



Registration of a Charge

Company name: **AFFECT ENERGY LTD**

Company number: **09263368**

Received for Electronic Filing: **04/05/2020**



X94B8MWP

Details of Charge

Date of creation: **30/04/2020**

Charge code: **0926 3368 0001**

Persons entitled: **ORIGIN ENERGY LIMITED**

Brief description: **THE INTELLECTUAL PROPERTY RIGHTS AS DEFINED IN THE CHARGE AND INCLUDING THE AFFECT ENERGY NAME TRADEMARK AND LOGO TRADEMARK SPECIFIED IN PART B OF SCHEDULE 1. SEE THE CHARGE FOR MORE DETAILS.**

Contains fixed charge(s).

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

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: **WE HEREBY CERTIFY THAT, SAVE FOR THE MATERIAL REDACTED PURSUANT TO SECTION 859G COMPANIES ACT 2006, THIS IS A TRUE AND ACCURATE COPY OF THE PDF SCANNED ORIGINAL.**

Certified by: **HERBERT SMITH FREEHILLS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9263368

Charge code: 0926 3368 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th April 2020 and created by AFFECT ENERGY LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 4th May 2020 .

Given at Companies House, Cardiff on 5th May 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

30 April 2020

THE CHARGORS

and

ORIGIN ENERGY LIMITED

as the Secured Party

SECURITY AGREEMENT

***THIS DEED IS SUBJECT TO THE TERMS OF A SUBORDINATION DEED
DATED ON OR ABOUT THE DATE HEREOF BETWEEN OCL, OEHL, OCTOPUS ENERGY
LIMITED, SHELL ENERGY EUROPE LIMITED AND THE SECURED PARTY***

Herbert Smith Freehills LLP

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THIS DEED is made on 30 April 2020

BETWEEN:

- (1) The companies whose respective names and company numbers appear in Schedule 3 (*The Chargors*) (collectively the "**Chargors**" and each a "**Chargor**"); and
- (2) Origin Energy Limited a company registered in New South Wales, Australia under ACN 000 051 696, whose registered office is at Level 32, Tower 1, 100 Barangaroo Ave, Barangaroo New South Wales, Australia 2000 (the "**Secured Party**").

IT IS AGREED as follows:

1. DEFINITIONS, CONSTRUCTION AND THIRD PARTY RIGHTS

1.1 Definitions

Terms defined in the Side Deed shall, unless otherwise defined in this Deed or unless a contrary intention appears, bear the same meaning when used in this Deed and the following terms shall have the following meanings:

"Account Proceeds" means all amounts (including interest) from time to time standing to the credit of any bank or other account of each Chargor with any bank, building society, financial institution or other person and the debts represented thereby save for the Excluded Assets.

"Administrator" means a person appointed under Schedule B1 to the Insolvency Act 1986 to manage a Chargor's affairs, business and property.

"Assigned Agreements" means the agreements (if any) specified in Part C of Schedule 1 (*Assigned Agreements*) and any present or future agreement, contract, deed, lease, underlease, tenancy, licence, undertaking, guarantee or other contract to which a Chargor is or becomes a counterparty and which is material to the business of such Chargor, but excluding the Facility Agreement.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London, United Kingdom and Sydney, Australia.

"Charged Assets" means the assets mortgaged, charged or assigned pursuant to Clauses 3 (*Fixed Security*) and 4.1 (*Creation of Floating Charge*) of this Deed.

"Debts" means all of each Chargor's present and future book and other debts, revenues and monetary claims, whether actual or contingent, and whether originally owing to that Chargor or purchased or acquired by it, and all things in action which may give rise to any debt, revenue or monetary claim and the benefit of any related Security, guarantee or other rights of any nature relating thereto and any proceeds of any of the above.

"Enforcement Date" means (i) the date on which the Secured Party demands the payment or discharge of all or any of the Secured Liabilities pursuant to clause [17.2] of the Side Deed (ii) the date on which the Secured Party is entitled to accelerate any amounts due under the Origin Shareholder Loan or, if earlier, (iii) the date on which the directors of a Chargor ask the Secured Party to appoint an Administrator.

"Excluded Assets" means any account in the name of the Borrower with an Issuing Bank (as defined in the Facility Agreement) which holds any amount OEHL has paid into such account in order to provide cash cover for a Letter of Credit (as defined in the Facility Agreement) from time to time.

"Existing Security" means:

- (a) share charge dated 5 March 2018 between OEHL and SEEL;
- (b) debenture dated 5 March 2018 between OEL and SEEL;
- (c) charge deposit deed dated 4 October 2019 between OEL and Wales & West Utilities Limited;
- (d) debenture dated 28 April 2020 between Affect Energy Ltd and SEEL; and

- (e) any replacement security granted following the date of this Deed between the parties to and substantially in the form of the security documents listed in paragraphs (a) to (d) above.

"Facility Agreement" means the document entitled 'Revolving Facility Agreement' between OEHL and National Australia Bank Limited dated on or about the date of this Deed.

"Insurance Policies" means all present and future contracts or policies of insurance (including life policies) in which a Chargor has an interest or in which it may from time to time have an interest (whether solely, jointly, as loss payee or otherwise).

"Insurance Proceeds" means all monies from time to time payable to a Chargor under or pursuant to the Insurance Policies, including (without limitation) the refund of any premiums.

"Intellectual Property Rights" means:

- (a) all of the property specified in Part B of Schedule 1 (*Intellectual Property*) (if any); and
- (b) all other patents, patent applications, trade marks and service marks (whether registered or not), trade mark and/or service mark applications, trade names, registered designs, design rights, copyrights, database rights, domain names, computer software, know-how, trade secrets, inventions and other intellectual property rights and interests (which may now or in the future exist), whether registered or unregistered, and the benefit of all applications and the rights to use such assets (which may now or in the future exist) and all Related Property Rights, to the extent of any Chargor's interest in the same.

"Investments" means all of each Chargor's right, title, benefit and interest in all stocks, shares, bonds, notes, warrants and other securities of any kind whatsoever whether in bearer or registered form, and all other interests in any person and all Related Investment Rights whether the same are held directly by or to the order of the Chargor or by any trustee, fiduciary, clearance system (including any depository for any clearance system and any other person whose business is or includes the provision of clearance services or the provision of security accounts or any nominees or depository for any such person), custody system, settlement system (including Euroclear UK & Ireland Limited for the London Stock Exchange plc and the Central Gilts Office Service for transactions in gilt edged stocks and any nominees thereof) or custodian on behalf of the Chargor or whether the same have been delivered to or to the order of the Secured Party or its nominee including all Related Investment Rights, all Related Property Rights and all rights against any such trustee, fiduciary, clearance system or other person holding such to the order of the Chargor.

"Kraken IP" means the Intellectual Property Rights in relation to the 'Kraken' platform.

"LPA" means the Law of Property Act 1925.

"OCL" means Octopus Capital Limited, a company registered in England and Wales under number 03981143, whose registered office is at 6th Floor, 33 Holborn, London, EC1N 2HT.

"OEL" means Octopus Energy Limited, a company registered in England and Wales under number 09263424, whose registered office is at 6th Floor, 33 Holborn, London, EC1N 2HT.

"OEHL" means Octopus Energy Holdings Limited, a company registered in England and Wales under number 09718624, whose registered office is at 6th Floor, 33 Holborn, London, EC1N 2HT.

"Origin Shareholder Loan" has the meaning given to it in the Side Deed.

"Principal Debtor" means OEL or OEHL.

"Real Property" means:

- (a) all of the freehold and/or leasehold property of each Chargor specified in Part A of Schedule 1 (*Real Property*);

- (b) all freehold and leasehold property or immovable property of each Chargor situated in England and Wales (other than the property referred to in paragraph (a)) of which the Chargor is the legal and beneficial owner);
- (c) any buildings, fixtures (including trade fixtures), fittings, fixed plant or machinery from time to time on or forming part of the property referred to in paragraphs (a) and (b) above, to the extent of any Chargor's interest in the same; and
- (d) the Related Property Rights.

"Receiver" means any person appointed by the Secured Party to be a receiver or receiver and manager or administrative receiver of any property subject to the security created by this Deed.

"Related Investment Rights" means all of each Chargor's right to any allotments, rights, benefits and advantages (including all voting rights) at any time accruing, offered or arising in respect of or incidental to any Investment and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or otherwise in respect of Investments.

"Related Property Rights" means, where used in relation to a particular property, asset (or class of assets) or right, the following:

- (a) the proceeds of sale and/or other realisation of that property, asset (or class of assets) or right (or any part thereof or interest therein);
- (b) all Security, options, agreements, rights, easements, benefits, indemnities, guarantees, warranties or covenants for title in respect of such property, asset (or class of assets) or right; and
- (c) all rights under any lease, licence or agreement for lease, sale or use in respect of such property or asset.

"Secured Liabilities" means all monies, obligations and liabilities covenanted to be paid or discharged pursuant to Clause 2 (*Covenants to Pay*).

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

"Security Period" means the period from the date of this Deed until the date on which all of the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full or released pursuant to clause 18 (*Release of Origin Security*) of the Side Deed.

"SEEL" means Shell Energy Europe Limited.

"Shares" means:

- (a) the entire issued share capital held by a Chargor of each entity set out in Part D of Schedule 1; and
- (b) all Related Investment Rights and all Related Property Rights in respect thereof.

"Side Deed" means the document entitled 'Side Deed' between OEL, OEHL, OCL and the Secured Party, dated on or about the date of this Deed.

"Subordination Deed" means the document entitled 'Subordination Deed' between OCL, OEHL, OEL, SEEL and the Secured Party, dated on or about the date of this Deed.

"Subordination Period" has the meaning given to it in the Subordination Deed.

"Third Party Security Provider" means:

- (a) Affect Energy Ltd;
- (b) Octopus Electric Vehicles Limited;
- (c) Octopus Energy Services Limited; and
- (d) Kraken Technologies Limited.

"VAT" means United Kingdom Value Added Tax together with all interest and penalties relating thereto.

1.2 **Construction and Third Party Rights**

1.2.1 Unless a contrary indication appears, any reference in this Deed to:

- (A) the singular includes the plural and vice versa;
- (B) the **"Secured Party"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (C) **"assets"** includes present and future properties, revenues and rights of every description;
- (D) 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);
- (E) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (F) a provision of law is a reference to that provision as amended or re-enacted;
- (G) a Clause or a Schedule is a reference to a clause of or schedule to this Deed;
- (H) this Deed shall be construed as references also to any separate or independent stipulation or agreement contained in it;
- (I) another agreement (including the Side Deed) shall be construed as a reference to such agreement as the same may have been modified, extended, amended, varied or supplemented or novated from time to time;
- (J) references to any form of property or asset (including a Charged Asset) shall include a reference to all or any part of that property or asset); and
- (K) the word **"including"** is without limitation.

1.2.2 Clause and Schedule headings are for ease of reference only.

1.2.3 The words **"other"**, **"or otherwise"** and **"whatsoever"** shall not be construed eiusdem generis or be construed as any limitation upon the generality of any preceding words or matters specifically referred to.

1.2.4 The terms of this Deed may be enforced only by a party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.

1.3 **Implied Covenants for Title**

The obligations of each Chargor under this Deed shall be in addition to the covenants for title deemed to be included in this Deed by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

1.4 **Effect as a deed**

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

1.5 **Law of Property (Miscellaneous Provisions) Act 1989**

To the extent necessary for any agreement for the disposition of the Charged Assets in this Deed to be a valid agreement under section 2(1) of the *Law of Property (Miscellaneous Provisions) Act 1989*, the terms of the Side Deed are incorporated into this Deed.

1.6 **Subordination Deed**

Prior to the end of the Subordination Period, the terms of this Deed are subject to the terms of the Subordination Deed and, in the event of any conflict between any provision of this Deed and any provision of the Subordination Deed, the relevant provision of the Subordination Deed shall prevail.

2. **COVENANTS TO PAY**

2.1 **Covenant to Pay Secured Liabilities**

Each Chargor covenants that it shall on demand pay to the Secured Party all monies and discharge all obligations and liabilities, now or hereafter due, owing or incurred by each Principal Debtor to the Secured Party under or pursuant to the terms of the Side Deed or the Origin Shareholder Loan, in each case when the same become due for payment or discharge, and whether such monies, obligations or liabilities are express or implied, present, future or contingent; joint or several; incurred as principal or surety; or denominated in sterling or any other currency.

2.2 **Potential Invalidity**

Neither the covenant to pay in Clause 2.1 (*Covenant to Pay Secured Liabilities*) nor the obligation to pay interest pursuant to Clause 2.3 (*Interest*) nor the security created by this Deed shall extend to or include any liability or sum which would, but for this Clause 2.2, cause such covenant, obligation or security to be unlawful under any applicable law.

2.3 **Interest**

2.3.1 Each Chargor hereby agrees to pay to the Secured Party, in respect of any amount demanded in accordance with this Deed (to the extent that interest on such amount is not otherwise being paid pursuant to any agreement between a Chargor and the Secured Party) interest from first demand by the Secured Party of the Chargor:

- (A) at the rate of interest payable or deemed to be payable by the Chargor in respect of the amount demanded as calculated and compounded in accordance with the Side Deed, the Origin Shareholder Loan or any other agreement between the Secured Party and the Chargor with respect to such amount; or
- (B) failing such agreement, at the rate per annum which is 2% per annum above the interest cost to the Secured Party (as conclusively determined by the Secured Party) of funding the amount demanded, such interest being calculated daily on the basis of a 365 day year and compounded at monthly rests.

2.3.2 Such interest shall accrue due on a daily basis from the demand by the Secured Party until actual payment by the Chargor (both before and after any further demand or judgment or the liquidation of the Chargor).

2.4 **Limited recourse**

Notwithstanding Clause 2.1 (*Covenant to Pay Secured Liabilities*):

2.4.1 the liability of each Third Party Security Provider to the Secured Party under Clause 2.1 (*Covenant to Pay Secured Liabilities*) shall be:

- (A) limited in aggregate to an amount equal to that recovered by the Secured Party as a result of the enforcement of this Deed with respect to the Charged Assets of the Third Party Security Provider; and
 - (B) satisfied only from the proceeds of sale or other disposal or realisation of the Charged Assets of the Third Party Security Provider pursuant to this Deed; and
- 2.4.2 the Secured Party shall not have any recourse under Clause 2 (*Covenants to Pay*) to any assets of a Third Party Security Provider other than the Charged Assets of the Third Party Security Provider.

3. **FIXED SECURITY**

3.1 **Creation of Fixed Security**

Subject to Clause 3.4 (*Prior Security and Ranking*), each Chargor charges in favour of the Secured Party by way of fixed charge (which so far as relates to freehold or leasehold property in England and Wales vested in the Chargor at the date of this Deed shall be a charge by way of legal mortgage) with full title guarantee (but subject to the Existing Security) and as a continuing security for the payment and discharge of the Secured Liabilities all of the Chargor's rights to and title and interest from time to time in any and each of the following:

- 3.1.1 the Real Property;
- 3.1.2 all plant, machinery, vehicles, computers, office and other equipment and chattels (excluding stock-in-trade or work in progress) and all Related Property Rights;
- 3.1.3 (to the extent that the same are not the subject of a fixed charge under Clause 3.1.4) all Debts;
- 3.1.4 all Account Proceeds;
- 3.1.5 all of its Investments;
- 3.1.6 the Shares;
- 3.1.7 all of its Intellectual Property Rights;
- 3.1.8 all goodwill and uncalled capital;
- 3.1.9 (to the extent not effectively assigned under Clause 3.2 (*Assignments*)), the Insurance Policies and the Insurance Proceeds; and
- 3.1.10 (to the extent not effectively assigned under Clause 3.2 (*Assignments*)), the Assigned Agreements and all Related Property Rights.

3.2 **Assignments**

Subject to Clause 3.4 (*Prior Security and Ranking*), each Chargor assigns to the Secured Party with full title guarantee (but subject to the Existing Security) as a continuing security for the payment and discharge of the Secured Liabilities all of the Chargor's rights to and title and interest from time to time in:

- 3.2.1 the Insurance Policies (subject to obtaining any necessary consent to such assignment from any third party) and the Insurance Proceeds; and
- 3.2.2 the Assigned Agreements (subject to obtaining any necessary consent to such assignment from any third party) and all Related Property Rights.

3.3 **Preservation of fixed charge**

Without prejudice to Clause 3.1 (*Creation of Fixed Security*) and Clause 3.2 (*Assignments*), if a Chargor is entitled to withdraw the proceeds of any book and other debts standing to the credit of an Account and, as a result, those proceeds are in any way released from the fixed charge created pursuant to Clauses 3.1 (*Creation of Fixed Security*) and 3.2 (*Assignments*), the release will in no way derogate from the subsistence and continuance

of the fixed charge on all other outstanding book and other debts of the Chargor and the proceeds of those debts.

3.4 **Prior Security and Ranking**

- 3.4.1 Where this Deed purports to create first ranking Security, that Security will rank subject to the equivalent Security created by the Existing Security until such time as the Security created by the Existing Security ceases to have effect or is discharged.
- 3.4.2 Where a right or asset has been assigned under the Existing Security and the same asset or right is expressed to be assigned again under this Deed, that assignment will take effect as a fixed charge over the right or asset and will only take effect as an assignment if the relevant Security created by the Existing Security ceases to have effect at a time when this Deed still has effect.

3.5 **Excluded Assets**

The provisions of Clauses 3.1 (*Creation of Fixed Security*), 3.2 (*Assignments*) and 4.1 (*Creation of Floating Charge*) of this Deed do not create, nor purport to create any Security over the Excluded Assets.

4. **FLOATING CHARGE**

4.1 **Creation of Floating Charge**

- 4.1.1 Subject to Clause 3.4 (*Prior Security and Ranking*), each Chargor charges to the Secured Party by way of a floating charge with full title guarantee and as a continuing security for the payment and discharge of the Secured Liabilities all of the Chargor's rights to and title and interest from time to time in the whole of its property, assets, rights and revenues, whatsoever and wheresoever, present and future, other than any property, assets, rights and revenues validly and effectively charged or assigned (whether at law or in equity) pursuant to Clauses 3.1 (*Creation of Fixed Security*) or 3.2 (*Assignments*) and the Excluded Assets.
- 4.1.2 The floating charge hereby created is a qualifying floating charge for the purpose of paragraph 14 of Schedule B1 to the Insolvency Act 1986.
- 4.1.3 Without prejudice to Clause 4.1.2, the Secured Party reserves its rights to appoint an administrative receiver on and following the Enforcement Date in accordance with sections 72B to H (inclusive) of the Insolvency Act 1986.

4.2 **Automatic Crystallisation of Floating Charge**

Notwithstanding anything express or implied in this Deed, and without prejudice to any law which may have similar effect, if:

- 4.2.1 a Chargor creates or attempts to create any Security (other than the Existing Security or as expressly permitted by this Deed or the Side Deed) over all or any of the Charged Assets without the prior consent of the Secured Party;
- 4.2.2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Assets;
- 4.2.3 a resolution is passed or an order is made for the winding up, dissolution, administration or other reorganisation of a Chargor; or
- 4.2.4 an Administrator is appointed or any step intended to result in such appointment is taken,

then the floating charge created by Clause 4.1 (*Creation of Floating Charge*) will automatically (without notice) be converted into a fixed charge as regards all of the assets subject to the floating charge.

4.3 **Crystallisation on Notice of Floating Charge**

Notwithstanding anything express or implied in this Deed, the Secured Party may at any time:

- 4.3.1 on or after the Enforcement Date; or
- 4.3.2 if the Secured Party considers in good faith that any of the Charged Assets are in danger of being seized or sold as a result of any legal process, are otherwise in jeopardy or the Secured Party reasonably believes that steps are being taken or have been taken which are likely to lead to the appointment of an Administrator or the presentation of a petition for the winding-up of a Chargor,

by giving notice in writing to that effect to a Chargor convert the floating charge created by Clause 4.1 (*Creation of Floating Charge*) into a fixed charge as regards any assets specified in such notice. The conversion shall take effect immediately upon the giving of the notice.

5. **FURTHER ASSURANCE**

- 5.1 Each Chargor must promptly upon request by the Secured Party execute (in such form as the Secured Party may reasonably require) such documents (including assignments, transfers, mortgages, charges, notices and instructions) in favour of the Secured Party or its nominees and do all such assurances and things as the Secured Party may reasonably require for:

- 5.1.1 perfecting and/or protecting (by registration or in any other way) the security created or intended to be created by this Deed;
- 5.1.2 conferring upon the Secured Party such security as it may require over the assets of a Chargor outside of England and Wales which if in England or Wales would form part of or be intended to form part of the Charged Assets;
- 5.1.3 facilitating, at any time on or after the Enforcement Date, the realisation of all or any part of the assets of a Chargor; and
- 5.1.4 exercising all powers, authorities and discretions conferred on the Secured Party or any Receiver pursuant to this Deed or by law.

- 5.2 Each Chargor shall promptly upon reasonable request by the Secured Party take all such action as may be available to it for the purpose of creating, perfecting or maintaining the security created or intended to be created pursuant to this Deed including, in respect of any material assets, the obtaining of any necessary consent (in form and content satisfactory to the Secured Party) to enable its assets to be mortgaged, charged or assigned pursuant to this Deed. Immediately upon obtaining any necessary consent the asset concerned shall become subject to the security created by this Deed. Each Chargor shall promptly deliver a copy of each such consent to the Secured Party.

6. **GENERAL UNDERTAKINGS WITH RESPECT TO CHARGED ASSETS**

- 6.1 Each Chargor undertakes to the Secured Party with respect to the Charged Assets that:

6.1.1 **Negative Pledge**

it shall not, create or attempt to create or permit to subsist or arise any Security (other than the Existing Security) on, over or affecting the Charged Assets or any part of them;

6.1.2 **Disposals**

it shall not dispose of the Charged Assets or any part of them or agree so to do where such disposal would constitute a breach of the terms of the Side Deed and for these purposes the term "disposal" shall include any form of disposal of any interest in any asset including any conveyance, transfer, lease, assignment, sale, right to use or occupy, surrender, declaration of trust or the creation of any other

form of legal or equitable interest in or over any asset or any option in respect of any of the foregoing;

6.1.3 Compliance with Laws

it shall at all times comply with all laws and regulations applicable to it and will obtain and maintain in full force and effect all material consents, licences, approvals or authorisations of, exemptions by or registrations or declarations with, any governmental or other authority which may at any time be required with respect to any of the Charged Assets;

6.1.4 Subsequent Charges

subject to Clause 6.1.1 (*Negative Pledge*), it shall procure that any Security created by a Chargor after the date of this Deed (otherwise than in favour of the Secured Party) shall be expressed to be subject to this Deed;

6.1.5 Deposit of Title Documents

it shall deposit with the Secured Party or its nominee the deeds and documents of title relating to the Charged Assets, save where such deeds and documents of title are held by a beneficiary pursuant to the Existing Security; and

6.1.6 Prejudicial Action

it shall not do or cause or permit to be done anything which may in any way reduce, jeopardise or otherwise prejudice the value to the Secured Party of the Charged Assets.

6.2 Notices of Charge and/or Assignment

6.2.1 Each Chargor shall, upon reasonable request by the Secured Party, deliver to the Secured Party and serve on any debtor or other person as required by the Secured Party:

- (A) on and from the Enforcement Date, notices of assignment in respect of any Assigned Agreement;
- (B) notices of assignment in respect of any Assigned Agreement entered into by a Chargor following the date of this Deed; and
- (C) notices of charge in respect of any of the material assets charged pursuant to this Deed,

and shall use its reasonable endeavours to procure that each notice is acknowledged by the debtor or other person specified by the Secured Party.

6.2.2 The notices of charge and/or assignment and/or acknowledgement referred to in Clause 6.2.1 shall be in a form substantially similar to that contained in Schedule 2 (*Form of Notice*) or such other form as the Secured Party may require.

7. REAL PROPERTY UNDERTAKING

Each Chargor hereby consents to an application being made by the Secured Party to the Chief Land Registrar on Form RX1 for the registration against the registered titles (if any) specified in Part A of Schedule 1 (*Real Property*) of the following restriction:

"No [disposition or *specify type of 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 [chargee] referred to in the charges register [or [their conveyancer or *specify appropriate details*]]."

8. UNDERTAKINGS AS TO INVESTMENTS AND SHARES

8.1 Deposit of Title Documents

Each Chargor shall deposit with the Secured Party or its nominee:

- 8.1.1 stock transfer forms or other instruments of transfer relating to the Investments and the Shares duly completed to the Secured Party's satisfaction; and
- 8.1.2 such other documents as the Secured Party may require from time to time for the purpose of perfecting its title to the Investments or the Shares or for the purpose of vesting the same in itself, its nominee or any purchaser or presenting the same for registration at any time,

as soon as reasonably practicable following the date of this Deed, save where such stock transfer forms, instruments of transfer or documents of title are held by a beneficiary pursuant to the Existing Security. There shall be no breach of this Clause 8.1 if a Chargor is unable to deposit such title documents with the Security Provider as a result of any formal or informal restrictions on movement imposed or recommended by Her Majesty's Government as a result of the Covid-19 pandemic.

8.2 Registration of transfers

If required by the Secured Party, each Chargor shall procure that all Investments and Shares which are in registered form are duly registered in the name of the Secured Party or its nominee once a transfer relating to those Investments and Shares is presented for that purpose.

8.3 Clearance Systems etc

Each Chargor shall, when requested by the Secured Party, instruct any clearance system, settlement system, custodian or similar person to transfer any Investments then held by any such person for the account of the Chargor to the account of the Secured Party (or its nominee) with such clearance system (or as otherwise required by the Secured Party).

8.4 Calls

Each Chargor:

- 8.4.1 shall not, without the consent in writing of the Secured Party, acquire any Investments or Shares unless they are fully paid; and
- 8.4.2 shall duly and promptly pay all calls, instalments or other payments which may be due and payable in respect of any Investments or Shares and, for the avoidance of doubt, the Secured Party shall not incur any liability in respect of any amounts due from the Chargor in respect of any Investments or Shares.

8.5 Dividends

Subject to the provisions of the Side Deed, the Secured Party (or its nominee) shall hold all dividends or other monies received by it in respect of the Investments and the Shares for the account of the relevant Chargor and, prior to the Enforcement Date, shall pay the same to an account of the Chargor as soon as practicable following receipt of a written request to do so.

8.6 Voting Rights and Other Matters

- 8.6.1 Prior to the occurrence of the Enforcement Date and save as otherwise provided in this Clause 8.6, each Chargor shall exercise (or direct the Secured Party to exercise on its behalf) all voting rights in respect of the Investments and the Shares provided that a Chargor shall not exercise (or direct the exercise of) any voting rights in any manner which, in the reasonable opinion of the Secured Party, may prejudice the value of, or the ability of the Secured Party to realise, the security over the Investments and the Shares created pursuant to this Deed.

- 8.6.2 Each Chargor shall not, without the prior written consent of the Secured Party, permit or agree to any variation of the rights attaching to or conferred by any of the Investments or the Shares, participate in any rights issue, elect to receive or vote in favour of receiving any dividends or other distributions other than in the form of cash or participate in any vote concerning a members voluntary winding-up or a compromise or arrangement pursuant to sections 895 – 901 of the Companies Act 2006.
- 8.6.3 At any time on or after the Enforcement Date, the Secured Party may in such manner and on such terms as it sees fit (in the name of a Chargor or otherwise and without the need for further consent from any Chargor):
- (A) exercise (or refrain from exercising) any voting rights in respect of the Investments and the Shares; and/or
 - (B) apply all dividends and other monies arising from the Investments and the Shares in accordance with Clause 18 (*Application of Monies Received under this Deed*); and/or
 - (C) without prejudice to any other provision of this Deed, transfer the Investments and the Shares into the name of a nominee or transferee of the Secured Party as the Secured Party may require; and/or
 - (D) exercise (or refrain from exercising) all or any of the powers and rights conferred upon or exercisable by the legal or beneficial owner of the Investments and the Shares.

8.7 **Liability of Secured Party**

Each Chargor agrees with the Secured Party that neither the Secured Party nor any nominee will have any liability for:

- 8.7.1 failing to present any coupon or other document relating to any of the Investments or the Shares;
- 8.7.2 accepting or failing to accept any offer relating to any of the Investments or the Shares;
- 8.7.3 failing to attend or vote at any meetings relating to any of the Investments or the Shares;
- 8.7.4 failing to notify the Chargors of any matters referred to in this Clause 8.7 or of any communication received in relation to any of the Investments or the Shares; or
- 8.7.5 any loss arising out of or in connection with the exercise or non-exercise of any rights or powers attaching or accruing to the Investments or the Shares or which may be exercised by the Secured Party or any nominee of the Secured Party under this Deed (whether or not on sale or other realisation of the Investments or the Shares a better price could have or might have been obtained by either deferring or advancing the date of sale or realisation or otherwise).

8.8 **Nominees**

Each Chargor represents and warrants that it has not and undertakes that it shall not appoint any nominee to exercise or enjoy all or any of its rights in relation to the Investments or the Shares.

8.9 **Register of members**

Each Chargor shall procure that, during the Security Period, no company whose shares are subject to the Security purported to be created under this Deed keeps information in respect of its members on the central register kept by the Registrar at Companies House.

9. UNDERTAKINGS AS TO CHARGE OVER BOOK AND OTHER DEBTS

9.1 Realisation of Debts

During the Security Period, each Chargor undertakes with reference to the Debts not, without the prior consent in writing of the Secured Party, to sell, factor, discount, charge, assign, declare a trust over or otherwise dispose of or release, exchange, compound, set off or grant time or indulgence or otherwise deal with all or any of the Debts in favour of any other person or purport to do so, other than in the ordinary course of its business.

9.2 Debts: Position after Default

On or after the Enforcement Date no Chargor shall, except with the consent of the Secured Party, withdraw or otherwise transfer the proceeds of realisation of any Debts standing to the credit of any account.

10. UNDERTAKINGS AS TO ACCOUNT PROCEEDS

10.1 Account Proceeds: Position before Default

Prior to the Enforcement Date each Chargor shall be entitled to withdraw any credit amount referred to in the definition of Account Proceeds from any relevant account.

10.2 Account Proceeds: Position after Default

On or after the Enforcement Date no Chargor shall not be entitled to be paid, withdraw or otherwise transfer any credit amount referred to in Clause 10.1 (*Account Proceeds: Position before Default*) except with the prior written consent of the Secured Party.

11. UNDERTAKINGS AS TO INTELLECTUAL PROPERTY RIGHTS

11.1 Registration

11.1.1 Each Chargor shall, if requested by the Secured Party, execute all such documents and do all such acts as the Secured Party may reasonably require to record the interests of the Secured Party in any registers relating to registered Intellectual Property Rights, subject to the rights of any party pursuant to the Existing Security.

11.1.2 OEL shall not be obliged to comply with any request made pursuant to Clause 11.1.1 above in respect of the Kraken IP until the transfer of the Kraken IP from OEL to Kraken Technologies Limited has been completed.

11.2 General Undertakings

Each Chargor shall:

11.2.1 take reasonable action to safeguard and maintain its rights, present and future, in or relating to Intellectual Property Rights (including the payment of all renewal fees and all steps which are necessary or desirable to maintain any applicable registrations with any appropriate registry or other government authority or body);

11.2.2 not use or refrain from using its Intellectual Property Rights in a way which may materially adversely affect the value of those Intellectual Property Rights; and

11.2.3 take reasonable steps to prevent or bring an end to any material infringement of its Intellectual Property Rights and to defend any challenge to the validity of its Intellectual Property Rights.

11.3 Kraken Platform

OEL and Kraken Technologies Limited undertake to:

- 11.3.1 notify the Secured Party promptly upon the completion of the transfer of the Kraken IP from OEL to Kraken Technologies Limited; and
- 11.3.2 following such transfer, provide the Secured Party with sufficient details of the Kraken IP to enable the Secured Party to register its interest in the Kraken IP in accordance with Clause 11.1.1 above.

12. RIGHTS OF THE SECURED PARTY

12.1 Enforcement

At any time on or after the Enforcement Date, the security created pursuant to this Deed shall be immediately enforceable and the Secured Party may in its absolute discretion and without notice to the Chargor or the prior authorisation of any court:

- 12.1.1 enforce all or any part of the security created by this Deed and take possession of or dispose of all or any of the Charged Assets in each case at such times and upon such terms as it sees fit; and
- 12.1.2 whether or not it has appointed a Receiver, exercise all of the powers, authorities and discretions:
 - (A) conferred from time to time on mortgagees by the LPA (as varied or extended by this Deed) or by law; and
 - (B) granted to a Receiver by this Deed or from time to time by law.

12.2 Restrictions on Consolidation of Mortgages

Section 93 of the LPA shall not apply to this Deed or to any sale made under it. The Secured Party shall have the right to consolidate all or any of the security created by or pursuant to this Deed with any other security in existence at any time. Such power may be exercised by the Secured Party at any time on or after the Enforcement Date. Each Chargor hereby consents to the Secured Party making an application to the Chief Land Registrar on Form CC for registration against the registered titles (if any) specified in Part A of Schedule 1 (*Real Property*) (and any unregistered properties subject to compulsory first registration at the date of this Deed and any other Real Property from time to time including a registered title) of the right to consolidate.

12.3 Restrictions on Exercise of Power of Sale

Section 103 of the LPA shall not apply to this Deed and the power of sale arising under the LPA shall arise on the date of this Deed (and the Secured Liabilities shall be deemed to have become due and payable for that purpose). The power of sale and other powers conferred by section 101 of the LPA as varied or extended by this Deed and those powers conferred (expressly or by reference) on a Receiver shall be immediately exercisable by the Secured Party at any time on or after the Enforcement Date.

12.4 Leasing Powers

The restrictions contained in sections 99 to 100 of the LPA shall not apply to restrict the rights of the Secured Party or any Receiver under this Deed. The statutory powers of leasing may be exercised by the Secured Party on or after the Enforcement Date and the Secured Party and any Receiver may make any lease or agreement for lease and/or accept any surrenders of leases and/or grant options on such terms as it sees fit without the need to comply with the aforementioned restrictions.

12.5 No Prior Notice Needed

The powers of the Secured Party set out in Clauses 12.2 (*Restrictions on Consolidation of Mortgages*) to 12.4 (*Leasing Powers*) may be exercised by the Secured Party without prior notice to the Chargors.

12.6 **Right of Appropriation**

12.6.1 Without prejudice to the other provisions of this Deed, to the extent that any of the Charged Assets constitute "financial collateral", and this Deed and the obligations of each Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No.2) Regulations 2003 (SI 2003/3226) (the "**Regulations**")), the Secured Party shall have the right to appropriate all or any part of those Charged Assets in or towards discharge of the Secured Liabilities. For this purpose, the parties agree that the value of any such Charged Assets so appropriated shall be the market price of such Charged Assets at the time the right of appropriation is exercised as determined by the Secured Party by reference to a public index or such other method or source of valuation as the Secured Party may select, including by independent valuation. The parties agree that the methods or sources of valuation provided for in this Clause or selected by the Secured Party in accordance with this Clause shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

12.6.2 The Secured Party shall notify the Chargors as soon as reasonably practicable of the exercise of its right of appropriation as regards such of the Charged Assets as are specified in such notice.

13. **EXONERATION**

13.1 **Exoneration**

The Secured Party shall not, nor shall any Receiver, by reason of it or the Receiver entering into possession of the Charged Assets or any part thereof, be liable to account as mortgagee in possession except for actual receipts or be liable for any loss or realisation or for any default or omission for which a mortgagee in possession might be liable; but every Receiver duly appointed by the Secured Party under this Deed shall for all purposes be deemed to be in the same position as a receiver duly appointed by a mortgagee under the LPA save to the extent that the provisions of that Act are varied by or are inconsistent with the provisions of this Deed when the provisions of this Deed shall prevail and every such Receiver and the Secured Party shall in any event be entitled to all the rights, powers, privileges and immunities conferred by the LPA on mortgagees and receivers duly appointed under the LPA.

13.2 **Indemnity**

The Secured Party and every Receiver, attorney, delegate, manager, agent or other person appointed by the Secured Party hereunder shall be entitled to be indemnified out of the Charged Assets or any part thereof in respect of all liabilities and expenses incurred by it or him in the execution of any of the powers, authorities or discretions vested in it or him pursuant to this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Charged Assets or any part of them. The Secured Party and any such Receiver may retain and pay all sums in respect of which it is indemnified out of any monies received by it under the powers conferred by this Deed.

14. **APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

14.1 **Appointment**

14.1.1 At any time on or after the Enforcement Date, or at the request of a Chargor or its directors, the Secured Party may, without prior notice to the Chargors, in writing (under seal, by deed or otherwise under hand) appoint:

- (A) a Receiver in respect of the Charged Assets or any part thereof and may in like manner from time to time (and insofar as it is lawfully able to do) remove any Receiver and appoint another in his stead; or

- (B) one or more persons to be an Administrator in accordance with paragraph 14 of Schedule B1 to the Insolvency Act 1986.

14.1.2 Nothing in Clause 14.1.1 shall restrict the exercise by the Secured Party of any one or more of the rights of the Secured Party under Schedule B1 to the Insolvency Act 1986 and the rules thereunder or at common law.

14.2 More than one Receiver

Where more than one Receiver is appointed, each joint Receiver shall have the power to act severally, independently of any other joint Receiver, except to the extent that the Secured Party may specify to the contrary in the appointment.

14.3 Receiver as agent

A Receiver shall be the agent of the Chargor to which it is appointed, which shall be solely responsible for his acts or defaults and for his remuneration. No Receiver shall at any time act as agent of the Secured Party.

14.4 Receiver's Remuneration

A Receiver shall be entitled to remuneration for his services at a rate to be determined by the Secured Party from time to time (and without being limited to any maximum rate specified by any statute or statutory instrument).

14.5 Actions of the Administrator

Save as provided for in statute or as otherwise agreed in writing by the Secured Party, the Secured Party shall have no liability for the acts or omissions of an Administrator.

15. RECEIVER'S POWERS

15.1 Powers

A Receiver shall have (and be entitled to exercise) in relation to the Charged Assets over which he is appointed the following powers (as the same may be varied or extended by the provisions of this Deed):

- 15.1.1 all of the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- 15.1.2 all of the powers conferred from time to time on receivers, mortgagors and mortgagees in possession by the LPA;
- 15.1.3 all the powers and rights of a legal and beneficial owner and the power to do or omit to do anything which a Chargor itself could do or omit to do; and
- 15.1.4 the power to do all things which, in the opinion of the Receiver, are incidental to any of the powers, functions, authorities or discretions conferred or vested in the Receiver pursuant to this Deed or upon receivers by statute or law generally (including the bringing or defending of proceedings in the name of, or on behalf of, a Chargor; the collection and/or realisation of Charged Assets in such manner and on such terms as the Receiver sees fit; and the execution of documents in the name of a Chargor (whether under hand, or by way of deed or by utilisation of the company seal of the Chargor).

15.2 Powers may be Restricted

The powers granted to a Receiver pursuant to this Deed may be restricted by the instrument (signed by the Secured Party) appointing him but they shall not be restricted by any winding-up or dissolution of a Chargor.

16. **PROTECTION OF PURCHASERS**

16.1 **Absence of Enquiry**

No person or persons dealing with the Secured Party or any Receiver appointed by it shall be concerned to enquire whether any event has happened upon which any of the powers in this Deed are or may be exercisable or otherwise as to the propriety or regularity of any exercise of such powers or of any act purporting or intended to be an exercise of such powers or whether any amount remains secured by this Deed. All the protections to purchasers and persons dealing with receivers contained in sections 104, 107 and 109(4) of the LPA shall apply to any person purchasing from or dealing with the Secured Party or any such Receiver.

16.2 **Receipt: Conclusive Discharge**

The receipt of the Secured Party or any Receiver shall be a conclusive discharge to any purchaser of the Charged Assets.

17. **POWER OF ATTORNEY AND DELEGATION**

17.1 **Power of Attorney: General**

Each Chargor hereby irrevocably and by way of security appoints the Secured Party and any Receiver severally to be its attorney in its name and on its behalf and as its act and deed:

- 17.1.1 to execute and deliver any documents or instruments which the Secured Party or such Receiver may require for perfecting the title of the Secured Party to the Charged Assets or for vesting the same in the Secured Party, its nominee or any purchaser;
- 17.1.2 to sign, execute, seal and deliver and otherwise perfect any further security document which the Chargor is required to enter into pursuant to this Deed; and
- 17.1.3 otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Secured Party or any Receiver under this Deed or which the Chargor is required to do pursuant to this Deed or which may be deemed expedient by the Secured Party or a Receiver in connection with any preservation, disposition, realisation or getting in by the Secured Party or such Receiver of the Charged Assets or in connection with any other exercise of any other power under this Deed.

17.2 **Power of Attorney: Exercise**

Prior to the Enforcement Date, the Secured Party may only exercise its powers under Clause 17.1 above in circumstances where the relevant Chargor has failed to carry out the obligations referred to in that Clause within ten (10) Business Days of the Secured Party giving notice to the Chargor.

17.3 **Power of Attorney: Ratification**

Each Chargor ratifies and confirms and agrees to ratify and confirm all acts and things which any attorney mentioned in this Clause 17 (*Power of Attorney and Delegation*) does or purports to do in exercise of the powers granted by this Clause.

17.4 **General Delegation**

The Secured Party and any Receiver shall have full power to delegate the powers, authorities and discretions conferred on it or him by this Deed (including the power of attorney) on such terms and conditions as it or he shall see fit which shall not preclude exercise of those powers, authorities or discretions by it or him or any revocation of the delegation or any subsequent delegation.

18. **APPLICATION OF MONIES RECEIVED UNDER THIS DEED**

Any monies received under the powers hereby conferred shall, subject to the repayment of any claims having priority to this Deed and to any applicable statutory requirement as to (i) the payment of preferential debts or (ii) the payment of unsecured creditors in accordance with section 176A Insolvency Act 1986, be applied for the following purposes and in the following order of priority:

- 18.1.1 in satisfaction of all costs, charges and expenses and payments (including payments made in accordance with paragraphs (i), (ii) and (iii) of section 109(8) of the LPA) made or incurred by the Secured Party or the Receiver and of remuneration to the Receiver in such order as the Secured Party shall in its absolute discretion decide;
- 18.1.2 in or towards satisfaction of the Secured Liabilities which shall be applied in such order as the Secured Party shall in its absolute discretion decide; and
- 18.1.3 the surplus, if any, shall be paid to the Chargors or other person or persons entitled to it,

save that the Secured Party may credit any monies received under this Deed to a suspense account and may retain the same for such period as he considers appropriate up until the end of the Security Period.

19. **RELEASE OF SECURITY**

19.1 **Release**

At the end of the Security Period, the Secured Party shall, at the request and cost of the Chargors, execute or procure the execution by its nominee (in each case in a form acceptable to the Secured Party) and do all such deeds, acts and things as are necessary to release and/or reassign the Charged Assets from the security created by or in accordance with this Deed.

19.2 **Avoidance of Payments**

If any amount paid, repaid or credited to the Secured Party is avoided or reduced because of any laws applicable on bankruptcy, insolvency, liquidation or any similar laws then any payment, release, discharge or settlement between the Secured Party and a Chargor shall be deemed not to have occurred and the Secured Party 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.

20. **AMOUNTS PAYABLE**

20.1 **No Deduction**

All payments to be made by a Chargor under this Deed shall be made without any set-off, counterclaim or equity.

20.2 **Currency of Payment**

The obligation of the Chargors under this Deed to make payments in any currency shall not be discharged or satisfied by any tender, or recovery pursuant to any judgment or otherwise, expressed in or converted into any other currency, except to the extent that tender or recovery results in the effective receipt by the Secured Party of the full amount of the currency expressed to be payable under this Deed.

20.3 **Currency Indemnity**

- 20.3.1 If any sum due from a Chargor under this Deed (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
- (A) making or filing a claim or proof against the Chargor;
 - (B) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings; or
 - (C) applying the Sum in satisfaction of any of the Secured Liabilities,
- the Chargor shall, as an independent obligation, within three Business Days of demand, indemnify the Secured Party against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to the Secured Party at the time of its receipt of that Sum.
- 20.3.2 Each Chargor waives any right it may have in any jurisdiction to pay any amount under this Deed in a currency unit other than that in which it is payable.

21. **POWER OF SEVERANCE**

In the exercise of the powers conferred by this Deed, the Secured Party or any Receiver may sever and sell plant, machinery or other fixtures separately from the property to which they may be annexed and the Secured Party or any Receiver may apportion any rent or other amount without the consent of a Chargor.

22. **REPRESENTATIONS AND WARRANTIES**

22.1 **Representations**

Each Chargor represents and warrants in favour of the Secured Party:

22.1.1 **Status**

It is a company duly formed and validly existing under the laws of its jurisdiction of formation.

22.1.2 **Powers and Authority**

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into, performance and delivery of, this Deed.

22.1.3 **Legal Validity**

This Deed constitutes its legal, binding, valid and enforceable obligations.

22.1.4 **Non-Conflict**

The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with:

- (A) any law or regulation or judicial or official order applicable to it; or
- (B) its constitutional documents; or
- (C) any material agreement or document which is binding upon it or any of its assets or result in the creation of (or a requirement for the creation of) any Security over any Charged Asset (other than the Existing Security).

22.1.5 **Status of Assets and Security**

This Deed confers the security it purports to confer over the Charged Assets and the security created under or pursuant to this Deed is not subject to any prior or

pari passu Security (other than the Existing Security and any security granted by the Chargors on or about the date hereof in favour of OCL) and is not liable to avoidance on liquidation or bankruptcy, composition or any other similar insolvency proceedings.

22.1.6 **Calls**

The Shares are not subject to any calls or other liability to pay money.

23. **NEW ACCOUNTS**

If the Secured Party receives notice of any subsequent charge or other interest affecting any part of the Charged Assets (the date of receipt of such notice being the "**Notice Date**") it may, without prejudice to its rights under this Deed, open a fresh account or accounts with a Chargor and continue any existing account in the name of a Chargor and may appropriate to any such fresh account any monies paid in, received or realised for the credit of a Chargor after that time without being under any obligation to apply the same or any part of them in discharge of any of the Secured Liabilities. If the Secured Party fails to open a fresh account it will be deemed to have done so and any monies received or realised after the Notice Date will not reduce the Secured Liabilities outstanding on the Notice Date.

24. **MISCELLANEOUS**

24.1 **The Chargors**

This Deed is binding on the successors and assigns of each Chargor.

24.2 **Assignment and Transfer**

No Chargor assign any of its rights or transfer any of its rights or obligations under this Deed. The Secured Party may assign and transfer all or any part of its rights and obligations under this Deed.

24.3 **Disclosure of Information**

The Secured Party may disclose to:

- 24.3.1 any of its professional advisers;
- 24.3.2 any person to (or through) whom the Secured Party assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Deed;
- 24.3.3 a Receiver, prospective Receiver or Administrator;
- 24.3.4 any person (together with professional advisers) who may have an interest in the benefits arising under this Deed and/or the Side Deed; or
- 24.3.5 any person to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about each Chargor, the Side Deed or this Deed as the Secured Party shall consider appropriate.

24.4 **Remedies and Waivers Cumulative**

Save as expressly provided in this Deed, no failure to exercise, or delay in exercising any right, power, privilege or remedy under this Deed, on the part of the Secured Party shall operate as a waiver, nor shall any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise, or the exercise of any other right, power, privilege or remedy. No waiver by the Secured Party shall be effective unless it is in writing. The rights and remedies of the Secured Party provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

24.5 **Set-Off**

The Secured Party may set off any matured obligation due from a Chargor under this Deed against any matured obligation owed by the Secured Party to a Chargor, regardless of the place of payment, booking branch or currency of either obligation and apply any credit balance to which a Chargor is entitled on any account with the Secured Party in accordance with Clause 18 (*Application of Monies Received under this Deed*). If the obligations are in different currencies, the Secured Party may, at the cost of the Chargor, convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

24.6 **Partial Invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant 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.

24.7 **Continuing Security**

- 24.7.1 This Deed shall be a continuing security and shall not be discharged by any intermediate payment or satisfaction of the whole or any part of the Secured Liabilities.
- 24.7.2 If any purported obligation or liability of the Principal Debtors to the Secured Party which, if valid, would have been the subject of any obligation or charge created by this Deed is or becomes unenforceable, invalid or illegal on any ground whatsoever whether or not known to the Secured Party, the Chargors shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and each Chargor was the principal debtor in respect thereof. The Chargors hereby agree to keep the Secured Party fully indemnified against all damages, losses, costs and expenses arising from any failure of a Principal Debtor to carry out any such purported obligation or liability.
- 24.7.3 The obligations of the Chargors under this Deed will not be affected by an act, omission, matter or thing which, but for this Clause 24.7.3, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to the Secured Party) including:
- (A) any time, waiver or consent granted to, or composition with, any Principal Debtor or other person;
 - (B) the release of any Principal Debtor or any other person under the terms of any composition or arrangement with any creditor of any 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 Chargors, any Principal Debtor 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, authority or legal personality of or dissolution or change in the members or status of a Principal Debtor or any other person;
 - (E) any amendment (however fundamental) or replacement of the Side Deed or the Origin Shareholder Loan or any other document or security;

- (F) any unenforceability, illegality or invalidity of any obligation of any person under the Side Deed or the Origin Shareholder Loan or any other document or security; or
- (G) any insolvency or similar proceedings.

24.7.4 The Chargors waive any right it may have of first requiring the Secured Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from any Chargor under this Deed.

24.8 **Deferral of rights**

24.8.1 Until the Security Period has ended, the Secured Party (or any trustee or agent on its behalf) may refrain from applying or enforcing any other moneys, security or rights held or received by it 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 Chargors shall not be entitled to the benefit of the same.

24.8.2 Unless the Secured Party otherwise directs, the Chargors will not exercise any rights which it may have by reason of performance by it of its obligations under this Deed or enforcement of the Security created by this Deed:

- (A) to be indemnified by a Principal Debtor (including any rights it may have by way of subrogation);
- (B) to claim any contribution from any guarantor of a Principal Debtor obligations under the Side Deed or the Origin Shareholder Loan;
- (C) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Party under the Side Deed or the Origin Shareholder Loan or of any other guarantee or security taken pursuant to, or in connection with, the Side Deed or the Origin Shareholder Loan;
- (D) to claim, rank, prove or vote as a creditor of a Principal Debtor or its estate in competition with the Secured Party; and/or
- (E) to exercise or claim any right of set off or counterclaim against a Principal Debtor or any other Chargor or any other person liable for any of the Secured Liabilities or claim or prove in competition with the Secured Party in the bankruptcy, administration, liquidation or any other analogous procedure of a Principal Debtor or any other Chargor or any other person liable or have the benefit of, or share in, any payment from or composition with, a Principal Debtor or any Chargor or any other person liable or any other Security now or hereafter held by the Secured Party for any of the Secured Liabilities or for the obligations or liabilities of any other person liable but so that, if so directed by the Secured Party, it will prove for the whole or any part of its claim in the liquidation, administration, bankruptcy or any other analogous procedure of any Principal Debtor or any Chargor on terms that the benefit of such proof and of all of the money received by it in respect thereof shall be held on trust for the Secured Party and applied in or towards discharge of the Secured Liabilities in such manner as the Secured Party shall deem appropriate.

24.8.3 If a Chargor fails to claim or prove in the liquidation, administration, bankruptcy or any other analogous procedure of a Principal Debtor or any Chargor promptly upon being directed to do so by the Security Agent as contemplated by Clause 24.8.2(E):

- (A) the Secured Party, and is irrevocably authorised on behalf of the Chargor to, file any claims or proofs in such liquidation, administration, bankruptcy or other analogous procedure on its behalf; and
- (B) the trustee in bankruptcy, liquidator, assignee or other person distributing the assets of the Principal Debtor or any Chargor or their proceeds is directed to pay distributions on the obligations or liabilities of the Principal Debtor or such Chargor direct to the Secured Party until the Secured Liabilities have been irrevocably paid in full.

24.8.4 Each Chargor shall hold on trust for and immediately pay or transfer to the Secured Party any payment or distribution or benefit of security received by it contrary to this Clause 24.8 (*Deferral of rights*) or in accordance with any directions given by the Secured Party under Clause 24.8.2.

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

24.9 **Additional Security**

This Deed shall be in addition to and not be affected by any other security or guarantee now or hereafter held by the Secured Party for all or any part of the Secured Liabilities nor shall any such other security or guarantee of liability to the Secured Party of or by any person not a party to this Deed be in any way impaired or discharged by this Deed nor shall this Deed in any way impair or discharge such other security or guarantee.

24.10 **Variation of Security**

This Deed shall not in any way be affected or prejudiced by the Secured Party at any time dealing with, exchanging, releasing, varying or abstaining from perfecting or enforcing any security or guarantee or any rights which the Secured Party may at any time have or giving time for payment or granting any indulgence or compounding with any person whatsoever.

24.11 **Enforcement of Other Security**

The Secured Party shall not be obliged to enforce any other Security it may hold for the Secured Liabilities before enforcing any of its rights under this Deed.

24.12 **Redemption of Prior Incumbrances**

The Secured Party may redeem or take a transfer of any prior Security over the Charged Assets and may agree the accounts of prior incumbrancers. An agreed account shall be conclusive and binding on the Chargor. Any amount paid in connection with such redemption or transfer (including expenses) shall be paid on demand by a Chargor to the Secured Party and until such payment shall form part of the Secured Liabilities.

24.13 **Stamp Taxes**

Each Chargor covenants to pay to the Secured Party and any Receiver, attorney, manager, agent or other person appointed by the Secured Party under this Deed promptly on demand a sum equal to any liability which the Secured Party, that Receiver, attorney, manager, agent or other person appointed by the Secured Party under this Deed incurs in respect of stamp duty, registration fees and other taxes which is or becomes payable in connection with the entry into, performance or enforcement of this Deed.

24.14 **Costs and Expenses**

Each Chargor shall promptly on demand reimburse the Secured Party or any Receiver, attorney, manager, agent or other person appointed by the Secured Party under this Deed for all costs and expenses (including legal fees) incurred by the Secured Party, that Receiver, attorney, manager, agent or other person (on a full indemnity basis together with any applicable VAT) in connection with the exercise, preservation and/or enforcement or attempted enforcement of the security created by or contemplated by this Deed.

24.15 **Further advances**

24.15.1 The Secured Party must perform its obligations under the Side Deed and the Origin Shareholder Loan (including any obligation to make available further advances).

24.15.2 Each Chargor hereby consents to the Secured Party making an application to the Chief Land Registrar on Form CH2 for the registration against the registered titles (if any) specified in Part A of Schedule 1 (*Real Property*) (and any unregistered properties subject to compulsory first registration at the date of this Deed and any other Real Property from time to time including a registered title) of the obligation to make further advances.

25. **CALCULATIONS AND CERTIFICATES**

25.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Secured Party in connection with this Deed are prima facie evidence of the matters to which they relate.

25.2 **Certificates and Determinations**

Any certification or determination by the Secured Party of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

25.3 **Day Count Convention**

Any interest accruing under this Deed will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

26. **NOTICES**

26.1 **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 post or email.

26.2 **Addresses**

The address and fax number (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 that identified with its name on the signature pages to this Deed, or any substitute address, fax number or department or officer as a Chargor may notify to the Secured Party by not less than five Business Days' notice.

26.3 **Delivery**

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

- (A) if by way of email, on receipt by the sender of an electronic mail acknowledgement from the recipient's information system showing that the notice has been delivered to the relevant electronic mail address; or
- (B) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 26.2 (*Addresses*), if addressed to that department or officer.

26.3.2 Any communication or document to be made or delivered to the Secured Party will be effective only when actually received by the Secured Party and then only if

it is expressly marked for the attention of the department or officer identified with the Secured Party's signature below (or any substitute department or officer as the Secured Party shall specify for this purpose).

26.4 Electronic communication

- 26.4.1 Any communication to be made between the Parties to this Deed under or in connection with this Deed may be made by electronic mail or other electronic means to the extent that the Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if the Parties:
- (A) 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
 - (B) 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.
- 26.4.2 Any electronic communication made between the Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Chargor to the Secured Party only if it is addressed in such a manner as the Secured Party shall specify for this purpose.
- 26.4.3 Any electronic communication which becomes effective, in accordance with Clause 26.4.2, after 5pm in the place of receipt shall be deemed only to become effective on the following day.

26.5 English language

- 26.5.1 Any notice given under or in connection with this Deed must be in English.
- 26.5.2 All other documents provided under or in connection with this Deed must be:
- (A) in English; or
 - (B) if not in English, and if so required by the Secured Party, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

27. 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 the Deed.

28. LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

29. ENFORCEMENT

29.1 Jurisdiction of English courts

- 29.1.1 The courts of England have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual dispute or claim) (a "**Dispute**").
- 29.1.2 Subject to Clause 29.1.3 below, the parties to this Deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Chargor will:
- (A) argue to the contrary; or

- (B) initiate or pursue any proceedings relating to a Dispute in any jurisdiction other than England.

29.1.3 This Clause 29.1.1 is for the benefit of the Secured Party only. As a result, the Secured Party shall not be prevented from initiating or pursuing proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Party may initiate or pursue:

- (A) proceedings in any other court; and
 - (B) concurrent proceedings in any number of jurisdictions,
- irrespective of whether proceedings have already been initiated by any party in England. Each Chargor irrevocably waives any right that it may have to claim that the action has been brought in an inconvenient forum.

29.2 **Service of Process**

The Secured Party confirms the appointment of Law Debenture Corporate Services Limited of Fifth Floor, 100 Wood Street, London EC2V 7EX as its agent for service of process in relation to any proceedings before the English courts in connection with this Deed.

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

SCHEDULE 1

PART A

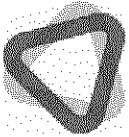
REAL PROPERTY

None

PART B

INTELLECTUAL PROPERTY

Trade Mark	Regn. (Appln.) Number	Class(es)	Owner
Electric Juice	3389132	35	Octopus Energy Limited
 (Series of 2)	3433351	1, 4, 7, 9, 35, 36, 37, 39, 40, 42	Octopus Energy Holdings Limited
 (Series of 2)	3433382	1, 4, 9, 35, 36, 37, 39, 40, 42	Octopus Energy Holdings Limited
KRAKEN Kraken (Series of 2)	3433397	4, 7, 9, 16, 35, 36, 37, 38, 39, 42, 45	Octopus Energy Holdings Limited
KRAKEN TECHNOLOGIES  (Series of 2)	3433406	4, 7, 9, 16, 35, 36, 37, 38, 39, 42, 45	Octopus Energy Holdings Limited
Because energy shouldn't cost the Earth. 	3443856	1, 4, 7, 9, 35, 36, 37, 39, 40, 42	Octopus Energy Holdings Limited

Because energy shouldn't cost The Earth.  (Series of 2)			
myelectriccar.shop	3243711	12	Octopus Electric Vehicles Limited
AFFECT ENERGY	3144008	4, 35, 37, 39, 40, 42	Affect Energy Limited
	3144010	4, 35, 37, 39, 40, 42	Affect Energy Limited

PART C

ASSIGNED AGREEMENTS

None

PART D

SHARES

Octopus Energy Limited
 Octopus Electric Vehicles Limited
 Octopus Energy Services Limited
 Kraken Technologies Limited
 Affect Energy Ltd
 Leyland Metering Services Limited

SCHEDULE 2
FORM OF NOTICE

To: **[debtor (etc)]**

[Date]

Dear Sirs,

**Security Agreement dated [] between [the Chargor]
and [the Secured Party] (the "Security Agreement")**

We hereby give you notice that under the Security Agreement we have [charged (by way of first fixed charge)] **[OR assigned]** in favour of [the Secured Party] (the "**Secured Party**") all of our rights to and title and interest from time to time in the property described in the Annexure to this Notice (the "**[Assigned]/[Charged] Property**").

We hereby irrevocably instruct and authorise you to:

- (A) disclose to the Secured Party such information regarding the **[Assigned]/[Charged] Property** as it may from time to time request;
- (B) send copies of all notices relating to the **[Assigned]/[Charged] Property** to the Secured Party;
- (C) comply with the terms of any written notice or instruction relating to the **[Assigned]/[Charged] Property** received by you from the Secured Party; and
- (D) make all payments due to us in respect of the **[Assigned]/[Charged] Property** to the Secured Party at [details] unless and until the Secured Party notifies you otherwise.

Your acknowledgement will be deemed to confirm in favour of the Secured Party that you:

- (1) [have not received notice of the interest of any third party relating to the **[Assigned]/[Charged] Property**];
- (2) are not aware of any dispute between ourselves and yourselves relating to the **[Assigned]/[Charged] Property**; and
- (3) have neither claimed nor exercised, nor will claim or exercise, any security interest, set-off, counter-claim or other right in respect of the **[Assigned]/[Charged] Property**.

We acknowledge that you may comply with the instructions in this letter without any further permission from us.

The instructions in this letter may not be revoked or amended without the prior written consent of the Secured Party.

This letter and any non-contractual obligations arising out of or in connection with this letter are governed by English law.

Please confirm your agreement to the above by sending the attached acknowledgement to the Secured Party at [insert address], Attention: [] with a copy to ourselves.

Yours faithfully,

.....

(Authorised signatory)
for and on behalf of
[the Chargor]

ANNEX

[On the letterhead of the debtor]

[On copy of Notice]

To: [the Secured Party]

Attention: []

Copy: [the Chargor]

[Date]

Dear Sirs,

**Security Agreement dated [] between [the Chargor]
and [the Secured Party] (the "Security Agreement")**

[Description of **[Assigned]/[Charged]** Property]

We acknowledge receipt of the Notice of **[Assignment]/[Charge]** dated []
relating to the Security Agreement, of which this is a copy.

Yours faithfully,

.....
duly authorised signatory for and on
behalf of **[debtor]**

SCHEDULE 3
THE CHARGORS

Name	Company Number
Octopus Energy Holdings Limited	09718624
Octopus Energy Limited	09263424
Affect Energy Ltd	09263368
Octopus Electric Vehicles Limited	10754317
Octopus Energy Services Limited	10434397
Kraken Technologies Limited	12014731

EXECUTED AS A DEED by
OCTOPUS ENERGY HOLDINGS LIMITED
acting by

)
)
)
)
.....
Director

Name:

STUART JACKSON

In the presence of:

Signature of witness:

.....
Name of witness:

KEITH JACKSON

Address of witness:

Notice details for OCTOPUS ENERGY HOLDINGS LIMITED for Clause 26

Address of company:

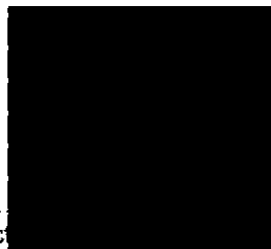
33 Holborn,
London,
EC1N 2HT

Email: notices@octoenergy.com

Attention: Legal Department
Helen Ansell

EXECUTED AS A DEED by
OCTOPUS ENERGY LIMITED
acting by

)
)
)
)



Direct

Name: *STUART JACKSON*

In the presence of:

Signature of witness:

.....
Name: 

KEITH JACKSON

Address of witness:



Notice details for OCTOPUS ENERGY LIMITED for Clause 26

Address of company:

33 Holborn,
London,
EC1N 2HT

Email: notices@octoenergy.com

Attention: Legal Department
Helen Ansell

EXECUTED AS A DEED by
AFFECT ENERGY LTD
acting by

)
)
)
)
.....

Director

Name: STUART JACKSON

In the presence of:
Signature of witness:

.....
Name: KETIA JACKSON
Address of witness:

[Redacted address]

Notice details for AFFECT ENERGY LTD for Clause 26

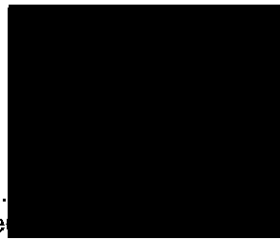
Address of company:
33 Holborn,
London,
EC1N 2HT

Email: notices@octoenergy.com

Attention: Legal Department
Helen Ansell

EXECUTED AS A DEED by
OCTOPUS ELECTRIC VEHICLES LIMITED
acting by

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)
)
)



.....
Dire

Name: *STUART JACKSON*

In the presence of:
Signature of witness:

.....
Name: *KEITH JACKSON*
Address of witness:

[Redacted address details]

Notice details for OCTOPUS ELECTRIC VEHICLES LIMITED for Clause 26

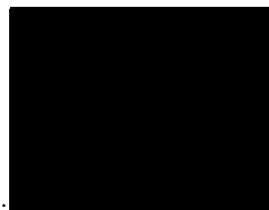
Address of company:
33 Holborn,
London,
EC1N 2HT

Email: notices@octoenergy.com

Attention: Legal Department
Helen Ansell

EXECUTED AS A DEED by
OCTOPUS ENERGY SERVICES LIMITED
acting by

)
)
)
)



Director

Name: *STUART JACKSON*

In the presence of:

Signature of witness:

Name

Address



KEITH JACKSON



Notice details for OCTOPUS ENERGY SERVICES LIMITED for Clause 26

Address of company:

33 Holborn,
London,
EC1N 2HT

Email: notices@octoenergy.com

Attention: Legal Department
Helen Ansell

EXECUTED AS A DEED by
KRAKEN TECHNOLOGIES LIMITED
acting by

)
)
)
)



.....
Dire

Name: *STUART JACKSON*

In the presence of:

Signature of witness:

.....
Name

KETHA JACKSON

Address or witness:

[Redacted address]

Notice details for KRAKEN TECHNOLOGIES LIMITED for Clause 26

Address of company:

33 Holborn,
London,
EC1N 2HT

Email: notices@octoenergy.com

Attention: Legal Department
Helen Ansell

Executed and delivered as a deed for and on
behalf of **ORIGIN ENERGY LIMITED** by its
lawfully appointed Attorney

)
)
)

Name: Frank Gerard Calabria
Title: Chief Executive Officer

In the presence of:

Name of witness: David Michael Ryan
Address of witness: Sydney, NSW, Australia

Notice details for ORIGIN ENERGY LIMITED for Clause 26

Address of company:

Level 32, Tower 1
100 Barangaroo Ave
Barangaroo
New South Wales 2000
Australia

Attention: Jon Briskin, Executive General Manager, Retail

Email:

With copies to:

OriginTreasuryFunding@originenergy.com.au