



**Registration of a Charge**

Company name: **E (GAS AND ELECTRICITY) LIMITED**

Company number: **08520118**



X90NCBYX

Received for Electronic Filing: **12/03/2020**

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**Details of Charge**

Date of creation: **09/03/2020**

Charge code: **0852 0118 0002**

Persons entitled: **SMARTESTENERGY LIMITED**

Brief description: **THE LEASEHOLD LAND KNOWN AS PLOT T4, TRINITY PARK, BICKENHILL LANE, SOLIHULL B37 7ES REGISTERED AT THE LAND REGISTRY WITH TITLE NUMBER MM94018.**

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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:

**GOWLING WLG (UK) LLP**



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

Company number: 8520118

Charge code: 0852 0118 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 9th March 2020 and created by E (GAS AND ELECTRICITY) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th March 2020 .

Given at Companies House, Cardiff on 13th March 2020

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

Dated 9 March 2020

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**THE COMPANIES**  
whose details are set out in Schedule 1 (1)

in favour of

**SMARTESTENERGY LIMITED** (2)

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**COMPOSITE GUARANTEE  
AND  
DEBENTURE**

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THIS DEED made

9 March

2020

BY

- (1) **THE COMPANIES** whose details are set out in Schedule 1 (the "**Companies**" and each a "**Company**"),

in favour of:

- (2) **SMARTESTENERGY LIMITED** a company registered in England with company number 3994598 and whose registered address is at Dashwood House, 69 Old Broad Street, London EC2M 1QS (the "**Chargee**").

IT IS AGREED as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed, the following expressions shall have the following meanings (unless the context otherwise requires):

<b>Account Bank</b>	any bank or financial institution with whom a Company holds an account, including the Collections Account, from time to time;
<b>Administrator</b>	a person appointed in accordance with Schedule B1 Insolvency Act 1986 to manage a Company's affairs, business and property;
<b>Business Day</b>	a day (other than a Saturday or Sunday) on which the clearing banks are open for general business in the City of London;
<b>Charged Property</b>	all the assets of a Company which from time to time are the subject of the Security created or expressed to be created in favour of the Chargee by or pursuant to this Deed (and references to the Charged Property includes references to any part of it);
<b>Collateral Rights</b>	all rights, powers and remedies of the Chargee provided by or pursuant to this Deed or by law;
<b>Collections Account</b>	(a) the account identified in Schedule 2 and/or such other account or accounts as the Chargee may from time to time designate in writing; and  (b) all Related Rights;
<b>Confidential Information</b>	all information and records wherever located (including accounts, business plans and financial forecasts, tax records,

correspondence, designs, drawings, manuals, specifications, customer, sales and supplier information, technical or commercial expertise, software, formulae, processes, trade secrets, methods, knowledge and know-how) and which (either in their entirety or in the precise configuration or assembly of their components) are not publicly available and in each case whether or not recorded;

**Consent Letter**

the consent letter dated on or about the date of this Deed given by the Chargee in favour of, amongst others, the Licence Holder;

**Customer Supply Contract**

each contract from time to time for the supply of gas and/or electricity by the Licence Holder to one or more customers in Great Britain, including deemed supply contracts existing pursuant to the Gas Act 1986 of the Electricity Act 1989, together in each case with all Related Rights;

**Cross-Product Master Agreement**

the 'Cross-Product Master Agreement' dated 24 October 2019 between the Licence Holder and the Chargee;

**Energy Framework Agreement**

each of:

- (a) the 'Electricity Trading Framework Agreement' dated 24 October 2019 between the Licence Holder and the Chargee; and
- (b) the 'NBP Gas Trading Framework Agreement' dated 24 October 2019 between the Licence Holder and the Chargee;

**Energy Trading Agreements**

(a) this Deed; (b) each Energy Framework Agreement; (c) the GTMA (as defined in the electricity Energy Framework Agreement) and each and every transaction thereunder (whether before or after the date of this Deed); (d) each and every transaction which is subject to the NBP15 Terms (as defined in the gas Energy Framework Agreement) whether entered into before or after the date of this Deed; and (e) the Cross-Product Master Agreement together with each and every agreement or transaction not already covered by limbs (c) or (d) which is subject to the Cross-Product Master Agreement (whether entered into before or after the date of this Deed);

**Environment**

humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including air within natural or man-made structures, whether above or below ground);
- (b) water (including territorial, coastal and inland waters, water under or within land and water in drains and

	sewers); and
	(c) land (including land under water);
<b>Environmental Law</b>	any applicable law or regulation which relates to: <ul style="list-style-type: none"> <li>(a) the pollution or protection of the Environment;</li> <li>(b) the conditions of the workplace; or</li> <li>(c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including any waste;</li> </ul>
<b>EU Regulation</b>	Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast);
<b>Event of Default</b>	means: <ul style="list-style-type: none"> <li>(a) a Close-Out Event as defined in the Cross-Product Master Agreement; or</li> <li>(b) a Company does not comply with any provision of a Finance Document;</li> </ul>
<b>Existing Debenture</b>	the debenture dated 22 October 2019 granted by E (Gas and Electricity) Limited in favour of the Chargee bearing charge code 0852 0118 0001);
<b>Finance Documents</b>	this Deed, the Energy Trading Agreements, the Consent Letter and any other documents designated as a "Finance Document" by a Company and the Chargee;
<b>Financial Collateral</b>	shall have the same meaning as in the Financial Collateral Regulations;
<b>Financial Collateral Regulations</b>	the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226);
<b>Floating Charge Property</b>	has the meaning given in clause 3.1(q);
<b>Insurance Policy</b>	<ul style="list-style-type: none"> <li>(a) any contract and policy of insurance or assurance and cover note in which a Company may from time to time have an interest (including any and all credit insurance in respect of the Customer Supply Contracts);</li> <li>(b) the Insurance Proceeds; and</li> </ul>



- (c) all Related Rights;

**Insurance Proceeds**

the proceeds of any insurance claim received by a Company (after deduction of amounts paid to meet third party claims) together with the benefits of all bonuses, profits, returns of premium and other benefits of whatever nature arising by virtue of the Company's ownership of any insurance policy and all the Company's interest in any of the foregoing;

**Intellectual Property**

- (a) patents, utility models, trade marks, service marks, copyright and related rights, moral rights, rights in databases, registered designs, design rights, domain names, the right to sue for passing off and/or unfair competition, and any other intellectual property rights and interests, (which may subsist now or in the future), in each case whether registrable or not and whether registered or not, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, including those subsisting in inventions, designs, drawings, performances, computer programs, computer software, trade secrets, semiconductor topographies, Confidential Information, knowhow, business names, trade names, brand names, domain names, metatags, goodwill or the style of presentation of goods or services;
- (b) the benefit of all applications (or rights to apply for and be granted) and rights to use such assets (which may subsist now or in the future);
- (c) all modification, derivatives, additions and improvements upon any such assets and all embodiments or fixations thereof;
- (d) all re-issues, continuations, divisionals, continuations-in-part, re-examinations, supplemental examinations, inter partes reviews, renewals, adjustments or extensions (including supplementary protection certificates and patent term extension certificates) of any such assets; and
- (e) all Related Rights;

**Investment Derivative Rights**

all dividends, interest or distributions and all other rights and benefits of an income nature accruing at any time in respect of any Investment;

**Investments**

- (a) any stocks, shares, loan capital, bonds or other securities, now or at any time held directly by or to the order of a Company or by any trustee, fiduciary or clearance system on its behalf including, but not limited to, the Shares;
- (b) all Related Rights (including all rights against any such

	trustee, fiduciary or clearance system);
<b>Issuer</b>	the issuer of any Investment;
<b>Licence Holder</b>	the Company identified as such in Schedule 1;
<b>Notice of Assignment</b>	a notice of assignment (including an acknowledgement and/or consent to assignment to be returned by the addressee) in substantially the form set out in Schedule 4 or in such other form as may be required by the Chargee from time to time;
<b>Parent</b>	the Company identified as such in Schedule 1;
<b>Permitted Security</b>	<p>(a) the Existing Debenture;</p> <p>(b) any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by one or more Companies;</p> <p>(c) any netting or set-off arrangement entered into by a Company in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances between itself and other Companies but only so long as such arrangement does not give rise to other Security over the assets of Companies in support of liabilities of persons which are not Companies; and</p> <p>(d) any security or quasi-security required by any energy industry codes.</p>
<b>Planning Acts</b>	the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 and any regulations or subordinate legislation made (before or after this Deed) under those statutes and any other statute or regulation governing or controlling the use or development of land and buildings;
<b>Prohibited Dividend</b>	any dividend paid by either Company in breach of any provision of any Finance Document;
<b>Real Property</b>	<p>comprises:</p> <p>(a) a Company's estates or interests in all freehold, leasehold, commonhold or other immovable property (including the property specified in Schedule 3);</p> <p>(b) any buildings, fixtures and fittings (including trade and tenant's fixtures) situated on that property, fixed plant or machinery from time to time situated on or forming part</p>

of such property; and

(c) all Related Rights;

**Receivables**

(a) all present and future book and other debts and monetary claims owing to a Company or in which a Company has an interest (including any and all amounts owing to the Licence Holder under or in connection with the Customer Supply Contracts); and

(b) all Related Rights;

**Receiver**

a receiver or receiver and manager or administrative receiver of any or all of the Charged Property;

**Related Rights**

in relation to any asset:

(a) the proceeds of sale of any part of that asset;

(b) all rights under any licence, contract, agreement for sale or agreement for lease in respect of that asset (which may subsist now or in the future);

(c) all rights, benefits, rents, deposits, goodwill, claims, warranties, guarantees, remedies, Security, indemnities or covenants (including covenants for title) in respect of that asset (which may subsist now or in the future);

(d) the right to bring, make, oppose, defend appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement or alleged infringement, or any other cause of action arising from ownership of the asset, whether occurring before, on or after the date of this Deed;

(e) any right (including future rights) to apply for, prosecute and otherwise obtain patent, trade mark, registered design or any other registration or protection throughout the world in respect of any Intellectual Property or any present or future matter relating to them;

(f) in respect of any and each application for any and all patents comprised in the Intellectual Property:

(i) the right to claim priority from and to prosecute and obtain grant of patent; and

(ii) the right to file divisional applications based thereon and to prosecute and obtain grant of patent on each and any such divisional application;

(g) in respect of each and any invention disclosed in any

and all patents, applications or patents, confidential information or otherwise disclosed by or comprised in the Intellectual Property, the right to file an application, claim priority from such application, and prosecute and obtain grant of patent or similar protection in or in respect of any country or territory in the world;

- (h) the right to extend to or register in or in respect of any country or territory in the world each and any of the Intellectual Property, and each and any of the applications comprised in such Intellectual Property or filed as aforesaid;
- (i) the rights (including rights relating to the receipt of royalties, fees or other monies from time to time) vested in a Company with respect to, and the benefit of all obligations owed from time to time by any person in relation to, any present or future agreement, document or instrument (including any licence, sub-licence or franchise) entered into, or the benefit of which is enjoyed, by a Company relating to the use of or licensing of or exploitation of any Intellectual Property by or to a Company or any other person whatsoever;
- (j) its interests of whatsoever kind in or to any (including future) physical, electronic or other materials or media (including manuscripts, drawings, paintings, designs, source code, computer disks and computer programs) constituting, comprising, the subject of or containing inventions, works, marks or things which are the subject of any Intellectual Property; and
- (k) any income, moneys and proceeds paid or payable in respect of that asset (including interest or any judgment or order to pay a sum of money);

**ROC**

each renewable obligation certificate (under section 32 and subsequent of the Electricity Act 1989) issued to or otherwise held by a Company from time to time;

**Secured Obligations**

all present and future obligations and liabilities, whether actual or contingent and whether incurred alone, jointly or severally, as principal or surety and/or in any other capacity whatsoever, owed by:

- (a) any Company to the Chargee under or in connection with any or all of the Finance Documents;
- (b) all costs, charges, expenses and liabilities incurred by the Chargee in connection with the protection, preservation or enforcement of its respective rights under the Finance Documents or any other document evidencing or securing any such liabilities,

together with interest on the above from the date of demand

until the date of payment in full (both before and after judgment) calculated on a daily basis at the same rate as applies to late payments in respect of transactions entered into under any Finance Document;

**Security** a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other preferential right or arrangement having a similar effect (including title retention, set-off, title transfer and trust arrangements); and

**Security Financial Collateral Arrangement** has the same meaning as in the Financial Collateral Regulations.

**Shares** the shares owned by the Parent in the Licence Holder specified in Schedule 5 (*Shares*) and any other shares issued in the future owned by the Parent in the Licence Holder from time to time;

## 1.2 Construction

(a) Unless a contrary indication appears, a reference in this Deed to:

- (i) the "**Chargee**", any "**Company**", or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to or of its rights and/or obligations under the Finance Document and this Deed shall be binding on, and enure to the benefit of, the parties to this Deed and their respective personal representations, successors, permitted assigns and permitted transferees;
- (ii) a document in "**agreed form**" is a document which is previously agreed in writing by or on behalf of a Company and the Chargee or, if not so agreed, is in the form specified by the Chargee;
- (iii) "**assets**" includes present and future properties, revenues and rights of every description;
- (iv) an "**Energy Trading Agreement**" or any other agreement or instrument is a reference to that Energy Trading Agreement or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated from time to time in accordance with its terms;
- (v) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated from time to time in accordance with its terms;
- (vi) "**guarantee**" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

- (vii) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (viii) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
  - (ix) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (x) a provision of law is a reference to that provision as amended, re-enacted or restated; and
  - (xi) a time of day is a reference to London time.
- (b) Section, clause and Schedule headings are for ease of reference only.
  - (c) Unless a contrary indication appears, a term used in this Deed (and not otherwise defined in this Deed) which is defined in any other Finance Document shall have the same meaning in this Deed.
  - (d) The words include(s), including and in particular shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words.
  - (e) An Event of Default is 'continuing' if it has not been waived by the Chargee in writing.

### 1.3 Third Party Rights

- (a) Unless expressly provided to the contrary in a Finance Document, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.
- (b) Notwithstanding any term of any Finance Document, the consent of any person who is not a party to this Deed is not required to rescind or vary this Deed at any time.

### 1.4 Incorporation of Terms

The terms of the Finance Documents and of any side letters between any of the parties thereto are incorporated in this Deed to the extent required to ensure that any disposition of Real Property contained in this Deed is a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

### 1.5 Effect as a Deed

This Deed is intended to take effect as a deed notwithstanding that the Chargee may have executed it under hand only.

## **2 COVENANT TO PAY**

### **2.1 Secured Obligations**

Each Company covenants that it will, on demand, pay and discharge the Secured Obligations to the Chargee when due.

## **3 GRANT OF SECURITY**

### **3.1 Charges**

Each Company with full title guarantee charges in favour of the Chargee as continuing security for the payment and discharge of the Secured Obligations:

- (a) by way of legal mortgage, any Real Property specified in Schedule 3;
- (b) by way of fixed charge, any Real Property now or at any time after the date of this Deed belonging to the Company (other than property charged under clause 3.1(a) above);
- (c) by way of legal mortgage, the Shares;
- (d) by way of equitable legal mortgage, the Related Rights and the Investment Derivative Rights from time to time accruing to or on the Shares;
- (e) to the extent not validly and effectively charged by way of mortgage pursuant to clauses 3.1(c) or 3.1 (d), by way of first fixed charge, the Shares, the Related Rights and the Investment Derivative Rights relating to such Shares;
- (f) by way of fixed charge, all vehicles, computers, office and other equipment owned by the Company, both present and future, and all Related Rights;
- (g) by way of fixed charge,
  - (i) the Collections Account; and
  - (ii) all present and future bank accounts, cash at bank and credit balances owned, operated or held by a Company or in which a Company has an interest other than the Collections Account, together with all Related Rights;
- (h) by way of fixed charge, all (including future) Intellectual Property;
- (i) by way of fixed charge, the goodwill of the Company;
- (j) by way of fixed charge, the uncalled capital of the Company;
- (k) by way of fixed charge, to the extent not validly and effectively assigned under clause 3.3, each and every (including future) Customer Supply Contract;

- (l) by way of fixed charge, to the extent not validly and effectively assigned under clause 3.3, all rights, interests and claims in relation to each of the Insurance Policies;
- (m) by way of fixed charge:
  - (i) all present and future Investments (except for the Shares);
  - (ii) all Investment Derivative Rights (except for those relating to the Shares); and
  - (iii) where any Investment (except for the Shares) is held in a system for the deposit and settlement of transactions in Investments (except for the Shares), all rights against the operator of such system or any participant in respect of such Investment;
- (n) by way of fixed charge, to the extent not validly and effectively assigned under clause 3.3, all present and future Receivables;
- (o) by way of fixed charge, the benefits of all licences, consents and authorisations held in connection with its business or the use of any Charged Property, and the right to any compensation in respect of any of them;
- (p) by way of fixed charge, all rights, interests and claims in any pension fund now or in the future; and
- (q) by way of floating charge, the whole of the Company's undertaking and assets, present and future (including (i) heritable property and all other property and assets in Scotland; and (ii) ROCs), other than any assets validly and effectively mortgaged, charged by way of fixed charge or assigned by way of security (whether at law or in equity) by this Deed (the "**Floating Charge Property**").

### 3.2 **Qualifying Floating Charge**

This Deed contains a qualifying floating charge and paragraph 14 of Schedule B1 of the Insolvency Act 1986 shall apply to any floating charge created by this Deed.

### 3.3 **Assignment**

As a continuing security for the payment and discharge of the Secured Obligations, each Company with full title guarantee assigns to the Chargee absolutely (subject to a proviso for reassignment on irrevocable discharge in full of the Secured Obligations) all of the Company's rights, title, interest and benefit from time to time in and to:

- (a) the Insurance Policies;
- (b) the Receivables; and
- (c) the Customer Supply Contracts.



### 3.4 Financial Collateral

- (a) To the extent that the Charged Property constitutes Financial Collateral, each Company agrees that such Charged Property shall be held or designated so as to be under the control of the Chargee (or by a person acting on its behalf) for the purposes of the Financial Collateral Regulations.
- (b) To the extent that the Charged Property constitutes Financial Collateral and is subject to a Security Financial Collateral Arrangement created by or pursuant to this Deed, the Chargee shall have the right at any time after this Deed becomes enforceable, to appropriate all or any part of that Charged Property in or towards the payment or discharge of the Secured Obligations.
- (c) The value of any Charged Property appropriated in accordance with this clause shall be:
  - (i) in the case of cash, the amount standing to the credit of any account, together with accrued but unposted interest, at the time the right of appropriation is exercised; and
  - (ii) in the case of Investments, the market price of that Charged Property at the time the right of appropriation is exercised, as listed on any recognised market index, or as determined by such other method as the Chargee may select (acting reasonably); and
  - (iii) each Company agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of Regulation 18 of the Financial Collateral Regulations.

## 4 GUARANTEE AND INDEMNITY

### 4.1 Each Company irrevocably and unconditionally jointly and severally:

- (a) guarantees to the Chargee punctual performance by each other Chargee of the Secured Obligations;
- (b) undertakes with the Chargee that whenever another Company does not pay any amount of the Secured Obligations when due, that Company shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with the Chargee that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Chargee immediately on demand against any cost, loss or liability it incurs as a result of a Company not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it on the date when it would have been due. The amount payable by a Company under this indemnity will not exceed the amount it would have had to pay under this clause 4 (*Guarantee and Indemnity*) if the amount claimed had been recoverable on the basis of a guarantee.

#### 4.2 Continuing Guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Company under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

#### 4.3 Reinstatement

If any payment by a Company or any discharge given by the Chargee (whether in respect of the obligations of any Company or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of each Company shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Chargee shall be entitled to recover the value or amount of that security or payment from each Company, as if the payment, discharge, avoidance or reduction had not occurred.

#### 4.4 Waiver of defences

The obligations of each Company under this guarantee will not be affected by any act, omission, matter or thing which, but for this Clause 4 (*Guarantee and Indemnity*), would reduce, release or prejudice any of its obligations under this guarantee (without limitation and whether or not known to it or the Chargee) including:

- (a) any time, waiver or consent granted to, or composition with, any Company or other person;
- (b) the release of any other Company or any other person under the terms of any composition or arrangement with any creditor of any Company;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Company or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Company or any other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or replacement of a Finance Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (g) any insolvency or similar proceedings.

#### **4.5 Immediate recourse**

Each Company waives any right it may have of first requiring the Chargee (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Company under this guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### **4.6 Appropriations**

Until all amounts which may be or become payable by the Companies under or in connection with the Finance Documents have been irrevocably paid in full, the Chargee (or any trustee or agent on its behalf) may:

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

#### **4.7 Deferral of rights**

Until all amounts which may be or become payable by the Companies under or in connection with the Finance Documents have been irrevocably paid in full and unless the Lender otherwise directs, no Company will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents:

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

#### **4.8 Additional security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Chargee.

### **5 NEGATIVE PLEDGE**

#### **5.1 Negative Pledge**

The Companies shall not create or permit to subsist any Security over any of the Charged Property other than Permitted Security.

## **5.2 Disposal Restrictions**

The Companies shall not:

- (a) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, discount, factor, release, exchange, transfer, assign, lease, lend or otherwise dispose of any of the Charged Property other than the Floating Charge Property in the ordinary course of trading on an arm's length basis; or
- (b) create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

## **5.3 No subsidiaries**

No Company shall incorporate, acquire or own a subsidiary (as defined in section 1159 of the Companies Act 2006); save for subsidiaries that are Companies.

## **5.4 Prohibited Dividends**

Each Company undertakes to the Chargee that it shall not pay (and it shall procure that no other Company pays) any Prohibited Dividend. Without prejudice to the foregoing, in the event that a Company receives monies representing a Prohibited Dividend it shall immediately pay such monies to the Chargee and shall hold them on trust for the Chargee pending such payment. The Chargee shall apply monies received from pursuant to this clause 5.4 in payment of the Secured Obligations.

# **6 CRYSTALLISATION OF FLOATING CHARGE**

## **6.1 Crystallisation on notice**

The Chargee may at any time by notice in writing to a Company immediately convert the floating charge created by clause 3.1(q) into a fixed charge as regards any property or assets specified in the notice if:

- (a) an Event of Default has occurred and is continuing; or
- (b) the Chargee considers in its sole discretion that any of the Charged Property may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process; or
- (c) the Chargee considers in its sole discretion that it is desirable in order to protect the priority of its Security.

## **6.2 Automatic crystallisation**

If, without the prior written consent of the Chargee:

- (a) a Company disposes of any of the Floating Charge Property other than in the ordinary course of trading on an arm's length basis or; or

- (b) any steps are taken for any of the Charged Property to become subject to any Security or a trust in favour of any other person; or
- (c) any person levies or uses or attempts to levy or use any distress, commercial rent arrears recovery procedure under section 72(1) of the Tribunals, Courts and Enforcement Act 2007, execution or other process against any of the Charged Property or other lawful taking control of goods; or
- (d) a resolution is passed, steps are taken or an order is made for the winding-up, dissolution, or re-organisation of or any steps are taken for the appointment of an administrator in respect of a Company,

the floating charge created under clause 3.1(q) by each Company will automatically be converted (without notice) with immediate effect into a fixed charge in respect of the relevant Floating Charge Property.

### **6.3 Cessation**

At any time after the floating charge constituted under this Deed shall have crystallised as a fixed charge over all or part of the Charged Property pursuant to this clause 6 but before the appointment of any Receiver pursuant hereto, the said fixed charge shall upon the written consent of the Chargee cease to attach to the assets then subject to the fixed charge and shall again subsist as a floating charge.

### **6.4 Assets acquired after crystallisation**

Any asset acquired by any Company after any conversion of the floating charge created under this Deed, in accordance with clauses 6.1 or 6.2 above which but for such conversion would be subject to a floating charge shall, (unless the Chargee confirms in writing to the contrary) be charged to the Chargee by way of first fixed charge.

### **6.5 Moratorium**

The floating charge created under this Deed shall not convert into a fixed charge solely by reason of a moratorium being obtained under Schedule A1 to the Insolvency Act 1986 (or anything done with a view to obtaining such a moratorium) in respect of a Company.

## **7 PERFECTION OF SECURITY**

### **7.1 Deposit of Title Documents**

Following the execution of this Deed (or, if later, the date of acquisition of the relevant Charged Property), each Company shall deposit with the Chargee (when requested by the Chargee):

- (a) all deeds and documents of title relating to the Charged Property;
- (b) all Insurance Policies to which the Company is entitled to possession;
- (c) all or any certificates relating to the Investments together with stock transfer forms executed in blank and other documents as the Chargee may from time to time require for perfecting its title to the Investments or for vesting or enabling it to vest the

Investments in itself or its nominees or in any purchaser and declarations of trust in favour of the Company executed by all persons (other than that Company) in whose name the Investments are registered; and

- (d) all certificates or other evidence of registration of any Intellectual Property, or records or other documents relating to applications for Intellectual Property, and physical, electronic or other materials, media or information in its possession or control or to which it has access (including manuscripts, drawings, paintings, designs, source codes, computer disks and computer programs) constituting, comprising, evidencing, the subject of or containing inventions, works, marks or things which are the subject of any Intellectual Property in or to which a Company has any interest of any kind whatsoever.

## **7.2 Notices of Assignment**

- (a) Each Company shall, immediately following the execution of this Deed (and immediately upon the opening of any Collections Account after the date of this Deed) give a Notice of Assignment to each Account Bank, and shall use reasonable endeavours to procure that each Account Bank will within five Business Days provide an acknowledgement to the Chargee in the required form.

## **7.3 Registration of Intellectual Property**

Each Company shall, if requested by the Chargee, execute all such documents and do all acts that the Chargee may reasonably require or that are otherwise required by the body responsible for the relevant register or that are otherwise required in law to record the interest of the Chargee in any registers relating to any registered Intellectual Property or applications for the registration of Intellectual Property.

## **7.4 Land Registry restriction**

In respect of any Real Property or part of or interest in any Real Property title to which is registered at the Land Registry (or any unregistered land subject to first registration), each Company shall apply or consent to an application being made to the Chief Land Registrar to enter the following restriction on the Register of Title for such Real Property:

*"No disposition of the registered estate (other than a charge) by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be registered without a written consent signed by the proprietor for the time being of the Charge dated {date} in favour of SmartestEnergy Limited."*

## **7.5 Tacking**

The obligation on the part of the Chargee to make further advances to any Company is deemed to be incorporated in this Deed and each Company shall apply to the Chief Land Registrar for a note of such obligation to be entered on the Register of Title of all present and future registered Real Property.

## **8 FURTHER ASSURANCE**

### **8.1 Further assurance - general**

Each Company shall (at its own expense) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Chargee may reasonably specify (and in such form as the Chargee may reasonably require in favour of the Chargee or its nominee(s)):

- (a) to create, perfect or protect or maintain the Security created or intended to be created under or evidenced by this Deed (which may include the execution of a mortgage, charge, assignment, transfer or other Security over all or any of the assets which are, or are intended to be, the subject of this Deed) or the giving of any notice, order or direction and the making of any filing or registration or for the exercise of any rights, powers discretions and remedies of the Chargee provided by or pursuant to the Finance Documents or by law;
- (b) to confer on the Chargee Security over any property and assets of the Company located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Deed; and/or
- (c) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Deed.

### **8.2 Further assurance - security**

Each Company shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Chargee by or pursuant to the Finance Documents.

## **9 REPRESENTATIONS**

### **9.1 Representations and warranties**

Each Company makes the representations and warranties set out in this clause 9 to the Chargee.

### **9.2 Ownership of Charged Property**

The Company is the sole legal and beneficial owner of the Charged Property.

### **9.3 No Security**

The Charged Property is free from any Security other than the Security created by this Deed.

### **9.4 No adverse claims**

The Company has not received, or acknowledged notice of, any adverse claim by any person in respect of the Charged Property or any interest in it.

**9.5 No adverse covenants**

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Charged Property.

**9.6 No breach of laws**

There is no breach of any law or regulation that materially and adversely affects the Charged Property.

**9.7 No interference in enjoyment**

No facility necessary for the enjoyment and use of the Charged Property is subject to terms entitling any person to terminate or curtail its use.

**9.8 No overriding interests**

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Real Property.

**9.9 Avoidance of security**

No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Company or otherwise.

**9.10 No prohibitions or breaches**

There is no prohibition on assignment in any Insurance Policy or Customer Supply Contract and the entry into this Deed by the Company does not, and will not, constitute a breach of any Insurance Policy, Customer Supply Contract or any other agreement or instrument binding on the Company or its assets.

**9.11 Environmental compliance**

The Company has, at all times, complied in all material respects with all applicable Environmental Law.

**9.12 Enforceable security**

This Deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Company, and is, and will continue to be, effective Security over all and every part of the Charged Property in accordance with its terms.

**9.13 Investments**

- (a) The Investments are fully paid and are not subject to any option to purchase or similar rights.



- (b) No constitutional document of an issuer of an Investment, nor any other agreement:
  - (i) restricts or inhibits any transfer of the Investments on creation or enforcement of the Security constituted by this Deed; or
  - (ii) contains any rights of pre-emption in relation to the Investments.
- (c) The Company has complied with all notices relating to all or any of the Investments received by it pursuant to sections 790D and 790E of the Companies Act 2006.
- (d) No warning notice has been issued under paragraph 1(2) of Schedule 1B of the Companies Act 2006, and no restrictions notice has been issued under paragraph 1(3) of Schedule 1B of the Companies Act 2006, in respect of all or any of the Investments.

#### 9.14 Shares

- (a) The entire issued share capital of each Company is subject to the Security created (or expressed to be created) by this Deed.
- (b) Each Company is the sole, absolute and beneficial owner of the Shares (save in respect of the shares owned by the Parent in the Licence Holder (the "**EGEL Shares**"), until the date falling no later than 5 Business Days from the receipt by the Parent of the stamp stock transfer forms from the Stamp Office, at which point this representation shall also be made in respect of the EGEL Shares).

#### 9.15 Times for making representations and warranties

The representations and warranties set out in clause 9.2 to clause 9.14 inclusive are made by each Company on the date of this Deed and are deemed to be repeated on each day of the duration of the Security constituted by this Deed with reference to the facts and circumstances existing at the time of repetition.

### 10 GENERAL UNDERTAKINGS

- 10.1 The undertakings in this clause 10 (*Undertakings*) shall remain in force during the continuance of the Security constituted by this Deed.

#### 10.2 Preservation of Charged Property

Each Company must not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the Security held by the Chargee, or materially diminish the value of any of the Charged Property or the effectiveness of the Security created by this Deed.

#### 10.3 Compliance with laws and regulations

- (a) Each Company must not, without the Chargee's prior written consent, use or permit the Charged Property to be used in any way contrary to law.

(b) Each Company must:

- (i) comply with the requirements of any law and regulation relating to or affecting the Charged Property or the use of it or any part of it;
- (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Property or their use or that are necessary to preserve, maintain or renew any of the Charged Property; and
- (iii) promptly effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Charged Property.

#### **10.4 Enforcement of rights**

Each Company must use its best endeavours to:

- (a) procure the prompt observance and performance of the covenants and other obligations imposed on the Company's counterparties (including each counterparty in respect of a Customer Supply Contract and each insurer in respect of an Insurance Policy); and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property that the Chargee may require from time to time.

#### **10.5 Notice of misrepresentation and breaches**

Each Company must promptly on becoming aware of any of the same, notify the Chargee in writing of:

- (a) any representation or warranty set out in this deed which is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this deed.

#### **10.6 Information**

Each Company must:

- (a) give the Chargee such information concerning the location, condition, use and operation of the Charged Property as the Chargee may reasonably require;
- (b) permit any persons designated by the Chargee and any Receiver to enter on its premises and inspect and examine any Charged Property, and the records relating to that Charged Property, at all reasonable times and on reasonable prior written notice; and
- (c) promptly notify the Chargee in writing of any action, claim, notice or demand made by or against it in connection with all or any part of the Charged Property or of any fact, matter or circumstance which may, (in the reasonable opinion of the relevant

Company) with the passage of time, give rise to such an action, claim, notice or demand, together with, in each case, the Company's proposals for settling, liquidating, compounding or contesting any such action, claim, notice or demand and shall, subject to the Chargee's prior approval (not to be unreasonably withheld or delayed), implement those proposals at its own expense.

#### **10.7 Payment of outgoings**

Each Company must promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Charged Property and, on demand, produce evidence of payment to the Chargee.

#### **10.8 Shares**

No Company shall issue any shares on or after the date of this Deed without the Chargee's prior written consent.

### **11 CHARGED PROPERTY UNDERTAKINGS**

#### **11.1 Real Property**

(a) Each Company shall:

(i) notify the Chargee within 14 days of receipt of every material notice, order or proposal given, or made in relation to, the Real Property by any competent authority and (if required by the Chargee) immediately provide it with a copy of the same and either:

(A) comply with such notice, order or proposal; or

(B) make such objections to the same as the Chargee (acting reasonably) may require or approve,

and any compensation received by a Company as a result of any notice or order shall be applied in repayment of any Secured Obligations then due or owing;

(ii) duly and punctually pay all rates, rents and other outgoings owed by it in respect of the Real Property;

(iii) comply with all covenants and obligations affecting any of the Real Property or the manner of use of any of it;

(iv) not, except with the prior written consent of the Chargee (such consent not to be unreasonably withheld or delayed), enter into any onerous or restrictive obligation affecting any of the Charged Property;

(v) not do, cause or permit to be done or omit to do anything which may in any way depreciate, jeopardise or otherwise prejudice the value or marketability of any of the Charged Property;

- (vi) maintain all buildings and erections forming part of the Real Property in a good state of repair and in all cases subject to fair wear and tear; and
  - (vii) not carry out any development within the meaning of section 55 of the Town and Country Planning Act 1990 without first obtaining such permissions as may be required under applicable legislation and, in the case of development involving a substantial change in the structure of or a substantial change in use of, any part of the Real Property, without first obtaining the written consent of the Chargee;
- (b) Each Company will:
- (i) not do or knowingly omit or knowingly suffer to be done or omitted any act, matter or thing in, on or in respect of any Real Property required to be done or omitted by the Planning Acts or which shall contravene the provisions of the Planning Acts; and
  - (ii) indemnify the Chargee on demand against all actions, proceedings, costs, expenses, claims and demands whatsoever suffered by the Chargee in respect of any such act, matter or thing so contravening the provisions of the Planning Acts.
- (c) Each Company will not, except with the prior written consent of the Chargee confer on any person:
- (i) any lease or tenancy of any of the Real Property or accept a surrender of any lease or tenancy (whether independently or under any statutory power);
  - (ii) any right or licence to occupy any land or buildings forming part of the Real Property; or
  - (iii) any licence to assign or sub-let any part of the Real Property;
- (d) Each Company will:
- (i) not do or permit to be done anything as a result of which any lease may be liable to forfeiture or otherwise be determined;
  - (ii) provide the Chargee with all information which it may reasonably request in relation to the Real Property;
  - (iii) authorise the Chargee to make any application which the Chargee deems appropriate for the designation of this Deed and/or any Finance Document and/or any other document as exempt information documents under rule 136 of the Land Registration Rules 2003 and use its best endeavours to assist with any such application made by or on behalf of the Chargee;
  - (iv) notify the Chargee in writing as soon as it receives notice of any person's application under rule 137 of the Land Registration Rules 2003 for the disclosure of this Deed or any other document, following its designation as an exempt information document and not make any application under rule 138 of the Land Registration Rules 2003 for the removal of the designation of such document as an exempt information document;

- (v) notify the Chargee immediately upon the acquisition of any Real Property;
- (vi) permit the Chargee and any person nominated by any of them at all reasonable times with reasonable notice to enter any part of the Real Property and view the state of it;
- (vii) grant the Chargee on request all reasonable facilities within the power of the Company to allow the Chargee (or its lawyers) to carry out (at the Company's expense) investigations of title to the Real Property and to make all enquiries in relation to any part of the Real Property which a prudent mortgagee might carry out;
- (viii) immediately upon demand by the Chargee, provide the Chargee with a report as to title of that Company to the Real Property concerning those items which may properly be sought to be covered by a prudent mortgagee in a lawyer's report of this nature;
- (ix) in respect of any Real Property which is acquired after the date of this Deed, title to which is registered at the Land Registry or which is required to be so registered:
  - (A) give written notice of this Deed to the Land Registry and procure that notice of this Deed is clearly noted in the Register of Title for such Real Property; and
  - (B) procure that no person is registered as proprietor of any such property under the Land Registration Acts 1925 to 2002 without the prior written consent of the Chargee.

## 11.2 Insurance

Each Company shall:

- (a) if requested by the Chargee, ensure that the Chargee (as required by the Chargee) is named as composite insured, first assignee and first loss payee or is named as joint insured, first assignee and first loss payee or has the interest of the Chargee noted on all relevant policies; but (in each case) without:
  - (i) any liability on the part of the Chargee for any premium in relation to those insurances; or
  - (ii) any obligation on the part of the Chargee to make any disclosure, or to fairly present any risk, in relation to those insurances
- (b) ensure that all policies in relation to the Charged Property are on such terms and contain such clauses as the Chargee may reasonably require;
- (c) not, without the prior consent of the Chargee, disapply any provision of the Insurance Act 2015, in relation to any of the insurances;
- (d) promptly pay all premiums and comply with all other terms relating to all policies of insurance;

- (e) supply to the Chargee on request copies of each policy of insurance required to be maintained in accordance with this Deed together with current premium receipts relating to it;
- (f) not do or permit to be done or omit to do anything which may render any insurance void, voidable or unenforceable (in whole or in part) or make available any other remedies to the insurer, or vary, amend or terminate any policy of insurance;
- (g) if it defaults at any time in effecting or maintaining such insurances or in producing any policy or receipt to the Chargee on demand, authorise the Chargee to take out or renew such policies of insurance in any sum which the Chargee may reasonably think expedient. All moneys which are expended by the Chargee in so doing shall be deemed to be properly paid by the Chargee and shall be reimbursed by the Company on demand;
- (h) notify the Chargee if any claim arises or may be made under the insurances;
- (i) give the Chargee the sole right to conduct or settle any insurance claim; and
- (j) authorise the Chargee to give any discharge for insurance and to direct the application of all moneys received or receivable under any insurances either in making good the loss or damage in respect of which the same have been received or in or towards the discharge of the Secured Obligations.

### 11.3 Intellectual Property

Each Company shall:

- (a) observe and comply with all material obligations and laws to which it is subject in its capacity as registered proprietor, applicant, beneficial owner, user, licensor or licensee of its Intellectual Property or any part of it;
- (b) duly register in such register(s), or with such authorities as may be available for the purpose and in such name(s) as may be required by the law and practice of the place or system of registration, such of its Intellectual Property (and all assignments, licences and mortgages of it) as may be capable of registration in such places;
- (c) not change the specification referred to in or scope of any of its registrations of Intellectual Property or permit any disclaimer, condition, restriction, memorandum or other thing to be entered on the registration of any registered Intellectual Property or any application therefore, the effect of which will be to materially and adversely affect the value of such Intellectual Property;
- (d) not grant any licence to any person to use its Intellectual Property in any manner which will materially and adversely affect the value of such Intellectual Property;
- (e) maintain a comprehensive, detailed and up-to-date centralised record of all its Intellectual Property (including details of agents engaged in relation to registrations of it) and, when reasonably requested by the Chargee, immediately provide to the Chargee a copy of such record and/or a summary of all its Intellectual Property created or acquired since the date of this Deed or the date of last notification.

#### 11.4 Receivables

Each Company shall:

- (a) collect all Receivables promptly in the ordinary course of trading as agent for the Chargee and immediately upon receipt pay all monies which it may receive in respect of the Receivables into the Collections Account and pending such payment hold all moneys so received upon trust for the Chargee;
- (b) deal with the Receivables (both collected and uncollected) in accordance with any directions given in writing from time to time by the Chargee;
- (c) not, without the prior written consent of the Chargee:
  - (i) set off, vary, postpone or release any of the Receivables; or
  - (ii) do or omit to do anything which may delay or prejudice the full recovery of any Receivable.
- (d) after the Security constituted by this Deed becomes enforceable and if called upon so to do by the Chargee, execute a legal assignment of the Receivables to the Chargee (in a form and substance satisfactory to the Chargee) and to the extent that the Receivables have not already been legally assigned pursuant to the provisions of clause 3.3, give notice of assignment of the Receivables (in a form and substance satisfactory to the Chargee) to the debtors from whom the Receivables are due, owing or incurred and use reasonable endeavours to obtain an acknowledgement to such notice from each debtor;
- (e) not withdraw, attempt or be entitled to withdraw (or direct any transfer of) any amount standing to the credit of the Collections Account without the prior consent of the Chargee;

#### 11.5 Investments

- (a) Each Company shall:
  - (i) promptly pay all calls or other payments which may become due in respect of the Investments;
  - (ii) promptly send to the Chargee copies of all notices, circulars, reports, accounts and other documents which are sent to the holders of any Investments;
  - (iii) at the request of the Chargee, procure all consents, waivers and approvals which are necessary, under the articles of association of any Issuer or otherwise, for the transfer of the Investments to the Chargee or its nominee or to a purchaser upon the enforcement of this Deed and to procure the amendment of the share transfer provisions of each Issuer's articles of association in such manner as the Chargee may require in order to permit such a transfer;

- (iv) ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer of the Investments that is not a public company shall not:
    - (A) consolidate or subdivide any of the Investments or reorganise, exchange, repay or reduce its share capital in any way;
    - (B) issue any new shares or stock; or
    - (C) refuse to register any transfer of any of the Investments that may be lodged with it for registration by, or on behalf of, the Chargee or the Company in accordance with this Deed.
  - (v) subject to clause 5.4 and only until the Security constituted by this Deed becomes enforceable, be entitled to:
    - (A) receive and retain all dividends, distributions and other moneys paid on or derived from the Investments; and
    - (B) exercise all voting and other rights and powers attaching to the Investments provided that it must not do so in a manner which is prejudicial to the interests Chargee under this Deed or which would result in the alteration of the rights or liabilities attaching to or conferred by all or any of the Investments;
  - (vi) after the Security constituted by this Deed becomes enforceable:
    - (A) hold all dividends, distributions and other moneys paid on or derived from the Investments on trust for the Chargee; and
    - (B) comply and procure that its nominees comply with any directions from the Chargee concerning the exercise of all voting and other rights and powers attaching to the Investments;
  - (vii) at any time after the Security constituted by this Deed becomes enforceable, permit the Chargee to complete the instrument(s) of transfer for the Investments on behalf of the Company in favour of itself or such other person as it may select.
- (b) Each Company shall:
- (i) within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are the subject of the Security created by this Deed; and
  - (ii) promptly provide the Chargee with a copy of that notice.
- (c) After the security constituted by this Deed becomes enforceable, the Chargee may exercise or refrain from exercising voting or other rights and powers as it thinks fit and may retain any dividends, payments or other distributions in respect of the Investments, but in any case the Chargee will not be under any duty to ensure that



any dividend, distributions or other monies payable in respect of those Investments are duly and promptly paid or received by it or its nominee or to verify that the correct amounts are paid or received by it or its nominee or to take any actions in connection with the taking up of any (or any offer of any) stocks, shares, rights, monies or other property paid, distributed, accruing or offered at any time by way of interest, dividend, redemption, bonus, rights, preference, option, warrant or otherwise on or in respect of or in substitution for, any of those Investments.

#### **11.6 Customer Supply Contracts**

Each Company shall:

- (a) not, without the prior written consent of the Chargee, amend or waive any term of any Customer Supply Contract, terminate any Customer Supply Contract or release any other party from its obligations under any Customer Supply Contract;
- (b) duly perform its obligations under each Customer Supply Contract, notify the Chargee of any material default by it or any other party under any Customer Supply Contract and not take any action which would reduce or impede recoveries in respect of any Customer Supply Contract;
- (c) provide to the Chargee, as soon as practicable upon receipt, copies of all notices which it may from time to time receive from any other party to any Customer Supply Contract.

#### **11.7 Centre of Main Interests**

Each Company shall not, without the prior written consent of the Chargee, change its centre of main interest (as that expression is used in Article 3(1) of the EU Regulation) to somewhere other than England and Wales, nor will it have any establishment (as that term is used in Article 2(10) of the EU Regulation) in any other jurisdiction.

#### **11.8 Goodwill**

Each Company shall:

- (a) not, except with the prior written consent of the Chargee, grant any franchise, licence or other authority to any person to use its company name, trade name or business name or any other business asset which will materially and adversely affect the value of the goodwill of the Company;
- (b) where the prior written consent of the Chargee had been given under clause 11.8(a), comply with clause 11.4 in relation to any income or monies receivable in respect of such franchise, licence or authority as if such income or monies were Receivables.

#### **11.9 Uncalled capital**

Each Company shall:

- (a) not call up, or receive in advance of its due date, any uncalled capital; and
- (b) promptly pay any paid capital into the Collections Account.

## **12 ENFORCEMENT OF SECURITY**

### **12.1 Enforcement**

- (a) The Security constituted by this Deed shall become immediately enforceable at any time after the occurrence of an Event of Default which is continuing.
- (b) Once the Security constituted by this Deed has become enforceable, the Chargee may with or without further notice to any Company:
  - (i) appoint an Administrator of a Company in accordance with the Insolvency Act 1986 and any secondary legislation made under or pursuant to the same; or
  - (ii) appoint a Receiver to any of the Charged Property as detailed in clause 14.1.

### **12.2 Powers on enforcement**

At any time after the Security created under this Deed becomes enforceable, the Chargee may, without notice to any Company and whether or not it has appointed a Receiver, exercise:

- (a) all or any of the powers, authorities and discretions conferred on mortgagees and Receivers by the Law of Property Act 1925 (as varied or extended by this Deed) including the power to take possession of, receive the benefit of, or sell any of the Charged Property;
- (b) all of the powers conferred on the holder of a qualifying floating charge (as specified in paragraph 14 of Schedule B1 to the Insolvency Act 1986) and all of the powers conferred on an administrative receiver by the Insolvency Act 1986 or, otherwise by law; and
- (c) in the name of the relevant Company (without any further consent or authority from that Company) any voting rights attached to the Investments and all powers given to trustees in respect of securities or property subject to a trust and any other powers or rights exercisable by the registered holder or bearer of the Investments; and
- (d) all or any of the powers conferred on the Chargee or any Receiver by this Deed (including for the avoidance of doubt by clauses 13 and 15 of this Deed).

### **12.3 No Liability as Mortgagee in Possession**

- (a) The exercise of any rights of the Chargee or Receiver under this Deed shall not make the Chargee or Receiver liable to account as a mortgagee in possession;
- (b) Neither the Chargee nor any Receiver shall be liable by reason of entering into possession of any Charged Property, or for any other reason, to account as a mortgagee in possession in respect of all or any part of the Charged Property or be liable for any loss upon realisation or for any act, neglect, default or omission for which a mortgagee in possession might otherwise be liable.

## **13 POWERS OF THE CHARGEES**

### **13.1 Extension of Powers**

The power of sale conferred on the Chargee and on any Receiver by this Deed shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925.

### **13.2 Statutory power of sale**

- (a) The statutory power of sale shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Deed.
- (b) The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 (as varied or extended by this Deed) shall be immediately exercisable at any time after the Security constituted by this Deed has become enforceable pursuant to clause 12 (*Enforcement of Security*), or a Receiver has been appointed, but this provision shall not affect a purchaser or require a purchaser to ask whether a demand or appointment has been made.
- (c) Section 103 of the Law of Property Act 1925 shall not apply to this Deed.

### **13.3 Consolidation of Mortgages**

The restrictions on consolidation of mortgages in Sections 93 of the Law of Property Act 1925 shall not apply to this Deed.

### **13.4 Power of Leasing**

At any time after the Security created by this Deed becomes enforceable, the Chargee may lease or make arrangements to lease, at a premium or otherwise, and accept surrenders of leases without any restriction and in particular without the need to comply with any restrictions imposed by Sections 99 and 100 of the Law of Property Act 1925.

### **13.5 Discretion**

Any liberty or power which may be exercised or any determination which may be made hereunder by the Chargee or any Receiver may, be exercised or made in their absolute and unfettered discretion without any obligation to give reasons.

### **13.6 Delegation**

- (a) Each of the Chargee and any Receiver may delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Deed (including the power of attorney) on such terms and conditions as it shall see fit (including the power to sub-delegate) which delegation shall not preclude either the subsequent exercise of such power, authority or discretion by the Chargee or the Receiver itself or any subsequent delegation or revocation thereof.
- (b) Neither the Chargee nor any Receiver will be in any way responsible or liable to the Companies or any other person for any cost, expense, loss or liability arising from any act, omission, default, or misconduct on the part of any delegate or sub-delegate.

### **13.7 Investigations**

Following the occurrence of an Event of Default which is continuing then (while it is continuing), the Chargee may initiate an investigation of, and/or instruct any report (accounting, legal, valuation or other) on the business and affairs of the defaulting Company which the Chargee considers necessary to ascertain its financial position. All fees and expenses incurred by the Chargee in connection with such investigations shall be payable by the Company and the Company consents to the provision by the Chargee of all information in relation to the Company which the Chargee provides to any person in relation to the preparation of any such report.

### **13.8 Power to Remedy**

If at any time a Company does not comply with any of its obligations under this Deed, the Chargee may (but shall not be obliged to) rectify such default and the Company irrevocably authorises the Chargee, its employees and agents, at the Company's expense, to do all such things as are necessary or desirable to rectify such default.

## **14 APPOINTMENT OF RECEIVER**

### **14.1 Appointment and Removal**

At any time after the Security created under this Deed becomes enforceable, or if requested to do so by a Company, the Chargee may (by deed or otherwise and acting through its authorised officer):

- (a) appoint one or more persons jointly or jointly and severally to be a Receiver of the whole or any part of the Charged Property;
- (b) remove (so far as it is lawfully able) any Receiver(s) so appointed;
- (c) appoint another person(s) as an additional or replacement Receiver(s); and
- (d) extend the Receiver's appointment to include Charged Property not previously included in his appointment.

### **14.2 Capacity of Receivers**

Each Receiver shall be:

- (a) an agent of a Company which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration; and
- (b) entitled to remuneration for his services at a rate to be fixed by the Chargee from time to time (without being limited to the maximum rate specified in Section 109(6) of the Law of Property Act 1925).

## **15 POWERS OF RECEIVER**

### **15.1 General Powers**

Every Receiver shall have all the powers:

- (a) conferred by the Law of Property Act 1925 on mortgagees in possession and receivers appointed under that Act but without any of the restrictions imposed upon the exercise of those powers by the Law of Property Act 1925;
- (b) set out in Schedule 1 to the Insolvency Act 1986; and
- (c) conferred from time to time on Receivers by statute.

### **15.2 Additional Powers**

In addition to the powers referred to in clause 15.1 (*General Powers*) a Receiver shall have the power, at the cost of any Company and either in the Receiver's own name or in the name of the Company over which or in respect of whose assets the Receiver is appointed or (with the written approval of the Chargee) in the name of the Chargee to:

- (a) take possession of, collect and get in all or any part of the Charged Property;
- (b) carry on, manage or concur in carrying on and managing all or any part of the business of the Company;
- (c) borrow or raise money and secure the payment of any money in priority to the charges created by this Deed for the purpose of exercising his powers and/or defraying any costs or expenses incurred by him in such exercise;
- (d) sell, let, lease or concur in selling, letting or leasing and to vary the terms or determine, surrender and to accept surrenders of leases or tenancies of or grant options or licences over all or any part of the Charged Property in any manner and on such terms as he thinks fit. The consideration for any such transaction may consist of cash or of shares or securities of another company (and the amount of such consideration may be dependent on profit or turnover or be determined by a third party) and may be payable in a lump sum or in instalments;
- (e) sever any fixtures (including trade and tenants fixtures) from the property of which they form part, without the consent of the Company;
- (f) exercise all powers, rights and/or obligations under any contract or agreement forming part of the Charged Property including all voting and other rights attaching to the Investments;
- (g) make and effect all repairs, renewals, improvements, and insurances which the Receiver may think fit;
- (h) redeem any prior Security in respect of all or any of the Charged Property and to settle and pass the accounts of the holder of such prior Security and any accounts so settled and passed will, in the absence of manifest error, be conclusive and binding

on the Company. All moneys paid to the holder of such Security in accordance with such accounts shall form part of the Secured Obligations;

- (i) promote the formation of subsidiaries of the Company for the purpose of purchasing, leasing, licensing or otherwise acquiring interests in all or any of the assets of the Company and to arrange for any such subsidiaries to trade or cease to trade on such terms as the Receiver thinks fit;
- (j) take such proceedings and to make any arrangement or compromise which the Receiver may think fit;
- (k) appoint managers, officers and agents at such salaries and for such periods as the Receiver may determine;
- (l) exercise in relation to all or any part of the Charged Property all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Charged Property; and/or
- (m) do all other acts and things as may be considered by the Receiver to be incidental or conducive to the above or otherwise expedient for or incidental or conducive to the preservation, improvement or realisation of the Charged Property.

### **15.3 Multiple Receivers**

If more than one person is appointed to act as Receiver, each person may act severally and independently of any other, except to the extent that the Chargee states to the contrary in the appointment. References in this Deed to the Receiver are to each and all of them as appropriate.

## **16 APPLICATION OF MONEYS**

### **16.1 Order of application**

All moneys received or recovered by the Chargee or any Receiver pursuant to this Deed shall (subject to the rights and claims of any person having Security ranking in priority to the Security constituted by this Deed) be applied in the following order:

- (a) first, in satisfaction of, or provision for, all costs, charges and expenses incurred by the Chargee or any Receiver and the payment of the remuneration of any Receiver;
- (b) second, in or towards payment of any debts or claims which are required by law to be paid in preference to the Secured Obligations, but only to the extent to which such debts or claims have such preference;
- (c) third, in or towards payment of all matters referred to in the first three paragraphs of Section 109(8) of the Law of Property Act 1925;
- (d) fourth, in or towards satisfaction of the Secured Obligations; and
- (e) fifth, any surplus shall be paid to the relevant Company or any other person entitled thereto.

## **16.2 No obligation**

Neither the Chargee nor any Receiver shall be bound (whether by virtue of section 109(8) of the Law of Property Act 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Obligations.

## **16.3 Actual Receipts**

Only money actually paid by the Receiver to the Chargee, or received or recovered by the Chargee under this Deed, shall be capable of being applied in or towards the satisfaction of the Secured Obligations and a Company shall have no rights in respect of the application by the Chargee of any sums received, recovered or realised by the Chargee under this Deed.

## **16.4 Suspense Account**

Until all Secured Obligations have been irrevocably and unconditionally paid and discharged in full, the Chargee and any Receiver may place and keep for such time as it thinks prudent any moneys received, recovered or realised under or by virtue of this Deed in a separate or suspense account to the credit of either a Company or of the Chargee without any obligation to apply all or any part of such moneys in or towards the discharge of the Secured Obligations.

## **16.5 Avoidance of Payments**

If the Chargee reasonably considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation, administration or similar laws, the liability of the Companies under this Deed and the Security constituted hereby shall continue and such amount shall not be considered to have been irrevocably paid.

## **16.6 Use of Insurance Proceeds**

All moneys receivable by virtue of any of the Insurance Policies shall:

- (a) in the case of insurance of Charged Property, be paid to the Chargee (or if not paid by the insurers directly to the Chargee shall be held on trust for the Chargee) and shall be applied in replacing, restoring or reinstating the Charged Property (any deficiency being made good by the Companies); or
- (b) in the case of credit and other insurance, be paid into the Collections Account.

## **17 PROTECTION OF PURCHASERS**

### **17.1 Conclusive Discharge**

The receipt of the Chargee or its authorised delegate or any Receiver shall be conclusive discharge to a purchaser in any sale or disposal of any of the Charged Property.

## **17.2 Protection of Third Parties**

No purchaser, mortgagee or other person dealing with the Chargee or its authorised delegate or any Receiver shall be bound to enquire:

- (a) whether any of the Secured Obligations have become due or payable or remain unpaid or undischarged;
- (b) whether any power the Chargee, delegate or such Receiver is purporting to exercise has arisen or become exercisable or is properly exercisable; or
- (c) how any money paid to the Chargee or its delegate or any Receiver is to be applied.

## **18 POWER OF ATTORNEY**

### **18.1 Appointment of Chargee**

Each Company irrevocably by way of security and to more fully secure the performance of its obligations under this Deed, appoints the Chargee, each person to whom the Chargee shall from time to time have delegated the exercise of the power of attorney conferred by this clause and any Receiver jointly and severally to be its attorney with full power to appoint substitutes and to delegate for the Company in its name and on its behalf to execute, deliver and perfect all deeds, documents and to do all acts or things which the attorney may consider to be necessary:

- (a) for carrying out any obligation imposed on the Company by this Deed that the Company has failed to perform (including the execution and delivery of any deeds, charges, assignments or other Security and any transfers of the Charged Property);
- (b) for enabling the Chargee and any Receiver to exercise any of the powers conferred on them by or pursuant to this Deed or by law; or
- (c) to perfect or vest in the Chargee, its nominees or any purchaser, title to any Charged Property which they deem expedient in connection with the getting in disposal or realisation of any Charged Property or the exercise of any other power under this Deed.

### **18.2 Ratification**

Each Company ratifies and confirms (and agrees to 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.

## **19 CONTINUING SECURITY**

### **19.1 Continuing nature of Security**

The Security created by or pursuant to this Deed will be a continuing and independent security for the Secured Obligations notwithstanding any intermediate payment or settlement of all or any part of the Secured Obligations or other matter or thing whatsoever and will be without prejudice and in addition to and shall not merge with any other right, remedy or



Security which the Chargee may hold at any time for the Secured Obligations and will not be affected by any release, reassignment or discharge of such other right, remedy or Security.

## **19.2 Settlements conditional**

- (a) Any release, discharge or settlement between a Company and the Chargee shall be conditional upon no Security, disposition or payment to the Chargee by the Company or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy or insolvency or for any other reason whatsoever, and if such condition shall not be fulfilled the Chargee shall be entitled to enforce this Deed subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.
- (b) The Chargee or its nominee may retain this Deed and the Security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that the Chargee deems necessary to provide the Chargee with Security against any such avoidance, reduction or order for refund.

## **20 SET-OFF AND CURRENCY**

### **20.1 Set off and currency**

- (a) All amounts payable by each Company under this Deed will be paid in full in Sterling without set off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- (b) If a Company is required by law to make a tax deduction, the sum payable by the Company shall be increased to the extent necessary to ensure that, after the making of such deduction, the recipient of such sum receives and retains a net sum equal to the sum which it would have received and retained had no such deduction been made or required to be made.

## **21 EXPENSES AND INDEMNITY**

### **21.1 Indemnity by the Company**

Each Company shall, notwithstanding any release or discharge of all or any part of the Security constituted by this Deed, promptly indemnify the Chargee, its agents, attorneys and any Receiver against any action, proceeding, claim, loss, liability and cost (including any direct, indirect or consequential losses, loss of profit and all interest, penalties and legal or other professionals' costs (including VAT)) which it may sustain:

- (a) in the taking, holding, protection, amendment or enforcement of any Finance Document;
- (b) in the exercise (or purported exercise) of any of the rights, powers or discretions and remedies vested in them by this Deed (or by law); and/or
- (c) as a result of any default by any Company in the performance of any of the obligations expressed to be assumed by it in any Finance Document, and/or
- (d) in connection with or otherwise relating to this Deed or the Charged Property,

## **21.2 Indemnity out of Charged Property**

The Chargee may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause 21.

## **22 MISCELLANEOUS**

### **22.1 Assignment and disclosure of information**

- (a) At any time, without the consent of the Companies, the Chargee may novate, assign, transfer or delegate all or any of its rights and obligations under this Deed. The Chargee may disclose such information concerning the Companies and this Deed as the Chargee 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.
- (b) No Company may novate, assign, transfer or delegate any of its rights or obligations under this Deed.

### **22.2 Perpetuities**

If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

### **22.3 Remedies and Waivers**

- (a) No failure on the part of the Chargee to exercise, or any delay on its part in exercising, any Collateral Right shall operate as a waiver thereof, or constitute an election to affirm any Collateral Right. No election to affirm any Collateral Right on the part of the Chargee shall be effective unless it is in writing.
- (b) No single or partial exercise of any Collateral Right shall prevent any further or other exercise of that or any other Collateral Right.
- (c) The Collateral Rights are cumulative and not exclusive of any rights, powers or remedies provided by law.
- (d) Any waiver, consent or approval given by the Chargee of or under this Deed will only be effective if given in writing. Such waiver, consent or approval shall then only apply for the purpose stated and be subject to any written terms and conditions imposed by the Chargee.

### **22.4 No Liability**

None of the Chargee, its authorised delegate(s) nominee(s) or any Receiver shall be liable for any loss by reason of (a) taking any action permitted by this Deed 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.

## **22.5 Partial Invalidity**

- (a) If, at any time, any provision of this Deed 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 Deed or the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired; and
- (b) if any part of the Security intended to be created by or pursuant to this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

## **22.6 Certificates**

Any certificate or determination of the Chargee of a rate or amount due from a Company is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **22.7 No obligations**

The Chargee is not obliged to do any of the following in respect of any Charged Property:

- (a) perform any obligation of any Company;
- (b) make any payment;
- (c) make any enquiry as to the nature and sufficiency of any payment received by it or any Company;
- (d) present or file any claim or take any other action to collect or enforce the payment of any amount to which it or any Company may be entitled; or
- (e) exercise any rights to which it or any Company may be entitled.

## **23 NOTICES**

### **23.1 Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by email or letter.

### **23.2 Addresses**

The postal and email address (and the department or officer, if any, for whose attention the communication is to be made) of each party to this Deed for any communication or document to be made or delivered under or in connection with this Deed is (a) its registered address; or (b) any substitute or additional postal or email address or department or officer as the party may notify to each other by not less than five Business Days' notice.

### **23.3 Delivery**

- (a) Any communication or document made or delivered by the Chargee under or in connection with this Deed will only be effective:
  - (i) if by way of email, at the time determined in accordance with clause 23.4; or
  - (ii) if by way of letter, when it has been left at the relevant address or two Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address.
- (b) Any communication or document to be made or delivered to the Chargee will be effective only when actually received by the Chargee and then only if it is expressly marked for the attention of the department or officer identified with the Chargee's signature below (or any substitute department or officer as the Chargee shall specify for this purpose).
- (c) Any communication or document made or delivered to the Licence Holder in accordance with this clause 23.3 will be deemed to have been made or delivered to each of the Companies.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.

### **23.4 Electronic communication**

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

## **24 COUNTERPARTS**

This Deed 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 Deed.

## **25 GOVERNING LAW**

This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its matters or formation are governed by and shall be construed in accordance with English law.

## **26 JURISDICTION**

### **26.1 English Courts**

The courts of England have exclusive jurisdiction to settle any dispute arising out of, or connected with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").

### **26.2 Convenient Forum**

The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and, accordingly, that they will not argue to the contrary.

### **26.3 Exclusive Jurisdiction**

Notwithstanding clause 26.1 (*English Courts*) above, the Chargee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law the Chargee may take concurrent proceedings in any number of jurisdictions.

**THIS DEED** has been signed on behalf of the Chargee and **EXECUTED AS A DEED** by the Companies and is delivered by them on the date first specified above.

## **SCHEDULE 1**

### **The Companies**

<b>Name of Company</b>	<b>Company number</b>	<b>Registered office</b>
E (Gas and Electricity) Limited	08520118	T3 Trinity Park, Bickenhill Lane, Birmingham B37 7ES (the " <b>Licence Holder</b> ")
Bayford Energy Bidco Limited	12502115	Bowcliffe Hall, Bramham, Wetherby, West Yorkshire, United Kingdom, LS23 6LP (the " <b>Parent</b> ")

## **SCHEDULE 2**

### **Collections Account**

The account at Lloyds Bank plc, account number [REDACTED] sort code [REDACTED] in the name of Licence Holder

### **SCHEDULE 3**

#### **Real Property**

The leasehold land known as Plot T4, Trinity Park, Bickenhill Lane, Solihull B37 7ES registered at the Land Registry under title number MM94018.



## SCHEDULE 4

### Notices of Assignment

#### Form of Notice of Assignment to Account Bank

To: [Account Bank]

Date: [ ]

Dear Sirs

We give notice that by a Debenture dated [ ] between (amongst others) us and SmartestEnergy Limited (the "Chargee") (the "Debenture") we have charged all our right, title and interest in and to all sums which are now or may from time to time in the future stand to the credit of:

Account Number [ ]  
Account Holder [ ]

together with all interest accrued or accruing thereto and the debts represented by those sums (the "Account").

1 We hereby irrevocably instruct and authorise you to:

- (a) hold any and all sums from time to time standing to the credit of the Account to the order of the Chargee, and to pay and release such sums in accordance with the Chargee's written instructions;
- (b) not pay or release all or any part of the sums from time to time standing to the credit of the Account without the written instructions of the Chargee;
- (c) disclose to the Chargee such information relating to the Account and the sums in the Account as the Chargee may, at any time and from time to time, request;
- (d) credit to the Account any and all interest from time to time earned on the sums of money held in the Account; and
- (e) comply with the terms of any written notice or instructions in any way relating to the Account or the sums standing to the credit of the Account from time to time which you may receive at any time from the Chargee;

Please note we are not permitted to withdraw any amount from the Account without the prior written consent of the Chargee.

These instructions cannot be revoked or varied without the prior written consent of the Chargee.

This notice, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of England.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning the same to the Chargee at [Address].

Yours faithfully

.....

Authorised Signatory

for and on behalf of

**[Licence Holder]**

[On Copy Only:]

### Form of Account Bank Acknowledgement

To: [Chargee]

Date: [ ]

Dear Sirs

We acknowledge receipt of a notice (the "**Notice**") in the terms set out above and confirm that we:

- 1 have not previously received notice of any previous assignments of, charges over or trusts in respect of the Account;
- 2 have noted the restrictions imposed upon by the Notice and the authority of the Chargee in respect of the Account and will not act in such a way as to breach those restrictions or to ignore the authority of the Chargee;
- 3 will act in accordance with the terms of the Notice; and
- 4 have not and will not claim or exercise any security interest, set-off, counterclaim or other right at any time in respect of the Account.

This notice, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England.

Yours faithfully,

.....  
for and on behalf of

[Account Bank]

Position: [ ]

Address: [ ]

Telephone: [ ]

## SCHEDULE 5

### Shares

Chargor	Name of company whose shares are being charged	Description of Investments and number of shares held	Issued Share Capital
Bayford Energy Bidco Limited	E (Gas and Electricity) Limited	100 ordinary shares of £1.00 each	100 ordinary shares of £1.00 each
		4 ordinary E shares of £1.00 each	4 ordinary E shares of £1.00 each

**SIGNATURE PAGE TO THE COMPOSITE GUARANTEE AND DEBENTURE**

**EXECUTED and DELIVERED**

as a **DEED** by  
**E (GAS AND ELECTRICITY) LIMITED**  
acting by a Director



Director

in the presence of:



Signature of witness

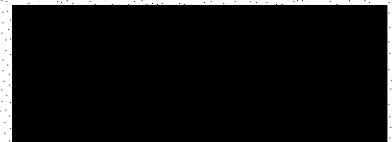
Name (in BLOCK CAPITALS)

Address

*ANDREW MOORE*  
Gordons LLP  
Solicitors  
Riverside West  
Whitchell Road  
LEEDS LS1 4AW

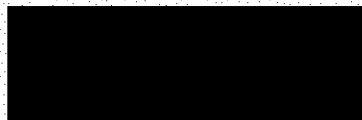
**EXECUTED and DELIVERED**

as a **DEED** by  
**BAYFORD ENERGY BIDCO LIMITED**  
acting by a Director



Director

in the presence of:



Signature of witness

Name (in BLOCK CAPITALS)

Address

*ANDREW MOORE*  
Gordons LLP  
Solicitors  
Riverside West  
Whitchell Road  
LEEDS LS1 4AW

**SIGNED** for and on behalf of  
**SMARTESTENERGY LIMITED**

