazakhstan Guarantor”** means any Guarantor organized under the laws of Kazakhstan.

**“LCIA”** means a body known as the LCIA and formerly the London Court of International Arbitration.

**“LCIA Rules”** means the rules set down by the LCIA for the conduct of arbitrations where any agreement, submission or reference provides in writing and in whatsoever manner for arbitration under the rules of the LCIA or by the court of the LCIA (or such amended rules as the LCIA may have adopted hereafter to take effect before the commencement of any particular arbitration commenced pursuant to this Indenture or a Guarantee of a Kazakhstan Guarantor).

**“Legal Holiday”** means a Saturday, Sunday or other day on which commercial banking institutions in New York, the United States, London, the United Kingdom, Amsterdam, the Netherlands, Almaty, Kazakhstan or Dublin, Ireland are authorized or required by law to close.

**“Lien”** means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

**“Listing”** means a listing of all or a portion of the Parent’s Capital Stock (or all or a portion of the Capital Stock of a new (direct or indirect) holding company of Zhaikmunai LLP) on either the London Stock Exchange plc or another recognized stock exchange (which may be an unregulated market for purposes of European Union legislation) or alternatively, the listing of the Parent’s global depository receipts on another recognized stock exchange.

**“Moody’s”** means Moody’s Investors Service, Inc., or any successor to the rating agency business thereof.

**“Net Available Cash”** from an Asset Disposition means cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise and net proceeds from the sale or other disposition of any securities received as consideration, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or received in any other non-cash form) therefrom, in each case net of:

- (1) all legal, accounting, investment banking, title and recording tax expenses, commissions and other fees and expenses Incurred, and all federal, state, provincial, foreign and local taxes required to be paid or accrued as a liability under GAAP (after taking into account any available tax credits or deductions and any tax sharing agreements), as a consequence of such Asset Disposition;
- (2) all payments made on any Indebtedness which is secured by any assets subject to such Asset Disposition, in accordance with the terms of any Lien upon such assets, or which

must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable law be repaid out of the proceeds from such Asset Disposition;

- (3) all distributions and other payments required to be made to minority interest holders in Subsidiaries or to holders of royalty or similar interests as a result of such Asset Disposition; and
- (4) the deduction of appropriate amounts to be provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the assets disposed of in such Asset Disposition and retained by the Parent or any Restricted Subsidiary after such Asset Disposition.

**“Net Cash Proceeds”**, with respect to any issuance or sale of Capital Stock or any contribution to equity capital, means the cash proceeds of such issuance, sale or contribution net of attorneys’ fees, accountants’ fees, underwriters’ or placement agents’ fees, listing fees, discounts or commissions and brokerage, consultant and other fees and charges actually Incurred in connection with such issuance, sale or contribution and net of taxes paid or payable as a result of such issuance or sale (after taking into account any available tax credit or deductions and any tax sharing arrangements).

**“Non-Recourse Debt”** means Indebtedness of a Person:

- (1) as to which neither the Parent nor any Restricted Subsidiary (a) provides any Guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Indebtedness) or (b) is directly or indirectly liable (as a guarantor or otherwise);
- (2) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit (upon notice, lapse of time or both) any holder of any other Indebtedness of the Parent or any Restricted Subsidiary to declare a default under such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity; and
- (3) the explicit terms of which provide there is no recourse against any of the assets of the Parent or its Restricted Subsidiaries.

**“Notes”** means (i) the 7.125% Senior Notes due 2019 issued under this Indenture by the Issuer on the Issue Date and (ii) any Additional Notes.

**“Notes Discharge Date”** means the date upon which all outstanding obligations of the Issuer and the Guarantors under the Notes and the Notes Guarantees are discharged pursuant to the terms of this Indenture.

**“Notes Documents”** means the Notes, this Indenture and the Proceeds Loan Agreement.

**“Notes Guarantee”** means, individually, any Guarantee of payment of the Notes by a Guarantor pursuant to the terms of this Indenture or any supplemental indenture substantially in the form of Exhibit B hereto, and, collectively, all such Guarantees.

**“Obligations”** means with respect to any Indebtedness, all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, and other amounts payable pursuant to the documentation governing such Indebtedness.

**“Obligor”** means the Issuer or any Guarantor.

**“Offering Memorandum”** means the offering memorandum dated 2 November 2012 relating to the Notes.

**“Officer”** means the Chairman of the Board of Directors of the Parent or the Chief Executive Officer, the Chief Operating Officer, the Deputy Chief Executive Officer, the Chief Financial Officer or the Group General Counsel of the Parent.

**“Officer’s Certificate”** means a certificate signed by an Officer of the Parent or the Issuer, as the case may be.

**“Oil and Gas Business”** means:

- (1) the business of acquiring, exploring, exploiting, developing, producing, operating and disposing of interests in oil, natural gas, liquid natural gas and other Hydrocarbon and mineral properties or products produced in association with any of the foregoing;
- (2) the business of gathering, marketing, distributing, treating, processing, storing, refining, selling and transporting (including by railcars or pipelines) of any production from such interests or properties and products produced in association therewith and the marketing of oil, natural gas, other Hydrocarbons and minerals obtained from unrelated Persons;
- (3) any other related energy business, including power generation and electrical transmission business, directly or indirectly, from oil, natural gas and other Hydrocarbons and minerals produced substantially from properties in which the Parent or its Restricted Subsidiaries, directly or indirectly, participates;
- (4) any business relating to oil field sales and service; and
- (5) any business or activity relating to, arising from, or necessary, appropriate or incidental to the activities described in the foregoing Clauses (1) through (4) of this definition.

**“Oil and Gas Properties”** means all properties, including equity or other ownership interests therein, owned by or licensed to a Person so that such Person can explore and/or exploit them, which contain or are believed to contain oil and gas reserves and all wells, oil or gas treatment facilities, oil or gas transportation and other related assets.

**“Opinion of Counsel”** means a written opinion from legal counsel reasonably acceptable to the Trustee. The counsel may be an employee of or counsel to the Parent or the Trustee.

**“Parent”** has the meaning assigned to that term in the introduction to this Indenture.

**“Pari Passu Indebtedness”** means Indebtedness that ranks equally in right of payment to the Notes or the Notes Guarantees.

**“Permitted Business Investment”** means any Investment made in the ordinary course of, and of a nature that is or shall have become customary in, the Oil and Gas Business including investments or expenditures for actively exploiting, exploring for, acquiring, developing, producing, processing, gathering, marketing or transporting oil, natural gas or other Hydrocarbons and minerals through agreements, transactions, interests or arrangements which permit one to share risks or costs, comply with regulatory requirements regarding local ownership or satisfy other objectives customarily achieved through the conduct of the Oil and Gas Business jointly with third parties including:

- (1) ownership interests in oil, natural gas, other Hydrocarbons and minerals properties, liquid natural gas facilities, processing facilities, gathering systems, pipelines, storage facilities or related systems or ancillary real property interests;

- (2) Investments in the form of or pursuant to operating agreements, working interests, royalty interests, mineral leases, processing agreements, contracts for the sale, transportation or exchange of oil, natural gas, other Hydrocarbons and minerals, production sharing agreements, participation agreements, development agreements, area of mutual interest agreements, unitization agreements, pooling agreements, joint bidding agreements, service contracts, joint venture agreements, partnership agreements (whether general or limited), subscription agreements, stock purchase agreements, stockholder agreements and other similar agreements (including for limited liability companies) with third parties (including Unrestricted Subsidiaries); and
- (3) direct or indirect ownership interests in drilling rigs and related equipment, including, without limitation, transportation equipment.

**“Permitted Holder”** means Frank Monstrey and any of his Related Parties. Any person whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made and settled in accordance with the requirements of this Indenture will thereafter, together with its Related Parties, constitute an additional Permitted Holder.

**“Permitted Investment”** means an Investment by the Parent or any Restricted Subsidiary in:

- (1) the Issuer, the Parent, or a Guarantor;
- (2) another Person whose primary business is the Oil and Gas Business if as a result of such Investment such other Person becomes a Guarantor or is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, the Issuer or a Guarantor and, in each case, any Investment held by such Person; *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer;
- (3) cash and Cash Equivalents;
- (4) receivables owing to the Parent or any Restricted Subsidiary created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; *provided, however*, that such trade terms may include such concessionary trade terms as the Parent or any such Restricted Subsidiary deems reasonable under the circumstances;
- (5) payroll, commission, travel, relocation and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;
- (6) loans or advances to employees or officers of the Parent or any Restricted Subsidiary or members of the Board of Directors of the Parent or any of the Restricted Subsidiaries not to exceed U.S.\$5 million in the aggregate outstanding at any time;
- (7) Capital Stock, obligations or securities received in settlement of debts (x) created in the ordinary course of business and owing to the Parent or any Restricted Subsidiary or in satisfaction of judgments or (y) pursuant to any plan of reorganization or similar arrangement in a bankruptcy or insolvency proceeding;
- (8) Investments made as a result of the receipt of non-cash consideration from an Asset Disposition that was made pursuant to and in compliance with Section 4.06;
- (9) Investments in existence on the Issue Date;



- (10) Investments represented by Hedging Obligations that are not incurred for speculative purposes;
- (11) Guarantees issued in accordance with Section 4.03;
- (12) Permitted Business Investments;
- (13) any Person where such Investment was acquired by the Parent or any of its Restricted Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Parent or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable or (b) as a result of a foreclosure by the Parent or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;
- (14) any Person to the extent such Investments consist of prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits made in the ordinary course of business by the Parent or any Restricted Subsidiary;
- (15) Guarantees of performance or other obligations (other than Indebtedness) arising in the ordinary course in the Oil and Gas Business, including obligations under oil and natural gas exploration, development, joint operating, and related agreements and licenses, concessions or operating leases related to the Oil and Gas Business;
- (16) acquisitions of assets, Capital Stock or other securities by the Parent or a Restricted Subsidiary for consideration consisting of Capital Stock (other than Disqualified Stock) of the Parent;
- (17) Investments in or purchases or repurchases of (a) the Notes or (b) in connection with the Substitution, by Zhaikmunai LLP, the Proceeds Loan;
- (18) advances to or reimbursements of employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business of the Parent or any of its Restricted Subsidiaries or the General Partner; and
- (19) Investments by the Parent or any of its Restricted Subsidiaries, together with all other Investments pursuant to this Clause (19), in an aggregate amount outstanding at the time of such Investment not to exceed U.S.\$10 million; *provided* that if an Investment is made pursuant to this Clause (19) in a Person that is not a Restricted Subsidiary and such Person subsequently becomes a Restricted Subsidiary or is subsequently designated a Restricted Subsidiary, in each case pursuant to Section 4.19, such Investment, if applicable, shall thereafter be deemed to have been made pursuant to Clause (2) of this definition of "Permitted Investment" and not this Clause.

**"Permitted Liens"** means, with respect to any Person:

- (1) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws, social security or old age pension laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits (which may be secured by a Lien) to secure public or statutory obligations of such Person including letters of credit and bank guarantees required or requested by any government or any subdivision, department, agency, organization or instrumentality of any of the foregoing in connection with any contract or statute (including lessee or operator obligations under statutes,

governmental regulations, contracts or instruments related to the ownership, exploration and production of oil, natural gas, other hydrocarbons and minerals), or deposits of cash or Cash Equivalents to secure indemnity performance or rehabilitation obligations, surety or appeal bonds or other similar bonds to which such Person is a party, or deposits as security for contested taxes or import or customs duties or for the payment of rent, in each case Incurred in the ordinary course of business;

- (2) statutory and contractual Liens of landlords and Liens imposed by law, including carriers', warehousemen's, mechanics' materialmen's and repairmen's Liens, in each case for sums not yet delinquent or being contested in good faith by appropriate proceedings if a reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made in respect thereof;
- (3) Liens for taxes, assessments or other governmental charges or claims not yet delinquent or which are being contested in good faith by appropriate proceedings; *provided* that appropriate reserves, if any, required pursuant to GAAP have been made in respect thereof;
- (4) Liens in favor of issuers of surety or performance bonds or letters of credit or bankers' acceptances issued pursuant to the request of and for the account of such Person in the ordinary course of its business; *provided, however*, that such letters of credit do not constitute Indebtedness;
- (5) survey exceptions, encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which do not in the aggregate materially adversely affect the value of the assets of such Person and its Restricted Subsidiaries, taken as a whole, or materially impair their use in the operation of the business of such Person and its Restricted Subsidiaries, taken as a whole;
- (6) Liens securing Hedging Obligations not incurred for speculative purposes;
- (7) leases, licenses, subleases and sublicenses of assets (including, without limitation, real property and intellectual property rights) which are in the ordinary course of business of the Parent or any of its Restricted Subsidiaries;
- (8) prejudgment Liens and judgment Liens not giving rise to an Event of Default so long as any appropriate legal proceedings which may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;
- (9) Liens for the purpose of securing the payment of all or a part of the purchase price of, or Capitalized Lease Obligations, purchase money obligations or other payments Incurred to finance the acquisition, lease, improvement or construction of or repairs or additions to, assets or property acquired or constructed in the ordinary course of business; *provided* that:
  - (a) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under this Indenture and does not exceed the cost of the assets or property that are the subject of such acquisition, lease, completion of improvements, construction, repairs or additions; and

- (b) such Liens are created not later than 90 days after the later of the acquisition, lease, completion of improvements, construction, repairs or additions or commencement of full operation of the assets or property subject to such Lien and do not encumber any other assets or property of the Parent or any Restricted Subsidiary other than such assets or property and assets affixed or appurtenant thereto;
- (10) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, rights of netting or set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository institution or pursuant to Clause 20 of any Dutch bank's general banking terms and conditions (*algemene bankvoorwaarden*); *provided* that:
  - (a) such deposit account is not a dedicated cash collateral account; and
  - (b) such deposit account is not intended by the Parent or any Restricted Subsidiary to provide collateral to the depository institution;
- (11) Liens arising from statutory filings (or similar filings in other applicable jurisdictions) regarding operating leases entered into by the Parent and its Restricted Subsidiaries in the ordinary course of business;
- (12) Liens existing on the Issue Date;
- (13) Liens on property or shares of Capital Stock of another Person at the time such other Person becomes a Subsidiary of such Person; *provided, however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such other Person becoming a Subsidiary; *provided further, however*, that any such Lien may not extend to any other property owned by the Parent or any Restricted Subsidiary (other than assets or property affixed or appurtenant thereto);
- (14) Liens on property at the time the Parent or any of its Subsidiaries acquired the property, including any acquisition by means of a merger or consolidation with or into the Parent or any of its Subsidiaries; *provided, however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such acquisition; *provided further, however*, that such Liens may not extend to any other property owned by the Parent or any Restricted Subsidiary (other than assets or property affixed or appurtenant thereto);
- (15) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Parent or a Guarantor;
- (16) Liens securing the Notes, the Notes Guarantees and other obligations under this Indenture;
- (17) Liens securing Refinancing Indebtedness Incurred to refinance Indebtedness that was previously so secured, *provided* that any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced or is in respect of property or assets that is the security for a Permitted Lien hereunder;
- (18) Liens that arise by operation of law or are required by law;
- (19) Liens securing Indebtedness in an aggregate principal amount outstanding at any one time, added together with all other Indebtedness secured by Liens Incurred pursuant to this Clause (19), not to exceed U.S.\$5 million;
- (20) Liens in favor of the Parent or any Restricted Subsidiary;

- (21) deposits made in the ordinary course of business to secure liability to insurance carriers;
- (22) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;
- (23) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 4.03; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;
- (24) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;
- (25) any (a) interest or title of a lessor or sublessor under any lease, liens reserved in oil, gas or other Hydrocarbons, minerals, leases for bonus, royalty or rental payments and for compliance with the terms of such leases; (b) restriction or encumbrance that the interest or title of such lessor or sublessor may be subject to (including, without limitation, ground leases or other prior leases of the demised premises, mortgages, mechanics' liens, tax liens, and easements); or (c) subordination of the interest of the lessee or sublessee under such lease to any restrictions or encumbrance referred to in the preceding Clause (b);
- (26) Liens (other than Liens securing Indebtedness) on, or related to, assets to secure all or part of the costs incurred in the ordinary course of the Oil and Gas Business for the exploration, drilling, development, production, processing, transportation, marketing, storage or operation thereof;
- (27) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;
- (28) Liens on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets in each case relating to obligations other than Indebtedness;
- (29) Liens to secure the performance of statutory obligations, trade contracts, insurance, surety or appeal bonds, workers compensation obligations, and pension obligations, performance bonds or other obligations of a like nature incurred in the ordinary course of business (including Liens to secure letters of credit issued to assure payment of such obligations);
- (30) Liens over cash paid into an escrow account pursuant to any purchase price retention arrangement as part of any permitted disposal by the Parent or a Restricted Subsidiary on condition that the cash paid into such escrow account in relation to a disposal does not represent more than 5.0% of the net proceeds of such disposal;
- (31) Liens on cash, Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Indebtedness;
- (32) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business or for its trading activities on the counterparty's standard or usual terms;
- (33) Liens for the purpose of securing the payment of all or a part of the purchase price of, or Capitalized Lease Obligations, purchase money obligations or other Indebtedness or other

payments, in each case, Incurred to finance the acquisition, lease, improvement or construction of or repairs or additions to GTF 2; *provided that*:

- (a) the aggregate principal amount of Indebtedness secured by such Liens is otherwise permitted to be Incurred under 4.03(a) and does not exceed the cost of GTF 2;
  - (b) neither the Parent nor any Restricted Subsidiary of the Parent provides any Guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Indebtedness) of, or is directly or indirectly liable (as a guarantor or otherwise) for, any of the Indebtedness secured by such Liens;
  - (c) the explicit terms of the Indebtedness secured by such Liens provide there is no recourse against any of the assets of the Parent or its Restricted Subsidiaries (other than GTF 2 and any assets affixed or appurtenant thereto and any Hydrocarbons produced thereby); and
  - (d) such Liens are created not later than 90 days after the later of the acquisition, lease, completion of improvements, construction, repairs or additions or commencement of full operation of GTF 2 and do not encumber any other assets or property of the Parent or any Restricted Subsidiary (other than GTF 2 and any assets affixed or appurtenant thereto and any Hydrocarbons produced thereby); and
- (34) Liens securing Indebtedness represented by (i) Credit Facilities for the purpose of pre-funding identified export volumes which provide the sole collateral securing such Indebtedness, and/or (ii) trade finance Credit Facilities for the purpose of buying, selling and/or trading crude oil, gas and oil products, *provided that*, in the case of (ii), the final maturity date of each loan under any such facility shall not be more than 180 days after the date such loan was borrowed and *provided further that*, in the case of both (i) and (ii), the aggregate principal amount at any time outstanding of Indebtedness that is secured by such Liens shall not exceed U.S.\$50 million.

In each case set forth above, notwithstanding any stated limitation on the assets that may be subject to such Lien, a Permitted Lien on a specified asset or group or type of assets may include Liens on all improvements, additions and accessions thereto and all products and proceeds thereof (including dividends, distributions and increases in respect thereof).

“**Person**” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision thereof or any other entity.

“**Preferred Stock**”, as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“**principal**” of a Note means the principal of the Note plus the premium, if any, payable on the Note which is due or overdue or is to become due at the relevant time.

“**Proceeds Loan**” means the loans from the Issuer to Zhaikmunai LLP in the aggregate principal amount equal to the gross proceeds from the Notes.

**“Proceeds Loan Agreement”** means the note proceeds loan agreement dated the Issue Date between the Issuer, as lender, and Zhaikmunai LLP, as borrower, and Zhaikmunai L.P., as the Support Provider, relating to the Proceeds Loan.

**“Purchase Agreement”** means (1) with respect to the Notes issued on the Issue Date, the Purchase Agreement dated 2 November 2012 among the Issuer, the Guarantors and the Initial Purchasers, and (2) with respect to each issuance of Additional Notes, the purchase agreement or underwriting agreement among the Issuer, the Guarantors and the Persons purchasing such Additional Notes.

**“QIB”** means a “qualified institutional buyer” as defined in Rule 144A.

**“Refinance”** means, in respect of any Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, purchase, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. **“Refinanced”** and **“Refinancing”** shall have correlative meanings.

**“Refinancing Indebtedness”** means Indebtedness that is Incurred to Refinance any Indebtedness (excluding Indebtedness of a Restricted Subsidiary that is not a Guarantor or the Issuer that Refinances Indebtedness of the Issuer or a Guarantor), including Indebtedness that Refinances Refinancing Indebtedness, *provided, however*, that:

- (1) (a) if the Stated Maturity of the Indebtedness being Refinanced is earlier than the Stated Maturity of the Notes, the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being Refinanced or (b) if the Stated Maturity of the Indebtedness being Refinanced is later than the Stated Maturity of the Notes, the Refinancing Indebtedness has a Stated Maturity at least six months later than the Stated Maturity of the Notes;
- (2) the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being Refinanced;
- (3) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to pay interest, premiums or defeasance costs required by the instruments governing such existing Indebtedness that is being refinanced and fees and expenses Incurred in connection therewith); and
- (4) if the Indebtedness being Refinanced is subordinated in right of payment to the Notes or the Notes Guarantees, such Refinancing Indebtedness is subordinated in right of payment to the Notes or the Notes Guarantees on terms at least as favorable to the holders as those contained in the documentation governing the Indebtedness being Refinanced.

**“Regulation S”** means Regulation S under the Securities Act.

**“Related Parties”** means, with respect to any Person:

- (1) the spouse of such Person; or
- (2) any trust, corporation, partnership, limited liability company or other entity, the beneficiaries, shareholders, partners, members, owners or Persons directly or indirectly beneficially holding 50.1% or more of the Capital Stock (including Voting Stock) of which consist solely

of such Person and/or such other Persons referred to in the immediately preceding Clause (1).

**“Reorganization Transaction”** means one or more of:

- (1) an intra-group transaction, which would require one or more of the following steps:
  - (a) the incorporation of a new (direct or indirect) holding company of Zhaikmunai LLP (**“NewCo”**) as a Subsidiary of the Parent;
  - (b) the transfer of substantially all of the assets of the Parent to NewCo;
  - (c) the accession by NewCo as a successor to the Parent under this Indenture;
  - (d) the distribution or transfer by the former Parent of the equity securities of NewCo to existing holders of Common Units of the former Parent;
  - (e) the listing of the equity securities of NewCo on a recognized stock exchange;
  - (f) the cancellation of the listing of the global depositary receipts of the former Parent; and
  - (g) the dissolution of the former Parent and the General Partner;
- (2) a tender offer transaction, which would require one or more of the following steps:
  - (a) the incorporation of NewCo as a Subsidiary of the Permitted Holder;
  - (b) the making of a tender offer by NewCo for all of the existing global depositary receipts and Common Units in the Parent (and the shares in the General Partner) in exchange for the issue of new equity securities in NewCo;
  - (c) the listing of the equity securities of NewCo on a recognized stock exchange;
  - (d) the transfer of substantially all of the assets of the Parent to NewCo;
  - (e) the accession by NewCo as a successor to the Parent under this Indenture; and
  - (f) the dissolution or liquidation of the former Parent and the General Partner; or
- (3) an alternative reorganization transaction, which comprises any other corporate reorganization or restructuring of the Parent, the General Partner, Zhaikmunai LLP and the other Guarantors as would result in NewCo becoming the new holding company of Zhaikmunai LLP with its equity securities listed on a recognized stock exchange in substitution of the listing of global depositary receipts of the Parent on the London Stock Exchange, the transfer of substantially all of the assets of the Parent to NewCo and the accession by NewCo as a successor to the Parent under this Indenture.

**“Restricted Investment”** means any Investment other than a Permitted Investment.

**“Restricted Payment”** has the meaning given to such term in Section 4.04.

**“Restricted Subsidiary”** means any Subsidiary of the Parent other than an Unrestricted Subsidiary.

**“Rule 144A”** means Rule 144A under the Securities Act.

**“S&P”** means Standard & Poor’s Rating Service, a division of The McGraw-Hill Companies, Inc., or any successor to the rating agency business thereof.

**“Sale/Leaseback Transaction”** means an arrangement relating to property owned by the Parent or a Restricted Subsidiary on the Issue Date or thereafter acquired by the Parent or a Restricted Subsidiary whereby the Parent or a Restricted Subsidiary transfers such property to a Person and the Parent or a Restricted Subsidiary leases it from such Person.

**“SEC”** means the United States Securities and Exchange Commission.

**“Securities”** and/or **“Security”** means the Notes and/or the Notes Guarantees, as the context requires.

**“Securities Act”** means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

**“Securities Custodian”** means the custodian with respect to a Global Note (as appointed by the Depository), or any successor Person thereto and shall initially be the Trustee.

**“Securityholder”** or **“holder”** means a Person in whose name a Note is registered on the registrar’s books.

**“Significant Subsidiary”** means any Restricted Subsidiary that would be a “Significant Subsidiary” of the Parent within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC, as in effect on the Issue Date and in any event shall include the Guarantors.

**“Stated Maturity”** means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

**“Subordinated Obligation”** means any Indebtedness of the Issuer (whether outstanding on the Issue Date or thereafter Incurred) which is expressly subordinate in right of payment to the Notes pursuant to a written agreement.

**“Subsidiary”** of any Person means (a) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total ordinary voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or Persons performing similar functions) or (b) any partnership, joint venture, limited liability company or similar entity of which more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, is, in the case of Clauses (a) and (b), at the time owned or controlled, directly or indirectly, by (1) such Person, (2) such Person and one or more Subsidiaries of such Person or (3) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary (other than in this definition) will refer to a Subsidiary of the Parent.

**“Subsidiary Guarantors”** means Zhaikmunai Netherlands, Claydon, Jubilata, Condensate-Holding, Zhaikmunai Finance and Zhaikmunai LLP and any other Restricted Subsidiary of the Parent providing a Notes Guarantee pursuant to Section 4.12 or Section 4.15.

**“Substituted Obligor”** has the meaning assigned to such term in Section 4.15.

**“Substitution”** has the meaning assigned to such term in Section 4.15.

**“Total Net Assets”** means the consolidated total net assets of the Parent and its Restricted Subsidiaries as shown on the most recent consolidated balance sheet (excluding the footnotes thereto) of the Parent.



**“Transfer Restricted Note”** means a Note that bears or is required to bear the legend relating to restrictions on transfer relating to the Securities Act set forth in Section 2.03(d) hereto.

**“Treasury Rate”** means, as of any redemption date, the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two Business Days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source or similar market data)) most nearly equal to the period from the redemption date to 13 November 2016; *provided, however*, that if the period from the redemption date to 13 November 2016 is not equal to the constant maturity of a United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from the redemption date to 13 November 2016 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

**“Trustee”** means the party named as such in this Indenture until a successor replaces it and, thereafter, means the successor.

**“Trust Officer”** means the Chairman of the Board, the President or any other officer or assistant officer of the Trustee assigned by the Trustee to administer its corporate trust matters.

**“Uniform Commercial Code”** means the New York Uniform Commercial Code as in effect from time to time.

**“Unrestricted Subsidiary”** means:

- (1) any Subsidiary of the Parent that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors of the Parent in the manner provided below; and
- (2) any Subsidiary of an Unrestricted Subsidiary.

Notwithstanding anything else to the contrary in this Indenture, neither the Issuer (or any successor of the Issuer) nor Zhaikmunai LLP shall be designated as Unrestricted Subsidiaries.

**“U.S. dollar”** or **“\$”** means the lawful currency of the United States of America.

**“U.S. Government Obligations”** means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable at the issuer’s option.

**“Voting Stock”** of an entity means all classes of Capital Stock of such entity then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of members of such entity’s Board of Directors.

**“Wholly Owned Subsidiary”** means a Restricted Subsidiary, all of the Capital Stock of which (other than directors’ qualifying shares or Capital Stock of Restricted Subsidiaries required to be owned by third parties pursuant to applicable law) is owned by the Parent or another Wholly Owned Subsidiary.

**“Zhaikmunai Finance”** has the meaning assigned to that term in the introduction to this Indenture.

**“Zhaikmunai LLP”** has the meaning assigned to that term in the introduction to this Indenture.

“Zhaikmunai Netherlands” has the meaning assigned to that term in the introduction to this Indenture.

**SECTION 1.02. Other Definitions**

<b>Term</b>	<b>Defined in Section</b>
“Additional Amounts”	4.17(a)
“Additional Taxing Jurisdiction”	4.17(g)
“Affiliate Transaction”	4.07(a)
“Agent Members”	2.01(b)
“Asset Disposition Offer”	4.06(b)
“Asset Disposition Offer Amount”	4.06(c)
“Asset Disposition Offer Period”	4.06(c)
“Asset Disposition Purchase Date”	4.06(c)
“Authenticating Agent”	2.02
“Authorized Agent”	13.08
“Change of Control Offer”	4.10(b)
“Change of Control Payment”	4.10(b)
“Change of Control Payment Date”	4.10(b)
“Conflicting Interest”	7.10(c)
“covenant defeasance option”	8.01(b)
“defeasance trust”	8.02
“Dispute”	10.04
“Event of Default”	6.01
“FATCA”	4.17(d)
“Global Exchange Market”	2.03(a)
“Global Notes”	2.01(a)
“Guaranteed Obligations”	10.01(a)
“Initial Lien”	4.11
“legal defeasance option”	8.01(b)
“Paying Agent”	2.03(a)
“Principal Paying Agent”	2.03(a)
“Prohibition”	10.03
“Registrar”	2.03(b)
“Regulation S Global Note”	2.01(a)
“Relevant Taxing Jurisdiction”	4.17(a)

<b>Term</b>	<b>Defined in Section</b>
"Rule 144A Global Note"	2.01(a)
"Successor Company"	5.01(a)
"Taxes"	4.17(a)
"Transfer Agent"	2.03
"U.S. Securities Act"	2.06(d)

### **SECTION 1.03. Rules of Construction**

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) "or" is not exclusive;
- (4) "including" means including without limitation;
- (5) words in the singular include the plural and words in the plural include the singular;
- (6) unsecured Indebtedness shall not be deemed to be subordinate or junior to secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;
- (7) secured Indebtedness shall not be deemed to be subordinate or junior to any other secured Indebtedness merely because it has a junior priority with respect to the same collateral;
- (8) all references to the date the Notes were originally issued shall refer to the Issue Date;
- (9) references to any officer or employee of the Parent or of any Restricted Subsidiary shall be deemed to include any officer or employee acting in such capacity or serving such function but actually employed or remunerated by the General Partner or by the Permitted Holder or any Affiliate of the Permitted Holder. References to any director of the Parent are to a member of the Board of Directors of the Parent; and
- (10) in this Indenture, where it relates to a Dutch entity, a reference to:
  - (a) a winding up, administration or dissolution includes a Dutch entity being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*);
  - (b) a moratorium includes *surseance van betaling* and granted a moratorium includes *surseance verleend*;
  - (c) insolvency includes a bankruptcy, moratorium and emergency regulation (*noodregeling*);
  - (d) a trustee in bankruptcy includes a curator;
  - (e) an administrator includes a *bewindvoerder*;
  - (f) "security right" includes any mortgage (*hypotheek*), pledge (*pandrecht*), financial collateral agreement (*financiële zekerheids overeenkomst*), retention of title arrangement (*eigendomsvoorbehoud*), right of retention (*recht van retentie*), right to reclaim goods (*recht van*

*reclame*), and, in general, any right in rem (*beperkt recht*), created for the purpose of granting security (*goederenrechtelijke zekerheid*);

(g) an attachment includes a *beslag*; and

(h) a subsidiary includes a *dochtermaatschappij* as defined in Article 2:24a of the Dutch Civil Code.

## Article 2

### The Notes

#### SECTION 2.01. The Notes

##### (a) Form and Dating

The Initial Notes will be offered and sold by the Issuer pursuant to a Purchase Agreement. The Initial Notes will be resold initially only to (i) QIBs in reliance on Rule 144A and (ii) Persons outside the United States in reliance on Regulation S. Initial Notes may thereafter be transferred to, among others, QIBs and purchasers in reliance on Regulation S, subject to the restrictions on transfer set forth herein. Initial Notes initially resold pursuant to Rule 144A shall be issued initially in the form of one or more permanent Global Notes in definitive, fully registered form (collectively, the “**Rule 144A Global Note**”) and Initial Notes initially resold pursuant to Regulation S shall be issued initially in the form of one or more permanent Global Notes in fully registered form (collectively, the “**Regulation S Global Note**”), in each case without interest coupons and with the Global Notes legend and the applicable restricted securities legend set forth in Exhibit A hereto, which shall be deposited on behalf of the purchasers of the Initial Notes represented thereby with the Securities Custodian and registered in the name of the Depository or a nominee of the Depository, duly executed by the Issuer and authenticated by the Trustee as provided in this Indenture.

Beneficial interests in a Rule 144A Global Note may be transferred to a Person who takes delivery in the form of an interest in a Regulation S Global Note, and beneficial interests in a Regulation S Global Note may be transferred to a Person who takes delivery in the form of an interest in a Rule 144A Global Note, in each case only if the transferor first delivers to the Trustee and the Registrar a written certificate (in the form provided in Exhibit C) to the effect that such transfer is being made in accordance with Rule 144A, Rule 904 of Regulation S or pursuant to any provision of the Securities Act other than Rule 144A or Regulation S (as applicable).

The Rule 144A Global Note and the Regulation S Global Note are collectively referred to herein as “**Global Notes**”. The aggregate principal amount of the Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee as hereinafter provided.

##### (b) Book-Entry Provisions

This Section 2.01(b) shall apply only to a Global Note deposited with or on behalf of the Depository.

The Issuer shall execute and the Trustee shall, in accordance with this Section 2.01(b), authenticate and deliver initially one or more Global Notes that (a) shall be registered in the name of the Depository for such Global Note or Global Notes or the nominee of such Depository and (b) shall be delivered by the Trustee to such Depository or held by the Trustee as custodian for the Depository pursuant to such Depository’s written instructions.

Members of, or participants in, the Depository (“**Agent Members**”) shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depository or by the Trustee as the custodian of the Depository or under such Global Note, and the Issuer, the Trustee and any agent of the Issuer or the Trustee shall be entitled to treat the Depository as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices of such Depository governing the exercise of the rights of a holder of a beneficial interest in any Global Note.

(c) **Definitive Notes**

Except as provided in this Article 2, owners of beneficial interests in Global Notes shall not be entitled to receive physical delivery of Definitive Notes.

**SECTION 2.02. Execution and Authentication**

Two directors of the Issuer shall sign the Notes for the Issuer by manual or facsimile signature. The Trustee shall be entitled to rely on such signatures as authentic and shall be under no obligation to make any investigation in relation thereto.

If a director whose signature is on a Note no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

A Note shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

On the Issue Date, the Trustee shall authenticate and deliver U.S.\$560 million of 7.125% Senior Notes due 2019 and, at any time and from time to time thereafter, the Trustee shall authenticate and deliver Notes for original issue in an aggregate principal amount specified in such order, in each case upon a written order of the Issuer signed by one director of the Issuer. Such order shall specify the amount of the Notes to be authenticated and the date on which the original issue of Notes is to be authenticated and, in the case of an issuance of Additional Notes pursuant to Section 2.13 after the Issue Date, shall certify that such issuance is in compliance with Section 4.03.

The Trustee may appoint an authenticating agent (also an “**Authenticating Agent**”) reasonably acceptable to the Issuer to authenticate the Notes. Unless limited by the terms of such appointment, such Authenticating Agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by an Authenticating Agent. An Authenticating Agent has the same rights as any Agent.

**SECTION 2.03. Registrar, Paying Agents and Transfer Agents**

- (a) The Issuer will maintain one or more paying agents (each, a “**Paying Agent**”) for the Notes in each of (i) the City of London (the “**Principal Paying Agent**”), (ii) the Borough of Manhattan, City of New York, and (iii) Dublin, Ireland, for so long as the Notes are listed on the Official List of the Irish Stock Exchange and admitted for trading on the Global Exchange Market of the Irish Stock Exchange (the “**Global Exchange Market**”) and the rules of the Irish Stock Exchange so require. The Issuer will undertake to maintain a Paying Agent in a member state of the European Union that will not be obliged to withhold or deduct tax pursuant to the European Union Directive 2003/48/EC or any other directive implementing the conclusions of the ECOFIN Council meeting of 26 and 27 November 2000

on the taxation of savings income, or any law implementing, or complying with or introduced in order to conform to, such directive. The Issuer hereby appoints (i) Citibank N.A. in London as initial Principal Paying Agent and (ii) Citibank N.A. in New York as a further initial Paying Agent, and each such Paying Agent hereby accepts its appointment.

- (b) The Issuer will also maintain one or more registrars (each, a “**Registrar**”) with offices in Frankfurt, Germany for so long as the Notes are listed on the Official List of the Irish Stock Exchange and admitted for trading on the Global Exchange Market and the rules of the Irish Stock Exchange so require. The Issuer will also maintain a transfer agent (the “**Transfer Agent**”) in Dublin, Ireland. The initial Registrar will be Citigroup Global Markets Deutschland AG. The initial Transfer Agent will be Citibank N.A. The Registrar and the Transfer Agent will maintain a register reflecting ownership of Definitive Notes outstanding from time to time and will make payments on and facilitate transfer of Definitive Notes on the behalf of the Issuer. The Issuer shall enter into a customary agency agreement with any Registrar, Paying Agent or co-registrar not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee of the name and address of any such agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06.
- (c) The Issuer may change any of the Paying Agents, the Registrars or the Transfer Agent without prior notice to the holders of the Notes, provided, however, that the Issuer shall promptly notify the Trustee in writing of such change.
- (d) Any Paying Agent, Registrar or Transfer Agent duly appointed by the Issuer hereunder shall have all the rights of the Trustee under Sections 7.01, 7.02(a), (c), (d), (e) and (g), 7.03, 7.06, 7.07 and 7.08 of this Indenture.

#### **SECTION 2.04. Paying Agent To Hold Money in Trust**

Prior to each due date of the principal and interest on any Note, the Issuer shall deposit with the Principal Paying Agent a sum sufficient to pay such principal and interest when so becoming due. The Issuer shall on the second Business Day before the due date of each payment by it pursuant to this Section 2.04 procure that the bank effecting payment for it confirms by tested telex or authenticated SWIFT message to the Principal Paying Agent the payment instructions relating to such payment. Such amounts will not be subject to the United Kingdom’s Financial Services Authority’s Client Money rules and need not be segregated except as required by applicable law. The Principal Paying Agent will not be liable to account for interest on such amounts received by it from the Issuer. The Issuer shall require each Paying Agent (other than the Trustee in its capacity as a Paying Agent) to agree in writing that the Paying Agent shall hold in trust for the benefit of Securityholders or the Trustee all money held by the Paying Agent for the payment of principal of or interest on the Notes and shall notify the Trustee in writing of any default by the Issuer in making any such payment. If the Issuer or an Affiliate of the Issuer acts as Paying Agent, it shall segregate the money held by it as Paying Agent and, to the fullest extent possible under applicable law, hold it as a separate trust fund. The Issuer (or, during the continuance of any payment default, the Trustee) at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by the Paying Agent. Upon complying with this Section, the Paying Agent shall have no further liability for the money delivered to the Trustee.

## **SECTION 2.05. Securityholder Lists**

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders. If the Trustee is not the Registrar, the Issuer shall furnish to the Trustee, in writing at least five Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders, on which list the Trustee may rely conclusively.

## **SECTION 2.06. Transfer and Exchange**

### **(a) Transfer and Exchange of Definitive Notes**

When Definitive Notes are presented to the Registrar with a request:

- (i) to register the transfer of such Definitive Notes; or
- (ii) to exchange such Definitive Notes for an equal principal amount of Definitive Notes of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; *provided, however*, that the Definitive Notes surrendered for transfer or exchange:

- (i) shall be duly endorsed or accompanied by a written instrument of transfer substantially in the form attached hereto as Exhibit C, or a written instrument of exchange substantially in the form attached hereto as Exhibit D duly executed by the holder thereof or its attorney duly authorized in writing; and
- (ii) if such Definitive Notes are required to bear a restricted securities legend, they are being transferred or exchanged pursuant to an effective registration statement under the Securities Act, pursuant to Section 2.06(b) or pursuant to Clause (A), (B) or (C) below, and are accompanied by the following additional information and documents, as applicable:
  - (A) if such Definitive Notes are being delivered to the Registrar by a Securityholder for registration in the name of such Securityholder, without transfer, a certification from such Securityholder to that effect; or
  - (B) if such Definitive Notes are being transferred to the Issuer, a certification to that effect; or
  - (C) if such Definitive Notes are being transferred (x) pursuant to an exemption from registration in accordance with Rule 144A, Regulation S or Rule 144 under the Securities Act; or (y) in reliance upon another exemption from the requirements of the Securities Act: (i) a certification to that effect (in the form set forth on the reverse of the Note) and (ii) if the Issuer so requests, an opinion of counsel or other evidence reasonably satisfactory to it as to the compliance with the restrictions set forth in the legend set forth in Section 2.06(d)(i).

All Definitive Notes issued upon any transfer or exchange pursuant to the terms of this Indenture will evidence the same debt and be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

**(b) Restrictions on Transfer of a Definitive Note for a Beneficial Interest in a Global Note**

A Definitive Note may not be exchanged for a beneficial interest in a Rule 144A Global Note or a Regulation S Global Note except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee or a Registrar of a Definitive Note, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Trustee or such Registrar, together with:

- (i) certification, in the form set forth on the reverse of the Note, that such Definitive Note is either (A) being transferred to a QIB in accordance with Rule 144A or (B) being transferred by a Person who initially purchased such Note in reliance on Regulation S to a buyer who elects to hold its interest in such Note in the form of a beneficial interest in the Regulation S Global Note; and
- (ii) written instructions directing the Trustee or a Registrar to make, or to direct the Securities Custodian to make, an adjustment on its books and records with respect to such Rule 144A Global Note (in the case of a transfer pursuant to Clause (b)(i)(A)) or Regulation S Global Note (in the case of a transfer pursuant to Clause (b)(i)(B)) to reflect an increase in the aggregate principal amount of the Notes represented by the Rule 144A Global Note or Regulation S Global Note, as applicable, such instructions to contain information regarding the Depository account to be credited with such increase,

then the Trustee shall cancel such Definitive Note and cause, or direct the Securities Custodian to cause, in accordance with the standing instructions and procedures existing between the Depository and the Securities Custodian, the aggregate principal amount of Notes represented by the Rule 144A Global Note or Regulation S Global Note, as applicable, to be increased by the aggregate principal amount of the Definitive Note to be exchanged and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Rule 144A Global Note or Regulation S Global Note, as applicable, equal to the principal amount of the Definitive Note so canceled. If no Rule 144A Global Notes or Regulation S Global Notes, as applicable, are then outstanding, the Issuer shall issue and the Trustee shall authenticate, upon written order of the Issuer in the form of an officers' certificate of the Issuer, a new Rule 144A Global Note or Regulation S Global Note, as applicable, in the appropriate principal amount.

**(c) Transfer and Exchange of Global Notes**

- (i) The transfer and exchange of Global Notes or beneficial interests therein shall be effected through the Depository, in accordance with this Indenture (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Depository therefor.
- (ii) If the proposed transfer is a transfer of a beneficial interest in one Global Note to a beneficial interest in another Global Note, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Note to which such interest is being transferred in an amount equal to the principal amount of the interest to be so transferred, and the Registrar shall reflect on its books and records the date and a corresponding decrease in the principal amount of the Global Note from which such interest is being transferred.
- (iii) Notwithstanding any other provisions of this Indenture, a Global Note may not be transferred as a whole except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository



or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

- (iv) In the event that a Global Note is exchanged for Definitive Notes, such Notes may be exchanged only in accordance with such procedures as are substantially consistent with the provisions of this Section 2.06 (including delivery to the Trustee and the Registrar of a certificate in the form provided in Exhibit D intended to ensure that such transfers comply with Rule 144A, Regulation S or another applicable exemption under the Securities Act, as the case may be) and such other procedures as may from time to time be adopted by the Issuer.

(d) **Legend**

- (i) Except as permitted by the following paragraph (ii), each Note certificate evidencing the Global Notes (and all Notes issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “**U.S. SECURITIES ACT**”) OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT (A) IT IS A “**QUALIFIED INSTITUTIONAL BUYER**” (AS DEFINED IN RULE 144A UNDER THE U.S. SECURITIES ACT (“**RULE 144A**”)) OR (B) IT IS NOT A U.S. PERSON AND IT IS ACQUIRING THIS SECURITY IN AN “OFFSHORE TRANSACTION” (AS DEFINED IN REGULATION S UNDER THE U.S. SECURITIES ACT), (2) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR FOR WHICH IT HAS PURCHASED SECURITIES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “**RESALE RESTRICTION TERMINATION DATE**”) WHICH IS [IN THE CASE OF SECURITIES OFFERED OR SOLD IN RELIANCE ON RULE 144A: ONE YEAR] [IN THE CASE OF SECURITIES OFFERED OR SOLD UNDER REGULATION S: 40 DAYS] (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RELEVANT REGULATION UNDER THE U.S. SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER) AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) ONLY (A) TO THE ISSUER, A GUARANTOR OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE U.S. SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT, OR ANY PERSON ACTING ON ITS BEHALF, REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) TO NON-U.S. PERSONS IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE U.S. SECURITIES ACT OR (E) PURSUANT TO

ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT, SUBJECT IN EACH OF THE FOREGOING CASES TO ANY REQUIREMENT OF LAW THAT THE DISPOSITION OF ITS PROPERTY OR THE PROPERTY OF SUCH INVESTOR ACCOUNT OR ACCOUNTS BE AT ALL TIMES WITHIN ITS OR THEIR CONTROL AND IN COMPLIANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OR TERRITORY OF THE UNITED STATES OR ANY OTHER JURISDICTION, AND ANY APPLICABLE LOCAL LAWS AND REGULATIONS AND FURTHER SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHTS PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER (I) PURSUANT TO CLAUSES (D) AND (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM AND (II) IN EACH OF THE FOREGOING CASES, TO REQUIRE THAT A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

- (ii) Upon any sale or transfer of a Transfer Restricted Note (including any Transfer Restricted Note represented by a Global Note) pursuant to Rule 144 under the Securities Act, the Registrar shall permit the transferee thereof to exchange such Transfer Restricted Note for a certificated Note that does not bear the legend set forth above and rescind any restriction on the transfer of such Transfer Restricted Note, if the transferor thereof certifies in writing to the Registrar that such sale or transfer was made in reliance on Rule 144 (such certification to be in the form set forth on the reverse of the Note).

**(e) Cancellation or Adjustment of Global Note**

At such time as all beneficial interests in a Global Note have either been exchanged for Definitive Notes, redeemed, purchased or canceled, such Global Note shall be returned to the Depository for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for certificated Notes, redeemed, purchased or canceled, the principal amount of Notes represented by such Global Note shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the Securities Custodian for such Global Note) with respect to such Global Note, by the Trustee or the Securities Custodian, to reflect such reduction.

**(f) No Obligation of the Trustee or Registrar**

- (i) Neither the Trustee nor the Registrar shall have any responsibility or obligation to any beneficial owner of an interest in a Global Note, a member of, or a participant in the Depository or other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Securityholders and all payments to be made to Securityholders under the Notes shall be given or made only to or upon the order of the registered Securityholders (which shall be the Depository or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depository

subject to the applicable rules and procedures of the Depository. The Trustee and the Registrar may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

- (ii) Neither the Trustee nor the Registrar shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depository participants, members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

The Notes shall be issued in registered form and shall be transferable only upon the surrender of a Note for registration of transfer. When a Note is presented to the Registrar or a co-registrar with a request to register a transfer, the Registrar shall register the transfer as requested if the requirements of this Indenture are met. When Notes are presented to the Registrar or a co-registrar with a request to exchange them for an equal principal amount of Notes of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. References in this Section 2.06 to the Registrar shall be deemed, where relevant and the context so requires, also to be references to any co-registrar or Transfer Agent.

#### **SECTION 2.07. Replacement Notes**

If a mutilated Note is surrendered to the Registrar or if the holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall, upon the written order of the Issuer in the form of an Officer's Certificate of the Issuer, authenticate a replacement Note if the requirements of this Indenture are met. If required by the Trustee or the Issuer, such holder shall furnish an indemnity bond sufficient in the judgment of the Issuer and the Trustee to protect the Issuer, the Trustee, the Paying Agent, the Registrar and any co-registrar from any loss which any of them may suffer if a Note is replaced. The Issuer and the Trustee may charge the holder for their expenses in replacing a Note.

Every replacement Note is an additional Obligation of the Issuer.

#### **SECTION 2.08. Outstanding Notes**

Notes outstanding at any time are all Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section as not outstanding. A Note does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Note.

If the Principal Paying Agent segregates and holds in trust, in accordance with this Indenture, on a redemption date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Notes (or portions thereof) to be redeemed or maturing, as the case may be, then on and after that date such Notes (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

#### **SECTION 2.09. Temporary Notes**

Until Definitive Notes are ready for delivery, the Issuer may prepare and the Trustee shall, upon written instruction of the Issuer in accordance with Section 2.02, authenticate temporary Notes. Temporary Notes shall be substantially in the form of Definitive Notes but may have variations that

the Issuer considers appropriate for temporary Notes. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate Definitive Notes and deliver them in exchange for temporary Notes.

#### **SECTION 2.10. Cancellation**

The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall promptly forward to the Trustee for cancellation any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee, and no one else, shall cancel and destroy (subject to the Trustee's record retention policies) all Notes surrendered for registration of transfer, exchange, payment or cancellation and deliver a certificate of such destruction to the Issuer unless the Issuer directs the Trustee in writing to deliver canceled Notes to the Issuer, at the Issuer's expense. Subject to Section 2.06, the Issuer may not issue new Notes to replace Notes it has redeemed, paid or delivered to the Trustee for cancellation.

#### **SECTION 2.11. Defaulted Interest**

If the Issuer defaults in a payment of interest on the Notes, the Issuer shall pay defaulted interest (plus interest on such defaulted interest to the extent lawful) in any lawful manner. The Issuer may pay the defaulted interest to the persons who are Securityholders on a subsequent special record date. The Issuer shall fix or cause to be fixed any such special record date and payment date, which shall be the 15th Business Day following such special record date, and shall promptly mail to each Securityholder, the Trustee and the Trustee's designated Paying Agent (which shall be the Principal Paying Agent unless otherwise notified by the Trustee to the Issuer) a notice that states the special record date, the payment date and the amount of defaulted interest to be paid.

#### **SECTION 2.12. CUSIP Numbers, ISINs, etc.**

The Issuer in issuing the Notes may use "CUSIP" numbers, ISINs and "Common Code" numbers (in each case if then generally in use) and, if so, the Trustee shall use "CUSIP" numbers, ISINs and "Common Code" numbers in notices of redemption as a convenience to Securityholders; *provided, however*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuer shall advise the Trustee in writing of any change in any "CUSIP" numbers, ISINs or "Common Code" numbers applicable to the Notes.

#### **SECTION 2.13. Issuance of Additional Notes**

After the Issue Date, the Issuer shall be entitled, subject to its compliance with Section 4.03, to issue Additional Notes under this Indenture, which Notes shall have identical terms as the Initial Notes issued on the Issue Date, other than with respect to the date of issuance and issue price, even if the Additional Notes have a different amount of original issue discount for U.S. federal income tax purposes. All the Notes issued under this Indenture shall be treated as a single class for all purposes of this Indenture including waivers, amendments, redemptions and offers to purchase.

With respect to any Additional Notes, the Issuer shall set forth in a resolution of the Board of Directors and an Officer's Certificate, a copy of each which shall be delivered to the Trustee, the aggregate principal amount of such Additional Notes to be authenticated and delivered pursuant to this Indenture and the provision of Section 4.03 that the Issuer is relying on to issue such Additional Notes.

## **SECTION 2.14. Definitive Notes**

- (a) A Global Note deposited with the Depository or with the Trustee as Securities Custodian for the Depository pursuant to Section 2.01 shall be transferred to the beneficial owners thereof in the form of Definitive Notes in an aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note, only if such transfer complies with Section 2.06 hereof and (i) the Depository notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Note and the Depository fails to appoint a successor depository or if at any time such Depository ceases to be a “clearing agency” registered under the Exchange Act, in either case, and a successor depository is not appointed by the Issuer within 90 days of such notice, or (ii) at the written request of a Securityholder if an Event of Default has occurred and is continuing or (iii) the Issuer, in its sole discretion, notifies the Trustee in writing that it elects to cause the issuance of Definitive Notes under this Indenture.
- (b) Any Global Note that is transferable to the beneficial owners thereof pursuant to this Section 2.14 shall be surrendered by the Depository to the Trustee located at its principal corporate trust office in the Borough of Manhattan, The City of New York, to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall, upon written instruction of the Issuer in accordance with section 2.02, authenticate and deliver, upon such transfer of each portion of such Global Note, an equal aggregate principal amount of Definitive Notes of authorized denominations. Any portion of a Global Note transferred pursuant to this Section 2.14 shall be executed, authenticated and delivered only in denominations of U.S.\$200,000 principal amount and any integral multiple of U.S.\$1,000 in excess thereof and registered in such names as the Depository shall direct. Any Definitive Note delivered in exchange for an interest in the Transfer Restricted Note shall, except as otherwise provided by Section 2.06(d) hereof, bear the applicable restricted securities legend and Definitive Notes legend set forth in Exhibit A hereto.
- (c) Subject to the provisions of Section 2.14(b) hereof, the registered holder of a Global Note shall be entitled to grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Securityholder is entitled to take under this Indenture or the Notes.
- (d) In the event of the occurrence of one of the events specified in Section 2.14(a) hereof, the Issuer shall promptly make available to the Trustee a reasonable supply of Definitive Notes in definitive, fully registered form without interest coupons. In the event that such Definitive Notes are not issued, the Issuer expressly acknowledges, with respect to the right of any Securityholder to pursue a remedy pursuant to Section 6.06 of this Indenture, the right of any beneficial owner of Notes to pursue such remedy with respect to the portion of the Global Note that represents such beneficial owner’s Notes as if such Definitive Notes had been issued.

## **Article 3**

### **Redemption**

#### **SECTION 3.01. Notices to Trustee**

If the Issuer elects to redeem Notes pursuant to paragraph 5 of the Notes, it shall notify the Trustee in writing of the redemption date, the principal amount of Notes to be redeemed and the paragraph of the Notes pursuant to which the redemption will occur.

The Issuer shall give each notice to the Trustee provided for in this Section at least 60 days before the redemption date unless the Trustee consents to a shorter period. Such notice shall be accompanied by an Officer's Certificate and an Opinion of Counsel to the effect that such redemption will comply with the conditions herein.

**SECTION 3.02. Selection of Notes to be Redeemed**

If the Issuer is redeeming less than all of the outstanding Notes, the Trustee shall select the Notes for redemption on a pro rata basis, or, if required by law or regulation, in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if not possible, by such other method as the Trustee in its sole discretion deems to be fair and appropriate, although no Note of U.S.\$200,000 in original principal amount or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to such Note will state the portion of the principal amount thereof to be redeemed. Provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption. The Trustee shall notify the Issuer promptly of the Notes or portions of Notes to be redeemed. The Trustee shall have no liability in relation to any selection of Notes in accordance with this Section 3.02.

**SECTION 3.03. Notice of Redemption**

At least 30 days but not more than 60 days before a date for redemption of Notes, the Issuer shall mail a notice of redemption by first-class mail to each Securityholder to be redeemed at such holder's registered address.

The notice shall identify the Notes to be redeemed and shall state:

- (1) the redemption date;
- (2) the redemption price;
- (3) the name and address of the Paying Agent;
- (4) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (5) if fewer than all the outstanding Notes are to be redeemed, the identification and principal amounts of the particular Notes to be redeemed;
- (6) that, unless the Issuer defaults in making such redemption payment, interest on Notes (or portion thereof) called for redemption ceases to accrue on and after the redemption date;
- (7) the "CUSIP" number, ISIN or "Common Code" number, if any, printed on the Notes being redeemed; and
- (8) that no representation is made as to the correctness or accuracy of the "CUSIP" number, ISIN, or "Common Code" number, if any, listed in such notice or printed on the Notes.

At the Issuer's instruction, the Trustee shall give the notice of redemption in the Issuer's name and at the Issuer's expense. In such event, the Issuer shall provide the Trustee with the information required by this Section.

**SECTION 3.04. Effect of Notice of Redemption**

Once notice of redemption is mailed, Notes called for redemption become due and payable on the redemption date and at the redemption price stated in the notice. Upon surrender to the Paying Agent, such Notes shall be paid at the redemption price stated in the notice, plus accrued interest

to the redemption date (subject to the right of Securityholders of record on the relevant record date to receive interest due on the related interest payment date), and such Notes shall be canceled by the Trustee, in accordance with Section 2.10. Failure to give notice or any defect in the notice to any Securityholder shall not affect the validity of the notice to any other Securityholder.

**SECTION 3.05. Deposit of Redemption Price**

Prior to the redemption date, the Issuer shall deposit with the Principal Paying Agent (or, if the Issuer or a Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued interest on all Notes to be redeemed on that date other than Notes or portions of Notes called for redemption which have been delivered by the Issuer to the Trustee for cancellation.

**SECTION 3.06. Notes Redeemed in Part**

Upon surrender of a Note that is redeemed in part, the Issuer shall execute and the Trustee shall authenticate for the Securityholder (at the Issuer's expense) a new Note equal in principal amount to the unredeemed portion of the Note surrendered.

**SECTION 3.07. Acquisition of Notes by the Issuer**

The Issuer may acquire Notes by means other than a redemption, whether by tender offer, open market purchases, negotiated transactions or otherwise, in each case in accordance with applicable securities laws.

**Article 4**  
**Covenants**

**SECTION 4.01. Payment of Notes**

The Issuer shall promptly pay the principal of and interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. An instalment of principal of and interest on the Notes shall be considered paid on the date it is due if the Trustee or its designated Paying Agent (which shall be the Principal Paying Agent unless otherwise notified by the Trustee to the Issuer) holds, prior to that date, money deposited by the Issuer in immediately available funds and designated for, and sufficient to pay the installment in full and is not prohibited from paying such money to Securityholders under the terms of this Indenture.

The Issuer shall pay interest on overdue principal at the rate specified therefor in the Notes, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

**SECTION 4.02. Reports to holders**

- (a) So long as any Notes are outstanding, the Parent will furnish to the Trustee (who, at the Parent's expense, will furnish to Securityholders):
- (1) within 120 days after the end of the Parent's fiscal year, annual reports containing:
    - (i) information with a scope that is substantially comparable in all material respects to the sections in the Offering Memorandum entitled "Risk Factors," "Selected Historical Financial Information," "Business," "Management and Corporate Governance," "Related Parties and Related Party Transactions" and "Description of Significant Indebtedness and Certain Financial Arrangements";
    - (ii) the audited consolidated balance sheet of the Parent and the Issuer as at the end of the most recent fiscal year

and audited consolidated income statements and statements of cash flow of the Parent for the most recent two fiscal years, including appropriate footnotes to such financial statements, and the report of the independent auditors on the financial statements; and (iii) information with a level of detail that is substantially comparable in all material respects to the section in the Offering Memorandum entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations;”

- (2) within 60 days following the end of each of the first three fiscal quarters in each fiscal year of the Parent, (i) quarterly financial statements containing the Parent’s unaudited condensed consolidated balance sheet as at the end of such quarter and unaudited condensed statements of income and cash flow for the most recent quarter year-to-date period ending on the unaudited condensed balance sheet date and the comparable prior period, together with condensed footnote disclosure and (ii) with respect to the second fiscal quarter in each fiscal year of the Parent information for such quarter and the year-to-date period with a level of detail that is substantially comparable in all material respects to the section in the Offering Memorandum entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations;” and
  - (3) promptly after the occurrence of a material event, acquisition, disposition, restructuring, changes of the Chief Executive Officer, Chief Financial Officer, Director of Geology or General Counsel of the Parent or a change in auditors of the Parent, a report containing a description of such event.
- (b) In addition to the reports described in Section 4.02(a), the Parent shall also furnish to the Securityholders and to prospective investors, upon the request of such holders, any information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act for so long as the Securities are not freely transferable under the Exchange Act by Persons who are not “affiliates” under the Securities Act.
  - (c) Notwithstanding the foregoing, the reports set forth in Section 4.02(a) will not be required to (i) contain any reconciliation to U.S. generally accepted accounting principles (or any replacement, in whole or in part, thereof), (ii) include separate financial statements for any Guarantors or non-Guarantors (or aggregate set of either thereof) or (iii) include any disclosure with respect to the results of operations or any other financial or statistical disclosure not of a type included in the Offering Memorandum.
  - (d) The Parent shall also make available copies of all reports furnished to the Trustee: (a) on the Parent’s public website and (b) through the newswire service of Bloomberg, or, if Bloomberg does not then operate, any similar agency. In addition, if and so long as the Notes are listed on the Official List of the Irish Stock Exchange and traded on the Global Exchange Market and to the extent that the rules of the Irish Stock Exchange so require, copies of such reports furnished to the Trustee will also be made available at the specified office of the Paying Agent in Ireland, if appointed.
  - (e) At any time that any of the Parent’s Subsidiaries are Unrestricted Subsidiaries and any such Unrestricted Subsidiary or a group of Unrestricted Subsidiaries, taken as a whole, constitutes a Significant Subsidiary of the Parent, then the annual financial information and the second fiscal quarter information, in each case, required by Section 4.02(a) will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, of the financial condition and results of operations of the Parent and its



Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries.

- (f) All reports provided pursuant to this Section 4.02 shall be made in the English language.

**SECTION 4.03. Limitation on Indebtedness**

- (a) The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, Incur any Indebtedness (including Acquired Indebtedness) and the Parent shall not permit any of its Restricted Subsidiaries to issue Preferred Stock; *provided, however*, that the Parent may Incur Indebtedness (including Acquired Indebtedness) and the Issuer or any Subsidiary Guarantor may Incur Indebtedness (including Acquired Indebtedness) and issue Preferred Stock if, in each case, as of the date of such Incurrence or issuance, the Consolidated Coverage Ratio for the Parent and its Restricted Subsidiaries is at least 3.00 to 1.00, determined on a pro forma basis (including a pro forma application of proceeds).
- (b) Notwithstanding Section 4.03(a), the Parent and the Restricted Subsidiaries shall be entitled to Incur any or all of the following Indebtedness:
- (1) Reserved;
  - (2) Guarantees by the Issuer or the Guarantors of Indebtedness of the Issuer or a Guarantor, as the case may be, Incurred in accordance with the provisions of this Indenture; *provided* that in the event such Indebtedness that is being Guaranteed is a Subordinated Obligation or a Guarantor Subordinated Obligation, then the related Guarantee shall be subordinated in right of payment to the Notes or the Notes Guarantees, as the case may be, to at least the same extent as the Indebtedness being Guaranteed;
  - (3) Indebtedness of the Issuer owing to and held by any Guarantor or Indebtedness of a Guarantor owing to and held by the Issuer or any other Guarantor; *provided, however*, that (i) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being held by a Person other than the Issuer or a Guarantor and (ii) any sale or other transfer of any such Indebtedness to a Person other than the Issuer or a Guarantor shall be deemed, in each case, to constitute an Incurrence of such Indebtedness by the Issuer or such Guarantor, as the case may be;
  - (4) Indebtedness represented by (a) the Notes issued on the Issue Date, all Notes Guarantees and the Proceeds Loan, (b) any Indebtedness (other than the Indebtedness described in Clauses (2) and (3) above) outstanding on the Issue Date and (c) any Refinancing Indebtedness Incurred in respect of any Indebtedness described in this Clause (4) or Clause (5) or Incurred pursuant to Section 4.03(a);
  - (5) Indebtedness of a Person that becomes a Guarantor or is acquired by the Issuer or a Guarantor or merged into the Issuer or a Guarantor in accordance with this Indenture and outstanding on the date on which such Person became a Guarantor or was acquired by or was merged into the Issuer or a Guarantor (other than Indebtedness Incurred (a) to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such Person became a Guarantor or was otherwise acquired by or was merged into the Issuer or a Guarantor or (b) otherwise in connection with, or in contemplation of, such acquisition); *provided, however*, that at the time such Person becomes a Guarantor or is acquired by or was merged into the Issuer or a Guarantor, the Parent would have been able to Incur

U.S.\$1.00 of additional Indebtedness pursuant to Section 4.03(a) after giving effect to the Incurrence of such Indebtedness pursuant to this Clause (5);

- (6) the Incurrence by the Issuer or a Guarantor of Indebtedness represented by Capitalized Lease Obligations, mortgage financings or purchase money obligations, in each case Incurred for the purpose of financing all or any part of the purchase price or cost of installation, construction or improvements or carrying costs of property, plant and equipment used in the business of the Guarantors or the Issuer, and Refinancing Indebtedness Incurred to Refinance any Indebtedness Incurred pursuant to this Clause (6) in an aggregate outstanding principal amount which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this Clause (6) and then outstanding, shall not exceed U.S.\$5 million at any time outstanding;
- (7) the Incurrence by the Parent or any Restricted Subsidiary of any Hedging Obligations not for speculative purposes;
- (8) the incurrence by the Issuer or a Guarantor of Indebtedness in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance, self-insurance obligations and bankers' acceptances in the ordinary course of business;
- (9) Indebtedness arising from agreements of the Issuer or a Guarantor providing for customary indemnification, obligations in respect of earnouts or other adjustments of purchase price or, in each case, similar obligations, in each case, Incurred or assumed in connection with the acquisition or disposition of any business or assets or Person or any Capital Stock of a Subsidiary, *provided* that the maximum liability of the Parent and the Restricted Subsidiaries in respect of all such Indebtedness shall at no time exceed the gross proceeds, including the Fair Market Value of non-cash proceeds (measured at the time received and without giving effect to any subsequent changes in value), actually received by the Parent and the Restricted Subsidiaries in connection with such disposition;
- (10) Indebtedness of the Parent and the Restricted Subsidiaries in respect of letters of credit, bid, surety, performance, appeal and similar bonds, completion guarantees, judgment, advance payment, customs, VAT or other tax guarantees or similar instruments issued in the ordinary course of business of such Person and not in connection with the borrowing of money, including letters of credit or similar instruments in respect of self-insurance and workers compensation obligations, *provided, however*, that upon the drawing of such letters of credit or other instrument, such obligations are reimbursed within 30 days following such drawing;
- (11) Indebtedness of the Parent or any Restricted Subsidiary to the extent the net proceeds thereof are concurrently with the Incurrence thereof deposited to defease the Notes in full as described in Article 8;
- (12) Capital Stock (other than Disqualified Stock) of the Parent or of any of the Subsidiary Guarantors; and
- (13) in addition to the items referred to in Clauses (2) through (12) above, Indebtedness of the Issuer or a Guarantor in an aggregate outstanding principal amount (including all Indebtedness incurred to renew, refund, refinance, replace, or discharge any Indebtedness incurred pursuant to this Clause (13)) which, when taken together with the principal amount of all other Indebtedness Incurred pursuant to this Clause (13)

and then outstanding, shall not at any time exceed the greater of U.S.\$20 million or 2% of Total Net Assets.

- (c) For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this Section 4.03,
- (1) in the event an item of that Indebtedness meets the criteria of more than one of the types of Indebtedness described in Section 4.03(a) or Section 4.03(b), the Parent, in its sole discretion, will classify such item of Indebtedness on the date of Incurrence and may reclassify all or a portion of such item of Indebtedness in any manner that complies with this Section 4.03;
  - (2) Guarantees of, or obligations in respect of letters of credit supporting, Indebtedness which is otherwise included in the determination of a particular amount of Indebtedness shall not be included;
  - (3) Reserved;
  - (4) the principal amount of any Disqualified Stock of the Parent or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary that is not a Subsidiary Guarantor, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof;
  - (5) Indebtedness permitted by this Section 4.03 need not be permitted solely by reference to one provision permitting such Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of this Section 4.03 permitting such Indebtedness; and
  - (6) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined in accordance with GAAP.
- (d) Accrual of interest, accrual of dividends, the amortization of debt discount or the accretion of accreted value, the payment of interest in the form of additional Indebtedness, the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock and unrealized losses or charges in respect of Hedging Obligations will not be deemed to be an Incurrence of Indebtedness for purposes of this Section 4.03. The amount of any Indebtedness outstanding as of any date shall be the principal amount or liquidation preference thereof, as applicable, together with any interest thereon that is more than 30 days past due, in the case of any other Indebtedness.
- (e) If at any time an Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, any Indebtedness of such Subsidiary shall be deemed to be Incurred by a Restricted Subsidiary as of the date of such redesignation (and, if such Indebtedness is not permitted to be Incurred as of such date under this Section 4.03, the Parent shall be in Default hereunder).
- (f) For purposes of determining compliance with any U.S. dollar denominated restriction on the Incurrence of Indebtedness, the U.S. dollar equivalent principal amount of Indebtedness denominated in another currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; *provided* that if such Indebtedness is Incurred to refinance other Indebtedness denominated in a currency other than U.S. dollars, and such refinancing would cause the applicable U.S. dollar

denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this Section 4.03, the maximum amount of Indebtedness that the Parent and its Restricted Subsidiaries may Incur pursuant to this Section 4.03 shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness Incurred to Refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being Refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such Refinancing.

- (g) For purposes of this Indenture and the Notes (1) unsecured Indebtedness is not deemed to be subordinated or junior to secured Indebtedness merely because it is unsecured and (2) senior Indebtedness shall not be deemed to be subordinated or junior to any other senior Indebtedness merely because it has a junior priority with respect to the same collateral.

#### **SECTION 4.04. Limitation on Restricted Payments**

- (a) The Parent shall not, and shall not permit any of its Restricted Subsidiaries, directly or indirectly, to:
- (1) declare or pay any dividend or make any payment or distribution on or in respect of the Parent's Capital Stock (including any payment or distribution in connection with any merger or consolidation involving the Parent or any of its Restricted Subsidiaries) except:
    - (i) dividends or distributions by the Parent payable solely in Capital Stock of the Parent (other than Disqualified Stock);
    - (ii) dividends or distributions payable (x) to the Parent or a Restricted Subsidiary and (y) if paid by a Restricted Subsidiary that is not a Wholly Owned Subsidiary, to minority stockholders (or owners of an equivalent interest in the case of a Subsidiary that is an entity other than a corporation) so long as the Parent or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution; and
    - (iii) any dividend, distribution, sale, assignment, transfer, conveyance, lease or other disposition of all or substantially all of the assets of the Parent to the extent permitted by, and in compliance with, Section 5.01 to a Successor Company (as defined under Section 5.01(a)(1)) of the Parent in connection with any Reorganization Transaction;
  - (2) purchase, redeem, defease, retire or otherwise acquire for value any Capital Stock of the Parent or any direct or indirect parent of the Parent held by Persons other than the Parent or a Restricted Subsidiary or any Capital Stock of a Restricted Subsidiary held by any Affiliate of the Parent (other than by a Restricted Subsidiary), in each case other than in exchange for Capital Stock of the Parent (other than Disqualified Stock);
  - (3) purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Obligations or Guarantor Subordinated Obligations (other than Indebtedness permitted under Section 4.03(b)(3)); or

(4) make any Restricted Investment

(any such dividend, distribution, purchase, redemption, repurchase, defeasance, other acquisition, retirement or Restricted Investment referred to in Clauses (1) through (4) shall be referred to herein as a “**Restricted Payment**”) if at the time the Parent or such Restricted Subsidiary makes such Restricted Payment:

- (a) a Default shall have occurred and be continuing (or would result therefrom);
- (b) the Parent is not able to Incur an additional U.S.\$1.00 of Indebtedness pursuant to 4.03(a) after giving effect, on a pro forma basis, to such Restricted Payment; or
- (c) the aggregate amount of such Restricted Payment and all other Restricted Payments declared or made subsequent to 19 October 2010 would exceed the sum of:
  - (i) 50% of Consolidated Net Income for the period (treated as one accounting period) from 1 October 2010 to the end of the most recent fiscal quarter ending prior to the date of such Restricted Payment for which financial statements are available (or, in case such Consolidated Net Income is a deficit, minus 100% of such deficit);
  - (ii) 100% of the aggregate Net Cash Proceeds received by the Parent from the issue or sale of its Capital Stock (other than Disqualified Stock) or other cash capital contributions to the Parent subsequent to 19 October 2010 (other than Net Cash Proceeds received from an issuance or sale of such Capital Stock to (y) a Subsidiary of the Parent or (z) an employee stock ownership plan, option plan or similar trust);
  - (iii) the amount by which Indebtedness of the Parent or its Restricted Subsidiaries is reduced on the Parent’s balance sheet upon the conversion or exchange (other than by a Wholly Owned Subsidiary of the Parent) subsequent to 19 October 2010 of any Indebtedness of the Parent or its Restricted Subsidiaries convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Parent (less the amount of any cash, or the Fair Market Value of any other property (other than such Capital Stock), distributed by the Parent upon such conversion or exchange), together with the net proceeds, if any, received by the Parent or any of its Restricted Subsidiaries upon such conversion or exchange; *provided* that the foregoing amount shall not exceed the Net Cash Proceeds received by the Parent or any Restricted Subsidiary from the sale of such Indebtedness (excluding Net Cash Proceeds from sale to (y) a Subsidiary of the Parent or (z) an employee stock ownership plan, option plan or similar trust); and
  - (iv) the amount equal to the aggregate net reduction in Restricted Investments that were made by the Parent or any of its Restricted Subsidiaries in any Person after 19 October 2010 resulting from:
    - (A) repurchases, repayments or redemptions of such Restricted Investments by such Person, proceeds realized upon the sale of such Restricted Investment (other than to a Subsidiary of the Parent), repayments of loans or advances or other transfers of assets (including by way of dividend or distribution) by such Person to the Parent or any Restricted Subsidiary; and

(B) the redesignation of Unrestricted Subsidiaries as Restricted Subsidiaries (valued in each case as provided in the definition of "Investment")

not to exceed, in each case, the amount of Restricted Investments previously made by the Parent or any Restricted Subsidiary in such Person or Unrestricted Subsidiary; *provided, however*, that no amount will be included under this Clause (iv) to the extent it is already included in Consolidated Net Income.

(b) The provisions of Section 4.04(a) will not prohibit:

- (1) any Restricted Payment made by exchange for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Parent (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary of the Parent or an employee stock ownership plan or similar trust) or a substantially concurrent cash capital contribution received by the Parent from its shareholders; *provided, however*, that (a) such Restricted Payment will be excluded from subsequent calculations of the amount of Restricted Payments and (b) the Net Cash Proceeds from such sale of Capital Stock or capital contribution will be excluded from Clause (c)(ii) of the preceding paragraph;
- (2) so long as no Default has occurred and is continuing, any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Subordinated Obligations or Guarantor Subordinated Obligations made by exchange for, or out of the proceeds of the substantially concurrent Incurrence of, Refinancing Indebtedness of such Person that, in each case, is permitted to be Incurred pursuant to Section 4.03; *provided, however*, that such purchase, repurchase, redemption, defeasance, acquisition or retirement will be excluded from subsequent calculations of the amount of Restricted Payments;
- (3) so long as no Default has occurred and is continuing, any purchase, repurchase, redemption, defeasance or other acquisition or retirement of Disqualified Stock of the Parent or a Restricted Subsidiary made by exchange for or out of the proceeds of the substantially concurrent sale of Disqualified Stock of the Parent or such Restricted Subsidiary, as the case may be, that, in each case, does not mature, is redeemable, convertible or exchangeable prior to the retired Disqualified Stock and is permitted to be Incurred pursuant to Section 4.03; *provided, however*, that such purchase, repurchase, redemption, defeasance, acquisition or retirement will be excluded from subsequent calculations of the amount of Restricted Payments;
- (4) dividends paid or distributions made within 60 days after the date of declaration if at such date of declaration such dividend or distribution would have complied with this Section 4.04; *provided, however*, that such dividends and distributions will be included in subsequent calculations of the amount of Restricted Payments; and *provided further, however*, that for purposes of clarification, this Clause (4) shall not include cash payments in lieu of the issuance of fractional shares included in Clause (7) below;
- (5) so long as no Default has occurred and is continuing, the purchase, repurchase, redemption or other acquisition or retirement for value of Capital Stock or options, warrants, equity appreciation rights or other rights to purchase or acquire Capital Stock of the Parent or any Restricted Subsidiary held by any existing or former employees, management, officers or directors of the Parent or any Restricted

Subsidiary or their assigns, estates or heirs, in each case in connection with the repurchase provisions under employee stock option or stock purchase agreements or other agreements to compensate management, employees, officers or directors; *provided* that such purchases, repurchases, redemptions, acquisitions or retirements during any calendar year shall not exceed U.S.\$2 million in the aggregate; *provided further*, that such maximum amount in any calendar year may be increased by an amount not to exceed (A) the cash proceeds received by the Parent from the sale of Capital Stock of the Parent to members of management or directors of the Parent and its Restricted Subsidiaries that occurs after the Issue Date (to the extent the cash proceeds from the sale of such Capital Stock have not otherwise been applied to the making of Restricted Payments pursuant to Clause (c) of the preceding paragraph), plus (B) the cash proceeds of key man life insurance policies received by the Parent and its Restricted Subsidiaries after the Issue Date; *provided further, however*, that the amount of any such purchase, repurchase, redemption, acquisition or retirement will be included in subsequent calculations of the amount of Restricted Payments and the proceeds received from any such sale will be excluded from Clause (c)(ii) of the preceding paragraph;

- (6) repurchases, redemptions or other acquisitions or retirements for value of Capital Stock deemed to occur upon the exercise of stock options, warrants, rights to acquire Capital Stock or other convertible securities if such Capital Stock represents a portion of the exercise or exchange price thereof, and any repurchases, redemptions or other acquisitions or retirements for value of Capital Stock made in lieu of withholding taxes in connection with any exercise or exchange of warrants, options or rights to acquire Capital Stock; *provided, however*, that such repurchases will be excluded from subsequent calculations of the amount of Restricted Payments;
- (7) cash payments in lieu of the issuance of fractional shares; *provided, however*, that any payment pursuant to this Clause (7) shall be excluded from subsequent calculations of the amount of Restricted Payments;
- (8) the declaration and payment of scheduled or accrued dividends to holders of any class of or series of Disqualified Stock of the Parent or any Preferred Stock of any Restricted Subsidiaries issued on or after the Issue Date in accordance with Section 4.03, to the extent such dividends are included in Consolidated Interest Expense; *provided, however*, that any payment pursuant to this Clause (8) shall be excluded from subsequent calculations of the amount of Restricted Payments; and
- (9) to the extent constituting Restricted Payments, any payments pursuant to Clause (8) or Clause (9) in Section 4.07(b); *provided* that the amount of such Restricted Payments shall be excluded from subsequent calculations of the amount of Restricted Payments.

The amount of all Restricted Payments (other than cash) shall be the Fair Market Value on the date of such Restricted Payment of the asset(s) or securities proposed to be paid, transferred or issued by the Parent or such Restricted Subsidiary, as the case may be, pursuant to such Restricted Payment. The Fair Market Value of any cash Restricted Payment shall be its face amount and the Fair Market Value of any non-cash Restricted Payment shall be determined as provided in the definition of "Fair Market Value".

In the event that a Restricted Payment meets the criteria of more than one of the exceptions described in Clauses (1) through (9) above or is entitled to be made pursuant to Section 4.04(a), the Parent shall, in its sole discretion, classify such Restricted Payment.

**SECTION 4.05. Limitation on restrictions on distributions from Restricted Subsidiaries**

- (a) The Parent shall not, and shall not permit any Restricted Subsidiary to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of any Restricted Subsidiary to:
  - (1) pay dividends or make any other distributions on its Capital Stock or pay any Indebtedness or other obligations owed to the Parent or any Restricted Subsidiary (it being understood that the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to make distributions on Capital Stock);
  - (2) make any loans or advances to the Parent or any Restricted Subsidiary (it being understood that the subordination of loans or advances made to the Parent or any Restricted Subsidiary to other Indebtedness Incurred by the Parent or any Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances); or
  - (3) sell, lease or otherwise transfer any of its property or assets to the Parent or any Restricted Subsidiary.
- (b) Section 4.05(a) will not prohibit:
  - (i) (a) any encumbrance or restriction pursuant to or by reason of an agreement in effect at or entered into on the Issue Date, and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements; *provided* that the amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such encumbrance or restriction than those contained in those agreements on the Issue Date and (b) any encumbrances or restrictions pursuant to or by reason of the Notes Documents;
  - (ii) any encumbrance or restriction with respect to a Person pursuant to or by reason of an agreement or instrument relating to any Capital Stock or Indebtedness Incurred by such Person on or before the date on which such Person was acquired by the Parent or another Restricted Subsidiary (other than Capital Stock or Indebtedness Incurred as consideration in, or to provide all or any portion of the funds utilized to consummate, the transaction or series of related transactions pursuant to which such Person was acquired by the Parent or a Restricted Subsidiary or in contemplation of the transaction) and outstanding on such date; *provided* that any such encumbrance or restriction shall not extend to any assets or property of the Parent or any other Restricted Subsidiary other than the assets and property of the Person so acquired;
  - (iii) encumbrances and restrictions contained in contracts entered into in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, detract from the value of, or from the ability of the Parent and the Restricted Subsidiaries to realize the value of, property or assets of the Parent or any



Restricted Subsidiary in any manner material to the Parent or any Restricted Subsidiary;

- (iv) in the case of Section 4.05(a)(3), any encumbrance or restriction:
  - (A) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease (including leases governing leasehold interests), license or similar contract, or the assignment or transfer of any such lease (including leases governing leasehold interests), license (including, without limitation, licenses of intellectual property) or other contract;
  - (B) contained in mortgages, pledges or other security agreements permitted under this Indenture securing Indebtedness of the Parent or a Restricted Subsidiary to the extent such encumbrances or restrictions restrict the transfer of the property subject to such mortgages, pledges or other security agreements;
  - (C) contained in Hedging Obligations permitted from time to time under this Indenture;
  - (D) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Parent or any Restricted Subsidiary;
  - (E) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business;
  - (F) provisions with respect to the disposition or distribution of assets or property in operating agreements, joint venture agreements, development agreements, area of mutual interest agreements and other agreements that are customary in the Oil and Gas Business and entered into in the ordinary course of business;
  - (G) purchase money obligations, mortgage financings, Capitalized Lease Obligations Incurred pursuant to Section 4.03(b)(6) that impose restrictions on the property purchased or leased; or
  - (H) Liens (including pursuant to Clause (33) of the definition of Permitted Liens) permitted to be incurred under the provisions of Section 4.11 that limit the right of the debtor to dispose of the assets subject to such Liens.
- (v) any encumbrance or restriction with respect to a Restricted Subsidiary (or any of its property or assets) imposed pursuant to an agreement entered into for the direct or indirect sale or disposition of all or a portion of the Capital Stock or assets of such Restricted Subsidiary (or the property or assets that are subject to such restriction) pending the closing of such sale or disposition;
- (vi) any customary encumbrances or restrictions imposed pursuant to any agreement of the type described in the definition of "Permitted Business Investment";
- (vii) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order or the terms of any authorization, concession or permit;
- (viii) any encumbrance or restriction contained in the terms of any Indebtedness Incurred pursuant to Section 4.03(a) or any guarantees thereof or liens related thereto and any amendments, restatements, modifications, renewals, supplements, refundings,

replacements or refinancings of such terms if (x) either (i) the encumbrance or restriction applies only in the event of and during the continuance of a payment default or a default with respect to a financial covenant contained in such Indebtedness, guarantees or liens or (ii) the Parent determines at the time any such Indebtedness is Incurred (and at the time of any modification of the terms of any such encumbrance or restriction) that any such encumbrance or restriction will not materially affect the Issuer's and the Guarantors' ability to make principal or interest payments on the Notes and any other Indebtedness for borrowed money that is an obligation of the Issuer or the Guarantors and (y) the encumbrance or restriction is not materially more disadvantageous to the Securityholders than is customary in comparable financings or agreements (as determined by the Parent in good faith);

- (ix) supermajority voting requirements existing under corporate charters, bylaws, stockholders agreements and similar documents and agreements;
- (x) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business; and
- (xi) any encumbrance or restriction existing under any agreement that extends, renews, refinances (including by way of Refinancing Indebtedness) or replaces the agreements containing the encumbrances or restrictions in the foregoing Clauses (i) through (x), or in this Clause (xi); *provided* that the terms and the conditions of any such encumbrances or restrictions are not more restrictive in any material respect than those under or pursuant to the agreement so extended, renewed, refinanced or replaced.

#### **SECTION 4.06.      Limitation on sales of assets and Subsidiary stock**

- (a) The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, make any Asset Disposition unless:
  - (1) the Parent or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Disposition at least equal to the Fair Market Value (such Fair Market Value to be determined on the date of contractually agreed for such Asset Disposition and including the value of all non-cash consideration), of the shares and assets subject to such Asset Disposition;
  - (2) at least 75% of the consideration received by the Parent or such Restricted Subsidiary, as the case may be, from such Asset Disposition is in the form of cash or Cash Equivalents or Additional Assets, or any combination thereof; and
  - (3) except as provided in the next paragraph, an amount equal to 100% of the Net Available Cash from such Asset Disposition is applied, within one year from the date of such Asset Disposition by the Parent or such Restricted Subsidiary, as the case may be:
    - (i) to the extent that the Parent or any Restricted Subsidiary, as the case may be, elects (or is required by the terms of any Indebtedness), to prepay, repay, redeem or purchase any Indebtedness of the Parent or a Subsidiary Guarantor that is secured by a Lien permitted to be Incurred under this Indenture on a basis prior to the Notes or Indebtedness (other than Disqualified Stock) of any Subsidiary of the Parent that is not a Subsidiary Guarantor; *provided, however*, that, in connection with any prepayment, repayment, redemption or purchase of Indebtedness pursuant to this sub-clause (i), the Parent or such Restricted

Subsidiary will retire such Indebtedness and will cause the related commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid, redeemed or purchased;

- (ii) to invest in Additional Assets; or
- (iii) enter into a binding commitment to apply Net Available Cash pursuant to sub-clause (ii) above; *provided* that such binding commitment shall be treated as a permitted application of the Net Available Cash from the date of such commitment until the earlier of (x) the date on which such acquisition or expenditure is consummated and (y) the 180th day following the expiration of the aforementioned one year period;

*provided* that pending the final application of any such Net Available Cash in accordance with this Section 4.06, the Parent and its Restricted Subsidiaries may temporarily reduce Indebtedness or otherwise invest such Net Available Cash in any manner not prohibited by this Indenture.

- (b) Any Net Available Cash from Asset Dispositions that is not applied or invested as provided in the preceding paragraph will be deemed to constitute “Excess Proceeds.” Not later than the Business Day immediately following the date that is one year from the later of the date of such Asset Disposition or the receipt of such Net Available Cash, if the aggregate amount of Excess Proceeds exceeds U.S.\$10.0 million, the Issuer will be required to make an offer (an “**Asset Disposition Offer**”) to all Securityholders and, to the extent required by the terms of other *Pari Passu* Indebtedness, to all holders of other *Pari Passu* Indebtedness outstanding with similar provisions requiring the Issuer to make an offer to purchase such *Pari Passu* Indebtedness with the proceeds from any Asset Disposition to purchase the maximum principal amount of Notes and any such *Pari Passu* Indebtedness to which the Asset Disposition Offer applies that may be purchased out of the Excess Proceeds, at an offer price in cash in an amount equal to 100% of the principal amount (or, in the event such *Pari Passu* Indebtedness of the Issuer was issued with significant original issue discount, 100% of the accreted value thereof) of the Notes and *Pari Passu* Indebtedness plus accrued and unpaid interest, if any (or in respect of such *Pari Passu* Indebtedness, such lesser price, if any, as may be provided for by the terms of such Indebtedness), to the date of purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), in accordance with the procedures set forth in this Indenture or the agreements governing the *Pari Passu* Indebtedness, as applicable, in each case in minimum principal amount of U.S.\$200,000 and integral multiples of U.S.\$1,000 in excess of U.S.\$200,000. If the aggregate principal amount of Notes surrendered by holders thereof and other *Pari Passu* Indebtedness surrendered by holders or lenders, collectively, exceeds the amount of Excess Proceeds, the Trustee shall select the Notes to be purchased on a pro rata basis on the basis of the aggregate principal amount of tendered Notes and *Pari Passu* Indebtedness. To the extent that the aggregate amount of Notes and *Pari Passu* Indebtedness so validly tendered and not properly withdrawn pursuant to an Asset Disposition Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for any purpose not prohibited by this Indenture.
- (c) The Asset Disposition Offer will remain open for a period of 20 Business Days following its commencement, except to the extent that a longer period is required by applicable law (the “**Asset Disposition Offer Period**”). No later than five Business Days after the termination of the Asset Disposition Offer Period (the “**Asset Disposition Purchase Date**”), the Issuer

will purchase the principal amount of Notes and Pari Passu Indebtedness required to be purchased pursuant to this Section 4.06 (the “**Asset Disposition Offer Amount**”) or, if less than the Asset Disposition Offer Amount has been so validly tendered, all Notes and Pari Passu Indebtedness validly tendered in response to the Asset Disposition Offer.

- (d) If the Asset Disposition Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest, if any, will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no further interest will be payable to holders who tender Notes pursuant to the Asset Disposition Offer.
- (e) On the Asset Disposition Purchase Date, the Issuer will, to the extent lawful, accept for payment, on a pro rata basis to the extent necessary, the Asset Disposition Offer Amount of Notes and Pari Passu Indebtedness or portions of Notes and Pari Passu Indebtedness so validly tendered and not properly withdrawn pursuant to the Asset Disposition Offer, or if less than the Asset Disposition Offer Amount has been validly tendered and not properly withdrawn, all Notes and Pari Passu Indebtedness so validly tendered and not properly withdrawn, in each case in minimum principal amount of U.S.\$200,000 and integral multiples of U.S.\$1,000 in excess of U.S.\$200,000. The Issuer shall deliver to the Trustee an Officer’s Certificate stating that such Notes or portions thereof were accepted for payment by the Issuer in accordance with the terms of this Section 4.06 and, in addition, the Issuer will deliver all certificates and notes required, if any, by the agreements governing the Pari Passu Indebtedness. The Issuer or the Paying Agent, as the case may be, will promptly (but in any case not later than five Business Days after the termination of the Asset Disposition Offer Period) mail or deliver to each tendering Securityholder or holder or lender of Pari Passu Indebtedness, as the case may be, an amount equal to the purchase price of the Notes or Pari Passu Indebtedness so validly tendered and not properly withdrawn by such holder or lender, as the case may be, and accepted by the Issuer for purchase, and the Issuer will promptly issue a new Note, and the Trustee, upon delivery of an Officer’s Certificate from the Issuer, will authenticate and mail or deliver such new Note to such holder, in a principal amount equal to any unpurchased portion of the Note surrendered; *provided that* each such new Note will be in a minimum principal amount of U.S.\$200,000 or an integral multiple of U.S.\$1,000 in excess of U.S.\$200,000. In addition, the Issuer will take any and all other actions required by the agreements governing the Pari Passu Indebtedness. Any Note not so accepted will be promptly mailed or delivered by the Issuer to the holder thereof. The Issuer will publicly announce the results of the Asset Disposition Offer on the Asset Disposition Purchase Date.
- (f) The Issuer will comply, to the extent applicable, with the requirements of Rule 14e-1 of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this Indenture. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Section 4.06, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Indenture by virtue of its compliance with such securities laws or regulations.
- (g) For the purposes of Section 4.06(a)(2), the following will be deemed to be cash:
  - (1) the assumption by the transferee of Indebtedness (other than Subordinated Obligations or Disqualified Stock) of the Parent or Indebtedness of a Restricted Subsidiary (other than Guarantor Subordinated Obligations, Preferred Stock or Disqualified Stock of any Restricted Subsidiary that is a Subsidiary Guarantor) and the

unconditional release of the Parent or such Restricted Subsidiary from all liability on such Indebtedness in connection with such Asset Disposition, in which case the Parent will, without further action, be deemed to have applied such deemed cash to Indebtedness in accordance with Section 4.06(a)(3)(i);

- (2) securities, notes or other obligations received by the Parent or any Restricted Subsidiary from the transferee that are converted by the Parent or such Restricted Subsidiary into cash within 180 days after receipt thereof; and
- (3) consideration consisting of Indebtedness of the Parent (other than Subordinated Obligations or Disqualified Stock) or Indebtedness of a Restricted Subsidiary (other than Guarantor Subordinated Obligations, Preferred Stock or Disqualified Stock) which is either deemed repaid in full or is cancelled in connection with such Asset Disposition.

#### **SECTION 4.07. Limitation on Affiliate Transactions**

(a) The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into, make, amend or conduct any transaction (including making a payment to, the purchase, sale, lease or exchange of any property or the rendering of any service), contract, agreement or understanding with or for the benefit of any Affiliate of the Parent (an “**Affiliate Transaction**”) unless:

- (1) the terms of such Affiliate Transaction are no less favorable to the Parent or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable transaction at the time of such transaction on an arm’s length basis with a Person that is not such an Affiliate as certified by an Officer’s Certificate delivered to the Trustee;
- (2) the terms of such Affiliate Transaction have been approved by a majority of members of the Board of Directors of the Parent who are disinterested with respect to the transaction and such members of the Board of Directors have accepted the Officer’s Certificate delivered to the Trustee pursuant to Clause (1) above; and
- (3) if such Affiliate Transaction involves an aggregate consideration in excess of U.S.\$25 million, the Board of Directors of the Parent has received a written opinion from an independent investment banking, accounting or appraisal firm of internationally recognized standing that such Affiliate Transaction is fair, from a financial standpoint, to the Parent or such Restricted Subsidiary or is not materially less favorable to the Parent and the Restricted Subsidiaries than those that could reasonably be expected to be obtained in a comparable transaction at such time on an arm’s length basis from a Person that is not an Affiliate.

(b) Section 4.07(a) will not apply to:

- (1) any Restricted Payment permitted to be made pursuant to Section 4.04 or any Permitted Investment;
- (2) any issuance of Capital Stock (other than Disqualified Stock), or other payments, awards or grants in cash, Capital Stock (other than Disqualified Stock) or otherwise pursuant to, or the funding of, employment or severance agreements and other compensation arrangements, options to purchase Capital Stock (other than Disqualified Stock) of the Parent, restricted stock plans, long-term incentive plans, stock appreciation rights plans, participation plans or similar employee benefits plans

and/or indemnity provided on behalf of officers and employees approved by the Board of Directors of the Parent;

- (3) loans or advances (or cancellations thereof) or guarantees of loans to employees or, officers of the Parent or any of its Restricted Subsidiaries or members of the Board of Directors of the Parent or any of its Restricted Subsidiaries not to exceed U.S.\$5 million in the aggregate outstanding at any time;
- (4) any transaction between the Parent and any Restricted Subsidiary or between Restricted Subsidiaries;
- (5) any transaction with a joint venture or similar entity which would constitute an Affiliate Transaction solely because the Parent or a Restricted Subsidiary owns, directly or indirectly, Capital Stock in or otherwise controls such joint venture or similar entity;
- (6) the issuance or sale of any Capital Stock (other than Disqualified Stock) of the Parent or the receipt by the Parent of any capital contribution;
- (7) any employment agreement, employee compensation plan or employee benefit arrangement, indemnification and similar arrangement (including the payment of directors' and officers' insurance premiums), employee salaries and bonuses (including stock options) entered into in the ordinary course of business by the Parent or any of its Restricted Subsidiaries;
- (8) the payment of reasonable compensation and fees paid to, and indemnity provided on behalf of, members of the Board of Directors of the Parent or any Restricted Subsidiary and indemnities of directors of the Parent or any of its Restricted Subsidiaries permitted by bylaws or statutory provisions;
- (9) the agreements relating to, and payments thereunder to fund, the cost of services provided directly to the Parent or any Restricted Subsidiary by employees, officers, contractors, consultants or advisors (and related indemnities for such employees, officers, contractors, consultants or advisors) of the General Partner or of the Permitted Holder or of any Affiliate of the Permitted Holder; provided that the aggregate level of such payments shall be consistent with the ordinary course of business and past practice of the Parent and its Restricted Subsidiaries, taken as a whole;
- (10) the performance of obligations of the Parent or any of its Restricted Subsidiaries under the terms of any agreement to which the Parent or any of its Restricted Subsidiaries is a party as of or on the Issue Date, as these agreements may be amended, modified, supplemented, extended or renewed from time to time; provided, however, that any future amendment, modification, supplement, extension or renewal entered into after the Issue Date will be permitted to the extent that its terms are not materially more disadvantageous, taken as a whole, to the Securityholders than the terms of the agreements in effect on the Issue Date; and
- (11) transactions permitted by, and complying with, the provisions of Section 5.01 and all agreements and instruments effecting such transactions.

#### **SECTION 4.08.      Limitation on Line of Business**

The Parent shall not, and shall not permit any Restricted Subsidiary, to engage in any business other than an Oil and Gas Business (including the financing and refinancing of such activities).

#### **SECTION 4.09. Listing**

The Parent shall use all commercially reasonable efforts to list and maintain the listing of the Notes on the Irish Stock Exchange; *provided* that if the Parent is unable to list the Notes on the Irish Stock Exchange or if maintenance of such listing becomes unduly onerous, it will use all commercially reasonable efforts to list and maintain the listing of the Notes on another recognized stock exchange.

#### **SECTION 4.10. Change of Control**

- (a) If a Change of Control occurs, unless the Issuer has previously or concurrently exercised its right to redeem all of the Notes as described under paragraph 5 (*Optional redemption*) of the Notes each holder will have the right to require the Issuer to repurchase all or any part (equal to U.S.\$200,000 or an integral multiple of U.S.\$1,000 in excess of U.S.\$200,000) of such holder's Notes at a purchase price in cash equal to 101% of the principal amount of the Notes plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date).
- (b) Within 30 days following any Change of Control, unless the Issuer has previously or concurrently exercised its right to redeem all of the Notes pursuant to paragraph 5 (*Optional redemption*) of the Notes, the Issuer will mail a notice (the "**Change of Control Offer**") to each holder, with a copy to the Trustee, stating:
- (1) that a Change of Control has occurred and that such holder has the right to require the Issuer to purchase such holder's Notes at a purchase price in cash equal to 101% of the principal amount of such Notes plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on a record date to receive interest on the relevant interest payment date) (the "**Change of Control Payment**");
  - (2) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is mailed or delivered) (the "**Change of Control Payment Date**");
  - (3) that any Note not properly tendered will remain outstanding and continue to accrue interest;
  - (4) that unless the Issuer defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest on the Change of Control Payment Date;
  - (5) that holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of such Notes completed, to the Paying Agent specified in the notice at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;
  - (6) that holders will be entitled to withdraw their tendered Notes and their election to require the Issuer to purchase such Notes, *provided* that the Paying Agent receives, not later than the close of business on the 30th day following the date of the Change of Control Offer, a telegram, telex, facsimile transmission or letter (or any method of reply specified as acceptable in the notice from the Issuer) setting forth the name of the Securityholder, the principal amount of Notes tendered for purchase, and a

statement that such holder is withdrawing its tendered Notes and its election to have such Notes purchased;

- (7) that if the Issuer is redeeming less than all of the Notes, the holders of the remaining Notes will be issued new Notes and such new Notes will be equal in principal amount to the unpurchased portion of the Notes surrendered. The unpurchased portion of the Notes must be equal to a minimum principal amount of U.S.\$200,000 and an integral multiple of U.S.\$1,000 in excess of U.S.\$200,000; and
  - (8) the procedures determined by the Issuer, consistent with this Indenture, that a holder must follow in order to have its Notes repurchased.
- (c) On the Change of Control Payment Date, the Issuer will, to the extent lawful:
- (1) accept for payment all Notes or portions of Notes (in a minimum principal amount of U.S.\$200,000 and integral multiples of U.S.\$1,000 in excess of U.S.\$200,000) properly tendered pursuant to the Change of Control Offer;
  - (2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered and not properly withdrawn; and
  - (3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Issuer.
- (d) The Paying Agent will promptly mail or deliver to each Securityholder properly tendered and not properly withdrawn the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each such new Note will be in a minimum principal amount of U.S.\$200,000 or an integral multiple of U.S.\$1,000 in excess of U.S.\$200,000.
- (e) If the Change of Control Payment Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest, will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no further interest will be payable to holders who tender pursuant to the Change of Control Offer.
- (f) The Change of Control provisions described above will be applicable whether or not any other provisions of this Indenture are applicable. Except as described above with respect to a Change of Control, this Indenture does not contain provisions that permit the holders to require that the Parent repurchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.
- (g) The Issuer will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Issuer and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.
- (h) The Issuer will comply, to the extent applicable, with the requirements of Rule 14e-1 of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Indenture, or compliance



with the Change of Control provisions of this Indenture would constitute a violation of any such laws or regulations, the Issuer will comply with the applicable securities laws and regulations and will be deemed not to have breached its obligations under the Change of Control provisions of this Indenture by virtue of its compliance with such securities laws or regulations.

#### **SECTION 4.11.      Limitation on Liens**

The Parent shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur or suffer to exist any Lien (the “**Initial Lien**”) other than Permitted Liens upon any of its property or assets (including Capital Stock of Restricted Subsidiaries), including any income or profits therefrom, whether owned on the date of this Indenture or acquired after that date; *provided* that the Parent and any of its Restricted Subsidiaries may incur or suffer to exist any Initial Lien on property or assets if, contemporaneously with the incurrence of such Initial Lien, effective provision is made to secure the indebtedness due under the Notes and Notes Guarantees equally and ratably with (or senior in priority to in the case of Initial Liens with respect to Subordinated Obligations or Guarantor Subordinated Obligations, as the case may be) the indebtedness secured by such Initial Lien for so long as such indebtedness is so secured.

Any Lien created for the benefit of the Securityholders pursuant to the preceding paragraph shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Initial Lien.

#### **SECTION 4.12.      Future Subsidiary Guarantors**

The Parent shall cause each Restricted Subsidiary created or acquired (after the Issue Date) by the Parent or one or more of its Restricted Subsidiaries, to execute and deliver to the Trustee a Notes Guarantee pursuant to which such Restricted Subsidiary will unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any, and interest, if any, on the Notes on a senior basis.

Notwithstanding anything to the contrary, upon completion of the Substitution, Zhaikmunai International B.V. shall execute and deliver to the Trustee a Notes Guarantee pursuant to which it will unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any, and interest, if any, on the Notes on a senior basis.

#### **SECTION 4.13.      [Reserved]**

#### **SECTION 4.14.      Payments for Consents**

Neither the Parent nor any of its Restricted Subsidiaries will, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fees or otherwise, to any Securityholder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to be paid or is paid to all Securityholders that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or amendment.

#### **SECTION 4.15.      Substitution**

Prior to the Substitution, the Issuer shall not consolidate with or merge with or into (whether or not the Issuer is the surviving corporation), or convey, transfer or lease all or substantially all of its assets in one or more related transactions to, any Person, unless pursuant to a Substitution (as defined below).

The Trustee shall, at Zhaikmunai LLP's written instruction, without the consent of the Securityholders, agree to the substitution of Zhaikmunai LLP or its successor in business (the "**Substituted Obligor**") as Issuer under this Indenture and the Notes (the "**Substitution**") *provided* that:

- (1) the Substituted Obligor will expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of the Issuer under the Notes and this Indenture;
- (2) the General Director of the Substituted Obligor certifies that it will be solvent immediately after the Substitution;
- (3) each Guarantor (other than the Substituted Obligor) shall have by supplemental indenture confirmed that its Notes Guarantee shall apply to the Substituted Obligor's obligations in respect of this Indenture and the Notes;
- (4) the Issuer and the Substituted Obligor shall have delivered to the Trustee satisfactory evidence that the Proceeds Loan shall be assigned or novated to the Substituted Obligor immediately after giving effect to such Substitution;
- (5) the Substituted Obligor shall have delivered an Opinion of Counsel, in form and substance reasonably satisfactory to the Trustee, to the effect that the Securityholders will not recognize income, gain or loss for United States federal, Kazakh or Dutch income tax purposes as a result of such transaction and will be subject to United States federal, Kazakh and Dutch (or the jurisdiction of organization of any successor company) income tax on the same amounts, in the same manner and at the same times as would have been the case if such transaction had not occurred;
- (6) the Substituted Obligor shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that (i) the Substituted Obligor has obtained all governmental and regulatory approvals and consents necessary for its assumption of liability as principal debtor in respect of the Notes in place of the Issuer; (ii) the Parent has obtained all governmental and regulatory approvals and consents necessary for the Notes Guarantee to be fully effective as described in Clause (3) above; and (iii) such approvals and consents are in full force and effect at the time of Substitution;
- (7) the Substitution shall not cause the Substituted Obligor to have the right to redeem any Notes pursuant to paragraph 5(d) of the Notes immediately following the completion of the Substitution;
- (8) immediately after giving effect to such Substitution, no Default shall have occurred and be continuing; and
- (9) the Substituted Obligor shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such Substitution and such supplemental indenture comply with this Indenture and such supplemental indenture and the Securities are legal, valid and binding obligations of the Substituted Obligor enforceable against it in accordance with their respective terms.

Upon completion of the Substitution, the Issuer shall be released from all of its obligations under the Notes Documents as Issuer and the Substituted Obligor will succeed to, and be substituted for (so that from and after the date of the Substitution the provisions of the Notes Documents referring to the "Issuer" will refer instead to the Substituted Obligor and not to the Issuer), and may exercise every right and power and shall be bound by every obligation of, the Issuer under the Notes

Documents with the same effect as if such Substituted Obligor had been named as the Issuer in this Indenture and the Securities.

**SECTION 4.16. [Reserved]**

**SECTION 4.17. Additional Amounts**

- (a) All payments made under or with respect to the Securities will be made free and clear of and without withholding or deduction for or on account of any present or future taxes, duties, levies, imposts, assessments or governmental charges of whatever nature imposed or levied by or on behalf of any jurisdiction in which the Issuer or any Guarantor is organized, engaged in business, resident for tax purposes or generally subject to tax on a net income basis or from or through which payment on the Notes is made or any political subdivision or authority thereof or therein having the power to tax (each, a “**Relevant Taxing Jurisdiction**”) and any interest, penalties and other liabilities with respect thereto (collectively, “**Taxes**”), unless the withholding or deduction of such Taxes is required by law or by the relevant taxing authority’s interpretation or administration thereof. In the event that the Issuer or a Guarantor is required to so withhold or deduct any amount for or on account of any such Taxes from any payment made under or with respect to the Notes, the Issuer or such Guarantor, as the case may be, will pay such additional amounts (“**Additional Amounts**”) as may be necessary so that the net amount received by each holder or beneficial owner (including Additional Amounts) after such withholding or deduction will be equal to the amount that such holder or beneficial owner would have received if such Taxes had not been required to be withheld or deducted.
- (b) Notwithstanding the foregoing, neither the Issuer nor any Guarantor will pay Additional Amounts to a holder or beneficial owner in respect or on account of:
- (1) any Taxes that are imposed or levied by a Relevant Taxing Jurisdiction by reason of the holder’s or beneficial owner’s present or former connection with such Relevant Taxing Jurisdiction (including, but not limited to, citizenship, nationality, residence, domicile, or existence of a business, a permanent establishment, a dependent agent, a place of business or a place of management present or deemed present within the Relevant Taxing Jurisdiction) other than the mere receipt or holding of any Note or by reason of the receipt of payments thereunder or the exercise or enforcement of rights under such Note or this Indenture;
  - (2) any Taxes that are imposed or withheld by reason of the failure of the holder or beneficial owner of any Note, prior to the relevant date on which a payment under and with respect to the Notes is due and payable (the “**Relevant Payment Date**”), to comply with the Issuer’s written request addressed to the holder or beneficial owner at least 30 calendar days prior to the Relevant Payment Date to provide accurate information with respect to any certification, identification, information or other reporting requirements concerning nationality, residence, identity or connection with the Relevant Taxing Jurisdiction which the holder or such beneficial owner is legally required to satisfy, whether imposed by statute, treaty, regulation or administrative practice, in each such case by the Relevant Taxing Jurisdiction, as a precondition to exemption from, or reduction in the rate of deduction or withholding of, Taxes imposed by the Relevant Taxing Jurisdiction (including, without limitation, a certification that the holder or beneficial owner is not resident in the Relevant Taxing Jurisdiction);
  - (3) any estate, inheritance, gift, sales, transfer, personal property or similar Taxes;

- (4) any Tax that is payable other than by deduction or withholding from payments made under or with respect to any Note or Notes Guarantee;
  - (5) any Tax which would not have been so imposed but for the presentation (where presentation is required in order to receive payment) by the holder or beneficial owner of a Note for payment on a date more than 30 days after the date on which such payment becomes due and payable or the date on which payment thereof is duly provided for, whichever occurs later, except to the extent that the holder or beneficial owner would have been entitled to such Additional Amounts on presenting the same for payment on any day (including the last day) within such 30-day period;
  - (6) any withholding or deduction in respect of any Taxes where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to the European Council Directive 2003/48/EC or any Directive otherwise implementing the conclusions of the ECOFIN Council meetings of 26 and 27 November 2000 on the taxation of saving income or any law implementing or complying with, or introduced in order to conform to, any such Directive; or
  - (7) any Tax that is imposed on or with respect to a payment made to a holder or beneficial owner who would have been able to avoid such withholding or deduction by requesting that a payment on the Note be made by, or presenting a Note for a payment to, another Paying Agent in a Member State of the European Union.
- (c) In addition, Additional Amounts will not be payable with respect to any Taxes that are imposed in respect of any combination of the above items.
  - (d) Notwithstanding anything herein to the contrary, none of the Issuer, the Guarantors, nor any Paying Agent or any other person shall be required to pay any Additional Amounts with respect to any withholding or deduction imposed on or in respect of any Note or Notes Guarantee pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (“**FATCA**”), the laws of a Relevant Taxing Jurisdiction implementing FATCA, any law implementing an intergovernmental approach thereto, or any agreement between the Issuer and the United States or any authority thereof entered into for FATCA purposes.
  - (e) The Issuer or Guarantor will also make or cause to be made such withholding or deduction of Taxes and remit the full amount of Taxes so deducted or withheld to the relevant taxing authority in accordance with all applicable laws. The Issuer will, upon request, make available to the Trustee, within 30 days after the date on which the payment of any Taxes so deducted or withheld is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by the Issuer or a Guarantor or if, notwithstanding the Issuer’s reasonable efforts to obtain such receipts, the same are not obtainable, other evidence reasonably satisfactory to the Trustee of such payment by the Issuer.
  - (f) At least 30 calendar days prior to each date on which any payment under or with respect to the Notes is due and payable, if the Issuer or a Guarantor will be obliged to pay Additional Amounts with respect to such payment (unless such obligation to pay Additional Amounts arises after the 30th day prior to the date on which payment under or with respect to the Notes is due and payable, in which case it will be promptly thereafter), the Issuer or Guarantor will deliver to the Trustee an Officer’s Certificate stating that such Additional Amounts will be payable and the amounts so payable and setting forth such other information as is necessary to enable such Trustee or Paying Agent to pay such Additional Amounts to the holders on the payment date. The Issuer will promptly publish a notice in

accordance with Section 13.01 stating that such Additional Amounts will be payable and describing the obligation to pay such amounts.

- (g) If the Issuer or a Guarantor conducts business in any jurisdiction (an “**Additional Taxing Jurisdiction**”) other than a Relevant Taxing Jurisdiction and, as a result, is required by the law of such Additional Taxing Jurisdiction to withhold or deduct any amount on account of the Taxes imposed by such Additional Taxing Jurisdiction from payment under the Notes or any Notes Guarantee, as the case may be, which would not have been required to be so withheld or deducted but for such conduct of business in such Additional Taxing Jurisdiction, the Additional Amounts provision described above will be considered to apply as if references in such provision to “Taxes“ included taxes imposed by way of withholding or deduction by any such Additional Taxing Jurisdiction (or any political subdivision thereof or therein).
- (h) In addition, the Issuer or a Guarantor will pay (i) any present or future stamp, issue, registration, transfer, documentation, court, excise or property taxes or other similar taxes, charges and duties, including interest, penalties and Additional Amounts with respect thereto in respect of the execution, issue, delivery, registration, redemption or retirement of, or receipt of payments to, the Notes, this Indenture or the Notes Guarantees, or any other document or instrument referred to thereunder; (ii) any such taxes, charges or duties imposed by any jurisdiction as a result of, or in connection with, the enforcement of the Notes, the Notes Guarantees or any other such document or instrument following the occurrence of any Event of Default with respect to the Notes; and (iii) any stamp, court or documentary taxes (or similar charges or levies) imposed with respect to the receipt of any payments with respect to the Notes or the Notes Guarantees.
- (i) The foregoing provisions will survive any termination, defeasance or discharge of this Indenture and will apply mutatis mutandis to any jurisdiction in which any Surviving Entity (as defined below) or successor person to the Issuer or a Guarantor is organized, engaged in business, resident for tax purposes or otherwise subject to taxation on a net income basis or any political subdivision or taxing authority or agency thereof or therein.
- (j) Whenever in this Indenture there is mentioned, in any context, the payment of principal (and premiums, if any), interest or any other amount payable under or with respect to any Securities, such mention will be deemed to include mention of the payment of Additional Amounts.

#### **SECTION 4.18. Compliance Certificates; Default Notices**

- (a) The Parent shall deliver to the Trustee within 120 days after the end of each fiscal year of the Parent an Officer’s Certificate stating (i) that in the course of the performance by the signers of their duties they would normally have knowledge of any Default and (ii) whether or not, to the best knowledge of such officers, the Issuer and the Guarantors are in Default and, if a Default or Event of Default has occurred in such period, describing the Default or Event of Default, its status and what action the Issuer is taking or proposes to take with respect thereto.
- (b) The Parent shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officer’s Certificate of any Event of Default under Clause (6) or (10) or (11) of Section 6.01 and any event which with the giving of notice or the lapse of time would become an Event of Default under Clause (4), (5) or (9) of Section 6.01, its status and what action the Parent is taking or proposes to take with respect thereto.

#### **SECTION 4.19. Designation of Unrestricted and Restricted Subsidiaries**

- (a) As of the Issue Date, the Parent has no Unrestricted Subsidiaries. The Board of Directors of the Parent may designate any Subsidiary of the Parent (including any newly acquired or newly formed Subsidiary or a Person becoming a Subsidiary through merger or consolidation or Investment therein) to be an Unrestricted Subsidiary only if:
- (1) such Subsidiary or any of its Subsidiaries does not own any Capital Stock or Indebtedness of or have any Investment in, or own or hold any Lien on any property of, any other Subsidiary of the Parent which is not a Subsidiary of the Subsidiary to be so designated or otherwise an Unrestricted Subsidiary;
  - (2) all the Indebtedness of such Subsidiary and its Subsidiaries shall, at the date of designation, and will at all times thereafter, consist of Non-Recourse Debt;
  - (3) on the date of such designation, such designation and the Investment of the Parent or a Restricted Subsidiary in such Subsidiary complies with Section 4.04;
  - (4) such Subsidiary is a Person with respect to which neither the Parent nor any of its Restricted Subsidiaries has any direct or indirect obligation:
    - (i) to subscribe for additional Capital Stock of such Person; or
    - (ii) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and
  - (5) on the date such Subsidiary is designated an Unrestricted Subsidiary, such Subsidiary is not a party to any agreement, contract, arrangement or understanding with the Parent or any Restricted Subsidiary with terms substantially less favorable to the Parent than those that might have been obtained from Persons who are not Affiliates of the Parent.
- (b) Notwithstanding anything else to the contrary, neither the Issuer (or any successor of the Issuer) nor Zhaikmunai LLP shall be designated as Unrestricted Subsidiaries.
- (c) Any such designation by the Board of Directors of the Parent shall be evidenced to the Trustee by filing with the Trustee a resolution of the Board of Directors of the Parent giving effect to such designation and an Officer's Certificate certifying that such designation complies with the foregoing conditions. If, at any time, any Unrestricted Subsidiary would fail to meet the foregoing requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary shall be deemed to be Incurred as of such date.
- (d) The Board of Directors of the Parent may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that immediately after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof and the Parent could Incur at least U.S.\$1.00 of additional Indebtedness under 4.03(a) on a pro forma basis taking into account such designation.
- (e) For purpose of designating any Restricted Subsidiary as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Parent and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated will be deemed to be an Investment made as of such designation and will reduce the amount available for Restricted Payments under Section 4.04 or under one or more clauses of the definition of Permitted Investments, as determined by the Parent. Such designation will be

permitted only if the Investment is permitted at such time and if such Subsidiary otherwise meets the definition of an Unrestricted Subsidiary.

**SECTION 4.20. Registration/Notification with the National Bank of Kazakhstan**

Zhaikmunai LLP shall register this Indenture with the National Bank of the Republic of Kazakhstan, as required by applicable law, as a currency operation in the event that:

- (1) any payment by Zhaikmunai LLP or Condensate-Holding in their capacity as Guarantors hereunder is (i) made to any non-resident of Kazakhstan prior to the Substitution and exceeds the equivalent of U.S.\$100,000 and (ii) is not reimbursed to Zhaikmunai LLP or Condensate-Holding, as the case may be, for the period exceeding 180 days; or
- (2) any payment by any of the Guarantors (other than Condensate-Holding) hereunder is (i) made following the Substitution and exceeds the equivalent of U.S.\$500,000 and (ii) is not reimbursed by Zhaikmunai LLP to the relevant Guarantor for the period exceeding 180 days.

**SECTION 4.21. No amendment to Proceeds Loan prior to Substitution**

Prior to the Substitution, Zhaikmunai International B.V. will not and the Parent will not, and will not permit any of the Parent's Restricted Subsidiaries or any other Person that is an obligor under the Proceeds Loan, to (1) sell, dispose, encumber, prepay, repay, repurchase, redeem or otherwise acquire, reduce or retire any amounts outstanding under the Proceeds Loan except in connection with (a) the Substitution or (b) a redemption, repayment or repurchase of outstanding Notes in a manner not prohibited by this Indenture or (2) amend, modify, supplement or waive any rights under the Proceeds Loan, except to the extent necessary or advisable in order to achieve registration of the Proceeds Loan with the National Bank of Kazakhstan.

**Article 5**

**Merger and Consolidation**

**SECTION 5.01. Merger and Consolidation**

- (a) The Parent shall not consolidate with or merge with or into (whether or not the Parent is the surviving Person), or convey, transfer or lease all or substantially all of its assets in one or more related transactions to, any Person, unless:
  - (1) the resulting, surviving or transferee Person (the "**Successor Company**") will be a corporation, partnership, trust or limited liability company organized and existing under the laws of any member state of the European Union, Switzerland, the Republic of Kazakhstan, British Virgin Islands, Isle of Man, Canada, the United States, any state of the United States or the District of Columbia and the Successor Company (if not the Parent) will expressly assume, by supplemental indenture and other appropriate agreements and instruments, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all of the obligations of the Parent under the Notes and this Indenture;
  - (2) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any Subsidiary of the Successor

Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default shall have occurred and be continuing;

- (3) immediately after giving pro forma effect to such transaction, the Successor Company would be able to Incur at least an additional U.S.\$1.00 of Indebtedness pursuant to 4.03(a);
  - (4) each Subsidiary Guarantor (unless it is the other party to the transactions above, in which case Clause (1) shall apply) shall have by supplemental indenture confirmed that its Notes Guarantee shall apply to such Successor Company's obligations in respect of this Indenture and the Notes;
  - (5) the Parent shall have delivered to the Trustee an Opinion of Counsel to the effect that the Securityholders will not recognize income, gain or loss for United States federal and Isle of Man (or the jurisdiction of organization of any Successor Company) income tax purposes as a result of such transaction and will be subject to United States federal and Isle of Man (or the jurisdiction of organization of any Successor Company) income tax on the same amounts, in the same manner and at the same times as would have been the case if such transaction had not occurred; and
  - (6) the Parent shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and such supplemental indenture (if any) comply with this Indenture and such supplemental indenture, if any, and the Notes are enforceable.
- (b) For purposes of this Section 5.01, the sale, lease, conveyance, assignment, transfer or other disposition of all or substantially all of the properties and assets of one or more Subsidiaries of the Parent, which properties and assets, if held by the Parent instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Parent on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Parent.
  - (c) The Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Parent under the relevant Notes Documents; and the predecessor Parent, except in the case of a lease of all or substantially all its assets, will be released from all of its obligations under the relevant Notes Documents.
  - (d) In addition, the Parent shall not permit any Subsidiary Guarantor to consolidate with or merge with or into, and shall not permit the conveyance, transfer or lease of substantially all of the assets of any Subsidiary Guarantor to, any Person (other than the Issuer, the Parent or another Subsidiary Guarantor) unless:
    - (1) (i) the resulting, surviving or transferee Person will be a corporation, partnership, trust or limited liability company organized and existing under the laws of any member state of the European Union, Switzerland, the Republic of Kazakhstan, British Virgin Islands, Isle of Man, Canada, the United States, any state of the United States or the District of Columbia and such Person (if not such Subsidiary Guarantor) will expressly assume, by supplemental indenture and other appropriate agreements and instruments, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of such Subsidiary Guarantor under its Subsidiary Guarantee and (ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the resulting, surviving or transferee



- Person or any Restricted Subsidiary as a result of such transaction as having been Incurred by such Person or such Restricted Subsidiary at the time of such transaction), no Default shall have occurred and be continuing; and
- (2) the Parent shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture.
- (e) Following the Substitution, the Issuer shall not consolidate with or merge with or into (whether or not the Issuer is the surviving corporation), or convey, transfer or lease all or substantially all of its assets in one or more related transactions to, any Person, unless:
- (1) the Successor Company will be a corporation, partnership, trust or limited liability company organized and existing under the laws of any member state of the European Union, Switzerland, the Republic of Kazakhstan, British Virgin Islands, Isle of Man, Canada, the United States, any state of the United States or the District of Columbia and the Successor Company (if not the Issuer) will expressly assume, by supplemental indenture and other appropriate agreements and instruments, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all of the obligations of the Issuer under the Notes and this Indenture;
  - (2) immediately after giving effect to such transaction, no Default shall have occurred and be continuing;
  - (3) the Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and such supplemental indenture (if any) comply with this Indenture and such supplemental indenture, if any, and the Notes are enforceable.
- (f) This Section 5.01 will not apply to: (i) any consolidation or merger among Guarantors, (ii) any consolidation or merger among the Issuer and any Guarantor, *provided* that, if the Issuer is not the surviving entity of such merger or consolidation, the relevant Guarantor is an entity organized or existing under the laws of The Republic of Kazakhstan, the British Virgin Islands, the Isle of Man, any member state of the European Union, Switzerland, Canada, the United States, any state of the United States or the District of Columbia and will assume the obligations of the Issuer under this Indenture and the Notes or (iii) any sale, assignment, transfer, conveyance, lease or other disposition of assets among the Issuer and/or the Guarantors; *provided, however*, that this Section 5.01 shall apply, if the Issuer so elects, to any sale, assignment, transfer, conveyance, lease or other disposition of all or substantially all of the assets of the Parent to any other Guarantor.

## **Article 6**

### **Defaults and Remedies**

#### **SECTION 6.01. Events of Default**

Each of the following is an “**Event of Default**” whatever the reason therefor and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

- (1) the Issuer defaults in any payment of interest on any Note when the same becomes due and payable, and such default continues for a period of 30 days;

- (2) the Issuer defaults in the payment of principal of or premium, if any, on any Note when due at its Stated Maturity, upon optional redemption, upon required repurchase, or otherwise;
- (3) the Issuer or a Guarantor fails to comply with Section 4.15 or Section 5.01;
- (4) failure by the Issuer or a Guarantor to comply for 30 days after notice as provided below with any of its obligations under Article 4 of this Indenture (other than a failure to purchase Notes constituting an Event of Default under Section 6.01(2) and other than a failure to comply with Section 4.15 or Section 5.01);
- (5) failure by the Issuer or a Guarantor to comply for 60 days after notice as provided below with its other agreements contained in this Indenture (other than those covered under Section 6.01(1), (2), (3) and (4));
- (6) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness by the Parent or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Parent or any of its Restricted Subsidiaries), whether such Indebtedness or guarantee now exists, or is created after the date of this Indenture, which default:
  - (A) is caused by a failure to pay principal of, or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness; or
  - (B) results in the acceleration of such Indebtedness prior to its maturity;and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates U.S.\$10 million or more;
- (7) the Issuer, any Guarantor or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:
  - (A) commences a voluntary case;
  - (B) consents to the entry of an order for relief against it in an involuntary case;
  - (C) consents to the appointment of a Custodian of it or for all or substantially all of its property; or
  - (D) makes a general assignment for the benefit of its creditors;
- (8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  - (A) is for relief against the Issuer, any Guarantor or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary in an involuntary case;
  - (B) appoints a Custodian of the Issuer, any Guarantor or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary or for all or substantially all of its property; or

- (C) orders the winding up or liquidation of the Issuer, any Guarantor or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 days;

- (9) any judgment or decree for the payment of money in excess of U.S.\$10 million is entered against the Issuer, any Guarantor, any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary, remains outstanding for a period of 60 consecutive days following such judgment and is not discharged, waived or stayed; or
- (10) any Notes Guarantee ceases to be in full force and effect (except as contemplated by the terms of this Indenture) or is declared null and void in a judicial proceeding or any Guarantor denies or disaffirms its obligations under this Indenture or its Notes Guarantee;

*provided* that a default under Section 6.01(4) or Section 6.01(5) will not constitute an Event of Default until the Trustee or the holders of 25% in aggregate principal amount of the outstanding Notes notify the Parent in writing and, in the case of a notice given by such holders, the Trustee of the Default and the Parent does not cure such default within the applicable time specified in Section 6.01(4) or Section 6.01(5) after receipt of such notice.

#### **SECTION 6.02. Acceleration**

If an Event of Default (other than an Event of Default specified in Section 6.01(7) or Section 6.01(8)) occurs and is continuing, the Trustee by notice to the Parent, or the holders of at least 25% in aggregate principal amount of the outstanding Notes by notice to the Parent and the Trustee, may, and the Trustee at the written direction of such holders shall, declare the principal of, premium, if any, accrued and unpaid interest, if any, on all the Notes to be due and payable. Upon such a declaration, such principal, premium (if any) and interest shall be due and payable immediately. If an Event of Default specified in Section 6.01(7) or Section 6.01(8) occurs, the principal of, premium, if any, accrued and unpaid interest, if any, on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any holders. The holders of a majority in principal amount of the outstanding Notes may, by notice to the Trustee, rescind any such acceleration with respect to the Notes and its consequences if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction based on an Opinion of Counsel delivered by the Parent to the Trustee, (2) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived and (3) the Parent has paid the Trustee compensation and has reimbursed the Trustee for its expenses, disbursements and advances. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

#### **SECTION 6.03. Other Remedies**

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of or interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in

exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in any Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by applicable law.

#### **SECTION 6.04. Waiver of Past Defaults**

The holders of a majority in principal amount of the Notes by notice to the Trustee may waive an existing Default and its consequences except (a) a Default in the payment of the principal of or interest on a Note, (b) a Default arising from the failure to redeem or purchase any Note when required pursuant to this Indenture or (c) a Default in respect of a provision that under Section 9.02(b) cannot be amended without the consent of Securityholders holding at least 90.0% of the principal amount of the Notes. When a Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or impair any consequent right.

#### **SECTION 6.05. Control by Majority**

The holders of a majority in principal amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of other Securityholders, as the case may be, or would involve the Trustee in personal liability; *provided, however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action hereunder, the Trustee shall be entitled to indemnification and/or security satisfactory to it in its sole discretion against all losses and expenses caused or which it may incur by taking or not taking such action.

#### **SECTION 6.06. Limitation on Suits**

Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Securityholder may pursue any remedy with respect to this Indenture or the Notes unless:

- (1) the Securityholder gives to the Trustee written notice stating that an Event of Default is continuing;
- (2) the Securityholders of at least 25% in aggregate principal amount of the then outstanding Notes give a written instruction to the Trustee to pursue the remedy;
- (3) such Securityholder or Securityholders shall have provided the Trustee security and/or indemnity satisfactory to the Trustee in its sole discretion against any loss, liability or expense;
- (4) the Trustee has not complied with the request within 60 days after receipt of the request and the offer of security and/or indemnity; and
- (5) the holders of a majority in aggregate principal amount of the then outstanding Notes have not waived such Event of Default or otherwise given the Trustee a direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over another Securityholder. In the event that the Definitive Notes are not issued to any beneficial owner promptly after the Registrar has received a request from the holder of a Global Note to issue such Definitive Notes to such beneficial owner or its nominee, the

Issuer expressly agrees and acknowledges, with respect to the right of any Securityholder to pursue a remedy pursuant to this Indenture, the right of such beneficial holder of Notes to pursue such remedy with respect to the portion of the Global Note that represents such beneficial holder's Notes as if such Definitive Notes had been issued.

#### **SECTION 6.07. Rights of Securityholders to Receive Payment**

Notwithstanding any other provision of this Indenture, the right of any Securityholder to receive payment of principal of and interest on the Notes is held by such Securityholder, on or after the respective due dates expressed in the Notes, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of the holders of not less than 90.0% of the then outstanding aggregate principal amount of the Notes.

#### **SECTION 6.08. Collection Suit by Trustee**

If an Event of Default specified in Section 6.01(1) or Section 6.01(2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.06.

#### **SECTION 6.09. Trustee May File Proofs of Claim**

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Securityholders allowed in any judicial proceedings relative to the Issuer, its creditors or its property and, unless prohibited by law or applicable regulations, may vote on behalf of the Securityholders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized and directed by each Securityholder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due to it for its compensation and for any, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.06. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and appointees and counsel, and any other amounts due to the Trustee under Section 7.07 hereof out of the estate in any such proceeding shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties which the Securityholders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

#### **SECTION 6.10. Priorities**

(a) If the Trustee collects any money or property pursuant to this Article 6, it shall pay out the money or property in the following order:

**First**, in payment of amounts due to the Trustee for its own account under Section 7.06;

**Second**, equally and ratably to the Securityholders in accordance with the terms of this Indenture; and

**Third**, in payment of the surplus (if any) to the Issuer or Guarantors or other persons entitled to it.

- (b) Upon prior written notice by the Issuer to the Securityholders, the Trustee and the Trustees' designated Paying Agent (which shall be the Principal Paying Agent unless otherwise notified by the Trustee to the issuer), the Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section. Such notice shall state the record date, the payment date (which shall be the 15<sup>th</sup> Business Day following such record date), and amount to be paid.

#### **SECTION 6.11. Undertaking for Costs**

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section does not apply to a suit by the Trustee, a suit by a Securityholder pursuant to Section 6.07 or a suit by Securityholders of more than 10% in aggregate principal amount of the Notes.

#### **SECTION 6.12. Waiver of Stay or Extension Laws**

The Issuer (to the extent it may lawfully do so) shall not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Issuer (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

### **Article 7**

#### **Trustee**

#### **SECTION 7.01. Duties of Trustee**

- (a) If an Event of Default actually known to the Trustee has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Securityholder or that would involve the Trustee in personal liability.
- (b) The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee and any Agent; and in the absence of bad faith on their part, the Trustee and the Agents may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, instructions or opinions furnished to them and believed by them to be genuine and to have been signed or presented by the proper party or parties. The Trustee or, as the case may be the Agents may refrain, without liability, from acting on any instructions that are equivocal, unclear or conflicting and shall advise the instructing party as soon as reasonably practicable if any such instructions are, in its sole opinion, equivocal, unclear or conflicting.

- (c) The Trustee shall be relieved from liability save for liability directly resulting from its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct; furthermore:
  - (1) this Section 7.01(c) does not limit the effect of Section 7.01(b);
  - (2) neither the Trustee nor any Agent shall be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee or such Agent, as the case may be, was grossly negligent in ascertaining the pertinent facts; and
  - (3) neither the Trustee nor any Agent shall be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.
- (d) Every provision of this Indenture that in any way relates to the Trustee or any Agent is subject to paragraphs (a), (b) and (c) of this Section.
- (e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer.
- (f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.
- (g) No provision of this Indenture shall require the Trustee or any Agent to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties under this Indenture or in the exercise of any of its rights or powers, if it shall have grounds to believe that repayment of such funds or adequate indemnity and/or security against such risk or liability is not assured to it.
- (h) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its rights to be indemnified, are extended to, and shall be enforceable by the Trustee in each of its capacities in which it may serve, and to each agent, custodian and other person employed to act hereunder.
- (i) The Trustee shall not be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, lost profits, goodwill, reputation, business opportunity or anticipated saving) whether or not foreseeable, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of whether the claim or loss or damage is made in negligence, for breach of contract, breach of trust or otherwise.

**SECTION 7.02. Rights of Trustee**

- (a) The Trustee may rely conclusively on, and shall be protected from acting or refraining from acting in good faith based upon, any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.
- (b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel, as the case may be.
- (c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

- (d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; *provided, however*, that the Trustee's conduct does not constitute willful misconduct or negligence.
- (e) The Trustee may consult with counsel, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Notes shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.
- (f) The Trustee shall not be deemed to have notice or any knowledge of any matter (including without limitation Defaults or Events of Default) unless a Trust Officer assigned to and working in the Trustee's Corporate Trust Administration office has actual knowledge thereof or unless written notice thereof is received by the Trustee, and such notice clearly references the Notes, the Issuer and this Indenture.
- (g) Neither the Trustee nor any Agent shall have any obligation to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent order, approval, appraisal, bond, debenture, note, coupon, security or other paper or document.
- (h) The Trustee shall not be bound to take any steps to ascertain whether any Default or Event of Default has occurred and, until it shall have actual knowledge or express notice to the contrary, the Trustee shall be entitled to assume that no such Default or Event of Default has occurred and that each of the Issuer and the Guarantors is observing and performing all the obligations contained in this Indenture.
- (i) The Trustee shall not be bound to take any step or action at the request of Securityholders in connection with this Indenture or the Notes or obligations arising pursuant thereto, including, without prejudice to the generality of the foregoing, forming an opinion or employing a financial adviser, unless it is indemnified and/or secured to its satisfaction against all its liabilities and costs incurred in connection with such step or action and may demand prior to taking any such step or action that there be paid to it in advance such sums as it considers (without prejudice to any further demand) shall be sufficient so to indemnify or secure it.

### **SECTION 7.03. Individual Rights of Trustee**

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer or its Affiliates with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. However, the Trustee must comply with Sections 7.10.

### **SECTION 7.04. Trustee's Disclaimer**

The Trustee shall not be responsible for, and neither makes any representation as to, the validity or adequacy of this Indenture or the Notes, shall be accountable for the Issuer's use of the proceeds from the Notes, or shall be responsible for any statement of the Issuer in this Indenture or in any document issued in connection with the sale of the Notes or in the Notes other than, in the case of the Trustee, the Trustee's certificate of authentication.

### **SECTION 7.05. Notice of Defaults**

If a Default occurs, is continuing and is known to the Trustee, the Trustee shall mail to each Securityholder notice of the Default within 90 days after it occurs. Except in the case of a Default in



the payment of principal of or interest on any Note (including payments pursuant to the mandatory redemption provisions of such Note, if any), the Trustee may withhold the notice if and so long as a committee of its Trust Officers in good faith determines that withholding the notice is not opposed to the interests of the Securityholders.

#### **SECTION 7.06. Compensation and Indemnity**

- (a) The Issuer shall pay to the Trustee from time to time such compensation for its services as the Issuer and the Trustee shall from time to time agree in writing for its acceptance of this Indenture and the provision of the Trustee's services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee upon request for all out-of-pocket expenses properly incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts (including the fees and disbursements of its legal counsel).
- (b) The Issuer shall indemnify the Trustee against any and all loss, liability or expense (including attorneys' fees) incurred by it in connection with the administration of this trust and the performance of its duties hereunder. The Trustee shall notify the Issuer promptly of any claim for which it may seek indemnity. Failure to so notify the Issuer shall not relieve the Issuer of its obligations hereunder. The Trustee shall use reasonable endeavors to defend the claim and shall control the defense of any claim which is made against it. The Issuer shall have the right to participate in such defense, except where the interests of the Issuer on the one hand, and the Trustee on the other hand may be adverse (as determined by the Trustee in its sole discretion), provided that the Trustee agrees not to settle any such claim where the Issuer has not been entitled to participate in such defense or such claim has not been defended, without the prior consent of the Issuer, such consent not to be unreasonably withheld or delayed. The Trustee may appoint separate counsel in relation to any defense, the fees and expenses of which counsel shall be paid by the Issuer.
- (c) The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through such party's own willful misconduct, gross negligence or bad faith.
- (d) To secure the Issuer's and Guarantors' obligations in this Section the Trustee shall have a lien prior to the Notes on all money or property held or collected by it other than money or property held in trust to pay principal of and interest on particular Notes.
- (e) The Issuer's and Guarantors' obligations pursuant to this Section and any claim arising hereunder shall survive the discharge of this Indenture, the resignation or removal of any Trustee or Agent, the discharge of the Issuer's obligations pursuant to Article 8 and any rejection or termination under any Bankruptcy Law. When the Trustee or any Agent incurs expense or renders services after the occurrence of a Default specified in Clause (7) or (8) of Section 6.01, its expenses (including the properly incurred fees and expenses of its agents and the reasonable fees and disbursements of its legal counsel) and its compensation for such services shall be preferred over the status of the Securityholders in a proceeding under any Bankruptcy Law and are intended to constitute expenses of administration under any applicable Bankruptcy Law.

## **SECTION 7.07. Replacement of Trustee**

- (a) The Trustee may resign at any time by so notifying the Issuer. The holders of a majority in principal amount of the Notes may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee. The Issuer shall remove the Trustee if:
  - (1) the Trustee fails to comply with Section 7.09 or Section 7.10;
  - (2) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
  - (3) a receiver or other public officer takes charge of the Trustee or its property; or
  - (4) the Trustee otherwise becomes incapable of acting.
- (b) If the Trustee resigns, is removed by the Issuer or by the holders of a majority in principal amount of the Notes and such holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuer shall promptly appoint a successor Trustee.
- (c) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to each Securityholder. The retiring Trustee shall promptly transfer all property held by it as Trustee, after deduction of all amounts owing to the retiring Trustee to the successor Trustee, subject to the lien provided for in Section 7.06.
- (d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, (i) the retiring Trustee, the Issuer or the holders of 10% in principal amount of the Securities may petition any court of competent jurisdiction for the appointment of a successor Trustee, or (ii) the retiring Trustee may, subject to Section 7.09, appoint a successor Trustee.
- (e) If the Trustee fails to comply with Section 7.09 or Section 7.10, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.
- (f) Notwithstanding the replacement of the Trustee pursuant to this Section, the Issuer's obligations under Section 7.06 shall continue for the benefit of the retiring Trustee.

## **SECTION 7.08. Successor Trustee by Merger**

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have.

## **SECTION 7.09. Eligibility; Disqualification**

The Trustee shall at all times be a corporation organized and doing business under, or licensed to do business pursuant to, the laws of the United States of America (or of any state thereof or the District of Columbia) or any member state of the European Union that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by governmental authorities, if applicable, and that has a combined capital and surplus of at least \$50,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such federal, state, territorial or other governmental supervising or examining authority, then for the purposes of this Section 7.09, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. No Obligor or Person directly controlling, controlled by, or under common control with such Obligor shall serve as Trustee in respect of the Notes.

## **SECTION 7.10. Conflicting Interest**

(a) If a Trust Officer becomes aware of a Conflicting Interest (as defined below), the Trustee shall either:

- (i) eliminate such Conflicting Interest within 90 days of the Trust Officer becoming aware thereof, or
- (ii) resign, to the extent and in the manner provided by, and subject to the provisions of, this Indenture.

(b) The provisions of clause (a) above shall apply only in the event that a Trust Officer has actual knowledge of the Conflicting Interest. The Trustee shall be under no obligation to monitor its investments and other activities, conduct any investigations or otherwise take steps to determine whether a Conflicting Interest exists.

(c) As used in this Section 7.10, a “**Conflicting Interest**” shall be deemed to exist when:

- (i) an Event of Default under Section 6.01(a) or 6.01(b) has occurred and is continuing; and
- (ii) Citibank N.A. (or, in the case of a successor Trustee, such Trustee) is a creditor of the Issuer or any Guarantor.

(d) Notwithstanding the provisions of clause (c) above, no Conflicting Interest shall be deemed to exist as a result of a creditor relationship arising from:

- (i) the ownership or acquisition of securities issued under any indenture (including this Indenture), trust deed or similar instrument, or any security or securities having a maturity of one year or more at the time of acquisition by the Trustee;
- (ii) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by this Indenture, for the purpose of discharging tax liens or other prior liens or encumbrances on the trust estate;
- (iii) disbursements made in the ordinary course of business in the capacity of Trustee or of trustee under any other indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depository, or other similar capacity;
- (iv) any indebtedness created as a result of services rendered or premises rented, or indebtedness created as a result of goods or securities sold in a cash transaction;

(v) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the U.S. Federal Reserve Act, as amended, which is directly or indirectly a creditor of the Issuer or any Guarantor; or

(vi) the acquisition, ownership, acceptance, or negotiation of any drafts, bills of exchange, acceptances, or obligations which fall within the classification of self-liquidating paper.

## Article 8

### Discharge of Indenture; Defeasance

#### SECTION 8.01. Discharge of Liability on Securities; Defeasance

- (a) When (1) all outstanding Notes (other than Notes replaced pursuant to Section 2.07) have been delivered to the Trustee for cancellation or (2) all outstanding Notes have become due and payable, whether at maturity or on a redemption date as a result of the mailing of a notice of redemption pursuant to Article 3 hereof and the Parent or any Subsidiary Guarantor has irrevocably deposited or cause to be deposited with the Trustee funds sufficient to pay at maturity or upon redemption all outstanding Notes, including interest thereon to maturity or such redemption date (other than Notes replaced pursuant to Section 2.07), and in either case if all other sums payable hereunder have been paid, then this Indenture shall, subject to Section 8.01(c), be discharged and shall cease to be of further effect. The Trustee shall acknowledge satisfaction and discharge of this Indenture on demand of the Issuer accompanied by an Officer's Certificate and an Opinion of Counsel.
- (b) Subject to Sections 8.01(c) and 8.02, the Parent and the Issuer at any time may terminate (1) all their respective obligations under the Notes, this Indenture and the Parent's Notes Guarantee ("**legal defeasance option**") or (2) all their respective obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.09, 4.10, 4.11, 4.12 and 4.14 and the operation of Clauses (4), (5), (6), (7), (8) (9) and (11) of Section 6.01 (but, in the case of Clauses (7) and (8) of Section 6.01, with respect only to Significant Subsidiaries other than Guarantors and in the case of Section 6.01(11) other than with respect to any security interests in defeasance trust assets) and the limitations contained in Section 5.01(a)(3) ("**covenant defeasance option**"). The Parent and the Issuer may exercise their legal defeasance option notwithstanding the prior exercise of their covenant defeasance option.

If the Parent and the Issuer exercise their legal defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect thereto. If the Parent and the Issuer exercise their covenant defeasance option, payment of the Notes may not be accelerated because of an Event of Default specified in Clauses (4), (5), (6), (7), (8) (9) or (11) of Section 6.01 (but, in the case of Clauses (7) and (8) of Section 6.01, with respect only to Significant Subsidiaries other than Guarantors and in the case of Section 6.01(11) other than with respect to any security interests in defeasance trust assets) or because of the failure of the Issuer to comply with Section 5.01(a)(3). If the Parent and Issuer exercise their legal defeasance option or its covenant defeasance option, each Guarantor, if any, shall be released from all its obligations with respect to its Notes Guarantee.

Upon satisfaction of the conditions set forth herein and upon request of the Issuer, the Trustee shall acknowledge in writing the discharge of those obligations that the Issuer terminates.

- (c) Notwithstanding Sections 8.01(a) and 8.01(b), the Parent's and Issuer's obligations in Sections 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 7.06 and 7.07 and in this Article 8 shall survive until the Notes have been paid in full. Thereafter, the Parent's and Issuer's obligations in Sections 7.06, 8.04 and 8.05 shall survive.

## **SECTION 8.02. Conditions to Defeasance**

The Parent and the Issuer may exercise their legal defeasance options or their covenant defeasance options only if:

- (1) the Parent irrevocably deposits in trust (the "**defeasance trust**") with the Trustee money or U.S. Government Obligations for the payment of principal of and interest on the Notes to maturity or redemption, as the case may be;
- (2) the Parent delivers to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal and interest when due on all the Notes to maturity or redemption, as the case may be;
- (3) 180 days pass after the deposit is made and during the 180-day period no Default specified in Clause (7) or (8) of Sections 6.01 with respect to the Issuer occurs which is continuing at the end of the period;
- (4) the deposit does not constitute a default under any other material agreement binding on the Issuer;
- (5) in the case of the legal defeasance option, the Parent shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling, or (B) since the date of this Indenture there has been a change in the applicable United States Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Securityholders will not recognize income, gain or loss for United States Federal income tax purposes as a result of such defeasance and will be subject to United States Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;
- (6) in the case of the covenant defeasance option, the Parent shall have delivered to the Trustee an Opinion of Counsel to the effect that the Securityholders will not recognize income, gain or loss for United States Federal income tax purposes as a result of such covenant defeasance and will be subject to United States Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred;
- (7) the Parent delivers to the Trustee an Opinion of Counsel in the jurisdiction or organization of the Issuer to the effect that (A) Securityholders will not recognize income, gain or loss income tax purposes of such jurisdiction as a result of such deposit and defeasance, and will be subject to income tax of such jurisdiction on the same amounts, and in the same manner and at the same times as would have been the case if such deposit and defeasance, had not occurred; and

- (8) the Parent delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities as contemplated by this Article 8 have been complied with.

Before or after a deposit, the Parent and the Issuer may make arrangements satisfactory to the Trustee for the redemption of Notes at a future date in accordance with Article 3.

**SECTION 8.03. Application of Trust Money**

The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from U.S. Government Obligations through the Paying Agents and in accordance with this Indenture to the payment of principal of and interest on the Notes.

**SECTION 8.04. Repayment to Issuer**

The Trustee and each Paying Agent shall promptly turn over to the Issuer upon request any excess money or securities held by them at any time.

Subject to any applicable abandoned property law, the Trustee and each Paying Agent shall pay to the Issuer upon request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter, Securityholders entitled to the money must look to the Issuer for payment as general creditors.

**SECTION 8.05. Indemnity for Government Obligations**

The Issuer shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

**SECTION 8.06. Reinstatement**

If the Trustee or a Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's and each Guarantor's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 8; *provided, however*, that, if the Issuer has made any payment of interest on or principal of any Notes because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

**Article 9**

**Amendments**

**SECTION 9.01. Without Consent of Securityholders**

(a) The Issuer, the Guarantors and the Trustee may amend this Indenture and the Securities without notice to or consent of any Securityholder:

- (1) cure any ambiguity, omission, defect, mistake or inconsistency;

- (2) provide for the assumption by a successor Person of the obligations of the Parent, the Issuer or any Subsidiary Guarantor under any Notes Document;
- (3) add Guarantees with respect to the Notes, including Subsidiary Guarantees, or release a Subsidiary Guarantor from its Subsidiary Guarantee and terminate such Subsidiary Guarantee; provided that the release and termination do not violate this Indenture;
- (4) provide security for the Securities;
- (5) add to the covenants of the Parent or a Subsidiary Guarantor for the benefit of the holders or surrender any right or power conferred upon the Parent or a Subsidiary Guarantor;
- (6) make any change that does not adversely affect the rights of any holder;
- (7) comply with any requirement of the SEC in connection with the qualification of this Indenture under the Trust Indenture Act;
- (8) provide for the succession of a successor Trustee;
- (9) conform the text of this Indenture or the Notes to any provision of the "Description of Notes" section in the Offering Memorandum, to the extent that such provision in that section was intended to be a verbatim recitation of a provision of this Indenture and the Notes; or
- (10) provide for the issuance of Additional Notes in accordance with the terms of this Indenture.

(b) In addition, each holder, by accepting a Note, hereby expressly waives and directs the Trustee to amend any and all other provisions of this Indenture or the Notes (other than amendments or waivers that would require the consent of holders holding at least 90% of the principal amount of the Notes, as described above) that would prevent the consummation of the Listing and/or the Reorganization Transactions and expressly acknowledges granting consent to and express authorization of such Listing and/or the Reorganization Transactions notwithstanding any provisions to the contrary in this Indenture or the Notes.

(c) The consent of the holders is not necessary under this Indenture to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment. A consent to any amendment or waiver under this Indenture by any Securityholder given in connection with a tender of such holder's Notes will not be rendered invalid by such tender.

#### **SECTION 9.02. With Consent of Securityholders**

- (a) Subject to Section 9.02(b), the Issuer, the Guarantors and the Trustee may amend this Indenture and the Securities with the written consent of the holders of at least a majority in principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a tender offer or exchange for the Notes) and any past default or compliance with any provisions may also be waived with the consent of the holders of at least a majority in principal amount of the Notes then outstanding.
- (b) Notwithstanding Section 9.02(a), without the consent of Securityholders holding at least 90.0% of the principal amount of the Notes (including, without limitation, consents obtained in connection with a tender offer or exchange for the Notes) an amendment or waiver of this Indenture and the Securities may not:

- (1) reduce the principal amount of Notes whose holders must consent to an amendment, supplement or waiver;
  - (2) reduce the stated rate of or extend the stated time for payment of interest on any Note;
  - (3) reduce the principal of or extend the Stated Maturity of any Note;
  - (4) reduce the premium payable upon the redemption of any Note pursuant to Article 3 of this Indenture or paragraph 5 of the Notes or change the time at which any Note may be redeemed pursuant to Article 3 of this Indenture or paragraph 5 of the Notes;
  - (5) make any Note payable in money other than that stated in the Note;
  - (6) impair the right of any holder to receive payment of, premium, if any, principal of and interest on such holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's Notes;
  - (7) make any change in the amendment provisions or the waiver provisions, in each case which require the consent of holders holding at least 90% of the principal amount of the Notes;
  - (8) release any Notes Guarantees (except in accordance with the terms of this Indenture);
  - (9) make any change in Section 4.17 that adversely affects the rights of any holder of Notes or amend the terms of the Notes or this Indenture in a way that would result in the loss of an exemption from any of the Taxes described thereunder; or
  - (10) make any change to or modify the ranking of the Notes that would adversely affect the holders.
- (c) It shall not be necessary for the consent of the Securityholders under this Section to approve the particular form of any proposed amendment, but it shall be sufficient if such consent approves the substance thereof.
- (d) After an amendment under this Section becomes effective, the Issuer shall provide to Securityholders, in the manner contemplated by Section 13.01 hereof, a notice briefly describing such amendment. The failure to give such notice to all Securityholders, or any defect therein, shall not impair or affect the validity of an amendment under this Section.

### **SECTION 9.03. Revocation and Effect of Consents and Waivers**

A consent to an amendment or a waiver by a Securityholder shall bind the holder and every subsequent holder of that Note or portion of the Note that evidences the same debt as the consenting holder's Note, even if notation of the consent or waiver is not made on the Note. However, any such holder or subsequent holder may revoke the consent or waiver as to such holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective. After an amendment or waiver becomes effective, it shall bind every Securityholder. An amendment or waiver becomes effective upon the execution of such amendment or waiver by the Trustee.

The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Securityholders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Securityholders at such record



date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Securityholders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

#### **SECTION 9.04. Notation on or Exchange of Notes**

If an amendment changes the terms of a Note, the Trustee may require the holder of the Note to deliver it to the Trustee, at the Issuer's expense. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the holder, at the Issuer's expense. Alternatively, if the Issuer or the Trustee so determines, the Issuer in exchange for the Note shall issue and the Trustee shall (in the case of a determination by the Issuer, upon written notice in accordance with Section 2.02) authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or to issue a new Note shall not affect the validity of such amendment.

#### **SECTION 9.05. Trustee To Sign Amendments**

The Trustee shall sign any amendment authorized pursuant to this Article 9 if the amendment does not adversely affect its rights, duties, liabilities or immunities. If it does, the Trustee may but need not sign it. Prior to signing such amendment the Trustee shall be entitled to receive indemnity satisfactory to it and to receive, and (subject to Section 7.01) shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

#### **SECTION 9.06. Payment for Consent**

Neither the Issuer nor any Affiliate of the Issuer shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Securityholder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture, the Notes or the Notes Guarantees unless such consideration is offered to all Securityholders and is paid to all Securityholders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

### **Article 10**

#### **Notes Guarantees**

##### **SECTION 10.01. Notes Guarantees**

- (a) Each Guarantor hereby unconditionally and irrevocably guarantees, jointly and severally, to each Securityholder and the Trustee and its respective successors and assigns (a) the full and punctual payment of principal of and interest on the Notes when due, whether at maturity, by acceleration, by redemption or otherwise, and all other monetary obligations of the Issuer under this Indenture and the Notes and (b) the full and punctual performance within applicable grace periods of all other obligations of the Issuer under this Indenture and the Notes (all the foregoing being hereinafter collectively called the "**Guaranteed Obligations**"). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from such Guarantor and that such Guarantor will remain bound under this Article 10 notwithstanding any extension or renewal of any Obligation.

- (b) Each Guarantor waives presentation to, demand of, payment from and protest to the Issuer of any of the Guaranteed Obligations and also waives notice of protest for non-payment. Each Guarantor waives notice of any default under the Notes or the Guaranteed Obligations. The obligations of each Guarantor hereunder shall not be affected by (1) the failure of any Securityholder or the Trustee to assert any claim or demand or to enforce any right or remedy against the Issuer or any other Person (including any Guarantor) under this Indenture, the Securities or any other agreement or otherwise; (2) any extension or renewal of any thereof; (3) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Securities or any other agreement; (4) the release of any security held by any Securityholder or the Trustee for the Guaranteed Obligations or any of them; (5) the failure of any Securityholder or the Trustee to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (6) except as set forth in Section 10.07, any change in the ownership of such Guarantor.
- (c) Each Guarantor further agrees that its Notes Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Securityholder or the Trustee to any security held for payment of the Guaranteed Obligations.
- (d) Except as expressly set forth in Sections 8.01(b), 10.02 and 10.07, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Securityholder or the Trustee to assert any claim or demand or to enforce any remedy under this Indenture, the Securities or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of such Guarantor or would otherwise operate as a discharge of such Guarantor as a matter of law or equity.
- (e) Each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Obligation is rescinded or must otherwise be restored by any Securityholder or the Trustee upon the bankruptcy or reorganization of the Issuer or otherwise.
- (f) In furtherance of the foregoing and not in limitation of any other right which any Securityholder or the Trustee has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Issuer to pay the principal of or interest on any Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Obligation, each Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Securityholders or the Trustee an amount equal to the sum of (A) the unpaid amount of such Guaranteed Obligations, (B) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by law) and (C) all other monetary Guaranteed Obligations of the Issuer to the Securityholders and the Trustee.

- (g) Each Guarantor agrees that, as between it, on the one hand, and the Securityholders and the Trustee, on the other hand, (i) the maturity of the Guaranteed Obligations hereby may be accelerated as provided in Article 6 for the purposes of such Guarantor's Notes Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purposes of this Section.
- (h) Each Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees) incurred by the Trustee or any Securityholder in enforcing any rights under this Section.

#### **SECTION 10.02. Limitation on Liability**

Any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any Guarantor shall not exceed the maximum amount that can be hereby guaranteed without rendering this Indenture, as it relates to such Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, Bankruptcy Laws or similar laws affecting the rights of creditors generally.

#### **SECTION 10.03. Limitation of Guarantee – The Netherlands**

Notwithstanding any other provision of this Article 10, the guarantee, indemnity and other obligations of any Dutch Guarantor expressed to be assumed in this Article 10 shall be deemed not to be assumed by such Dutch Guarantor to the extent that the same would constitute unlawful financial assistance within the meaning of Article 2:207c or 2:98c Dutch Civil Code or any other applicable financial assistance rules under any relevant jurisdiction (the "**Prohibition**") and the provisions of this Indenture and the Securities shall be construed accordingly. For the avoidance of doubt, it is expressly acknowledged that the relevant Dutch Guarantors will continue to guarantee all such obligations which, if included, do not constitute a violation of the Prohibition.

#### **SECTION 10.04. Guarantees of Kazakhstan Guarantors – Arbitration**

In respect of each Guarantee of a Kazakhstan Guarantor, such Kazakhstan Guarantor and the Trustee irrevocably agree that any dispute arising out of or connected with such Kazakhstan Guarantee (including, without limitation, (1) any contractual, pre-contractual or non-contractual rights, obligations or liabilities arising in any way out of, in relation to or in connection with such Kazakhstan Guarantee, and (2) any issue as to the existence, validity or release of such Kazakhstan Guarantee) (a "**Dispute**") may be finally resolved:

- (a) subject to clause (b) below, by arbitration under the LCIA Rules. The arbitral tribunal shall consist of three arbitrators. Each party will nominate an arbitrator and then the two arbitrators shall together nominate a Chairman. Any requirement in the LCIA Rules to take account of the nationality of a person considered for appointment as an arbitrator shall be disapplied and a person shall be nominated or appointed as an arbitrator (including as Chairman) regardless of his nationality. The seat of arbitration shall be London, England. The language of the arbitration shall be English; or
- (b) at the sole option of the Trustee, any suit, action or proceeding relating to a Dispute may be brought in the courts and the manner specified in Section 13.08 hereof. If the Trustee is in the position of a Respondent (as defined in the LCIA Rules) and wishes to exercise this option, it must do so by notice to the other parties to the Dispute within

30 days of service on it of the Request for Arbitration (as defined in the LCIA Rules). For the avoidance of doubt, this clause (b) is for the benefit solely of the Trustee and shall not limit the right of the Trustee to bring proceedings in any other court of competent jurisdiction.

**SECTION 10.05. Successors and Assigns**

This Article 10 shall be binding upon each Guarantor and its successors and assigns and shall enure to the benefit of the successors and assigns of the Trustee and the Securityholders and, in the event of any transfer or assignment of rights by any Securityholder or the Trustee, the rights and privileges conferred upon that party in this Indenture and in the Notes shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

**SECTION 10.06. No Waiver**

Neither a failure nor a delay on the part of either the Trustee or the Securityholders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee and the Securityholders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 10 at law, in equity, by statute or otherwise.

**SECTION 10.07. Release of Guarantor**

A Subsidiary Guarantor will be released from its obligations under this Article 10 (other than any obligation that may have arisen under Section 10.08):

- (1) upon any sale or other disposition of (i) Capital Stock of a Subsidiary Guarantor following which such Subsidiary Guarantor is no longer a Restricted Subsidiary or (ii) all or substantially all of the properties and assets of a Subsidiary Guarantor to a Person that is not (either before or after giving effect to such transaction) the Parent, a Restricted Subsidiary or any Affiliate of the Parent, in each case in accordance with Section 4.06 of this Indenture;
- (2) upon the designation of such Guarantor as an Unrestricted Subsidiary in accordance with the terms of this Indenture;
- (3) in the event such Subsidiary Guarantor consolidates with, or is merged with or into, another Person that is not (either before or after giving effect to such transaction) the Parent, a Restricted Subsidiary or any Affiliate of the Parent, and such successor Person shall have expressly assumed, by supplemental indenture, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of such Subsidiary Guarantor under its Guarantee, in accordance with the provisions of this Indenture;
- (4) upon defeasance of the Securities pursuant to Article 8;
- (5) upon the full satisfaction and discharge of the Issuer's obligations under this Indenture pursuant to Article 8; or
- (6) in the case of the Notes Guarantee issued by Zhaikmunai LLP, upon completion of the Substitution in compliance with the terms of this Indenture.



Canary Wharf  
London E14 5LB  
United Kingdom  
Attention: The Directors, Agency and Trust  
Department

if to the Registrar: Citigroup Global Markets Deutschland AG  
Reuterweg 16  
60323 Frankfurt  
Germany  
Attention: Citi Germany Agency & Trust and Stock  
Events Department

- (b) The Issuer, any Guarantor or the Trustee by notice to the others may designate additional or different addresses for subsequent notices or communications.
- (c) Any notice or communication mailed to a Securityholder shall be mailed, at the Issuer's expense, to the Securityholder at the Securityholder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.
- (d) Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.
- (e) For Notes which are represented by Global Notes held on behalf of DTC, Euroclear or Clearstream, notices may be given by delivery of the relevant notices to DTC, Euroclear or Clearstream for communication to entitled account holders.
- (f) So long as any Notes are listed on the Official List of the Irish Stock Exchange and admitted for trading on the Global Exchange Market and the rules of the Irish Stock Exchange so require, any such notice to the holders of the relevant Notes shall also be published in a newspaper having a general circulation in Ireland (which is expected to be the *Irish Times*) or, to the extent and in the manner permitted by such rules, posted on the official website of the Irish Stock Exchange and, in connection with any redemption, the Issuer will notify the Irish Stock Exchange of any change in the principal amount of Notes outstanding.

### **SECTION 13.02. Certificate and Opinion as to Conditions Precedent**

Upon any request or application by the Issuer to the Trustee to take or refrain from taking any action under this Indenture, the Issuer shall furnish to the Trustee:

- (1) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

### **SECTION 13.03. Statements Required in Certificate or Opinion**

Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

- (1) a statement that the individual making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

**SECTION 13.04. When Notes Disregarded**

In determining whether the holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Issuer or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes which the Trustee knows are so owned shall be so disregarded. Also, subject to the foregoing, only Notes outstanding at the time shall be considered in any such determination.

**SECTION 13.05. Rules by Trustee, Paying Agent and Registrar**

The Trustee may make reasonable rules for action by or a meeting of Securityholders. The Registrar and the Paying Agent may make reasonable rules for their functions.

**SECTION 13.06. Legal Holidays**

If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a regular record date is a Legal Holiday, the record date shall not be affected.

**SECTION 13.07. Governing Law**

**THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

**SECTION 13.08. Jurisdiction**

Each of the parties hereto agrees that any suit, action or proceeding brought by any other party hereto arising out of or based upon this Indenture, the Guarantees or the Notes may be instituted in any state or Federal court in the Borough of Manhattan, New York, New York, and any appellate court from any thereof, and each of them irrevocably submits to the non exclusive jurisdiction of such courts in any such suit, action or proceeding. Each of the parties hereto irrevocably waives, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with this Indenture, the Guarantee or the Notes, including such actions, suits or proceedings relating to securities laws of the United States of America or any state thereof, in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the parties hereto agrees that final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon it, and may be enforced in any court to the jurisdiction of which such Person is subject by a suit upon such judgment; provided, however, that service of process is effected upon the Issuer or the applicable Guarantor, as the case may be, in the

manner provided by this Indenture. Each of the Issuer and the Guarantors has appointed CT Corporation System, 111 Eighth Avenue, New York, NY 10011, USA as its authorized agent (the “**Authorized Agent**”), upon whom process may be served in any suit, action or proceeding arising out of or based upon this Indenture, the Guarantees or the Notes or the transactions contemplated herein which may be instituted in any state or Federal court in the Borough of Manhattan, New York, New York, by any Securityholder or the Trustee, and expressly accepts the non exclusive jurisdiction of any such court in respect of any such suit, action or proceeding. Each of the Issuer and the Guarantors hereby represents and warrants that the Authorized Agent has accepted such appointment and has agreed to act as said agent for service of process, and the Issuer and the Guarantors agree to take any and all action, including the filing of any and all documents, that may be reasonably necessary to continue such respective appointment in full force and effect as aforesaid. Service of process upon the Authorized Agent and with written notice of such service to the Issuer and the Guarantors in accordance with Section 13.01 shall be deemed, in every respect, effective service of process upon the Issuer and the Guarantors.

### **SECTION 13.09. Currency Indemnity**

U.S. dollars are the sole currency of account and payment for all sums payable under the Notes, the Guarantees and this Indenture. Any amount received or recovered in respect of the Notes or the Guarantees in a currency other than U.S. dollars (whether as a result of, or of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding up or dissolution of the Issuer, any Subsidiary or otherwise) by the Trustee and/or a Securityholder in respect of any sum expressed to be due to such Securityholder from the Issuer or the Guarantors will constitute a discharge of their obligation only to the extent of the U.S. dollar amount which the recipient is able to purchase with the amount so received or recovered in such other currency on the date of that receipt or recovery (or, if it is not possible to purchase U.S. dollars on that date, on the first date on which it is possible to do so). If the U.S. dollar amount that could be recovered following such a purchase is less than the U.S. dollar amount expressed to be due to the recipient under any Note, the Issuer and the Guarantors will jointly and severally indemnify the recipient against the cost of the recipient’s making a further purchase of U.S. dollars in an amount equal to such difference. For the purposes of this Section 13.09, it will be sufficient for the Trustee and/or holder to certify that it would have suffered a loss had the actual purchase of U.S. dollars been made with the amount so received in that other currency on the date of receipt or recovery (or, if a purchase of U.S. dollars on that date had not been possible, on the first date on which it would have been possible). These indemnities, to the extent permitted by law:

- (a) constitute a separate and independent obligation from the Issuer’s and the Guarantors’ other obligations contained herein or contained in the Notes;
- (b) give rise to a separate and independent cause of action contained herein or contained in the Notes;
- (c) apply irrespective of any waiver granted by any Securityholder; and
- (d) will continue in full force and effect notwithstanding any other judgment, order, claim or proof for a liquidated amount in respect of any sum due hereunder or any other judgment or order.

### **SECTION 13.10. No Recourse Against Others**

No member of the Board of Directors of the Parent, officer, employee, director, incorporator, stockholder, member, partner or trustee of the General Partner, the Parent, the Issuer or any Guarantor, as such, shall have any liability for any obligations of the Parent, the Issuer or any



Guarantor under the Notes, the Notes Guarantees or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each holder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Notes and the Notes Guarantees.

**SECTION 13.11. Successors**

All agreements of the Issuer and the Guarantors in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

**SECTION 13.12. Multiple Originals**

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture.

**SECTION 13.13. Table of Contents Headings**

The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

**SECTION 13.14. Prescription**

Claims against the Issuer or any Guarantor for the payment of principal or Additional Amounts, if any, on the Notes will be prescribed ten years after the applicable due date for payment thereof. Claims against the Issuer or any Guarantor for the payment of interest on the Notes will be prescribed five years after the applicable due date for payment of interest.

**SECTION 13.15. Agents of the Issuer**

In acting hereunder and in connection with the Securities, the Paying Agents, Registrar and Transfer Agent shall act solely as agents of the Issuer and will not thereby assume any obligations towards, or any relationship of agency or trust for, any Securityholders.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

**ZHAIKMUNAI INTERNATIONAL B.V.,**  
as Issuer

By: .....

Name:

Title:

**ZHAIKMUNAI LP,**  
as Guarantor

By: .....

Name:

Title: Director

For and on behalf of the General Partner

By: .....

Name:

Title: Director/Secretary (delete as appropriate)

For and on behalf of the General Partner

**ZHAIKMUNAI LLP,**  
as Guarantor

By: .....

Name:

Title:

**ZHAIKMUNAI NETHERLANDS B.V.,**  
as Guarantor

By: .....

Name:

Title:

**ZHAIKMUNAI FINANCE B.V.,**  
as Guarantor

By: .....

Name:

Title:

**CONDENSATE-HOLDING LLP,**  
as Guarantor

By: .....

Name:

Title:

**JUBILATA INVESTMENTS LIMITED,**  
as Guarantor

By: .....

Name:

Title:

By: .....

Name:

Title:



**CLAYDON INDUSTRIAL LIMITED,**  
as Guarantor

By: .....

Name:

Title:

By: .....

Name:

Title:

**CITIBANK N.A.,  
as Trustee, Principal Paying Agent, Paying Agent in New York, Transfer Agent and  
Authenticating Agent**

By: .....

Name:

Title:

**CITIGROUP GLOBAL MARKETS DEUTSCHLAND AG,  
as Registrar**

By: .....

Name:

Title:

## Exhibit A

### Form of Initial Note

#### [Form of Face of Initial Note]

#### [Global Notes Legend]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“**DTC**”), NEW YORK, NEW YORK, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

#### [Restricted Securities Legend]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “**U.S. SECURITIES ACT**”) OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE OFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT. THE HOLDER OF THIS SECURITY BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT (A) IT IS A “**QUALIFIED INSTITUTIONAL BUYER**” (AS DEFINED IN RULE 144A UNDER THE U.S. SECURITIES ACT (“**RULE 144A**”)) OR (B) IT IS NOT A U.S. PERSON AND IT IS ACQUIRING THIS SECURITY IN AN “OFFSHORE TRANSACTION” (AS DEFINED IN REGULATION S UNDER THE U.S. SECURITIES ACT), (2) AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR FOR WHICH IT HAS PURCHASED SECURITIES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “**RESALE RESTRICTION TERMINATION DATE**”) WHICH IS [FOR RULE 144A GLOBAL NOTE ONLY: ONE YEAR] [FOR REGULATION S GLOBAL NOTE ONLY: 40 DAYS] (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RELEVANT REGULATION UNDER THE U.S. SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER) AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) ONLY (A) TO THE ISSUER, A GUARANTOR OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE U.S. SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO

RULE 144A, TO A PERSON IT, OR ANY PERSON ACTING ON ITS BEHALF, REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) TO NON-U.S. PERSONS IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE U.S. SECURITIES ACT OR (E) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT, SUBJECT IN EACH OF THE FOREGOING CASES TO ANY REQUIREMENT OF LAW THAT THE DISPOSITION OF ITS PROPERTY OR THE PROPERTY OF SUCH INVESTOR ACCOUNT OR ACCOUNTS BE AT ALL TIMES WITHIN ITS OR THEIR CONTROL AND IN COMPLIANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OR TERRITORY OF THE UNITED STATES OR ANY OTHER JURISDICTION, AND ANY APPLICABLE LOCAL LAWS AND REGULATIONS AND FURTHER SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHTS PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER (I) PURSUANT TO CLAUSES (D) AND (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM AND (II) IN EACH OF THE FOREGOING CASES, TO REQUIRE THAT A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE AND (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

[Definitive Notes Legend]

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

No. [●]

\$[●]

CUSIP: [●]

ISIN: [●]

Common Code: [●]

Issue Date: [●]

7.125% Senior Notes due 2019

**ZHAIKMUNAI INTERNATIONAL B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) duly incorporated under the laws of the Netherlands registered with the commercial register under number 56250851, promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) on 13 November 2019 (the “**Maturity Date**”).

Interest Payment Dates: 14 May and 13 November.

Record Dates: 28 April and 29 October.

Additional provisions of this Note are set forth on the other side of this Note.

Dated: [●]

**ZHAIKMUNAI INTERNATIONAL B.V.**

By: .....

Name:

Title: Director

By: .....

Name:

Title: Director

**Trustee's certificate of authentication**

**CITIBANK N.A.**

as Trustee, certifies that this is one of the Notes referred to in the Indenture.

By: .....

Authorized Signatory

## [Form of Reverse Side of Initial Note]

7.125% Senior Note due 2019

Capitalized terms used but not defined herein have the same meaning as set forth in the Indenture (defined below).

### 1 Interest

ZHAIKMUNAI INTERNATIONAL B.V., a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) duly incorporated under the laws of the Netherlands registered with the commercial register under number 56250851 (such company, and its successors and assigns under the Indenture hereinafter referred to, being herein called the “**Issuer**”), promises to pay interest on the principal amount of this Note at the rate per annum shown above. The Issuer will pay interest in cash semiannually on arrears on 14 May and 13 November of each year, commencing 14 May 2013. Interest on the Notes will accrue from the Issue Date or, if interest has already been paid, from the most recent date on which interest has been paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. The Issuer will pay interest on overdue principal at the rate borne by this Note, and it will pay interest on overdue installments of interest at the same rate to the extent lawful.

### 2 Method of Payment

The Issuer will pay interest on the Notes (except defaulted interest) to the Persons who are registered holders of Notes at the close of business on 28 April and 29 October immediately preceding the related interest payment dates; or if that day is not a Business Day, on the next preceding Business Day with the same force and effect as if made on such interest payment date, even if Notes are canceled after the record date and on or before the interest payment date. Securityholders must surrender Notes to a Paying Agent to collect principal payments. The Issuer will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of the Notes represented by a Global Note (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by the Depository. The Issuer will make all payments in respect of a certificated Note (including principal, premium and interest) by mailing a check to the registered address of each holder thereof; *provided, however*, that payments on a certificated Note will be made by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent to such effect designating such account no later than 30 days immediately preceding the relevant due date for payment (or such other date as the Trustee may accept in its discretion).

### 3 Paying Agent and Registrar

The Issuer will maintain one or more paying agents (each, a “**Paying Agent**”) for the Notes in each of (i) the City of London (the “**Principal Paying Agent**”), (ii) the Borough of Manhattan, City of New York, and (iii) Dublin, Ireland, for so long as the Notes are listed on the Official List of the Irish Stock Exchange and admitted for trading on the Global Exchange Market of the Irish Stock Exchange (the “**Global Exchange Market**”) and the rules of the Irish Stock Exchange so require. The Issuer will undertake to maintain a



Paying Agent in a member state of the European Union that will not be obliged to withhold or deduct tax pursuant to the European Union Directive 2003/48/EC or any other directive implementing the conclusions of the ECOFIN Council meeting of 26 and 27 November 2000 on the taxation of savings income, or any law implementing, or complying with or introduced in order to conform to, such directive. The initial Paying Agents will be Citibank N.A. in London and Citibank N.A. in New York.

The Issuer will also maintain one or more registrars (each, a “**Registrar**”) with an office in Frankfurt, Germany, for so long as the Notes are listed on the Official List of the Irish Stock Exchange and admitted for trading on the Global Exchange Market and the rules of the Irish Stock Exchange so require. The Issuer will also maintain a transfer agent (the “**Transfer Agent**”). The initial Registrar will be Citigroup Global Markets Deutschland AG. The initial Transfer Agent will be Citibank N.A. The Registrar will maintain a register reflecting ownership of Definitive Notes outstanding from time to time and will make payments on and facilitate transfer of Definitive Notes on the behalf of the Issuer.

The Issuer may change any of the Paying Agents, the Registrar or the Transfer Agent without prior notice to the holders of the Notes.

#### **4 Indenture**

The Issuer issued the Notes under an Indenture dated as of 13 November 2012 (the “**Indenture**”), among the Issuer, the Guarantors, Citibank N.A., as Trustee, Principal Paying Agent, Paying Agent in New York, Transfer Agent and Authenticating Agent and Citigroup Global Markets Deutschland AG, as Registrar. Terms defined in the Indenture and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Securityholders are referred to the Indenture for a statement of those terms.

The Notes are general unsecured obligations of the Issuer. The Issuer shall be entitled, subject to its compliance with Section 4.03 of the Indenture, to issue Additional Notes pursuant to Section 2.13 of the Indenture. The Initial Notes issued on the Issue Date and any Additional Notes will be treated as a single class for all purposes under the Indenture. The Indenture contains covenants that limit the ability of the Issuer and its subsidiaries to incur additional indebtedness; pay dividends or distributions on, or redeem or repurchase capital stock; make investments; issue or sell capital stock of subsidiaries; engage in transactions with affiliates; create liens on assets; transfer or sell assets; guarantee indebtedness; restrict dividends or other payments of subsidiaries; and consolidate, merge or transfer all or substantially all of its assets and the assets of its subsidiaries. These covenants are subject to important exceptions and qualifications. To the extent that any provision of this Global Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

#### **5 Optional Redemption**

- (a) Except as set forth below, the Issuer shall not be entitled to redeem the Notes at its option.
- (b) On and after 13 November 2016, the Issuer shall be entitled at its option to redeem all or a portion of the Notes upon not less than 30 nor more than 60 days’ notice, at the redemption prices (expressed in percentages of principal amount of the Note), plus accrued and unpaid interest on the Notes, if any, to the applicable redemption

date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), if redeemed during the twelve-month period commencing on 13 November of the years set forth below:

<u>Period</u>	<u>Redemption Price</u>
2016	103.56250%
2017	101.78125%
2018 and thereafter	100.00000%

- (c) Prior to 13 November 2016, the Issuer may, at its option, on one or more occasions redeem up to 35% of the aggregate principal amount of the Notes issued under the Indenture with the Net Cash Proceeds of one or more Equity Offerings at the redemption price of 107.125% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date (subject to the right of the holders of record on the relevant record date to receive interest due on the relevant interest payment date); provided that (1) at least 65% of the original principal amount of the Notes remains outstanding after the occurrence of each such redemption; and (2) each such redemption occurs within 90 days after the date of the related Equity Offering.
- (d) In addition, the Notes may be redeemed, in whole or in part, at any time prior to 13 November 2016 at the option of the Issuer upon not less than 30 nor more than 60 days' prior notice mailed by first class mail to each holder of Notes at its registered address, at a redemption price equal to 100% of the principal amount of the Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest to, the applicable redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date).
- (e) The Issuer may, at its option, redeem the Notes pursuant to this paragraph 5(e), in whole but not in part, at any time upon giving not less than 30 nor more than 60 days' notice to the holders, at a redemption price equal to 100% of the principal amount thereof, together with accrued and unpaid interest thereon, if any, to the redemption date and all Additional Amounts, if any, then due and which will become due on the date of redemption as a result of the redemption or otherwise, if the Issuer determines in good faith that the Issuer is or, on the next date on which any amount would be payable in respect of the Notes, would be obliged to pay Additional Amounts in respect of the Notes pursuant to the terms and conditions thereof, which the Issuer cannot avoid by the use of reasonable measures available to it as a result of:
- (1) any change in, or amendment to, the laws or treaties (or any regulations or rulings promulgated thereunder) of any Relevant Taxing Jurisdiction affecting taxation which change or amendment becomes effective on or after the date of the Indenture or, if the Relevant Taxing Jurisdiction has changed since the date of the Indenture, on or after the date on which the then current Relevant Taxing Jurisdiction became the Relevant Taxing Jurisdiction under the Indenture (or, in the case of a successor person, on or after the date of assumption by the successor person of the Issuer's obligations hereunder); or

- (2) any change in, or amendment to, the official application, administration, or interpretation of the laws, treaties, regulations or rulings of any Relevant Taxing Jurisdiction (including a holding, judgment or order by a court of competent jurisdiction or a change in established practice) on or after the date of the Indenture or, if the Relevant Taxing Jurisdiction has changed since the date of the Indenture, on or after the date on which the then current Relevant Taxing Jurisdiction became the Relevant Taxing Jurisdiction under the Indenture (or, in the case of a successor person, on or after the date of assumption by the successor person of the Issuer's obligations hereunder) (each of the foregoing Clauses (1) and (2), a "**Change in Tax Law**").

Notwithstanding the foregoing, the Issuer may not redeem the Notes under this paragraph 5(e) if the Relevant Taxing Jurisdiction changes under the Indenture and the Issuer is obliged to pay Additional Amounts as a result of a Change in Tax Law of the then current Relevant Taxing Jurisdiction which, at the time the latter became the Relevant Taxing Jurisdiction under the Indenture, had been publicly announced as being or having been formally proposed.

In the case of Additional Amounts required to be paid as a result of the Issuer conducting business in an Additional Taxing Jurisdiction, the Change in Tax Law must become effective after the date the Issuer begins to conduct the business giving rise to the relevant withholding or deduction.

Notwithstanding the foregoing, no such notice of redemption will be given (a) earlier than 90 days prior to the earliest date on which the Issuer would be obliged to make such payment of Additional Amounts or withholding if a payment in respect of the Notes were then due and (b) unless at the time such notice is given, the obligation to pay Additional Amounts remains in effect.

Prior to the publication or, where relevant, mailing of any notice of redemption pursuant to this paragraph 5(e), the Issuer will deliver to the Trustee:

- (1) an Officer's Certificate stating that the Issuer is entitled to effect such redemption and setting forth a statement of facts showing that the conditions precedent to the right of the Issuer to so redeem have occurred (including that such obligation to pay such Additional Amounts cannot be avoided by the Issuer taking reasonable measures available to it); and
- (2) an Opinion of Counsel, in form and substance reasonably satisfactory to the Trustee, of independent tax counsel of recognized standing, qualified under the laws of the Relevant Taxing Jurisdiction and reasonably satisfactory to the Trustee to the effect that the Issuer is or would be obliged to pay such Additional Amounts as a result of a Change in Tax Law.

Absent manifest error, the Trustee will accept such Officer's Certificate and opinion as sufficient evidence of the satisfaction of the conditions precedent as described above, in which event it will be conclusive and binding on the holders.

The foregoing provisions of this paragraph 5(e) will apply *mutatis mutandis* to any successor person, after such successor person becomes a party to the Indenture, with respect to a Change in Tax Law occurring after the time such successor person becomes a party to the Indenture.

## **6 Selection and Notice of Redemption**

If the Issuer is redeeming less than all of the outstanding Notes, the Trustee will select the Notes for redemption on a pro rata basis, or, if required by law or regulation, in compliance with the requirements of the principal national securities exchange, if any, on which the Notes are listed or, if not possible, by such other method as the Trustee in its sole discretion deems to be fair and appropriate, although no Note of U.S.\$200,000 in original principal amount or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption relating to such Note will state the portion of the principal amount thereof to be redeemed. A new Security in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the partially redeemed Note. On and after the redemption date, interest will cease to accrue on Notes or the portion of them called for redemption unless the Issuer defaults in the payment thereof.

## **7 Change of Control**

If a Change of Control occurs, unless the Issuer has previously or concurrently exercised its right to redeem all of the Notes as described under paragraph 5 above each holder of Notes will have the right to require the Issuer to repurchase all or any part (equal to U.S.\$200,000 or an integral multiple of U.S.\$1,000 in excess of U.S.\$200,000 of the Notes of such holder at a repurchase price in cash equal to 101% of the principal amount of the Notes to be repurchased plus accrued and unpaid interest, if any, to the date of purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date) as provided in, and subject to the terms of, the Indenture.

## **8 Guarantee**

The Guarantors will, jointly and severally, fully and unconditionally guarantee on a senior basis obligations under the Notes and the Indenture to the extent permitted by applicable law.

## **9 Denominations; Transfer; Exchange**

The Notes are in registered form without coupons in minimum denominations of U.S.\$200,000 principal amount and integral multiples of U.S.\$1,000 in excess of U.S.\$200,000. A holder may transfer or exchange Notes in accordance with the Indenture. The Registrar may require a holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange any Notes selected for redemption (except, in the case of a Note to be redeemed in part, the portion of the Note not to be redeemed) or any Notes for a period of 15 days before a selection of Notes to be redeemed or 15 days before an interest payment date.

## **10 Persons Deemed Owners**

The registered holder of this Note may be treated as the owner of it for all purposes.

## **11 Unclaimed Money**

If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Issuer at its request unless an abandoned property law designates another Person. After any such payment, holders entitled to the money must look only to the Issuer and not to the Trustee for payment.

## **12 Discharge and Defeasance**

Subject to certain conditions, the Issuer at any time shall be entitled to terminate some or all of its obligations under the Notes and the Indenture if the Issuer deposits with the Trustee money or U.S. Government Obligations for the payment of principal and interest on the Notes to redemption or maturity, as the case may be.

## **13 Amendment, Waiver**

Subject to certain exceptions set forth in the Indenture, (a) the Indenture and the Notes may be amended with the written consent of the holders of at least a majority in principal amount then outstanding of the Notes and (b) any default or non-compliance with any provision may be waived with the consent of the holders of a majority in principal amount then outstanding of the Notes. Subject to certain exceptions set forth in the Indenture, without the consent of any Securityholder, the Issuer, the Guarantors and the Trustee shall be entitled to amend the Indenture or the Notes to cure any ambiguity, omission, defect, mistake or inconsistency, or provide for the assumption by a successor Person of the obligations of the Parent, the Issuer or any Subsidiary Guarantor under any Notes Document, or to add Guarantees with respect to the Notes, including Subsidiary Guarantees, or to release a Subsidiary Guarantor from its Subsidiary Guarantee and terminate such Subsidiary Guarantee (provided that the release and termination do not violate the Indenture), or to provide security for the Notes or the Notes Guarantees, or to add to covenants of the Parent or a Subsidiary Guarantor for the benefit of the Securityholders, or to surrender any right or power conferred upon the Parent or a Subsidiary Guarantor, or to make any change that does not adversely affect the rights of any Securityholder, or to comply with any requirement of the SEC in connection with the qualification of the Indenture under the Trust Indenture Act, or to provide for the succession of a successor Trustee, or to conform the text of the Indenture or the Notes to any provision of the "Description of Notes" section in the Offering Memorandum or to provide for the issuance of Additional Notes in accordance with the terms of the Indenture. In addition, each holder, by accepting a Note, hereby expressly waives and directs the Trustee to amend any and all other provisions of the Indenture or the Notes (other than amendments or waivers that would require the consent of holders holding at least 90% of the principal amount of the Notes, as described above) that would prevent the consummation of the Listing and/or the Reorganization Transactions and expressly acknowledges granting consent to and express authorization of such Listing and/or the Reorganization Transactions notwithstanding any provisions to the contrary in the Indenture or the Notes.

## **14 Defaults and Remedies**

Under the Indenture, each of the following is an Event of Default, whatever the reason therefor and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of

any administrative or governmental body: (a) default in any payment of interest on any Note when the same becomes due and payable, and such default continues for a period of 30 days; (b) default in payment of principal of or premium, if any, on any Note when due at its Stated Maturity, upon optional redemption, upon required repurchase, or otherwise; (c) failure by the Issuer or any Guarantor to comply with Section 4.15 or Section 5.01 of the Indenture; (d) failure by the Issuer or a Guarantor to comply for 30 days after notice as provided below with any of its obligations under Article 4 of the Indenture (other than a failure to purchase Notes constituting an Event of Default under Clause (b) above and other than a failure to comply with Section 4.15 or Section 5.01); (e) failure by the Issuer or a Guarantor to comply for 60 days after notice as provided below with its other agreements contained in the Indenture (other than those covered under Clauses (a), (b), (c) and (d) above); (f) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness by the Parent or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Parent or any of its Restricted Subsidiaries), whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, which default: (1) is caused by a failure to pay principal of, or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness; or (2) results in the acceleration of such Indebtedness prior to its maturity; and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment default or the maturity of which has been so accelerated, aggregates U.S.\$10 million or more; (g) the Issuer, any Guarantor or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law: (1) commences a voluntary case; (2) consents to the entry of an order for relief against it in an involuntary case; (3) consents to the appointment of a Custodian of it or for all or substantially all of its property; or (4) makes a general assignment for the benefit of its creditors; (h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (1) is for relief against the Issuer, any Guarantor or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary in an involuntary case; (2) appoints a Custodian of the Issuer, any Guarantor or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary or for all or substantially all of its property; or (3) orders the winding up or liquidation of the Issuer, any Guarantor or any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary; and the order or decree remains unstayed and in effect for 60 days; (i) any judgment or decree for the payment of money in excess of \$10 million is entered against the Issuer, any Guarantor, any Significant Subsidiary or group of Restricted Subsidiaries that, taken together (as of the latest audited consolidated financial statements for the Parent and its Restricted Subsidiaries), would constitute a Significant Subsidiary, remains outstanding for a period of 60 consecutive days following such judgment and is not discharged, waived or stayed; or (j) any Notes Guarantee ceases to be in full force and effect (except as contemplated by the terms of the Indenture) or is declared null and void in a judicial proceeding or any Guarantor denies or disaffirms its obligations under the Indenture or its Notes Guarantee;

*provided* that a default under Clause (d) or (e) above will not constitute an Event of Default until the Trustee or the holders of at least 25% in principal amount of the outstanding Notes notify the Parent in writing and, in the case of a notice given by the holders, the Trustee of the default and the Parent does not cure such default within the applicable time specified in Clause (d) or (e) above after receipt of such notice.

Securityholders may not enforce the Indenture or the Notes except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Notes unless it receives indemnity or security satisfactory to it. Subject to certain limitations, holders of a majority in principal amount outstanding of the Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Securityholders notice of any continuing Default (except a Default in payment of principal or interest) if it and so long as a committee of its Trust Officers determines that withholding notice is not opposed to the interests of the holders.

## **15 Trustee Dealings with the Issuer**

The Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with and collect obligations owed to it by the Issuer or its Affiliates and may otherwise deal with the Issuer or its Affiliates with the same rights it would have if it were not Trustee.

## **16 No Recourse Against Others**

No director, officer, employee, incorporator, partner, trustee or stockholder, as such, of the Issuer, the Guarantors or the Trustee shall have any liability for any obligations of the Issuer, the Guarantors or the Trustee under the Notes or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Securityholder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Notes.

## **17 Authentication**

This Note shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication on the other side of this Note.

## **18 Abbreviations**

Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

## **19 CUSIP Numbers**

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures the Issuer has caused CUSIP numbers to be printed on the Notes and has directed the Trustee to use CUSIP numbers in notices of redemption as a convenience to Securityholders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

## 20 Governing Law

**THIS SECURITY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

The Issuer will furnish to any Securityholder upon written request and without charge to the Securityholder a copy of the Indenture which has in it the text of this Note in larger type. Requests may be made to:

Zhaikmunai International B.V.  
Zuidsingel 1  
3811 HA Amersfoort  
The Netherlands  
Attention: Jan-Ru Muller



## Assignment Form

To assign this Note, fill in the form below:

I or we assign and transfer this Security to

(Print or type assignee's name, address and zip code/postal code)

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint [●] agent to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

\_\_\_\_\_  
Date: \_\_\_\_\_ Your Signature: \_\_\_\_\_

Sign exactly as your name appears on the other side of this Note.

In connection with any transfer of any of the Notes evidenced by this certificate, the undersigned confirms that such Notes are being transferred in accordance with its terms:

**Check one box below**

- to the Issuer; or
- (1)  pursuant to an effective registration statement under the Securities Act of 1933; or
- (2)  inside the United States to a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933) that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in reliance on Rule 144A, in each case pursuant to and in compliance with Rule 144A under the Securities Act of 1933; or
- (3)  outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act in compliance with Rule 904 under the Securities Act of 1933; or
- (4)  pursuant to the exemption from registration provided by Rule 144 under the Securities Act of 1933.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered holder thereof; *provided, however,* that if box (4) is checked, the Trustee shall be entitled to require, prior to registering any such transfer of the Notes, such legal opinions, certifications and other information as the Issuer has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, such as the exemption provided by Rule 144 under such Act.

.....

Signature

Signature Guarantee:

.....

Signature must be guaranteed

.....

Signature

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“**STAMP**”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

**To be completed by purchaser if (2) above is checked.**

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: [●]

.....

Notice: To be executed by an executive officer

**[To be attached to Global Notes]**

**Schedule of Increases or Decreases in Global Note**

The following increases or decreases in this Global Note have been made:

<b>Date of Exchange</b>	<b>Amount of decrease in Principal amount of this Global Note</b>	<b>Amount of increase in Principal amount of this Global Note</b>	<b>Principal amount of this Global Note following such decrease or increase)</b>	<b>Signature of authorized officer of Trustee or Securities Custodian</b>
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### Option of Holder to Elect Purchase

If you want to elect to have this Note purchased by the Issuer pursuant to Section 4.06 or 4.10 of the Indenture, check the box: .

If you want to elect to have only part of this Note purchased by the Issuer pursuant to Section 4.06 or 4.10 of the Indenture, state the amount in principal amount: \$[●]

Dated: [●]

Your Signature: .....

(Sign exactly as your name appears on the other side of this Note.)

Signature Guarantee: .....

(Signature must be guaranteed)

Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“**STAMP**”) or such other “signature guarantee program” as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

**EXHIBIT B**

Dated [●], 20[●]

**[ZHAIKMUNAI INTERNATIONAL B.V.]<sup>1</sup>**

**as Issuer**

**[NAME OF GUARANTOR(S)]**

**as Guarantor[s]**

**and**

**CITIBANK N.A.**

**as Trustee**

**SUPPLEMENTAL INDENTURE**

**relating to**

**7.125% Senior Notes due 2019**

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<sup>1</sup> Insert Zhaikmunai LLP following Substitution.

This SUPPLEMENTAL INDENTURE, dated as of [●], 20[●], is among [Zhaikmunai International B.V.]<sup>2</sup> (the “**Issuer**”), each of the parties identified as a “**Guarantor**” on the signature page hereto (the “**Guarantors**”) and Citibank N.A., as trustee (the “**Trustee**”).

## RECITALS

WHEREAS, the Issuer and the Trustee, amongst others, entered into an Indenture, dated as of 13 November 2012 (the “**Indenture**”), pursuant to which the Issuer has originally issued U.S.\$560 million in principal amount of 7.125% Senior Notes due 2019 (the “**Notes**”); and

WHEREAS, Section 9.01(a)(3) of the Indenture provides that the Issuer and the Trustee may amend or supplement the Indenture in order to provide a guarantee (a “**Guarantee**”) to comply with Section 4.12 thereof without the consent of the Securityholders; and

WHEREAS, all acts and things prescribed by the Indenture, by law and by the charter and the bylaws (or comparable constituent documents) of the Issuer, of the Guarantors and of the Trustee necessary to make this Supplemental Indenture a valid instrument legally binding on the Issuer, the Guarantors and the Trustee, in accordance with its terms, have been duly done and performed;

NOW, THEREFORE, to comply with the provisions of this Indenture and in consideration of the above premises, the Issuer, the Guarantors and the Trustee covenant and agree for the equal and proportionate benefit of the respective Securityholders as follows:

## ARTICLE 1

*SECTION 1.01.* This Supplemental Indenture is supplemental to the Indenture and does and shall be deemed to form a part of, and shall be construed in connection with and as part of, the Indenture for any and all purposes.

*SECTION 1.02.* This Supplemental Indenture shall become effective immediately upon its execution and delivery by each of the Issuer, the Guarantors and the Trustee.

## ARTICLE 2

*SECTION 2.01.* From this date, by executing this Supplemental, each Guarantor whose signature appears below is subject to the provisions of the Indenture and to the extent provided for in Article 10 thereunder.

## ARTICLE 3

*SECTION 3.01.* Except as specifically modified herein, the Indenture and the Notes are in all respects ratified and confirmed (*mutatis mutandis*) and shall remain in full force and effect in accordance with their terms with all capitalized terms used herein without definition having the same respective meanings ascribed to them as in the Indenture.

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<sup>2</sup> Insert Zhaikmunai LLP following Substitution.

*SECTION 3.02.* Except as otherwise expressly provided herein, no duties, responsibilities or liabilities are assumed, or shall be construed to be assumed, by the Trustee by reason of this Supplemental Indenture. This Supplemental Indenture is executed and accepted by the Trustee subject to all the terms and conditions set forth in the Indenture with the same force and effect as if those terms and conditions were repeated at length herein and made applicable to the Trustee with respect hereto. The recitals in this Supplemental Indenture shall be taken as the statements of the Issuer and the Guarantors, and the Trustee assumes no responsibility for their correctness. The Trustee shall not be responsible or accountable in any manner whatsoever for or with respect to the validity or sufficiency of this Supplemental Indenture.

*SECTION 3.03.* **THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.**

*SECTION 3.04.* The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

*SECTION 3.05.* Each of the Guarantors hereto agrees that any suit, action or proceeding brought by any other party hereto arising out of or based upon this Supplemental Indenture or any Guarantee may be instituted in any state or Federal court in the Borough of Manhattan, New York, New York, and any appellate court from any thereof, and each of them irrevocably submits to the non exclusive jurisdiction of such courts in any such suit, action or proceeding. Each of the Guarantors irrevocably waives, to the fullest extent permitted by law, any objection to any suit, action, or proceeding that may be brought in connection with this Supplemental Indenture or any Guarantee, including such actions, suits or proceedings relating to securities laws of the United States of America or any state thereof, in such courts whether on the grounds of venue, residence or domicile or on the ground that any such suit, action or proceeding has been brought in an inconvenient forum. Each of the Guarantors agrees that final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon it, and may be enforced in any court to the jurisdiction of which such Person is subject by a suit upon such judgment; provided, however, that service of process is effected upon the applicable Guarantor, as the case may be, in the manner provided by the Indenture. Each Guarantor has appointed [●] as its authorized agent (the “**Authorized Agent**”), upon whom process may be served in any suit, action or proceeding arising out of or based upon this Supplemental Indenture or any Guarantees or the transactions contemplated herein which may be instituted in any state or Federal court in the Borough of Manhattan, New York, New York, by any Securityholder or the Trustee, and expressly accepts the non exclusive jurisdiction of any such court in respect of any such suit, action or proceeding. Each Guarantor hereby represents and warrants that the Authorized Agent has accepted such appointment and has agreed to act as said agent for service of process, and each Guarantor agrees to take any and all action, including the filing of any and all documents, that may be reasonably necessary to continue such respective appointment in full force and effect as aforesaid. Service of process upon the Authorized Agent shall be deemed, in every respect, effective service of process upon the Guarantors.

**[Signatures on following page]**

SIGNATURES

[ZHAIKMUNAI INTERNATIONAL B.V.]

as Issuer

By: \_\_\_\_\_

Name:

Title:

CITIBANK N.A

as Trustee

By: \_\_\_\_\_

Name:

Title:

[NAME OF GUARANTOR(S)]

as Guarantor

By: \_\_\_\_\_

Name:

Title:



## EXHIBIT C

### FORM OF CERTIFICATE OF TRANSFER

**Citigroup Global Markets Deutschland AG**, as Registrar

Reuterweg 16

60323 Frankfurt

Germany

Attention: Citi Germany Agency & Trust and Stock Events Department

**Citibank N.A.**, as Trustee

Citigroup Centre

Canada Square

Canary Wharf

London E14 5LB

United Kingdom

Attention: The Directors, Agency and Trust Department

**Zhaikmunai International B.V.**

Zuidsingel 1

3811 HA Amersfoort

The Netherlands

Attention: Jan-Ru Muller

**Re: 7.125% Senior Notes due 2019 of Zhaikmunai International B.V.**

Reference is hereby made to the Indenture, dated 13 November 2012 (the "**Indenture**"), among, *inter alios*, Zhaikmunai International B.V. (the "**Issuer**"), the Guarantors and Citibank N.A., as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

\_\_\_\_\_, (the "**Transferor**") owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of U.S.\$\_\_\_\_\_ (the "**Transfer**") to \_\_\_\_\_ (the "**Transferee**"), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

1.  **Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Definitive Note pursuant to Rule 144A.** The Transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "**Securities Act**"), and, accordingly, the Transferor hereby further certifies that the beneficial interest or the beneficial interest or Definitive Note is being transferred to a Person that the Transferor or any person acting on its behalf reasonably believed and believes is purchasing the beneficial interest or the beneficial interest or Definitive Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act to whom notice has been given that the transfer is being made in reliance on Rule 144A in a transaction meeting the requirements of Rule 144A under the Securities Act and such Transfer is in compliance with any applicable blue sky securities laws of any state or territory of the United States. Upon consummation of the proposed Transfer in accordance with the terms

of the Indenture, the transferred beneficial interest or the beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the restricted securities legend printed on the 144A Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

2.  **Check if Transferee will take delivery of a beneficial interest in the Regulation S Global Note or a Definitive Note pursuant to Regulation S.** The Transfer is being effected pursuant to and in accordance with Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that: (i) the Transfer is not being made to a person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States; (ii) no directed selling efforts have been made in contravention of the requirements of Rule 904(b) of Regulation S under the Securities Act; (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and (iv) if the proposed transfer is being effected prior to the expiration of the 40-day distribution compliance period as defined in Regulation S, the transferee is not a U.S. Person, or for the account or benefit of a U.S. Person (other than a distributor), as such term is defined pursuant to Regulation S of the Securities Act, and will take delivery only as a beneficial interest so transferred through Euroclear or Clearstream. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the restricted securities legend printed on the 144A Global Note and/or the Definitive Note and in the Indenture and the Securities Act.

3.  **Check and complete if Transferee will take delivery of a beneficial interest in a Global Note or a Definitive Registered Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S.** The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Global Notes and Definitive Registered Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state or territory of the United States.

This certificate and the statements contained herein are made for the benefit of the Trustee, the Issuer and any Guarantor.

*[Insert Name of Transferor]*

By:  
Name:  
Title:

Dated:

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE]

(a) a beneficial interest in the:

(i)  Rule 144A Global Note (ISIN \_\_\_\_\_ or CUSIP \_\_\_\_\_), or

(ii)  Regulation S Global Note (ISIN \_\_\_\_\_ or CUSIP \_\_\_\_\_),  
or

(b)  a Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) a beneficial interest in the:

(i)  Rule 144A Global Note (ISIN \_\_\_\_\_ or CUSIP \_\_\_\_\_), or

(ii)  Regulation S Global Note (ISIN \_\_\_\_\_ or CUSIP \_\_\_\_\_),  
or

(b)  a Definitive Note.

## EXHIBIT D

### FORM OF CERTIFICATE OF EXCHANGE

**Citigroup Global Markets Deutschland AG**, as Registrar

Reuterweg 16

60323 Frankfurt

Germany

Attention: Citi Germany Agency & Trust and Stock Events Department

**Citibank N.A.**, as Trustee

Citigroup Centre

Canada Square

Canary Wharf

London E14 5LB

United Kingdom

Attention: The Directors, Agency and Trust Department

**Zhaikmunai International B.V.**

Zuidsingel 1

3811 HA Amersfoort

The Netherlands

Attention: Jan-Ru Muller

**Re: 7.125% Senior Notes due 2019 of Zhaikmunai International B.V.**

Reference is hereby made to the Indenture, dated 13 November 2012 (the “**Indenture**”), among, *inter alios*, Zhaikmunai International B.V. (the “**Issuer**”), the Guarantors and Citibank N.A., as trustee. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

\_\_\_\_\_, (the “**Owner**”) owns and proposes to exchange the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of U.S.\$\_\_\_\_\_ in such Note[s] or interests (the “**Exchange**”) to be held following such Exchange as specified below and in Annex A hereto. In connection with the Exchange, the Owner hereby certifies that:

**1.  Check if Exchange is from beneficial interest in a Global Note for Definitive Notes.** In connection with the Exchange of the Owner’s beneficial interest in a Global Note for Definitive Notes in an equal amount, the Owner hereby certifies that such Definitive Notes are being acquired for the Owner’s own account without transfer. The Definitive Notes issued pursuant to the Exchange will bear the restricted securities legend and will be subject to restrictions on transfer enumerated in the Indenture and the Securities Act.

**2.  Check if Exchange is from Definitive Notes for beneficial interest in a Global Note.** In connection with the Exchange of the Owner’s Definitive Notes for beneficial interests in a Global Note in an equal amount, the Owner hereby certifies that such beneficial interests in a Global Note are being acquired for the Owner’s own account without transfer. The beneficial interests transferred in exchange will be subject to restrictions on transfer enumerated in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for the benefit the Trustee, the Issuer and each Guarantor.

*[Insert Name of Owner]*

By:

Name:

Title:

Dated:

ANNEX A TO CERTIFICATE OF EXCHANGE

1. The Owner owns and proposes to exchange the following:

[CHECK ONE]

(a) a beneficial interest in the:

(i)  Rule 144A Global Note (ISIN \_\_\_\_\_ or CUSIP \_\_\_\_\_), or

(ii)  Regulation S Global Note (ISIN \_\_\_\_\_ or CUSIP \_\_\_\_\_),  
or

(b)  a Definitive Note.

2. After the Exchange the Owner will hold:

[CHECK ONE]

(a) a beneficial interest in the:

(i)  Rule 144A Global Note (ISIN \_\_\_\_\_ or CUSIP \_\_\_\_\_), or

(ii)  Regulation S Global Note (ISIN \_\_\_\_\_ or CUSIP \_\_\_\_\_),  
or

(b)  a Definitive Note.