



**Registration of a Charge**

Company Name: **ELGIN ENERGY HOLDINGS LIMITED**

Company Number: **07181686**



Received for filing in Electronic Format on the: **03/11/2021**

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**Details of Charge**

Date of creation: **27/10/2021**

Charge code: **0718 1686 0006**

Persons entitled: **BERENBERG ALTERNATIVE ASSETS FUND II S.A., SICAV-RAIF (WITH THE SUBFUND BERENBERG GREEN ENERGY JUNIOR DEBT FUND III)**

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: **VICTORIA PROCTER**



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

Company number: 7181686

Charge code: 0718 1686 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 27th October 2021 and created by ELGIN ENERGY HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd November 2021 .

Given at Companies House, Cardiff on 4th November 2021

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**

**EXECUTION VERSION**

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Dated 27 October 2021

- (1) **ELGIN ENERGY HOLDINGS LIMITED**
- (2) **Berenberg Alternative Assets Fund II S.A., SICAV-RAIF (with the subfund Berenberg Green Energy Junior Debt Fund III)**

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**LIMITED RECOURSE MORTGAGE AND CHARGE OF SHARES**

We certify this document as a true copy of the original, save for material redacted pursuant to section 859G Companies Act 2006

*Eversheds Sutherland (International) LLP*

Date: 1 November 2021

EVERSHEDS SUTHERLAND (INTERNATIONAL) LLP

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**THIS DEED** is dated **27 October** 2021 and is made

**BETWEEN:**

1. **ELGIN ENERGY HOLDINGS LIMITED** a company incorporated in England and Wales with registration number 07181686 and having its registered office at Twp Accounting LLP, The Old Rectory, Church Street, Weybridge, Surrey, KT13 8D (the "**Chargor**"); and
2. **BERENBERG ALTERNATIVE ASSETS FUND II S.A., SICAV-RAIF** with the subfund Berenberg Green Energy Junior Debt Fund III represented by the AIFM (as defined below) with its registered seat in 6B, rue Gabriel Lippmann, L – 5365 Munsbach, Grand-Duchy of Luxembourg, registered with the commercial register of Luxembourg (Registre de Commerce et des Sociétés) under number B213586 (the "**Lender**").

**WHEREAS:**

- (A) The Chargor is the registered and beneficial owner of the entire issued share capital of the Company;
- (B) The Chargor is now or may after the date of this Deed become indebted to the Lender as principal, security or otherwise;
- (C) The parties to this Deed have agreed and it is hereby intended that this Deed shall secure the payment, discharge and performance of the Secured Liabilities;
- (D) The board of directors of the Chargor is satisfied that it is in the best interest and for the benefit of the Chargor to enter into this Deed.

**IT IS AGREED** as follows:

**1 INTERPRETATION**

**1.1 Definitions**

In this Deed:

"**Act**" means the Land and Conveyancing Law Reform Act 2009;

"**AIFM**" shall have the meaning ascribed thereto in the Facility Agreement;

"**Business Day**" shall have the meaning ascribed thereto in the Facility Agreement;

"**Company**" means Elgin Energy Development Limited an Irish registered company with company number 548186, whose shares are referred to in **Schedule 1 (Securities)**;

"**Default Rate**" means the rate per annum payable in respect of any overdue amount as determined by the Lender from time to time in accordance with the terms of the Facility Agreement;

"**Event of Default**" means an Event of Default as defined in the Facility Agreement;

"**Facility Agreement**" means the Promissory Note (Schuldschein) Loan Agreement dated 30 July 2021 between (1) EEB Finance Designated Activity Company (as Borrower); (2) The Companies Listed in Part II Of Schedule 1 (as Original Guarantors); (3) The Company Listed in Part III Of Schedule 1 (as Third Party Security Provider) and (4) the Lender (as Lender) (as the same may be amended, restated, supplemented, varied, extended, novated and/or replaced from time to time);

**"Finance Document"** shall have the meaning ascribed thereto in the Facility Agreement;

**"Guarantor"** means from time to time, any guarantor or guarantors of all or any of the Secured Liabilities which expression shall be deemed to include a body corporate and/or an individual (as appropriate) and **"Guarantors"** shall be construed accordingly;

**"Receiver"** means any one or more receivers and/or managers appointed by the Lender in respect of the Chargor or over all or any of its property, assets or undertaking (whether pursuant to this Deed, at law or otherwise) which shall, where the context so admits, include the plural and any replacement or substitute receiver and/or manager;

**"Related Rights"** means in relation to any Securities, all rights derived from such Securities including rights to dividends, interest and other distributions paid or payable after the date of this Deed on all or any of those Securities and all stocks, shares or other securities (and dividends, interest and other distributions on those Securities and on such stocks shares or other securities) or other rights accruing or offered at any time by way of redemption, bonus, pre-emption or otherwise to or in respect of all or any of those Securities or in substitution or exchange for all or any of the Securities;

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent and whether owed jointly or severally or in any other capacity whatsoever) of each Transaction Obligor to any Secured Party under each Finance Document and any reference to the **"Secured Liabilities"** includes a reference to any of them;

**"Securities"** means those shares in the Company which are referred to in **Schedule 1 (Securities)** as being held by the Chargor in the Company together with all Related Rights and which are to be secured under this Deed;

**"Security"** means the security constituted or intended to be constituted by this Deed;

**"Security Interest"** means any mortgage, charge (fixed or floating), pledge, lien, assignment, hypothecation, title retention, preferential right, trust arrangement or other security arrangement or agreement (including the deposit of monies or property with a person with the intention of affording such person a right of set-off or lien) and any other agreement or arrangement having a similar effect; and

**"Security Period"** means the period commencing on the date of execution of this Deed and terminating upon the date on which the Lender notifies the Chargor that the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full and all the commitments of the Lender cancelled.

## 1.2 Successors and Assigns

References to the **"Lender"**, the **"Chargor"** or any of the **"Guarantors"** or any other person include references to their successors and permitted assignees, transferees, novatees or substitutes (as appropriate) whether immediate or derivative notwithstanding, in the case of the Lender, any change in the constitution of the Lender or the absorption of the Lender in or amalgamation with any other person or the acquisition of all or part of the undertaking of the Lender by any other person.

## 1.3 Headings

Clause headings and the contents page are inserted for convenience of reference only and shall be ignored in the interpretation of this Deed.

## 1.4 Construction

1.4.1 References to this Deed or to any other agreement or document shall be construed as a reference to this Deed or, as the case may be, such other agreement or document as the same may have been, or may from time to time be, amended,

restated, varied, novated, assigned, substituted, supplemented or otherwise modified from time to time (and so that any reference to this Deed shall include, unless the context otherwise requires any other amendment or document expressed to be supplemental hereto or expressed to be collateral herewith or which is otherwise entered into pursuant to or in accordance with the provisions hereof).

1.4.2 In this Deed (including the Recitals), all terms and expressions shall, unless otherwise defined in this Deed or the context requires otherwise, have the meaning attributed to such terms in the Facility Agreement (whether defined expressly in the Facility Agreement or by reference to another document).

1.4.3 Unless a contrary indication appears in this Deed:

1.4.3.1 words and phrases the definition of which is contained in or referred to in section 2 of the Companies Act 2014 are to be construed as having the meaning attributed to them in that section;

1.4.3.2 references to any enactments or other legislation shall be deemed to include references to such enactment or other legislation as re-enacted, amended, substituted or extended from time to time;

1.4.3.3 references to clauses and Schedules are to be construed as references to the clauses of and the Schedules to this Deed and any reference to this Deed includes each of its Schedules;

1.4.4 words importing the plural shall include the singular and vice versa and words denoting any gender include all genders.

