



**Registration of a Charge**

Company name: **ENRC Finance Limited**

Company number: **06050675**

Received for Electronic Filing: **20/05/2016**



X57DK3TL

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**Details of Charge**

Date of creation: **11/05/2016**

Charge code: **0605 0675 0005**

Persons entitled: **JSC VTB BANK**

Brief description:

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **CLIFFORD CHANCE LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 6050675

Charge code: 0605 0675 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 11th May 2016 and created by ENRC Finance Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 20th May 2016 .

Given at Companies House, Cardiff on 23rd May 2016

The above information was communicated by electronic means and authenticated  
by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

DATED 11 May 2016

ENRC FINANCE LIMITED  
AS CHARGOR

IN FAVOUR OF

JSC VTB BANK  
AS SECURITY AGENT

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FLOATING CHARGE AGREEMENT

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THIS AGREEMENT is made by way of deed on 11 May 2016

BY:

- (1) **ENRC FINANCE LIMITED** registered in England and Wales with company number 06050675 (the "**Chargor**"); in favour of
- (2) **JSC VTB BANK** in its capacity as security agent for and on behalf of itself and in the name and on behalf of each of the other Finance Parties (as defined below) in accordance with the provisions of the Finance Documents (the "**Security Agent**" which expression shall include any person for the time being appointed as trustee, or as an additional trustee, for the purposes of the Finance Documents).

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement:

"**Charged Assets**" means all of the assets and undertaking of the Chargor which from time to time are the subject of any Security created or expressed to be created by it in favour of the Security Agent by or pursuant to this Agreement.

"**Collateral Rights**" means all rights, powers and remedies of the Security Agent provided by or pursuant to this Agreement or by law.

"**Discharge Date**" means the time at which the Security Agent, with the approval of the Majority Lenders, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents.

"**Enforcement Event**" means:

- (a) an Event of Default which is continuing in respect of which a notice has been given pursuant to clause 21.26 (*Acceleration*) of the Facility Agreement to exercise, or direct the Security Agent to exercise, any or all of its rights, remedies, powers or discretions under any Finance Document and the Chargor has been notified of the same; or
- (b) a request from the Chargor to the Security Agent that it exercise any of its powers under this Agreement.

"**ENRC N.V.**" means ENRC N.V., a public company with limited liability (*naamloze vennootschap*) incorporated under the laws of the Netherlands, having its seat (*statutaire zetel*) in Amsterdam, the Netherlands and its registered office at Piet

Heinkade 55, 1019GM, Amsterdam, the Netherlands, and registered with the Dutch Chamber of Commerce under number 34260677.

**"Facility Agreement"** means the facility agreement dated 15 February 2016 between, among others, Joint-stock company "Transnational Company "Kazchrome", Joint-stock company "Eurasian energy corporation", Joint-stock company "Shubarkol komir" and Eurasian Resources Group B.V. each as an Original Borrower, Eurasian Resources Group as the Parent, ENRC N.V. as the Obligors' Agent, JSC VTB Bank as Arranger, Agent and Security Agent and the Lenders referred to therein.

**"Finance Party"** means the Agent, the Arranger, the Security Agent or a Lender.

**"Notice of Charge"** means a notice of charge in such form as may be specified by the Security Agent.

**"Receiver"** means a receiver, receiver and manager or, where permitted by law, an administrative receiver and that term will include any appointee made under a joint or several appointment.

**"Related Rights"** means, in relation to any asset:

- (a) the proceeds of sale or rental of any part of that asset;
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset;
- (c) all rights, powers, benefits, claims, causes of action, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of or derived from that asset; and
- (d) any monies and proceeds paid or payable in respect of that asset.

**"Secured Obligations"** means all present and future obligations and liabilities at any time due, owing or incurred by any Obligor to any Secured Party under the Finance Documents, whether actual or contingent and whether incurred solely or jointly and as principal or surety or in any other capacity, including the obligations set out in clause 26.2 (*Parallel Debt (Covenant to pay the Security Agent)*) of the Facility Agreement.

**"Security Period"** means the period beginning on the date of this Agreement and ending on the Discharge Date.

## 1.2 Terms defined in other Finance Documents

Unless defined in this Agreement, or the context otherwise requires, a term defined in the Facility Agreement or in any other Finance Document has the same meaning in this Agreement, or any notice given under or in connection with this Agreement.

### 1.3 Construction

In this Agreement:

- (a) the rules of interpretation contained in clauses 1.2 (*Construction*) and 1.3 (*Currency Symbols and definitions*) of the Facility Agreement shall apply to the construction of this Agreement, or in any notice given under or in connection with this Agreement;
- (b) any reference to the "**Security Agent**", the "**Secured Parties**", the "**Finance Parties**", the "**Chargor**" or any "**Obligor**" shall be construed so as to include its or their (and any subsequent) successors in title, permitted assigns and permitted transferees in accordance with their respective interests and, in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with the Facility Agreement;
- (c) any reference to "**including**" and "**include**" shall mean including and include "without limitation" and any words following such terms shall be construed as illustrative and shall not limit the meaning or scope of the phrase or words preceding such terms; and
- (d) references in this Agreement to any Clause shall be to a Clause contained in this Agreement.

### 1.4 Incorporation of provisions from Facility Agreement

The provisions of clauses 1.6 (*Third party rights*), 11 (*Tax gross up and indemnities*), 13 (*Other indemnities*), 33.1 (*Accounts*), 33.2 (*Certificates and determinations*) and 36 (*Amendments and waivers*) of the Facility Agreement are deemed to form part of this Agreement as if expressly incorporated into it and as if all references in those clauses to the Facility Agreement were references to this Agreement.

### 1.5 Present and future assets

A reference in this Agreement to any Charged Asset or other asset includes, unless the contrary intention appears, present and future Charged Assets and other assets.

### 1.6 Security Agent assumes no obligation

The Security Agent shall not be under any obligation in relation to the Charged Assets as a consequence of this Agreement and the Chargor shall at all times remain liable to perform all obligations in respect of the Charged Assets.

## 2. COVENANT TO PAY

### 2.1 Covenant to pay

The Chargor covenants with the Security Agent that it shall, on demand of the Security Agent pay, discharge and satisfy the Secured Obligations in accordance with their respective terms.

### 3. **COMMON PROVISIONS**

#### 3.1 **Common provisions as to all Security**

All the Security created by or pursuant to this Agreement is:

- (a) created with full title guarantee;
- (b) created in favour of the Security Agent as trustee for the Secured Parties and the Security Agent shall hold the benefit of this Agreement and the Security created by or pursuant to it on trust for the Secured Parties; and
- (c) continuing security for the payment and discharge of all the Secured Obligations.

### 4. **FLOATING CHARGE**

#### 4.1 **Floating charge**

- (a) The Chargor charges by way of first floating charge in favour of the Security Agent all present and future assets and undertaking of the Chargor except for the shares in ENRC N.V. held by the Chargor.
- (b) The floating charge created pursuant to paragraph (a) of Clause 4.1 above shall be deferred in point of priority to all fixed security validly and effectively created by the Chargor under the Finance Documents in favour of the Security Agent as security for the Secured Obligations.
- (c) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created pursuant to paragraph (a) of Clause 4.1 above.

#### 4.2 **Crystallisation: by notice**

The Security Agent may at any time by notice in writing to any Chargor convert the floating charge created pursuant to Clause 4.1 (*Floating Charge*) with immediate effect into a fixed charge as regards any property or assets specified in the notice if:

- (a) an Event of Default has occurred;
- (b) the Security Agent (acting reasonably) considers that it is desirable in order to protect the priority of the security; or
- (c) any Chargor requests the Security Agent to exercise any of its powers under this Agreement.



#### 4.3 **Crystallisation: automatic**

Notwithstanding Clause 4.2 (*Crystallisation: by notice*) and without prejudice to any law which may have a similar effect, the floating charge created pursuant to Clause 4.1 (*Floating Charge*) will automatically be converted (without notice) with immediate effect into a fixed charge as regards all the assets subject to the floating charge if:

- (a) the Chargor creates or attempts to create any Security (other than any Security permitted under the terms of the Facility Agreement), over any of the Charged Assets;
- (b) any person levies or attempts to levy any distress, execution or other process against any of the Charged Assets;
- (c) there is an application presented to the court for the making of an administration order in relation to the Chargor;
- (d) there is a written notice given by any person (who is entitled to do so) of its intention to appoint an administrator of the Chargor or the filing of such a notice with the court;
- (e) a Receiver is appointed over all or any of the Charged Assets;
- (f) a meeting is convened for the passing of a resolution for the voluntary winding-up of the Chargor;
- (g) a petition is presented for the compulsory winding-up of the Chargor;
- (h) a provisional liquidator is appointed to the Chargor; or
- (i) a resolution is passed or an order is made for the dissolution or reorganisation of the Chargor,

or any analogous procedure or step is taken in any jurisdiction.

### 5. **PROVISIONS AS TO SECURITY AND PERFECTION**

#### 5.1 **Negative pledge and restriction on dealings**

The Chargor shall not at any time during the Security Period:

- (a) create or permit to subsist any Security over all or any part of the Charged Assets, except for Security permitted under paragraphs (c)(i), (c)(ii), (c)(iii) or (c)(iv), or (c)(vi) to the extent disclosed under the Disclosure Letter, of clause 20.5 (*Negative pledge*) of the Facility Agreement or Security granted with the prior written consent of the Security Agent (acting on the instructions of the Majority Lenders; or
- (b) dispose of or otherwise deal with any part of the Charged Asset, except any disposal or dealing in the ordinary course of business of the Chargor or if such

disposal or dealing is made with the prior written consent of the Security Agent (acting on the instructions of the Majority Lenders).

## 5.2 Implied covenants for title

- (a) The covenants set out in sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clause 4 (*Floating charge*).
- (b) It shall be implied in respect of Clause 4 (*Floating charge*) that the Chargor is disposing of the Charged Assets free from all charges and incumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

## 5.3 Notice of Security

- (a) The Chargor shall, when requested by the Security Agent from time to time, promptly deliver to the Security Agent (or procure the delivery of) a Notice of Charge duly executed by, or on behalf of, the Chargor in relation to any asset which is the subject of any floating charge which is converted into a fixed charge pursuant to Clauses 4.2 (*Crystallisation: by notice*) and 4.3 (*Crystallisation: automatic*).
- (b) The Chargor shall use all reasonable endeavours to procure from each recipient of such a Notice of Charge an acknowledgement in the form set out therein.

## 5.4 Further advances

- (a) Subject to the terms of the Finance Documents, each Lender is under an obligation to make further advances to the Chargor and that obligation will be deemed to be incorporated in this Agreement as if set out in this Agreement.
- (b) The Chargor consents to an application being made to the Land Registry to enter the obligation to make further advances on the Charges Register of any registered land forming part of the Charged Assets.

## 5.5 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to all or any part of the Charged Assets as the Security Agent may determine and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any such person or be bound to supervise the proceedings or acts of any such person.

## **6. FURTHER ASSURANCE**

### **6.1 Extension of implied covenant**

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in Clause 6.2 below.

### **6.2 Further assurance**

The Chargor shall promptly, at its own cost, take all such action (including making all filings, registrations and notarisations) and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require) in favour of the Security Agent or its nominee(s):

- (a) to create, perfect, protect and/or maintain the Security created or intended to be created in respect of the Charged Assets (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Assets) or for the exercise of the Collateral Rights; and/or
- (b) following an Enforcement Event, to facilitate the realisation of the Charged Assets.

### **6.3 Consents**

- (a) The Chargor shall, as soon as possible, use its best endeavours to obtain any consents necessary or to remove any restriction on the creation of Security (in each case in form and substance satisfactory to the Security Agent, acting reasonably) to enable the assets of the Chargor to be the subject of the relevant fixed security pursuant to this Agreement.
- (b) Immediately upon obtaining any such consent or removing any such restriction, the asset concerned will become subject to that fixed security and the Chargor shall promptly deliver a copy of such consent or evidence of such removal to the Security Agent.

## **7. GENERAL UNDERTAKINGS**

### **7.1 Information and access**

The Chargor shall from time to time on request of the Security Agent, furnish the Security Agent with such information as the Security Agent may reasonably require about the Chargor's business and affairs, the Charged Assets and its compliance with the terms of this Agreement and the Chargor shall permit the Security Agent, its representatives, professional advisers and contractors, free access at all reasonable times and on reasonable notice (a) to inspect and take copies and extracts from the books, accounts and records of the Chargor and (b) to view the Charged Assets (without becoming liable as mortgagee in possession).

## 8. ENFORCEMENT OF SECURITY

### 8.1 Enforcement

Any time after the occurrence of an Enforcement Event the Security created by or pursuant to this Agreement is immediately enforceable and the Security Agent may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

- (i) secure and perfect its title to all or any part of the Charged Assets;
- (ii) enforce all or any part of that Security at the times, in the manner and on the terms it thinks fit and take possession of and hold or dispose of all or any part of the Charged Assets (and any assets of the Chargor which, when got in, would be part of the Charged Assets) at the times, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration); and
- (iii) whether or not it has appointed a Receiver, exercise all or any of the rights, powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Agreement) on mortgagees and by this Agreement on any Receiver or otherwise conferred by law on mortgagees or Receivers.

### 8.2 Effect of moratorium

The Security Agent shall not be entitled to exercise its rights under Clause 8.1 (*Enforcement*) or Clause 4.2 (*Crystallisation: by notice*) where the right arises as a result of an Event of Default occurring solely due to any person obtaining, or taking steps to obtain, a moratorium pursuant to Schedule A1 of the Insolvency Act 1986.

## 9. EXERCISE OF POWERS UNDER THE POWER OF ATTORNEY

Without prejudice to the rights of any other person dealing with the Security Agent or any Receiver and without limiting any provision of Clause 14 (*Protection of purchasers*) or Clause 15 (*Power of Attorney*), the Security Agent agrees with the Chargor that it shall not exercise its rights under the power of attorney referred to in Clause 15 (*Power of Attorney*) unless:

- (a) the Chargor has failed to comply with any of its obligations under Clause 6.2 (*Further assurance*) within 5 Business Days of the request of the Security Agent; or
- (b) the Security has become enforceable pursuant to Clause 8 (*Enforcement of Security*).

## 10. EXTENSION OF POWERS AND RIGHT OF APPROPRIATION

### 10.1 Extension of power of sale

The power of sale or other disposal conferred on the Security Agent and on any Receiver by this Agreement shall operate as a variation and extension of the statutory

power of sale under section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Agreement.

## 10.2 **Restrictions**

The restrictions contained in sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to the exercise by the Security Agent of its right to consolidate all or any of the Security created by or pursuant to this Agreement with any other Security in existence at any time or to its power of sale, which powers may be exercised by the Security Agent without notice to the Chargor on or at any time after the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8 (*Enforcement of Security*).

## 10.3 **Right of appropriation**

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8.1 (*Enforcement*) to the extent that the provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003, as amended, (the "**Regulations**") apply to a Charged Asset, the Security Agent shall have the right to appropriate all or any part of that Charged Asset in or towards the payment or discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the relevant Chargor. For this purpose, the parties agree that the value of that Charged Asset shall be in the case of cash, the amount standing to the credit of each of the Accounts, together with any accrued but unposted interest, at the time of appropriation. The parties further agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## 10.4 **Statutory powers**

The powers conferred by this Agreement on the Security Agent are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the Law of Property Act 1925, the Insolvency Act 1986 or otherwise by law (as extended by this Agreement) and such powers shall remain exercisable from time to time by the Security Agent in respect of any part of the Charged Assets. In the case of any conflict between the statutory powers contained in any such Acts and those conferred by this Agreement, the terms of this Agreement shall prevail.

## 11. **APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

### 11.1 **Appointment and removal**

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8.1 (*Enforcement*), the Security Agent may by deed or otherwise (acting through an authorised officer of the Security Agent):

- (a) without prior notice to the Chargor:
  - (i) appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets;

- (ii) appoint two or more Receivers of separate parts of the Charged Assets;
  - (iii) remove (so far as it is lawfully able) any Receiver so appointed;
  - (iv) appoint another person(s) as an additional or replacement Receiver(s);  
and
  - (v) appoint one or more persons to be an administrator of any Chargor pursuant to paragraph 14 of Schedule B1 of the Insolvency Act 1986;  
and
- (b) appoint one or more persons to be an administrator of the Chargor pursuant to paragraph 12 of Schedule B1 of the Insolvency Act 1986.

## 11.2 Capacity of Receivers

Each person appointed to be a Receiver pursuant to Clause 11.1 (*Appointment and removal*) shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver;
- (b) the agent of the Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Agent; and
- (c) entitled to remuneration for his services at a rate to be fixed by the Security Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

## 11.3 Statutory powers of appointment

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Agent under the Law of Property Act 1925 (as extended by this Agreement) or otherwise and such powers shall remain exercisable from time to time by the Security Agent in respect of any part of the Charged Assets.

## 12. POWERS OF RECEIVERS

Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to the Charged Assets (and any assets of the Chargor which, when got in, would be Charged Assets) in respect of which he was appointed, and as varied and extended by the provisions of this Agreement (in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor):

- (a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
- (b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);

- (c) all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do; and
- (d) the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to:
  - (i) any of the functions, powers, authorities or discretions conferred on or vested in him;
  - (ii) the exercise of the Collateral Rights (including realisation of all or any part of the assets in respect of which that Receiver was appointed); or
  - (iii) bringing to his hands any assets of the Chargor forming part of, or which when got in would be, Charged Assets.

### **13. APPLICATION OF PROCEEDS**

All monies received or recovered and any non-cash recoveries made or received by the Security Agent or any Receiver pursuant to this Agreement or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied first in the payment or other discharge of the costs, charges and expenses incurred and payments made by the Receiver, the payment or other discharge of his remuneration and of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Security Agent (notwithstanding any purported appropriation by the Chargor) in accordance with the terms of the Facility Agreement.

### **14. PROTECTION OF PURCHASERS**

#### **14.1 Consideration**

The receipt of the Security Agent or any Receiver shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Assets or making any acquisition, the Security Agent or any Receiver may do so for such consideration (whether cash or non-cash), in such manner and on such terms as it thinks fit.

#### **14.2 Protection of purchasers**

No purchaser or other person dealing with the Security Agent or any Receiver shall be bound to inquire whether the right of the Security Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned to inquire whether that power has been properly or regularly exercised by the Security Agent or such Receiver in such dealings.

### **15. POWER OF ATTORNEY**

#### **15.1 Appointment and powers**

The Chargor by way of security irrevocably appoints the Security Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and

deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on the Chargor by this Agreement or any other agreement binding on the Chargor to which the Security Agent is a party (including the execution and delivery of any deeds, charges, assignments or other Security and any transfers of the Charged Assets and perfecting and/or releasing the Security created or intended to be created in respect of the Charged Assets); and
- (b) enabling the Security Agent and any Receiver to exercise, or delegate the exercise of, any of the Collateral Rights (including, after the occurrence of an Enforcement Event, the exercise of any right of a legal or beneficial owner of the Charged Assets).

## 15.2 **Ratification**

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## 16. **EFFECTIVENESS OF SECURITY**

### 16.1 **Continuing security**

- (a) The Security created by or pursuant to this Agreement shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Security Agent in writing.
- (b) No part of the Security from time to time intended to be created by this Agreement will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

### 16.2 **Cumulative rights**

The Security created by or pursuant to this Agreement, and the Collateral Rights, shall be cumulative, in addition to and independent of every other Security which the Security Agent or any other Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent Security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security. No prior Security held by the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Charged Assets shall merge into the Security created by this Agreement.

### 16.3 **No prejudice**

The Security created by or pursuant to this Agreement, and the Collateral Rights, shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person by the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties or by any variation of the terms of the trust upon which the Security



Agent holds the Security or by any other thing which might otherwise prejudice that Security or any Collateral Right.

#### **16.4 Remedies and waivers**

No failure on the part of the Security Agent to exercise, nor any delay on its part in exercising, any Collateral Right, shall operate as a waiver of that Collateral Right or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of the Security Agent shall be effective unless it is in writing. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

#### **16.5 No liability**

None of the Security Agent, its nominee(s) or any Receiver shall be liable:

- (a) to account as a mortgagee or mortgagee in possession; or
- (b) for any loss arising by reason of taking any action permitted by this Agreement or any neglect or default in connection with the Charged Assets or taking possession of or realising all or any part of the Charged Assets,

except in the case of gross negligence or wilful default upon its part.

#### **16.6 Partial invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

#### **16.7 Waiver of defences**

The obligations assumed, and the Security created, by the Chargor under this Agreement, and the Collateral Rights, will not be affected by any act, omission, matter or thing which, but for this Clause 16.7, would reduce, release or prejudice any of its obligations under, or the Security created by, this Agreement (whether or not known to the Chargor or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any Obligor or other person or any non-presentation or non-

observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of, any Obligor or any other person;
- (e) any amendment, novation, supplement, extension, restatement (in each case, however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or Security or of the Secured Obligations including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security or of the Secured Obligations; and
- (g) any insolvency or similar proceedings.

#### **16.8 Chargor intent**

Without prejudice to the generality of Clause 16.7 (*Waiver of Defences*), the Chargor expressly confirms that it intends that the Security created under this Agreement, and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **16.9 Immediate recourse**

The Chargor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any other person before claiming from the Chargor under this Agreement or enforcing the Security created by this Agreement. This waiver applies irrespective of any law or any provision of this Agreement to the contrary.

#### **16.10 Deferral of rights**

Until the end of the Security Period, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Agreement:

- (a) to be indemnified by an Obligor or in respect of any other person;
- (b) to claim any contribution from any guarantor or any other person in respect of any Obligor's obligations under the Finance Documents;

- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under the Finance Documents or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any Obligor or other person to make any payment, or perform any obligation, in respect of which any Obligor or other person has given a guarantee, undertaking or indemnity under any Finance Document;
- (e) to exercise any right of set-off against any Obligor or other person; and/or
- (f) to claim or prove as a creditor of any Obligor or other person in competition with any Secured Party.

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to any Secured Party by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 13 (*Application of Proceeds*).

#### **16.11 Additional Security**

The Security created by the Chargor under this Agreement and the Collateral Rights are in addition to and are not in any way prejudiced by any other guarantee or Security now or subsequently held by any Secured Party.

### **17. PRIOR SECURITY INTERESTS**

#### **17.1 Redemption or transfer**

In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against any of the Charged Assets or in case of exercise by the Security Agent or any Receiver of any power of sale or right of appropriation or application under this Agreement, the Security Agent may redeem such prior Security or procure the transfer thereof to itself.

#### **17.2 Accounts**

The Security Agent may settle and agree the accounts of the prior Security and any accounts so settled and agreed will be conclusive and binding on the Chargor.

#### **17.3 Costs of redemption or transfer**

All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargor to the Security Agent on demand.

## 18. SUBSEQUENT SECURITY INTERESTS

If the Security Agent (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting all or any part of the Charged Assets which is prohibited by the terms of any Finance Document, all payments thereafter made by or on behalf of the Chargor to the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Secured Parties will (in the absence of any express contrary appropriation by the Chargor) be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations at the time that notice was received.

## 19. SUSPENSE ACCOUNTS

All monies received, recovered or realised by the Security Agent under this Agreement (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Security Agent considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant account) pending their application from time to time at the Security Agent's discretion, in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

## 20. RELEASE OF SECURITY

### 20.1 Release of Security

The Security Agent shall, at the request and cost of the Chargor, release and cancel the Security created by this Agreement:

- (a) upon the Discharge Date; or
- (b) if the Security Agent is otherwise required to release the Security created by this Agreement (or a part thereof) in order to effect a transaction which is permitted under the Finance Documents,

in each case, provided that no Default is continuing and subject to Clause 20.2 (*Clawback*) and without recourse to, or any representation or warranty by, the Security Agent or any of its nominees.

### 20.2 Clawback

If the Security Agent considers that any amount paid or credited to any Secured Party is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Agreement and the Security created by this Agreement will continue and such amount will not be considered to have been irrevocably paid or credited.

## 21. SET-OFF

The Chargor authorises the Security Agent (but the Security Agent shall not be obliged to exercise such right), after the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 8.1 (*Enforcement*), to set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Security Agent to any Chargor and apply any credit balance to which the Chargor is entitled on any account with the Security Agent in accordance with Clause 13 (*Application of Proceeds*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

## 22. ASSIGNMENT

### 22.1 No assignments or transfers by Chargor

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Agreement.

### 22.2 Assignments by the Security Agent

The Security Agent may assign all or any of its rights under this Agreement. The Security Agent shall be entitled to disclose such information concerning the Chargor and this Agreement as the Security Agent considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

### 22.3 Successors

This Agreement shall remain in effect despite any amalgamation or merger (however effected) relating to the Security Agent. References to the Security Agent shall include (i) any assignee or successor in title of the Security Agent, (ii) any entity into which the Security Agent is merged or converted or with which it may be consolidated, (iii) any legal entity resulting from any merger, conversion or consolidation to which such Security Agent is a party and (iv) any other person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Security Agent under this Agreement or to which, under such laws, those rights and obligations have been transferred (such person described in (i) to (iv) being a successor to the Security Agent for all purposes under the Finance Documents).

## 23. NOTICES

### 23.1 Communications in Writing

Each communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, shall be made by fax or letter.

## 23.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

- (a) in the case of the Chargor, ENRC Finance Limited, 5<sup>th</sup> Floor, 6 St Andrew Street, London EC4A 3AE (*fax number* +44(0) 1582 439200) marked for the attention of Vivienne McLean; and
- (b) in the case of the Security Agent, 12 Presnenskaya Embankment, 123100 Moscow (*fax number* +7 (495) 956 71 48) marked for the attention of Bondarenko Oksana and Loan Admin,

or any substitute address, fax number, or department or officer as the Party may notify to the Agent pursuant to clause 32 (*Notices*) of the Facility Agreement by not less than five Business Days' notice.

## 23.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post, postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 23.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified above (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with paragraphs (a) and (b) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

## 23.4 Electronic communication

- (a) Any communication to be made between the Chargor and the Security Agent under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two parties:

- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above may only be made in that way to the extent that the Chargor and the Security Agent agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by the Chargor to the Security Agent only if it is addressed in such manner as the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the addressee of the relevant communication has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 23.4.

### **23.5 English language**

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Security Agent, 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.

## **24. DISCRETION AND DELEGATION**

### **24.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Agreement by the Security Agent or any Receiver may, subject to the terms and conditions of the Facility Agreement, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

## 24.2 Delegation

Each of the Security Agent and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Security Agent or the Receiver itself.

## 25. ENFORCEMENT

### 25.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity) or any non-contractual obligations arising out of or in connection with this Agreement (a "**Dispute**").
- (b) The Chargor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary.
- (c) Notwithstanding paragraph (a) of this Clause 25.1 (*Jurisdiction*), the Security Agent may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

## 26. GOVERNING LAW

This Agreement and all non-contractual obligations arising out of or in connection with it are governed by English law.

**THIS AGREEMENT** has been signed by the Security Agent and executed as a deed by the Chargor and is delivered by it as a deed on the date stated at the beginning of this Agreement.



EXECUTION PAGE TO AGREEMENT

**The Chargor**

**EXECUTED AS A DEED** by  
**ENRC FINANCE LIMITED**  
acting by *Director*  
in the presence of:

)  
)  
)  
) *P. Aggleton*

Signature of witness:

*E. Cherkissova*

Name (in BLOCK CAPITALS):

E. CHERKISSOVA

Address:

*c/o Piet Heinkade 55  
1019 GM Amsterdam  
The Netherlands*

**The Security Agent**

Signed by  
**JSC VTB BANK**  
for and on its behalf  
by its duly authorised  
Officer

)  
)  
)  
)  
)

EXECUTION PAGE TO AGREEMENT

**The Chargor**

EXECUTED AS A DEED by )  
ENRC FINANCE LIMITED )  
acting by )  
in the presence of: )

Signature of witness:

Name (in BLOCK CAPITALS):

Address:

**The Security Agent**

Signed by )  
JSC VTB BANK )  
for and on its behalf )  
by its duly authorised )  
Officer )



Yuri Soloviev  
First Deputy Chairman