



**Registration of a Charge**

Company name: **AES BALLYLUMFORD HOLDINGS LIMITED**

Company number: **07261857**

Received for Electronic Filing: **08/04/2016**



X54GMCUB

---

**Details of Charge**

Date of creation: **01/04/2016**

Charge code: **0726 1857 0001**

Persons entitled: **UNICREDIT BANK AG, LONDON BRANCH**

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 QUEK**



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

Company number: 7261857

Charge code: 0726 1857 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 1st April 2016 and created by AES BALLYLUMFORD HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th April 2016 .

Given at Companies House, Cardiff on 11th April 2016

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

---

**Dated:** 1 April 2016

- (1) AES BALLYLUMFORD HOLDINGS LIMITED
- (2) UNICREDIT BANK AG, LONDON BRANCH (as Security Trustee)

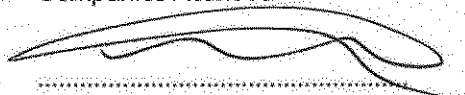
---

**Parent security agreement**

---

In relation to the financing of Ballylumford Power Station

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



Eversheds LLP

# Contents

Clause		Page
1	DEFINITIONS AND INTERPRETATION .....	1
2	COVENANT TO PAY AND CHARGE .....	4
3	COMMON PROVISIONS .....	5
4	FIXED SECURITY AND ASSIGNMENT .....	5
5	DEPOSIT OF CERTIFICATES AND RELATED ASSETS .....	6
6	VOTING RIGHTS AND DIVIDENDS .....	6
7	NOTICE OF ASSIGNMENT .....	7
8	CHARGOR'S REPRESENTATIONS AND UNDERTAKINGS .....	7
9	FURTHER ASSURANCE .....	13
10	SECURITY ENFORCEMENT .....	13
11	EXTENSION AND VARIATION OF THE LAW OF PROPERTY ACT 1925 .....	14
12	APPOINTMENT OF RECEIVER OR ADMINISTRATOR .....	15
13	POWERS OF RECEIVERS .....	16
14	APPLICATION OF MONIES .....	16
15	PROTECTION OF PURCHASERS .....	16
16	POWER OF ATTORNEY .....	17
17	EFFECTIVENESS OF SECURITY .....	17
18	RELEASE OF SECURITY .....	20
19	SET-OFF .....	20
20	PRIOR SECURITY INTERESTS .....	20
21	SUBSEQUENT SECURITY INTERESTS .....	21
22	SUSPENSE ACCOUNTS AND CURRENCY CONVERSION .....	21
23	ASSIGNMENT .....	21
24	NOTICES .....	22
25	COSTS, EXPENSES, STAMP TAXES AND INDEMNITY .....	22
26	DISCRETION AND DELEGATION .....	23
27	WAIVERS AND COUNTERPARTS .....	24
28	GOVERNING LAW .....	24
29	JURISDICTION .....	24
<b>Schedules</b>		
1	Form of Notice Assignment .....	25

**THIS AGREEMENT** is dated 1 April 2016

**BETWEEN**

- (1) **AES BALLYLUMFORD HOLDINGS LIMITED**, a company incorporated in England and Wales with company number 07261857 having its registered office at 21 St Thomas Street, Bristol BS1 6JS (the "**Chargor**"); and
- (2) **UNICREDIT BANK AG, LONDON BRANCH**, the branch office of UniCredit Bank Aktiengesellschaft (a public company limited by shares incorporated under the laws of Germany registered in the commercial register of the local court of Munich under number HRB42148) with registered branch number BR001757 and whose registered address is Moor House, 120 London Wall, London EC2Y 5ET as security trustee (the "**Security Trustee**").

**BACKGROUND**

- (A) Further to the Facilities Agreement (as defined below) the Lender has agreed to make available to the Borrower the Facilities.
- (B) It is a condition precedent to the Facilities being made available that the Chargor enters into this Agreement.
- (C) It is intended by the parties to this Agreement that this document will take effect as a deed despite the fact that a Party may only execute this Agreement under hand.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

"**1911 Act**" means the Conveyancing Act 1911.

"**Act**" means the Conveyancing and Law of Property Act 1881.

"**Barry Operations Shares**" means all of the shares in the capital of AES Barry Operations Limited held by the Chargor from time to time.

"**Borrower**" means AES Ballylumford Limited, a company incorporated in Northern Ireland (registered number NI026040) and having its registered office at Ballylumford Power Station, Ballylumford, Islandmagee, Larne, Co. Antrim BT40 3RS.

"**Charged Portfolio**" means the Shares and the Related Assets.

"**Charged Property**" means the Charged Portfolio, the Specific Contracts and all Related Rights of each of the former, which from time to time are the subject of the Security created or expressed to be created in favour of the Security Trustee by or pursuant to this Agreement. The Charged Property does not include the Barry Operations Shares or their Related Rights.

"**Collateral Rights**" means all rights, powers and remedies of the Security Trustee provided by this Agreement or by law.

"**Default Rate**" means the rate determined in accordance with the provisions of clause 10.3 of the Facilities Agreement.

"**Discharge Date**" means the date with effect from which all the Secured Obligations have been unconditionally and irrevocably paid and discharged in full to the reasonable satisfaction of the Security Trustee and all relevant commitments of the Secured Parties cancelled.

**"Disputes"** has the meaning given to it in Clause 29 (*Jurisdiction and Enforcement*).

**"Enforcement Party"** means any of the Security Trustee, a Receiver or a Delegate.

**"Facilities Agreement"** means a facilities agreement made on or about the date of this Agreement between, amongst others, the Borrower, the Security Trustee and UniCredit Bank AG, London Branch in various other capacities.

**"Notice of Assignment"** means a notice of assignment in substantially the form set out in Schedule 1 (*Form of Notice of Assignment*).

**"Party"** means a party to this Agreement.

**"Receiver"** means any one or more receivers and managers or (if the Security Trustee so specifies in the relevant appointment) receivers appointed by the Security Trustee pursuant to this Agreement in respect of the Chargor or in respect of the Charged Property.

**"Regulations"** has the meaning given to it in Clause 10.3 (*Right of Appropriation*).

**"Related Assets"** means all dividends, interest and other monies at any time payable in respect of the Shares and all Related Rights, benefits and proceeds in respect of or derived from the Shares (whether by way of redemption, bonus, preference, option, substitution, conversion, compensation or otherwise) held by, to the order or on behalf of the Chargor at any time.

**"Related Rights"** means, in relation to any asset:

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

**"Secured Obligations"** 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 the Borrower and/or the Chargor to the Secured Parties (or any of them), whatever their nature or basis, in any currency or currencies, and however they are described, together with all costs, charges and expenses incurred by any Secured Party in connection with the protection, preservation or enforcement of its rights, under the Finance Documents or any other document evidencing or securing any such liabilities.

**"Shareholders' Loan Agreement"** means the shareholder loan agreement dated 11 August 2010 as amended on 22 March 2016 made between the Chargor (as lender) and the Borrower (as borrower) evidencing the Shareholders' Loans made by the Chargor to the Borrower.

**"Shares"** means all of the shares in the capital of the Borrower held by, to the order or on behalf of the Chargor at any time.

**"Specific Contracts"** means each of the following:

- (a) the Shareholder Loan Agreement; and
- (b) any other Project Document to which the Chargor is or becomes a party.

## 1.2 Definitions contained in Facilities Agreement

Unless a contrary indication appears each term used in this Agreement which is defined in the Facilities Agreement shall have the same meaning as in the Facilities Agreement.

### 1.3 Construction

In this Agreement:

- 1.3.1 unless a contrary indication appears, a reference to:
  - 1.3.1.1 "**assets**" includes present and future properties, revenues, rights and interests of every kind and reference to an "**asset**" includes any part or parts of such asset;
  - 1.3.1.2 "**guarantee**" includes any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to pay any deposit on behalf of, or make an investment in, or loan to, any person or to purchase assets of any person, where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
  - 1.3.1.3 "**indebtedness**" includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - 1.3.1.4 "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - 1.3.1.5 "**regulation**" includes any applicable regulation, rule, official directive, request or guideline (in each case, having the force of law) of any relevant governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - 1.3.1.6 "**set-off**" includes analogous rights and obligations in jurisdictions other than Northern Ireland; and
  - 1.3.1.7 the "**Security Trustee**", any of the "**Secured Parties**", the "**Chargor**" or "**Party**", shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.3.2 where something (or a list of things) is introduced by the word "**including**", or by the phrase "**in particular**", or is followed by the phrase "**or otherwise**", the intention is to state an example (or examples) and not to be exhaustive (and the same applies when other similar words or phrases are used);
- 1.3.3 unless this Agreement expressly states otherwise or the context requires otherwise, (a) each reference in this Agreement to any provision of any statute or of any subordinate legislation means, at any time, the relevant provision as in force at that time (even if it has been amended or re-enacted since the date of this Agreement) and (b) each reference in this Agreement to any provision of any statute at any time includes any subordinate legislation made pursuant to or in respect of such provisions as in force at such time (whether made before or after the date of this Agreement and whether amended or re-enacted since the date of this Agreement);
- 1.3.4 each reference to this Agreement (or to any other agreement, instrument or deed) means, at any time, this Agreement (or as applicable such other agreement, instrument or deed) as amended, novated, supplemented,

extended, or restated, at that time, provided that the relevant amendment, novation, supplement, extension, substitution or restatement does not breach any term of this Agreement or of any of the Finance Documents;

- 1.3.5 the index and Clause and Schedule headings are for ease of reference only;
- 1.3.6 an Event of Default is "**continuing**" if it has not been waived by the Security Trustee; and
- 1.3.7 references to any Security Interest "**created by this Agreement**" are to be deemed to include such Security Interest created, constituted, given, made or extended by, under or pursuant to this Agreement.

#### 1.4 **Third Party Rights**

No person has any right under the Third Parties Act to enforce or enjoy the benefit of any term of this Agreement, other than an Enforcement Party, which may do so, or any other person, to the extent that this Agreement or any other of the Finance Documents expressly provides for it to do so. No consent of any person who is not a Party is required to rescind or vary this Agreement at any time. This Clause 1.4 does not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to the Third Parties Act.

#### 1.5 **Incorporation of other terms**

The terms of the other Finance Documents under which the Secured Obligations arise and of any side letters between the Chargor and the Secured Parties or any of them relating to the Secured Obligations are incorporated into this Agreement to the extent required for any purported disposition of the Charged Property contained in this Agreement to be a valid disposition in accordance with section 2 Statute of Frauds (Ireland) 1695.

#### 1.6 **Present and future assets**

A reference in this Agreement to any Charged Property or other asset includes, unless the contrary intention appears, present and future Charged Property and other assets.

#### 1.7 **Separate security**

Clauses 4.1 (*Fixed charge*) and 4.2 (*Assignment of specific contracts*) shall be construed as creating a separate and distinct fixed charge or assignment over each relevant asset within any particular class of assets defined in this Agreement and the failure to create an effective fixed charge or assignment (whether arising out of this Agreement or any act or omission by any party) over any one asset shall not affect the nature or validity of the charge or assignment imposed on any other asset whether within that same class of assets or not.

#### 1.8 **No obligation**

The Security Trustee shall not be under any obligation in relation to the Charged Property as a consequence of this Agreement and the Chargor shall at all times remain liable to perform all obligations expressed to be assumed by it in respect of the Charged Property.

### 2. **COVENANT TO PAY**

#### 2.1 **Covenant to pay**

- 2.1.1 Subject to Clause 2.1.2, the Chargor, as primary obligor and not merely as surety, covenants with the Security Trustee that it will pay, discharge and perform the Secured Obligations on demand made on or at any time after the due date for payment provided in the Finance Documents and in the manner provided in the Finance Documents.
- 2.1.2 Notwithstanding any other provision of this Agreement or the Finance Documents, it is expressly agreed and understood that:



- 2.1.2.1 the sole recourse of the Security Trustee and the Finance Parties to the Chargor under this Agreement is to the Chargor's interest in the Charged Property; and
- 2.1.2.2 the liability of the Chargor to the Security Trustee or any other Finance Party pursuant to or otherwise in connection with the Finance Documents shall be:
  - (a) limited in aggregate to an amount equal to that recovered as a result of enforcement of this Agreement with respect to the Charged Property; and
  - (b) satisfied only from the proceeds of sale or other disposal or realisation of the Charged Property pursuant to this Agreement.

## 2.2 **Default interest**

Any amount which is not paid under this Agreement on the due date shall bear interest (both before and after judgment) payable on demand at the Default Rate from time to time from the due date until the date of actual unconditional and irrevocable payment and discharge of such amount in full, save to the extent that interest at such rate on such amount and for such period is charged pursuant to the Finance Documents relevant to that liability and itself constitutes part of the Secured Obligations.

## 2.3 **Barry Operations Shares and Related Rights**

Notwithstanding any other provision of this Agreement, this Agreement will not create any right in favour of the Security Trustee or any Finance Party, any obligation on the Chargor, any security interest in or any restriction on the Chargor's rights, in each case in relation to the Barry Operations Shares or their Related Rights.

## 3. **COMMON PROVISIONS**

### 3.1 **Common provisions to all security**

All the Security Interest created by or pursuant to this Agreement is:

- 3.1.1 created by the Chargor as beneficial owner;
- 3.1.2 created in favour of the Security Trustee as security trustee for the Secured Parties and the Security Trustee shall hold the benefit of this Agreement and the Security Interest created by or pursuant to it on trust for the Secured Parties; and
- 3.1.3 continuing security for the payment and discharge of all the Secured Obligations.

### 3.2 **Consent for fixed security**

The Chargor creates the fixed Security Interest pursuant to Clause 4.1 (*Fixed charge*) and Clause 4.2 (*Assignment of specific contracts*) subject to obtaining any necessary Authorisation to such fixed Security Interest from any relevant third party.

## 4. **FIXED SECURITY AND ASSIGNMENT**

### 4.1 **Fixed charge**

The Chargor charges, by way of first fixed charge, all of its rights, title and interest from time to time in the Charged Portfolio.

**4.2 Assignment of specific contracts**

The Chargor assigns and agrees to assign absolutely by way of security, all of its rights, claims, title and interest from time to time in, under and to each Specific Contract and all Related Rights.

**5. DEPOSIT OF CERTIFICATES AND RELATED ASSETS**

**5.1 Deposit of certificates**

The Chargor will promptly following the execution of this Agreement (and promptly following its coming into possession of the Chargor at any time) deposit (or procure there to be deposited) with the Security Trustee all certificates (if any) and other documents of title (if any) to the Shares, and stock transfer forms (executed in blank by or on behalf of the Chargor) in respect of the Shares.

**5.2 Related assets**

The Chargor shall, promptly upon the accrual, offer or issue of any Related Assets (in the form of stocks, shares, warrants or other securities) in which the Chargor has a beneficial interest, notify the Security Trustee of that occurrence and procure the delivery to the Security Trustee of (a) all certificates and other documents of title representing those Related Assets and (b) such duly executed blank stock transfer forms or other instruments of transfer in respect of those Related Assets as the Security Trustee may require.

**6. VOTING RIGHTS AND DIVIDENDS**

**6.1 Voting rights and dividends prior to an event of default**

Prior to the occurrence of an Event of Default which is continuing, the Chargor shall:

6.1.1 apply all dividends, interest and other monies arising from the Charged Portfolio in accordance with the terms of the Facilities Agreement. Notwithstanding anything to the contrary in this Agreement, prior to the occurrence of an Event of Default which is continuing, the Chargor may receive any and all funds paid to it by the Borrower from the Distribution Account in accordance with the terms of the Finance Documents and deal with, and pay such funds without restriction; and

6.1.2 subject to Clause 8.2.5, be entitled to exercise all voting rights in relation to the Charged Portfolio.

**6.2 Voting rights and dividends after an event of default**

Upon the occurrence of an Event of Default which is continuing, the Security Trustee may, at its discretion, (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor):

6.2.1 exercise (or refrain from exercising) any voting rights in respect of the Charged Portfolio;

6.2.2 apply all dividends, interest and other monies arising from the Charged Portfolio as though they were the proceeds of sale under this Agreement;

6.2.3 transfer the Charged Portfolio into the name of the Security Trustee or such nominee(s) of the Security Trustee as it shall require; and

6.2.4 exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Charged Portfolio including the right, in relation to any company whose shares or other securities are included in the Charged Portfolio, to concur or participate in:

- 6.2.4.1 the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);
- 6.2.4.2 the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
- 6.2.4.3 the exercise, renunciation or assignment of any right to subscribe for any shares or securities,

in each case in the manner and on the terms the Security Trustee thinks fit, and the proceeds of any such action shall form part of the Charged Portfolio.

## **7. NOTICE OF ASSIGNMENT**

- 7.1 The Chargor shall, on the date of this Agreement or, if later, when requested by the Security Trustee from time to time, promptly deliver to the Security Trustee (or procure the delivery of) a Notice of Assignment duly executed by, or on behalf of, the Chargor in relation to the assignment of each of the Specific Contracts pursuant to Clause 4.2 (*Assignment of specific contracts*).
- 7.2 The Chargor shall use all reasonable endeavours to procure from the recipient of such a Notice of Assignment an acknowledgement in the form set out therein.

## **8. CHARGOR'S REPRESENTATIONS AND UNDERTAKINGS**

### **8.1 Representations**

The Chargor makes the following representations and warranties to the Security Trustee and acknowledges that the Security Trustee has become a Party to this Agreement in reliance on these representations and warranties.

#### **8.1.1 Status**

- 8.1.1.1 It is a corporation with limited liability, duly incorporated and validly existing under the law of England and Wales.
- 8.1.1.2 It has the power to own its assets and carry on its business as it is being conducted.

#### **8.1.2 Binding obligations**

Subject in each case to the Reservations and any filing requirements or procedural formalities for perfection identified in the legal opinions delivered to the Agent prior to the Effective Date:

- 8.1.2.1 the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations; and
- 8.1.2.2 (without limiting the generality of Clause 8.1.2.1 above), this Agreement creates the Security Interests which it purports to create and those Security Interests are valid and effective.

#### **8.1.3 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this Agreement (including any transfer of the Shares on creation or enforcement of the Security Interest constituted by this Agreement) does not and shall not:

- 8.1.3.1 conflict with:

- (a) any law or regulation applicable to it;
  - (b) its constitutional documents; or
  - (c) any agreement or instrument binding upon it, any of its assets or the Shares or constitute a default or a termination event (howsoever described) under any such agreement or instrument, in each case, which has or is reasonably likely to have a Material Adverse Effect; or
- 8.1.3.2 result in the existence of, or oblige it to create, any Security Interest over the Shares other than as permitted under the terms of the Finance Documents.

**8.1.4 Power and authority**

- 8.1.4.1 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 Agreement and the transactions contemplated by this Agreement.
- 8.1.4.2 No limit on its powers will be exceeded as a result of the grant of security or giving of guarantees or indemnities (if any) contemplated by this Agreement.

**8.1.5 Governing law and judgments**

Subject in each case to the Reservations:

- 8.1.5.1 the choice of law set out in this Agreement as its governing law will be recognised and enforced in its Relevant Jurisdiction; and
- 8.1.5.2 any judgment obtained in relation to this Agreement in Northern Ireland and (if applicable) any award will be recognised and enforced in its Relevant Jurisdiction.

**8.1.6 Insolvency**

No:

- 8.1.6.1 corporate action, legal proceeding or other procedure or step described in clause 35.7 (*Insolvency proceedings*) of the Facilities Agreement; or
- 8.1.6.2 creditors' process described in clause 35.8 (Creditors' process) of the Facilities Agreement,

has been taken or, to its best knowledge (having made due and careful enquiry), threatened in writing in relation to it and none of the circumstances described in clause 35.6 (*Insolvency*) of the Facilities Agreement applies to it.

**8.1.7 Ownership**

As at the date of this Agreement, the Chargor is the legal and beneficial owner of all of the issued share capital of the Borrower.

**8.1.8 Unissued share capital and share options**

It is not under any commitment or obligation to issue any of its unissued share capital and it has not entered into any commitment or arrangement to issue any or all of its authorised and unissued share capital, and no person has any right

or option to call for or require the issuance of any share or security convertible into any share in its capital.

#### **8.1.9 Security**

Subject in each case to the Reservations, this Agreement confers valid security, of the type which this Agreement purports to create, over the Charged Property and evidences each Security Interest it is expressed to evidence and such Security Interest:

8.1.9.1 is enforceable in accordance with the terms of this Agreement and is not restricted or inhibited by the terms of its constitutional documents;

8.1.9.2 has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* Security Interest; and

8.1.9.3 is not subject to avoidance in the event of any winding-up, dissolution or administration involving the Borrower or the Chargor.

#### **8.1.10 Ownership of assets**

It is the sole legal and beneficial owner of, and has good and marketable title to, the Charged Property free and clear of all security interests save as created by this Agreement and has not sold or disposed of or granted any options or pre-emption rights in respect of any of its right, title and interest, in the Charged Property (other than as permitted under the Finance Documents) and all of the Shares are validly issued, fully paid and are not subject to any options to purchase, pre-emption rights or similar rights or other restrictions upon disposal which would operate to restrict in any way their disposal by the Security Trustee should it come to enforce its Security Interest over the Charged Property contained in this Agreement.

#### **8.1.11 Authorisations**

All Authorisations required:

8.1.11.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in the this Agreement; and

8.1.11.2 to make this Agreement admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect except any Authorisations referred to in Clause 31.9 of the Facilities Agreement, which will be obtained promptly after the Effective Date.

#### **8.1.12 Pari passu**

All unsecured and unsubordinated claims of a Secured Party against it under this Agreement, rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except for those creditors whose claims are mandatorily preferred by laws of general application to companies.

#### **8.1.13 No filing or stamp taxes**

Other than the registration of this Agreement with the Companies House in England and Wales, it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority or that any stamp, registration, notarial or similar Tax or fees be paid on or in relation to this Agreement or the transactions contemplated by this Agreement.

**8.1.14 Centre of main interests and establishments**

8.1.14.1 It has its "**centre of main interests**" (as that term is used in Article 3(1) of the Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**")) in England.

8.1.14.2 It has no "**establishment**" (as that term is used in Article 2(h) of the Regulation) in any jurisdictions other than the Relevant Jurisdiction and the jurisdiction under whose laws the Chargor is incorporated as at the date of this Agreement.

**8.1.15 No proceedings pending or threatened**

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

**8.1.16 No immunity**

8.1.16.1 Its execution of this Agreement constitutes, and its exercise of its rights and performance of its obligations under this Agreement will constitute, private and commercial acts performed for private and commercial purposes.

8.1.16.2 It shall not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Agreement.

**8.1.17 Compliance with laws**

As at the date of this Agreement, it is in compliance with all Applicable Laws in all material respects.

**8.1.18 Anti-corruption law**

8.1.18.1 The Chargor shall not (and shall ensure that no other member of the Group will) directly or indirectly use the proceeds of the Facilities for any purpose which would breach the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions.

8.1.18.2 Neither the Chargor nor, to the best of its knowledge, any of its directors, officers, agents, employees or affiliates are currently subject to any sanctions administered by Office of Foreign Assets Control (OFAC) of the US department of treasury or any equivalent sanctions administered by the European Union or HM Treasury.

8.1.18.3 Each member of the Group has conducted its business in compliance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

8.1.18.4 The Chargor, or as far as it is aware (after due and careful enquiry) its employees or any of them or anyone acting on their behalf has not offered, given or agreed to give to any person employed by or on behalf of the Government or any other public body, any improper, dishonest or unlawful gift, commission or consideration.

**8.1.19 Specific contracts**

Each of the Specific Contracts is in full force and effect, enforceable in accordance with its terms and, as at the date of this Agreement, no party to the Specific Contracts is in breach of any term or condition of that agreement. There are no restrictions on the Chargor's ability to assign or charge any of the Specific Contracts, whether contained in any of the Specific Contracts or in any other document.

#### **8.1.20 Repetition**

The representations set out in this Clause 8.1 (*Representations*) are made by the Chargor on the date of this Agreement. The representations set out in Clauses 8.1.1(*Status*), 8.1.2 (*Binding obligations*), 8.1.3 (*Non-conflict with other obligations*), 8.1.4 (*Power and authority*), 8.1.5 (*Governing law and judgments*), 8.1.14 (*Centre of main interests and establishments*) and 8.1.16 (*No immunity*) are also deemed to be made by the Chargor by reference to the facts and circumstances then existing on the date of the Utilisation Request, the Utilisation Date and the last day of each Interest Period.

### **8.2 Undertakings**

#### **8.2.1 Authorisations**

The Chargor shall promptly:

8.2.1.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and

8.2.1.2 supply certified copies to the Security Trustee of,

any Authorisation required under any law or regulation of any relevant jurisdiction to enable it to perform its obligations under this Agreement and to ensure the legality, validity, enforceability or admissibility in evidence in any relevant jurisdiction of this Agreement.

#### **8.2.2 Compliance with laws**

The Chargor shall:

8.2.2.1 obtain, comply with and do all that is necessary to maintain in full force and effect all applicable laws, authorisations, regulations, licences, consents and other approvals to which it may be subject; and

8.2.2.2 promptly notify the Agent of any change, repeal or re-enactment of any law or regulation which has or is reasonably likely to have a Material Adverse Effect.

#### **8.2.3 Disposals and negative pledge**

8.2.3.1 The Chargor shall not, either in a single transaction or in a series of transactions and whether related or not, dispose (whether by sale, transfer, lease, grant, lend, sub-lease or licence) of or cease to exercise direct control over any part of the Charged Property, other than pursuant to this Agreement or as otherwise permitted under the Finance Documents.

8.2.3.2 The Chargor shall not create or permit to subsist any Security Interest on any part of the Charged Property.

#### **8.2.4 Calls on shares**



The Chargor undertakes to pay all calls or other payments when due in respect of any part of the Charged Portfolio. If the Chargor fails to make any such payment the Security Trustee may make that payment on behalf of the Chargor and any sums so paid by the Security Trustee shall be reimbursed, on a full indemnity basis, by the Chargor on demand together with interest on those sums. Such interest shall be calculated from the due date up to the actual date of payment (after, as well as before, judgment) in accordance with Clause 2.2 (*Default interest*).

#### **8.2.5 Voting rights**

The Chargor shall not:

- 8.2.5.1 exercise (and shall procure that any nominee acting on its behalf does not exercise) its voting rights and powers in relation to the Charged Portfolio; or
- 8.2.5.2 otherwise permit or agree to, or concur or participate in any (i) variation of the rights attaching to or conferred by all or any part of the Charged Portfolio (ii) increase in the issued share capital of any company whose shares are charged pursuant to this Agreement (iii) exercise, renunciation or assignment of any right to subscribe for any shares or securities or (iv) reconstruction, amalgamation, sale or other disposal of any company or any of the assets of any company (including the exchange, conversion or reissue of any shares or securities as a consequence thereof) whose shares are charged under this Agreement,

in each case in a manner which would prejudice the value of, or the ability of the Security Trustee to realise, the Security Interest created by this Agreement provided that the proceeds of any such action shall form part of the Charged Portfolio.

#### **8.2.6 Anti-corruption law and Sanctions**

- 8.2.7 The Chargor shall not (and shall ensure that no other member of the Group will) engage in any transaction, activity or conduct that would violate the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 or other similar legislation in other jurisdictions or for the purpose of financing the activities of any person currently subject to any sanctions administered by OFAC or any equivalent sanctions administered by the European Union or HM Treasury.

- 8.2.8 The Chargor shall (and shall ensure that each other member of the Group will):

- 8.2.8.1 conduct its businesses in compliance with applicable anti-corruption laws; and
- 8.2.8.2 maintain policies and procedures designed to promote and achieve compliance with such laws.

#### **8.2.9 Specific contracts**

The Chargor shall not take, or omit to take, any action which might result in (a) the alteration or impairment of any of its rights in any Specific Contract, (b) any default of any of its obligations under or in respect of any Specific Contract, (c) any right to terminate any Specific Contract becoming exercisable by any other party to that agreement, or (d) any counterclaims or rights of set-off arising under any Specific Contract.



## **9. FURTHER ASSURANCE**

### **9.1 Extension of implied covenant**

The covenants set out in section 7 of the Act shall extend to include the obligations set out in Clause 9.2 (*Covenant for further assurance*) below.

### **9.2 Covenant for further assurance**

The Chargor will promptly at the cost of the Borrower do all such acts (including making all filings, registrations and notarisations) and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require) in favour of the Security Trustee or its nominee(s):

- 9.2.1 to create, perfect, protect and/or maintain the Security Interest created or intended to be created in respect of the Charged Property (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Property) or for the exercise of Collateral Rights;
- 9.2.2 to confer on the Security Trustee Security Interest over any asset or undertaking of the Chargor located in any jurisdiction outside Northern Ireland equivalent or similar to the Security Interest intended to be conferred by or pursuant to this Agreement; and/or
- 9.2.3 to facilitate the realisation of the Charged Property.

### **9.3 Consents**

- 9.3.1 The Chargor shall, as soon as possible, use its best endeavours to obtain any consents necessary or to remove any restriction on the creation of Security Interest (in each case in form and substance satisfactory to the Security Trustee, acting reasonably) to enable the assets of the Chargor to be the subject of the relevant fixed Security Interest pursuant to this Agreement.
- 9.3.2 Immediately upon obtaining any such consent or removing any such restriction, the asset concerned will become subject to that fixed Security Interest and the Chargor shall promptly deliver a copy of such consent or evidence of such removal to the Security Trustee.

### **9.4 Prescribed Wording**

The following covenants shall be implied in respect of any action taken by the Chargor to comply with its obligations under Clause 9.2 (*Covenant for further assurance*):

- 9.4.1 the Chargor has the right to take such action in respect of the Charged Property; and
- 9.4.2 the Chargor will at the cost of the Borrower do all that it reasonably can to give the Security Trustee or its nominee the title and/or rights that it purports to give.

## **10. SECURITY ENFORCEMENT**

### **10.1 Time for enforcement**

Any time after the occurrence of:

- 10.1.1 an Event of Default which is continuing; or
- 10.1.2 a request from the Chargor to the Security Trustee that it exercise any of its powers under this Agreement,

the Security Interest created by or pursuant to this Agreement is immediately enforceable and the Security Trustee may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

- 10.1.3 secure and perfect its title to all or any part of the Charged Property (including transferring the Charged Portfolio into the name of the Security Trustee or its nominees);
- 10.1.4 enforce all or any part of that Security Interest (at the times, in the manner and on the terms it thinks fit) and take possession of and hold, sell or otherwise dispose of all or any part of the Charged Property (and any assets of the Chargor which, when got in, would be part of the Charged Property) at the times, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration); and
- 10.1.5 whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Act or the 1911 Act (as each are varied or extended by this Agreement) on chargees and by this Agreement on any Receiver or otherwise conferred by law on chargees or Receivers.

#### 10.2 **No liability as mortgagee in possession**

Neither the Security Trustee, its nominee(s) nor any Receiver shall be liable:

- 10.2.1 to account as mortgagee or mortgagee in possession in respect of all or part of the Charged Property; or
- 10.2.2 for any loss or liability arising by reason of taking any action permitted by this Agreement or any neglect or default in connection with the Charged Property or taking possession of or realising all or any part of the Charged Property,

except in the case of gross negligence or wilful default upon its part.

#### 10.3 **Right of Appropriation**

To the extent that any of the Charged Property constitutes "**financial collateral**" and this Agreement and the obligations of the Chargor hereunder constitute a "**security financial collateral arrangement**" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226), as amended, (the "**Regulations**") the Security Trustee shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be the market price of the Shares determined by the Security Trustee by reference to a public index or by such other process as the Security Trustee may reasonably select, including independent valuation. The parties agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

#### 10.4 **Effect of moratorium**

The Security Trustee shall not be entitled to exercise its rights under Clause 10.1 (*Time for enforcement*) where the right arises as a result of an Event of Default occurring solely due to any person obtaining or taking steps to obtain a moratorium pursuant to Schedule A1 of the Insolvency (Northern Ireland) Order 1989.

### 11. **EXTENSION AND VARIATION OF THE LAW OF PROPERTY ACT 1925**

#### 11.1 **Extension of powers**

The power of sale or other disposal conferred on the Security Trustee and on any Receiver by this Agreement shall operate as a variation and extension of the statutory power of sale

under Section 19 of the Act and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Agreement.

#### **11.2 Restrictions**

The restrictions contained in Sections 17 and 20 of the Act shall not apply to this Agreement or to the exercise by the Security Trustee of its right to consolidate all or any of the Security Interest created by or pursuant to this Agreement with any other Security Interest in existence at any time or to its power of sale, which powers may be exercised by the Security Trustee without notice to the Chargor on or at any time after the Security Interest created by this Agreement has become enforceable in accordance with Clause 10 (*Security enforcement*).

#### **11.3 Statutory powers**

The powers conferred by this Agreement on the Security Trustee are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the Act, the 1911 Act, the Insolvency (Northern Ireland) Order 1989 or otherwise by law (as extended by this Agreement) and such powers shall remain exercisable from time to time by the Security Trustee in respect of any part of the Charged Property. In the case of any conflict between the powers contained in any such Act and those conferred by this Agreement the terms of this Agreement will prevail.

### **12. APPOINTMENT OF RECEIVER**

#### **12.1 Appointment and removal**

At any time after having been requested to do so by the Chargor or after this Agreement becomes enforceable in accordance with Clause 10 (*Security enforcement*), the Security Trustee may by deed or otherwise (acting through an authorised officer of the Security Trustee), without prior notice to the Chargor:

- 12.1.1 appoint one or more persons to be a Receiver of the whole or any part of the Charged Property;
- 12.1.2 appoint two or more Receivers of separate parts of the Charged Property respectively;
- 12.1.3 remove (so far as it is lawfully able) any Receiver so appointed; and/or
- 12.1.4 appoint another person(s) as an additional or replacement Receiver(s),

and, except as provided hereunder, any restriction imposed by law on the right of a mortgagee to appoint a Receiver (including under section 24(1) of the Act) does not apply to this Agreement.

#### **12.2 Capacity of receivers**

Each person appointed to be a Receiver pursuant to Clause 12.1 (*Appointment and removal*) shall be:

- 12.2.1 entitled to act individually or together with any other person appointed or substituted as Receiver;
- 12.2.2 for all purposes deemed to be the agent of the Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Trustee; and
- 12.2.3 entitled to remuneration for his services at a rate to be fixed by the Security Trustee from time to time (without being limited to the maximum rate specified by the Act).

### **12.3 Statutory powers of appointment**

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Trustee under the Act (as extended by this Agreement) or otherwise and such powers shall remain exercisable from time to time by the Security Trustee in respect of any part of the Charged Property.

## **13. POWERS OF RECEIVERS**

Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to the Charged Property (and any assets of the Chargor which, when got in, would be Charged Property) in respect of which he was appointed, and as varied and extended by the provisions of this Agreement (in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor):

13.1 all the powers conferred by the Act on mortgagors and on mortgagees in possession and on receivers appointed under that Act;

13.2 all the powers of an administrative receiver set out in Schedule 1 to the Insolvency (Northern Ireland) Order 1989 (whether or not the Receiver is an administrative receiver);

13.3 all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do; and

13.4 the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to:

13.4.1 any of the functions, powers, authorities or discretions conferred on or vested in him;

13.4.2 the exercise of the Collateral Rights (including realisation of all or any part of the Charged Property); or

13.4.3 bringing to his hands any assets of the Chargor forming part of, or which when got in would be, Charged Property.

## **14. APPLICATION OF MONIES**

All moneys received or recovered and any non-cash recoveries made or received by the Security Trustee or any Receiver pursuant to this Agreement or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Act) be applied first in the payment of the costs, charges and expenses incurred and payments made by the Receiver, the payment of his remuneration and the discharge of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Security Trustee (notwithstanding any purported appropriation by the Chargor) in accordance with the terms of the Facilities Agreement.

## **15. PROTECTION OF PURCHASERS**

### **15.1 Consideration**

The receipt of the Security Trustee or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Property or making any acquisition, the Security Trustee or any Receiver may do so for such consideration (whether cash or non-cash), in such manner and on such terms as it thinks fit.

### **15.2 Protection of purchasers**

No purchaser or other person dealing with the Security Trustee or any Receiver shall be bound to inquire whether the right of the Security Trustee or such Receiver to exercise any

of its powers has arisen or become exercisable or be concerned to inquire whether that power has been properly or regularly exercised by the Security Trustee or such Receiver in such dealings.

## **16. POWER OF ATTORNEY**

### **16.1 Appointment and powers**

The Chargor by way of security irrevocably appoints the Security Trustee and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

- 16.1.1 carrying out any obligation imposed on the Chargor by this Agreement or any other agreement entered into pursuant to this Agreement and binding on the Chargor to which the Security Trustee is party (including the execution and delivery of any deeds, charges, assignments or other Security Interest and any transfers of the Charged Property and perfecting and/or releasing the Security Interest created or intended to be created in respect of the Charged Property);
- 16.1.2 enabling the Security Trustee to exercise, or delegate the exercise of, all or any of the Collateral Rights (including, after the occurrence of an Event of Default, which is continuing, the exercise of any right of a legal or beneficial owner of the Charged Property); and
- 16.1.3 enabling any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Agreement or by law.

### **16.2 Ratification**

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## **17. EFFECTIVENESS OF SECURITY**

### **17.1 Continuing security**

- 17.1.1 The Security Interest created by or pursuant to this Agreement shall remain in full force and effect as a continuing Security Interest for the Secured Obligations unless and until the Discharge Date.
- 17.1.2 No part of the Security Interest from time to time intended to be constituted by this Agreement will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

### **17.2 Cumulative rights**

The Security Interest created by or pursuant to this Agreement and the Collateral Rights shall be cumulative, in addition to and independent of every other Security Interest which the Security Trustee or any other Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent Security Interest notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security Interest. No prior Security Interest held by the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Charged Property shall merge into the Security Interest constituted by this Agreement.

### **17.3 No prejudice**

The Security Interest created by or pursuant to this Agreement and the Collateral Rights shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Borrower or any other person, or the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Secured Parties or by any variation of the terms of the trust upon which the Security Trustee holds the Security interest or by any other thing which might otherwise prejudice that Security Interest or any Collateral Right.

### **17.4 Remedies and waivers**

No failure on the part of the Security Trustee to exercise, nor any delay on its part in exercising, any Collateral Right shall operate as a waiver of that Collateral Right or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of the Security Trustee shall be effective unless it is in writing. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

### **17.5 No liability**

None of the Security Trustee, its nominee(s) or any Receiver shall be liable by reason of (a) taking any action permitted by this Agreement or (b) any neglect or default in connection with the Charged Property or (c) taking possession of or realising all or any part of the Charged Property, except in the case of gross negligence or wilful default upon its part.

### **17.6 Partial invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Security Interest intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security Interest.

### **17.7 Waiver of defences**

The obligations of the Chargor under this Agreement, the Security Interest created pursuant to this Agreement and the Collateral Rights will not be affected by any act, omission, matter or thing which, but for this Clause 17.7 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Agreement and the Security Interest constituted by or pursuant to this Agreement (without limitation and whether or not known to it or any Secured Party) including:

- 17.7.1 any time, waiver or consent granted to, or composition with, the Borrower or other person;
- 17.7.2 the release of the Borrower or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- 17.7.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security Interest over assets of, the Borrower or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security Interest;
- 17.7.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;



- 17.7.5 any amendment, novation, supplement, extension, restatement (in each case, however fundamental and whether or not more onerous) or replacement of a Finance Document or any other document or Security Interest or of the Secured Obligations including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or Security Interest;
- 17.7.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security Interest or of the Secured Obligations; or
- 17.7.7 any insolvency or similar proceedings.

#### **17.8 Chargor intent**

Without prejudice to the generality of Clause 17.7 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security Interest created under this Agreement, and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **17.9 Immediate recourse**

The Chargor waives any right it may have of first requiring the Security Trustee or a Secured Party to proceed against or enforce any other rights or Security Interest or claim payment from any person before claiming from the Chargor under this Agreement or enforcing the Security Interest created by this Agreement. This waiver applies irrespective of any provision of this Agreement to the contrary.

#### **17.10 Deferral of rights**

Until such time as the Secured Obligations have been discharged in full, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Agreement:

- 17.10.1 to be indemnified by the Borrower;
- 17.10.2 to claim any contribution from any guarantor or any other person in respect of the Borrower's obligations under this Agreement or any other Finance Document; and/or
- 17.10.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Security Trustee under this Agreement or the Security Trustee or any other Secured Party under any other guarantee or other Finance Document or Security Interest taken pursuant to, or in connection with, this Agreement or any other Finance Document by the Security Trustee or any Secured Party;
- 17.10.4 to bring legal or other proceedings for an order requiring the Borrower or other person to make any payment, or perform any obligation, in respect of which the Borrower or other person has given a guarantee, undertaking or indemnity under any Finance Document;
- 17.10.5 to exercise any right of set-off against the Borrower or other person; and/or

- 17.10.6 to claim or prove as a creditor of the Borrower or other person in competition with any Secured Party.

**17.11 Turnover trust**

17.11.1 The Chargor shall not accept or permit to subsist any collateral from the Borrower or any other person in respect of any rights the Chargor may have arising out of this Agreement: If, despite this provision, any such collateral shall be accepted or subsisting the Chargor acknowledges that the Chargor's rights under such collateral shall be held on trust for the Security Trustee and the Secured Parties, to the extent necessary to enable all amounts which may be or become payable to the Security Trustee and the Secured Parties by the Borrower under or in connection with the Finance Documents to be repaid in full.

17.11.2 If the Chargor receives any benefit, payment or distribution relating to the rights mentioned in Clause 17.10 (*Deferral of rights*) above, it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Security Trustee and the Secured Parties by the Borrower under or in connection with the Finance Documents to be repaid in full.

**18. RELEASE OF SECURITY**

**18.1 Release**

Upon the Secured Obligations being discharged in full and none of the Secured Parties being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor, the Borrower or any other person under any of the Finance Documents, the Security Trustee shall, at the request and cost of the Chargor, release and cancel the Security Interest constituted by this Agreement and procure the reassignment to the Chargor of the property and assets assigned to the Security Trustee pursuant to this Agreement, in each case subject to Clause 18.2 (*Avoidance of payments*) and without recourse to, and without any representation or warranty by, the Security Trustee or any of its nominees.

**18.2 Avoidance of payments**

If the Security Trustee reasonably considers that any amount paid or credited to it or any other Secured Party is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Chargor under this Agreement and the Security Interest constituted by this Agreement shall continue and such amount shall not be considered to have been irrevocably paid.

**19. SET-OFF**

The Chargor authorises the Security Trustee (but the Security Trustee shall not be obliged to exercise such right), after the Security Interest created by or pursuant to this Agreement has become enforceable in accordance with Clause 10 (*Security Enforcement*), to set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Security Trustee to the Chargor and apply any credit balance up to the value of the Charged Property to which the Chargor is entitled on any account with the Security Trustee in accordance with Clause 14 (*Application of Monies*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

**20. PRIOR SECURITY INTERESTS**

**20.1 Redemption or transfer**

In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security Interest against any of the Charged Property or in case of exercise by the Security Trustee or any Receiver of any power of sale or right of appropriation or application under this Agreement, the Security Trustee may redeem such prior Security Interest or procure the transfer thereof to itself.



**20.2 Accounts**

The Security Trustee may settle and agree the accounts of the prior Security Interest and any accounts so settled and agreed will be conclusive and binding on the Chargor.

**20.3 Costs of redemption or transfer**

All principal monies, interest, costs, charges and expenses (including legal fees and other out of pocket expenses and any VAT or other similar tax thereon) of and incidental to any redemption or transfer will be paid by the Chargor to the Security Trustee on a full indemnity basis on demand together with accrued interest thereon calculated in accordance with Clause 2.2 (*Default interest*).

**21. SUBSEQUENT SECURITY INTERESTS**

If the Security Trustee (acting in its capacity as security trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security Interest affecting all or any part of the Charged Property or any assignment or transfer of the Charged Property which is prohibited by the terms of any Finance Document, all payments thereafter by or on behalf of the Chargor to the Security Trustee (whether in its capacity as security trustee or otherwise) or any of the other Secured Parties shall (in the absence of any express contrary appropriation by the Chargor) be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations as at the time when the that notice was received.

**22. SUSPENSE ACCOUNTS AND CURRENCY CONVERSION**

**22.1 Suspense accounts**

All monies received, recovered or realised by the Security Trustee under this Agreement (including the proceeds of any conversion of currency) may in the discretion of the Security Trustee be credited to any interest bearing suspense or impersonal account maintained with the Security Trustee or any bank, building society, financial institution or other person as it considers appropriate (including itself) and may be held in such account for so long as the Security Trustee may think fit (the interest being credited to the relevant account) pending their application from time to time (as the Security Trustee is entitled to do in its discretion) in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

**22.2 Currency conversion**

22.2.1 For the purpose of or pending the discharge of any of the Secured Obligations the Security Trustee may convert any money received, recovered or realised or subject to application by it under this Agreement from one currency to another, as the Security Trustee reasonably considers necessary and any such conversion shall be effected at the Security Trustee's spot rate of exchange for the time being for obtaining such other currency with the first currency.

22.2.2 The obligations of the Chargor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

**23. ASSIGNMENT**

23.1 The Chargor may not assign or transfer all or part of its rights or obligations under this Agreement except with the prior written consent of the Security Trustee.

23.2 The Security Trustee may, subject to any restrictions contained in the Finance Documents, assign and transfer all or any of its rights and obligations under this Agreement to any person to whom it transfers its rights and/or obligations under the Facilities Agreement,

provided such person is subject to confidentiality obligations in respect of such information that are no less stringent than those to which the Security Trustee is subject before receipt of such confidential information.

23.3 Subject to clause 48 (*Confidentiality*) of the Facilities Agreement, the Security Trustee shall be entitled to disclose such information concerning the Chargor (or any other person) and this Agreement as the Security Trustee considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

23.4 This Agreement shall remain in effect despite any amalgamation or merger (however effected) relating to the Security Trustee. References to the Security Trustee shall include (i) any assignee or successor in title of the Security Trustee, (ii) any entity into which the Security Trustee is merged or converted or with which it may be consolidated, (iii) any legal entity resulting from any merger, conversion or consolidation to which such Security Trustee is a party and (iv) any other person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Security Trustee under this Agreement or to which, under such laws, those rights and obligations have been transferred (such person described in (i) to (iv) being a successor to the Security Trustee for all purposes under the Finance Documents).

## 24. **NOTICES**

### 24.1 **Communications in writing**

Each communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by electronic mail or letter and in accordance with and in accordance with clause 43 (*Notices*) of the Facilities Agreement.

### 24.2 **Addresses**

24.2.1 In the case of the Chargor,

Address: C/O Kilroot Power Station, Larne Road, Carrickfergus, BT38 7LX

E-mail: Julie.leeburn@AES.com

Attention: Julie Leeburn (Legal Counsel)

With a copy to:

Address: C/O AES Netherlands Holdings BV, Vinoly 4th Floor, Claude Debussylan 12, 1082 MD Amsterdam, Netherlands

Email: [Chad.Canfield@AES.com](mailto:Chad.Canfield@AES.com)

Contact: Chad Canfield

24.2.2 In the case of the Security Trustee, that identified in the signing pages below,

or any substitute address or department or officer as the Party may notify the other by not less than five (5) Business Days' notice.

## 25. **COSTS, EXPENSES, STAMP TAXES AND INDEMNITY**

### 25.1 **Expenses**

The Chargor shall, within three (3) Business Days of demand, pay the Security Trustee, the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under this Agreement and the Security

contemplated by this Agreement and any proceedings instituted by or against the Security Trustee as a consequence of taking or holding the Security Interest contemplated by this Agreement or enforcing these rights.

## **25.2 Stamp taxes**

The Chargor shall pay all stamp, registration, notarial and other taxes and fees to which this Agreement, the Security Interest contemplated in this Agreement or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Trustee, within three (3) Business Days of demand against any cost, loss or liability that the Security Trustee incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of this Agreement.

## **25.3 Indemnity**

25.3.1 The Chargor shall promptly (and in any event within three (3) Business Days of demand) indemnify the Security Trustee, every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

25.3.1.1 any failure by the Chargor to comply with its obligations under this Clause 25 (Costs, Expenses, Stamp Taxes and Indemnity);

25.3.1.2 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

25.3.1.3 the taking, holding, protection or enforcement of the Security Interest created pursuant to this Agreement;

25.3.1.4 the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Trustee and each Receiver by this Agreement or by Law;

25.3.1.5 any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Agreement; or

25.3.1.6 acting as Security Trustee, Receiver or Delegate under this Agreement or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Trustee's, Receiver's or Delegate's gross negligence or wilful misconduct).

25.3.2 This Clause 25.3 (*Indemnity*) shall survive in full force and effect, notwithstanding the termination of this Agreement or the resignation or replacement of the Security Trustee in accordance with the terms of the Facilities Agreement.

## **26. DISCRETION AND DELEGATION**

### **26.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Agreement by the Security Trustee or any Receiver may, subject to the terms and conditions of the Facilities Agreement or except as otherwise provided under this Agreement, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

### **26.2 Delegation**

Each of the Security Trustee and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement (including the power of attorney) on such terms and conditions as it shall see

fit which delegation shall not preclude either the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Security Trustee or the Receiver itself.

**27. WAIVERS AND COUNTERPARTS**

**27.1 Waivers**

No waiver by the Security Trustee of any of its rights under this Agreement shall be effective unless given in writing.

**27.2 Counterparts**

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

**28. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of Northern Ireland.

**29. JURISDICTION**

29.1 The courts of Northern Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) and any non-contractual obligations arising out of or in connection with it (a "**Dispute**"). The Parties agree that the courts of Northern Ireland are the most appropriate and convenient courts to settle any Dispute and accordingly no Party will argue to the contrary. This Clause 29 is for the benefit of the Enforcement Parties only. As a result, no Enforcement Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, each Enforcement Party may take concurrent proceedings in any number of jurisdictions.

29.2 The Chargor irrevocably appoints AES Ballylumford Limited as its agent for service of process in relation to any proceedings before the courts of Northern Ireland in connection with this Agreement and agrees that any failure to notify it of the process will not invalidate the proceedings concerned.

This document is executed as a deed and delivered on the date stated at the beginning of this Agreement.

## SCHEDULE 1

### Form of Notice Assignment

To: [name and address of counterparty]

Dated: [date]

Dear Sirs,

**Re:** [here identify relevant Charged Contract] [the "Contract"] made between (1) [Chargor] (the "Chargor") and (2) [here insert name of counterparty]

We, the Chargor, give you notice that, by a parent security agreement dated [date] (the "Agreement") and made by ourselves in favour of UniCredit Bank AG, London Branch (the "Security Trustee"), we have assigned to the Security Trustee, as first priority assignee, all of our rights, title and interest in the Contract.

We further irrevocably and unconditionally:

1. notify you that we may not agree to amend, modify or terminate the Contract without the prior written consent of the Security Trustee;
2. confirm that, subject to paragraph 1 above, you may continue to deal with us in relation to the Contract until you receive written notice to the contrary from the Security Trustee, but authorise and instruct you that, after you have received such notice, we will cease to have any right to deal with you in relation to the Contract except in accordance with the instructions of the Security Trustee and therefore from that time you may deal directly with the Security Trustee;
3. authorise and instruct you to disclose information in relation to the Contract to the Security Trustee promptly on request, without any enquiry by you as to the justification for such disclosure or reference to or further authority from us;
4. authorise and instruct you to pay or release all monies to which we are entitled under the Contract directly into [specify designated bank account] or, if the Security Trustee so instructs you, into such other account as the Security Trustee shall specify;
5. authorise and instruct you that, whenever you serve any notice upon us under the Contract, you should supply a copy of such notice to the Security Trustee at its address given in the copy of this notice (or as otherwise notified to you by it from time to time); and
6. notify you that the provisions of this notice may only be revoked with the written consent of the Security Trustee.

Please sign the copy of this notice and deliver it to the Security Trustee (with a further copy to us).

This notice and any non-contractual obligations arising out of or in connection with it are governed by the law of Northern Ireland.

Yours faithfully,

\*\*\*\*\*  
For and on behalf of  
[Chargor]:

By: .....

**[to be included on copy notice]**

To: [name and address of Security Trustee]

Copy to: [name and address of Chargor]

We [name of counterparty] acknowledge receipt of the above notice. We:

1. accept the instructions and authorisations set out in the notice and undertake to act in accordance with such instructions and authorisations; and
2. confirm that we have not received notice that the Chargor has assigned its rights under the Contract to a third party or created any other interest (whether by way of Security Interest or otherwise) in the Contract in favour of a third party.

Terms defined in the notice apply to this endorsement, which is governed by the law of Northern Ireland together with any non-contractual obligations arising out of or in connection with it.

Signed:.....

for and on behalf of [name of counterparty]

Dated: [date]

**SIGNATURES**

**THE CHARGOR**

Executed as a deed by **AES BALLYLUMFORD HOLDINGS LIMITED**, acting by a director/attorney in the presence of:

\_\_\_\_\_  
Director/Attorney

In the presence of:

Witness Signature: \_\_\_\_\_

Witness Name: **JULIE LEBSUCK**

Witness Address: \_\_\_\_\_

Witness Occupation: **SOLICITOR**

**THE SECURITY TRUSTEE**

Executed as a deed by **UNICREDIT BANK AG, LONDON BRANCH** by its Authorised Signatory(ies) in the presence of:

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

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

In the presence of:

Witness signature: \_\_\_\_\_

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

Witness Address: \_\_\_\_\_

Witness Occupation: \_\_\_\_\_

**SIGNATURES**

**THE CHARGOR**

Executed as a deed by **AES BALLYLUMFORD HOLDINGS LIMITED**, acting by a director/attorney in the presence of:

\_\_\_\_\_  
**Director/Attorney**

In the presence of:

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

**THE SECURITY TRUSTEE**

Executed as a deed by **UNICREDIT BANK AG, LONDON BRANCH** by its Authorised Signatory(ies) in the presence of:

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

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

*STEFANO VITALI*

In the presence of:

Witness signature:

Witness Name:

Witness Address:

Witness Occupation: