

**WHITE & CASE**

**Dated 26 October 2018**

**DEED OF COVENANT**

relating to

**THE REPUBLIC OF KAZAKHSTAN, REPRESENTED BY THE MINISTRY OF FINANCE  
OF THE REPUBLIC OF KAZAKHSTAN ACTING UPON AUTHORISATION OF THE  
GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN**

**U.S.\$10,000,000,000**

**GLOBAL MEDIUM TERM NOTE PROGRAMME**

White & Case LLP  
P.O. Box 9705  
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Dubai International Financial Centre  
Dubai, United Arab Emirates

**THIS DEED OF COVENANT** is made on 26 October 2018

**BY**

- (1) **THE REPUBLIC OF KAZAKHSTAN** (the “**Issuer**”), represented by the Ministry of Finance of the Republic of Kazakhstan acting upon authorisation of the Government of the Republic of Kazakhstan;

**IN FAVOUR OF:**

- (2) **THE ACCOUNTHOLDERS** (as defined below); and
- (3) **THE PERSONS** from time to time registered as holders of the Notes or the Global Notes referred to below (the “**holders**” and, together with the Accountholders, the “**Beneficiaries**”).

**WHEREAS:**

- (A) The Issuer has established a Global Medium Term Note Programme (the “**Programme**”) for the issuance of notes (“**Notes**”). In connection with the Programme, the Issuer has entered into an amended and restated fiscal agency agreement dated 26 October 2018 (as may be amended or supplemented from time to time, the “**Fiscal Agency Agreement**”) between the Issuer, Citigroup Global Markets Europe AG as registrar (the “**Registrar**” which expression includes any successor registrar appointed from time to time in connection with the Notes), Citibank, N.A., London Branch as fiscal agent (the “**Fiscal Agent**” which expression includes any successor fiscal agent appointed from time to time in connection with the Notes) and the transfer agents, paying agents and other agents named therein.
- (B) Each Series shall initially be represented upon issue by one or more global notes evidencing the Notes registered in the name of nominees for the applicable Clearing System for credit to such securities clearance (or any other) account or accounts with any Clearing System as may be determined by the terms and conditions and operating procedures or management regulations of the relevant Clearing System with its respective participants. Each Series will be evidenced by (i) in respect of Restricted Notes, a “**Restricted Global Note**”, unless otherwise agreed, deposited with Citibank, N.A. as custodian for, and registered in the name of, Cede & Co., as nominee for DTC and (ii) in respect of Unrestricted Notes, an “**Unrestricted Global Note**”, deposited with Citibank Europe plc as common depository for, and registered in the name of Citivic Nominees Limited as nominee of, Euroclear and Clearstream, Luxembourg. Restricted Global Notes and Unrestricted Global Notes are hereinafter referred to as “**Global Notes**” and each a “**Global Note**”. The Global Notes may be exchanged for definitive note certificates (“**Definitive Note Certificates**”) only in the limited circumstances set out in the Global Notes.
- (C) On 24 September 2014, the Issuer executed a deed covenant in favour of the Beneficiaries in relation to the Notes issued under the Programme.
- (D) The Issuer wishes to execute this new Deed of Covenant in favour of the Beneficiaries in order to (i) make arrangements for the protection of the interests of Accountholders in the event that an Exchange Event (as defined below) occurs in relation to any Global Note and (ii) constitute the Notes by deed poll. This does not affect any Notes issued prior to the date hereof.

**THIS DEED OF COVENANT WITNESSES** as follows:

## **1. INTERPRETATION**

**1.1** “**Accountholder**” means any accountholder or participant with a Clearing System which at the Determination Date has credited to its securities account with such Clearing System one or more Entries in respect of a Global Note except for any Clearing System in its capacity as an accountholder of the other Clearing System;

“**Clearing System**” means each of DTC, Euroclear, Clearstream, Luxembourg and any other clearing system specified in the relevant Final Terms;

“**Clearstream, Luxembourg**” means Clearstream Banking S.A.;

“**Determination Date**” means, in relation to any Global Note, the date of the occurrence of an Exchange Event (as defined in the relevant Global Note);

“**DTC**” means The Depository Trust Company;

“**Entry**” means, in relation to a Global Note, any entry which is made in the securities account of any Accountholder with a Clearing System in respect of Notes represented by such Global Note;

“**Euroclear**” means Euroclear Bank SA/NV;

“**Principal Amount**” means, in respect of any Entry, the aggregate principal amount of the Notes to which such Entry relates; and

“**Terms and Conditions**” means, in relation to any Tranche of Notes, the terms and conditions applicable to such Notes substantially in the form set out in Schedule 6 (*Terms and Conditions of the Notes*) of the Fiscal Agency Agreement as completed by the relevant Final Terms and as modified, with respect to any Notes represented by a Global Note, by the provisions of such Global Note, and any reference to a numbered “**Condition**” is to the corresponding numbered provision thereof.

**1.2** Terms defined in the Terms and Conditions have the same meanings in this Deed of Covenant.

**1.3** Any reference in this Deed of Covenant to a Clause or sub-clause is, unless otherwise stated, to a clause or sub-clause hereof.

**1.4** Headings and sub-headings are for ease of reference only and shall not affect the construction of this Deed of Covenant.

**1.5** A person, except for a Beneficiary from time to time, who is not a party to this Deed of Covenant has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Covenant.

## **2. THE NOTES**

The Issuer hereby constitutes the Notes and covenants in favour of each holder of Notes that it will duly perform and comply with the obligations expressed to be undertaken by it in the Notes and in the Terms and Conditions (and for this purpose any reference in the Terms and

Conditions to any obligation or payment under or in respect of the Notes shall be construed to include a reference to any obligation or payment under or pursuant to this provision).

### 3. DEPOSIT OF DEED OF COVENANT

An original of this Deed of Covenant shall be deposited with and held by each of the Fiscal Agent and the Registrar until the date on which all the obligations of the Issuer under or in respect of the Notes (including, without limitation, its obligations under this Deed of Covenant) have been discharged in full. The Issuer hereby acknowledges the right of every Beneficiary to the production of this Deed of Covenant.

### 4. DIRECT RIGHTS

4.1 On the Determination Date in relation to any Global Note representing all or a part of a Tranche of Notes, each Accountholder shall have against the Issuer all rights (“**Direct Rights**”) which such Accountholder would have had in respect of the Notes if, immediately before the Determination Date in relation to that Global Note, it had been the holder of a Definitive Note Certificate, duly completed, executed, authenticated and issued, in an aggregate principal amount equal to the Principal Amount of such Accountholder’s Entries relating to such Global Note including (without limitation) the right to receive all payments due at any time in respect of the Notes represented by such Definitive Note Certificate as if such Definitive Note Certificate had (where required by the Terms and Conditions) been duly presented and (where required by the Terms and Conditions) surrendered on the due date in accordance with the Terms and Conditions and as if an appropriate entry had been made in the register kept by the Registrar recording the entitlement of such Accountholder in an amount equivalent to such Accountholder’s Entries.

4.2 No further action shall be required on the part of the Issuer or any other person:

- (a) for the Accountholders to enjoy the Direct Rights; and
- (b) for each Accountholder to have the benefit of the Terms and Conditions as if they had been incorporated *mutatis mutandis* into this Deed of Covenant,

*provided*, however, that nothing herein shall entitle any Accountholder to receive any payment which has already been made in accordance with the terms of the relevant Global Note.

### 5. EVIDENCE

5.1 The records of the Clearing Systems shall be conclusive as to the identity of the Accountholders and the respective amounts of Notes credited to their securities accounts and a statement issued by a Clearing System setting out:

- (a) the name of the Accountholder in respect of which it is issued; and
- (b) the Principal Amount of any Entry credited to the securities account of such Accountholder with such Clearing System on any date,

shall, absent manifest error, be conclusive evidence for all purposes of this Deed of Covenant.

- 5.2 If a Clearing System determines the Determination Date, such determination shall be binding on the Issuer and all Accountholders with such Clearing System.

## **6. WAIVER AND REMEDIES**

No failure to exercise, and no delay in exercising, on the part of any Beneficiary, any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right. Rights hereunder shall be in addition to all other rights provided by law. No notice or demand given in any case shall constitute a waiver of rights to take other action in the same, similar or other instances without such notice or demand.

## **7. STAMP DUTIES**

The Issuer will pay any stamp duty, issue, registration, documentary or other taxes and duties, including interest and penalties payable in Kazakhstan, the United Kingdom, the United States, the Kingdom of Belgium or the Grand Duchy of Luxembourg on or in connection with the execution and delivery of this Deed of Covenant, and shall, to the extent permitted by law, indemnify each Beneficiary against any claim, demand, action, liability, damages, cost, loss or expense (including, without limitation, legal fees and any applicable value added tax) which it incurs as a result or arising out of or in relation to any failure to pay or delay in paying any of the same.

## **8. BENEFIT OF DEED OF COVENANT**

- 8.1 This Deed of Covenant shall take effect as a deed poll for the benefit of the Beneficiaries from time to time.
- 8.2 This Deed of Covenant shall enure to the benefit of each Beneficiary and its (and any subsequent) successors and assigns, each of which shall be entitled severally to enforce this Deed of Covenant against the Issuer.
- 8.3 The Issuer shall not be entitled to assign or transfer all or any of its rights, benefits and obligations hereunder. Each Beneficiary shall be entitled to assign all or any of its rights and benefits hereunder.

## **9. PARTIAL INVALIDITY**

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

## **10. NOTICES**

- 10.1 All notices and other communications to the Issuer hereunder shall be made in writing (by letter or email) and shall be sent to the Issuer at:

The Ministry of Finance of the Republic of Kazakhstan  
8 Mangilik El Avenue,  
House of Ministries, Entrance 4  
Astana 010000

Kazakhstan

Fax no.: +7-7172-75-03-52  
Email: r.meirkhanov@minfin.gov.kz  
Attention: Ruslan Meirkhanov

or to such other address, email address or fax number or for the attention of such other person or department as the Issuer has notified to the Beneficiaries in the manner prescribed for the giving of notices in connection with the Notes.

- 10.2** Every notice or other communication sent in accordance with this Clause 10 (*Notices*) shall be effective if sent by letter, email or fax, upon receipt by the Issuer provided, however, that any such notice or other communication which would otherwise take effect after 4.00 p.m. on any particular day shall not take effect until 10.00 a.m. on the immediately succeeding business day in the place of the Issuer.

## **11. GOVERNING LAW AND ARBITRATION**

### **11.1 Governing Law**

This Deed of Covenant and all matters (including any non-contractual obligations arising out of or in connection with the Notes) are governed by, and shall be construed in accordance with, English law.

### **11.2 Arbitration**

Any claim, dispute or difference of whatever nature arising under, out of or in connection with the Notes (including a claim, dispute or difference regarding its existence, termination or validity or any non-contractual obligations arising out of or in connection with the Notes) (a “**Dispute**”), shall be referred to and finally settled by arbitration in accordance with the LCIA Rules (the “**Rules**”) as in force at the date of this Deed of Covenant and as modified by this Deed of Covenant, which Rules shall be deemed to be incorporated into this Deed of Covenant. The number of arbitrators shall be three, one of whom shall be nominated by the claimant(s), one by the respondent(s) and the third of whom, who shall act as Chairman, shall be nominated by the two party nominated arbitrators, provided that if the third arbitrator has not been nominated within 30 days of the nomination of the second party nominated arbitrator, such third arbitrator shall be appointed by the LCIA Court. The parties may nominate and the LCIA Court may appoint arbitrators from among the nationals of any country, whether or not a party is a national of that country. The seat of arbitration shall be London, England and the language of arbitration shall be English. Sections 45 and 69 of the Arbitration Act 1996 shall not apply.

### **11.3 Service of Process**

The Issuer agrees that the process by which any proceedings are commenced in the English courts in support of, or in connection with, an arbitration commenced pursuant to Clause 11.2 (*Arbitration*) may be served on it by being delivered to the Ambassador of the Republic of Kazakhstan to the Court of St. James’s from time to time, at the Embassy of the Republic of Kazakhstan, currently located at 125 Pall Mall, London SW1Y 5EA or, in his absence, his designate as its authorised agent for service of process in England. If such person is not or ceases to be effectively appointed to accept service of process on behalf of the Issuer, the Issuer shall, on the written demand of a Noteholder appoint a further person in England to accept service of process on its behalf and, failing such appointment within 14 days, such

Noteholder shall be entitled to appoint such a person by written notice to the Issuer. Nothing in this paragraph shall affect the right of the Noteholder to serve process in any other manner permitted by law.

#### **11.4 Enforcement of Awards; Waiver of Immunity**

The Issuer agrees that any award made pursuant to Clause 11.2 (*Arbitration*) in relation to a Dispute or any final judgment in any Proceeding may be enforced in a tribunal or court (as the case may be) to the jurisdiction of which the Issuer is or may be subject. To the extent that the Issuer may in any jurisdiction claim for itself or its assets, property or revenues (irrespective of their use or intended use) immunity from jurisdiction, suit, enforcement, execution, attachment (whether in aid of execution, before the making of a judgment or award or otherwise) or other legal process, including in relation to the enforcement of any arbitration award, and to the extent that such immunity (whether or not claimed) may be attributed in any such jurisdiction to the Issuer or its assets, property or revenues, the Issuer agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction subject to the provisions of 11.5 (*Waiver of Immunity – Exclusions*). The Issuer reserves the right to plead sovereign immunity under the U.S. Foreign Sovereign Immunities Act of 1976 with respect to actions brought against it in any court of, or in, the United States of America under any United States federal or state securities law.

#### **11.5 Waiver of Immunity – Exclusions**

Notwithstanding any of the provisions of Clause 11.4 (*Enforcement of Awards; Waiver of Immunity*), the Issuer does not waive any immunity in respect of any property which is real property or buildings or the contents belonging to diplomatic missions, consular posts, special missions to international organisations or delegations or organs of international organisations or conferences, in each case situated outside the Republic of Kazakhstan.

#### **11.6 Consolidation of Disputes**

In this Clause 11.6 (*Consolidation of Disputes*):

“**Joinder Order**” means an order by a Tribunal that a Primary Dispute and a Linked Dispute be resolved in the same arbitral proceedings;

“**Linked Dispute**” means any Dispute and/or any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Deed of Covenant or the Notes, including any dispute as to its or their existence, validity, interpretation, performance, breach or termination or the consequences of its or their nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it or any of them, where a Request for Arbitration (as defined in the Rules) is served after a Request for Arbitration has been served in respect of a Primary Dispute;

“**Primary Dispute**” means any Dispute and/or any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Deed of Covenant or the Notes, including any dispute as to its or their existence, validity, interpretation, performance, breach or termination or the consequences of its or their nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it or any of them, where a Request for Arbitration has been served before a Request for Arbitration has been served in relation to any Linked Dispute; and

“**Tribunal**” means any arbitral tribunal appointed under this Deed of Covenant.

- (a) Any party to both a Primary Dispute and a Linked Dispute may apply to the Tribunal appointed in relation to the Primary Dispute for a Joinder Order in relation to the Linked Dispute.
- (b) The applicant for a Joinder Order must promptly notify all parties to the Primary Dispute and the Linked Dispute of any application under (a) above.
- (c) The Tribunal appointed in relation to the Primary Dispute may, if it considers it just, make a Joinder Order on hearing an application brought under (a) above. In determining whether to make a Joinder Order, the Tribunal must take account of:
  - (i) the likelihood and consequences of inconsistent decisions if joinder is not ordered;
  - (ii) any failure on the part of the party seeking joinder to make a timely application; and
  - (iii) the likely consequences of joinder in terms of cost and time.
- (d) If the Tribunal makes a Joinder Order:
  - (i) it will immediately, to the exclusion of any other Tribunal, have jurisdiction to resolve finally the Linked Dispute in addition to its jurisdiction in relation to the Primary Dispute;
  - (ii) it must order that notice of the Joinder Order and its effect be given immediately to any arbitrators already appointed in relation to the Linked Dispute and to all parties to the Linked Dispute and to all parties to the Primary Dispute;
  - (iii) any appointment of an arbitrator in relation to the Linked Dispute before the date of the Joinder Order will terminate immediately and that arbitrator will be deemed to be *functus officio* with effect from the date of the Joinder Order, such termination being without prejudice to the validity of any act done or order made by that arbitrator or by the court in support of that arbitration before his appointment is terminated, his entitlement to be paid his proper fees and disbursements and the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision; and
  - (iv) it may also give any other directions it considers appropriate to give effect to the Joinder Order and make provisions for any costs which may result from it (including costs in any arbitration terminated as a result of the Joinder Order) and ensure the proper organisation of the arbitration proceedings and the proper formulation and resolution of the issues between the parties.
- (e) If a Tribunal appointed in respect of a Primary Dispute under this Deed of Covenant makes a Joinder Order which confers on that Tribunal jurisdiction to resolve a Linked Dispute arising under this Deed of Covenant, that Joinder Order and the award of that Tribunal will bind the parties to the Primary Dispute and the Linked Dispute being heard by that Tribunal.
- (f) For the avoidance of doubt, where a Tribunal is appointed under this Deed of Covenant, the whole of its award (including any part relating to a Linked Dispute) is deemed for the purposes of the New York Convention on the Recognition and Enforcement of Arbitral Awards 1958 to be contemplated by this Deed of Covenant.

- (g) Each of the Issuer and the Accountholders waives any objection, on the basis of a Joinder Order, to the validity and/or enforcement of any arbitral award made by a Tribunal following any Joinder Order.

## **12. CURRENCY INDEMNITY**

If any Beneficiary receives or recovers any amount in a currency other than that in which the relevant payment is expressed to be due (the “**Contractual Currency**”) (whether as a result of, or of the enforcement of, an award, judgment or order of any court or other tribunal) in respect of any sum expressed to be due to it from the Issuer that amount will only discharge the Issuer to the extent of the Contractual Currency amount which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so).

If that Contractual Currency amount is less than the Contractual Currency amount expressed to be due to the relevant Beneficiary under this Deed of Covenant, the Issuer will indemnify such Beneficiary against any loss sustained by it as a result on the written demand of such Noteholder addressed to the Issuer and delivered to the Issuer or to the Specified Office of the Fiscal Agent or any Paying Agent. In any event, the Issuer will indemnify the relevant Beneficiary against the cost of making any such purchase.

This indemnity constitutes a separate and independent obligation of the Issuer and shall give rise to a separate and independent cause of action.

## **13. MODIFICATION**

The Fiscal Agency Agreement contains provisions for convening meetings of holders to consider matters relating to the Notes, including the modification of the Terms and Conditions and any provision of this Deed of Covenant. Any such modification may be made by supplemental deed poll if sanctioned by an Extraordinary Resolution and shall be binding on all Beneficiaries. Notwithstanding anything in the Terms and Conditions to the contrary, the Issuer may amend or supplement this Deed of Covenant without the consent of the holders of the Notes of any Series insofar as such amendment or supplement does not apply to any outstanding Notes.

**IN WITNESS** whereof this Deed of Covenant has been executed by the Issuer and is intended to be and is hereby delivered on the date first before written.

**EXECUTED** as a Deed

**THE REPUBLIC OF KAZAKHSTAN,  
REPRESENTED BY THE MINISTRY OF  
FINANCE OF THE REPUBLIC OF  
KAZAKHSTAN ACTING UPON  
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By: