

27 **October 2020**

**THE PERSON LISTED IN PART I (THE ORIGINAL  
SUBORDINATED BORROWER) OF SCHEDULE 1  
(THE ORIGINAL JUNIOR PARTIES)**

as the Original Subordinated Borrower

**THE PERSONS LISTED IN PART II (THE  
ORIGINAL SUBORDINATED CREDITORS) OF  
SCHEDULE 1 (THE ORIGINAL JUNIOR PARTIES)**

as Original Subordinated Creditors

and

**VTB BANK (PJSC)**

as Agent

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**SUBORDINATION AGREEMENT**

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## CONTENTS

Clause	Page
1. DEFINITIONS AND INTERPRETATION.....	1
2. JUNIOR DEBT .....	4
3. REPRESENTATIONS .....	6
4. TURNOVER OF NON-PERMITTED PAYMENTS .....	8
5. SUBORDINATION ON INSOLVENCY .....	9
6. PROTECTION OF SUBORDINATION.....	10
7. INFORMATION .....	12
8. PRESERVATION OF DEBT .....	12
9. CONSENTS.....	13
10. STATUS OF SUBORDINATED BORROWER.....	13
11. CHANGES TO THE PARTIES .....	13
12. NOTICES .....	14
13. CALCULATIONS AND CERTIFICATES .....	16
14. PARTIAL INVALIDITY .....	16
15. REMEDIES AND WAIVERS .....	16
16. AMENDMENTS AND WAIVERS .....	17
17. COUNTERPARTS .....	17
18. GOVERNING LAW.....	17
19. ENFORCEMENT.....	17
SCHEDULE 1 .....	20
<b>THE ORIGINAL JUNIOR PARTIES</b>	
SCHEDULE 2 .....	21
<b>FORM OF RESIGNATION LETTER</b>	

**THIS AGREEMENT** is dated 27 October 2020 and made as a deed between:

- (1) **THE PERSON** listed in Part I (*The Original Subordinated Borrower*) of Schedule 1 (*The Original Junior Parties*) (the “**Subordinated Borrower**”);
- (2) **THE PERSONS** listed in Part II (*The Original Subordinated Creditors*) of Schedule 1 (*The Original Junior Parties*) (the “**Original Subordinated Creditors**”); and
- (3) **VTB BANK (PJSC)**, as agent of the other Senior Finance Parties (the “**Agent**”).

## **BACKGROUND**

- (A) This Agreement is entered into in connection with the Senior Facilities Agreement (as defined below) and is referred to therein as the “Subordination Agreement (Shareholders)”.
- (B) The Parties intend this document to take effect as a deed (even though the Agent only executes it under hand).

**IT IS AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement:

“**Acceleration Event**” means the Agent (as defined in the Senior Facilities Agreement) exercising any of its rights under paragraphs (a) or (b) of clause 25.22 (*Acceleration*) of the Senior Facilities Agreement.

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Amsterdam, London, Moscow, Nur-Sultan (previously Astana) and (in relation to any date for payment or purchase of dollars) New York.

“**Company**” means Nova Resources B.V., a company incorporated under the laws of the Netherlands with company number 67335845 and having its registered office at Strawinskyiaan 1151, Tower C - Level 11, 1077 XX Amsterdam, the Netherlands.

“**Debt**” means any Senior Debt or Junior Debt.

“**Default**” means a Default (as defined in the Senior Facilities Agreement).

“**Documents**” means the Senior Finance Documents and the Junior Finance Documents.

“**Enforcement Action**” means any action of any kind to:

- (a) demand payment, declare prematurely due and payable or otherwise seek to accelerate payment of or place on demand all or any part of any Debt;
- (b) recover all or any part of any Debt (including by exercising any set-off, save as required by law);

- (c) exercise or enforce any right against any Relevant Person or Junior Party or any other right under any other document, agreement or instrument, in each case in relation to (or given in support of) all or any part of any Debt against any member of the Group;
- (d) petition for (or take or support any other step which may lead to) an Insolvency Event in relation to any Relevant Person or member of the Group; or
- (e) sue, claim or bring proceedings against any Relevant Person or member of the Group in respect of all or any Debt.

“**Group**” means the Company and its Subsidiaries for the time being.

“**Insolvency Event**” means any event described in clause 25.6 (*Insolvency*) or clause 25.7 (*Insolvency proceedings*) of the Senior Facilities Agreement.

“**Junior Debt**” means all present and future moneys, debts and liabilities due, owing or incurred from time to time by any Subordinated Borrower to any Subordinated Creditor (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise) under the Junior Finance Documents.

“**Junior Finance Documents**” means:

- (a) the USD 35,000,000 facility agreement dated 22 October 2020 between Mr Oleg Novachuk and the Subordinated Borrower;
- (b) the USD 35,000,000 facility agreement dated 22 October 2020 between Mr Vladimir Kim and the Subordinated Borrower; and
- (c) any other document designated from time to time as a "Junior Finance Document" for the purposes of this Agreement by each Party.

“**Junior Party**” means a Subordinated Borrower or a Subordinated Creditor.

“**Junior Recoveries**” means the aggregate of all moneys and other assets received or recovered (whether by way of payment, repayment, prepayment, distribution, redemption, purchase or defeasance, in cash or in kind, or the exercise of any set-off or otherwise) from time to time by any Subordinated Creditor under or in connection with any Junior Debt.

“**Obligor**” means a Borrower or a Guarantor (in each case as such terms are defined in the Senior Facilities Agreement).

“**Party**” means a party to this Agreement.

“**Permitted Facility Payment**” means a Permitted Payment (as defined in the Senior Facilities Agreement).

“**Permitted Payments**” means the payments, receipts and set-offs permitted by Clause 2.2 (*Permitted Payments*) in each case for as long as they are so permitted.

“**Relevant Person**” means an Obligor or a Security Provider.

“**Resignation Letter**” means a letter substantially in the form set out in Schedule 2 (*Form of Resignation Letter*).

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

“**Security Provider**” has the meaning given to that term in the Senior Facilities Agreement.

“**Senior Debt**” means all present and future moneys, debts and liabilities due, owing or incurred from time to time by any Subordinated Borrower to any Senior Finance Party under or in connection with any Senior Finance Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise).

“**Senior Discharge Date**” means the time when the Agent is satisfied that all Senior Debt has been fully and irrevocably paid or discharged and all commitments of the Senior Finance Parties in respect of the Senior Debt have expired or been cancelled.

“**Senior Facilities Agreement**” means the USD term facilities agreement dated on or about the date of this Agreement between, among others, the Company as borrower and VTB Bank (PJSC) as Agent and Arranger.

“**Senior Finance Documents**” means the Finance Documents (as defined in the Senior Facilities Agreement).

“**Senior Finance Parties**” means the Finance Parties (as defined in the Senior Facilities Agreement).

“**Subordinated Creditor**” means an Original Subordinated Creditor unless it has ceased to be a Subordinated Creditor in accordance with Clause 11.4 (*Resignation of Junior Parties*).

“**Subsidiary**” has the meaning given to that term in the Senior Facilities Agreement.

“**Tax**” means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
- (i) the “**Agent**”, any “**Relevant Person**”, any “**Senior Finance Party**” or any “**Junior Party**” shall be construed so as to include its successors in title, assigns and transferees permitted under this Agreement;
  - (ii) “**assets**” includes present and future properties, revenues and rights of every description;
  - (iii) a “**Document**”, “**Junior Finance Document**” or “**Senior Finance Document**” or any other agreement or instrument, other than a reference to a document or other agreement or instrument in its original form, is a reference to that document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that document or other agreement or instrument but excluding any amendment, novation, supplement, restatement or replacement contrary to this Agreement;
  - (iv) “**guarantee**” means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment

in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

- (v) **“indebtedness”** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) **“it”** in respect of a Subordinated Creditor shall be construed as him, he or his as applicable;
  - (vii) the **“original form”** of a document, agreement or instrument means that document, agreement or instrument as originally entered into;
  - (viii) a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - (ix) a **“regulation”** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (x) **“set-off”** includes combining accounts and payment netting;
  - (xi) **“shares”** or **“share capital”** include equivalent ownership interests (and **“shareholder”** and similar expressions shall be construed accordingly); and
  - (xii) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.
  - (c) A Default or an Event of Default (each as defined in the Senior Facilities Agreement) is **“continuing”** if it has not been remedied or waived in accordance with the terms of the relevant agreement.
  - (d) If the Agent reasonably considers that any amount paid or credited to any Senior Finance Party under any Senior Finance Document is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Senior Debt has been irrevocably paid.

### 1.3 **Third Party Rights**

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

### 1.4 **Subordination Agreement**

The Documents are subject to the Subordination Agreement. In the event of any inconsistency between any Junior Finance Document and this Agreement, this Agreement shall prevail.

## 2. **JUNIOR DEBT**

### 2.1 **Junior Debt**

- (a) Until the Senior Discharge Date:

- (i) no Subordinated Creditor shall demand or receive and no Subordinated Borrower shall (and the Company shall ensure that no other Relevant Person or member of the Group will) make, any payment, repayment or prepayment of any principal, interest or other amount on or in respect of, or any distribution in respect of, or any redemption, purchase or defeasance of, any Junior Debt in cash or in kind, except as permitted by Clause 2.2 (*Permitted Payments*), Clause 2.3 (*Restrictions on enforcement by the Subordinated Creditors*) or Clause 5.2 (*Filing of claims*);
  - (ii) no Subordinated Creditor shall apply any money or property in or towards discharge of, and no Subordinated Borrower shall (and the Company shall ensure that no other Relevant Person or member of the Group will) redeem, purchase or defease, any Junior Debt, except as permitted by Clause 2.2 (*Permitted Payments*), Clause 2.3 (*Restrictions on enforcement by the Subordinated Creditors*) or Clause 5.2 (*Filing of claims*);
  - (iii) no Subordinated Creditor or Subordinated Borrower shall exercise any set-off against any Junior Debt, except as permitted by Clause 2.2 (*Permitted Payments*), Clause 2.3 (*Restrictions on enforcement by the Subordinated Creditors*) or Clause 5.2 (*Filing of claims*);
  - (iv) no Subordinated Creditor shall permit to subsist or receive, and no Subordinated Borrower shall (and the Company shall ensure that no other Relevant Person or member of the Group will) create or permit to subsist any Security, or any guarantee, for, or in respect of, any Junior Debt (in each case save to the extent granted by a person which is not a Relevant Person or a member of the Group);
  - (v) no Subordinated Creditor shall claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of any Subordinated Borrower other than in accordance with Clause 2.3 (*Restrictions on enforcement by the Subordinated Creditors*) or Clause 5.2 (*Filing of claims*);
  - (vi) no Junior Party shall take or omit to take any action whereby the ranking and/or subordination contemplated by this Agreement may be impaired;
  - (vii) no Junior Party shall permit any Junior Debt to be evidenced by a negotiable instrument; and
  - (viii) no Junior Party shall convert any Junior Debt into shares of any Subordinated Borrower.
- (b) Paragraph (a) above does not apply to any action taken with the prior consent of the Agent.

