



Registration of a Charge

Company name: **ENVIROPOWER INVESTMENTS LIMITED**

Company number: **05024248**



X78LK4W9

Received for Electronic Filing: **21/06/2018**

Details of Charge

Date of creation: **18/06/2018**

Charge code: **0502 4248 0003**

Persons entitled: **GLAS TRUSTEES LIMITED**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

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: **NETTIE CHOO**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 5024248

Charge code: 0502 4248 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th June 2018 and created by ENVIROPOWER INVESTMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st June 2018 .

Given at Companies House, Cardiff on 25th June 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

18 June 2018

ENVIROPOWER INVESTMENTS LIMITED
as Assignor

GLAS TRUSTEES LIMITED
as General Common Security Agent

ASSIGNMENT AGREEMENT

This Assignment Agreement is entered into subject to the terms of the
Intercreditor Agreement

CERTIFIED A TRUE AND COMPLETE COPY
OF THE ORIGINAL

*Save for material redacted pursuant to section
859G of the Companies
Act 2006*
Nettle Choo
.....
FRESHFIELDS BRUCKHAUS DERINGER LLP
65 FLEET STREET
LONDON
EC4Y 1HS



Freshfields Bruckhaus Deringer

Freshfields Bruckhaus Deringer LLP
65 Fleet Street
London EC4Y 1HS

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THIS ASSIGNMENT AGREEMENT is made on 18 June 2018

BETWEEN:

- (1) **ENVIROPOWER INVESTMENTS LIMITED**, a company incorporated in England and Wales with registered number 5024248 (the *Assignor*); and
- (2) **GLAS TRUSTEES LIMITED** for itself and trustee for each of the Secured Parties (as defined below) (the *General Common Security Agent*).

WHEREAS:

- (A) The Assignor is required to enter into this Assignment Agreement in connection with the Senior Facility Agreement and the Finance Documents.
- (B) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Assignment Agreement:

Assigned Agreement means the Enviropower Intercompany Loan and all Related Rights.

Enviropower Intercompany Loan means the intercompany loan agreement made between the Assignor as lender and KEPL as borrower dated 29 March 2004 (as amended from time to time).

Effective Date means the date on which the Effective Time occurs.

Effective Time means the time immediately following the occurrence of both:

- (a) the Agent providing the notification referred to in clause 4.1(a) of the Senior Facility Agreement to the Borrower and the Lenders under the Senior Facility Agreement; and
- (b) the receipt by the Agent of an amount equal to £188,705,443.04 to the account details below in respect of prepayment of the Existing Facilities Agreement:

Receiving bank: **BBVA**

Account number: [REDACTED]

IBAN: [REDACTED]

Final Discharge Time has the meaning given to it in the Intercreditor Agreement.

Insolvency Proceedings means (subject to paragraph (b) of Clause 25.7 (*Insolvency Proceedings*) of the Senior Facility Agreement) taking of any corporate action, legal proceedings or other procedure referred to in paragraph (a) of Clause 25.7 (*Insolvency proceedings*) of the Senior Facility Agreement in respect of the Assignor.

KEPL means Kent Enviropower Limited, a company incorporated in England and Wales with registration number 02894377.

KEPL Credit Agreement means the Credit Agreement as defined in the Enviropower Intercompany Loan.

KEPL Finance Documents means the Finance Documents as defined in the KEPL Credit Agreement.

Liabilities has the meaning given to it in the Intercreditor Agreement.

Majority Senior and Working Capital Creditors has the meaning given to it in the Intercreditor Agreement.

Newco Security Agreement means the newco security agreement dated 31 March 2004 between Enviropower Investments Limited as chargor and The Royal Bank of Scotland as agent.

Newco Security Release Effective Time means the time at which the Security Assets (as defined in the Newco Security Agreement) are released from the security created by the Newco Security Agreement in accordance with clause 19 (*Release*) of the Newco Security Agreement.

Project Financing means the project bond or loan financing secured against the assets and shares of FCC Energy Limited, Kent Energy Limited, Kent Enviropower Limited and WasteNotts (Reclamation) Limited that is financed on the Effective Date.

Project Financing Agreements means any agreements entered into between, amongst others, FCC Energy Limited and the Project Financing financiers under the Project Financing entered into or on about the date of this agreement.

Project Financing Release Effective Time means the time at which the security granted by FCC Energy Limited and its Subsidiaries in favour of the security agent in connection with the Project Financing Agreements is released from the security in accordance with the terms of the Project Financing Agreements *provided that* such time shall always be after the Effective Time.

Receiver means a receiver and manager or other receiver appointed under this Assignment Agreement in respect of the Security Assets and shall, if allowed by law, include an administrative receiver.

Related Rights means, in relation to any asset:

- (a) all rights under any licence, agreement for sale or agreement for lease or other use in respect of all or any part of that asset;
- (b) all rights, powers, benefits, claims, contracts, warranties, remedies, covenants for title, security, guarantees or indemnities in respect of any part of that asset;
- (c) the proceeds of sale of all or any part of that asset; and
- (d) any other moneys paid or payable in respect of that asset.

Relevant Material Adverse Effect means a material adverse effect on the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to, this Assignment Agreement or the rights or remedies of any Finance Party under this Assignment Agreement.

Secured Obligations has the meaning given to it in the Intercreditor Agreement but does not include the ABL Facility Secured Obligations (as defined in the Intercreditor Agreement).

Secured Parties has the meaning given to it in the Intercreditor Agreement but does not include the ABL Facility Creditors (as defined in the Intercreditor Agreement).

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

Security Assets means all the assets and undertaking of the Assignor from time to time assigned (or expressed to be assigned) pursuant to this Assignment Agreement.

Senior Facility Agreement means the senior facility agreement dated on or about the date of this Assignment Agreement between, among others, Azincourt Investment S.L.U., Banco Bilbao Vizcaya Argentaria, S.A. as Agent and GLAS Trustees Limited as General Common Security Agent.

1.2 Construction

- (a) Words and expressions defined in the Senior Facility Agreement have the same meanings when used in this Assignment Agreement unless otherwise provided or the context otherwise requires.
- (b) The provisions of Clause 1.2 (*Construction*) of the Senior Facility Agreement shall apply to this Assignment Agreement as if set out in full with references to “this Agreement” being treated as references to this Assignment Agreement.
- (c) If the General Common Security Agent considers that an amount paid to a Secured Party under a Finance Document is capable of being avoided or otherwise set aside on the liquidation or administration of the payer or otherwise then the Security and the liability of the Assignor under this Assignment Agreement shall continue and that amount will not be considered to have been irrevocably paid for the purposes of this Assignment Agreement.

1.3 Trustee Act 1925 and Trustee Act 2000

- (a) Section 1 of the Trustee Act 2000 shall not apply to any function of the General Common Security Agent. Where there are any inconsistencies between the Trustee Act 1925 and the Trustee Act 2000 and the provisions of this Assignment Agreement, the provisions of this Assignment Agreement shall, to the extent allowed by law, prevail and, in case of any inconsistency with the Trustee Act 2000, the provisions of this Assignment Agreement shall constitute a restriction or exclusion for the purposes of the Trustee Act 2000.
- (b) The General Common Security Agent may retain or invest in securities payable to bearer without appointing a person to act as a custodian.

1.4 Provisions relating to Security

- (a) All Security created pursuant to this Assignment Agreement:
 - (i) is created in favour of the General Common Security Agent for itself and on behalf of each of the other Secured Parties;
 - (ii) is created over the present and future assets of the Assignor; and
 - (iii) is continuing security for the payment, discharge and performance of all of the Secured Obligations and will extend to the ultimate balance of all sums payable under the Finance Documents regardless of any intermediate payment or discharge in whole or in part.

- (b) The General Common Security Agent holds the benefit of this Assignment Agreement on trust for itself and each of the other Secured Parties.
- (c) The Security created pursuant to this Assignment Agreement by the Assignor is made with full title guarantee under the Law of Property (Miscellaneous Provisions) Act 1994.
- (d) The fact that the details of any assets are incorrect or incomplete shall not affect the validity or enforceability of this Assignment Agreement in respect of the assets of the Assignor.

1.5 Effectiveness of Security

- (a) Clauses 3 (*Creation of Security*), 7 (*Enforcement of Security*) to 12 (*Power of attorney*), 14 (*Miscellaneous*) and 18 (*Reassignment*) shall automatically become effective on and from the later to occur of the Newco Security Release Effective Time and the Project Financing Security Release Effective Time.
- (b) The parties acknowledge that, after the occurrence of the later of the Newco Security Release Effective Time and the Project Financing Security Release Effective Time, no consent or confirmation shall be required from the Assignor for the Security to be created under this Assignment Agreement in accordance with its terms.
- (c) Notwithstanding any other term of this Assignment Agreement, no Security or option or subordination (in each case, within the meaning of clause 8.7(a) (*Junior Debt*) of the Subordinated Agreement (as defined in the KEPL Credit Agreement)) shall be created or purported to be created under or pursuant to this Assignment Agreement, until the later of the Newco Security Release Effective Time and the Project Financing Security Release Effective Time occurs.

2. COVENANT TO PAY

- (a) The Assignor, as primary obligor and not merely as surety, covenants with the General Common Security Agent that it will pay or discharge on demand the Secured Obligations on the date(s) on which such Secured Obligations are expressed to become due and in the manner provided for in the relevant Finance Document.
- (b) The recourse of the General Common Security Agent against the assets of the Assignor with respect to the Secured Obligations shall be limited to and payable from the Security Assets. If or to the extent that amounts so recovered on realisation of such Security Assets are insufficient to discharge in full the Secured Obligations, the Assignor will have no liability to pay or make good such deficit.
- (c) The General Common Security Agent agrees that it shall not take any corporate action or other steps or legal proceedings for the winding-up, dissolution, arrangement, reconstruction or reorganisation of the Assignor or for the appointment of a liquidator, receiver, administrative receiver, administrator, trustee, manager or similar officer in respect of the Assignor or over any or all of its assets or undertaking, except as expressly permitted by:
 - (i) at any time prior to the Newco Security Release Effective Time, the KEPL Finance Documents;
 - (ii) at any time after Newco Security Release Effective Time but prior to the Project Financing Release Effective Time, the Project Financing Agreements; or

- (iii) at any time on and from the Newco Security Release Effective Time and the Project Financing Security Release Effective Time, this Assignment Agreement or any other Finance Document.

3. CREATION OF SECURITY

The Assignor assigns by way of security, absolutely, to the General Common Security Agent all its right, title and interest from time to time in and to the Assigned Agreement.

4. RESTRICTION ON DEALINGS

- (a) The Assignor may not create or permit to subsist any Security over any of the Security Assets unless:
 - (i) at any time prior to the Newco Security Release Effective Time, such Security is or has been created pursuant to the Newco Security Agreement;
 - (ii) at any time after the Newco Security Release Effective Time but prior to the Project Financing Release Effective Time, such security is or has been created pursuant to the Project Financing Agreements; or
 - (iii) at any time on and from the Newco Security Release Effective Time and the Project Financing Release Effective Time, the Assignor is expressly permitted to do so under the Finance Documents.
- (b) The Assignor may not at any time (whether by a single transaction or a number of related or unrelated transactions and whether at the same time or over a period of time) assign, charge, transfer or dispose of all or any part of its rights, title and interest in and to the Security Assets, unless expressly permitted to do so under the Finance Documents.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties

The Assignor makes the representations and warranties set out in this Clause 5 to each Secured Party.

5.2 Status

- (a) It is a limited liability corporation, duly incorporated and validly existing under the law of its Original Jurisdiction.
- (b) It has the power to own its assets and carry on its business as it is being conducted.

5.3 Binding obligations

Subject to the Legal Reservations:

- (a) the obligations expressed to be assumed by it in this Assignment Agreement and the Intercreditor Agreement are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above) this Assignment Agreement creates the security interests which it purports to create and those security interests are valid and effective.

5.4 Non-conflict with other obligations

The entry into and performance by it of this Assignment Agreement and the Intercreditor Agreement and the granting of the Security under this Assignment Agreement do not and will not conflict with:

- (a) any law or regulation applicable to it in any material respect;
- (b) its constitutional documents;
- (c) in any material respect, any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
- (d) any terms of the KEPL Finance Documents.

5.5 Power and authority

- (a) It 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 Assignment Agreement and the Intercreditor Agreement and the transactions contemplated by this Assignment Agreement and the Intercreditor Agreement.
- (b) No limit on its powers will be exceeded as a result of the grant of security or giving of guarantees or indemnities contemplated by this Assignment Agreement and the Intercreditor Agreement.

5.6 Validity and admissibility in evidence

- (a) Subject to the Legal Reservations and Perfection Requirements, all Authorisations required:
 - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Assignment Agreement or the Intercreditor Agreement; and
 - (ii) to make this Assignment Agreement and the Intercreditor Agreement admissible in evidence in its Relevant Jurisdictions,have been obtained or effected and are in full force and effect.
- (b) All Authorisations necessary for the entry into and performance of the Assignors obligations under the Assigned Agreement have been obtained or effected and are in full force and effect.

5.7 Governing law and enforcement

- (a) Subject to the Legal Reservations:
 - (i) the choice of governing law of this Assignment Agreement and the Intercreditor Agreement will be recognised and enforced in its Relevant Jurisdictions; and
 - (ii) any judgment obtained in relation to this Assignment Agreement or the Intercreditor Agreement in the jurisdiction of the governing law of that document will be recognised and enforced in its Relevant Jurisdictions.

5.8 Insolvency

No:

- (a) Insolvency Proceeding; or
- (b) creditors' process described in Clause 25.8 (*Creditors' process*) of the Senior Facility Agreement,

has been taken or, to the Assignor's knowledge, threatened in relation to it and none of the circumstances described in Clause 25.6 (*Insolvency*) of the Senior Facility Agreement apply to it.

5.9 No filing or stamp taxes

Under the laws of its Relevant Jurisdiction it is not necessary for this Assignment Agreement or the Intercreditor Agreement to be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to this Assignment Agreement or the Intercreditor Agreement or the transactions contemplated by this Assignment Agreement or the Intercreditor Agreement except for the Perfection Requirements.

5.10 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Relevant Material Adverse Effect have (to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened in writing against it.

5.11 No breach of laws

- (a) It has not breached any law or regulation which breach has or is reasonably likely to have a Relevant Material Adverse Effect.
- (b) No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened in writing against it which have or are reasonably likely to have a Relevant Material Adverse Effect.

5.12 Assigned Agreement

- (a) The Assigned Agreement is in full force and effect and it is not in breach of any material term or material condition of the Assigned Agreement.
- (b) There is no prohibition on assignment in the Assigned Agreement that has not been waived by the other parties to it.
- (c) The entry into and performance by it of this Assignment Agreement does not conflict with any term of the Assigned Agreement.
- (d) Subject to any Security created pursuant to the Newco Security Agreement and the Project Financing Agreements, it is the legal and beneficial owner of, and absolutely entitled to, the assets it purports to assign under this Assignment Agreement.
- (e) Any copy of the Assigned Agreement supplied to a Finance Party or its advisors on or prior to the date of this Assignment Agreement is true and complete and contains all provisions relating to the Security Assets in each case as at the date on which it was supplied.
- (f) Subject to the Legal Reservations, no Security or Quasi-Security exists over all or any of the assets it purports to grant Security over under this Deed other than:

- (i) at any time prior to the Newco Security Release Effective Time, as created pursuant to the Newco Security Agreement and the Project Financing Agreements; or
- (ii) at any time on and from the later of the Newco Security Release Effective Time and the Project Financing Security Release Effective Time, as expressly permitted under the Finance Documents.

5.13 Times for making representations and warranties

The representations and warranties set out in Clause 5.1 (*Representations and warranties*):

- (a) are made by the Assignor on the date of this Assignment Agreement; and
- (b) (other than the representations and warranties set out in Clauses 5.8 (*Insolvency*) and 5.9 (*No filing or stamp taxes*)) are deemed to be repeated by the Assignor at the Newco Security Release Effective Time, the Project Financing Security Release Effective Time and on each date prior to the Final Discharge Time on which any of the representations and warranties set out in Clause 21 (*Representations*) of the Senior Facility Agreement are repeated,

in each case by reference to the circumstances existing at that time.

6. UNDERTAKINGS

6.1 Notices

- (a) The Assignor shall, promptly after the occurrence of the later of the Newco Security Release Effective Time and the Project Financing Security Release Effective Time, give notice to each of the other parties to the Assigned Agreement in the form set out in the Schedule 1 and shall procure that such parties deliver to the General Common Security Agent a duly completed acknowledgement of such notice.
- (b) Prior to the Newco Security Release Effective Time and the Project Financing Security Release Effective Time, the Assignor shall remain entitled to exercise all of its rights and remedies under or in respect of the Assigned Agreement.
- (c) On and from the occurrence of the later of the Newco Security Release Effective Time and the Project Financing Security Release Effective Time, the Assignor shall remain entitled to exercise all of its rights and remedies under or in respect of the Assigned Agreement unless an Event of Default is continuing.

6.2 Other undertakings

- (a) The Assignor shall:
 - (i) take all reasonable and practicable steps to preserve and enforce its rights and remedies under or in respect of the Assigned Agreement; and
 - (ii) not amend, rescind, waive or terminate the terms of the Assigned Agreement at any time without the prior written consent of the General Common Security Agent if such variation, recession or amendment would be materially prejudicial to the interests of the Secured Parties unless it is expressly permitted by the Finance Documents.
- (b) The Assignor shall supply to the General Common Security Agent on reasonable request copies of the Assigned Agreement and any other information and documentation relating to the Assigned Agreement.

- (c) The Assignor shall not do or permit to be done any act or thing at any time which might (i) jeopardise the rights of the General Common Security Agent in the Assigned Agreement; or (ii) adversely affect or diminish the value of the Assigned Agreement unless, in each case, such act or thing is expressly permitted by the Finance Documents.
- (d) The Assignor shall promptly notify the General Common Security Agent:
 - (i) of any circumstances which give rise, or may reasonably be expected to give rise, to a claim on or in relation to the Assigned Agreement; or
 - (ii) of any notice of termination served by a counterparty in relation to the Assigned Agreement.
- (e) The Assignor shall promptly comply with its obligations under the Assigned Agreement except to the extent that any such requirement to comply with its obligations is being contested in good faith by it and where adequate reserves are set aside to account for any liabilities arising out of or in connection with non-compliance with such obligations or where a breach by the counterparty renders compliance with such obligations unnecessary or inappropriate.
- (f) The Assignor shall not take or omit to take any action which could reasonably be expected to result in:
 - (i) the alteration or impairment of any rights under the Assigned Agreement at any time unless such alteration or impairment is expressly permitted by the Finance Documents;
 - (ii) without prejudice to paragraph (e) above, a default in any of its obligations under the Assigned Agreement;
 - (iii) any right to terminate the Assigned Agreement becoming exercisable by a counterparty to the Assigned Agreement; or
 - (iv) any counterclaim or rights of set-off arising in favour of a counterparty to the Assigned Agreement relating to any amounts owing to the Assignor.
- (g) If, at any time prior to the later of the Newco Security Release Effective Time and the Project Financing Security Release Effective Time:
 - (i) the Assignor receives any benefit, payment or distribution in relation to the Assigned Agreement from KEPL or any other source;
 - (ii) that benefit, payment or distribution is expressly permitted under the KEPL Finance Documents; and
 - (iii) an Event of Default is continuing,the Assignor shall:
 - (iv) hold that benefit, payment or distribution on trust for the General Common Security Agent and the Secured Parties; and
 - (v) promptly pay or transfer the same to the General Common Security Agent for application in accordance with Clause 13.1 (*Order of application*).

6.3 Exercise of rights when an Event of Default is continuing

On and from the later of the Newco Security Release Effective Time and the Project Financing Security Release Effective Time, if an Event of Default is continuing, the General Common Security Agent may exercise (without any further consent or authority on the part of the Assignor and irrespective of any direction given by the Assignor) any of the Assignor's rights and remedies under or in respect of the Assigned Agreement.

7. ENFORCEMENT OF SECURITY

7.1 Timing and manner of enforcement

- (a) The Security created pursuant to this Assignment Agreement shall become enforceable and the powers referred to in paragraph (a) of Clause 7.2 (*General*) shall become exercisable:
 - (i) if an Event of Default is continuing; or
 - (ii) on the appointment of a Receiver in respect of KEPL.
- (b) Immediately after the Security created pursuant to this Assignment Agreement has become enforceable the General Common Security Agent may in its absolute discretion enforce all or any part of that Security in any manner it sees fit or as the Majority Senior and Working Capital Creditors direct in accordance with the terms of the Intercreditor Agreement.
- (c) No Secured Party shall be liable to the Assignor for any loss arising from the manner in which the General Common Security Agent or any other Secured Party enforces or refrains from enforcing the Security created pursuant to this Assignment Agreement, unless directly caused by the General Common Security Agent's or a Secured Party's (as applicable) gross negligence or wilful misconduct.

7.2 General

- (a) The Secured Obligations shall be deemed to have become due and payable on the Effective Date for the purposes of section 101 of the Law of Property Act 1925. The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 (as varied and extended by this Assignment Agreement) and all other powers conferred on a mortgagee by law shall be deemed to arise immediately after the Effective Time.
- (b) Section 103 of the Law of Property Act 1925 shall not apply to this Assignment Agreement.

7.3 Contingencies

If the Security created pursuant to this Assignment Agreement is enforced at a time when no amount is due under the Finance Documents but at a time when amounts may or will become due, the General Common Security Agent (or a Receiver) may pay the proceeds of any recoveries effected by it into such number of suspense accounts as it considers appropriate.

7.4 Exercise of powers

All or any of the powers conferred on mortgagees by the Law of Property Act 1925 as varied or extended by this Assignment Agreement and all or any of the rights and powers conferred by this Assignment Agreement on a Receiver (whether express or implied) may be exercised by the General Common Security Agent without further notice to the Assignor if an Event of Default is continuing, irrespective of whether the General Common Security Agent has taken possession of the Security Assets or appointed a Receiver.

7.5 Restrictions on notices

The General Common Security Agent shall not be entitled to give any notice or instruction referred to in any notice delivered pursuant to Clause 6.1 (*Notices*) unless an Event of Default is continuing.

7.6 Protection of third parties

- (a) No person (including a purchaser) dealing with the General Common Security Agent or a Receiver or any of its respective agents will be concerned to enquire:
 - (i) whether the Secured Obligations have become payable;
 - (ii) whether any power which the General Common Security Agent or that Receiver may purport to exercise has become exercisable or is being properly exercised;
 - (iii) whether any amount remains due under the Finance Documents; or
 - (iv) how any money paid to the General Common Security Agent or to that Receiver is to be applied.
- (b) The receipt by the General Common Security Agent or any Receiver of any moneys paid to the General Common Security Agent or any Receiver by any person (including a purchaser) shall be an absolute and conclusive discharge and shall relieve any person dealing with the General Common Security Agent or that Receiver of any obligation to see to the application of any moneys paid to or by the direction of the General Common Security Agent or any Receiver.
- (c) In paragraphs (a) and (b) of this Clause 7.6, *purchaser* includes any person acquiring, for money or money's worth, any interest or right whatsoever in relation to the Security Assets.

7.7 No liability as mortgagee in possession

Neither the General Common Security Agent nor any Receiver will be liable by reason of entering into possession of a Security Asset:

- (a) to account as mortgagee in possession for any loss on realisation in respect of such Security Asset; or
- (b) for any default or omission for which a mortgagee in possession might be liable unless directly caused by its gross negligence or wilful misconduct.

7.8 Redemption of prior security interests

The General Common Security Agent or any Receiver may if an Event of Default is continuing redeem any prior Security on or relating to any of the Security Assets or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Assignor. The Assignor will on demand pay to the General Common Security Agent all principal monies and interest and all losses incidental to any such redemption or transfer.

8. RECEIVER

8.1 Appointment of Receivers

- (a) The General Common Security Agent may (without notice) by deed or otherwise in writing signed by any officer or manager of the General Common Security Agent or any person

authorised for this purpose by the General Common Security Agent, appoint one or more persons to be a Receiver:

- (i) if requested by the Assignor;
 - (ii) if an Event of Default is continuing (whether or not the General Common Security Agent has taken possession of the Security Assets); or
 - (iii) upon the initiation of Insolvency Proceedings in respect of KEPL.
- (b) The General Common Security Agent is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium or anything done with a view to obtaining a moratorium under the Insolvency Act 2000.
- (c) Section 109(1) of the Law of Property Act 1925 shall not apply to this Assignment Agreement.
- (d) If the General Common Security Agent appoints more than one person as Receiver, the General Common Security Agent may give those persons power to act either jointly or severally.
- (e) Any Receiver may be appointed Receiver of all of the Security Assets or Receiver of a part of the Security Assets specified in the appointment. In the case of an appointment of a part of the Security Assets, the rights conferred on a Receiver as set out in Clause 8.5 (*Powers of Receivers*) shall have effect as though every reference in that Clause to any Security Assets were a reference to the part of those assets so specified or any part of those assets.

8.2 Removal of Receivers

The General Common Security Agent may by notice in writing remove any Receiver appointed by it (subject to section 45 of the Insolvency Act 1986 in the case of an administrative receivership) whenever it thinks fit and appoint a new Receiver instead of any Receiver whose appointment has terminated for any reason.

8.3 Agent of Assignor

Any Receiver shall be the agent of the Assignor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Law of Property Act 1925. The Assignor is solely responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for any liabilities incurred by a Receiver. No Secured Party will incur any liability (either to the Assignor or any other person) by reason of the appointment of a Receiver where such appointment is in accordance with the terms of the Finance Documents.

8.4 Remuneration

The General Common Security Agent may (subject to section 36 of the Insolvency Act 1986) determine the remuneration of any Receiver appointed by it and any maximum rate imposed by any law (including under section 109(6) of the Law of Property Act 1925) shall not apply to this Assignment Agreement.

8.5 Powers of Receivers

Any Receiver appointed pursuant to Clause 8.1 (*Appointment of Receivers*) shall have the following rights, powers and discretions (in addition to those conferred by the Law of Property Act 1925 on any Receiver appointed under the Law of Property Act 1925):

- (a) to take immediate possession of, get in and collect any Security Asset and to require payment to it or to the General Common Security Agent of any Monetary Claims or credit balance on any Account;
- (b) to carry on any business of the Assignor in any manner he thinks fit;
- (c) to enter into any contract or arrangement and to perform, repudiate, succeed or vary any contract or arrangement to which the Assignor is party;
- (d) to appoint and discharge any managers, officers, agents, accountants, servants, workmen and others for the purposes of this Assignment Agreement upon such terms as to remuneration or otherwise as he thinks fit and to discharge any person appointed by the Assignor;
- (e) to raise and borrow money either unsecured or on the security of any Security Asset either in priority to the Security created pursuant to this Assignment Agreement or otherwise and generally on any terms and for whatever purpose which he thinks fit;
- (f) to sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner, and on any terms which he thinks fit and for a consideration of any kind (which may be payable in a lump sum or by instalments spread over any period);
- (g) to settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Assignor or relating in any way to any Security Asset;
- (h) to bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit;
- (i) to give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset;
- (j) to form a Subsidiary of the Assignor and transfer to that Subsidiary any Security Asset;
- (k) to delegate his powers in accordance with this Assignment Agreement;
- (l) to lend money or advance credit to any customer of the Assignor;
- (m) to effect any insurance and do any other act which the Assignor might do in the ordinary conduct of its business to protect or improve any Security Asset in each case as he thinks fit;
- (n) to do all other acts and things which he may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Assignment Agreement or law;
- (o) to exercise all the powers described in schedule 1 to the Insolvency Act 1986 whether or not the Receiver is an administrative receiver as defined in the Insolvency Act 1986;
- (p) to purchase or acquire by leasing, hiring, licensing or otherwise (for such consideration and on such terms as he may think fit) any assets which he considers necessary or desirable for the carrying on, improvement, realisation or other benefit of any of the Security Assets or the business of the Assignor;
- (q) to exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset;

- (r) to make any payment and incur any expenditure, which the General Common Security Agent is, by this Assignment Agreement, expressly or impliedly authorised to make or incur; and
- (s) to use the name of the Assignor for any of the above purposes.

9. DELEGATION

- (a) The General Common Security Agent or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Assignment Agreement. Any such delegation may be made upon the terms (including power to sub-delegate) and subject to such conditions and regulations as the Security Agent or Receiver may think fit.
- (b) Neither the General Common Security Agent nor any Receiver will be in any way liable or responsible to the Assignor for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate unless such loss or liability is directly caused by the gross negligence or wilful misconduct of that delegate.
- (c) References in this Assignment Agreement to the General Common Security Agent or a Receiver shall be deemed to include references to any delegate of the General Common Security Agent or Receiver appointed in accordance with this Clause 9.

10. PRESERVATION OF SECURITY

10.1 Reinstatement

- (a) If any payment by the Assignor or any discharge or release given by a Secured Party (whether in respect of the obligations of any person or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:
 - (i) the liability of the Assignor and the relevant security shall continue as if the payment, discharge, release, avoidance or reduction had not occurred; and
 - (ii) the relevant Secured Party shall be entitled to recover the value or amount of that security or payment from the Assignor, as if the payment, discharge, avoidance or reduction had not occurred.
- (b) The General Common Security Agent may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

10.2 Waiver of defences

Neither the obligations of the Assignor under this Assignment Agreement nor the Security created pursuant to this Assignment Agreement will be affected by any act, omission, matter or thing (whether or not known to the Assignor or any Secured Party) which, but for this provision, would reduce, release, prejudice or provide a defence to any of those obligations including:

- (a) any time, waiver, release or consent granted to, or composition with, the Assignor or any other person;
- (b) the release of the Assignor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group 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, the Assignor or any

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 such rights or security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Assignor or any other person;
- (e) any amendment (however fundamental and including any amendment that may increase the liability of an Obligor or the Assignor) or replacement of a Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

10.3 Immediate recourse

The Assignor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from or enforcing against the Assignor under this Assignment Agreement. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

10.4 Appropriations

If an Event of Default is continuing and the Secured Obligations have not been irrevocably paid in full, each Secured Party (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Party (or any trustee or agent on its behalf) 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 the Assignor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Assignor or on account of the Assignor's liability under this Assignment Agreement.

10.5 Deferral of Assignor's rights

Until all the Secured Obligations have been irrevocably paid in full and unless the General Common Security Agent otherwise directs or unless expressly permitted under the Finance Documents, the Assignor will not exercise any rights which it may have by reason of performance (or a claim for performance) by it of its obligations under the Finance Documents:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any guarantor of any Obligor's or its obligations under the Finance Documents; or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party.

10.6 Security held by Assignor

The Assignor shall not, without the prior consent of the General Common Security Agent, hold or otherwise take the benefit of any Security from any Obligor in respect of the Assignor's liability under

this Assignment Agreement. The Assignor will hold any Security held by it in breach of this provision on trust for the General Common Security Agent.

10.7 Additional security/non-merger

The Security created pursuant to this Assignment Agreement is in addition to and shall not be merged into or in any way excluded or prejudiced by any other Security now or hereafter held by or on behalf of any Secured Party in respect of the Secured Obligations or any other amount due by the Assignor to any Secured Party.

10.8 Power of consolidation

Section 93 of the Law of Property Act 1925 shall not apply to this Assignment Agreement or to the Security created pursuant to this Assignment Agreement.

10.9 New accounts and ruling off

- (a) Any Secured Party may open a new account in the name of the Assignor at any time after any subsequent Security affects any Security Asset. If a Secured Party does not open a new account in such circumstances it will nevertheless be deemed to have done so upon the occurrence of such circumstances.
- (b) No moneys paid into any account (whether new or continuing) after the occurrence of any circumstances referred to in paragraph (a) shall reduce or discharge the Secured Obligations.

11. FURTHER ASSURANCES

The Assignor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the General Common Security Agent may reasonably specify (and in such form as the General Common Security Agent may reasonably require in favour of the General Common Security Agent or a Receiver or, in each case, its nominee(s)):

- (a) to perfect the Security created or intended to be created under or evidenced by this Assignment Agreement (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of this Assignment Agreement) or for the exercise of any rights, powers and remedies of the General Common Security Agent or the Secured Parties provided by or pursuant to the Finance Documents or by law;
- (b) to confer on the General Common Security Agent or confer on the Secured Parties Security over any property and assets of the Assignor (located in any jurisdiction) equivalent or similar to the Security intended to be conferred by or pursuant to this Assignment Agreement; and/or
- (c) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Assignment Agreement,

including:

- (d) the execution of any legal mortgage, charge, transfer, conveyance, assignment or assurance of any property, whether to the General Common Security Agent or to its nominee; and
- (e) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the General Common Security Agent considers necessary (acting reasonably).

12. POWER OF ATTORNEY

12.1 Appointment

The Assignor by way of security irrevocably appoints the General Common Security Agent and each Receiver severally as its attorney with full power of substitution, on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

- (a) unless an Event of Default is continuing, to do anything which the Assignor is obliged to do under this Assignment Agreement but has failed to do and following notice from the General Common Security Agent of such failure;
- (b) if an Event of Default is continuing, to do anything which the Assignor is obliged to do under this Assignment Agreement; and
- (c) if an Event of Default is continuing, to exercise any of the rights conferred on the General Common Security Agent or any Receiver in relation to the Security Assets or under any Finance Document, the Law of Property Act 1925 or the Insolvency Act 1986.

12.2 Ratification

The Assignor ratifies and confirms and agrees to ratify and confirm whatever any attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 12.1 (*Appointment*).

13. APPLICATION OF PROCEEDS

13.1 Order of application

- (a) All amounts received by the General Common Security Agent or any Receiver pursuant to this Assignment Agreement or the powers conferred by it shall be applied in accordance with Clause 19.3 (*Order of application – proceeds of Topco Security and Third Party Obligor Security*) of the Intercreditor Agreement.
- (b) The order of application referred to in paragraph (a) shall override any appropriation by the Assignor.

13.2 Receiver's receipts

Section 109(8) of the Law of Property Act 1925 shall not apply in relation to a Receiver appointed under this Assignment Agreement.

14. MISCELLANEOUS

14.1 Further advances

Subject to the terms of the Finance Documents each Secured Party is under an obligation to make further advances or other financial accommodation to the Borrowers. Such obligation will be deemed incorporated into this Assignment Agreement as if set out in it.

14.2 Time Deposits

Without prejudice to any right of set-off any Secured Party may have under any Finance Document or otherwise, if any time deposit matures on any account which the Assignor has with a Secured Party prior to the Final Discharge Time when:

- (a) the Security created pursuant to this Assignment Agreement has become enforceable; and
- (b) no amount of the Secured Obligations is due and payable,

such time deposit shall automatically be renewed for such further maturity as the relevant Secured Party in its absolute discretion considers appropriate unless such Secured Party otherwise agrees in writing.

14.3 General Common Security Agent's liability

Neither the General Common Security Agent nor any Receiver shall (either by reason of taking possession of the Security Assets or for any other reason and whether as mortgagee in possession or otherwise) be liable to the Assignor or any other person for any costs, losses, liabilities or expenses relating to the realisation of any Security Assets or from any act, default, omission or misconduct of the General Common Security Agent or any Receiver or their respective officers, employees or agents in relation to the Security Assets or in connection with the Finance Documents except to the extent caused by its or his own gross negligence or wilful misconduct.

14.4 Perpetuity period

The perpetuity period for the trusts in this Assignment Agreement is 125 years.

15. PARTIAL INVALIDITY

If any provision of this Assignment Agreement is or becomes invalid, illegal or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability of the remaining provisions in that jurisdiction or of that provision in any other jurisdiction.

16. CHANGES TO PARTIES

16.1 Transfer by the General Common Security Agent

The General Common Security Agent may at any time assign or otherwise transfer all or any part of its rights under this Assignment Agreement to any successor appointed in accordance with the Finance Documents.

16.2 Changes to parties

The Assignor agrees to be bound by the terms of Clauses 26 (*Changes to the Lenders*) to 28 (*Changes to the Obligors*) (inclusive) of the Senior Facility Agreement, and Clause 24 (*Changes to the Parties*) of the Intercreditor Agreement and authorises the General Common Security Agent to execute on its behalf any document the General Common Security Agent considers necessary or desirable in relation to the creation, perfection or maintenance of the Security created pursuant to this Assignment Agreement and any transfer or assignment contemplated by such provisions.

17. NOTICES

17.1 Method

Any notice or other communication to be served under or in connection with this Assignment Agreement shall be made in writing and, unless otherwise stated, served in person or by post, fax or any electronic method of communication approved by the General Common Security Agent to the relevant party at its address or fax number shown immediately after its name on the signature page of this Assignment Agreement or such other address or number notified by it to the other parties to this Assignment Agreement and, in the case of the General Common Security Agent, marked for the attention of the person or department there specified.

17.2 Deemed service

Any notice or other communication served by post will, unless otherwise stated, be effective five Business Days after being deposited in the post (with postage prepaid) in an envelope addressed to it at that address or on delivery if delivered personally or by courier to the relevant address. A notice or other communication sent by fax will, unless otherwise stated, be effective when received in legible form. Any communication or notice to the General Common Security Agent by electronic method will be effective only when actually received in readable form and if addressed in the manner specified by the General Common Security Agent for this purpose.

17.3 Proof of Service

In proving service of any notice or other communication it will be sufficient to prove:

- (a) in the case of a letter, that such letter was properly stamped or franked, addressed and placed in the post or in the case of personal delivery, was left at the correct address; and
- (b) in the case of a fax transmission, that such fax was duly transmitted to the fax number, as appropriate, of the addressee referred to in Clause 17.1 (*Method*).

18. REASSIGNMENT

With effect from the Final Discharge Time each Secured Party shall at the request and cost of the Parent take any action that may be necessary to reassign the Security Assets to the Assignor, in each case without recourse to or any representation or warranty by any Secured Party or any other person.

19. GOVERNING LAW AND ENFORCEMENT

19.1 Governing law

This Assignment Agreement and any non-contractual obligations arising out of or in relation to this Assignment Agreement are governed by, and interpreted in accordance with, English law.

19.2 Jurisdiction

- (a) Subject to paragraphs (b) and (c) below, the English courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Assignment Agreement (including claims for set-off and counterclaims), including, without limitation, disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Assignment Agreement; and (ii) any non-contractual obligations arising out of or in connection with this Assignment Agreement. For such purposes each party irrevocably submits to the jurisdiction of the English courts and waives any objection to the exercise of such jurisdiction.
- (b) The agreement contained in paragraph (a) is included for the benefit of the General Common Security Agent who shall retain the right to take proceedings in any other courts with jurisdiction and the Assignor irrevocably submits to the jurisdiction of any such court. To the extent permitted by law, the General Common Security Agent may take concurrent proceedings in any number of jurisdictions.
- (c) The Assignor agrees that a judgment or order of any court referred to in this Clause 19.2 is conclusive and binding and may be enforced against it in the courts of any other jurisdiction.

19.3 Third parties

- (a) Except as otherwise expressly provided in this Assignment Agreement, the terms of this Assignment Agreement may be enforced only by a party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- (b) Notwithstanding any term of this Assignment Agreement, no consent of a third party is required for any termination or amendment of this Assignment Agreement.

19.4 Counterparts

This Assignment Agreement may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Assignment Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

THIS ASSIGNMENT AGREEMENT has been executed and delivered as a deed on the date stated at the beginning of this Assignment Agreement.

SCHEDULE 1

NOTICE FOR ASSIGNED AGREEMENT

To: [Counterparty to the Assigned Agreement]

Copy: GLAS Trustees Limited as General Common Security Agent

Date: ●

Dear Sirs,

1. We hereby give you notice that we have assigned to GLAS Trustees Limited (the **General Common Security Agent**) on behalf of certain Secured Parties pursuant to an assignment agreement dated ● 2018 entered into by us in favour of the General Common Security Agent, all of our right, title and interest in and to [insert details of the Assigned Agreement] (the **Assigned Agreement**).

2. We will remain liable under the Assigned Agreement to perform all obligations imposed on us under the Assigned Agreement and none of the General Common Security Agent, its agents, any receiver, administrator or any other person will at any time be under any obligation or liability to you under or in respect of the Assigned Agreement.

3. We will remain entitled to exercise all of our rights under the Assigned Agreement and you should continue to give notices under the Assigned Agreement to us, until such time as the General Common Security Agent provides you with written notification to the contrary. Thereafter, all rights in respect of the Assigned Agreement (including the right to direct payments of amounts due thereunder to another account) will be exercisable by the General Common Security Agent and notices under the Assigned Agreement should be given to the General Common Security Agent or as it directs.

4. You are authorised and instructed (without requiring further approval from us) to provide the General Common Security Agent with such information relating to the Assigned Agreement as it may from time to time request;

5. These instructions may not be revoked without the prior written consent of the General Common Security Agent.

6. Please sign and return the enclosed copy of this notice to the General Common Security Agent (with a copy to us) to confirm (by way of undertaking in favour of the General Common Security Agent) that:

- (a) you agree to the terms of this notice and to act in accordance with its provisions;
- (b) [you have not and will not claim, exercise or enforce any right of set-off, counterclaim or similar right in respect of the Assigned Agreement without the consent of the General Common Security Agent;]
- (c) you have not received notice of the interest of any third party in the Assigned Agreement; and
- (d) [you will notify the General Common Security Agent of any breach by us of the terms of the Assigned Agreement and will allow the General Common Security Agent or the Secured Parties referred to in this notice to remedy that breach].

7. This notice and any non-contractual obligations arising out of or in relation to this notice shall be governed by, and interpreted in accordance with, English law.

Yours faithfully,

.....
for and on behalf of
[ASSIGNOR]

.....
for and on behalf of
GLAS Trustees Limited as General Common Security Agent

[On acknowledgement copy]

To: GLAS Trustees Limited as General Common Security Agent
45 Ludgate Hill
London EC4M 7JU

Copy to: [ASSIGNOR]

We acknowledge receipt of the above notice and agree to and confirm the matters set out in it.

.....
for and on behalf of
[Counterparty to the Assigned Agreement]

Date: ●

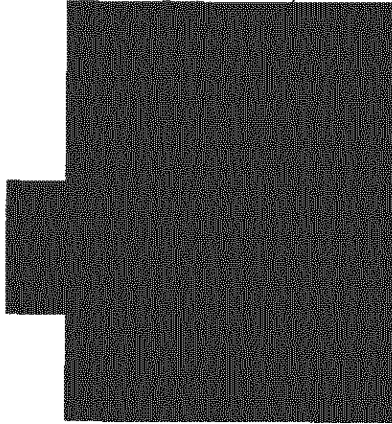
SIGNATORIES TO THE EIL ASSIGNMENT AGREEMENT

The Assignor

EXECUTED as a DEED)
by ENVIROPOWER INVESTMENTS)
LIMITED acting by:

Director:

Director/Secretary:



The General Common Security Agent

GLAS TRUSTEES LIMITED

By:



TREVOR BURWER

Address: 45 Ludgate Hill
London EC4M 7JU

Fax: +44 (0) 203 070 0113

Attention: TES

Copy to:

