



**Registration of a Charge**

Company name: **KYEN RESOURCES UK LTD**

Company number: **11145755**



X7EDMN23

Received for Electronic Filing: **13/09/2018**

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**Details of Charge**

Date of creation: **30/08/2018**

Charge code: **1114 5755 0002**

Persons entitled: **KIMURA MASTER FUND LIMITED**

Brief description:

**Contains fixed charge(s).**

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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: **REED SMITH LLP**



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

Company number: 11145755

Charge code: 1114 5755 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th August 2018 and created by KYEN RESOURCES UK LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th September 2018 .

Given at Companies House, Cardiff on 17th September 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

## Security Assignment

To: **Kimura Master Fund Limited**  
PO Box 30116  
2F Landmark Square  
64 Earth Close  
Seven Mile Beach  
Grand Cayman, KY1-1201  
Cayman Islands

Certified as a true copy of the original instrument  
other than material redacted pursuant to s.859G of  
the Companies Act 2006

*Reed Smith LLP*  
Reed Smith LLP

Date 13/09/18

*30 August* 2018

Dear Sirs

In consideration of, and as a condition precedent to, you, Kimura Master Fund Limited (the **Lender**), agreeing to make certain facilities available to us, Kyen Resources UK Ltd, a company incorporated under the laws of England and Wales with company number 11145755 (the **Company**) under the uncommitted borrowing base facility agreement (the **Facility Agreement**) dated on or about the date of this Deed and made between, among others, you and us, we, the Company, hereby agree as follows.

### 1 Definitions and Interpretation

1.1 Unless otherwise defined in this letter words and expressions defined in, or whose interpretation is provided for in, the Facility Agreement shall have the same meaning when used in this letter. All provisions of the Facility Agreement that apply to Finance Documents apply to this letter as if set out here in full with the necessary changes to the extent applicable.

1.2 In this letter the following definitions apply.

**Assigned Contract** means an Offtake Contract, a Transferrable Export LC or any contract that is designated as such by the Company and the Lender.

**Assigned Rights** means all rights, title, benefit and interest of the Company, whether present or future, proprietary, contractual or otherwise, arising out of, in, to, under or in connection with any or all Assigned Contracts, including:

- (a) all moneys now or hereafter due or owing to the Company under or in connection with any or all Assigned Contracts;
- (b) all rights of the Company to make demands, to require performance by the relevant Counterparty or otherwise exercise all its rights and remedies under any or all Assigned Contracts;
- (c) all Export LC Proceeds;
- (d) all Credit Insurance Proceeds;
- (e) all Insurance Policy Proceeds; and
- (f) all claims for damages, indemnities, compensation or other remedies in respect of any or all Assigned Contracts (including in respect of any breach of any or all Assigned Contracts).

**Counterparty** means each person (other than the Company) who is party to an Assigned Contract.

**Credit Insurance Proceeds** means the proceeds of any claim made in connection with any right to receive payment under any Assigned Contract or Collateral Document under any

insurance policy that has been taken out by, or for the benefit of, the Company (including without limitation each Credit Policy).

**Export LC** means any letter of credit issued by an acceptable third party bank in favour of the Company.

**Export LC Proceeds** means the proceeds of any claim under any Export LC that is not a Transferable Export LC.

**Insurance Policy Proceeds** means the proceeds of any claim made in connection with any Commodity under any insurance policy that has been taken out by, or for the benefit of, the Company.

**Secured Liabilities** means all present and future indebtedness, moneys, liabilities and other obligations due, owing, incurred or payable or expressed or intended to be due, owing, incurred or payable by the Company to the Lender (whether actual, contingent, joint or several) under or in connection with any Finance Document.

**Security** means the Security Interests created or intended to be created pursuant to this letter.

**Security Interest** means any mortgage, charge, assignment by way of security, pledge, hypothecation, lien, right of set off, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same, or any agreement to sell or otherwise dispose of any asset on terms whereby such asset is or may be leased to or re-acquired by the person selling it (or a person connected to the person selling it).

**Security Period** means the period from the date of this Deed until the day when the Lender notifies the Company in writing that all of the Company's obligations under the Finance Documents have been discharged in full.

**Transferable Export LC** means an Export LC under the terms of which the benefit of that Export LC can be transferred to the Lender.

- 1.3 This Deed is intended to take effect as a deed notwithstanding the fact that any Party may only execute this letter under hand.

## **2 Covenant to pay and assignment**

- 2.1 The Company covenants with the Lender to pay and discharge all Secured Liabilities due, payable or owing by the Company at the time or times when, and in the currency or currencies in which, the same are expressed to be due, payable or owing by the Company under any of the Finance Documents.
- 2.2 The Company, as continuing security for the payment and discharge in full of the Secured Liabilities, hereby assigns and agrees to assign to the Lender absolutely with full title guarantee the Assigned Rights.
- 2.3 Notwithstanding the terms of this letter, the Company shall remain liable to perform all of the obligations assumed by it in relation to the Assigned Contracts and the Lender shall not have any obligation or liability under any Assigned Contract by reason of this letter, or any assignment effected pursuant to it, to:
- (a) perform any of the obligations or duties of the Company;
  - (b) make any payment;

- (c) present or file any claim or take any other action to collect or enforce any claim for the payment of any sum payable, or any other right or benefit thereunder; or
  - (d) make any enquiries as to the nature or sufficiency of any payments received by the Lender by virtue of the Security.
- 2.4 The Lender may at any time following the assignment of an Assigned Contract pursuant to this letter, if the Lender considers such action is necessary or desirable to protect the Security, notify the relevant Counterparty of such assignment.

### **3 Reassignment**

At the end of the Security Period and subject to Clause 9.2, the Lender will, if so requested by the Company and at the Company's expense, reassign to the Company such interest as it may then have in the Assigned Rights.

### **4 Enforcement of the Security**

- 4.1 Upon the occurrence of an Event of Default (and without prejudice to any other right or remedy of the Lender), the Security shall be enforceable and all powers conferred by this letter or by any law or regulation shall become exercisable and, without prejudice to the generality of the foregoing, the Lender may, without prior notification to the Company:
- (a) appropriate all or any part of the Assigned Rights in or towards discharge of the Secured Liabilities;
  - (b) collect, recover, compromise and give a good discharge for any and all moneys or claims for moneys then outstanding or thereafter arising under any of the Assigned Contracts;
  - (c) take any action, make any demand, and exercise any rights available to the Company under any of the Assigned Contracts;
  - (d) take over or institute (if necessary using the name of the Company) all such proceedings in connection with the Assigned Rights as the Lender in its absolute discretion thinks fit;
  - (e) generally recover from the Company on demand each and every expense, liability or loss incurred by the Lender in or about or incidental to the exercise by it of any of the powers described above;
  - (f) apply for and maintain, at the Company's expense, any licence, authorisation, consent, registration, filing or approval from any governmental body or any person at any time necessary or desirable to enable the performance of any obligation or the exercise of any right under this letter, or any Assigned Contract; and
  - (g) fulfil, at the Company's expense and risk, the Company's obligations under each Assigned Contract.
- 4.2 Neither the Lender nor its agents, managers, officers, employees, delegates and advisers shall be liable for any claim, liability, loss, cost, damage or expense incurred or arising in connection with the exercise or purported exercise of any rights, powers and discretions under this letter in the absence of gross negligence or wilful misconduct. Each agent, manager, officer, employee, delegate and adviser of the Lender may enforce the provisions of this Clause in accordance with and within the meaning of the provisions of the Contracts (Rights of Third Parties) Act 1999.

## 5 Suspense account

All moneys received, recovered or realised by the Lender under this letter (including the proceeds of any currency conversion) may in the discretion of the Lender be credited to any suspense or impersonal account held with the Lender (or with any bank) and may be held in such account for so long as the Lender thinks fit until such time as the Lender has irrevocably received, recovered or realised, in freely transferable funds, amounts sufficient to discharge all the Secured Liabilities.

## 6 Representations and warranties

6.1 The Lender has entered into this letter in reliance on the following representations and warranties, and the Company represents and warrants to the Lender that:

- (a) the Assigned Rights are in the sole legal and beneficial ownership of the Company, fully assignable and free from any Security Interests (other than Security) and have not been agreed to be sold, assigned, transferred or otherwise disposed of (other than under this letter); and
- (b) each Assigned Contract constitutes the legal, valid and binding obligations of the parties thereto enforceable in accordance with its terms (except to the extent that enforceability may be limited by applicable insolvency, bankruptcy or similar laws affecting the enforcement of creditors' rights generally) and no Counterparty is in default of its obligations under the Assigned Contracts, or has repudiated, or has done or caused to be done any act or omission evidencing an intention to repudiate, any such document.

6.2 The representations and warranties in Clause 6.1 will be deemed repeated by the Company on each day during the Security Period with reference to the facts and circumstances then subsisting.

## 7 Undertakings

7.1 The Company undertakes and covenants to the Lender that, unless the Lender otherwise agrees, it shall promptly upon an Assigned Contract becoming subject to the Security:

- (a) ensure that the relevant Counterparty is notified of the assignment of such Assigned Contract and instructed to pay (on each invoice thereunder) any and all amounts that form part of, or otherwise relate to, the Assigned Rights into the Collection Account; and
- (b) not amend or change those payment instructions or give any other instructions to the Counterparty with respect to the Assigned Rights that are inconsistent with such payment instructions or with any of the other terms of this letter.

7.2 The Company undertakes and covenants to the Lender that, unless the Lender otherwise agrees, it shall:

- (a) **Deposit of documents:** as soon as the same come into its possession, deposit with the Lender copies of each Assigned Contract;
- (b) **Performance:**
  - (i) perform its obligations under the Assigned Contract in accordance with their respective terms;
  - (ii) use its reasonable endeavours to procure that each Counterparty performs its obligations under the Assigned Contract to which it is party, in each case in accordance with their respective terms;

- (c) **Notice to the Lender:** promptly upon becoming aware of any actual or threatened breach of, or default under, any Assigned Contract by it or any Counterparty, or the existence of any event or state of affairs which is, or with the giving of notice or the passing of time or upon any other condition being satisfied or determination being made, would be likely to constitute such a breach or default, or of the doing of or permitting to be done of any act or thing evidencing an intention to contest or repudiate any Assigned Contract in whole or in part, notify the Lender of the same;
- (d) **No amendment or waiver etc:**
  - (i) not make or consent to any variation, suspension, cancellation or termination of any Assigned Contract where such variation, suspension, cancellation or termination would materially impair the value of that Assigned Right as collateral for the Lender; or
  - (ii) not make or agree to any claim that any Assigned Contract is frustrated; or
  - (iii) not consent or agree to any waiver or release of any obligation of Counterparty under any Assigned Contract;
- (e) **No jeopardising the assignments or Assigned Rights:** not do or cause or permit to be done or omit to do anything which may:
  - (i) result in the receipt or recovery of moneys payable under or by virtue of any Assigned Contract being delayed, prevented or impeded;
  - (ii) impair the legal effect of the assignments created or purported to be created pursuant to Clause 2.2; or
  - (iii) in any material way depreciate, jeopardise or otherwise prejudice the value of the Assigned Rights; and
- (f) **No set-off etc:** not exercise any right of counterclaim, lien, set-off or any equities against any Counterparty which would be likely to affect the performance of any rights or obligations under any Assigned Contract.

7.3 The Company acknowledges that in performing its obligations under this Clause 7 the Company may be required to incur costs and the Company agrees to incur such costs as are reasonably necessary for such performance.

## 8 Power of attorney

- 8.1 The Company irrevocably and by way of security appoints the Lender or any other person nominated in writing by an officer of the Lender, as the Company's attorney and in its name and otherwise on its behalf, jointly and also severally to sign, execute, seal, deliver and do all deeds, instruments, acts and things which the Company is required to do under this letter, or which are necessary or desirable to enable the Lender or its delegates to exercise their respective powers under this letter or referred by law, and the Company agrees, immediately on the Lender's request, to ratify and confirm all acts, deeds, instruments and things signed, executed, sealed, delivered or done under the appointment, contained in this Clause 8.1.
- 8.2 The Lender shall have full power to delegate the power conferred on it by Clause 8.1, but no such delegation shall preclude the subsequent exercise of such power by the Lender itself or preclude the Lender from making a subsequent delegation thereof to some other person; any such delegation may be revoked by the Lender at any time.
- 8.3 The power of attorney granted pursuant to Clause 8.1 is as regards the Lender and its delegates (and as the Company hereby acknowledges) granted irrevocably and for value as

part of the Security to secure proprietary interests in and the performance of obligations owed to the Lender within the meaning of the Powers of Attorney Act 1971.

- 8.4 No person dealing with the Lender or its delegate shall be bound to see or inquire whether the right of the Lender to exercise any of its powers has arisen or become exercisable or be concerned with notice to the contrary, or be concerned to see whether any such delegation by the Lender shall have lapsed for any reason or been revoked.

## **9 Nature of the Security**

- 9.1 This letter may be enforced against the Company without first having recourse to any other rights or security of the Lender.
- 9.2 If, following release, settlement, satisfaction or discharge of any of the Secured Liabilities (including any reassignment effected pursuant to Clause 3), any security, disposition or payment is avoided, reduced, set aside, rendered unenforceable or required to be paid away, the Lender will be entitled to recover the value or amount of that security, disposition or payment from the Company as if that release, settlement, satisfaction or discharge had not occurred and enforce this letter subsequently as if such reassignment had not occurred and any such payment not been made.
- 9.3 The Security is continuing and will not be considered satisfied or discharged by any intermediate payment or settlement, any fluctuation in the Secured Liabilities or any variation of the Facility Agreement but will remain in force until the end of the Security Period.

## **10 Miscellaneous**

- 10.1 The Lender shall make further advances or other banking facilities available to the Company on the terms and subject to the conditions of the Facility Agreement.
- 10.2 Subject to any express provision to the contrary, any liberty or power which may be exercised or any determination which may be made under this letter by the Lender may be exercised or made in the absolute and unfettered discretion of the Lender which shall not be under any obligation to give reasons.
- 10.3 If any provision of this letter imposes a more onerous obligation on the Company than an equivalent provision in the Facility Agreement, the Company shall only be obliged to comply with the terms of the provision in this letter to the extent that such terms are not more onerous than those in the equivalent provision in the Facility Agreement.

## **11 Governing law and third party rights**

- 11.1 English law governs this letter, its interpretation and any non-contractual obligations arising from or connected with it. The Company agrees for the benefit of the Lender that the courts of England are to have exclusive jurisdiction to settle any disputes that may arise out of, or in connection with, this letter. Nothing in this Clause shall limit the right of the Lender to bring any legal action or proceedings with respect to this letter in any competent jurisdiction.
- 11.2 Except as expressly provided in Clause 4.2, the Company and the Lender do not intend that any term of this letter shall be enforceable solely by virtue of the Contracts (Third Parties) Act 1999 by any person who is not a party to this letter and no consent of any third party is required for any variation or termination of this letter.

**IN WITNESS** whereof the Company has executed this letter as a deed with the intention that it be delivered the date written at the beginning of this letter.



EXECUTED as a DEED and DELIVERED by  
**Kyen Resources UK Ltd** and signed by person(s)  
who under the laws of England are acting under the  
authority of the company

Name: VICTOR Kwo

Position: DIRECTOR

*in the presence of*

Name: [REDACTED] Long Tsip as a witness

Position: Trade Finance Manager

ACKNOWLEDGED and AGREED for and on behalf  
of **Kimura Master Fund Limited**

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

EXECUTED as a DEED and DELIVERED by  
Kyen Resources UK Ltd and signed by person(s)  
who under the laws of England are acting under the  
authority of the company

Name:

Position:

Name:

Position:

ACKNOWLEDGED and AGREED for and on behalf  
of Kimura Master Fund Limited

Name: Neil Stanley West

Position: Director

Name:

Position: