



**Registration of a Charge**

Company name: **ESSAR ENERGY LIMITED**

Company number: **07108619**

Received for Electronic Filing: **10/01/2019**



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**Details of Charge**

Date of creation: **27/12/2018**

Charge code: **0710 8619 0021**

Persons entitled: **VTB BANK (PUBLIC JOINT-STOCK COMPANY) AS SECURITY TRUSTEE  
AND AGENT FOR THE SECURED PARTIES (AS DEFINED IN THE  
INSTRUMENT)**

Brief description:

**Contains fixed charge(s).**

**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 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:

**DECHERT LLP**



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

Company number: 7108619

Charge code: 0710 8619 0021

The Registrar of Companies for England and Wales hereby certifies that a charge dated 27th December 2018 and created by ESSAR ENERGY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 10th January 2019 .

Given at Companies House, Cardiff on 14th January 2019

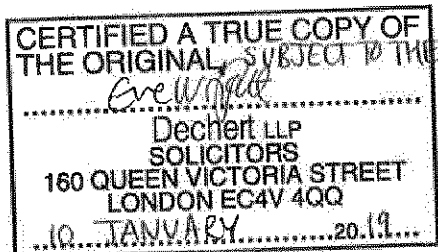
The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES



MATERIAL REDACTED  
PURSUANT TO S859G OF  
THE COMPANIES ACT 2006

Execution version

DATED 27 DECEMBER 2018

**ESSAR ENERGY LIMITED**

as Chargor

and

**VTB BANK (PUBLIC JOINT-STOCK COMPANY)**  
as the Essar Ports Security Agent

**ESSAR PORTS DEBENTURE**

*This Deed is subject to and has the benefit of an Intercreditor Agreement dated the same date as this Deed and made between, among others, the Chargor, the Essar Ports Security Agent and the Secured Parties.*

**Dechert**  
LLP

## Table of Contents

|     |   | Page |
|-----|---|------|
| 1.  | DEFINITIONS AND INTERPRETATION.....         | 2    |
| 2.  | COVENANT TO PAY.....                        | 7    |
| 3.  | ESSAR PORTS SECURITY AGENT .....            | 7    |
| 4.  | CREATION OF SECURITY .....                  | 7    |
| 5.  | ASSIGNMENTS .....                           | 7    |
| 6.  | FIXED CHARGES .....                         | 7    |
| 7.  | FLOATING CHARGE.....                        | 8    |
| 8.  | REPRESENTATIONS – GENERAL .....             | 9    |
| 9.  | RESTRICTIONS ON DEALINGS .....              | 10   |
| 10. | ENFORCEMENT OF SECURITY .....               | 11   |
| 11. | RECEIVER AND ADMINISTRATOR.....             | 13   |
| 12. | POWERS OF RECEIVER .....                    | 15   |
| 13. | RIGHT OF APPROPRIATION .....                | 17   |
| 14. | APPLICATION OF PROCEEDS .....               | 18   |
| 15. | EXPENSES AND INDEMNITY .....                | 18   |
| 16. | DELEGATION .....                            | 18   |
| 17. | FURTHER ASSURANCES .....                    | 19   |
| 18. | POWER OF ATTORNEY .....                     | 19   |
| 19. | PRESERVATION OF SECURITY .....              | 19   |
| 20. | ASSIGNMENT AND TRANSFER .....               | 22   |
| 21. | THIRD PARTY RIGHTS .....                    | 22   |
| 22. | MISCELLANEOUS.....                          | 23   |
| 23. | RELEASE .....                               | 24   |
| 24. | COUNTERPARTS.....                           | 24   |
| 25. | NOTICES.....                                | 24   |
| 26. | APPLICABLE LAW AND JURISDICTION .....       | 26   |
|     | SCHEDULE 1 LIST OF RELEVANT DOCUMENTS ..... | 27   |
|     | SCHEDULE 2 FORMS OF NOTICE .....            | 28   |
|     | Part 1 Notice to Counterparty.....          | 28   |
|     | Part 2 Acknowledgement of Counterparty..... | 31   |

THIS DEED is made on 27 DECEMBER 2018

**BETWEEN:**

- (1) **ESSAR ENERGY LIMITED**, a private limited company incorporated under the laws of England and Wales with company number 7108619 (the "**Chargor**"); and
- (2) **VTB BANK (PUBLIC JOINT-STOCK COMPANY)** as security trustee and agent for the Secured Parties (as defined below) (the "**Essar Ports Security Agent**").

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed:

"**Act**" means the Law of Property Act 1925;

"**Administrator**" means any administrator(s) appointed pursuant to the provisions of the Insolvency Act 1986;

"**Ancillary Rights**" means (i) all amounts which the Chargor receives (directly or indirectly) under the Relevant Documents, including but not limited to all payments (including, without limitation, interest, default interest, principal, fees, indemnities, recoveries, distributions, sharing payments, sale proceeds, indemnity payments, costs and expenses); (ii) the benefit of all Relevant Documents and other related contracts, guarantees, appointments, warranties and other documents to which the Chargor is a party, which are in its favour or of which it has the benefit (including, in each case, but without limitation, the right to demand and receive all monies whatsoever payable to or for its benefit under or arising from any of them, all discretions or remedies provided for in any of them or available at law or in equity in relation to any of them, the right to deliver notices, make demands, grant consents or waivers, compel performance of any of them and all other rights, interests and benefits whatsoever accruing to or for its benefit arising from any of them); and (iii) all authorisations (statutory or otherwise) held or required in connection with the Relevant Documents, and all rights in connection with them, provided that nothing in this definition shall constitute the Essar Ports Security Agent as a mortgagee in possession;

"**EGFL Facility Rights**" means all rights, title and interests of the Chargor in, to, and under each EGFL Loan Finance Document, including all related rights and any sums or assets derived therefrom whether or not against third parties;

"**EGFL Loan Facility Agreement**" means the facility agreement entered into between, among others, the Parent as borrower, the companies named therein as guarantors, the Chargor as lender, VTB Bank (Public Joint-Stock Company) as the agent and the security agent as amended by the EGFL Loan Facility Agreement Amendment Letter (as amended and/or amended and restated from time to time);

"**EGFL Loan Facility Agreement Amendment Letter**" means the amendment letter relating to the EGFL Loan Facility Agreement dated on or about the date of this Deed between Essar Energy Limited as lender, VTB Bank (Public Joint-Stock Company) as

facility agent, security agent, joint security agent, VTB Capital plc, the Parent as borrower and the entities listed therein as original guarantors;

**"EGFL Loan Finance Documents"** means each of the following documents:

- (a) the EGFL Loan Facility Agreement; and
- (b) each of the "Finance Documents" under and as defined in the EGFL Loan Facility Agreement;

**"Essar Energy Discharge Date"** has the meaning given to it in the Intercreditor Agreement;

**"Essar Energy First Ranking Security Document"** means the first ranking security document granted in respect of the Security Assets by the Chargor in relation to the Essar Energy Finance Documents and including any confirmatory security document relating thereto;

**"Essar Energy Guarantor"** has the meaning given to it in the Essar Ports Facilities Agreement;

**"Essar Ports Facilities Agreement"** means the facilities Agreement dated on or about the date of this Deed and entered into between the Parent, Essar Sapphire Holdings Limited as borrower, the companies listed in Schedule 1 thereto as guarantors, VTB Bank (Public Joint-Stock Company) as lender, agent and security agent and VTB Capital plc as arranger (as amended from time to time);

**"Financial Collateral"** means, in relation to the Chargor, any of the Security Assets comprising financial collateral within the meaning of the Financial Collateral Regulations;

**"Financial Collateral Regulations"** the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226);

**"Floating Charge Assets"** means those assets of the Chargor from time to time subject to a floating charge pursuant to this Deed;

**"Intercreditor Agreement"** has the meaning given to that term in the Essar Ports Facilities Agreement;

**"Parent"** means Essar Global Fund Limited an exempted company incorporated under the laws of the Cayman Islands with company registration number HL-154766 and having its registered office at the offices of Estera Trust (Cayman) Limited, Clifton House, 75 Fort Street, P.O. Box 1350, George Town, Grand Cayman, KY1-1108, Cayman Islands;

**"Party"** means a party to this Deed;

**"Raceview Intercreditor Deed"** means the intercreditor deed dated 27 March 2008 (registered with the Registrar General on 22 April 2008 (Reg C491 No. 139)) between, amongst others, the Parent, Standard Chartered Bank, as joint security agent, ICICI Bank Limited and Axis Bank Limited, as amended and restated from time to time (including most recently by a supplemental deed dated 21 October 2016, registered with the Registrar General on 25 November 2016 (Title No CLN201611/000482)) and subject to the adjustments agreed pursuant to the side letter dated 23 December 2016 between Essar Global Fund Limited, Axis Bank Limited, DIFC Branch, ICICI Bank Limited, Singapore Branch, VTB Capital plc and VTB Bank (Public Joint-Stock Company) and as further

amended and supplemented by the Raceview Intercreditor Supplemental Deed;

**"Raceview Intercreditor Supplemental Deed"** the supplemental deed dated on the dated on or about the date of this Deed between the Parent, VTB Bank (Public Joint-Stock Company) as acceding VTB security agent, acceding VTB facility agent, joint security agent and the VTB lender, the entities listed therein as other facilities obligors and IDBI Trustceship Services Limited as the onshore collateral trustee and the onshore collateral agent in respect of the Raceview Intercreditor Deed;

**"Receiver"** means an administrative receiver, receiver and manager or a receiver, in each case appointed under this Deed or any Finance Document, including any appointee appointed under a joint or several appointment;

**"Receivables"** means all sums of money receivable by the Chargor at any time consisting of or payable under or derived from any Relevant Document or any other Security Asset;

**"Relevant Documents"** means each of the EGFL Loan Finance Documents, each of the agreements, instruments or other documents specified in Schedule 1 (*List of Relevant Documents*) or any other agreement, instrument or other document designated as a Relevant Document by the Essar Ports Security Agent;

**"Reserve Account"** has the meaning given to such term in the Essar Ports Facilities Agreement;

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Obligor, each Security Provider and each Essar Energy Guarantor to any Secured Party under the Finance Documents;

**"Security Assets"** means all the assets of the Chargor which have been or are intended to be assigned or are otherwise the subject of any security created or constituted by this Deed;

**"Security Financial Collateral Arrangement"** has the meaning given to that expression in the Financial Collateral Regulations; and

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

## 1.2 Construction

1.2.1 In this Deed (unless the context requires otherwise):

1.2.1.1 each of the "Essar Ports Security Agent" and any "Chargor" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Essar Ports Security Agent, any person for the time being appointed as Essar Ports Security Agent or Essar Ports Security Agents;

1.2.1.2 capitalised terms defined in the Essar Ports Facilities Agreement have the same meaning in this Deed unless expressly defined in this Deed;



- 1.2.1.3 the provisions of clause 1.2 (*Construction*) of the Essar Ports Facilities Agreement (other than clause 1.2(d)) apply to this Deed as though they were set out in full in this Deed except that references to "*this Agreement*" will be construed as references to this Deed;
- 1.2.1.4 any reference to "**this Deed**", "**the Essar Ports Facilities Agreement**", any other "**Finance Document**" or any "**Relevant Document**" is a reference to this Deed, the Essar Ports Facilities Agreement, that other Finance Document or that Relevant Document as amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the obligations of any member of the Group or provides for further advances);
- 1.2.1.5 the term "**this Security**" means any security created or constituted by this Deed;
- 1.2.1.6 any covenant or undertaking of the Chargor (other than a payment obligation) remains in force during the Security Period;
- 1.2.1.7 the terms of the other Finance Documents and of any side letters between any Parties in relation to any Finance Document are incorporated in this Deed to the extent required to ensure that any purported disposition of any freehold or leasehold property contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989;
- 1.2.1.8 if the Essar Ports Security Agent considers that an amount paid to a Finance Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise, then that amount will not be considered to have been irrevocably paid for the purposes of this Deed;
- 1.2.1.9 any reference to a "**Security Asset**" includes the proceeds of sale of that "**Security Asset**";
- 1.2.1.10 use of any gender includes the other gender;
- 1.2.1.11 use of the singular includes the plural and vice versa;
- 1.2.1.12 a reference to "**writing**" does not include email;
- 1.2.1.13 any reference to a person being an "**associate**" of another shall be interpreted in accordance with section 435 of the Insolvency Act 1986, and a person shall be regarded as "**connected**" or "**associated**" with any person which is an associate of his and with any company of which any director is an associate of his;
- 1.2.1.14 a reference to a statute or statutory provision is a reference to that statute or statutory provision and to all orders, regulations, instruments or other subordinate legislation made under the relevant statute;

- 1.2.1.15 any reference to a statute, statutory provision, subordinate legislation, code or guideline ("**legislation**") is a reference to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without) modification any such legislation;
- 1.2.1.16 any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what, most nearly approximates in that jurisdiction to the English legal term;
- 1.2.1.17 the *ejusdem generis* rule shall not apply and accordingly general words introduced by the word "other" or any similar word, or followed by the words "including", "includes", "include", "in particular" or any similar words, shall not be given a restricted meaning because they are preceded or followed by more specific words;
- 1.2.1.18 reference to any "**disposal**" includes any sale, lease, sub-lease, assignment or transfer, the grant of an option or similar right, the grant of any easement, right or privilege, the creation of a trust or other equitable interest or security right in favour of a third party, a sharing or parting with possession or occupation whether by way of licence or otherwise and (without prejudice to the generality of the foregoing) in the case of Intellectual Property Rights the granting of use of or access to any other person and "**dispose**" and "**disposition**" shall be construed accordingly;
- 1.2.1.19 clause headings and the contents page are for ease of reference only and shall not affect the interpretation of this Deed; and
- 1.2.1.20 a Clause or Schedule is a reference to a clause of or schedule to this Deed.
- 1.2.2 This Deed is drafted in the English language. If this Deed is translated into another language, the English language text shall in any event prevail.
- 1.2.3 The Schedules form an integral part of this Deed and shall have effect as if set out in full in the body of this Deed and any reference to this Deed includes the Schedules.
- 1.2.4 It is intended that this Deed takes effect as a deed notwithstanding that any party may only execute it under hand.

### **1.3 Inconsistency between this Deed and the Intercreditor Agreement**

If there is any conflict or inconsistency between any provision (including the terms, conditions and obligations) of this Deed and any provision (including the terms, conditions and obligations) of the Intercreditor Agreement, the provision of the Intercreditor Agreement shall prevail.

### **1.4 Essar Energy First Ranking Security Document**

Notwithstanding any other provision of this Deed, where a right or asset has been assigned by the Chargor (subject to a proviso for re-assignment on redemption) under the Essar Energy First Ranking Security Document and the Chargor purports to charge the same asset or right under this Deed, that subsequent assignment will take effect as a fixed charge over the Chargor's equitable right of redemption under the first assignment and will only take effect as an assignment if the relevant Security Interest created by the Essar Energy First Ranking Security Document has no, or ceases to have, effect at a time when this Deed still has effect.

**2. COVENANT TO PAY**

Subject to the Intercreditor Agreement, the Chargor covenants with the Essar Ports Security Agent that it will, on the Essar Ports Security Agent's written demand, pay or discharge the Secured Liabilities at the times and in the manner provided in the Finance Documents.

**3. ESSAR PORTS SECURITY AGENT**

The Essar Ports Security Agent shall hold this Security on trust for the Secured Parties on the terms and subject to the conditions set out in clause 29 of the Essar Ports Facilities Agreement.

**4. CREATION OF SECURITY**

**4.1 General**

All the security created under this Deed:

- 4.1.1 is created in favour of the Essar Ports Security Agent;
- 4.1.2 is created over present and future assets of the Chargor;
- 4.1.3 is security for the payment and satisfaction of all the Secured Liabilities;
- 4.1.4 is created by the Chargor to the extent of its interest whether joint or several, legal or beneficial; and
- 4.1.5 is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

**5. ASSIGNMENTS**

- 5.1 Subject to the Intercreditor Agreement and the Essar Energy First Ranking Security Document, the Chargor assigns and agrees to assign absolutely and with full title guarantee, subject to a proviso for re-assignment on irrevocable discharge of all the Secured Liabilities all of its rights, title and interest in:

- 5.1.1 each Relevant Document; and
  - 5.1.2 all Ancillary Rights,
- to the Essar Ports Security Agent.

**6. FIXED CHARGES**

6.1 Subject to the Intercreditor Agreement and the Essar Energy First Ranking Security Document, to the extent not effectively assigned under Clause 5 above, the Chargor charges to the Essar Ports Security Agent by way of fixed charge (which ranks second only to the Essar Energy First Ranking Security Document) with full title guarantee as continuing security for the payment and discharge of the Secured Liabilities all of its rights, title and interest in and to:

6.1.1 each Relevant Document;

6.1.2 all EGFL Facility Rights;

6.1.3 all Ancillary Rights; and

6.1.4 all Receivables.

## 7. **FLOATING CHARGE**

### 7.1 **Creation of Floating Charge**

7.1.1 Subject to the Intercreditor Agreement and the Essar Energy First Ranking Security Document, the Chargor charges by way of a floating charge (which ranks second only to the Essar Energy First Ranking Security Document) its undertaking and all its property, assets and rights whatsoever and wheresoever, both present and future, but excluding any property or assets otherwise effectively assigned under Clause 5 (*Assignments*).

7.1.2 Paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to the floating charge created by this Clause 6 which floating charge is accordingly a qualifying floating charge for such purposes.

### 7.2 **Crystallisation by notice**

7.2.1 Subject to the Intercreditor Agreement, except as provided in Clause 7.2.2, the Essar Ports Security Agent may by notice to the Chargor convert the floating charge created by this Clause over all or any part of the Floating Charge Assets into a fixed charge as regards any assets specified in that notice, if:

7.2.1.1 an Event of Default is outstanding; or

7.2.1.2 the Essar Ports Security Agent considers those assets to be in jeopardy, whether in danger of being seized or sold under any form of distress, execution or other similar process or otherwise.

7.2.2 The floating charge created by Clause 7.1.1 may not be converted into a fixed charge solely by reason of:

7.2.2.1 the obtaining of a moratorium; or

7.2.2.2 anything done with a view to obtaining a moratorium under the Insolvency Act 2000.

**7.3 Automatic crystallisation**

7.3.1 Notwithstanding anything expressed or implied in this Deed, the floating charge created by this Deed shall automatically and without notice convert into a fixed charge over the Floating Charge Assets if:

7.3.1.1 steps are taken to appoint an administrator or to issue a notice of intention to appoint an administrator; or

7.3.1.2 the Chargor creates or attempts to create any security over all or any of the Floating Charge Assets without the prior written consent of the Essar Ports Security Agent; or

7.3.1.3 any person levies or attempts to levy any distress, execution, sequestration or other process against any of the Floating Charge Assets.

**8. REPRESENTATIONS – GENERAL**

**8.1 Nature of security**

8.2 The Chargor represents to each Secured Party that:

8.2.1 subject to the Intercreditor Agreement and the Essar Energy First Ranking Security Document, this Deed creates the security it purports to create and is not liable to be avoided or otherwise set aside on the liquidation or administration of any Obligor or any Essar Energy Guarantor or otherwise;

8.2.2 the Security Assets are free of any Security and any rights or interests in favour of third parties (except those created by the Essar Energy First Ranking Security Document or under this Deed or as expressly permitted by the Essar Energy First Ranking Security Document);

8.2.3 any copy of any Relevant Document supplied to the Essar Ports Security Agent contains all provisions relating to the matters set out therein;

8.2.4 it is the sole legal and beneficial owner of the EGFL Facility Rights, including participation (as lender of record) in loans under the EGFL Facility Agreement, as at the date of this Deed, free from all liens, mortgages, charges, pledges, options, encumbrances, equities and third party interests of whatever nature (other than those granted pursuant to the Essar Energy First Ranking Security Document or in favour of the Essar Ports Security Agent);

8.2.5 it has full power, and has taken all steps necessary, to enable it lawfully to enter into and perform this Deed; and

8.2.6 it shall not without the prior written consent of the Essar Ports Security Agent or as expressly permitted under the Essar Ports Facilities Agreement, sell, transfer or otherwise dispose of or mortgage, charge, pledge, grant any option over, or otherwise encumber or create or permit to be created any equity over any of the EGFL Facility Rights (other than those granted pursuant to the Essar Energy First Ranking Security Document or in favour of the Essar Ports Security Agent).

8.3 **Times for making representations**

- 8.3.1 The representations set out in this Deed (including, without limitation, in Clause 8.1 (*Nature of security*)) are made on the date of this Deed.
- 8.3.2 Unless a representation is expressed to be given at only a specific date, each representation under this Deed is deemed to be repeated by the Chargor on the date that the Repeating Representations are repeated by the Obligors under the Essar Ports Facilities Agreement.
- 8.3.3 When a representation is repeated, it is applied to the circumstances existing at the time of repetition.

9. **RESTRICTIONS ON DEALINGS**

9.1 **Security**

Except as expressly permitted by the Essar Energy First Ranking Security Document, the Chargor shall not create or attempt to create or permit to subsist any security on any Security Asset (except for this Security and the Security under the Essar Energy First Ranking Security Document).

9.2 **Disposals**

Except as expressly permitted by the Essar Energy First Ranking Security Document, the Chargor shall not sell transfer, assign, licence, lease or otherwise dispose of or agree to sell, transfer, assign, licence, lease or otherwise dispose of any Security Asset or any part of an interest in any Security Asset.

9.3 **Documents of title**

On or after the Essar Energy Discharge Date, the Chargor must immediately deposit with the Essar Ports Security Agent, or procure the deposit with the Essar Ports Security Agent of, all such deeds and documents of title (if any) relating to the Relevant Documents and Ancillary Rights as the Essar Ports Security Agent may from time to time specify (to be held at the risk of the Chargor).

9.4 **Notices of assignment**

On or after the Essar Energy Discharge Date, the Chargor must, at the request of the Essar Ports Security Agent:

- 9.4.1 immediately serve a notice of assignment, in the form of Part I (*Notice to Counterparty*) of Schedule 2 (*Forms of letter for Relevant Documents*), on each counterparty to a Relevant Document other than the Intercreditor Deed; and
- 9.4.2 procure that each such party acknowledges that notice, substantially in the form of Part II (*Acknowledgement of Counterparty*) of Schedule 2 (*Forms of letter for Relevant Documents*) no later than the date of such Relevant Document or within such other time frame as the Essar Ports Security Agent shall direct in writing,

unless such notice and acknowledgement is included within the Relevant Document to the satisfaction of the Essar Ports Security Agent.

## 9.5 Obligations and Rights

Subject to the Intercreditor Agreement, unless otherwise directed by the Essar Ports Security Agent in writing, the Chargor shall:

- 9.5.1 if it receives any payment in respect of a Relevant Document or an Ancillary Right, immediately notify the Essar Ports Security Agent, hold that payment on trust for the Essar Ports Security Agent and immediately pay such amount into any Reserve Account or as may otherwise be directed in writing by the Essar Ports Security Agent;
- 9.5.2 supply the Essar Ports Security Agent and any Receiver with copies of each Relevant Document and any information and documentation relating to any Relevant Document or Ancillary Right requested by the Essar Ports Security Agent or any Receiver;
- 9.5.3 not, without the prior consent of the Essar Ports Security Agent or as expressly permitted under the Essar Energy First Ranking Security Document, amend or waive any term of any Relevant Document or exercise any discretion or grant any consents thereunder;
- 9.5.4 perform all of its obligations under the Relevant Documents in the manner specified and contemplated therein;
- 9.5.5 not amend, vary, waive, settle, compromise, grant any consent or give any direction under or with respect to any Relevant Document or agree to do so;
- 9.5.6 diligently enforce and pursue its rights under each Relevant Document;
- 9.5.7 not exercise any right of set-off, counterclaim against any party to any Relevant Document;
- 9.5.8 immediately notify the Essar Ports Security Agent of (i) any default, event of default or termination event (howsoever described) arising under any Relevant Document; (ii) any breach by any party to a Relevant Document of their obligations under that Relevant Document or any rights of rescission or termination arising under a Relevant Document; or (iii) any event or circumstance to its knowledge that could give rise to any of the foregoing;
- 9.5.9 immediately provide the Essar Ports Security Agent with a copy of any notice or other document received by the Chargor under or with respect to any Relevant Document;
- 9.5.10 at any time after the Security has become enforceable, immediately take such action as the Essar Ports Security Agent may request in order for the Essar Ports Security Agent (or such person as the Essar Ports Security Agent may direct from time to time) to become the lender of record in respect of the Relevant Document(s); and
- 9.5.11 act on and implement any instructions of the Essar Ports Security Agent with respect to the Relevant Documents and any of the foregoing, at the expense of the Chargor.

## 10. ENFORCEMENT OF SECURITY

#### **10.1 Event of Default**

- 10.1.1 On the occurrence of any Event of Default, the Secured Liabilities shall immediately become payable on demand.
- 10.1.2 This Security will become immediately enforceable at any time after the occurrence of an Event of Default.

#### **10.2 Discretion**

After this Security has become enforceable, the Essar Ports Security Agent may in its absolute discretion enforce all or any part of this Security in any manner it sees fit.

#### **10.3 Statutory powers**

- 10.3.1 The power of sale and other powers conferred by section 101 of the Act, as amended by this Deed, will be immediately exercisable at any time after this Security has become enforceable.
- 10.3.2 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- 10.3.3 Section 103 of the Act (restricting the power of sale) and section 93 of the Act (restricting the right of consolidation) do not apply to this Security or to any security given to the Essar Ports Security Agent pursuant to this Deed.
- 10.3.4 The statutory powers of leasing conferred on the Essar Ports Security Agent are extended so as to authorise the Essar Ports Security Agent to lease, make agreements for leases at a premium or otherwise, accept surrenders of leases and grant options as the Essar Ports Security Agent may think fit and without the need to comply with any provision of section 99 or 100 of the Act.

#### **10.4 No liability as mortgagee in possession**

Neither the Essar Ports Security Agent nor any Receiver will be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable.

#### **10.5 Privileges**

Each Receiver and the Essar Ports Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers duly appointed under the Act except that section 103 of the Act does not apply.

#### **10.6 Protection of third parties**

No person (including, without limitation, a purchaser) dealing with the Essar Ports Security Agent or a Receiver or its or his agent will be concerned to enquire:

- 10.6.1 whether the Secured Liabilities have become payable;
- 10.6.2 whether any power which the Essar Ports Security Agent or a Receiver is purporting to exercise has become exercisable or is being properly exercised;



- 10.6.3 whether any money remains due under the Finance Documents; or
- 10.6.4 how any money paid to the Essar Ports Security Agent or to that Receiver is to be applied.

#### 10.7 **Redemption of prior security**

- 10.7.1 At any time after this Security has become enforceable, the Essar Ports Security Agent may:
  - 10.7.1.1 redeem any prior security against any Security Asset; and/or
  - 10.7.1.2 procure the transfer of that security to itself; and/or
  - 10.7.1.3 settle and pass the accounts of the prior mortgagee, chargee or encumbrancer, and accounts so settled or passed will be, in the absence of manifest error, conclusive and binding on the Chargor.
- 10.7.2 The Chargor must pay to the Essar Ports Security Agent, immediately on demand, the costs and expenses incurred by the Essar Ports Security Agent in connection with any such redemption and/or transfer, including, without limitation, the payment of any principal or interest.

#### 10.8 **Essar Ports Security Agent's right to remedy Chargor's default**

- 10.8.1 If the Chargor at any time defaults in complying with any of its obligations contained in this Deed the Essar Ports Security Agent shall, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default and the Chargor irrevocably authorises the Essar Ports Security Agent and its employees and agents by way of security to do all such things (including, without limitation, entering the Chargor's property) necessary or desirable in connection with such task.
- 10.8.2 Any monies so expended by the Essar Ports Security Agent shall be repayable by the Chargor to the Essar Ports Security Agent on demand together with interest accruing daily at the highest rate of interest agreed in any Finance Document to be payable by the Chargor on unpaid sums from the date of payment by the Essar Ports Security Agent until such repayment both before and after judgment. Such interest shall be compounded monthly in accordance with the normal practice of the Essar Ports Security Agent.

#### 10.9 **Contingencies**

If this Security is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the Essar Ports Security Agent (or the Receiver) may pay the proceeds of any recoveries effected by it into a suspense account or other account selected by it.

### 11. **RECEIVER AND ADMINISTRATOR**

#### 11.1 **Appointment of Receiver or Administrator**

- 11.1.1 Except as provided below, the Essar Ports Security Agent may appoint any one or more persons to be a Receiver of all or any part of the Security Assets if:

11.1.1.1 this Security has become enforceable; or

11.1.1.2 the Chargor so requests the Essar Ports Security Agent in writing at any time.

11.1.2 Any appointment of a Receiver under Clause 11.1.1 may be by deed, under seal or in writing under the hand of the Essar Ports Security Agent.

11.1.3 Except as provided in Clauses 11.1.4 and 11.1.5, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including, without limitation, under section 109(1) of the Act) does not apply to this Deed.

11.1.4 The Essar Ports Security Agent is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under the Insolvency Act 2000 except with the leave of the court.

11.1.5 The Essar Ports Security Agent may not appoint an administrative receiver (as defined in section 29(2) of the Insolvency Act 1986) over the Security Assets if the Essar Ports Security Agent is prohibited from doing so by section 72A of the Insolvency Act 1986 and no exception to the prohibition on appointing an administrative receiver applies.

11.1.6 The Essar Ports Security Agent may appoint an Administrator.

## **11.2 Removal**

The Essar Ports Security Agent may by writing under its hand (subject to any requirement for an order of the court in the case of an administrative receiver) remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

## **11.3 Remuneration**

The Essar Ports Security Agent may from time to time fix the remuneration of any Receiver appointed by it and the maximum rate specified in section 109(6) of the Act will not apply. A Receiver shall be entitled to remuneration appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted by the Receiver in accordance with the current practice of his firm.

## **11.4 Agent of the Chargor**

11.4.1 A Receiver will (save as otherwise required or provided as a matter of law) be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor alone is responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver and for his remuneration.

11.4.2 No Finance Party will incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

## **11.5 Exercise of Receiver powers by the Essar Ports Security Agent**

To the fullest extent allowed by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may after this Security becomes enforceable, or if requested by the Chargor, be exercised by the Essar Ports Security Agent in relation to any Security Asset without first appointing a Receiver and notwithstanding the appointment of a Receiver.

## **12. POWERS OF RECEIVER**

### **12.1 General**

12.1.1 A Receiver has all of the rights, powers and discretions set out below in this Clause in addition to those conferred on it by any law, including without limitation:

12.1.1.1 in the case of an administrative receiver, all the rights, powers and discretions conferred on an administrative receiver under the Insolvency Act 1986; and

12.1.1.2 otherwise, all the rights, powers and discretions conferred on a receiver (or a receiver and manager) under the Act and the Insolvency Act 1986 including, without limitation, those powers provided for in schedule I of the Insolvency Act 1986 (notwithstanding that such Receiver may not be an administrative receiver).

12.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.

### **12.2 Possession**

A Receiver may take possession of, get in and collect any Security Asset.

### **12.3 Carry on business**

A Receiver may carry on any business of the Chargor in any manner he considers fit.

### **12.4 Employees**

12.4.1 A Receiver may appoint and discharge managers, officers, agents, employees, accountants, servants, workmen and others for the purposes of this Deed upon such terms as to remuneration or otherwise as he thinks fit.

12.4.2 A Receiver may discharge any person appointed by the Chargor.

### **12.5 Borrow money**

A Receiver may raise and borrow money either unsecured or on the security of any Security Asset either in priority to this Security or otherwise and generally on any terms and for whatever purpose which he thinks fit.

### **12.6 Sale of assets**

- 12.6.1 A Receiver may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any term which he thinks fit.
- 12.6.2 The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit.
- 12.7 **Calls on members**
- A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital.
- 12.8 **Compromise**
- A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Security Asset.
- 12.9 **Legal actions**
- A Receiver may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit.
- 12.10 **Receipts**
- A Receiver may give a valid receipt for any monies and execute any assurance or thing which may be proper or desirable for realising any Security Asset.
- 12.11 **Subsidiaries**
- A Receiver may form a Subsidiary of the Chargor and transfer to that Subsidiary any Security Asset or otherwise arrange for such Subsidiary to trade or cease to trade and to purchase, lease, licence or otherwise acquire all or any of the Security Assets on such terms and conditions as he may think fit.
- 12.12 **Delegation**
- A Receiver may delegate his powers in accordance with this Deed.
- 12.13 **Lending**
- A Receiver may lend money or advance credit to any customer of the Chargor.
- 12.14 **Contracts**
- A Receiver may make any arrangement or compromise or enter into or cancel any contracts which he thinks expedient.
- 12.15 **Execution of documents**
- A Receiver may sign any document, execute any deed and do all such other acts and things as may be considered by him to be incidental or conducive to any of the matters or powers in this Clause 12 or to the realisation of this Security and to use the name of the Chargor for such purposes.

12.16 **Protection of assets**

A Receiver may:

- 12.16.1 effect any repair or insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect or improve any Security Asset;
- 12.16.2 commence and/or complete any building operation; and
- 12.16.3 apply for and maintain any planning permission, building regulation approval or any other authorisation,

in each case as he thinks fit.

12.17 **Other powers**

A Receiver may:

- 12.17.1 do all other acts and things which he may consider to be desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;
- 12.17.2 exercise all the powers of the Essar Ports Security Agent under this Deed;
- 12.17.3 exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset; and
- 12.17.4 use the name of the Chargor for any of the above purposes.

13. **RIGHT OF APPROPRIATION**

13.1 This Clause 13 is subject to the Intercreditor Agreement.

13.2 The Parties acknowledge and intend that the charges over the Chargor's Financial Collateral provided under or pursuant to this Debenture will constitute a "security financial collateral arrangement" for the purposes of the Financial Collateral Regulations.

13.3 The Essar Ports Security Agent may, on or at any time after the security constituted by this Debenture becomes enforceable in accordance with its terms, by notice in writing to the Chargor appropriate with immediate effect all or any of its Financial Collateral charged by this Debenture which is subject to a security financial collateral arrangement (within the meaning of the Financial Collateral Regulations) and apply it in or towards the discharge of the Secured Liabilities, whether such Security Assets are held by the Essar Ports Security Agent or otherwise.

13.4 The value of Financial Collateral appropriated pursuant to Clause 13.3 shall be:

- 13.4.1 in the case of cash, its face value at the time of appropriation; and
- 13.4.2 in the case of financial instruments or other financial collateral, their market value at the time of appropriation as determined (after appropriation) by the Essar Ports Security Agent by reference to a public index or other applicable generally recognised source or such other process as the Essar Ports Security

Agent may reasonably select, including a valuation carried out by an independent firm of accountants or valuers appointed by the Essar Ports Security Agent,

as converted, where necessary, into dollars at a market rate of exchange prevailing at the time of appropriation selected by the Essar Ports Security Agent.

- 13.5 The Essar Ports Security Agent will account to the Chargor for any amount by which the value of the appropriated Security Assets exceeds the Secured Liabilities and the Chargor shall remain liable to the Essar Ports Security Agent for any amount by which the value of the appropriated Security Assets is less than the Secured Liabilities.

#### 14. APPLICATION OF PROCEEDS

All monies received by the Essar Ports Security Agent or any Receiver on enforcement of this Security must (subject to any requirement of law to the contrary) be applied in accordance with and subject to the Intercreditor Agreement.

#### 15. EXPENSES AND INDEMNITY

- 15.1 The Chargor must:

15.1.1 immediately on demand pay all costs and expenses (including, without limitation, legal fees) incurred in connection with this Deed by any Finance Party, Receiver, attorney, manager, agent or other person appointed by the Essar Ports Security Agent under this Deed (the "Indemnified Parties");

15.1.2 keep each of the Indemnified Parties indemnified against all losses, damages, costs, charges, awards, claims, demands, expenses, judgments, actions, proceedings or other liabilities whatsoever:

15.1.2.1 incurred by or arising from any failure or delay in paying those costs or expenses including (without limitation) any arising from any actual or alleged breach by any person of any law or regulation;

15.1.2.2 which such Indemnified Party may sustain as a consequence of any breach by the Chargor of the provisions of this Deed or the exercise or purported exercise of any of the rights and powers conferred on it by this Deed, save where the same arises as a result of the fraud, gross negligence or wilful default of such Indemnified Party; and

15.1.2.3 in respect of any matter or thing done or omitted in any way in relation to this Deed, save where the same arises as a result of the fraud, gross negligence or wilful default of such Indemnified Party; and

15.1.3 pay interest on the sum demanded at a rate equal to the highest rate of interest agreed in any Finance Document to be payable by the Chargor on unpaid sums.

#### 16. DELEGATION

- 16.1 Power of Attorney

The Essar Ports Security Agent or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed.

**16.2 Terms**

Any delegation under Clause 16.1 may be made upon any terms (including, without limitation, power to sub-delegate) which the Essar Ports Security Agent or any Receiver may think fit.

**16.3 Liability**

Neither the Essar Ports Security Agent nor any Receiver will be in any way liable or responsible to any Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

**17. FURTHER ASSURANCES**

The Chargor shall, at its own expense, take whatever action the Essar Ports Security Agent may request under and in accordance with this Deed and/or Clause 23.32 (*Further Assurance*) of the Essar Ports Facilities Agreement.

**18. POWER OF ATTORNEY**

**18.1** The Chargor, by way of security, irrevocably and severally appoints the Essar Ports Security Agent, each Receiver and any of its delegates or sub-delegates to be its attorney and in its name, on its behalf and as its act and deed:

18.1.1 to take any action which the Chargor is obliged to take under this Deed;

18.1.2 to execute and complete any documents or instruments which the Essar Ports Security Agent or such Receiver may require for perfecting the title of the Essar Ports Security Agent to the Security Assets (including, without limitation, becoming lender of record in respect of the FGFL Facility Rights) or for vesting the same in the Essar Ports Security Agent, its nominees or any purchaser;

18.1.3 to sign, execute, seal and deliver and otherwise perfect any further security document referred to in Clause 17 (*Further Assurances*); and

18.1.4 otherwise generally to sign, seal, execute and deliver all deeds, assurances agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Essar Ports Security Agent or a Receiver under this Deed or which may be deemed expedient by the Essar Ports Security Agent or a Receiver in connection with any disposition, realisation or getting in by the Essar Ports Security Agent or such Receiver of the Security Assets or any part of them or in connection with any other exercise of any power under this Deed.

**18.2** The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause 18.

**19. PRESERVATION OF SECURITY**

**19.1 Continuing security**

This Security is a continuing security and will secure the ultimate balance of the Secured Liabilities regardless of any intermediate payment or discharge in whole or in part.

## **19.2 Reinstatement**

- 19.2.1 If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or any security for those obligations or otherwise) or arrangement is made by any Secured Party in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor under this Deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 19.2.2 Each Secured Party may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

## **19.3 Waiver of defences**

The obligations of the Chargor under this Deed will not be affected by any act, omission or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Deed (whether or not known to the Chargor or any Secured Party). This includes:

- 19.3.1 any time, waiver or consent granted to, or composition with, the Chargor or any other person;
- 19.3.2 the release of any person under the terms of any composition or arrangement with any creditor of the Chargor;
- 19.3.3 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, the Chargor or any other person;
- 19.3.4 any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to perfect, enforce or realise the full value of any security;
- 19.3.5 any incapacity or lack of power, authority or legal personality of or insolvency or dissolution or change in the members or status of the Chargor or any other person;
- 19.3.6 any amendment (however fundamental) or replacement of a Finance Document or any other document or security so that references to that document or security in this Clause 19 include any amendment to or replacement of that document or security;
- 19.3.7 any unenforceability, illegality, invalidity, voidability or non-provability of any obligation of any person under any Finance Document or any other document or security; or
- 19.3.8 any postponement, discharge, reduction, non-provability or other similar circumstance affecting the Secured Liabilities or any other obligation of the Chargor resulting from any insolvency, liquidation, dissolution or similar proceedings or from any law, regulation or order so that each obligation shall



for the purposes of the Chargor's obligations under this Deed be construed as if there were no such circumstances.

**19.4 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 person before claiming from the Chargor under this Deed and no action taken or omitted by the Essar Ports Security Agent or any other Secured Party in connection with such security or other means of payment shall discharge, reduce, prejudice or affect the liability of the Chargor.

**19.5 Appropriations**

19.5.1 Subject to the Intercreditor Agreement, each Secured Party (or any trustee or agent on its behalf) may at any time during the Security Period without affecting the liability of the Chargor under this Deed:

19.5.1.1 refrain from applying or enforcing any other monies, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts;

19.5.1.2 apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the same; and/or

19.5.1.3 hold in a suspense account any monies received from or on account of the liability of the Chargor under this Deed.

**19.6 Non-competition**

19.6.1 Unless the Security Period has expired or the Essar Ports Security Agent otherwise directs, the Chargor will not, after a claim has been made under this Deed or by virtue of any payment or performance by it under this Deed:

19.6.1.1 be subrogated to any rights, security or monies held, received or receivable by any Secured Party (or any trustee or agent on its behalf);

19.6.1.2 be entitled to any right of contribution or indemnity in respect of any payment made or monies received on account of the Chargor's liability under this Deed or require any Secured Party to effect or implement marshalling;

19.6.1.3 demand or accept repayment in whole or in part of any indebtedness now or after the date of this Deed due to the Chargor from any Obligor, any Essar Energy Guarantor or from any other person liable or demand or accept any collateral instrument in respect of the same or dispose of the same;

19.6.1.4 claim, rank, prove or vote as a creditor of an Obligor or an Essar Energy Guarantor or their estate in competition with any Finance Party (or any trustee or agent on its behalf); or

19.6.1.5 receive, claim or have the benefit of any payment, distribution or security from or on account of an Obligor or an Essar Energy Guarantor or exercise any right of set-off as against an Obligor or an Essar Energy Guarantor.

19.6.2 Subject to the Intercreditor Agreement, the Essar Ports Security Agent shall be entitled to direct the Chargor to prove, and if so directed the Chargor must prove, for the whole or any part of any debt or other claim that one or more of the Obligors or the Essar Energy Guarantors may have in the liquidation or bankruptcy of any other of them to the fullest extent permitted by law and any such direction shall not affect the Chargor's liability or give the Chargor any recourse against the Finance Parties.

19.6.3 Subject to the Intercreditor Agreement, if the Chargor receives any benefit, payment or distribution in relation to any rights referred to in this Clause 19.6 or in accordance with any direction given by the Essar Ports Security Agent under this Clause 19.6 it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Chargor 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 any Reserve Account or as the Essar Ports Security Agent may direct for application in accordance with Clause 14 (*Application of proceeds*).

#### 19.7 Additional security

This Security is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any Secured Party.

#### 20. ASSIGNMENT AND TRANSFER

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

20.2 The Essar Ports Security Agent may assign and/or transfer all or any part of its rights and obligations under this Deed in accordance with the Essar Ports Facilities Agreement.

#### 21. THIRD PARTY RIGHTS

21.1 Subject to Clauses 21.3 and 21.4, the Receiver may rely upon and enforce the rights conferred upon it under this Deed, including, without limitation, those set out in Clauses 11.1 (*Appointment of Receiver or Administrator*), 11.3 (*Remuneration*), 12 (*Powers of Receiver*), 14 (*Application of proceeds*), 15 (*Expenses and indemnity*) and 18 (*Power of attorney*) against the Chargor.

21.2 Subject to Clauses 21.3 and 21.4, the indemnified parties may rely upon and enforce the rights conferred upon them under Clause 15 (*Expenses and indemnity*).

21.3 The third party rights referred to in Clauses 21.1 and 21.2 (and any other terms of this Deed which provide that a third party may in his own right enforce a term of this Deed) may only be enforced by the relevant third party with the prior written consent of the Essar Ports Security Agent and subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 (the "1999 Act") and all other relevant terms of this Deed, including, without limitation, Clause 26 (*Applicable Law and Jurisdiction*).

21.4 Notwithstanding any other provision of this Deed (including, without limitation, Clauses 21.1 and 21.2) but subject to the provisions of the Intercreditor Agreement, the Essar Ports Security Agent and the Chargor may by agreement in writing rescind or vary any of the provisions in this Deed in any way without the consent of any third party, and accordingly section 2(1) of the 1999 Act shall not apply.

21.5 Except as provided in Clauses 21.1 and 21.2 (or insofar as this Deed otherwise expressly provides that a third party may in his own right enforce a term of this Deed), a person who is not a party to this Deed has no right under the 1999 Act to rely upon or enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **22. MISCELLANEOUS**

### **22.1 Tacking**

Each Lender must perform its obligations under the Essar Ports Facilities Agreement (including any obligation to make available further advances).

### **22.2 Ruling off**

22.2.1 If any subsequent security or other interest affects any Security Asset, each Finance Party may open a new account with the Chargor.

22.2.2 If a Finance Party does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that security or other interest.

22.2.3 As from that time all payments made to the Finance Parties will be credited or be treated as having been credited to the new account and will not operate to reduce any Secured Liability.

### **22.3 Essar Ports Security Agent's discretion**

Any liability or power which may be exercised or any determination which may be made under this Deed in each case by the Essar Ports Security Agent may be exercised or made in its absolute and unfettered discretion and the Essar Ports Security Agent shall not be obliged to give reasons.

### **22.4 Notice of assignment**

This Deed constitutes notice in writing to the Chargor of any charge or assignment of a debt owed by the Chargor to any other member of the Group, which charge or assignment is contained in any other Finance Document.

### **22.5 Remedies and waivers**

No failure to exercise, nor any delay in exercising on the part of the Essar Ports Security Agent any right, power or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise or waiver of any right, power or remedy prevent any further or other exercise or the exercise of any other right, power or remedy. The rights, powers and remedies provided in this Deed are cumulative and are not, nor are they to be construed as, exclusive of any powers, rights or remedies provided by law or otherwise and may be exercised from time to time and as often as the Essar Ports Security Agent deems expedient.

22.6 **Severance**

22.6.1 If any provision of this Deed shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Deed which shall remain in full force and effect.

22.6.2 If any provision of this Deed is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision was deleted, the provision in question shall apply with such deletion(s) as may be necessary to make it valid.

22.7 **Non-Signatories**

Failure by one or more parties ("Non-Signatories") to execute this Deed on the date hereof will not invalidate the provisions of this Deed as between the other parties who execute this Deed. Such Non-Signatories may execute this Deed (or a counterpart thereof) on a subsequent date and will thereupon become bound by its provisions.

22.8 **Amendment**

Subject to the Intercreditor Agreement:

22.8.1 no modification or variation of this Deed (or any document entered into pursuant to or in connection with this Deed) shall be valid unless it is in writing and signed by or on behalf of each of the parties to this Deed. For the avoidance of doubt, no modification or variation of this Deed shall be valid if made by e-mail; and

22.8.2 unless expressly so agreed, no modification or variation of this Deed shall constitute or be construed as a general waiver of any provisions of this Deed, nor shall it affect any rights, obligations or liabilities under this Deed which have already accrued up to the date of such modification or waiver, and the rights and obligations of the parties under this Deed shall remain in full force and effect, except and only to the extent that they are so modified or varied.

23. **RELEASE**

At the end of the Security Period, the Finance Parties must, at the request and cost of the Chargor, take whatever action is necessary to release the Security Assets from this Security and re-assign the Relevant Contracts to the Chargor.

24. **COUNTERPARTS**

This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

25. **NOTICES**

25.1 **Communications in writing**

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

## 25.2 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 to this Deed for any communication or document to be made or delivered under or in connection with this Deed is:

25.2.1 in the case of the Chargor, that identified with its name below; and

25.2.2 in the case of the Essar Ports Security Agent, as follows

Address: 12 Presnenskaya Embankment, Tower West, Moscow 123112, Russia

Telephone: +7 (495) 775 54 54

Fax: +7 (495) 783 22 20

Attention: Russia Loan Administration

Email: loanadmin@msk.vtb.ru

or any substitute address, fax number, or department or officer as the Chargor may notify to the Essar Ports Security Agent (or the Essar Ports Security Agent may notify to the Chargor, if a change is made by the Essar Ports Security Agent) by not less than five Business Days' notice.

## 25.3 Delivery

25.3.1 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

25.3.1.1 if by way of fax, at the time of transmission; or

25.3.1.2 if by way of letter, when it has been left at the relevant address or two 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 25.2 (Addresses), if addressed to that department or officer.

25.3.2 Any communication or document to be made or delivered to the Essar Ports Security Agent will be effective only when actually received by the Essar Ports Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Essar Ports Security Agent's signature below (or any substitute department or officer as the Essar Ports Security Agent shall specify for this purpose).

25.3.3 All notices from or to the Chargor shall be sent through the Essar Ports Security Agent.

25.3.4 Any communication or document made or delivered to the Chargor in accordance with this Clause 25 will be deemed to have been made or delivered to the Chargor.

26. **APPLICABLE LAW AND JURISDICTION**

26.1 **Applicable law**

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

26.2 **Jurisdiction**

The Chargor irrevocably agrees for the exclusive benefit of the Essar Ports Security Agent that the English Courts shall have exclusive jurisdiction over any claim, dispute or matter arising under or in connection with this Deed or its enforceability including any non-contractual obligation arising out of or in connection with this Deed and that accordingly any proceedings in respect of any such claim, dispute or matter may be brought in such courts. Nothing in this Clause 26.2 shall limit the right of the Essar Ports Security Agent to take proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction or jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction or jurisdictions.

**THIS DEED** has been executed and delivered by or on behalf of the parties on the date at the top of page 1.

## **SCHEDULE 1**

### **List of Relevant Documents**

1. The intercompany loan agreement between the Chargor (as lender) and to Essar Oil Cyprus (as borrower) dated on or around 15 October 2012.
2. The intercompany loan agreement between the Chargor (as lender) and Essar Energy Overseas (as borrower) dated on or around 25 April 2017.
3. EGFL Loan Facility Agreement.
4. EGFL Loan Facility Agreement Amendment Letter.
5. Each of the EGFL Loan Finance Documents (including without limitation each Joint Security Document as defined in the EGFL Facility Agreement).
6. Raceview Intercreditor Deed.
7. Raceview Supplemental Intercreditor Deed.

## SCHEDULE 2

### Forms of Notice

#### Part 1

#### Notice to Counterparty

*[On letterhead of the Chargor]*

From: Essar Energy Limited (the "Chargor")

To: [Contract party]

[Date]

Dear Sirs

**Debenture dated [ ] 2018 between the Chargor and VTB Bank (Public Joint-Stock Company) as security agent (the "Debenture")**

This letter constitutes notice to you that under the Debenture we have assigned absolutely and charged to VTB Bank (Public Joint-Stock Company) (as trustee for the Secured Parties as referred to in the Debenture, the "Essar Ports Security Agent") all our rights, title and interest in respect of each of the [following agreements]/[the agreements listed in the Schedule hereto] (each an "Agreement"), together with all ancillary rights including the right to all payments thereunder.

1. This letter constitutes notice to you that under the Debenture we have assigned absolutely and charged to the Essar Ports Security Agent all our rights, title and interest in respect of [the] / each] Agreement, including the right to all payments thereunder.
2. We confirm that:
  - 2.1 we will remain liable under [the]/[each] Agreement to perform all the obligations assumed by us under the [relevant] Agreement;
  - 2.2 [we shall remain lender of record in respect of [insert details of participation] (the "Participation") until such time as you receive notice to the contrary from the Essar Ports Security Agent, whereupon you are instructed to immediately record the transfer of the Participation to the Essar Ports Security Agent (or to such person as the Essar Ports Security Agent may direct from time to time), subject only to receipt by you of the applicable transfer certificate in accordance with clause [•] of the [Debenture]].
  - 2.3 none of the Essar Ports Security Agent, its agents, any receiver or any other person will at any time be under any obligation or liability to you under or in respect of the [relevant] Agreement; and
  - 2.4 all amounts payable to us by you must be paid into our account held with [Mauritius Commercial Bank with IBAN [REDACTED] 4360000USD], or as the Essar Ports Security Agent may otherwise direct.
3. Until you receive notice to the contrary from the Essar Ports Security Agent, the Chargor may only exercise its rights, powers, discretions and remedies under the Agreement(s) with the prior written consent of the Essar Ports Security Agent. If the Essar Ports Security Agent gives you notice that the security constituted by the Debenture has become enforceable, all the rights, powers, discretions and remedies under the Agreement(s) will be exercisable by the Essar Ports Security Agent.



4. Until you receive notice to the contrary from the Essar Ports Security Agent, you should continue to give all notices under the Agreement(s) to the Chargor with a copy to the Essar Ports Security Agent at [xxx].
5. Until you receive notice to the contrary from the Essar Ports Security Agent, we shall not be permitted to make any amendments or waivers or grant any consents or give instructions or directions or permit any repayments or prepayments or agree to any of the foregoing in respect of the Agreement(s) without the prior written consent of the Essar Ports Security Agent.
6. The instructions in this letter may not be revoked or amended without the prior written consent of the Essar Ports Security Agent. You are permitted to assume and rely upon the accuracy of anything communicated to you by the Essar Ports Security Agent. In the event of any conflict between communications received from us and from the Essar Ports Security Agent, you shall treat the communication from the Essar Ports Security Agent as prevailing over the communication from us.  
  
This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.
7. Please agree to the terms of this letter and acknowledge receipt by sending the attached acknowledgement to the Essar Ports Security Agent with copy to ourselves.

Yours faithfully

.....  
**ESSAR ENERGY LIMITED**

(Authorised signatory)

.....  
**VTB Bank (Public Joint-Stock Company)**

(Authorised signatory)

**[Schedule to Notice**

**[Details of Assigned Agreement(s) to be inserted]]**

**Part 2**  
**Acknowledgement of Counterparty**

To: **VTB Bank (Public Joint-Stock Company)** as Essar Ports Security Agent

Copy: Essar Energy Limited

[Date]

Dear Sirs

1. We confirm receipt from Essar Energy Limited (the "Chargor") of a notice dated [ ] 2018 of an assignment and charge on the terms of the Debenture dated [ ] 2018 (the "Notice") of all the Chargor's rights in respect of [insert details of the Agreement]/[the documents specified in the Schedule hereto] [schedule to be appended] (the "Agreement(s)"). Capitalised terms used in this letter shall have the meanings given to them in the Notice, unless otherwise defined herein.
2. We have not previously received notice of any other assignment of the Agreement(s) and we are not aware of any interest of any third party in any of the Chargor's rights, benefits, interests or claims under or in respect of the Agreement(s).
3. Notwithstanding any provision to the contrary contained in the Agreement(s), we consent to the assignment of the Agreement(s) to the Essar Ports Security Agent, as described in the Notice [and we irrevocably agree to the transfer of the Participation to the Essar Ports Security Agent (or to such other person as the Essar Ports Security Agent may direct from time to time) upon receipt of notice from the Essar Ports Security Agent, subject only to receipt by the [Facility Agent] of the applicable transfer certificate in accordance with clause [•] of [•]].
4. We agree that in the event of any conflict between the Notice and any provision of the Agreement(s), the instructions contained in the Notice shall prevail. [We irrevocably confirm that [prior consent requirements in the Agreement(s)] shall be disappplied.]
5. We acknowledge and agree to the terms of the Notice and for good and valuable consideration (receipt of which is hereby acknowledged), we confirm and undertake as follows:
  - (a) we will pay all sums due, and give notices, under the Agreement(s) as directed in that notice; and
  - (b) all amounts of whatever nature payable to, or recoverable by the Chargor or the Essar Ports Security Agent in accordance with the Agreement(s), will be payable by us without withholding, set-off or counterclaim.
6. We acknowledge that the Chargor shall not be permitted to make any amendments or waivers or grant any consents or give instructions or directions or make demands or permit any repayments or prepayments or agree to any of the foregoing in respect of the Agreement(s) without the prior written consent of the Essar Ports Security Agent.
7. We acknowledge that the Chargor shall at all times remain liable to us for the performance of all of the obligations assumed by it under the Agreement(s), and that you will not be under any liability or obligation whatever in the event of any breach or failure by the Chargor to perform its obligations under the Agreement(s).

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

Yours faithfully

.....  
(Authorised signatory)

[Counterparty]

**[Schedule to Acknowledgement of Counterparty**

**[Details of Assigned Agreement(s) to be inserted]]**

EXECUTION PAGES

**Chargor**

**EXECUTED** as a deed but not  
delivered until the date of this Deed  
by **ESSAR ENERGY LIMITED**  
acting by its director  
In the presence of:

) Director's  
) Signature ..  
)  
)  
) Print Name ..Sushil Kumar BAID....

*Witness's*

*Signature:* .....

*Name:* ..... Ritish DOORBIZ .....

*Address:* ..... Port Louis, Mauritius .....

*Address:* ..... Lansdowne House 2nd Floor, 57 Berkeley Square, London, W1J 6ER .....

*Fax:* ..... + 44 203 205 3343 .....

**Essar Ports Security Agent**

**VTB Bank (Public Joint-Stock Company)**

By: ..........