

**………………………….. 2019**

**[*COMPANY* *NAME*]**

**and**

**SBERBANK OF RUSSIA**

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**ASSIGNMENT AGREEMENT**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Herbert Smith Freehills CIS LLP

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**THIS ASSIGNMENT AGREEMENT** (the **"Agreement"**) is dated ................................................ 2019 and made between:

1. **[*COMPANY NAME*]**,[a company incorporated under the laws of [*jurisdiction*] under registration number [*number*] with its registered office at [*address*] (the **"Assignee"**)] ***OR*** [[a limited liability company]/[a joint stock company]/[a public joint stock company] organised and existing under the laws of the Russian Federation under main state registration number [*ORGN*], located at: [*address*]]; and
2. **SBERBANK OF RUSSIA**, a banking institution organised and existing under the laws of the Russian Federation registered with the Central Bank of the Russian Federation under number 1481, located at: ulitsa Vavilova, 19, 117997, Moscow, Russian Federation, main state registration number – 1027700132195 (the **"Assignor"**).

**WHEREAS:**

1. The Assignor has provided financing to the Borrower under the Facility Agreement.
2. Obligations of the Borrower under the Facility Agreement are secured, among other things, by the Guarantee.
3. The Assignor is a party to the Security Agency Agreement in capacity of senior beneficiary.
4. The Parties have entered into the Facility Assignment Agreement and, further to the transactions contemplated by the Facility Assignment Agreement, the Assignor wishes to assign all its rights under the Guarantee and the Security Agency Agreement to the Assignee, and the Assignee wishes to assume such rights pursuant to the terms of this Agreement.

**IT IS AGREED** as follows:

# DEFINITIONS AND INTERPRETATION

## **Definitions**

In this Agreement (including the recitals above):

1. **"Assigned Agreements"** means the Guarantee and the Security Agency Agreement.
2. **"Borrower"** means LLC "Central Market – Capital's Groceries", a company incorporated in the Russian Federation (with main state registration number (OGRN) 1047796477002,) and whose registered office is at Building 1, Korobeinikov Lane, Moscow, Russia.
3. **"Consideration"** meansconsideration for the assignment of the Primary Rights payable by the Assignee to the Assignor under the Facility Assignment Agreement.
4. **"Effective Date"** means the date on which the assignment of the Primary Rights to the Assignee becomes effective, as determined pursuant to the Facility Assignment Agreement.
5. **"Facility Agreement"** means a facility agreement between the Borrower and the Assignor (as lender) dated 30 June 2011 (as amended from time to time).
6. **"Facility Assignment Agreement"** means an assignment agreement entered into on or about the date of this Agreement between the Assignee and the Assignor with respect to assignment to the Assignee of all rights of the Assignor under the Facility Agreement.
7. **"Guarantee"** means a deed of guarantee and indemnity dated 19 September 2016 entered into between the Assignor (as beneficiary) and the Guarantor (as guarantor).
8. **"Guarantor"** means Horizons Investing Ltd, a company incorporated in the British Virgin Islands with its registered office is at Wickhams Cay 1, Vanterpool Plaza, 2nd floor, Road Town, Tortola, British Virgin Islands.
9. **"Party"** means a party to this Agreement.
10. **"Primary Rights"** means all rights of the Assignor under the Facility Agreement which are assigned pursuant to the Facility Assignment Agreement.
11. **"SBIL"** means Sberbank Investments Limited, a limited liability company incorporated in the Republic of Cyprus with registration number HE 293417 and registered address at: Poseidonos 1, LEDRA BUSINESS CENTRE, Egkomi, 2406 Nicosia, Cyprus.
12. **"Security Agency Agreement"** means a security sharing and agency deed dated 19 September 2016 entered into between the Assignor (as senior beneficiary), SBIL (as junior beneficiary), the Guarantor (as security provider) and SBIL (as security agent).

## **Construction**

* + 1. Unless a contrary indication appears, any reference in this Agreement to:
       1. any **"Party"**, the **"Assignor"**, the **"Assignee"**, the **"Borrower"** or the **"Guarantor"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Facility Agreement, the Assigned Agreements and this Agreement;
       2. **"assets"** includes present and future properties, revenues and rights of every description;
       3. an "**agreement**" includes a deed and instrument;
       4. the **"Facility Agreement"**,the **"Guarantee"**,the **"Facility Assignment Agreement"**, the **"Security Agency Agreement"**, the **"Assigned Agreements"** or any other agreement or instrument is a reference to that agreement or instrument as amended, novated, supplemented, extended or restated;
       5. a **"judgment"** includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
       6. a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
       7. a **"law"** includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute, treaty or other legislative measure, in each case of any jurisdiction whatever (and **"lawful"** and **"unlawful"** shall be construed accordingly);
       8. the words **"include"** and **"including"** are to be construed without limitation;
       9. words in the singular include the plural and words in the plural include the singular; and
       10. a provision of law is a reference to that provision as amended or re-enacted;
    2. Clause headings are for ease of reference only.

## **Third party rights**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

# Assignment of RiGHTS

With effect from (and including) the Effective Date, the Assignor:

### assigns absolutely to the Assignee all its rights under the Assigned Agreements;

### is released from all its rights, obligations and duties under the Assigned Agreements; and

### ceases to be a party to, and is no longer bound by the terms of, the Assigned Agreements.

# assumption of rights

With effect from (and including) the Effective Date, the Assignee:

### assumes absolutely all rights under the Assigned Agreements which the Assignor assigns pursuant to Clause 2.1.1;

### assumes all rights, obligations and duties under the Assigned Agreements from which the Assignor is released pursuant to Clause 2.1.2; and

### becomes a party to and, is bound by the terms of, the Assigned Agreements.

# consideration

The Parties hereby confirm that:

### consideration for the assignment of the rights of the Assignor assigned under this Agreement is included into the Consideration; and

### the Consideration represents due, valuable and sufficient consideration for the assignment of such rights.

# REPRESENTATIONS AND WARRANTIES of the Assignee

## The Assignee represents and warrants to the Assignor that:

### it is a [*limited liability corporation*], duly incorporated and validly existing and good standing under the law of its jurisdiction of incorporation;

### it has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Agreement;

### the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;

### the entry into and performance by it of, and the transactions contemplated by, this Agreement do not and will not conflict with:

#### any law or regulation or judicial or official order applicable to it; or

#### its constitutional documents; or

#### any agreement or instrument binding upon it or any of its assets or cause a termination event or default (howsoever described) under any such agreement or instrument;

### it has obtained all necessary consents and authorisations for the performance by it of this Agreement;

### it is not necessary that this Agreement to be filed, recorded or enrolled with any court or other authority in the jurisdiction of its incorporation or that any stamp, registration or similar tax be paid on or in relation to this Agreement or the transactions contemplated by this Agreement;

### no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a materially adverse effect on its ability to comply with its obligations under this Agreement (to the best of its knowledge and belief) been started or threatened which affects or involves it; and

### it is not necessary under the laws of its jurisdiction of incorporation that the Assignor should be licensed, qualified or otherwise entitled to carry on business in the jurisdiction of incorporation of the Assignee and the Assignor is not or will not be deemed to be resident, domiciled or carrying on business in such jurisdiction of incorporation by reason only of execution, performance and/or enforcement of this Agreement.

## The representations set out in Clause 5.1 are made on the date of this Agreement and are repeated on the Effective Date.

# REPRESENTATIONS AND WARRANTIES of the Assignor

## Subject to Clause 6.3, the Assignor represents and warrants to the Assignee that:

### it is a public joint stock company and financial institution duly incorporated and validly existing and good standing under the law of the Russian Federation;

### it has the power to enter into, perform and deliver, and has taken all necessary corporate action to authorise the entry into, performance and delivery of, this Agreement; and

### the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations.

## The representations set out in Clause 6.1 are made on the date of this Agreement and are repeated on the Effective Date.

* 1. The Assignor makes no representation or warranty and assumes no responsibility to the Assignee for anything of the following:
     1. the financial condition and status of the Guarantor or any other party under the Assigned Agreements;
     2. the legality, validity, effectiveness, adequacy or enforceability of the Assigned Agreements and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Assigned Agreements;
     3. whether it or the Assignee has or will have recourse, and the nature and extent of that recourse, against the Guarantor, any other person or any assets under or in connection with the Assigned Agreements, the transactions contemplated by the Assigned Agreements or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Assigned Agreements; and
     4. the adequacy, accuracy and/or completeness of the information provided by the Guarantor or any other person under or in connection the Assigned Agreements, the transactions contemplated by the Assigned Agreements or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Assigned Agreements,

and any representations or warranties implied by law are excluded.

* 1. The Parties agree and acknowledge that the provision of any documents or information by the Assignor under or in connection with the Facility Assignment Agreement shall be without any representation, warranty or liability for accuracy, completeness or otherwise on the part of the Assignor.

# Liabilities of the Parties

* 1. The Assignor shall not be liable to any person for any cost or loss suffered by that person as a result of acts or omissions of the Assignor in its capacity as beneficiary under the Assigned Agreements, unless directly caused by fraud of the Assignor in its capacity as beneficiary under the Assigned Agreements prior to the Effective Date.
  2. The Assignee shall not be liable to any person for any damages, costs or losses suffered in connection with the Assigned Agreements by any person which relate to or arise out of any matters or events occurring prior to the Effective Date, including without limitation any damages, costs or losses caused or otherwise incurred as a result of acts or omissions of the Assignor.

# FURTHER ASSURANCE

## Each Party agrees that it will, on the request of the other Party, execute all such documents and take all such steps as may be necessary to give full effect to the assignment contemplated by this Agreement, provided that the Assignor is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

# Notices

## **Notices**

A notice (including any approval, consent or other communication) in connection with this Agreement:

### must be in writing;

### must be left at the address of the addressee or sent by pre‑paid recorded airmail delivery to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this Section in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number and marked for the attention of such other person, as the relevant Party may from time to time specify by notice given in accordance with this Clause 9;

### the relevant details of each Party at the date of this Agreement are:

**The Assignor:**

Address: "Sberbank of Russia", ulitsa Vavilova, 19, 117997, Moscow, Russian Federation

Facsimile: [*fax No.*]

Attention: [*name*]

**The Assignee:**

Address: [*address*]

Facsimile: [*fax No.*]

Attention: [*name*]

### for the avoidance of doubt, must not be sent by electronic mail.

## **Effectiveness**

In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with this Clause 9.2. Subject to Clause 9.3 below, a notice is deemed to be received:

### in the case of a notice left at the address of the addressee, upon delivery at that address;

### in the case of a posted letter, on the fifth day after posting; and

### in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient,

provided that a notice to the Assignor will only be effective on actual receipt by it.

## **Non-Business Days**

A notice received or deemed to be received in accordance with Clause 9.2 above on a day which is not a Business Day or after 5 p.m. on any Business Day, according to local time in the place of receipt, shall be deemed to be received on the next following Business Day.

## **Changes to Contact Details**

Each Party undertakes to notify the other Party by notice served in accordance with this Clause 9 if the address specified herein is no longer an appropriate address for the service of notices.

## **English language**

* + 1. Any notice given under or in connection with this Agreement must be in English.
    2. All other documents provided under or in connection with this Agreement must be:
       1. in English; or
       2. if not in English, and if so required by the Assignor, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

# GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

# Enforcement

## **Arbitration**

### Any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual dispute or claim) (a **"Dispute"**) shall be referred to arbitration and finally settled under the under the LCIA Rules, which are deemed to be incorporated by reference into this Clause 11.1.

### The claimant shall nominate one arbitrator and the respondent shall nominate one arbitrator for appointment by the LCIA Court. The two arbitrators nominated by the Parties shall within 15 days of the appointment of the second arbitrator, agree upon a third arbitrator who shall act as Chairman of the Tribunal. Notwithstanding anything to the contrary in the LCIA Rules, in agreeing upon a third arbitrator, the two arbitrators may communicate directly with each other and their respective appointing parties. If no agreement is reached upon the third arbitrator within 15 days of the appointment of the second arbitrator, the LCIA Court shall expeditiously nominate and appoint a third arbitrator to act as Chairman of the Tribunal. If the claimant or claimant parties and/or the respondent or respondent parties fail to nominate an arbitrator, an arbitrator shall be appointed on their behalf by the LCIA Court in accordance with the LCIA Rules. In such circumstances, any existing nomination or confirmation of an arbitrator shall be unaffected, and the remaining arbitrator(s) shall be appointed in accordance with this Clause 11.1.

### Each Party expressly agrees and consents to this process for nominating and appointing the arbitrators and, in the event that this Clause 11.1 operates to exclude a Party's right to choose its own arbitrator, irrevocably and unconditionally waives any right to do so.

### The place of arbitration shall be London, England.

### The language of the arbitration proceedings shall be English.

### The award of the arbitrators shall be final and binding on the Parties, their successors and assigns.

### The arbitration agreement under this Clause 11.1 is governed by English law.

## **Litigation**

Nothing in Clause 11.1 shall limit the rights of the Parties to bring proceedings against another Party in any court of competent jurisdiction in order to:

### enforce an arbitration award rendered in accordance with Clauses 11.1; or

### make a claim for interim or injunctive relief.

# MISCELLANEOUS

## **Variation**

This Agreement may not be varied except by an agreement in writing signed by the Parties.

## **No Partnership**

Neither this Agreement nor any other agreement or arrangement of which it forms part, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership between the Parties.

## **Partial Invalidity**

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect or this Agreement is or becomes ineffective in any respect under the law of any jurisdiction, such illegality, invalidity, unenforceability or ineffectiveness shall not affect:

### the legality, validity or enforceability of the remaining provisions of this Agreement or the effectiveness in any other respect of this Agreement under such law; or

### the legality, validity or enforceability of such provision or the effectiveness of this Agreement under the law of any other jurisdiction.

## **Counterparts**

This Agreement may be executed in counterparts and such counterparts taken together shall constitute one and the same instrument.

**IN WITNESS** whereof this Agreement has been duly executed on the date stated at the beginning of this Agreement.

**SIGNATORIES**

**Assignee**

[***COMPANY*** ***NAME***]

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**Assignor**

**SBERBANK OF RUSSIA**

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