Unless the context otherwise requires:

1.4.4.1 "**assets**" includes present and future properties, revenues and rights of every description;

1.4.4.2 in this Deed "**disposal**" includes a sale, transfer, grant (including the grant of an option), lease, mortgage, factor or other disposal, whether voluntary or involuntary or whether by operation of law (and "**dispose**" shall be construed accordingly);

1.4.4.3 a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having a separate legal personality) or any two or more of the foregoing;

1.4.4.4 any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression is to be construed as examples and not to be exhaustive;

1.4.4.5 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 regulatory, self-regulatory or other authority or organisation;

1.4.4.6 "**tax**" shall be construed so as to include any tax, levy, impost, duty or other charge of a similar nature (including any penalty or interest payable in connection with any failure to pay or delay in paying any of the same).

1.4.5 References to, or to any specified provision of, this Deed, any other Finance Document or any other document, agreement or instrument shall be construed as a reference to this Deed, such Finance Document or such other document, agreement or instrument in force for the time being and as the same may be amended, restated, extended, varied, novated, substituted or supplemented from time to time (which may, as the Chargor specifically agrees and acknowledges in relation to any Finance

Document, include (i) any increase or reduction in any amount made available under thereunder and/or any alteration and/or addition to the purposes for which any such amount, or increased or reduced amount, may be used, (ii) any ancillary facilities provided in substitution for or in addition to the facilities originally made available thereunder, (iii) any rescheduling of the indebtedness incurred thereunder or change to any repayment term applicable thereto, whether in isolation or in connection with any of the foregoing, (iv) any substitution of any existing borrower thereunder for any other borrower and/or addition of any new borrowers thereunder and (v) any combination of any of the foregoing) in each case in accordance with the terms thereof or, as the case may be, with the agreement of the relevant parties and (where any consents are required to be obtained as a condition to such amendment, restatement, extension, variation, novation, substitution or supplement being permitted) with the requisite consents;

- 1.4.6 In this Deed, an Event of Default is "continuing" where such Event of Default has not been remedied within any stated grace or remedy period applicable to such Event of Default or otherwise waived by the Lender.
- 1.4.7 This Deed is intended to take effect as a deed, notwithstanding that the Lender may execute it only under hand or not at all.
- 1.4.8 Notwithstanding anything to the contrary in this Deed, the obligations, liabilities and undertakings under this Deed shall be deemed not to be undertaken or incurred to the extent that the same would (i) constitute unlawful financial assistance prohibited by section 82 of the Companies Act 2014 (or any analogous provision of any other applicable law), or (ii) constitute a breach of section 239 of the Companies Act 2014 (or any analogous provision of any other applicable law).
- 1.4.9 The Security shall enure to the benefit of and be enforceable by the Lender as Lender notwithstanding any change in its Constitution or its absorption into or amalgamation with any other person or acquisition of all or part of its undertaking by any other person.

## **2 SECURED LIABILITIES**

### **2.1 Covenant to pay and discharge**

- 2.1.1 Subject to clause 2.2 (Limited Recourse), the Chargor hereby unconditionally and irrevocably covenants that it shall, on demand by the Lender or on such terms as may otherwise be agreed in writing between the Chargor and the Lender, pay, discharge and perform the Secured Liabilities. In the absence of any formal agreement to the contrary, the Chargor acknowledges and confirms that any liabilities in respect of the Secured Liabilities shall be due and payable to the Lender on demand.
- 2.1.2 The making of one demand shall not preclude the Lender from making any further demands.

### **2.2 Limited Recourse**

- 2.2.1 Notwithstanding anything to the contrary herein contained, but subject as hereafter expressly provided, the recourse of the Lender in respect of the obligations of the Chargor under this Deed shall be limited to the Chargor's interest in the Securities and the Lender shall not otherwise have recourse to or take or pursue any judicial or other steps or proceedings or exercise any other right or remedy that it may have against the Chargor for the discharge and repayment of the Secured Liabilities and no action, proceedings, claim, levy, judgment or other process shall be taken or levied against the Chargor in respect of its obligations under this Deed provided always that:



- (a) nothing in this **clause 2.2** shall in any way prejudice the right of the Lender to take any action or proceedings or seek any judgment to enforce or realise the Securities and/or this Deed;
  - (b) this **clause 2.2** shall be construed so as to maintain and preserve the obligations contained in this Deed to the extent of the benefits, rights and proceeds arising under or in connection with this Deed and so as to maintain the security conferred thereby;
  - (c) nothing herein shall prevent the Lender from obtaining (but not enforcing) a declaratory or other similar judgment or order as to the obligations of the Chargor under this Deed or any of the other Finance Documents or the Securities or to claim or prove in any bankruptcy, insolvency, reorganisation or arrangement to the extent that such a claim or proof is a necessary procedural step to enable the Lender fully to realise the benefits of its rights and remedies under this Deed or any of the other Finance Documents; and
  - (d) the Chargor agrees that it shall at the Lender's reasonable request take such action to preserve the Lender's rights under this Deed and any of the other documents entered into pursuant to the Finance Documents or the assets subject thereto as shall be within his power.
- 2.2.2 If the aggregate proceeds received or receivable by the Lender as a result of realising the Securities in accordance with this Deed is insufficient to pay or discharge the Secured Liabilities (including payment of all reasonably incurred costs and fees involved in disposing or realising the Securities) in full for any reason, the Chargor will not have any further liability under this Deed, and all the obligations and liabilities of the Chargor under this Deed shall, subject to all applicable laws, be deemed wholly satisfied and unconditionally and irrevocably discharged by receipt by the Lender of those proceeds.
- 2.2.3 The limited recourse provided for in clause 2.2 shall, to the extent specified in clause 2.2.4, cease and be of no effect as regards the Chargor if:
- (a) the Chargor contests the priority, validity or enforceability of this Deed or any part thereof; or
  - (b) the Chargor fails to take any affirmative action within its control as is required by the Lender to preserve its rights under this Deed or takes any action to frustrate or impede the enforcement or preservation by the Lender of its rights under this Deed or registration thereof; or
  - (c) the Chargor is not the sole legal and beneficial owner of the Securities it purports to charge; or
  - (d) any execution, judgment, injunction, garnishee order or other process is levied against the Chargor's interest in the Securities which restricts the ability of the Lender to sell the Securities or reduces the value of the Securities; or
  - (e) the Chargor commits (A) fraud or (B) engages in any wilful misconduct in connection with the Securities and/or this Deed which restricts the ability of the Lender to transfer or sell the Securities or reduces the value of the Securities.
- 2.2.4 If any of the events specified in clause 2.2.3 occurs in relation to the Chargor, the provisions of clause 2.2 of this Deed shall not apply and the Chargor shall lose its right to limited recourse to the extent of the amount that the Lender would otherwise have received from the Chargor if the relevant event had not occurred together with all costs and expenses incurred by the Lender in recovering same (the "**Shortfall**") and accordingly the Lender shall in these circumstances be entitled to have recourse to the Chargor and its other assets for the amount of the Shortfall.

## **2.3 Interest**

Subject to clause 2.2 (**Limited Recourse**), the Chargor shall pay interest on each amount demanded of it under this Deed from the due date for payment until actual payment (after as well as before judgment) at the Default Rate.

## **2.4 Payment free of deduction**

All payments to be made under this Deed by the Chargor shall be made free and clear of and without deduction for or on account of any set-off, counterclaim or any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever. If the Chargor shall at any time be compelled by law to make any deduction or withholding from any payment to be made under this Deed, the Chargor will concurrently pay to the Lender such additional amount as will result in payment to the Lender of the full amount which would have been received had such deduction or withholding not been made and will, on request, supply to the Lender all appropriate documentation (in each case in a form and substance satisfactory to the Lender) evidencing that the Chargor has duly accounted to the relevant authority for any such deduction or withholding.

## **2.5 Evidence and calculation**

Any certificate or determination by the Lender as to the amount of the Secured Liabilities shall, in the absence of manifest error or fraud, be conclusive and binding on the Chargor for all purposes.

## **2.6 Obligations Unconditional**

The obligations of the Chargor under **clause 2.1 (Covenant to pay and discharge)** are unconditional and neither the provisions of this Deed nor the obligations of the Chargor will be affected by the occurrence or existence at any time of any of the following events or circumstances or by any person's knowledge or lack of knowledge as to any such matter: (a) any person's insolvency or lack of capacity, power or authority; (b) any unenforceability, illegality or invalidity of any obligation of any person; (c) any change in the constitution, membership, ownership, legal form, name or status of any person; (d) the making, amendment or termination of any other deed or agreement; (e) any amendment, novation, re-statement or substitution of, or any supplement to, any other deed or agreement; (f) any increase or reduction in the amount of any person's indebtedness or any alteration of any term, condition or arrangement in respect of any person's indebtedness; (g) any person taking or omitting to take any steps in relation to (i) the Chargor or any other person, (ii) any of the Secured Liabilities, (iii) any Security, guaranteed or other financial support in respect of any indebtedness and/or (iv) any other asset; or (h) anything else which, although it could affect the liability of a surety, would not affect the liability of a principal debtor.

# **3 CHARGING PROVISIONS**

## **3.1 Security**

Subject to **clause 12.1 (Release of Security)** the Chargor for good and valuable consideration and as continuing security for the payment, discharge and performance of the Secured Liabilities and as legal and beneficial owner hereby:

- 3.1.1 mortgages and charges and agrees to mortgage and charge in favour of the Lender, by way of first fixed charge, all of its respective rights, title, benefit and interest whatsoever, present and future, to or in or in respect of the Securities, but so that the Lender shall not in any circumstances incur any liability whatsoever in respect of any calls, instalments or otherwise in connection with the Securities and grants a lien to the Lender on the certificates and other documents of title relating to the Securities together with such further certificates which may from time to time be issued to the Chargor in respect of any conversion, bonus, redemption, option or otherwise relating to the Securities; and

- 3.1.2 assigns and agrees to assign absolutely to the Lender by way of first fixed security all of its right, title and interest in the Securities.

### 3.2 Continuing Security

- 3.2.1 The Security is a continuing security over all present and future assets and undertaking of the Chargor and will remain in full force and effect as a continuing security for the payment and discharge of the Secured Liabilities until released or discharged by the Lender.
- 3.2.2 No part of the Security will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Liabilities.
- 3.2.3 If upon the final repayment and satisfaction of the Secured Liabilities there shall exist any right on the part of the Chargor or any other person to draw funds or otherwise which, if exercised, would or might cause the Chargor to become actually or contingently liable to the Lender whether as principal debtor or as surety for another person, then the Lender will be entitled to retain this Security and all rights, remedies and powers conferred by this Deed and the Securities for so long as the Lender, acting reasonably, deems necessary and in the event that any demand is made by the Lender under any Finance Document the said monies will become due and shall be paid and discharged to the Lender and all provisions of this Deed shall apply accordingly.

### 3.3 Additional Security

This Deed is in addition to and is not prejudiced by any other security held by the Lender for the Secured Liabilities.

### 3.4 Validity of details of Securities

The fact that incorrect or incomplete details of any Securities are included or inserted in **Schedule 1 (Securities)** will not affect the validity or enforceability of the Security created by this Deed.

### 3.5 Non-Competition

Until the Security has been discharged, the Chargor will not, after a claim has been made or by virtue of any payment or performance by the Chargor of the Secured Liabilities:

- 3.5.1 be subrogated to any rights, security or monies held, received or receivable by the Lender or any person nor be entitled to any right of contribution or indemnity in respect of any payment made or monies received on account of the Secured Liabilities;
- 3.5.2 claim, rank, prove or vote as creditor of any person; or
- 3.5.3 receive, claim or have the benefit of any payment, distribution or security from or on account of any person, or exercise any right of set-off as against any person, and

the Chargor shall forthwith pay or transfer to the Lender an amount equal to the amount of any dividend, distribution, contribution or benefit (including any amount set-off) actually received by it and in the meantime shall hold the same in trust for the Lender to the extent required to pay or discharge the Secured Liabilities.

### 3.6 Negative Pledge and Restriction on Dealing

The Chargor unconditionally and irrevocably covenants with the Lender that it will not during the Security Period without the prior written consent of the Lender:

- 3.6.1 save by way of charge which at the date of its creation operates as a floating charge over all of the assets of the Chargor, create or attempt to create or permit to subsist in favour of any person other than the Lender, any Security Interest in or affecting the all or any part of the Securities;
- 3.6.2 assign, sell, transfer, discount, lease, release, terminate, factor or otherwise dispose (or assign, sell, transfer, discount, lease, release, terminate, factor or otherwise dispose) of all or any part of the Securities; or
- 3.6.3 permit any variation, waiver or termination of any of the rights attaching to the whole or any part of the Securities.

## **4 PERFECTION OF SECURITY**

### **4.1 Documentation**

The Chargor hereby covenants with the Lender that it shall promptly upon the execution of this Deed and/or following the acquisition of any Securities deposit with the Lender, or as the Lender may direct:

- 4.1.1 all certificates and other documents of title or evidence of ownership in relation to any Securities and execute and deliver to the Lender stock transfer forms (executed in blank and left undated) and such other documents as the Lender may reasonably require in order to enable the Lender (or its nominee) to be registered as the owner or otherwise obtain legal title to any Securities;
- 4.1.2 blank, signed and undated transfer(s) in respect of the Securities;
- 4.1.3 the original share certificates in respect of the Securities;
- 4.1.4 letters of resignation from each of the directors and company secretary (from time to time) of the Company in the form set out in **Schedule 2 (Letter of Resignation)** and letters of authority in relation to the dating of such resignation letters from each director and the company secretary (from time to time) of the Company in the form set out in **Schedule 3 (Letter of Authority re Letter of Resignation)**;
- 4.1.5 a dividend mandate in respect of the Securities in the form set out in **Schedule 4 (Dividend Mandate)**;
- 4.1.6 an irrevocable proxy in respect of the Securities as set out in **Schedule 5 (Form of Irrevocable Proxy)** executed by the Chargor in favour of the Lender entitling the Lender to exercise all voting rights together with all other rights and powers of the Chargor in respect of the Securities;
- 4.1.7 a letter of authority in respect of the transfer(s), dividend mandate and irrevocable proxy in the form set out in **Schedule 6 (Letter of Authority re Stock Transfer Forms, Dividend Mandates and Forms of Proxy)**; and
- 4.1.8 such other documents as may be reasonably required by the Lender to give full effect to the Security hereby granted.

### **4.2 Chargor's obligations**

The Chargor covenants that during the continuance of this Security it shall:

- 4.2.1 forward to the Lender all notices, reports, accounts, circulars and other documents in respect of the Securities which are sent to the holders of the Securities as soon as reasonably practicable after they are received;

- 4.2.2 take such action as the Lender may, in its absolute discretion, direct in the event that it becomes possible (whether under the terms of issue of the Securities, a reorganisation or otherwise) to convert or exchange the Securities or have them repaid or in the event that any offer to purchase is made in respect of the Securities or any proposal is made for varying or abrogating any rights attaching to them;
- 4.2.3 forthwith, sign, seal, deliver and complete all transfers, renunciations, proxies, mandates, assignments, deeds and documents and do all acts and things which the Lender may, in its absolute discretion, specify for enabling or assisting the Lender to perfect its title to the Securities, to vest the Securities in the Lender or any nominee, to exercise or to facilitate the proposed exercise of (or enable the Lender's nominees to exercise or to facilitate the proposed exercise by the Lender's nominees of) any rights or powers attaching to the Securities or to sell or dispose of the Securities or otherwise to enforce any of the Lender's rights under this Deed;
- 4.2.4 procure forthwith such amendments to the Constitution of the Company in which the Securities are held as may be required to (i) permit, without restriction or delay, the registration of the Securities in the name of the Lender or in the name of a transferee from the Lender or in the name of any nominee; and (ii) remove the Company's first and paramount lien on every share called or payable at a fixed time in respect of that share and the extension of that lien to all dividends payable thereon in respect of shares which have been mortgaged or charged by way of security, and procure that such Constitution are not subsequently amended in a manner prejudicial to the Lender;
- 4.2.5 not knowingly by any act or omission do anything prejudicial to the maintenance of the value of the Securities;
- 4.2.6 procure that the Company shall not issue any shares to any person without the prior written consent of the Lender and that in the event that such consent is given it shall procure that such shares are mortgaged and charged in favour of the Lender on terms similar to those contained in this Deed; and
- 4.2.7 if and when required by the Lender, execute such share transfers and such further legal or other mortgages, charges or assignments in favour of the Lender as the Lender shall from time to time require over all or any of the Securities.

#### **4.3 Registration of transfers**

Ensure that the directors of any Company shall not refuse to register a duly stamped transfer of any Securities presented by the Lender and/or any Receiver appointed by it to such company's board of directors for registration and shall, if necessary, procure that the Constitution of such company are amended as required in order to remove or otherwise restrict any such discretion in a manner satisfactory to the Lender.

#### **4.4 Further assurances**

The Chargor shall, at its own expense, if and when at any time required by the Lender or any Receiver appointed by it, execute such further security deeds or instruments (comprising fixed charges and assignments) including, if required by the Lender (acting reasonably), a deed of confirmation in respect of, inter alia, the continuance validity of the Security in each case in favour of or for the benefit of the Lender or any such Receiver and do all such acts and things as may be required to perfect or protect the Security over the Securities (both present and future) or any part of the Securities or to facilitate the realisation of same or the exercise of any right, power or discretion exercisable by the Lender or any such Receiver or any of its delegates or sub-delegates in respect of any Securities.

#### **4.5 Power to remedy**

If the Chargor fails to comply with any of its obligations under this Deed, the Lender (or its nominee) may (at the Chargor's expense) take such action as is necessary to protect the Securities against the consequences of the Chargor's non-compliance and to ensure compliance with such obligations. The Lender is not obliged to perform any obligation of the Chargor to take any action which it may be entitled to take under this Deed.

## **5 REPRESENTATIONS AND WARRANTIES**

### **5.1 Representations and Warranties**

The Chargor represents and warrants to the Lender that:

- 5.1.1 it is duly incorporated and validly existing under the laws of its place of Incorporation;
- 5.1.2 it has the power to grant this Deed and to perform its obligations under this Deed;
- 5.1.3 it has the power and authority to own its assets and to conduct the business which it conducts and proposes to conduct;
- 5.1.4 it has taken all necessary corporate action to authorise the execution and delivery of this Deed and to authorise the performance by it of its obligations hereunder and this Deed constitutes its legal, valid, binding and enforceable obligations;
- 5.1.5 neither the granting of this Deed by it nor the performance by it of its obligations hereunder will contravene any law, regulation or any agreement to which it is a party or by which it is bound nor will it cause any limitation on any of its powers howsoever imposed or the right or ability of its directors to exercise any such powers to be exceeded;
- 5.1.6 it is not required to obtain any consents, licences, authorisations, or approval of or exemption from any governmental or public body or any entity in connection with the execution, delivery or performance of this Deed or the deposit of the certificates relating to or the transfer of the Securities to the Lender and/or any nominee under the terms of this Deed;
- 5.1.7 it has not granted or created, nor is there outstanding, any Security Interest over the Securities (or any part of the Securities);
- 5.1.8 the Securities referred to in **Schedule 1 (Securities)** comprise the entire issued share capital of the Company in which the Chargor has any interest;
- 5.1.9 the Chargor is the registered and beneficial owner of the Securities of the Company referred to in **Schedule 1 (Securities)** free from any Security Interest (other than pursuant to this Deed);
- 5.1.10 the Chargor has delivered to the Lender all documents evidencing its ownership of the Securities;
- 5.1.11 the Chargor has not received or acknowledged notice of any adverse claim by any person in respect of the Securities or any interest in them;
- 5.1.12 the Securities referred to in **Schedule 1 (Securities)** have been duly authorised, validly issued and are fully paid and non-assessable and are not subject to any claim, lien or option or pre-emption or other rights;
- 5.1.13 the Chargor has full power to enter into and perform and will perform its obligations under this Deed and all necessary action to enable the Chargor to execute, deliver and perform same and to deposit the certificates relating to the Securities with the Lender under the terms of this Deed has been taken and the Chargor has obtained and will maintain in full force and effect all necessary consents, licences and authorities;

5.1.14 all factual information provided by it or on its behalf was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated to be given; and

5.1.15 this Deed creates those Security Interests it purports to create and is not liable to be avoided or otherwise set aside on its liquidation or otherwise.

## **5.2 Representations**

The representations and warranties set out in **clause 5.1 (Representations and Warranties)** shall be given on the date of this Deed and shall be deemed to be repeated on each date on which interest is due and payable in accordance with the terms of the relevant Finance Document.

# **6 SECURITIES**

## **6.1 General Undertakings**

The Chargor hereby irrevocably covenants and undertakes with the Lender that it shall:

6.1.1 provide the Lender with such information relating to any of the Securities as the Lender may reasonably require from time to time;

6.1.2 conduct and carry on its business in a proper and efficient manner and shall at all times keep full and proper books of account and records;

6.1.3 comply with all laws, statutes and regulations (including those relating to the payment of taxes) which are applicable to it and obtrah, effect, comply with and maintain in full force and effect all registrations, licences, consents, authorisations and exemptions required for the conduct of its business and the performance, validity and enforceability of this Deed and any document entered into pursuant to this Deed and generally do all other acts and things (including the taking of legal proceedings) necessary or desirable to maintain, defend or preserve its right, title and interest to and in the Securities without infringement by any third party;

6.1.4 notify the Lender immediately if any distress or execution is levied or enforced against it or any of its assets or any third party debt order or freezing order is made and served on it;

6.1.5 notify the Lender immediately if any steps (including the making of an application without the giving of any notice) are taken by any person (including the Chargor) in relation to its examination, receivership, winding up or dissolution or any analogous step or procedure is taken in any jurisdiction;

6.1.6 not do or allow to be done any act which could, in the reasonable opinion of the Lender, have a material adverse effect on the value of any Securities; and

6.1.7 maintain its centre of main interests (COMI) for the purposes of Council Regulation (EC) No 2015/848 on Insolvency Proceedings in England and Wales.

## **6.2 Rights prior to default**

Prior to the Security becoming enforceable in accordance with **clause 7 (Rights of Enforcement)**, but not otherwise, the Chargor shall:

6.2.1 be entitled to exercise all voting rights in relation to the Securities mortgaged and charged by it under this Deed provided that the Chargor shall not exercise such voting rights in any manner which would alter the rights attached to the Securities or which, in the opinion of the Lender, would prejudice the value of or the ability of the Lender to realise the Security; and

6.2.2 be entitled to receive all dividends, interest and other monies arising from the Securities.

### **6.3 Rights during default**

After the Security has become enforceable in accordance with **clause 7 (Rights of Enforcement)**, the Lender:

6.3.1 may, at its discretion and without any further consent or authority from the Chargor:

- (i) register all or any of the Securities in the name of the Lender or its nominee and the Chargor shall, as and when required by the Lender, procure such registration;
- (ii) exercise (or refrain from exercising) any voting rights in respect of the Securities; and
- (iii) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Securities,

in such manner and on such terms as the Lender may in its discretion think fit; and

6.3.2 shall be entitled to receive all dividends, interest and other monies arising from the Securities and to apply same in payment of the Secured Liabilities and, in that regard, the Chargor shall take all necessary steps to ensure that all dividends, interest and other monies arising from the Securities are paid directly to the Lender. If the Chargor receives any dividends, interest or other monies arising from the Securities, it shall promptly pay the same to the Lender and pending such payment shall hold the same on trust for the Lender.

### **6.4 Payment of calls**

The Chargor covenants with the Lender that it shall pay when due all calls or other payments which may be or become due in respect of the Securities from time to time.

### **6.5 Performance by the Lender**

If the Chargor fails to perform any of the obligations relating to the Securities (including the payment of any call or other payment due in respect of any of the Securities) the Lender may, at its sole discretion, do so on its behalf and the Chargor shall repay to the Lender on demand, any cost or expense incurred by the Lender together with the accrued interest on any such cost and expense at the Default Rate from the time or respective time of the same having been paid or incurred until payment thereof (as well after as before judgment).

### **6.6 Liability of the Lender**

Notwithstanding the provisions of **clause 6.5 (Performance by the Lender)**, if the Chargor fails to perform any of its obligations in relation to the Securities, the Lender shall not be obliged to perform any of the obligations of the Chargor in relation to the Securities nor shall it have any liability in respect of the Securities as a result of the grant of this Deed, the transfer of the Securities to the Lender or its nominee or as a result of the performance or non-performance of any such obligation.

## **7 RIGHTS OF ENFORCEMENT**

The Security will become immediately enforceable upon the occurrence of an Event of default which is continuing.

## **8 ENFORCEMENT OF SECURITY**

### **8.1 Powers of the Lender**



After the Security has become enforceable in accordance with **clause 7 (Rights of Enforcement)**, the Lender may in its absolute discretion and without prior notice to the Chargor enforce and realise all or any part of the Securities and/or take possession of, hold or dispose of all or any part of the Securities in any manner it sees fit and the statutory power of sale and of appointing a Receiver and other powers conferred on mortgagees by the Act shall apply to this Deed in each case as varied by this Deed. Section 99 of the Act shall not apply to this Deed and neither the Lender nor any Receiver shall be obliged to take any steps to sell or lease the Securities after taking possession of same and the Lender and any Receiver shall have absolute discretion as to the time of exercise of the power of sale and all other powers conferred on them by the Act or otherwise.

## **8.2 The Lender as mortgagee in possession**

At any time after this Security has become enforceable in accordance with **clause 7 (Rights of Enforcement)**, and without any need to obtain the consent of the Chargor for an order for possession under section 97 or 98 of the Act, the Lender may without further notice or demand take possession of the Securities or any part thereof. The rights of the Lender under this clause are without prejudice to and/or in addition to, any right of possession (express or implied) to which it is at any time otherwise entitled (whether by virtue of this Deed, operation of law, contract or otherwise). The Lender shall have the power to do all acts and things which, in the opinion of the Lender, are incidental to any of the powers, functions, authorities or discretions conferred on the Lender pursuant to this Deed or by statute and law generally.

## **8.3 Power of Sale**

At any time after the Security hereby constituted has become enforceable in accordance with **clause 7 (Rights of Enforcement)**, the power of sale and all other powers conferred on mortgagees by the Act shall be exercisable immediately without the need:

- 8.3.1 for the occurrence of any of the events specified in paragraphs (a) to (c) of section 100(1) of the Act; or
- 8.3.2 to give notice to the Chargor specified in the final proviso to section 100(1) of the Act;
- 8.3.3 to obtain the consent of the Chargor or a court order authorising the exercise of the power of sale under sections 103(2) or (3) of the Act;
- 8.3.4 to give any notice to the Chargor under section 103(2) of the Act; or
- 8.3.5 to obtain an order for possession or a consent to possession under sections 97 or 98 of the Act.

Sections 93, 94, 95 and 95(1) and 101 of the Act shall not apply to this Deed.

## **8.4 Liability and Privileges of the Lender and Receiver**

- 8.4.1 Nothing in this Deed shall be deemed to impose on the Lender or any Receiver, any liability whatsoever in relation to the Securities or render the Lender or any Receiver liable to account to the Chargor as mortgagee in possession in respect of any Securities or be liable to the Chargor in respect of any loss or damage which arises out of the exercise, the attempted or purported exercise or the failure to exercise any of their respective powers or for any other loss of any nature whatsoever.
- 8.4.2 The Lender will not be liable for any involuntary losses which may occur as a result of the exercise or execution of the statutory power of sale or any of the powers or trust expressed or implied which may be vested in the Lender by virtue of this Deed.
- 8.4.3 The Lender and any Receiver appointed under this Deed shall be entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, but so that

the power of sale and other powers conferred by the Act and as may be available at law shall be as varied and extended by this Deed.

### **8.5 Protection of third parties**

- 8.5.1 No purchaser or other person will be bound or concerned to see or enquire whether the right of the Lender or any Receiver appointed by the Lender to exercise any of the powers conferred by this Deed has arisen or not or be concerned with notice to the contrary or with the propriety of the exercise or purported exercise of such powers.
- 8.5.2 The receipt of the Lender or any Receiver shall be an absolute and complete discharge to a purchaser and shall relieve it of any obligation to see to the application of any monies paid to or at the direction of the Lender or any Receiver.
- 8.5.3 All protections to purchasers contained in sections 105, 106 and 108(5) of the Act shall apply to any person (including a purchaser) dealing with the Lender or any Receiver in like manner as if the statutory powers of sale and appointing a Receiver had not been varied or extended by this Deed.

### **8.6 Delegation**

- 8.6.1 The Lender or any Receiver may from time to time delegate by power of attorney or otherwise to any person or corporation any of the powers and discretions of the Lender or any Receiver under this Deed whether arising by statute or otherwise upon such terms and for such periods of time as it may think fit and may determine by such delegation.
- 8.6.2 Neither the Lender nor any Receiver will be liable to the Chargor for any loss or damage arising from any act, default, omission or misconduct of any such delegate and references in this Deed to the Lender or to any Receiver will, where the context so admits, include reference to any delegates so appointed.

### **8.7 Stock transfer forms**

At any time after the Security has become enforceable the Lender, any nominee of the Lender or any Receiver or delegate may at any time:

- 8.7.1 complete the stock transfers in respect of the Securities deposited with the Lender pursuant to this Deed by dating the same and submitting all or any of the said transfers together with any certificates or other documentation evidencing the Securities for registration into the name of the Lender or its nominee and may date any dividend mandates and any proxies in respect of the Securities deposited with the Lender pursuant to this Deed; and
- 8.7.2 sell the Securities or any part thereof in the same manner as if the statutory power of sale had arisen.

In relation to any sale or transfer of Securities contemplated hereby the Chargor hereby expressly waives any pre-emption rights to which it is entitled under the Constitution of the Company or otherwise.

## **9 RECEIVERS**

### **9.1 Appointment and removal**

At any time after the Security has become enforceable in accordance with **clause 7 (Rights of Enforcement)**, the Lender (without the need for the occurrence of any of the events specified in paragraphs (a) to (c) of section 108(1) of the Act) may by instrument in writing (under seal, or otherwise under the hand of any officer, manager or other nominated person of the Lender), without prior notice to the Chargor:

- 9.1.1 appoint one or more persons considered by it to be competent to be a Receiver (which shall, for the avoidance of doubt include a receiver and manager or joint receiver) of the whole or any part of the Securities; and
- 9.1.2 remove any Receiver so appointed and appoint another or others in his place or appoint another or others to act jointly with such Receiver provided that where more than one Receiver is appointed they shall have the power to act severally unless the Lender shall otherwise specify.

The foregoing powers of appointment of a Receiver shall be in addition to and not to the prejudice of all statutory and other powers of the Lender under the Act or otherwise and such powers as varied or extended by this Deed shall be and remain exercisable by the Lender in respect of any of the Securities notwithstanding the appointment of a Receiver over any of the Securities.

## **9.2 Receiver as agent of the Chargor**

Any Receiver appointed under this Deed shall at all times be the agent of the Chargor and the Chargor shall be solely responsible for his acts and defaults and liable on any contract or engagements made or entered into or adopted by him and the Receiver shall at no time act as agent for the Lender.

## **9.3 Remuneration of the Receiver**

The Lender may fix the remuneration of any Receiver appointed by it and direct payment of the Receiver out of the Securities or any part of the Securities, but the Chargor alone will be liable for the payment of such remuneration and the provisions of section 108(7) of the Act shall not apply to this Deed.

## **9.4 Powers of the Receiver**

A Receiver shall, in relation to the Securities over which he is appointed, have all powers conferred by the Act and all other statutes in the same way as if the Receiver had been duly appointed under the Act and shall be entitled to exercise such powers in such manner and on such terms as he may in his absolute discretion think fit. Furthermore a Receiver shall have (in each case at the cost of the Chargor) the following additional powers:

- 9.4.1 to take possession of, manage, collect and get in all or any part of the Securities in respect of which the Receiver is appointed and for that purpose take any proceedings in the name of the Chargor or otherwise as may seem expedient;
- 9.4.2 to sell, realise or dispose of the Securities or any part of them on any terms and for any consideration (including for deferred consideration or a consideration payable wholly or partly in instalments or consisting in whole or in part of shares or securities of any other company or of any other non-cash asset) on such terms and conditions as he may think fit (including conditions excluding or restricting the personal liability of the Receiver or the Lender);
- 9.4.3 to raise and borrow money for any other purpose, whether secured on the security of any of the Securities or not and either in priority to the security constituted by this Deed or otherwise and generally on any terms and for whatever purpose consistent with his appointment which he thinks fit;
- 9.4.4 to redeem any Security Interest on, over or affecting the Securities or any part of the Securities;
- 9.4.5 take any indemnity from the Chargor from and against all actions, claims, expenses, demands and liabilities whether arising out of contract or out of tort or in any other way incurred by the Receiver or by any manager, agent, officer, servant or workman for whose debt, default or misfeasance he may be answerable for anything done or omitted to be done in the exercise or purported exercise of his powers under this Deed or under any appointment duly made by the Receiver and if he thinks fit but

without prejudice to the foregoing to effect with any insurance company or office or underwriters any policy or policies of insurance either in lieu or satisfaction of or in addition to such indemnity from the Chargor;

- 9.4.6 to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating in any way to the Securities or otherwise as the Lender or the Receiver may think expedient;
- 9.4.7 to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Securities (or any part of the Securities) or any of the businesses of the Chargor;
- 9.4.8 to exercise all voting and other rights attaching to the Securities or other powers or rights relating to the Securities in such manner as the Receiver thinks fit;
- 9.4.9 to do all such other acts and things which, in the opinion of the Receiver, are incidental to any of the powers, functions, authorities or discretions conferred on or vested in the Receiver pursuant to this Deed or upon receivers by statute or law generally including the bringing or defending of proceedings in the name of, or on behalf of, the Chargor and the preservation, improvement, collection and/or realisation of Securities and the execution of documents in the name of the Chargor (whether by hand or under seal of the Chargor).

#### **9.5 Application of Monies by Receiver**

All monies received by any Receiver shall, notwithstanding section 109 of the Act, be applied by him for the following purposes (subject to the claims of secured and unsecured creditors (if any) ranking in priority to or pari passu with the security hereby constituted) in the following order:

- 9.5.1 in payment of all costs, charges and expenses of and incidental to the appointment of any Receiver and the exercise of all or any of the powers aforesaid and of all outgoings paid by any Receiver;
- 9.5.2 in payment of remuneration to any Receiver at such rate as may be agreed between him and the Lender;
- 9.5.3 in or towards payment and discharge of the Secured Liabilities; and
- 9.5.4 in payment of any surplus to the Chargor or any other person lawfully entitled to such payment.

#### **10 ADDITIONAL POWERS OF THE LENDER**

- 10.1 All or any of the powers, authorities and discretions which are conferred by this Deed, either expressly or impliedly, upon a Receiver, may be exercised by the Lender in relation to the whole of the Securities or any part thereof without first appointing a Receiver of such Securities or any part thereof or notwithstanding the appointment of a Receiver of such Securities or any part thereof.
- 10.2 The powers conferred by this Deed in relation to the Securities or any part thereof on the Lender or on any Receiver of such Securities or any part thereof shall be in addition to, and not in substitution for, the powers conferred on mortgagees or receivers by any law.

#### **11 SET-OFF**

Without prejudice to any right of set-off or any similar right to which the Lender may be entitled at law or in equity and without prejudice to anything else in this Deed, the Lender may at any time after the Security has become enforceable in accordance with clause 7 (*Rights of Enforcement*), and without further notice to or further authorisation from the Chargor, combine and consolidate all or any accounts of the Chargor with the Lender and/or

set-off any monies in such accounts against any monies owed by the Chargor (whether actual or contingent) to the Lender, regardless of the place of payment or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **12 RELEASE OF SECURITY**

### **12.1 Release of Security**

Subject to and without prejudice to **clause 12.3 (Avoidance of payments)**, after the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and all the commitments of the Lender cancelled, the Lender shall, as soon as reasonably practicable thereafter and at the request and cost of the Chargor, execute and do all such deeds, acts and things as may be necessary to release the Security and shall promptly after written request made by the Chargor (and at the Chargor's cost and expense) return the stock transfer form(s) executed by the Chargor and the other documents referred to in **clause 4.1 (Documentation)** relating to the Securities to the Chargor, and release the Security created pursuant to the Deed.

### **12.2 Entitlement to retain Security**

If any payment or discharge of the Secured Liabilities is, in the reasonable opinion of the Lender, liable to be avoided or invalidated under any enactment relating to bankruptcy or insolvency, the Lender may refuse to grant any release of the Security for such further period as the risk of such avoidance or invalidity continues.

### **12.3 Avoidance of payments**

No assurance, security or payment which may be avoided or adjusted under law, including under any statute relating to bankruptcy or insolvency and no release, settlement or discharge given or made by the Lender on the faith of any such assurance, security or payment, shall prejudice or affect the right of the Lender to recover the Secured Liabilities from the Chargor (including any monies which the Lender may be compelled to pay or refund under the laws of insolvency and any costs payable by it pursuant to or otherwise incurred in connection therewith) or to appoint a Receiver and enforce the Security to the full extent of the Secured Liabilities.

## **13 WAIVER OF DEFENCES**

### **13.1 The obligations of the Chargor under this Deed will not be affected by any act, omission or circumstances which, but for this clause 13 (Waiver of Defences), might operate to release or otherwise exonerate the Chargor from its obligations under this Deed or affect such obligations in whole or in part including and whether or not known to the Chargor or the Lender:**

13.1.1 any time, waiver or consent granted to or composition with any other person;

13.1.2 the release of any persons from their obligations under any Finance Document or any Security Interest or guarantee granted in connection therewith;

13.1.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against or security over assets of any 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;

13.1.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any person;

13.1.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance

Document or any other document or security instrument including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under a Finance Document or other document or security;

13.1.6 any unenforceability, illegality or invalidity of any obligation of any person under a Finance Document or any other document or security instrument;

13.1.7 any insolvency or similar proceedings; or

13.1.8 any other act, event or omission which, but for this **clause 13 (Waiver of Defences)** might operate to discharge, impair or otherwise affect any of the obligations of the Chargor under this Deed or any of the rights, powers or remedies conferred upon the Lender by a Finance Document or by law.

## **14 NEW ACCOUNT**

If the Lender receives, or is deemed to be effected by actual or constructive notice of any subsequent Security Interest or other interest affecting the Securities (or any part of the Securities), the Lender may open a new account for the Chargor. If the Lender does not open a new account then, unless the Lender gives express written notice to the contrary to the Chargor, the Lender will be treated as if it had done so at the time when it received or was deemed to have received notice and as from that time all monies paid by the Chargor shall be credited or be treated as having been credited to the new account and will not operate to reduce the amount due from the Chargor to the Lender at the time when the Lender received or was deemed to have received that notice and furthermore the Lender may forthwith discontinue any guarantee or any other facility given or granted on the account of the Chargor.

## **15 APPLICATION OF PROCEEDS**

### **15.1 Application of proceeds**

Any monies received by the Lender after the Security has become enforceable in accordance with **clause 7 (Rights of Enforcement)**, shall notwithstanding the provisions of section 107 of the Act be applied in the following order of priority:

15.1.1 in payment of all costs (including break-costs), charges and expenses incurred by the Lender or any Receiver under or in connection with this Deed including all remuneration due to any Receiver;

15.1.2 in or towards payment of the Secured Liabilities; and

15.1.3 in payment of the surplus (if any) to the Chargor or any other person entitled to it.

### **15.2 Other claims**

Without prejudice to the right of the Lender to recover any shortfall from the Chargor, the provisions of **clause 15.1 (Application of proceeds)** are subject to the payment of any claims having priority over the Security.

## **16 SUSPENSE ACCOUNT**

Any monies received, recovered or realised by the Lender under this Deed (including the proceeds of any conversion of currency) may, at the discretion of the Lender, be credited to any interest-bearing suspense account maintained with any bank, building society or financial institution as it considers appropriate and may be held in such account for so long as the Lender may think fit pending the application of such monies from time to time (as the Lender is entitled to do in its discretion) in or towards the discharge of the Secured Liabilities (or any part of the Secured Liabilities) and the Chargor shall not be entitled to withdraw any amount at any time standing to the credit of any suspense account referred to above.

## **17 POWER OF ATTORNEY**

### **17.1 Appointment and powers**

The Chargor by way of security hereby irrevocably appoints (in the case of those matters referred to in **clause 17.1.2** with immediate effect but otherwise with effect from the Security becoming enforceable in accordance with **clause 7 (Rights of Enforcement)**) the Lender and every Receiver jointly and severally to be its attorney in its name and on its behalf:

- 17.1.1 to execute and complete any documents or instruments to which the Lender or such Receiver may require for perfecting the title of the Lender to the Securities or for vesting the same in the Lender or any nominee or purchaser;
- 17.1.2 to sign, execute, seal and deliver and otherwise perfect any further security document or instrument required to be provided to the Lender pursuant to this Deed;
- 17.1.3 to exercise all rights of the Chargor under the Constitution of the Company for the time being and serve all notices under the Constitution of the Company; and
- 17.1.4 otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Lender or a Receiver under this Deed or which may be deemed expedient by the Lender or a Receiver in connection with any disposition, realisation or getting in by the Lender or such Receiver of the Securities or any part of the Securities or in connection with any other exercise of any power under this Deed.

### **17.2 Ratification**

The Chargor ratifies and confirms whatever any such attorney appointed under **clause 17.1 (Appointment and Powers)** shall do or purport to do in the exercise or purported exercise of all or any of the powers, authorities and discretions referred to in such clause.

## **18 EXPENSES AND INDEMNITY**

### **18.1 Expenses**

The Chargor shall pay to the Lender and/or each Receiver, attorney or delegate duly appointed by the Lender and/or Receiver under this Deed the amount of all costs and expenses (including legal fees) together with any applicable value added tax payable on such costs and expenses which are incurred by it or them in connection with:

- 18.1.1 the preparation, negotiation and execution of this Deed;
- 18.1.2 the perfection of any Security created or purported to be created pursuant to this Deed; and
- 18.1.3 the enforcement and preservation of the Lender's rights under this Deed.

### **18.2 Indemnity**

The Chargor shall indemnify the Lender and any Receiver appointed by it against all actions, claims, demands, losses, expenses or liabilities of whatever nature after the date of this Deed incurred by them or any officer, agent or employee for whose liability act or omission they or any of them may be answerable for anything done or omitted in (i) the purported exercise of the powers contained in this Deed, (ii) occasioned by any breach by the Chargor of any of its covenants or other obligations to the Lender, (iii) any failure on the part of the Lender to perform any obligations of the Chargor as a result of the grant of Security under this Deed, and (iv) in consequence of any payment in respect of the Secured Liabilities (whether made by the Chargor or a third person) being declared void or impeached for any

reason unless such loss or damage shall be caused by the Lender's or Receiver's own fraud or gross negligence.

## **19 CURRENCIES**

19.1 All monies received or held by the Lender or a Receiver under this Deed may from time to time after demand has been made be converted into such other currency as the Lender considers necessary or desirable to cover the obligations of the Chargor in that currency at the then prevailing spot rate of exchange (as conclusively determined by the Lender) for purchasing the currency to be acquired with the existing currency. The Chargor shall indemnify the Lender against the full euro cost (including all costs charges and expenses) incurred in relation to such conversion of currency. Neither the Lender nor any Receiver shall have any liability to the Chargor in respect of any loss resulting from any fluctuation in exchange rates after such sale.

19.2 No payment to the Lender (whether under any judgment or court order or otherwise) will discharge the obligation or liability of the Chargor in respect of which it was made and until the Lender receives payment in full in the currency in which such obligation or liability was originally incurred and to the extent that the amount of any such payment, on actual conversion into such currency, falls short of such obligation or liability expressed in that currency, the Lender shall have a further separate cause of action against the Chargor and will be entitled to enforce the charges created by this Deed to recover the amount of any shortfall.

## **20 TRANSFERS**

### **20.1 Transfer by Chargor**

The Chargor may not assign or otherwise transfer all or any of its rights, benefits or obligations under this Deed.

### **20.2 Transfer by the Lender**

20.2.1 The Lender may at any time assign and transfer all or any of its rights or obligations under this Deed to any person to whom the Lender is entitled to assign the benefit of the Facility Agreement and shall be entitled to disclose such information concerning the Chargor under this Deed as the Lender considers appropriate to any such person, including any actual or prospective direct or indirect successor, assignee or transferee or any person to whom the information may be required to be disclosed by any applicable law.

20.2.2 In the event of assignment or transfer by the Lender pursuant to **clause 20.2.1**, the Chargor shall at the request of the Lender join in such assignment, transfer or other document so as to cause full beneficial title in the Security to be passed to the relevant assignee or transferee.

## **21 FINANCIAL COLLATERAL**

### **21.1 To the extent that:**

21.1.1 all or any part of the assets mortgaged, charged, assigned or otherwise secured under this Deed constitute "**financial collateral**"; and

21.1.2 this Deed and the obligations of the Chargor under this Deed constitute a "**security financial collateral arrangement**";

in each case for the purpose of, and as defined in, the European Communities (Financial Collateral Arrangements) Regulations 2010 (SI No 626 of 2010) (the "**Regulations**"), the Lender shall have the right after the Security has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Liabilities.



- 21.2 For the purpose of **clause 21.1**, the parties agree that the value of the financial collateral so appropriated shall be the market value of that financial collateral determined reasonably by the Lender by reference to a public index or by such other process as the Lender may select, including independent valuation. The parties further agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## **22 NOTICES**

### **22.1 Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing, in the English language and may be delivered by hand, sent by prepaid post (including via airmail to another jurisdiction) or sent by email.

### **22.2 Addresses**

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) for each party for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below or any substitute address, email address or department or officer as either party may notify to the other by not less than five (5) Business Days' notice in writing:

#### **The Chargor:**

Address: c/o Elgin Energy Services Limited, 4th Floor, Hambledon House, 19-26 Pembroke Street Lower, Dublin 2 D02 WY56 Ireland

Attention: David Meehan and Dermot Kelleher

Email Address: [david.meehan@elgin-energy.com](mailto:david.meehan@elgin-energy.com) and [dermot.kelleher@elgin-energy.com](mailto:dermot.kelleher@elgin-energy.com)

#### **The Lender:**

Address: Berenberg Alternative Assets Fund II S.A SICAV-RAIF  
c/o BayernInvest Luxembourg S.A.  
60, rue Gabriel Lippmann  
L-5365 Munsbach  
Luxembourg

Attention: Patrick Wacht

Email Address: [fondsmanagement@bayerninvest.lu](mailto:fondsmanagement@bayerninvest.lu)

### **22.3 Delivery**

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

22.3.1 if delivered by hand, on delivery;

22.3.2 if sent by prepaid post, twenty-four (24) hours after posting; or

22.3.3 if sent by email, at the time of sending the email (provided that a return receipt is received by the person sending the email)

provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours (between 9am and 5pm Dublin time on a Business Day) such notice or other communication

shall be deemed to be given or made at the start of working hours on the next succeeding Business Day.

## **23 MISCELLANEOUS**

### **23.1 No waivers, cumulative remedies**

The rights of the Lender and any Receiver may be exercised as often as necessary, are cumulative and are in addition to its respective rights under general law. No failure or delay on the part of the Lender or any Receiver to exercise, or any partial exercise of any power, right or remedy shall operate as a waiver of that power, right or remedy or preclude its further exercise or the exercise of any other power, right or remedy.

### **23.2 Severability**

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

### **23.3 Variation**

This Deed may not be released, discharged, supplemented, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties to this Deed.

### **23.4 Unfettered discretion**

Save as otherwise stated in this Deed, any liability or power which may be exercised or any determination which may be made under this Deed by the Lender may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons therefor.

## **24 COUNTERPARTS**

This Deed may be executed in any number of counterparts and all those counterparts taken together shall be deemed to constitute one and the same instrument.

## **25 GOVERNING LAW**

This Deed and all relationships created hereby in all respects will be governed by and construed in accordance with the laws of Ireland.

## **26 JURISDICTION**

26.1 The Chargor hereby agrees for the exclusive benefit of the Lender that any legal action or proceedings ("Proceedings") brought against the Chargor with respect to this Deed may be brought in the High Court in Ireland or such competent Court of Ireland as the Lender may elect and the Chargor waives any objection to the bringing of Proceedings in such courts whether on grounds of venue or on the grounds that such Proceedings have been brought in an inconvenient forum. The Chargor undertakes to enter an unconditional appearance within ten (10) Business Days after the completion of any service or process in any Proceedings. The Chargor hereby consents to the service by post of any process issued in connection with this Deed. Nothing in this Deed will affect the right to serve process in any other manner permitted by law.

26.2 Nothing contained in this Deed would limit the right of the Lender to take Proceedings against the Chargor in any other court of competent jurisdiction, nor will the taking of any such Proceedings in any one or more jurisdictions preclude the taking by the Lender of Proceedings in any other jurisdiction whether concurrently or not.

## **27 SERVICE OF PROCESS**

27.1 Without prejudice to any other mode of service allowed under any relevant law the Chargor (unless incorporated in the Republic of Ireland):

- 27.1.1 Irrevocably appoints Elgin Energy Services Limited as its agent for service of process in relation to any proceedings before the Irish courts in connection with this Deed. The Chargor will procure evidence in writing from Elgin Energy Services Limited that it has accepted such appointment and provide evidence of same to the Lender; and
- 27.1.2 agrees that failure by a process agent to notify the Chargor of the process will not invalidate the proceedings concerned;
- 27.2 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 Chargor must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Lender. Failing this, the Lender may appoint another agent for this purpose.
- 27.3 The Chargor expressly agrees and consents to the provisions of this clause 27 (Service of Process).

**IN WITNESS** whereof this Deed has been executed and delivered as a deed on the date first written above.

# **SCHEDULE 1**

## **SECURITIES**

<b>Name and Company Number of the Company</b>	<b>Issued share capital of the Company</b>	<b>Number and class of shares held by Chargor in the Company</b>	<b>Number and class of shares held by the Chargor in the Company which are secured hereunder</b>
Elein Energy Development Limited	€100	100 ordinary shares of €1 each	100 ordinary shares of €1 each

**SCHEDULE 2**

**LETTER OF RESIGNATION**

Date \_\_\_\_\_

The Board of Directors  
Eign Energy Development Limited (the "Company")

Dear Sirs,

**Resignation of Director/Secretary**

I hereby tender my resignation as Director [and Secretary] of the Company with immediate effect.

I hereby confirm that I have no rights to compensation or claims against the Company for loss of office or arrears of pay or fees.

This letter shall be governed by and construed in accordance with the laws of Ireland.

Yours faithfully,

\_\_\_\_\_

Director/Secretary

**SCHEDULE 3**

**LETTER OF AUTHORITY RE LETTER OF RESIGNATION**

To: Berenberg Alternative Assets Fund II S.A., SICAV-RAPF (the "Lender")

[•]

Date: \_\_\_\_\_

Dear Sirs:

**Elgin Energy Development Limited** (the "Company")

I hereby unconditionally and irrevocably authorise the Lender to date the resignation letter in respect of the Company deposited with you pursuant to the limited recourse mortgage and charge of shares dated [•] 2021 (the "Deed") between Elgin Energy Holdings Limited and you as and when you become entitled to date and complete the same pursuant to the terms of the Deed.

Yours faithfully,

\_\_\_\_\_  
Director/Secretary

**SCHEDULE 4**  
**DIVIDEND MANDATE**

To: The Secretary  
Elgin Energy Development Limited

Date:

Dear Sir,

Reference is made to:

- (A) 100 ordinary shares of C\$1.00 each (the "**Shares**") in Elgin Energy Development Limited (the "**Company**"), of which Elgin Energy Holdings Limited is entitled to be the registered holder; and
- (B) a limited recourse mortgage and charge on shares dated [ ] (the "**Deed**") given by Elgin Energy Holdings Limited to Berenberg Alternative Assets Fund II S.A., SICAV-RAIF (the "**Lender**").

We hereby request that:

- (1) you shall forward to the Lender until further written notice by it all cash dividends that may become from time to time payable on so many of the Shares as are specified in that notice; and
- (2) you act in accordance with paragraph (1) and the request in paragraph (1) without requiring further evidence of the identity of the Lender, the number of the Shares in respect of which the Lender is entitled under the Deed to receive dividends or any other matter relating to compliance with, or entitlement under, the Deed.

This request is irrevocable. Compliance with this request shall be a good discharge to the Company.

Yours faithfully

\_\_\_\_\_  
For and on behalf of  
**Elgin Energy Holdings Limited**

**SCHEDULE 5**

**FORM OF IRREVOCABLE PROXY**

**ELGIN ENERGY DEVELOPMENT LIMITED (THE "COMPANY")**

Elgin Energy Holdings Limited being a shareholder of the Company hereby irrevocably appoints Berenberg Alternative Assets Fund II S.A., SICAV-RATF (the "**Lender**"), and the officers and other authorised agents and representatives of the Lender, as proxy to vote for it or its behalf at meetings of the shareholders of the Company and exercise all of its rights and powers in respect of any existing or further interests in the shares of the Company which may have been or may from time to time be issued to it and/or registered in its name.

This proxy is irrevocable.

The person appointed as proxy is authorised to vote as that person thinks fit.

\_\_\_\_\_  
For and on behalf of  
**Elgin Energy Holdings Limited**

Dated:



**SCHEDULE 6**

**LETTER OF AUTHORITY**

**re Stock Transfer Forms, Dividend Mandates and Forms of Proxy**

To: [•]

[•]

Date: \_\_\_\_\_

**Re: Limited recourse Mortgage and Charge on Shares dated [•] 2021 (the "Deed") between, Elgin Energy Holdings Limited (the "Chargor") and Berenberg Alternative Assets Fund II S.A., SICAV-RAIF (the "Lender") in respect of shares held by the Chargor in Elgin Energy Development Limited.**

Dear Sirs,

We hereby unconditionally and irrevocably authorise the Lender to date and otherwise complete any and all stock transfer forms, dividend mandates and forms of proxy in respect of the Securities (as defined in the Deed) deposited with the Lender and its agents pursuant to the Deed, as and when the Lender becomes entitled to date and complete the same pursuant to the terms of the Deed.

Yours faithfully,

\_\_\_\_\_  
For and on behalf of  
**Elgin Energy Holdings Limited**

## EXECUTION PAGE

### THE CHARGOR

Executed as a deed by

**ELGIN ENERGY HOLDINGS LIMITED,**

acting by one director in the presence of:

Director

Witness signature:

Witness name: OLIVER MCNULTY

Witness address:

Name:

### THE LENDER

**SIGNED** by a duly authorised signatory  
for and on behalf of  
**BERENBERG ALTERNATIVE ASSETS  
FUND II S.A., SICAV-RAIF**  
with the subfund **Berenberg Green  
Energy Junior Debt Fund III**  
(represented by BayernInvest  
Luxembourg S.A. acting as AIFM)

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Authorised Signatory