



**Registration of a Charge**

Company name: **GLENCORE ENERGY UK LTD.**

Company number: **04542769**



X7H4PMMZ

Received for Electronic Filing: **22/10/2018**

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**Details of Charge**

Date of creation: **17/10/2018**

Charge code: **0454 2769 0186**

Persons entitled: **ING BANK N.V. IN ITS CAPACITY AS SECURITY AGENT FOR THE  
FINANCE PARTIES (AND ITS SUCCESSORS IN TITLE AND PERMITTED  
TRANSFEREES)**

Brief description:

**Contains floating charge(s) .**

**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 SAVE FOR MATERIAL REDACTED PURSUANT  
TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC  
COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION  
FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.**

Certified by:

**LINKLATERS LLP**



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

Company number: 4542769

Charge code: 0454 2769 0186

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th October 2018 and created by GLENCORE ENERGY UK LTD. was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd October 2018 .

Given at Companies House, Cardiff on 24th October 2018

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**

EXECUTION VERSION

CERTIFIED THAT, SAVE FOR  
MATERIAL REDACTED PURSUANT  
TO SECTION 859G OF THE COMPANIES  
ACT 2006, THIS COPY INSTRUMENT IS  
A CORRECT COPY OF THE ORIGINAL  
INSTRUMENT.

DATED 17 October 2018

GLENCORE ENERGY UK LTD.  
AS CHARGOR

IN FAVOUR OF

ING BANK N.V.  
AS SECURITY AGENT

LINKLATERS LLP  
ONE SILK STREET  
LONDON  
EC2Y 8HQ  
22/10/2018

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BORROWER AR COLLECTION ACCOUNT  
SECURITY AGREEMENT

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**THIS AGREEMENT** (the "**Deed**") is made by way of deed on 17 October 2018

**BY**

- (1) **GLENCORE ENERGY UK LTD.** a private limited company registered in England and Wales with company registration number 04542769 (the "**Chargor**") in favour of
- (2) **ING BANK N.V.** whose address is Bijlmerplein 888, 1102 MG Amsterdam, The Netherlands as trustee for each of the Finance Parties on the terms and conditions set out in the Facility Agreement (the "**Security Agent**").

**RECITALS:**

- (A) The Chargor has entered into the Facility Agreement (as defined below) pursuant to which the Lenders defined therein have agreed, subject to the terms and conditions of the Facility Agreement, to make certain facilities available to the Chargor.
- (B) This is the "Borrower AR Collection Account Security Agreement" referred to in the Facility Agreement. It is a condition precedent to the Amendment and Restatement Agreement that the Parties enter into this Deed.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed:

"**Account**" means the bank account of the Chargor details of which are set out in Schedule 1 (*Details of Account*) (including any renewal, redesignation, replacement, subdivision or sub-account of such account) and the debt or debts represented thereby.

"**Account Bank**" means Bank of America N.A., London Branch.

"**Amendment and Restatement Agreement**" means the amendment and restatement agreement dated on or about the date of this Deed and made between, amongst others, the Chargor, Glencore PLC as guarantor, the Security Agent and the financial institutions listed therein as lenders (as amended, varied, novated or supplemented from time to time).

"**Borrower AR Collection Account Control Deed**" shall have the meaning given to it in the Amendment and Restatement 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 Deed.

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

**"Effective Date"** shall have the meaning given to it in the Amendment and Restatement Agreement.

**"Enforcement Event"** means (i) the occurrence of an Event of Default pursuant to clause 23.1 (*Failure to pay*) of the Facility Agreement or (ii) an acceleration notice being served pursuant to clause 23.14(b) (*Acceleration and cancellation*) of the Facility Agreement or a notice of Enforcement Action being served in accordance with clause 23.14(c) (*Acceleration and cancellation*) of the Facility Agreement as a result of any Event of Default.

**"Facility Agreement"** means the facility agreement dated 20 October 2017 and amended and restated on the Effective Date and made between, amongst others, the Chargor, Glencore PLC as guarantor, the Security Agent and the financial institutions listed therein as lenders (as amended, varied, novated or supplemented from time to time).

**"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) 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
- (b) any monies and proceeds paid or payable in respect of that asset.

**"Revocation Notice"** shall mean a notice from the Security Agent to the Chargor revoking the authorisation granted pursuant to Clause 6.3 (*Restrictions on Account*).

**"Secured Liabilities"** means all present and future moneys, debts and liabilities due, owing or incurred by the Obligors to any Finance Party under or in connection with any Finance Document, including following any increase in the Total Proposed Participations pursuant to clause 2.2 (*Increase*) of the Facility Agreement, (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise).

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect of creating a security interest.

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which the Security Agent is satisfied that the Secured Liabilities have been irrevocably and unconditionally paid or discharged in full and no Finance Party is under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor or any other person under any of the Finance Documents.

## 1.2 Terms defined in other Finance Documents

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

## 1.3 Construction

In this Deed:

- (a) the rules of interpretation contained in clause 1.2 (*Construction*) of the Facility Agreement shall apply to the construction of this Deed, or in any notice given under or in connection with this Deed;
- (b) any reference to the "Security Agent", the "Finance Parties" or the "Chargor" 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 Deed to any Clause or Schedule shall be to a Clause or Schedule contained in this Deed.

## 1.4 Incorporation of provisions from Facility Agreement

The provisions of clauses 1.3 (*Third party rights*), 32.1 (*Accounts*) and 32.2 (*Certificates and determinations*) of the Facility Agreement are incorporated into this Deed as if expressly set out in full in this Deed, but so that references in those clauses to the Facility Agreement are references to this Deed.

## 1.5 Present and future assets

- (a) A reference in this Deed to the Account or other asset includes, unless the contrary intention appears, present and future Account(s) and other assets.
- (b) The absence of or incomplete details of the Account shall not affect the validity or enforceability of any Security under this Deed.

## 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 Liabilities in accordance with their respective terms.



### **3. FLOATING CHARGE**

#### **3.1 Floating charge**

The Chargor, with full title guarantee and as continuing Security for the payment and discharge of all the Secured Liabilities, charges in favour of the Security Agent by way of first floating charge, all of its rights, claims, title and interest from time to time in and to the Account and all Related Rights.

#### **3.2 Crystallisation: by notice**

The Security Agent may at any time by notice in writing to the Chargor convert the floating charge created pursuant to Clause 3.1 (*Floating charge*) with immediate effect into a fixed charge if:

- (a) an Enforcement Event has occurred and is continuing; and/or
- (b) the Security Agent considers that it is desirable to do so in order to protect or preserve the Security over the Charged Assets and/or the priority of such Security.

#### **3.3 Crystallisation: automatic**

Notwithstanding Clause 3.2 (*Crystallisation: by notice*) and without prejudice to any law which may have a similar effect, the floating charge created pursuant to Clause 3.1 (*Floating charge*) will automatically be converted (without notice) with immediate effect into a fixed 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 the Charged Assets; or
- (b) any person levies or attempts to levy any distress, execution or other process against the Charged Assets,

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

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

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

The Chargor shall not at any time during the Security Period create or permit to subsist any Security over the Account or any part of it, nor do anything else prohibited by clause 22.4 (*Negative pledge*) of the Facility Agreement, except as permitted by that clause.

#### **4.2 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 3.1 (*Floating charge*).

- (b) It shall be implied in respect of Clause 3.1 (*Floating charge*) that the Chargor is disposing of the Charged Assets free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

#### **4.3 Notice of Security**

The Chargor and the Security Agent shall (and the Chargor shall use all reasonable endeavours to procure that the Account Bank shall), on or about the date of this Deed, enter into the Borrower AR Collection Account Control Deed.

#### **4.4 Further advances**

Subject to the terms of the Facility Agreement the Lenders are under an obligation to make further advances to the Chargor and that obligation shall be deemed to be incorporated into this Deed as if set out in this Deed.

### **5. FURTHER ASSURANCE**

#### **5.1 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 5.2 below.

#### **5.2 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 specify (and in such form as the Security Agent may 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 Account (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 credit balance on the Account) or for the exercise of the Collateral Rights; and/or
- (b) to facilitate the realisation of the Security created or intended to be created in respect of the Account.

### **6. ACCOUNT**

#### **6.1 Closure**

The Chargor shall not, without the Security Agent's prior written consent, permit or agree to close the Account or maintain any other accounts for the purposes of receivables collection other than with respect to the Non-Recourse Receivables.

## **6.2 Disposal**

The Chargor shall not (nor agree to), without the prior written consent of the Majority Lenders, enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub-license, transfer or otherwise dispose of any Charged Asset which is subject to a security interest pursuant to this Deed and which would materially affect the Chargor's ability to perform its obligations under the Finance Documents to which it is a party.

## **6.3 Restrictions on Account**

- (a) The Security Agent hereby authorises the Chargor to freely deal with and freely use any credit balance from time to time on the Account and deal with the Charged Assets as permitted by the Finance Documents until the Security Agent issues a Revocation Notice to the Chargor, it being understood that upon the receipt by the Chargor of a Revocation Notice, such authorisation shall be revoked immediately and the Chargor shall not be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on Account.
- (b) The Security Agent shall be entitled to issue a Revocation Notice to the Chargor:
  - (i) prior to the occurrence of an Event of Default, only should the Security Agent, in its reasonable opinion, deem that in the absence of the issuance of a Revocation Notice, the Security created under this Deed would be invalid or voidable; and
  - (ii) upon and following the occurrence of an Event of Default, at the discretion of the Security Agent.

## **6.4 Security Agent rights**

Upon the occurrence of an Event of Default, the Security Agent shall be entitled, without notice or further demand, immediately to exercise the Collateral Rights and to:

- (a) demand and receive all and any monies due under or arising out of the Account; and
- (b) exercise in relation to the Account all such rights as the Chargor was then entitled to exercise in relation to the Account or might, but for the terms of this Deed, exercise.

## **7. CHARGOR'S REPRESENTATIONS AND UNDERTAKINGS**

### **7.1 Representations**

The representations and warranties set out in clause 20 (*Representations*) of the Facility Agreement are made by the Chargor to the Security Agent on the date of this Deed.

## **7.2 Undertakings**

During the Security Period, the Chargor shall not do, or permit to be done, anything which could prejudice all or any of the Security created or expressed to be created by or pursuant to this Deed.

## **8. ENFORCEMENT OF SECURITY**

### **8.1 Enforcement**

Any time after the occurrence of an Enforcement Event (as long as it is continuing) the Security created by or pursuant to this Deed 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 the Account (including transferring the same into the name of the Security Agent or its nominee(s)) or otherwise exercise in relation to the Account all the rights of an absolute owner;
- (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, dispose of, apply or transfer all or any part of the credit balance on the Account (and any assets of the Chargor which, when got in, would be part of the credit balance on the Account), 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 Deed) on mortgagees and by this Deed 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 3.2 (*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. EXTENSION OF POWERS AND RIGHT OF APPROPRIATION**

### **9.1 Extension of power of sale**

The power of sale or other disposal conferred on the Security Agent and on any Receiver by this Deed 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 Liabilities shall be deemed due and payable for that purpose) on the date of this Deed.

## 9.2 Restrictions

The restrictions contained in sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed 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 Deed 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 Deed has become enforceable in accordance with Clause 8 (*Enforcement of Security*).

## 9.3 Right of appropriation

After the Security created by or pursuant to this Deed has become enforceable in accordance with Clause 8 (*Enforcement of Security*), to the extent that the provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003, as amended, (the "**Regulations**") apply to the Account, the Security Agent shall have the right to appropriate all or any part of the credit balance on that Account in or towards the payment or discharge of the Secured Liabilities and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of that Account shall be the amount of the credit balance on it, together with any accrued but unposted interest that is paid in relation to the Account, at the time the right of appropriation is exercised. The parties further agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## 9.4 Statutory powers

The powers conferred by this Deed 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 Deed) and such powers shall remain exercisable from time to time by the Security Agent in respect of the Account. In the case of any conflict between the statutory powers contained in any such Acts and those conferred by this Deed, the terms of this Deed shall prevail.

# 10. APPOINTMENT OF RECEIVER

## 10.1 Appointment and removal

After the Security created by or pursuant to this Deed has become enforceable in accordance with Clause 8 (*Enforcement of Security*), the Security Agent may by deed or otherwise (acting through an authorised officer of the Security Agent), without prior notice to the Chargor:

- (a) appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets;
- (b) remove (so far as it is lawfully able) any Receiver so appointed; and
- (c) appoint another person(s) as an additional or replacement Receiver(s).

## 10.2 Capacity of Receivers

Each person appointed to be a Receiver pursuant to Clause 10.1 (*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).

## 10.3 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 Deed) or otherwise and such powers shall remain exercisable from time to time by the Security Agent in respect of the whole or any part of the Account.

## 11. 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 Account (and any assets of the Chargor which, when got in, would be part of the Account) in respect of which he was appointed, and as varied and extended by the provisions of this Deed (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 Account 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 part of the Account.

## **12. 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 Deed 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 in accordance with paragraph 4.1 (*Order of application*) of schedule 15 (*Security Agency Provisions*) of the Facility Agreement.

## **13. PROTECTION OF PURCHASERS**

### **13.1 Consideration**

The receipt of the Security Agent or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any credit balance on the Account, 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.

### **13.2 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.

## **14. POWER OF ATTORNEY**

### **14.1 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 Deed 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, all or any of the Collateral Rights (including, after the occurrence of an Event of Default, the exercise of any right of a legal or beneficial owner of the Charged Assets).

#### **14.2 Ratification**

The Chargor shall ratify and confirm all things done and all documents executed by any attorney appointed in accordance with Clause 14.1 (*Appointment and powers*) in the exercise or purported exercise of all or any of his powers.

### **15. EFFECTIVENESS OF SECURITY**

#### **15.1 Continuing security**

- (a) The Security created by or pursuant to this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities 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 Deed will be considered satisfied or discharged by an intermediate payment, discharge or satisfaction of the whole or any part of the Secured Liabilities.

#### **15.2 Cumulative rights**

The Security created by or pursuant to this Deed, and the Collateral Rights, shall be cumulative, in addition to and independent of every other Security which the Security Agent or any other Finance Party may at any time hold for the Secured Liabilities 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 Finance Parties over the whole or any part of the Account shall merge into the Security created by this Deed.

#### **15.3 No prejudice**

The Security created by or pursuant to this Deed, 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, or the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Finance 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.

#### **15.4 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 Deed. No election to affirm this Deed 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.



### **15.5 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 Deed or any neglect or default in connection with the Account or taking possession of or realising all or any part of the Account,

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

### **15.6 Partial invalidity**

If, at any time, any provision of this Deed 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 Deed nor the legality, validity or enforceability 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 Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

### **15.7 Waiver of defences**

The obligations assumed, and the Security created, by the Chargor under this Deed, and the Collateral Rights, will not be affected by any act, omission, matter or thing which, but for this Clause 15.7, would reduce, release or prejudice any of its obligations under, or the Security created by, this Deed (whether or not known to the Chargor or any Finance Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any 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 Liabilities including, any change in the purpose of, any extension of or any 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 Liabilities; or
- (g) any insolvency or similar proceedings.

#### **15.8 Chargor intent**

The Chargor expressly confirms that it intends that the Security created under this Deed, 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.

#### **15.9 Immediate recourse**

The Chargor waives any right it may have of first requiring the any Finance 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 Deed or enforcing the Security created by this Deed. This waiver applies irrespective of any law or any provision of this Deed to the contrary.

#### **15.10 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 Deed:

- (a) to be indemnified by an Obligor or any other person;
- (b) to claim any contribution from any guarantor or 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 Finance Party under the Finance Documents or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents by any Finance 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 Finance 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 Finance Party by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance 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 12 (*Application of Proceeds*).

#### **15.11 Additional Security**

The Security created by the Chargor under this Deed 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 Finance Party.

### **16. PRIOR SECURITY INTERESTS**

#### **16.1 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 the Account 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 Deed, the Security Agent may redeem such prior Security or procure the transfer thereof to itself.

#### **16.2 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.

#### **16.3 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 together with accrued interest thereon calculated in accordance with clause 10.3 (*Default interest*) of the Facility Agreement.

### **17. SUBSEQUENT SECURITY INTERESTS**

If the Security Agent (acting in its capacity as trustee or otherwise) or any of the other Finance 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 Account which is prohibited by the terms of any Finance Document, all payments thereafter by or on behalf of the Chargor to the Security Agent (whether in its capacity as trustee or otherwise) or any of the other Finance 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 Liabilities at the time that notice was received.

### **18. SUSPENSE ACCOUNTS**

All monies received, recovered or realised by the Security Agent under this Deed (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 Liabilities 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.

## **19. RELEASE OF SECURITY**

### **19.1 Release of Security**

Upon the expiry of the Security Period, the Security Agent shall, at the request and cost of the Chargor, release and cancel the Security constituted by this Deed, subject to Clause 19.2 (*Clawback*) and without recourse to, or any representation or warranty by, the Security Agent or any of its nominees.

### **19.2 Clawback**

If the Security Agent considers that any amount paid or credited to any Finance 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 Deed and the Security created by this Deed will continue and such amount will not be considered to have been irrevocably paid or credited.

## **20. ASSIGNMENT**

### **20.1 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 Deed.

### **20.2 Assignments by the Security Agent**

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

### **20.3 Successors**

This Deed 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 transferee, 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 Deed 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).

**21. NOTICES**

All notices or other communications to be given under or in connection with the Agreement shall be made pursuant to and in accordance with the provisions of the Facility Agreement.

**22. COUNTERPARTS**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

**23. DISCRETION AND DELEGATION**

**23.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Deed 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.

**23.2 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 Deed (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.

**24. GOVERNING LAW**

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

**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 Deed (including a dispute relating to the existence, validity or termination of this Deed or the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Deed) (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.

**THIS DEED** has been signed by the Security Agent and executed as a deed by the Chargor and is delivered by it as a deed.

**SCHEDULE 1**  
**DETAILS OF ACCOUNT**

Account Bank	Account
Bank of America N.A., London Branch	Bank of America N.A., New York SWIFT: [REDACTED]  For account of Bank of America N.A., London Branch SWIFT: [REDACTED] Account No: [REDACTED] IBAN: [REDACTED]

**EXECUTION PAGE**

**The Chargor**

**SIGNED** as a **DEED** by <sup>Karen Davis</sup>  
Authorized Signatory )  
as attorney for )  
**GLENCORE ENERGY UK LTD.** )



Signature

in the presence of



Signature of witness

.....  
LISA KERR

Name of witness

.....  
50 BERKELEY STREET

Address of witness

.....  
LONDON

.....  
W10 8HD

**The Security Agent**

**EXECUTED** as a **DEED** by )  
**ING BANK N.V.** )  
acting by )

Name:

.....  
Authorised Signatory

Name:

.....  
Authorised Signatory



**EXECUTION PAGE**

**The Chargor**

**SIGNED** as a **DEED** by )  
\_\_\_\_\_)  
as attorney for )  
**GLENCORE ENERGY UK LTD.** )

\_\_\_\_\_) Signature

in the presence of

..... Signature of witness

..... Name of witness

..... Address of witness

.....

.....

**The Security Agent**

**EXECUTED** as a **DEED** by )  
**ING BANK N.V.** )  
acting by )

Name:

.....  
Authorised Signatory M.S. Preuss

Name:

.....  
Authorised Signatory

H.R. van Räs