



Registration of a Charge

Company name: **EP UK INVESTMENTS LTD**

Company number: **09255154**



X8HTFQS3

Received for Electronic Filing: **08/11/2019**

Details of Charge

Date of creation: **29/10/2019**

Charge code: **0925 5154 0003**

Persons entitled: **KBC BANK N.V.**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **LAUREN YOUNG**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9255154

Charge code: 0925 5154 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th October 2019 and created by EP UK INVESTMENTS LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 8th November 2019 .

Given at Companies House, Cardiff on 11th November 2019

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

DATED 29 October 2019

EP UK INVESTMENTS LTD
(the "Chargor")

AND

KBC BANK N.V.
(the "Security Trustee")

**CHARGE OVER SHARES IN
TYNAGH ENERGY LIMITED**

ARTHUR COX

**WE CERTIFY THAT THE WITHIN
IS A TRUE COPY OF THE
ORIGINAL**

**DATED THE 7th DAY OF November 2019
A&L GOODBODY**

A&L Goodbody

EP026/006/AC#32554936.4

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THIS DEED is dated 29 October 2019 and made

BETWEEN:

- (1) **EP UK INVESTMENTS LTD** a company incorporated in England and Wales under registration number 09255154 with its registered office at Berger House, 36-38 Berkeley Square, London, W1J 5AE (the "**Chargor**"); and
- (2) **KBC Bank N.V.**, a limited liability company (naamloze vennootschap / société anonyme) incorporated under the laws of Belgium, having its registered office at Havenlaan 2, 1080 Brussels, Belgium, registered with the Crossroads Bank for Enterprises under company number 0462.920.226 (RPR Brussels) (the "**Security Trustee**").

RECITALS

- A. By a facility agreement originally dated 26 August 2004, as amended supplemented and restated from time to time (the "**Facility Agreement**") made between, inter alia, the Company (as defined below) as borrower, the Original Lenders, the Mandated Lead Arrangers, the Agent, the Security Trustee, the L/C Fronting Bank and the Account Bank (each party as defined therein), the Original Lenders have agreed to make available to the Company certain facilities on the terms and conditions contained in the Facility Agreement.
- B. Pursuant to a share purchase agreement dated 22 August 2019 (the "**Share Purchase Agreement**") between EFS Tynagh Holding Company Limited ("**EFST**"), Gama Energy International B.V. ("**GIBV**") and the Chargor, the Chargor has acquired from GIBV and EFST 5,000,080 A ordinary shares of EUR 1.00 each in the capital of Company, equal to 80% of the entire issued share capital of the Company.
- C. It is a term of the Facility Agreement that the Chargor enter into this Deed.
- H. The benefit of the security constituted by this Deed shall be held on trust by the Security Trustee as security trustee for the Secured Creditors on the terms set out in the Security Trust Deed.

IT IS AGREED BY THIS DEED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires or unless otherwise defined or provided for in this Deed, terms shall have the meaning attributed to them in the Facility Agreement, the Security Trust Deed and the Intercreditor Deed, and if there is any conflict between such definitions, the definitions in the Intercreditor Deed shall have first order of preference followed by the Facility Agreement and in addition:

"**Charged Assets**" means the Shares, the Derivative Assets and the Dividends (other than Excluded Dividends) or any part of those assets as referred to in Clause 3.

"**Company**" means Tynagh Energy Limited, a company incorporated in Ireland, with registered number 378735, and having its registered office at The Crescent Building, Northwood Park, Santry, Dublin 9.

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

"**Companies Act**" means the Companies Act 2014 (Ireland) (as amended).

"Delegate" means a delegate or sub-delegate appointed by the Security Trustee or any Receiver for the purpose of carrying out certain functions in connection with this Deed that the Security Trustee may from time to time prescribe.

"Derivative Assets" means any stocks, share or other securities, rights, monies or other property accruing, offered or issued at any time by way of bonus, redemption, exchange, purchase, substitution, conversion, preference, option or otherwise in respect of the Shares or in respect of any stocks, shares or other securities, rights, monies or other property previously accruing, offered or issued as mentioned in this definition.

"Dividends" means any payment, repayment, redemption by way of set-off, counterclaim or otherwise or other distribution, whether in cash or in kind, made by or on behalf of the Company in respect of dividends or return of share capital (including, for the avoidance of doubt, the payment of interest (including, without limitation, deferred and capitalised interest), principal and/or any other costs) howsoever the same may arise and whether pursuant to the terms of an agreement or otherwise or by way of gift or in respect of any class of the share capital of the Company.

"Enforcement Event" means the occurrence of any of the Events of Default (provided that such an occurrence shall only constitute an Enforcement Event if the Agent, following such occurrence, delivers any notice under Clause 37 of the Facility Agreement).

"Event of Default" means an Event of Default under the Facility Agreement.

"Excluded Dividends" means those monies which are lodged to the credit of the Distribution Account (as long as and to the extent that such a lodgement is permitted by the provisions of the Facility Agreement) and the proceeds of same and all payments deriving from same.

"Finance Documents" shall have the meaning given to it in the Intercreditor Deed.

"Gama/Mountside Share Charge" means the charge over shares dated 27 August, 2004 as supplemented by a supplemental charge over shares dated 21 November, 2006 and partially released pursuant to the Deed of Release made between Gama Construction Ireland Limited and Mountside Partners Limited (as Chargors) and the Security Trustee.

"Intercreditor Deed" means the intercreditor deed dated 26 August 2004 between, amongst others, the Borrower, the Mandated Lead Arrangers, the Shareholders, the Mezzanine Agent, the Agent, the Intercreditor Agent, the Account Bank, the L/C Fronting Bank, the Security Trustee and the Hedging Counterparties.

"Party" means a party to this Deed and includes its successors in title, permitted assigns and permitted transferees.

"Receiver" means any receiver and/or receiver and manager appointed by the Security Trustee (whether pursuant to this Deed or otherwise) in respect of the Chargor or over all or any part of the Charged Assets.

"Revenue Date" means the date on which the stock transfer forms in respect of the Shares are fully stamped with the Revenue Commissioners to reflect the transfers outlined in the Share Purchase Agreement which shall in any event be no later than 10 Business Days of the date hereof.

"Secured Creditors" shall have the meaning given to it in the Intercreditor Deed.

"Secured Obligations" means the Senior Finance Liabilities which for the avoidance of doubt shall include the indebtedness of the Company to the Senior Creditors under the Facility Agreement.

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

"Security Trust Deed" means the security trust deed dated 26 August 2004 between, amongst others, the Agent, the Security Trustee, the Account Bank, the Mandated Lead Arrangers, the L/C Fronting Bank, the Original Lenders, the Hedging Counterparties, the Mezzanine Agent, the Mezzanine Arranger, the Original Mezzanine Lenders and the Borrower.

"Shares" means:

- (a) all present and future shares in the Company held by or on behalf of the Chargor, including the ordinary shares issued and outstanding at the date of this Deed described in the Schedule hereto;
- (b) all warrants, options or other rights to subscribe for, purchase or otherwise acquire those shares; and
- (c) all rights relating to any of those shares which are deposited with, or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager, chargee or other similar person or their nominee, in each case whether or not on a fungible basis (including rights against any such person).

1.2 Interpretation

In this Deed except where the context otherwise requires:

- (a) references to the Company, the Chargor and the Security Trustee shall be construed so as to include its respective successors in title, permitted assigns and permitted transferees;
- (b) words and phrases the definition of which is contained in or referred to in Section 2 of the Companies Act are to be construed as having the meaning attributed to them there;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing persons include natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having a separate legal personality);
- (e) use of any gender includes the other genders;
- (f) any reference to a statute, statutory provision or subordinate legislation (legislation) is (unless the contrary is clearly stated) to be construed as a reference to legislation operative in Ireland and is (except where the context otherwise requires) to be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;

- (g) save as otherwise provided in this Deed, any reference to a clause, paragraph, sub-clause, sub-paragraph or schedule is a reference to a clause, paragraph, sub-clause, sub-paragraph or schedule (as the case may be) of this Deed;
- (h) the index and headings are inserted for convenience only and are not to affect the construction of this Deed;
- (i) a reference to any document includes that document as it has or may be amended, varied, assigned, novated, restated or supplemented from time to time;
- (j) any reference to a legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing is, in respect of any jurisdiction other than Ireland, to be deemed to include a reference to what most nearly approximates in that jurisdiction to the Irish legal term;
- (k) any phrase introduced by the terms including, include, in particular or any similar expression is to be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (l) the Schedule forms part of this Deed and is to have effect as if set out in full in the body of this Deed and any reference to this Deed includes the Schedule.

2. COVENANT TO PAY AND DISCHARGE

The Chargor hereby covenants that it shall pay and discharge to the Security Trustee on demand the Secured Obligations as and when same becomes due provided that the recourse of the Security Trustee and the other Secured Creditors to the Chargor under this Deed shall be limited to the Charged Assets.

3. SECURITY

- 3.1 The Chargor, as beneficial owner and as a continuing security for the payment and discharge of the Secured Obligations, hereby charges in favour of the Security Trustee for and on behalf of the Secured Creditors by way of first equitable charge all present and future Shares, Derivative Assets and Dividends (other than Excluded Dividends). Notwithstanding any other provision of this Deed, the parties hereto acknowledge and agree that the Excluded Dividends shall not be charged hereunder.
- 3.2 The Chargor shall on the date of this Deed or, in the case of Shares acquired after the date of this Deed, on the date of such acquisition, deliver to the Security Trustee, or as it directs:
 - (a) blank, signed and undated transfer(s) in respect of the Shares and the Derivative Assets; and
 - (b) shall promptly deliver to the Security Trustee any other documents in its possession or under its control relating to the Shares, the Derivative Assets and the Dividends (other than Excluded Dividends) which the Security Trustee requires.
- 3.3 The Chargor shall procure the stamping of the stock transfer forms in respect of all transfers of Shares arising from the Share Purchase Agreement as soon as possible and shall on or before the Revenue Date deliver to the Security Trustee, or as it directs all certificates representing the Shares and the Derivative Assets.

- 3.4 In the event that the Chargor notifies the Security Trustee that it proposes to sell or transfer the Shares (or some of them) and provided (i) such sale is permitted under the Facility Agreement and (ii) no Event of Default would be caused by such sale, the Security Trustee shall promptly, at the cost of the Chargor, discharge the security hereby evidenced and created in respect of the Shares to be sold and, to the extent that such Shares are vested in the Security Trustee or its nominees, transfer or cause to be transferred to the Chargor or any person nominated by it, without recourse or warranty, such Shares and deliver to the Chargor or such person as may be nominated by it all certificates and other documents of title and all transfer forms in respect of any such Shares delivered to and remaining in the possession of the Security Trustee, provided always that the Security Trustee shall only be obliged to take such actions when it is satisfied (acting reasonably) that the relevant transferee will, immediately upon the transfer being completed, execute a deed of deposit of shares as security in respect of the transferred Shares in favour of the Security Trustee in substantially the same form as this Deed.

4. CHARGED SHARES

- 4.1 Subject to Clause 4.2, the Chargor shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Shares or any Derivative Assets as it sees fit provided that:

- (a) it does so for a purpose not inconsistent with any Finance Document; and
- (b) the exercise or failure to exercise those rights would not have an adverse effect on the value of the Shares or any Derivative Assets and would not otherwise prejudice the interests of the Secured Creditors.

- 4.2 At any time while an Enforcement Event is continuing:

- (a) the Security Trustee shall be entitled to exercise or direct the exercise of the voting and other rights attached to any Shares or any Derivative Assets as it sees fit provided that it does so for a purpose not inconsistent with the rights of the Secured Creditors pursuant to any Finance Document; and
- (b) the Chargor shall comply or procure the compliance with any directions of the Security Trustee in respect of the exercise of those rights and shall promptly execute and/or deliver to the security Trustee such forms of proxy as it may require in connection with that exercise.

4.3 Dividends

- (a) Subject to the express provisions of the Facility Agreement, and the Intercreditor Deed and provided that no Enforcement Event has occurred and is continuing, until this Deed becomes enforceable, the Chargor shall be entitled to retain any cash income derived from the relevant Shares or the relevant Derivative Assets (including Dividends) as an ordinary distribution.
- (b) Thereafter, all Dividends (other than Excluded Dividends) and other monies forming part of the Charged Assets (whether of the nature of capital or income) shall, unless otherwise agreed between the Security Trustee and the Chargor, be paid to and retained by the Security Trustee and any Dividends (other than Excluded Dividends) and other such monies which may be received by the Chargor shall, pending such payment, be held in trust for the Security Trustee. The Security Trustee shall be entitled at any time to apply all Dividends (other than Excluded Dividends) and other such monies in or towards the reduction

or discharge of the Secured Obligations in accordance with the provisions of the Intercreditor Deed. The Chargor shall promptly execute and deliver (or cause to be executed and delivered) all such mandates or other authorities as the Security Trustee may require for the purpose of enabling the Security Trustee to receive all Dividends other than Excluded Dividends and other such monies.

- (c) Neither the Security Trustee nor any Delegate shall have a duty to ensure that any Dividends or other monies forming part of the Charged Assets (whether of the nature of capital or income) are duly and punctually paid, received or collected or to secure that the correct amounts (if any) are paid.

4.4 The Chargor shall promptly notify the Security Trustee of:

- (a) the acquisition of, or agreement to acquire, any Shares or any Derivative Assets; and
- (b) the declaration, payment, allotment, offer or issue of any Dividend (other than any Excluded Dividends).

4.5 If any Share, Derivative Asset or Dividend (other than an Excluded Dividend) is not held in the Chargor's name other than pursuant to this Deed, the Chargor shall procure that the relevant registered owner of the Shares, Derivative Asset or Dividend (other than an Excluded Dividend) promptly executes and delivers to the Security Trustee an irrevocable power of attorney, expressed to be given by way of security and executed as a deed. That power of attorney shall appoint the Security Trustee and every Delegate the attorney of the holder and shall be in such form as the Security Trustee requires.

5. REPRESENTATIONS AND WARRANTIES

The Chargor makes the representations and warranties set out in this Clause 5 to each Secured Creditor on the date of the Deed, each Utilisation Date, the last day of each Interest Period and each Calculation Date.

- 5.1 The Chargor is a limited company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- 5.2 The obligations expressed to be assumed by the Chargor in this Deed are legal, valid, binding and enforceable, subject to any general principles of law limiting its obligations or the enforceability of the Security expressed to be created by this Deed which are specifically referred to in any legal opinion delivered in relation to this Deed.
- 5.3 The entry into and performance by the Chargor of, and the transactions contemplated by, this Deed do not and will not conflict with;
 - (a) any law or regulation applicable to the Chargor;
 - (b) the Chargor's constitutional documents; or
 - (c) any agreement or instrument binding upon the Chargor's assets.
- 5.4 The Chargor has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
- 5.5 All Authorisations:

- (a) to enable the Chargor lawfully to enter into, exercise its rights, comply with its obligations in and enforce this Deed;
- (b) to ensure that those obligations referred to in Clause 5.5.1 are legal, valid, binding and enforceable;
- (c) to make this Deed admissible in evidence in Ireland and England and Wales; and
- (d) to enable it to create and perfect the Security to be created by it by or pursuant to this Deed,

have been obtained or effected and are in full force and, so far as the Chargor is aware, effect and no steps have been taken by a person to challenge, revoke, cancel or annul them.

5.6

- (a) This Deed creates in favour of the Security Trustee the legal and valid Security which it is expressed to create with the ranking and priority it is expressed to have.
- (b) Without limiting Clause 5.6.1, its payment obligations under this Deed rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

- 5.7 The Security expressed to be created under this Deed is legal and valid security which ranks in the priority specified herein and, to the Chargor's knowledge and belief, is not liable to avoidance on liquidation, bankruptcy or other insolvency proceedings.
- 5.8 The Chargor is the sole and absolute beneficial owner of the Shares listed in the Schedule hereto and on the Revenue Date will become the legal owner of the Shares listed in the Schedule hereto.
- 5.9 The shares described in the Schedule hereto are duly authorised, validly issued and fully paid, non-assessable and freely transferable and constitute shares in the capital of a limited company. There are no moneys or liabilities outstanding or payable in respect of any of the Shares.
- 5.10 The Shares described in the Schedule hereto together with the shares charged pursuant to the Gama/Mountside Share Charge constitute all the issued share capital in the Company and no person has or is entitled to any conditional or unconditional option, warrant or other rights to subscribe for, purchase or otherwise acquire any issued or unissued shares, or any interest in shares, in the capital of the Company.
- 5.11 Except for the Security constituted by this Deed and by the Gama/Mountside Share Charge, no other Security exists on or over the Charged Assets.
- 5.12 There is not now pending against the Chargor nor is there to the best of the Chargor's knowledge or belief being threatened, at the date of execution of this Deed, any litigation or any proceedings which could reasonably be expected to affect the Charged Assets.
- 5.13 Notwithstanding anything to the contrary contained in the Shareholders' Agreement or any other document, the only documents which govern or affect the Company

members' rights and obligations in respect of the Shares are the Company's constitution and the Shareholders' Agreement.

6. COVENANTS OF THE CHARGOR

Unless the Security Trustee agrees otherwise, the Chargor shall comply at all times with the undertakings set out in this Clause 6.

- 6.1 The Chargor shall comply with all its obligations under this Deed.
 - 6.2 The Chargor shall obtain and maintain in full force and effect and (if necessary) promptly renew, and comply with the terms of, and supply certified copies to the Security Trustee of, all Authorisations required to be held by it to perform its obligations under this Deed.
 - 6.3 The Chargor shall promptly do whatever the Security Trustee requires:
 - (a) to perfect or protect the Security constituted by this Deed or the priority of such Security or the exercise of any rights vested in the Security Trustee or any Delegate; or
 - (b) upon the occurrence of an Enforcement Event to facilitate the realisation of the Charged Assets.
- including executing any document, transfer, conveyance, charge, assignment or assurance of the Charged Assets (whether to the Security Trustee or its nominees or otherwise), making any registration and giving any notice, order or direction.
- 6.4 The Chargor shall maintain and preserve the security interest created by this Deed and the priority thereof.

7. NEGATIVE COVENANTS

- 7.1 The Chargor shall not create, extend or permit to subsist any Security over the Charged Assets except for the Security constituted by this Deed and by the Gama/Mountside Share Charge and except with the Security Trustee's prior written consent.
- 7.2 Save as permitted under the Finance Documents, the Chargor shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of the Charged Assets save, in the case of Dividends, as permitted by Clause 4.3.
- 7.3 The Chargor will not, while the Security remains in place, take any action in relation to the Charged Assets or under this Deed under the provisions of Section 94 of the Conveyancing Act (*Court Order for sale*).

8. ENFORCEMENT

- 8.1 As between the Chargor and the Security Trustee this Deed shall be enforceable, the powers conferred by Sections 100 (*Power of Sale*) and 102 (*Incidental powers*) of the Conveyancing Act as varied and extended by this Deed shall immediately arise and be exercisable and the Secured Obligations will be deemed to have become due and payable, while an Enforcement Event is continuing. After the Security has become enforceable, the Security Trustee may in its absolute discretion enforce all or any part of the Security in such a manner as it sees fit or as the Security Trustee directs.

- 8.2 The statutory power of sale, of appointing a receiver and the other statutory powers conferred on mortgagees by Section 100 of the Conveyancing Act as varied and extended by this Deed shall arise on the date of this Deed, free from the restrictions contained in Section 100(1), (2), (3) and (4) and without the requirement to serve notice (as specified in the final proviso to Section 100(1)). The provisions of Section 96(1)(c) of the Conveyancing Act shall not apply to this Deed.
- 8.3 Section 92 of the Conveyancing Act (as the same may be amended or modified) shall not apply to the Security created by this Deed.
- 8.4 All the rights, powers, privileges and immunities conferred under the Conveyancing Act or in any other applicable legislation shall apply to the Security Trustee and each Receiver. All of the powers, authorities and discretions which are conferred by this Deed upon a Receiver (either expressly or impliedly) may be exercised after the Security constituted by this Deed becomes enforceable by the Security Trustee in relation to all or any part of the Charged Assets both before and after the appointment of a Receiver.
- 8.5 In addition to the statutory powers incidental to the estate or interest of mortgagees contained in the Conveyancing Act as more particularly detailed in Clause 8.1 and at any time after the Security has become enforceable, the Security Trustee may, without further notice or demand and without the need to obtain the consent of the Chargor or obtain an order for possession under Section 97 (*Taking possession*) of the Conveyancing Act, enter into possession of the Charged Assets. Neither the Security Trustee nor any Receiver will be obliged to take any steps to sell or lease the Charged Assets (or any part thereof) and the provisions of Section 99 (*Mortgagee in possession*) and Section 101 (*Applications under sections 97 and 100*) of the Conveyancing Act shall not apply to this Deed.
- 8.6 Save as provided for in Section 103 (*Obligations on selling*) of the Conveyancing Act, neither the Security Trustee nor any Receiver will be liable for any loss or damages which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, its or his respective powers (unless such loss or damage is caused by its or his gross negligence or wilful misconduct) in relation to all or any part of the Charged Assets.
- 8.7 Without prejudice to the generality of clause 8.6 above, neither the Security Trustee nor any Receiver will be liable to account as mortgagee in possession in respect of the Charged Assets or any part thereof nor be liable for any loss on realisation or in connection with the Charged Assets or for any default or omission for which a mortgagee in possession might be liable.

9. SECURITY TRUSTEE RIGHTS

- 9.1 At any time after this Deed becomes enforceable, the Security Trustee shall have the rights set out in the Security Trust Deed.
- 9.2 The Security Trustee may delegate in any manner to any person any rights exercisable by the Security Trustee under this Deed. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Security Trustee thinks fit.

10. ORDER OF DISTRIBUTIONS

- 10.1 All amounts received or recovered by the Security Trustee or any Delegate in exercise of their rights under this Deed shall, subject to the payment of any claims having

priority to this security, be applied in or towards payment to the Security Trustee for application in accordance with Clause 10.1 of the Intercreditor Deed.

11. LIABILITY OF SECURITY TRUSTEE AND DELEGATES

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

12. RECEIVERS

Appointment of a Receiver

- 12.1 At any time after the Chargor so requests or the Security becomes enforceable after the occurrence of an Enforcement Event, the Security Trustee may, without the need for the occurrence of any of the events specified in paragraphs (a) to (c) of Section 108(1) (*Appointment of a receiver*) of the Conveyancing Act, appoint under seal or under the hand of a duly authorised officer of the Security Trustee, any person or persons considered by it to be competent to be a Receiver of all or any part of the Charged Assets and such persons shall be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Conveyancing Act.
- 12.2 If at any time there is more than one Receiver of all or part of the Charged Assets, each such Receiver may (unless otherwise stated in any appointment document) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of each other Receiver.
- 12.3 All of the powers, authorities and discretions which are conferred by this Deed, either expressly or impliedly, upon any Receiver may be exercised by the Security Trustee after the Security becomes enforceable in relation to all or part of the Charged Assets without first appointing a Receiver or notwithstanding the appointment of a Receiver of the Charged Assets, or any part thereof.

Receiver as agent

- 12.4 Any Receiver so appointed shall be the agent of the Chargor and the Chargor will be solely responsible for his remuneration, acts, defaults, omissions and losses and for all costs, expenses, liabilities incurred by him. The Security Trustee shall not incur any liability by reason of the appointment of a Receiver or for any other reason.

Remuneration

- 12.5 A Receiver shall be entitled to remuneration for his services at a rate to be fixed by the Security Trustee (but without being limited to a maximum rate of commission as prescribed in Section 108(7) (*Appointment of a Receiver*) of the Conveyancing Act) and the Security Trustee may direct payment thereof out of the Charged Assets but the Chargor alone will be liable for payment of such remuneration.

Removal of a Receiver

- 12.6 The Security Trustee may in writing remove any Receiver so appointed and appoint another person or person as Receiver either in place of a Receiver whose appointment has been terminated or in addition to any Receiver already appointed.

Powers of a Receiver

- 12.7 A Receiver so appointed will have and be entitled to exercise, in addition to all powers conferred by the Conveyancing Act (except where expressly disappplied in this Deed) and pursuant to Section 108(3) of the Conveyancing Act, each of the additional powers, rights and obligations as set forth in Schedule 2, subject always to the terms of Clause 2. Section 108(4) of the Conveyancing Act shall not apply to this Deed.

13. PROTECTION OF THIRD PARTIES

- 13.1 No purchaser or other person dealing with the Security Trustee or any receiver appointed hereunder shall be bound or concerned to see or enquire whether the right of the Security Trustee or any Receiver appointed by the Security Trustee to exercise any of the powers conferred by this Deed has arisen or not or be concerned with notice to the contrary or with the propriety of the exercise or purported exercise of such powers.

- 13.2 The receipt of the Security Trustee or any receiver appointed hereunder shall be an absolute and conclusive discharge to a purchaser or other person dealing with the Security Trustee or such receiver and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Security Trustee or such receiver.

- 13.3 No person dealing with the Security Trustee, any receiver or any Delegate shall be concerned to enquire:-

- (a) whether the rights conferred by or pursuant to any Finance Document are exercisable;
- (b) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;
- (c) otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such rights; or
- (d) as to the application of any money borrowed or raised

and all protections to purchasers contained in Sections 105(1), 106 and 108(5) of the Conveyancing Act shall apply to all persons (including a purchaser) dealing with the Security Trustee or any Receiver in like manner as if the statutory powers of sale and appointing a receiver had not been varied or extended by this Deed.

- 13.4 No purchaser from the Security Trustee or any Receiver, delegate or sub-delegate shall be entitled to rely on Section 105(2) of the Conveyancing Act which is disapplied by this Deed.

14. POWER OF ATTORNEY

- 14.1 The Chargor by way of security irrevocably appoints the Security Trustee and every Delegate jointly and severally its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

- (a) to do anything which the Chargor is obliged to do (but has not done) under this Deed (including to execute charges over, transfers, conveyances, assignments

and assurances of, and other instruments, notices, orders and directions relating to, the Charged Assets); and

- (b) to exercise any of the rights conferred on the Security Trustee or any Delegate in relation to the Charged Assets or under this Deed or the Conveyancing Act.

14.2 The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 14.1.

15. SAVING PROVISIONS

15.1 This Deed is a continuing Security and will extend to the ultimate balance of the Secured Obligations, regardless of any intermediate payment or discharge in whole or in part and will continue in full force and effect until final repayment in full and total satisfaction of the Secured Obligations. If upon final repayment and satisfaction there shall exist any right on the part of the Company or any other person to draw funds from any of the Secured Creditors or otherwise which, if exercised, would or might cause the Company to become actually or contingently liable to any of the Secured Creditors whether as principal debtor or as surety for another person, then the Security Trustee will be entitled to retain this security and all rights, remedies and powers conferred by this Deed and the Charged Assets for so long as shall or might be necessary to secure the discharge of such actual or contingent liability.

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

- (a) the liability of the Chargor and the Security constituted by this Deed shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Security Trustee shall be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

15.3 Neither the obligations of the Chargor under this Deed nor the Security constituted by this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under this Deed or any of the Security constituted by this Deed (without limitation and whether or not known to it or any of the Secured Creditors) including:

- (a) any time, waiver or consent granted to, or composition with, the Company or any other person;
- (b) the release of the Company or any other person under the terms of any composition or arrangement with any creditor of the Company or any such person;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or security over assets of, the Company or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

- (d) any incapacity or lack of power or authority or any lack of legal personality of or dissolution or change in the members or status of the Company or any other person;
 - (e) any amendment (however fundamental) 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.
- 15.4 The Chargor waives any right it may have of first requiring the Security Trustee (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 the Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.
- 15.5 Until all the Secured Obligations have been irrevocably paid in full and all facilities which might give rise to Secured Obligations have terminated, the Secured Creditors (or any trustee or agent on their behalf) may:
 - (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Secured Creditors (or any trustee or agent on their behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
 - (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed.
- 15.6 Until all the Secured Obligations have been irrevocably paid in full and all facilities which might give rise to Secured Obligations have terminated and unless the Secured Creditors otherwise direct, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed:
 - (a) to be indemnified by any person;
 - (b) to claim any contribution from any other provider of Security for or any other guarantor of any person'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 Secured Creditors under the Finance Documents or of any guarantee or other security taken pursuant to, or in connection with, the Finance Documents by the Secured Creditors.
- 15.7 The Security constituted by this Deed is in addition to and is not in any way prejudiced by any other guarantees or security now or subsequently held by any of the Secured Creditors.

16. DISCHARGE OF SECURITY

- 16.1 Subject to Clause 16.2, if the Security Trustee is satisfied that all the Secured Obligations have been irrevocably paid in full and that all facilities which might give rise to Secured Obligations have terminated, the Security Trustee shall at the request and cost of the Chargor execute such documents as may be necessary to release,

reassign or discharge (as appropriate) the Charged Assets from the Security created by this Deed.

- 16.2 If any amount paid or credited to the Security Trustee or any Secured Creditor under any Finance Document is avoided or otherwise set aside on the liquidation or other insolvency of the Chargor or any other person, or otherwise, that amount shall not be considered to have been paid for the purposes of determining whether all the Secured Obligations have been irrevocably paid.

17. PAYMENTS

- 17.1 Any demand for payment made by the Security Trustee shall be valid and effective even if it contains no statement of the relevant Secured Obligations or an inaccurate or incomplete statement of them.
- 17.2 All payments by the Chargor under this Deed (including damages for its breach) shall be made in euro and to such account, with such financial institution and in such other manner as the Security Trustee may direct.
- 17.3 The Chargor shall pay and, within three Business Days of demand, indemnify the Security Trustee against any cost, loss or liability the Security Trustee incurs in relation to all stamp duty, registration and other similar taxes payable in respect of this Deed.
- 17.4 At any time after:
- (a) the receipt by any of the Secured Creditors of notice (either actual or otherwise) of any subsequent Security affecting the Charged Assets; or
 - (b) any step is taken in relation to the liquidation or examination of the Chargor,
- each Secured Creditor may open a new account in the name of the Chargor with it (whether or not it permits any existing account to continue). If any Secured Creditor does not open such a new account, it shall nevertheless be treated as if it had done so when the relevant event occurred. No moneys paid into any account, whether new or continuing, after that event shall discharge or reduce the amount recoverable pursuant to any Finance Document to which the Chargor is party.

18. INDEMNITIES

- 18.1 The Chargor waives any right it may have in any jurisdiction to pay any amount under this Deed in a currency or currency unit other than that in which it is expressed to be payable.
- 18.2 Each indemnity in this Deed shall:
- (a) constitute a separate and independent obligation from the other obligations in this Deed or any other Finance Document;
 - (b) give rise to a separate and independent cause of action;
 - (c) apply irrespective of any indulgence granted by any Secured Creditor;
 - (d) continue in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of any Secured Obligation or any other judgment or order; and

- (e) apply whether or not any claim under it relates to any matter disclosed by the Chargor or otherwise known to any Secured Creditor.

19. RIGHTS, AMENDMENTS, WAIVERS AND DETERMINATIONS

19.1

- (a) Where there is any ambiguity or conflict between the rights conferred by law and those conferred by or pursuant to this Deed, the terms of this Deed shall prevail.
- (b) Where there is any ambiguity or conflict between the rights conferred pursuant to the Shareholders Agreement and those conferred by or pursuant to this Deed, the terms of this Deed shall prevail.
- (c) Where there is any ambiguity or conflict between the rights conferred pursuant to the Intercreditor Deed and those conferred or pursuant to this Deed, the terms of the Intercreditor Deed shall prevail.

19.2 No failure or delay in exercising, on the part of the Security Trustee or Delegate any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights, powers or remedies provided by law or otherwise.

19.3 Any term of this Deed may be amended, supplemented or waived only with the consent of the Security Trustee and the Chargor in writing.

19.4 Any determination by or certificate of the Security Trustee or any Delegate under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

19.5 The Security Trustee may at its discretion grant time or indulgence or make any other arrangement, variation or release with any person or persons not party hereto (whether or not such person or persons are jointly liable with the Chargor) in respect of the Secured Obligations or any other security therefore or guarantee or indemnity in respect thereof, without prejudice either to the security hereby evidenced or to any of the powers, rights or remedies of the Security Trustee or the Secured Creditors or to the liability of the Chargor for the Secured Obligations.

19.6 Subject to section 439 of the Companies Act, neither the Security Trustee, the Secured Creditors nor any receiver appointed hereunder shall be under any liability for loss of any kind (including, without limitation, any loss arising from changes in exchange rates or the diminution in the value of any of the Charged Assets) which may be occasioned by the exercise or purported exercise of, or any delay or neglect to exercise any of its rights under or pursuant to this Deed and in particular without limitation neither the Security Trustee, the Secured Creditors nor any receiver appointed hereunder shall be liable to account as mortgagee in possession or for anything except actual receipts.

20. PARTIAL INVALIDITY

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

21. ASSIGNMENT

- 21.1 The Chargor may not assign or enter into any trust arrangements with any third party in respect of any of its rights under this Deed.
- 21.2 The Security Trustee will be entitled to assign the benefit of this Deed or any part of this Deed to any person (to the extent permitted under the Finance Documents), and the Chargor hereby consents to any such assignment. The Security Trustee will be entitled to impart any information concerning the Chargor to any assignee or successor in title.
- 21.3 In the event of assignment by the Security Trustee as permitted by Clause 21.1.2 the Chargor shall at the request of the Security Trustee join in such assignment so as to cause full beneficial title to the security created by this Deed to be passed to the relevant assignee.

22. NOTICES

The terms and provisions set forth in Clause 47 of the Facility Agreement in respect of Notices shall apply to this Deed as if such terms were set out in full in this Deed, *mutatis mutandis*.

23. 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.

24. GOVERNING LAW AND JURISDICTION

- 24.1 This Deed is governed by and construed in accordance with the laws of Ireland.
- 24.2 The courts of the Republic of Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a Dispute). The Parties agree that the courts of the Republic of Ireland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary. This Clause 24.2 is for the benefit of the Security Trustee only. As a result, the Security Trustee shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.
- 24.3 The Chargor hereby irrevocably appoints Bradwell Limited of 10 Earlsfort Terrace, Dublin 2 as its agent with full authority to receive, accept and acknowledge, for itself and on its behalf, service of all process issued out of proceedings in the courts of Ireland in respect of Disputes.

IN WITNESS whereof this Deed has been duly executed on the date first above written.

SCHEDULE 1

SHARES

| Shareholder | <u>Number and Designation of Shares of €1 each in the Company as at the date of this Deed</u> |
|-----------------------|--|
| EP UK Investments Ltd | 5,000,080 'A' Ordinary Shares of €1.00 each |

SCHEDULE 2

POWERS OF A RECEIVER

1 POSSESSION

To take immediate possession of, get in and collect the Charged Assets in respect of which the Receiver is appointed and to make such demands and take such proceedings as may seem expedient for that purpose, and to take possession of the Charged Assets over which the Receiver is appointed with like rights.

2 REALISATION

To sell, realise or otherwise dispose of the Charged Assets as the Receiver thinks fit.

3 APPOINT ADVISORS

To appoint and discharge managers, officers, agents, professional advisers, consultants and others for the purposes specified in this Schedule upon such terms as to remuneration or otherwise as the Receiver thinks fit and to remove any person so appointed to any such position by the Chargor.

4 BORROW MONEY

To raise and borrow money or incur any other liability, either unsecured or on the security of any Charged Asset on any terms and for whatever purpose the Receiver thinks fit in connection with the Charged Assets over which the Receiver is appointed.

5 SELL

To grant rights, options, dispose of, convert into money and realise any Charged Asset by public auction or private contract and generally in any manner and on any terms the Receiver thinks fit. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period he or she thinks fit.

6 SHARE CALLS

To require the Company, or the directors of the Company, to make calls conditionally or unconditionally upon the Chargor in respect of any uncalled capital in respect of the Charged Assets and enforce payment of any call so made by action (in the name of the Company or the Receiver as the Receiver may think fit) or otherwise.

7 RELATED RIGHTS

To sell or assign all or any of the Derivative Assets or Dividends in respect of which the Receiver is appointed in such manner, and generally on such terms and conditions, as the Receiver thinks fit.

8 VOTING RIGHTS

To exercise in respect of any Charged Asset all voting or other powers or rights in such manner as the Receiver thinks fit.

9 COMPROMISE

To settle, adjust, refer to arbitration, allow time for payment, compromise and arrange any claim, contract, account, dispute, question or demand with or by any person relating in any way to any Charged Asset.

10 LEGAL ACTIONS

To bring, prosecute, enforce, defend and abandon any action, suit or proceedings both in the Receiver's own name and in the name of the Chargor in relation to any Charged Asset which the Receiver thinks fit.

11 RECEIPTS

To give a valid receipt for any money and execute any assurance or thing that may be necessary or desirable for realising any Charged Assets.

12 DELEGATION

To delegate the Receiver's powers.

13 MATERIAL CONTRACTS

To enter into, abandon, perform, repudiate, rescind, vary or cancel any material contracts relating to the Charged Assets as the Receiver thinks fit.

14 SETTLE ACCOUNTS

To redeem any prior security interest relating to the Charged Assets and to settle and pass the accounts to which that security interest relates. Any accounts so settled and passed are conclusive and binding on the Chargor, and any money so paid shall be taken to be an expense properly incurred by him or her.

15 PROTECT

To do any act which the Chargor might do in the ordinary conduct of its business to protect any Charged Asset.

16 USE THE CHARGOR'S NAME

To use the name of the Chargor when exercising any of the rights, powers or discretions conferred on the Receiver.

17 COMPANY SEAL

Where the Chargor is a company and has a seal, to use the Chargor's seal where required in connection with the Charged Assets.

18 PAYMENTS

To make any payment which is necessary or incidental to the performance of his or her functions.

19 OTHER RIGHTS

To do all other acts and things which he or she may consider desirable or necessary for realising any Charged Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver.

To exercise in relation to a Charged Asset all the rights, powers and authorities that he or she could exercise if he or she were the absolute beneficial owner of the Charged Asset.

To do all acts and to execute in the name and on behalf of the Chargor any deed, receipt or other document in each case in relation to a Charged Asset.

EXECUTION

SIGNED AND DELIVERED AS A DEED for and
on behalf of
EP UK INVESTMENTS LTD
by its director
in the presence of:



Signature of director

Witness signature

Daniel Kontar

Print name

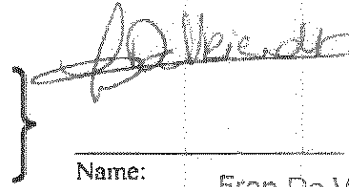
Plot 20 to 26, Frigate 7, 11000

Print address

Legal Counsel

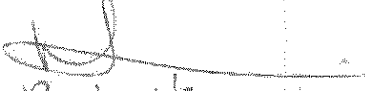
Witness occupation

SIGNED, SEALED AND DELIVERED
For and on behalf of
KBC BANK N.V.



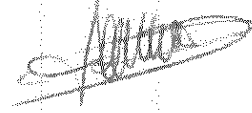
Name: Fran De Vriendt
Agent Syndicated Loans

By its lawfully appointed attorney
in the presence of:

Witness 
Name Best Vriendt

Address Twaalv Apostelenstraat 5, 2700 Mechelen, Belgium

Occupation employee



Nathalie Aelewaters
Agent Syndicated Loans