## 2.2 Permitted Payments

Subject to Clause 5 (*Subordination on insolvency*), the Subordinated Borrower may pay, and the Subordinated Creditors may receive and retain, including without limitation by way of set-off, payments in respect of, any Junior Debt, if (i) such payment is a Permitted Facility Payment; and (ii) no Default has occurred and is continuing or would occur as a result of making the relevant payment, or otherwise with the prior written consent of the Agent.

## 2.3 Restrictions on enforcement by the Subordinated Creditors

- (a) Until the Senior Discharge Date, no Subordinated Creditor shall, subject to paragraphs (b) to (d) below or otherwise with the prior consent of or as required by the Agent, take any Enforcement Action in relation to any Junior Debt.
- (b) A Subordinated Creditor may take any of the actions referred to in paragraphs (a) to (c) of the definition of Enforcement Action to the extent required to facilitate the making of a Permitted Payment.
- (c) If required by the Agent to take Enforcement Action after the occurrence of an Event of Default (as defined in the Senior Facilities Agreement) which is continuing, the Subordinated Creditors will promptly take the relevant Enforcement Action and apply any proceeds from that Enforcement Action in accordance with Clause 4.1 (*Turnover*).
- (d) After the occurrence of any event described in Clause 5.1 (*Subordination events*) in relation to a Subordinated Borrower, a Subordinated Creditor may (unless otherwise directed by the Agent or the Security Agent or unless the Agent or the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Subordinated Creditor in accordance with Clause 5 (*Subordination on insolvency*)), exercise any right it may otherwise have in respect of the Junior Debt owed to it by that Subordinated Borrower to:
  - (i) accelerate that Junior Debt or declare it prematurely due and payable;
  - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by the Subordinated Borrower in respect of that Junior Debt;
  - (iii) exercise any right of set-off or take or receive any payment in respect of that Junior Debt; or
  - (iv) claim and prove in the liquidation of the Subordinated Borrower for the Junior Debt owing to it,

provided that the relevant Subordinated Creditor shall only exercise such rights (1) after first giving two Business Days' notice to the Agent that it intends to do so and (2) for the purposes of preserving the validity, existence or priority of any Junior Debt (and shall for the avoidance of doubt, if it receives any proceeds from that Enforcement Action, apply them in accordance with Clause 4.1 (*Turnover*)).

#### 2.4 Amendments to Junior Finance Documents

- (a) Until the Senior Discharge Date, no Junior Finance Party or Obligor shall (and the Company shall ensure that no other member of the Group will) amend or give any waiver or consent under any provision of any Junior Finance Document which would result in a Default or the ranking and/or subordination contemplated by this Agreement being impaired.
- (b) Paragraph (a) above does not apply to any amendment, waiver or consent:
  - (i) made with the prior consent of the Agent; or
  - (ii) which is minor, technical or administrative or corrects a manifest error.

### 3. REPRESENTATIONS

Each Junior Party makes the representations and warranties set out in this Clause 3 to the Agent on the date of this Agreement (in the case of a Subordinated Creditor, in respect of itself only):



- (a)
  - (i) in the case of the Subordinated Borrower, it is duly incorporated (if a corporate person) or duly established (in any other case) and validly existing under the law of its jurisdiction of incorporation or formation;
  - (ii) in the case of each Subordinated Creditor, he has full power and legal capacity to enter into, execute and deliver this Agreement and to undertake, perform, discharge, observe and comply with all obligations and liabilities thereunder;
- (b) in the case of Mr Oleg Novachuk, he:
  - (i) is a citizen of Russia and the United Kingdom and has legal domicile in Monaco;
  - (ii) has full capacity to enter into, perform and deliver this Agreement and the transactions contemplated by it;
  - (iii) he has not been declared by a court, tribunal or governmental agency of competent jurisdiction to be incompetent or of unsound mind, and is of sound mind;
  - (iv) he has full capacity to own his assets and carry on his business as it is being conducted;
  - (v) he enters into this Agreement without any duress and with the full understanding of all his obligations and liabilities hereunder;
  - (vi) he has received a copy of each of the Finance Documents and has carefully reviewed them together with his representatives and legal advisers and fully understands the commercial and legal implications of the transactions thereunder;
  - (vii) he has the power to enter into, perform and deliver, and has taken all necessary action to authorize the entry into, performance and delivery of, this Agreement; and
  - (viii) he is not registered as an individual entrepreneur;
- (c) in the case of Mr Vladimir Kim, he:
  - (i) is a citizen of Kazakhstan and has legal domicile in Kazakhstan;
  - (ii) has full capacity to enter into, perform and deliver this Agreement and the transactions contemplated by it;
  - (iii) he has not been declared by a court, tribunal or governmental agency of competent jurisdiction to be incompetent or of unsound mind, and is of sound mind;
  - (iv) he has full capacity to own his assets and carry on his business as it is being conducted;
  - (v) he enters into this Agreement without any duress and with the full understanding of all his obligations and liabilities hereunder;

- (vi) he has received a copy of each of the Finance Documents and has carefully reviewed them together with his representatives and legal advisers and fully understands the commercial and legal implications of the transactions thereunder; and
- (vii) he has the power to enter into, perform and deliver, and has taken all necessary action to authorize the entry into, performance and delivery of, this Agreement;
- (d) the obligations expressed to be assumed by it in this Agreement and the Junior Finance Documents to which it is a party are, subject to the Legal Reservations (as defined in the Senior Facilities Agreement) and any general principles of law limiting its obligations, legal, valid, binding and enforceable;
- (e) the entry into and performance by it of, and the transactions contemplated by, this Agreement and the Junior Finance Documents to which it is a party do not and will not conflict with any law or regulation applicable to it or (in the case of the Subordinated Borrower) its constitutional documents or (to an extent which has, or is reasonably likely to have, a Material Adverse Effect (as defined in the Senior Facilities Agreement)) any agreement or instrument binding on it or any of its assets;
- (f) the Subordinated Borrower has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this Agreement and the Junior Finance Documents to which it is a party and the transactions contemplated by this Agreement and the Junior Finance Documents to which it is a party;
- (g) all Authorisations required to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Agreement and the Junior Finance Documents to which it is a party and to make this Agreement and the Junior Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation (in the case of the Subordinated Borrower), any jurisdiction referred to in respect of it in paragraph (b) or (c) above (as applicable) (in the case of a Subordinated Creditor) and any jurisdiction where it conducts its business have been obtained or effected and are in full force and effect; and
- (h) (in respect of a Subordinated Creditor only) it is the sole beneficial owner of the Junior Debt owed to it.

#### **4. TURNOVER OF NON-PERMITTED PAYMENTS**

##### **4.1 Turnover**

Until the Senior Discharge Date, if any Subordinated Creditor receives or recovers any Junior Recoveries except for any Permitted Payment, that Subordinated Creditor shall:

- (a) within three Business Days of the receipt or recovery, notify details of that receipt or recovery to the Agent;
- (b) hold any such Junior Recoveries received by it, up to the aggregate of all amounts which may be or become payable as Senior Debt, on trust for the Senior Finance Parties for application towards the Senior Debt in accordance with the Senior Finance Documents; and
- (c) pay an amount equal to any such Junior Recoveries (or, where the receipt or recovery is by way of discharge by set-off, an equivalent amount), up to the aggregate of all

amounts which may be or become payable as Senior Debt, to the Agent for application towards the Senior Debt in accordance with the Senior Finance Documents.

#### 4.2 **Non-creation of charge**

Nothing in this Clause 4 or any other provision of this Agreement is intended to or shall create a charge or security interest.

### 5. **SUBORDINATION ON INSOLVENCY**

#### 5.1 **Subordination events**

If:

- (a) any order is made or resolution passed for the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Subordinated Borrower; or
- (b) any Subordinated Borrower enters into any composition, assignment or arrangement with its creditors generally; or
- (c) any liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer is appointed in respect of any Subordinated Borrower or any of its assets; or
- (d) any Security over any assets of any Subordinated Borrower is enforced; or

any analogous event occurs in any jurisdiction, this Clause 5 shall apply.

#### 5.2 **Filing of claims**

- (a) In any of the circumstances mentioned in Clause 5.1 (*Subordination events*), until the Senior Discharge Date the Agent may, and is hereby irrevocably authorised on behalf of each Subordinated Creditor to:
  - (i) demand, claim, enforce and prove for the Junior Debt owed by that Subordinated Borrower;
  - (ii) file claims and proofs, give receipts and take any proceedings in respect of filing such claims or proofs and do anything which the Agent considers necessary or desirable to recover the Junior Debt owed by that Subordinated Borrower; and
  - (iii) receive all distributions of the Junior Debt owed by that Subordinated Borrower for application towards the Senior Debt in accordance with the Senior Finance Documents.
- (b) If and to the extent that the Agent is not entitled, or elects not, to take any of the action mentioned in paragraph (a) above, each Subordinated Creditor will do so promptly on request by the Agent.

#### 5.3 **Distributions**

In any of the circumstances mentioned in Clause 5.1 (*Subordination events*), until the Senior Discharge Date each Subordinated Creditor will:

- (a) hold all Junior Recoveries, up to the aggregate of all amounts which may be or become payable as Senior Debt, received by it in respect of the Junior Debt owed by the relevant Subordinated Borrower on trust for the Senior Finance Parties for application in accordance with the Senior Finance Documents;
- (b) pay an amount equal to any Junior Recoveries received by it (or, where the receipt or recovery is by way of discharge by set-off, an equivalent amount) in respect of the Junior Debt owed by the relevant Subordinated Borrower, up to the aggregate of all amounts which may be or become payable as Senior Debt, to the Agent for application towards the Senior Debt in accordance with the Senior Finance Documents;
- (c) promptly direct the trustee in bankruptcy, liquidator, assignee or other person distributing the assets of the relevant Subordinated Borrower or their proceeds to pay distributions in respect of the Junior Debt directly to the Agent; and
- (d) promptly take any action requested by the Agent to give effect to this Clause 5.3.

#### 5.4 **Voting**

- (a) In any of the circumstances mentioned in Clause 5.1 (*Subordination events*), until the Senior Discharge Date:
  - (i) the Agent may, and is hereby irrevocably authorised on behalf of each Senior Finance Party and Subordinated Creditor to, exercise all powers of convening meetings, voting and representation in respect of the Junior Debt; and
  - (ii) each Subordinated Creditor shall promptly on demand execute and/or deliver to the Agent such forms of proxy and representation as it may require to facilitate any such action.
- (b) If and to the extent that the Agent is not entitled, or elects not, to exercise a power under paragraph 5.4 above, each Subordinated Creditor will:
  - (i) exercise that power as the Agent directs; and
  - (ii) not exercise that power so as to impair the ranking and/or subordination contemplated by this Agreement.

### 6. **PROTECTION OF SUBORDINATION**

#### 6.1 **Continuing subordination**

The subordination provisions in this Agreement shall remain in full force and effect by way of continuing subordination and extend to the ultimate balance of the Senior Debt, regardless of any intermediate payment or discharge of the Senior Debt in whole or in part.

#### 6.2 **Waiver of defences**

Neither the subordination in this Agreement nor the obligations of any Subordinated Creditor shall be affected in any way by an act, omission, matter or thing which, but for this Clause 6, would reduce, release or prejudice the subordination or any of those obligations in whole or in part, (without limitation and whether or not known to any Junior Party or any other person) including:

- (a) any time, waiver or consent granted to, or composition with, any Relevant Person, Junior Party or other person;

- (b) the release of any Relevant Person, Junior Party or any other person under the terms of any composition or arrangement with any creditor of any Relevant Person, Junior Party or any other person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Relevant Person, Junior Party or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Relevant Person, Junior Party or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Document or any other document or security;
- (g) (without prejudice to the obligation of the Company or the Parent to procure that certain persons accede to this Agreement from time to time), any failure by any person to accede to this Agreement as a Junior Party in accordance with the requirements of this Agreement; or
- (h) any insolvency or similar proceedings.

### 6.3 **Immediate recourse**

Each Subordinated Creditor waives any right it may have of first requiring the Agent or any other Senior Finance Party (or any trustee or agent on behalf of any of them) to proceed against or enforce any other rights or security or claim payment from any person before claiming the benefit of this Agreement. This waiver applies irrespective of any law or any provision of a Junior Finance Document to the contrary.

### 6.4 **Appropriations**

Until the Senior Discharge Date, the Agent or any other Senior Finance Party (or any trustee or agent on behalf of any of them) may:

- (a) refrain from applying or enforcing any Junior Recoveries or other moneys, security or rights held or received by the Agent or any other Senior Finance Party (or any trustee or agent on behalf of any of them) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Subordinated Creditor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any Junior Recoveries or other moneys received from any Subordinated Creditor or on account of any Subordinated Creditor's liability under this Agreement.

### 6.5 **Deferral of Subordinated Creditors' rights**

Until the Senior Discharge Date and unless the Agent otherwise directs, no Subordinated Creditor will exercise any rights which it may have by reason of performance by it of its obligations under this Agreement or the Documents or by reason of any amount being payable, or liability arising under this Clause 6:

- (a) to be indemnified by a Subordinated Borrower;
- (b) to claim any contribution from any guarantor of any Subordinated Borrower's obligations under the Senior Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Senior Finance Parties under the Senior Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Senior Finance Documents by any Senior Finance Party;
- (d) to bring legal or other proceedings for an order requiring any Subordinated Borrower to make any payment, or perform any obligation, in respect of which any guarantor has given a guarantee, undertaking or indemnity under the Junior Finance Documents;
- (e) to exercise any right of set-off against any Subordinated Borrower; and/or
- (f) to claim or prove as a creditor of any Subordinated Borrower in competition with any Senior Finance Party.

If a Subordinated Creditor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Senior Finance Parties by the Subordinated Borrowers under or in connection with the Senior Finance Documents to be repaid in full on trust for the Senior Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with clause 34 (*Payment mechanics*) of the Senior Facilities Agreement.

## 6.6 **Discharge**

Each Junior Party hereby irrevocably waives any right to appropriate any payments to, or other sum received, recovered or held by, the Agent or any other Senior Finance Party in or towards discharge of a particular part of the Senior Debt and agrees that the Agent shall have the exclusive right to appropriate any such payment or other sum in accordance with this Agreement.

## 7. **INFORMATION**

Each Subordinated Creditor will on written request by the Agent from time to time (but in any case not more than once in any Financial Quarter unless an Event of Default is continuing) notify the Agent of the amount of its outstanding Junior Debt.

## 8. **PRESERVATION OF DEBT**

### 8.1 **Preservation of Junior Debt**

Notwithstanding any term of this Agreement postponing, subordinating or preventing the payment of all or any part of the Junior Debt, the relevant Junior Debt shall, as between each Subordinated Borrower and the Subordinated Creditors, be deemed to remain owing or due and payable (and interest, default interest or indemnity payments shall continue to accrue) in accordance with the Junior Finance Documents.

### 8.2 **No liability**

The provisions of clause 29.10 (*Exclusion of liability*) of the Senior Facilities Agreement shall apply to this Agreement *mutatis mutandis* as if set out in full herein.

## **9. CONSENTS**

### **9.1 No objection by Subordinated Creditors**

No Subordinated Creditor shall have any claim or remedy against any Relevant Person or member of the Group or any Senior Finance Party by reason of:

- (a) the entry by any of them into any Senior Finance Document or any other agreement between any Senior Finance Party and any Relevant Person or member of the Group;
- (b) any waiver or consent granted under any Senior Finance Document; or
- (c) any requirement or condition imposed by or on behalf of any Senior Finance Party under any Senior Finance Document or such other agreement,

which breaches or causes an event of default or potential event of default (however described) under any Junior Finance Document. No Subordinated Creditor may object to any such matter by reason of any provision of any Junior Finance Document.

## **10. STATUS OF SUBORDINATED BORROWER**

### **10.1 Subordinated Borrower's role**

The Subordinated Borrower is party to this Agreement to acknowledge the priorities, rights and obligations set out in this Agreement.

### **10.2 No rights**

Unless a contrary indication appears in this Agreement, the Subordinated Borrower shall not have any rights under this Agreement and none of the undertakings by the Senior Finance Parties in this Agreement are given (or deemed to be given) to or for the benefit of any Subordinated Borrower.

## **11. CHANGES TO THE PARTIES**

### **11.1 Assignment and transfer by Subordinated Borrowers**

No Subordinated Borrower may assign any of its rights or transfer any of its rights or obligations under this Agreement.

### **11.2 Assignments and transfers by Senior Finance Parties**

A Senior Finance Party may assign any of its rights or transfer any of its rights or obligations under this Agreement in accordance with the Senior Facilities Agreement.

### **11.3 Assignments and transfers by Subordinated Creditors**

No Subordinated Creditor may assign any of its rights or transfer any of its rights or obligations under, or declare or create any trust of any of its rights, title, interest or benefits under, this Agreement or (save for any transfer of any Junior Debt or Junior Recoveries owed to it to another Subordinated Creditor) any Junior Finance Document (including any Junior Recoveries owing to it) to, or in favour of, any person except with the prior consent of the Agent.

### **11.4 Resignation of Junior Parties**

- (a) The Company may request that a person cease to be a Subordinated Creditor by delivering to the Agent a Resignation Letter.
- (b) The Agent shall accept a Resignation Letter and notify the Company and the Lenders in writing of its acceptance if:
  - (i) the Agent is satisfied (acting reasonably) that the relevant Junior Party is not or has ceased to be a debtor or, as the case may be, creditor in respect of any Junior Debt; and
  - (ii) the Company confirms that no Default would result from the acceptance of the Resignation Letter.
- (c) The resignation of the Junior Party shall be effective on the date on which the Agent notifies the Company in writing as contemplated in paragraph (b) above, at which time that the relevant Junior Party shall cease to be a Subordinated Creditor (as specified in the relevant Resignation Letter) and shall have no further rights or obligations under the Finance Documents as a Subordinated Creditor.

#### **11.5 Notification by Agent**

The Agent shall notify the other Parties promptly of the receipt and execution by it on their behalf of any Accession Deed or any Resignation Letter.

#### **11.6 Set-off**

No Party or Senior Finance Party may set off any matured obligation due from a Subordinated Creditor under this Agreement (to the extent beneficially owned by that Senior Finance Party) against any matured obligation owed by that Senior Finance Party to that Subordinated Creditor.

### **12. NOTICES**

#### **12.1 Communications in writing**

Any communication or document to be made or delivered under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made or delivered by fax, letter, electronic mail or other electronic means (including, without limitation, by way of posting to a secure website).

#### **12.2 Addresses**

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

- (a) in the case of the Company, the Parent, each other Obligor (as defined in the Senior Facilities Agreement) and each Senior Finance Party, that identified in accordance with the terms of the Senior Facilities Agreement; and
- (b) in the case of each additional Junior Party, that notified in writing to the Agent on or prior to the date on which it becomes a Party,

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

#### **12.3 Delivery**



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

and, if a particular department or officer is specified as part of its address details provided under Clause 12.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).
- (c) Any communication or document which becomes effective, in accordance with paragraphs (a) and (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### 12.4 **Notification of address and fax number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 12.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

#### 12.5 **Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### 12.6 **English language**

- (a) Any notice given under or in connection with this Agreement must be in English.

- (b) All other documents provided under or in connection with this Agreement must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **13. CALCULATIONS AND CERTIFICATES**

### **13.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Agreement or any Document, the entries made in the accounts maintained by a Senior Finance Party or a Subordinated Creditor are prima facie evidence of the matters to which they relate.

### **13.2 Certificates and determinations**

Any certification or determination by a Senior Finance Party or a Subordinated Creditor of a rate or amount under this Agreement or any Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **13.3 Extent of discharge**

Any Junior Recoveries, or any other payment required to be paid by any Junior Party under this Agreement, or any order, judgment or award given or made in relation to such amount, received or recovered in a currency other than the currency of the Senior Debt by the Agent shall not constitute a discharge of all or any part of the Senior Debt unless and until the Agent converts the currency received at a market rate of exchange in its usual course of business to the currency of the Senior Debt and applies the proceeds of conversion in or towards discharge of the Senior Debt, in accordance with this Agreement.

### **13.4 Currency of payments**

Each Junior Party waives any right they may have in any jurisdiction to pay any amount under this Agreement in a currency or currency unit other than that in which it is expressed to be payable.

## **14. PARTIAL INVALIDITY**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **15. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Agent or any Subordinated Creditor any right or remedy under this Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No waiver or election to affirm this Agreement on the part of the Agent or any Subordinated Creditor shall be effective unless in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## 16. AMENDMENTS AND WAIVERS

- (a) Any term of this Agreement may be amended or waived only with the written consent of the Agent and each Junior Party and any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Senior Finance Party, any amendment or waiver permitted by this Clause.

## 17. COUNTERPARTS

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

## 18. GOVERNING LAW

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

## 19. ENFORCEMENT

### 19.1 Arbitration

Any dispute, difference or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, interpretation, breach, performance, termination or enforceability (including any non-contractual dispute, difference or claim) (a “**Dispute**”) shall be referred to and finally resolved by arbitration on the following terms:

- (a) the arbitration shall be administered by the Singapore International Arbitration Centre (“**SIAC**”) and conducted in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (the “**SIAC Rules**”) for the time being in force, which are deemed to be incorporated by reference in this Clause 19.1;
- (b) the seat (legal place) of the arbitration shall be Singapore, and all hearings shall take place in Singapore;
- (c) the language of the arbitration shall be English;
- (d) the number of arbitrators shall be three. Notwithstanding anything to the contrary in the SIAC Rules, in agreeing the third arbitrator the two arbitrators may communicate directly with each other and with their respective appointing parties;
- (e) the claimant (or the multiple claimants together) and the respondent (or the multiple respondents together) shall each nominate one arbitrator, and the two party-nominated arbitrators shall nominate the third and presiding arbitrator of the arbitral tribunal. If the two party-nominated arbitrators fail to nominate the third and presiding arbitrator within 21 days from the date on which the second party-nominated arbitrator is appointed, he or she shall be selected and appointed expeditiously by the President of the SIAC;
- (f) in the event the claimant (or the multiple claimants together) or the respondent (or the multiple respondents together) fails to nominate an arbitrator in accordance with the SIAC Rules, such arbitrator shall be appointed by the President of the SIAC in accordance with the SIAC Rules;
- (g) if all the parties to an arbitration so agree in writing, a sole arbitrator shall be appointed by the President of the SIAC within 15 days of such agreement. The period for reaching

such an agreement shall start on the date of the commencement of the arbitration proceedings under the SIAC Rules and shall expire 14 days after that date;

- (h) the appointed presiding arbitrator or any sole arbitrator shall be an English law qualified lawyer with more than ten years' experience practicing English law. Any provision of the SIAC Rules to the contrary shall to that extent not apply;
- (i) this arbitration agreement, including its validity and scope, shall be governed by English law; and
- (j) the SIAC Expedited Procedure under Rule 5.2 of the SIAC Rules shall not apply except by agreement of the parties.

## **19.2 Consolidation of arbitrations**

- (a) Any party to this Agreement or any Linked Agreement may, in accordance with the SIAC Rules, be joined to any arbitration commenced under this Agreement or any Linked Agreement. Each party to this Agreement hereby consents, for the purposes of the SIAC Rules, to such joinder.
- (b) Pursuant to Rules 6 and 8 of the SIAC Rules:
  - (i) Disputes may be resolved in a single arbitration together with Disputes (as defined in any Linked Agreement) arising out of any such Linked Agreement; and
  - (ii) the parties agree to the consolidation of any two or more arbitrations commenced pursuant to this Clause 19 and/or the arbitration agreement contained in any Linked Agreement into a single arbitration, as provided for in the SIAC Rules.
- (c) Each party waives any objection, on the basis that a Dispute has been resolved in a manner contemplated in paragraphs of this Clause 19.2, to the validity and/or enforcement of any arbitral award made by an arbitral tribunal following the Dispute being resolved in that manner.
- (d) In this Clause 19.2, "**Linked Agreement**" means each Finance Document other than this Agreement, provided such Finance Document is governed by English law and does not expressly provide for a dispute resolution mechanism other than the one contained in this Clause 19.
- (e) The requirement in the SIAC Rules that the Court or a tribunal considering whether to consolidate disputes should consider the views of all parties or give the parties an opportunity to be heard shall extend to all parties to each of the arbitrations in respect of which consolidation is sought

## **19.3 Appointment of arbitrators**

- (a) If there are multiple claimants or multiple respondents, each Party agrees that, in the absence of a joint nomination of an arbitrator by one side, any existing nomination or confirmation of the arbitrator chosen by the party or parties on the other side of the proposed arbitration shall be unaffected.
- (b) Each Party expressly agrees and consents to the process in this Clause 19 for nominating and appointing the Arbitral Tribunal and, if this Clause 19 operates to

exclude a Party's right to choose its own arbitrator, irrevocably and unconditionally waives any right it may have to do so.

#### **19.4 Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Junior Party (other than a Junior Party incorporated in Singapore):
  - (i) irrevocably appoints [REDACTED] as its agent for service of process in relation to any proceedings in Singapore in connection with this Agreement; and
  - (ii) agrees that failure by an agent for service of process to notify the relevant Junior Party of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (on behalf of the relevant Junior Party) must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.
- (c) Each Junior Party expressly agrees and consents to the provisions of this Clause 19 and Clause 18 (*Governing law*).

**This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed and is intended to be and is delivered as a deed on the date specified above.**

**SCHEDULE 1**

**THE ORIGINAL JUNIOR PARTIES**

**Part 1**

**THE ORIGINAL SUBORDINATED BORROWER**

<b>Name of Original Subordinated Borrower</b>	<b>Registration number (or equivalent, if any)</b>	<b>Original Jurisdiction</b>
Nova Resources B.V	67335845	The Netherlands

**Part II**

**THE ORIGINAL SUBORDINATED CREDITORS**

<b>Name of Original Subordinated Creditor</b>	<b>Passport details</b>
Mr Vladimir Kim	Passport details have been provided to the Agent
Mr Oleg Novachuk	Passport details have been provided to the Agent

**SCHEDULE 2**

**FORM OF RESIGNATION LETTER**

To: [ ] as Agent

From: **NOVA RESOURCES B.V.** as Company

Dated:

Dear Sirs

**NOVA RESOURCES B.V. - Subordination Agreement  
dated [ ] October 2020 (the "Agreement")**

1. We refer to the Agreement. This is a Resignation Letter. Terms defined in the Agreement have the same meaning in this Resignation Letter.
2. Pursuant to clause 11.4 (*Resignation of Junior Parties*) of the Agreement, we request that [*name of Junior Party*] be released from its obligations as a Subordinated Creditor under the Agreement.
3. We confirm that:
  - (a) no Default would result from the acceptance of this request; and
  - (b) [*name of Junior Party*] is not a creditor in respect of any Junior Debt.
4. We hereby request that you, upon being satisfied (acting reasonably) that [*name of Junior Party*] is not or has ceased to be a creditor in respect of any Junior Debt, agree to the resignation as requested above by countersigning this Resignation Letter where indicated below.
5. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully

.....  
authorised signatory for  
**NOVA RESOURCES B.V.**

This Resignation Letter is accepted for the purposes of the Agreement by the Agent.

[Agent]

By:

Date signed:

**SIGNATURE PAGES**

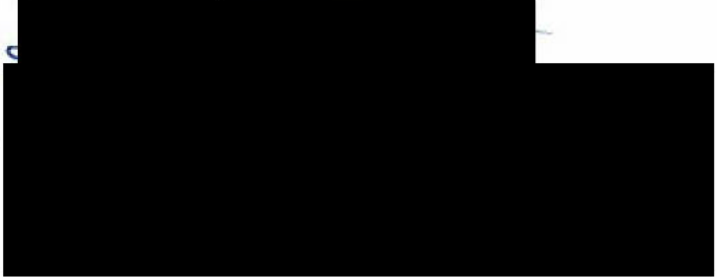
**THE ORIGINAL SUBORDINATED BORROWER**

**EXECUTED as a DEED by NOVA  
RESOURCES B.V. acting by**

By:

Name:

Title:



in the presence of

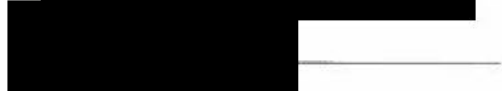


Signature of witness

Name of witness



Address of witness



Occupation of witness



EXECUTED as a DEED by VLADIMIR  
KIM

[Redacted]

in the presence of

[Redacted]

Signature of witness

[Redacted]

Name of witness

[Redacted]

Address of witness

[Redacted]

Occupation of witness

**THE ORIGINAL SUBORDINATED CREDITORS**

**EXECUTED as a DEED by OLEG  
NOVACHUK**

[Redacted]

in the presence of

[Redacted]

[Redacted]

Signature of witness

[Redacted]

Name of witness

[Redacted]

Address of witness

[Redacted]

Occupation of witness

**THE AGENT**

**VTB BANK (PJSC)**

By: \_\_\_\_\_

Name:

Title: