

MR01
Particulars of a charge



Companies House



Go online to file this information
www.gov.uk/companieshouse

A fee is be payable with this form
Please see 'How to pay'

☒ **What this form is for**
You may use this form to register
a charge created or evidenced by
an instrument.

☐ **What this form is NOT for**
You may not use this form to
register a charge where
instrument. Use form M1

SATURDAY



A10

A8CJVPRT

24/08/2019

#304

COMPANIES HOUSE

This form **must** be delivered to the Registrar for registration within
21 days beginning with the day after the date of creation of the charge. If
delivered outside of the 21 days it will be rejected unless it is accompanied by a
court order extending the time for delivery.



You **must** enclose a certified copy of the instrument with this form. This will be
scanned and placed on the public record. **Do not send the original.**

1 Company details

Company number 1 1 3 4 2 8 3 3

Company name in full SSDC OPIUM POWER LIMITED

For official use

→ Filling in this form

Please complete in typescript or in
bold black capitals.

All fields are mandatory unless
specified or indicated by *

2 Charge creation date

Charge creation date d 1 d 5 m 0 m 8 y 2 y 0 y 1 y 9

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees
entitled to the charge.

Name SOUTH SOMERSET DISTRICT COUNCIL

Name

Name

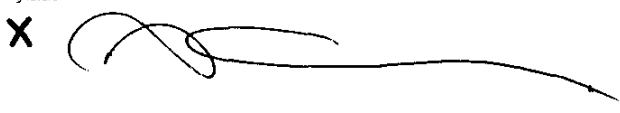
Name

If there are more than four names, please supply any four of these names then
tick the statement below.

☐ I confirm that there are more than four persons, security agents or
trustees entitled to the charge.

MR01

Particulars of a charge

4	Brief description Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument. Brief description FIDEOAK MILL. FIDEOAK, BISHOPS HULL, TAUNTON, SOMERSET, TA4 1AF TITLE NUMBER ST346758 & ST348539	Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument". Please limit the description to the available space.
5	Other charge or fixed security Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
6	Floating charge Is the instrument expressed to contain a floating charge? Please tick the appropriate box. <input type="checkbox"/> Yes Continue <input checked="" type="checkbox"/> No Go to Section 7 Is the floating charge expressed to cover all the property and undertaking of the company? <input type="checkbox"/> Yes	
7	Negative Pledge Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
8	Trustee statement ^① You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge. <input type="checkbox"/>	① This statement may be filed after the registration of the charge (use form MR06).
9	Signature Please sign the form here. Signature  This form must be signed by a person with an interest in the charge.	

MR01

Particulars of a charge



Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name R. SALTONSTALL

Company name SOUTH SOMERSET

DISTRICT COUNCIL

Address THE COUNCIL OFFICES

BRYMPTON WAY

Post town YEOVIL

County/Region SOMERSET

Postcode B A 2 0 2 H T

Country

DX

Telephone 01935 462116



Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have included a certified copy of the instrument with this form.
- ☐ You have entered the date on which the charge was created.
- ☐ You have shown the names of persons entitled to the charge.
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8.
- ☐ You have given a description in Section 4, if appropriate.
- ☐ You have signed the form.
- ☐ You have enclosed the correct fee.
- ☐ Please do not send the original instrument; it must be a certified copy.



Important information

Please note that all information on this form will appear on the public record.



How to pay

A fee of £23 is payable to Companies House in respect of each mortgage or charge filed on paper.

Make cheques or postal orders payable to 'Companies House.'



Where to send

You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below:

For companies registered in England and Wales:

The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ.
DX 33050 Cardiff.

For companies registered in Scotland:

The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post).

For companies registered in Northern Ireland:

The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG.
DX 481 N.R. Belfast 1.



Further information

For further information, please see the guidance notes on the website at www.gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.gov.uk/companieshouse



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 11342833

Charge code: 1134 2833 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th August 2019 and created by SSDC OPIUM POWER LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th August 2019.

f

Given at Companies House, Cardiff on 4th September 2019



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

Dated 15th August 2019

Legal Charge

between

SSDC Opium Power Limited

and

South Somerset District Council

I HEREBY CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL



SOUTH SOMERSET DISTRICT COUNCIL

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This agreement is dated 15th day of August 2019.

Parties

- (1) **SSDC OPIUM POWER LIMITED** incorporated and registered in England and Wales with company number 11342833 whose registered office is at Maltravers House, Petters Way, Yeovil, BA20 1SH, United Kingdom (**Borrower**)
- (2) **SOUTH SOMERSET DISTRICT COUNCIL** having its principal place of business at The Council Offices, Brympton Way, Yeovil, Somerset, BA20 2HT (**Lender**)

Background

- (A) The Lender has agreed, under the Facility Agreement, to provide the Borrower with a £2,500,000 (Two million five hundred thousand pounds) loan facility on a secured basis.
- (B) The Borrower owns the Property.
- (C) Under this deed, the Borrower provides security to the Lender for the loan facilities made available under the Facility Agreement.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

The following definitions apply in this deed:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charged Property: all the assets, property and undertaking for the time being of the Borrower, which are, or are intended to be, subject to any Security created by this deed (and references to the Charged Property shall include references to any part of it).

Delegate: any person appointed by the Lender or any Receiver under clause 14 and any person appointed as attorney of the Lender, Receiver or Delegate.

Environment: the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

Environmental Law: all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes in so far as they relate to or apply to the Environment.

Environmental Licence: any authorisation, permit or licence necessary under Environmental Law in respect of any of the Charged Property.

Event of Default: has the meaning given to that expression in the Facility Agreement.

Facility Agreement: the facility agreement having the same date as this deed between the Borrower and the Lender for the provision of the loan facilities secured by this deed.

Insurance Policy: each contract or policy of insurance effected or maintained by the Borrower from time to time in respect of the Property, together with all moneys paid or payable in respect of that policy.

LPA 1925: the Law of Property Act 1925.

Project: the installation and operation of a battery storage facility at the Property.

Project Income: all amounts paid or payable to or for the account of the Borrower in connection with the operation of the Project at the Property.

Property: the freehold property at Fideoak Mill, Fideoak, Bishops Hull, Taunton TA4 1AF part of which is registered at HM Land Registry with absolute title under title number ST346758 and the remainder of which is registered at HM Land Registry with possessory title under title number ST348539.

Receiver: a receiver or a receiver and manager of any or all of the Charged Property.

Secured Liabilities: all present and future obligations and liabilities of the Borrower to the Lender, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Facility Agreement or this deed (including, without limitation, those arising under clause 26.3.2), together with all interest (including, without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

Security: any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

Security Period: the period starting on the date of this deed and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 Interpretation

In this deed:

- 1.2.1 clause headings shall not affect the interpretation of this deed;
- 1.2.2 a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality);
- 1.2.3 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.4 unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.2.5 a reference to a party shall include that party's successors, permitted assigns and permitted transferees and this deed shall be binding on, and enure to the benefit of, the parties to this deed and their respective personal representatives, successors, permitted assigns and permitted transferees;

- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- 1.2.7 a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.8 a reference to **writing** or **written** includes fax but not email;
- 1.2.9 an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.2.10 a reference to **this deed** (or any provision of it) or to any other agreement or document referred to in this deed is a reference to this deed, that provision or such other agreement or document as amended (in each case, other than in breach of the provisions of this deed) from time to time;
- 1.2.11 unless the context otherwise requires, a reference to a clause is to a clause of this deed;
- 1.2.12 any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.13 a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amend** and **amended** shall be construed accordingly);
- 1.2.14 a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- 1.2.15 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- 1.2.16 a reference to **continuing** in relation to an Event of Default means an Event of Default that has not been remedied or waived;
- 1.2.17 a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the absolute discretion of the person making it; and
- 1.2.18 a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

1.3 **Clawback**

If the Lender considers that an amount paid by the Borrower in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.

1.4 **Nature of security over real property**

A reference in this deed to a **charge or mortgage of or over the Property** includes:

- 1.4.1 all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) and fixed plant and machinery that are situated on or form part of the Property at any time;

- 1.4.2 the proceeds of the sale of any part of the Property and any other monies paid or payable in respect of or in connection with the Property;
- 1.4.3 the benefit of any covenants for title given, or entered into, by any predecessor in title of the Borrower in respect of the Property and any monies paid or payable in respect of those covenants; and
- 1.4.4 all rights under any licence, agreement for sale or agreement for lease in respect of the Property.

1.5 Law of Property (Miscellaneous Provisions) Act 1989

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Facility Agreement and of any side letters between any parties in relation to the Facility Agreement are incorporated into this deed.

1.6 Perpetuity period

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

1.7 Schedules

The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.

2 Covenant to pay

The Borrower shall, on demand, pay to the Lender and discharge the Secured Liabilities when they become due.

3 Grant of security

3.1 Legal mortgage and fixed charges

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee charges to the Lender:

- 3.1.1 by way of a second legal mortgage, the Property; and
- 3.1.2 by way of a second fixed charge:
 - (a) all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy;
 - (b) the benefit of all other contracts, guarantees, appointments and warranties relating to the Charged Property and other documents to which the Borrower is a party or which are in its favour or of which it has the benefit relating to any letting, development, sale, purchase, use or the operation of the Charged Property or otherwise relating to the Charged Property (including, in each case, but without limitation, the right to demand and receive all monies whatever payable to or for its benefit under or arising from any of them, all remedies provided for in any of them or available at law or in equity in relation to any of them, the right to compel performance of any of them and all other rights, interests and benefits whatever accruing to or for its benefit arising from any of them); and

- (c) all licences, consents and authorisations (statutory or otherwise) held or required in connection with its business carried on at the Property or the use of any Charged Property, and all rights in connection with them.

3.2 Assignment

As a continuing security for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee assigns to the Lender absolutely, subject to a proviso for reassignment on irrevocable discharge in full of the Secured Liabilities all its rights in each Insurance Policy, including all claims, the proceeds of all claims and all returns of premiums in connection with each Insurance Policy provided that nothing in this clause 3.2 shall constitute the Lender as mortgagee in possession.

4 Perfection of security

4.1 Registration of legal mortgage at the Land Registry

The Borrower consents to an application being made by the Lender to the Land Registrar for the following restriction in Form P to be registered against its title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate, is to be registered without a written consent signed by the proprietor for the time being of the charge dated [] in favour of South Somerset District Council referred to in the charges register or their conveyancer."

4.2 Further advances

The Lender covenants with the Borrower that it shall perform its obligations to make advances under the Facility Agreement (including any obligation to make available further advances).

5 Liability of the Borrower

5.1 Liability not discharged

The Borrower's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- 5.1.1 any security, guarantee, indemnity, remedy or other right held by, or available to, the Lender that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- 5.1.2 the Lender renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- 5.1.3 any other act or omission that, but for this clause 5.1, might have discharged, or otherwise prejudiced or affected, the liability of the Borrower.

5.2 Immediate recourse

The Borrower waives any right it may have to require the Lender to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Borrower.

6 Representations and warranties

6.1 Times for making representations and warranties

The Borrower makes the representations and warranties set out in this clause 6 to the Lender on the date of this deed.

6.2 Ownership of Charged Property

The Borrower is the sole legal and beneficial owner of the Charged Property and has good and marketable title to the Property.

6.3 No Security

The Charged Property is free from any Security other than a first legal charge in favour of the Lender dated 17th May 2018 and the Security created by this deed.

6.4 No adverse claims

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

6.5 No adverse covenants

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

6.6 No breach of laws

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

6.7 No interference in enjoyment

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

6.8 No overriding interests

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

6.9 No prohibitions or breaches

There is no prohibition on the Borrower assigning its rights in any of the Charged Property referred to in clause 3.2 and the entry into of this deed by the Borrower does not and will not constitute a breach of any policy, agreement, document, instrument or obligation binding on the Borrower or its assets.

6.10 Environmental compliance

The Borrower has, at all times, complied in all respects with all applicable Environmental Law and Environmental Licences.

6.11 Avoidance of security

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

6.12 Enforceable security

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

7 General covenants

7.1 Negative pledge and disposal restrictions

The Borrower shall not at any time, except with the prior written consent of the Lender:

- 7.1.1 create, purport to create or permit to subsist any Security on, or in relation to, any Charged Property other than any Security created by this deed;
- 7.1.2 sell, assign, transfer, part with possession of or otherwise dispose of in any manner (or purport to do so) all or any part of, or any interest in, the Charged Property; or
- 7.1.3 create or grant (or purport to create or grant) any interest in the Charged Property in favour of a third party.

7.2 Preservation of Charged Property

The Borrower shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Lender or materially diminish the value of any of the Charged Property or the effectiveness of the security created by this deed.

7.3 Compliance with laws and regulations

- 7.3.1 The Borrower shall not, without the Lender's prior written consent, use or permit the Charged Property to be used in any way contrary to law.
- 7.3.2 The Borrower shall:
 - (a) comply with the requirements of any law or regulation relating to or affecting the Charged Property or the use of it or any part of it;
 - (b) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Charged Property or its use or that are necessary to preserve, maintain or renew any Charged Property; and
 - (c) promptly effect any maintenance, modifications, alterations or repairs to be effected on or in connection with the Charged Property that are required to be made by it under any law or regulation.

7.4 Enforcement of rights

The Borrower shall use its best endeavours to:

- 7.4.1 procure the prompt observance and performance by the relevant counterparty to any agreement or arrangement with the Borrower and forming part of the Charged Property of the covenants and other obligations imposed on such counterparty; and
- 7.4.2 enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Property that the Lender may require from time to time.

7.5 Notice of misrepresentations and breaches

The Borrower shall, promptly on becoming aware of any of the same, give the Lender notice in writing of:

- 7.5.1 any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- 7.5.2 any breach of any covenant set out in this deed.

7.6 Title documents

The Borrower shall, on the execution of this deed, deposit with the Lender and the Lender shall, for the duration of this deed, be entitled to hold:

- 7.6.1 all deeds and documents of title relating to the Charged Property that are in the possession or control of the Borrower (and if these are not within the possession and/or control of the Borrower, the Borrower undertakes to obtain possession of all these deeds and documents of title); and
- 7.6.2 each Insurance Policy.

7.7 Notices to be given by the Borrower

- 7.7.1 The Borrower shall immediately on the execution of this deed give notice to the relevant insurers of the assignment of the Borrower's rights and interest in and under each Insurance Policy (including the proceeds of any claims under that Insurance Policy) under clause 0 and procure that each addressee of such notice promptly provides an acknowledgement of that notice to the Lender.
- 7.7.2 The Borrower shall obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this clause 7.7.

8 Property covenants

8.1 Repair and maintenance

- 8.1.1 The Borrower shall keep all premises, and fixtures and fittings on the Property, in:
 - (a) good and substantial repair and condition and shall keep all premises adequately and properly painted and decorated and replace any fixtures and fittings which have become worn out or otherwise unfit for use with others of a like nature and equal value;
 - (b) such repair and condition as to enable the Project to be operated at the Property in accordance with all applicable laws and regulations.

8.2 No alterations

- 8.2.1 The Borrower shall not, without the prior written consent of the Lender:
 - (a) pull down or remove the whole or any part of any building container or other construction or installation on the Property nor permit the same to occur; or
 - (b) make or permit to be made any alterations to the Property or sever or remove or permit to be severed or removed any of its fixtures or fittings (except to make any necessary repairs or renew or replace the same in accordance with clause 8.1).

- 8.2.2 The Borrower shall promptly give notice to the Lender if the premises or fixtures or fittings forming part of the Property are destroyed or damaged.

8.3 Development restrictions

The Borrower shall not, without the prior written consent of the Lender:

- 8.3.1 make or, in so far as it is able, permit others to make any application for planning permission or development consent in respect of the Property; or
- 8.3.2 carry out or permit or suffer to be carried out on the Property any development (as defined in each of the Town and Country Planning Act 1990 and the Planning Act 2008) or change or permit or suffer to be changed the use of the Property.

8.4 Insurance

- 8.4.1 The Borrower shall insure and keep insured the Charged Property against:
- (a) loss or damage by fire or terrorist acts, including any third party liability arising from such acts;
 - (b) other risks, perils and contingencies that would be insured against by reasonably prudent persons carrying on the same class of business as the Borrower; and
 - (c) any other risk, perils and contingencies as the Lender may reasonably require.
- 8.4.2 Any such insurance must be with an insurance company or underwriters and on such terms as are reasonably acceptable to the Lender and must include property owners' public liability and third party liability insurance and be for not less than the replacement value of the relevant Charged Property (meaning in the case of any premises on the Property, the total cost of entirely rebuilding, reinstating or replacing the premises in the event of their being destroyed, together with architects', surveyors', engineers' and other professional fees and charges for shoring or propping up, demolition, site clearance and reinstatement with adequate allowance for inflation) and loss of income payable by the Project for a period of at least three years, including provision for increases in rent during the period of insurance.
- 8.4.3 The Borrower shall, if requested by the Lender, produce to the Lender each policy, certificate or cover note relating to any insurance required by clause 8.4.1.
- 8.4.4 The Borrower shall, if requested by the Lender, procure that a note of the Lender's interest is endorsed on each Insurance Policy (other than public liability and third party liability insurances) maintained by it or any person on its behalf in accordance with clause 8.4.1 but without the Lender having any liability for any premium in relation to those Insurance Policies unless it has expressly and specifically requested to be made liable in respect of any increase in premium or unpaid premium in respect of any Insurance Policy.
- 8.4.5 The Borrower shall ensure that each Insurance Policy:
- (a) contains a loss payee clause under which the Lender is named as first loss payee (other than in respect of any claim under any public liability and third party liability insurances);

- (b) contains terms ensuring that it cannot be avoided or vitiated as against the Lender by reason of the act or default of any other insured party or any misrepresentation, non-disclosure or failure to make a fair presentation of risk by any other insured party;
- (c) *contains a waiver of each insurer's rights of subrogation against the Borrower, the Lender and the tenants of the Property other than any such rights arising in connection with any fraud or criminal offence committed by any of those persons in respect of the Property or any Insurance Policy; and*
- (d) contains terms ensuring that no insurer can repudiate, rescind or cancel it, treat it as avoided in whole or in part nor treat it as expired due to non-payment of premium without giving at least 30 days' prior written notice to the Lender.

8.5 Insurance premiums

The Borrower shall:

- 8.5.1 promptly pay all premiums in respect of each Insurance Policy and do all other things necessary to keep that policy in full force and effect; and
- 8.5.2 (if the Lender so requires) give to the Lender copies of the receipts for all premiums *and other payments necessary for effecting and keeping up each Insurance Policy.*

8.6 No invalidation of insurance

The Borrower shall not do or omit to do, or permit to be done or omitted, any act or thing that may invalidate or otherwise prejudice any Insurance Policy.

8.7 Proceeds from Insurance Policies

All monies payable under any Insurance Policy at any time (whether or not the security constituted by this deed has become enforceable) shall:

- 8.7.1 immediately be paid to the Lender;
- 8.7.2 (if they are not paid directly to the Lender by the insurers) be held by the Borrower as trustee of the same for the benefit of the Lender (and the Borrower shall account for them to the Lender); and
- 8.7.3 at the option of the Lender, be applied in making good or recouping expenditure in respect of the loss or damage for which such monies are received or in or towards discharge or reduction of the Secured Liabilities.

8.8 Leases and licences affecting the Property

The Borrower shall not, without the prior written consent of the Lender (which consent, in the case of clause 8.8.4, is not to be unreasonably withheld or delayed in circumstances in which the Borrower may not unreasonably withhold or delay its consent):

- 8.8.1 grant any licence or tenancy affecting the whole or any part of the Property, or exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925 (or agree to grant any such licence or tenancy, or agree to exercise the statutory powers of leasing or of accepting surrenders under section 99 or section 100 of the LPA 1925);
- 8.8.2 in any other way dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property (or agree to

dispose of, accept the surrender of, surrender or create any legal or equitable estate or interest in the whole or any part of the Property);

8.8.3 let any person into occupation of or share occupation of the whole or any part of the Property; or

8.8.4 grant any consent or licence under any lease or licence affecting the Property.

8.9 **No restrictive obligations**

The Borrower shall not, without the prior written consent of the Lender, enter into any onerous or restrictive obligations affecting the whole or any part of the Property or create or permit to arise any overriding interest, easement or right whatever in or over the whole or any part of the Property.

8.10 **Proprietary rights**

The Borrower shall procure that no person shall become entitled to assert any proprietary or other like right or interest over the whole or any part of the Property, without the prior written consent of the Lender.

8.11 **Compliance with and enforcement of covenants**

The Borrower shall:

8.11.1 observe and perform all covenants, stipulations and conditions to which the Property, or the use of it, is or may be subject and (if the Lender so requires) produce to the Lender evidence sufficient to satisfy the Lender that those covenants, stipulations and conditions have been observed and performed; and

8.11.2 diligently enforce all covenants, stipulations and conditions benefiting the Property and shall not (and shall not agree to) waive, release or vary any of the same.

8.12 **Notices or claims relating to the Property**

8.12.1 The Borrower shall:

(a) give full particulars to the Lender of any notice, order, direction, designation, resolution, application, requirement or proposal given or made by any public or local body or authority (a **Notice**) that specifically applies to the Property, or to the locality in which it is situated, within seven days after becoming aware of the relevant Notice; and

(b) (if the Lender so requires) immediately, and at the cost of the Borrower, take all reasonable and necessary steps to comply with any Notice, and make, or join with the Lender in making, any objections or representations in respect of that Notice that the Lender thinks fit.

8.12.2 The Borrower shall give full particulars to the Lender of any claim, notice or other communication served on it in respect of any modification, suspension or revocation of any Environmental Licence or any alleged breach of any Environmental Law, in each case relating to the Property.

8.13 **Payment of outgoings**

The Borrower shall pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed on the Property or on its occupier.

8.14 Environment

The Borrower shall in respect of the Property:

8.14.1 comply with all the requirements of Environmental Law; and

8.14.2 obtain and comply with all Environmental Licences.

8.15 Conduct of business on Property

The Borrower shall carry on the business of the Project at the Property in accordance with the standards of good management from time to time current in such business.

8.16 Inspection

The Borrower shall permit the Lender, any Receiver and any person appointed by either of them to enter on and inspect the Property on reasonable prior notice.

8.17 VAT option to tax

The Borrower shall not, without the prior written consent of the Lender:

8.17.1 exercise any VAT option to tax in relation to the Property; or

8.17.2 revoke any VAT option to tax exercised, and disclosed to the Lender in writing, before the date of this deed.

9 Powers of the Lender

9.1 Power to remedy

9.1.1 The Lender shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Borrower of any of its obligations contained in this deed.

9.1.2 The Borrower irrevocably authorises the Lender and its agents to do all things that are necessary or desirable for that purpose.

9.1.3 Any monies expended by the Lender in remedying a breach by the Borrower of its obligations contained in this deed shall be reimbursed by the Borrower to the Lender on a full indemnity basis and shall carry interest in accordance with clause 16.1.

9.1.4 In remedying any breach in accordance with this clause 9.1, the Lender, its agents and their respective officers, agents and employees shall be entitled to enter onto the Property and to take any action as the Lender may reasonably consider necessary or desirable including, without limitation, carrying out any repairs, other works or development.

9.2 Exercise of rights

The rights of the Lender under clause 9.1 are without prejudice to any other rights of the Lender under this deed. The exercise of any rights of the Lender under this deed shall not make the Lender liable to account as a mortgagee in possession.

9.3 Lender has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this deed (either expressly or impliedly) or by law on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Lender in relation to any of the Charged

Property whether or not it has taken possession of any Charged Property and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

9.4 Indulgence

The Lender may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any person is jointly liable with the Borrower) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this deed or to the liability of the Borrower for the Secured Liabilities.

10 When security becomes enforceable

10.1 Security becomes enforceable on Event of Default

The security constituted by this deed shall become immediately enforceable if an Event of Default occurs.

10.2 Discretion

After the security constituted by this deed has become enforceable, the Lender may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Charged Property.

11 Enforcement of security

11.1 Enforcement powers

11.1.1 The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this deed, but the Lender shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable under clause 10.1.

11.1.2 Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

11.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Lender and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Borrower, to:

11.2.1 grant a lease or agreement for lease;

11.2.2 accept surrenders of leases; or

11.2.3 grant any option in respect of the whole or any part of the Property with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Borrower and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Lender or Receiver thinks fit, without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

11.3 Protection of third parties

No purchaser, mortgagee or other person dealing with the Lender, any Receiver or any Delegate shall be concerned to enquire:

11.3.1 whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;

11.3.2 whether any power the Lender, a Receiver or Delegate is purporting to exercise has become exercisable or is being properly exercised; or

11.3.3 how any money paid to the Lender, any Receiver or any Delegate is to be applied.

11.4 Privileges

Each Receiver and the Lender is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

11.5 No liability as mortgagee in possession

Neither the Lender nor any Receiver or Delegate shall be liable, by reason of entering into possession of the Charged Property or for any other reason, to account as mortgagee in possession in respect of all or any of the Charged Property, nor shall any of them be liable for any loss on realisation of, or for any act, default or admission for which a mortgagee in possession might be liable.

11.6 Relinquishing possession

If the Lender, any Receiver or Delegate enters into or takes possession of the Charged Property, it may at any time relinquish possession.

11.7 Conclusive discharge to purchasers

The receipt of the Lender or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Charged Property or in making any acquisition in the exercise of their respective powers, the Lender, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it thinks fit.

12 Receivers

12.1 Appointment

At any time after the security constituted by this deed has become enforceable, or at the request of the Borrower, the Lender may, without further notice, appoint by way of deed, or otherwise in writing, any one or more person or persons to be a Receiver of all or any part of the Charged Property.

12.2 Removal

The Lender may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

12.3 Remuneration

The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925 and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

12.4 Power of appointment additional to statutory powers

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Lender under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

12.5 Power of appointment exercisable despite prior appointments

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Lender despite any prior appointment in respect of all or any part of the Charged Property.

12.6 Agent of the Borrower

Any Receiver appointed by the Lender under this deed shall be the agent of the Borrower and the Borrower shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Borrower goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Lender.

13 Powers of Receiver

13.1 Powers additional to statutory powers

13.1.1 Any Receiver appointed by the Lender under this deed shall, in addition to the powers conferred on him/her by statute, have the rights, powers and discretions set out in clause 13.2 to clause 13.20.

13.1.2 If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him/her states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.

13.1.3 Any exercise by a Receiver of any of the powers given by clause 13 may be on behalf of the Borrower, the directors of the Borrower or himself/herself.

13.2 Repair and develop the Property

A Receiver may undertake or complete any works of repair, alteration, building or development on the Property and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

13.3 Grant or accept surrenders of leases

A Receiver may grant, or accept, surrenders of any leases or tenancies affecting the Property on any terms and subject to any conditions that he/she thinks fit.

13.4 Employ personnel and advisers

A Receiver may provide services and employ, or engage, any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms and subject to any conditions that he/she thinks fit. A Receiver may discharge any such person or any such person appointed by the Borrower.

13.5 Make and revoke VAT options to tax

A Receiver may make, exercise or revoke any VAT option to tax as he/she thinks fit.

13.6 Charge for remuneration

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him/her) that the Lender may prescribe or agree with him/her.

13.7 Possession

A Receiver may take immediate possession of, get in and realise any of the Charged Property.

13.8 Manage or reconstruct the Borrower's business

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Borrower carried out at the Property.

13.9 Dispose of Charged Property

A Receiver may grant options and licences over all or any part of the Charged Property, grant any other interest or right over, sell, assign or lease (or concur in granting options and licences over all or any part of the Charged Property, granting any other interest or right over, selling, assigning or leasing) all or any of the Charged Property in respect of which he/she is appointed for such consideration and in such manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions that he/she thinks fit. A Receiver may promote, or concur in promoting, a company to purchase the Charged Property to be disposed of by him/her.

13.10 Sever fixtures and fittings

A Receiver may sever and sell separately any fixtures or fittings from the Property without the consent of the Borrower.

13.11 Give valid receipts

A Receiver may give a valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Charged Property.

13.12 Make settlements

A Receiver may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person who claims to be a creditor of the Borrower or relating in any way to any of the Charged Property.

13.13 Bring legal action

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Charged Property that he thinks fit.

13.14 Insure

A Receiver may, if he thinks fit, but without prejudice to the indemnity in clause 16.2, effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Borrower under this deed.

13.15 Powers under LPA 1925

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925 and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

13.16 Borrow

A Receiver may, for any of the purposes authorised by this clause 13, raise money by borrowing from the Lender (or from any other person) either unsecured or on the security of all or any of the Charged Property in respect of which he is appointed on any terms that he thinks fit (including, if the Lender consents, terms under which that Security ranks in priority to this deed).

13.17 Redeem prior Security

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Borrower, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

13.18 Delegation

A Receiver may delegate his/her powers in accordance with this deed.

13.19 Absolute beneficial owner

A Receiver may, in relation to any of the Charged Property, exercise all powers, authorisations and rights he/she would be capable of exercising as, and do all those acts and things, an absolute beneficial owner could exercise or do in the ownership and management of all or any part of the Charged Property.

13.20 Incidental powers

A Receiver may do any other acts and things that he:

13.20.1 may consider desirable or necessary for realising any of the Charged Property;

13.20.2 may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; or

13.20.3 lawfully may or can do as agent for the Borrower.

14 Delegation

14.1 Delegation

The Lender or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under clause 18.1).

14.2 Terms

The Lender and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

14.3 Liability

Neither the Lender nor any Receiver shall be in any way liable or responsible to the Borrower for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

15 Application of proceeds

15.1 Order of application of proceeds

All monies received or recovered by the Lender, a Receiver or a Delegate under this deed or in connection with the realisation or enforcement of all or part of the security constituted by this deed (other than sums received under any Insurance Policy), shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority (but without prejudice to the Lender's right to recover any shortfall from the Borrower):

15.1.1 in or towards payment of all costs, liabilities, charges and expenses incurred by or on behalf of the Lender (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed and of all remuneration due to any Receiver under or in connection with this deed;

15.1.2 in or towards payment of the Secured Liabilities in any order and manner that the Lender determines; and

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

15.2 Appropriation

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

15.3 Suspense account

All monies received by the Lender, a Receiver or a Delegate under this deed (other than sums received under any Insurance Policy that are not going to be applied in or towards discharge of the Secured Liabilities):

15.3.1 may, at the discretion of the Lender, Receiver or Delegate, be credited to any suspense or securities realised account;

15.3.2 shall bear interest, if any, at the rate agreed in writing between the Lender and the Borrower; and

15.3.3 may be held in that account for so long as the Lender, Receiver or Delegate thinks fit.

16 Costs and indemnity

16.1 Costs

The Borrower shall, promptly on demand, pay to, or reimburse, the Lender and any Receiver, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by the Lender, any Receiver or any Delegate in connection with:

16.1.1 this deed or the Charged Property;

16.1.2 taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's, a Receiver's or a Delegate's rights under this deed; or

16.1.3 taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost, charge, expense, tax or liability arose until full discharge of that cost, charge, expense, tax or liability (whether before or after judgment, liquidation, winding-up or administration of the Borrower) at the rate and in the manner specified in the Facility Agreement.

16.2 Indemnity

16.2.1 The Borrower shall indemnify the Lender, each Receiver and each Delegate, and their respective employees and agents against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Charged Property;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- (c) any default or delay by the Borrower in performing any of its obligations under this deed.

16.2.2 Any past or present employee or agent may enforce the terms of this clause 16.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

17 Further assurance

17.1 Further assurance

The Borrower shall promptly, at its own expense, take whatever action the Lender or any Receiver may reasonably require for:

17.1.1 creating, perfecting or protecting the security created or intended to be created by this deed;

17.1.2 facilitating the realisation of any of the Charged Property; or

17.1.3 facilitating the exercise of any right, power, authority or discretion exercisable by the Lender or any Receiver in respect of any of the Charged Property,

including, without limitation the execution of any mortgage, transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Charged Property (whether to the Lender or to its nominee) and the giving of any notice, order or direction and the making of any filing or registration which, in any such case, the Lender may consider necessary or desirable.

18 Power of attorney

18.1 Appointment of attorneys

By way of security, the Borrower irrevocably appoints the Lender, every Receiver and every Delegate separately to be the attorney of the Borrower and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

18.1.1 the Borrower is required to execute and do under this deed; or

18.1.2 any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Lender, any Receiver or any Delegate.

18.2 Ratification of acts of attorneys

The Borrower ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 18.1.

19 Release

19.1 Release

Subject to clause 26.3, at the end of the Security Period, the Lender shall, at the request and cost of the Borrower, take whatever action is necessary to:

19.1.1 release the Charged Property from the security constituted by this deed; and

19.1.2 reassign the Charged Property to the Borrower.

20 Assignment and transfer

20.1 Assignment by Lender

20.1.1 At any time, without the consent of the Borrower, the Lender may assign or transfer any or all of its rights and obligations under this deed.

20.1.2 The Lender may disclose to any actual or proposed assignee or transferee any information in its possession that relates to the Borrower, the Charged Property and this deed that the Lender considers appropriate.

20.2 Assignment by Borrower

The Borrower may not assign any of its rights, or transfer any of its rights or obligations, under this deed.

21 Set-off

21.1 Lender's right of set-off

The Lender may at any time set off any liability of the Borrower to the Lender against any liability of the Lender to the Borrower, whether either liability is present or future,

liquidated or unliquidated, and whether or not either liability arises under this deed. If the liabilities to be set off are expressed in different currencies, the Lender may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Lender of its rights under this clause 21.1 shall not limit or affect any other rights or remedies available to it under this deed or otherwise.

21.2 No obligation to set off

The Lender is not obliged to exercise its rights under clause 21.1. If, however, it does exercise those rights it must promptly notify the Borrower of the set-off that has been made.

21.3 Exclusion of Borrower's right of set-off

All payments made by the Borrower to the Lender under this deed shall be made in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

22 Amendments, waivers and consents

22.1 Amendments

No amendment of this deed shall be effective unless it is in writing and signed by, or on behalf of, each party (or its authorised representative).

22.2 Waivers and consents

22.2.1 A waiver of any right or remedy under this deed or by law, or any consent given under this deed, is only effective if given in writing by the waiving or consenting party and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.

22.2.2 A failure or delay by a party to exercise any right or remedy provided under this deed or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm this deed. No single or partial exercise of any right or remedy provided under this deed or by law shall prevent or restrict the further exercise of that or any other right or remedy. No election to affirm this deed by the Lender shall be effective unless it is in writing.

22.3 Rights and remedies

The rights and remedies provided under this deed are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

23 Severance

If any provision (or part of a provision) of this deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this deed.

24 Counterparts

24.1 Counterparts

24.1.1 *This deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one deed.*

24.1.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

25 Third party rights

25.1 Third party rights

25.1.1 Except as expressly provided elsewhere in this deed, a person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or enjoy the benefit of, any term of this deed. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

25.1.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

26 Further provisions

26.1 Independent security

The security constituted by this deed shall be in addition to, and independent of, any other security or guarantee that the Lender may hold for any of the Secured Liabilities at any time. No prior security held by the Lender over the whole or any part of the Charged Property shall merge in the security created by this deed.

26.2 Continuing security

The security constituted by this deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Lender discharges this deed in writing.

26.3 Discharge conditional

Any release, discharge or settlement between the Borrower and the Lender shall be deemed conditional on no payment or security received by the Lender in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded under any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

26.3.1 the Lender or its nominee may retain this deed and the security created by or under it, including all certificates and documents relating to the whole or any part of the Charged Property, for any period that the Lender deems necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

26.3.2 the Lender may recover the value or amount of such security or payment from the Borrower subsequently as if the release, discharge or settlement had not occurred.

26.4 **Certificates**

A certificate or determination by the Lender as to any amount for the time being due to it from the Borrower under this deed and the Facility Agreement shall be, in the absence of any manifest error, conclusive evidence of the amount due.

26.5 **Consolidation**

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

27 **Notices**

27.1 **Delivery**

Any notice or other communication given to a party under or in connection with this deed shall be:

27.1.1 in writing;

27.1.2 delivered by hand, by pre-paid first-class post or other next working day delivery service or sent by fax; and

27.1.3 sent to:

(a) the Borrower at:

South Somerset District Council

The Council Offices

Brympton Way

Yeovil

Somerset

BA20 2HT

marked for the attention of: Clare Pestell

(b) the Lender at:

Maltravers House

Petters Way

Yeovil

BA20 1SH

United Kingdom

marked for the attention of: Jason Dobson

or to any other address or fax number as is notified in writing by one party to the other from time to time.

27.2 Receipt by Borrower

Any notice or other communication that the Lender gives to the Borrower shall be deemed to have been received:

27.2.1 if delivered by hand, at the time it is left at the relevant address;

27.2.2 if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting; and

27.2.3 if sent by fax, when received in legible form.

A notice or other communication given as described in clause 27.2.1 or clause 27.2.3 on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

27.3 Receipt by Lender

Any notice or other communication given to the Lender shall be deemed to have been received only on actual receipt.

27.4 Service of proceedings

This clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27.5 No notice by email

A notice or other communication given under or in connection with this deed is not valid if sent by email.

28 Governing law and jurisdiction

28.1 Governing law

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

28.2 Jurisdiction

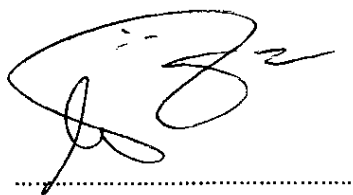
Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. *Nothing in this clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.*

28.3 Other service

The Borrower irrevocably consents to any process in any legal action or proceedings under clause 28.2 being served on it in accordance with the provisions of this deed relating to service of notices. Nothing contained in this deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by SSDC OPIUM
POWER LIMITED acting by a director, in
the presence of:



Director

Witness name: PAUL MATRAVERS

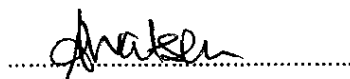


Witness address: MATTHEWS FARM
BLADON HILL, TABBF Witness

Witness occupation:

FINANCE SPECIALIST

Executed as a deed by affixing the
common seal of SOUTH SOMERSET
DISTRICT COUNCIL in the presence of:



Authorised Signatory

LEAD SPECIALIST - LEGAL

