



## Registration of a Charge

LLP name: **WILLAND BIOGAS LLP**

LLP number: **OC400775**



X86HLZJ6

Received for Electronic Filing: **29/05/2019**

## Details of Charge

Date of creation: **24/05/2019**

Charge code: **OC40 0775 0002**

Persons entitled: **PRIVILEGE PROJECT FINANCE LIMITED**

Brief description: **ALL FREEHOLD AND LEASEHOLD PROPERTIES AND ALL COMMONHOLD PROPERTIES NOW OR IN THE FUTURE OWNED BY WILLAND BIOGAS LLP. INTELLECTUAL PROPERTY SUBJECT TO THE CHARGE INCLUDES ANY PRESENT AND FUTURE PATENTS, TRADE MARKS, SERVICE MARKS, TRADE NAMES, BUSINESS NAMES, DESIGN RIGHTS, COPYRIGHTS, MORAL RIGHTS, INVENTIONS, TOPOGRAPHICAL OR SIMILAR RIGHTS, CONFIDENTIAL INFORMATION, KNOW-HOW AND OTHER INTELLECTUAL PROPERTY RIGHTS AND INTERESTS AS WELL AS THE APPLICATION TO USE SUCH RIGHTS.**

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

Certified by: **ALEXANDER GRANT**



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

LLP number: OC400775

Charge code: OC40 0775 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th May 2019 and created by WILLAND BIOGAS LLP was delivered pursuant to Part 25 of the Companies Act 2006 as applied by The Limited Liability Partnerships (Application of Companies Act 2006) (Amendment) Regulations 2013 on 29th May 2019 .

Given at Companies House, Cardiff on 30th May 2019

The above information was communicated by electronic means and authenticated  
by the Registrar of Companies under the Limited Liability Partnership  
(Application of the Companies Act 2006) Regulations 2009 SI 2009/1804



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

**PRIVILEGE PROJECT FINANCE LIMITED**

and

**WILLAND BIOGAS LLP**

**Second Ranking Debenture**

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This Debenture is made on: 24 May

2019

Between:

- (1) **Privilege Project Finance Limited** incorporated and registered in England and Wales with company registration number 04323959, the registered office of which is at 4<sup>th</sup> Floor, 36 Spital Square, London, England, E1 6DY (the Lender); and
- (2) **Willand Biogas LLP** (Registered in England and Wales No. OC400775) whose registered office is at Cleave Farm, Tiverton, Devon, England, EX16 8BP (the Chargor).

each a **Party**, and together the **Parties**.

### Background

- (A) The Lender has agreed, pursuant to the Facility Agreement (as defined below), to provide the Chargor (as defined below) with loan facilities on a secured basis.
- (B) Under this Debenture, the Chargor provides Security to the Lender for the loan facilities made available under the Facility Agreement.

It is agreed as follows:

## 1 Definitions and Interpretation

### 1.1 Definitions

The definitions and rules of interpretation in this clause apply in this Debenture.

**Account** means any account opened or maintained by the Chargor with the Lender, any bank, building society, financial institution or any other person (and any renewal, redesignation, replacement, subdivision or subaccount of that account), the debts or debts represented thereby and all Related Rights;

**Administrator** means an administrator appointed to manage the affairs, business and property of the Chargor pursuant to Clause 19.3 (*Appointment of an Administrator*);

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

**Book Debts** means all book and other debts and monetary claims due or owing to the Chargor and any proceeds of such debts and claims and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Chargor in relation to any of them;

**Book Debts Account** means such separate and denominated account or accounts with the Lender or such bank as may be specified in writing by the Lender for the purpose of receiving payments of the proceeds of realisation and collection of Book Debts;

**Business Day** means a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London;

**Charged Assets** means all the assets, property and undertaking of the Chargor which from time to time are subject to any Security created or expressed to be created by this Debenture (and references to the Charged Assets shall include references to any part of it);

**Costs** means all costs, charges, expenses and liabilities of any kind including, without limitation, costs and damages in connection with litigation, professional fees, disbursements and any value added tax charged on Costs;

**Environment** means the natural and man-made environment including all or any of the following media, namely air, water and land (including (without limitation) the 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 Claim** means any claim by any person (including any regulatory authority) arising from or concerning any actual or alleged violation of or liability under or in respect of any Environmental Law or any Environmental Licence or any provision of any agreement relating to the Environment;

**Environmental Licence** means any Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of the Chargor conducted on or from the any of the Properties owned or used by the Chargor and all Related Rights;

**Equipment** means all present and future equipment, plant, machinery, office equipment, computers, tools, vehicles, furniture, fittings, installations and apparatus and other tangible moveable property for the time being owned by the Chargor, including any part of it and all spare parts, replacements, modifications and additions, together with all Related Rights;

**Event of Default** means (i) a notice provided in accordance with clause 16 of the Facility Agreement; or (ii) a breach of any one of clauses 14.12, 14.13, 14.18, 15.6 or 15.7 of the Facility Agreement;

**Facility Agreement** means the facility agreement dated on or around the date of this Agreement between (1) the Chargor and (2) the Lender;

**Financial Collateral** shall have the meaning given to that expression in the Financial Collateral Regulations;

**Financial Collateral Regulations** means the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003/3226);

**Group Company** means the Chargor and any subsidiary of the Chargor from time to time;

**Insurance Policy** means any policy of insurance (including without limitation, any insurances relating to the Properties or the Equipment and any life insurance or assurance) in which the Chargor may from time to time have an interest (as amended and supplemented) and all Related Rights;

**Intellectual Property** means any present and future patents, trade marks, service marks, trade names, business names, design rights, copyrights, moral rights, inventions, topographical or similar rights, confidential information, know-how and other intellectual property rights and interests,

and any interest in any of these rights, whether or not registered, the benefit of all applications and rights to rights to use such assets in which the Chargor may from time to time have an interest and all Related Rights;

**Investments** means:

- (a) any stocks, shares, debentures, securities and certificates of deposit and other instruments creating or acknowledging indebtedness, including alternative financial bonds;
- (b) all interests in collective investment schemes, in whatever form or jurisdiction any such scheme is established, including partnership interests;
- (c) all warrants, options and other rights to subscribe or acquire any of the investments described in paragraph (a) above;
- (d) certificates and other instruments conferring contractual or property rights (other than options) in respect of the investments in paragraphs (a) or (b) above; and
- (e) options to acquire any investments described in paragraphs (a), (b) or (c) above,

in each case whether held directly by or to the order of the Chargor or by any trustee, nominee, custodian, fiduciary or clearance system on its behalf (including all rights against any such trustee, nominee, fiduciary or clearance system) and all Related Rights;

**Properties** means all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Chargor, or in which the Chargor holds an interest and **Property** means any of them;

**Receiver** means a receiver, receiver and manager or, where permitted by law, an administrative receiver appointed under Clause 14.1 (*Appointment of Receiver*), and that term will include any appointee made under a joint or several appointment;

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

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

**Relevant Jurisdictions** means, in relation to the Chargor:

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Security to be created by it pursuant to this Debenture is situated; and



- (c) any jurisdiction where it conducts its business;

**Secured Liabilities** means all monies, present and future obligations and liabilities of the Chargor and each Group Company (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by the Chargor or by some other person) to the Lender, except for any obligation or liability which, if it were included, would cause that obligation or liability or any of the Security in respect thereof, to be unlawful, prohibited or invalid under any applicable law;

**Security** means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, encumbrance, right of set-off, 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 Financial Collateral Arrangement** shall have the meaning given to that expression in the Financial Collateral Regulations; and

**Security Period** means the period starting on the date of this Debenture and ending on the date on which the Lender is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid discharged in full and the Lender is under no further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor or any other person.

## 1.2 Interpretation

- (a) Unless otherwise defined herein or unless the context otherwise requires, terms defined in the Facility Agreement shall have the same meaning when used in this Debenture;
- (b) any covenant or undertaking of the Chargor under this Debenture (other than a payment obligation) remains in force throughout the Security Period;
- (c) a reference to the **Chargor** or the **Lender** shall be construed so as to include its or their (and subsequent) successors in title, permitted transferees and permitted assigns in accordance with their respective interests;
- (d) clause, schedule and paragraph headings shall not affect the interpretation of this Debenture;
- (e) a reference to "**this Debenture**" (or any provision of it) or any other document shall be construed as a reference to this agreement, that provision or that document as it is in force for the time being and as amended, varied or supplemented from time to time in accordance with its terms, or with the agreement of the relevant parties;
- (f) a reference to a "**person**" shall include a reference to an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person;
- (g) a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any former

statute, statutory provision or subordinate legislation which it amends or re-enacts;

- (h) a reference to "**writing**" or "**written**" does not include fax or email (except for any notices provided under this Agreement in accordance with clause 27.15);
- (i) unless the context otherwise requires, words in the singular include the plural and in the plural include the singular;
- (j) references to a "**certified copy**" of a document mean a copy certified to be a true, complete and up-to-date copy of the original document, in writing and signed by a director or the company secretary of the Chargor;
- (k) a reference to an "**amendment**" includes a novation, re-enactment, supplement or variation (and "**amended**" shall be construed accordingly);
- (l) a reference to an "**authorisation**" includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution;
- (m) a reference to the Chargor and the Lender shall include their respective successors, permitted transferees and permitted assigns;
- (n) a reference to a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any government, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (o) a reference to "**determines**" or "**determined**" means, unless the contrary is indicated, a determination made at the discretion of the person making it;
- (p) a reference to "**assets**" includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (q) a reference to a "**disposal**" of any asset, undertaking or business, includes a sale, lease, licence, transfer, loan or other disposal by that person of that asset, undertaking or business (whether by a voluntary or involuntary single transaction or series of transactions); and
- (r) a reference to a Clause or schedule is to a Clause of, or schedule to, this Debenture unless the context requires otherwise.

### 1.3 **Clawback**

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

### 1.4 **Nature of security over real property**

A reference in this Debenture to a charge or mortgage of any freehold, leasehold or commonhold property includes:

- (a) all buildings and fixtures (including trade and tenant's fixtures) which are situated on that property at any time;
- (b) the proceeds of the sale of any part of that property; and
- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Chargor in respect of that property, and any monies paid or payable in respect of those covenants.

#### **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 Debenture.

#### **1.6 Third party rights**

A person who is not a party to this Debenture has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any term of this Debenture.

#### **1.7 Perpetuity period**

If the rule against perpetuities applies to any trust created by this Debenture, the perpetuity period shall be 125 years.

### **2 Payment of Secured Obligations**

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

The Chargor covenants with the Lender that it shall, from time to time when due, or if there is no specific due date, on demand of the Lender, pay, discharge and satisfy the Secured Liabilities and indemnify the Lender against any losses, costs, charges, expenses and liabilities arising from any breach or failure to pay, discharge or satisfy the Secured Liabilities in accordance with their respective terms.

#### **2.2 Interest on demands**

If the Chargor fails to pay any amount payable by it under this Debenture on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (before and after any judgment and to the extent interest at a default rate is not otherwise being paid on such sum) at the rate and upon on the terms from time to time agreed with the Lender and such interest shall be secured as part of the Secured Liabilities.

### **3 Grant of Security**

#### **3.1 Fixed Security**

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to the Lender by way of first fixed charge:

- (a) all Properties acquired by the Chargor in the future;
- (b) all present and future interests of the Chargor not effectively mortgaged or charged under the preceding provisions of this Clause 3 in, or over, freehold or leasehold property;

- (c) all tangible moveable property;
- (d) all the Equipment;
- (e) all the Intellectual Property;
- (f) all the Book Debts;
- (g) all the Investments;
- (h) all present and future rights, licences, guarantees, rents, deposits, contracts, covenants and warranties relating to any Properties;
- (i) all licences, consents and authorisations (statutory or otherwise) held or required in connection with the Chargor's business or the use of any Charged Assets, and all rights in connection with them;
- (j) all present and future goodwill and rights in relation to uncalled capital for the time being of the Chargor;
- (k) all monies from time to time standing to the credit of the Accounts; and
- (l) all its rights to recover any VAT on any supplies made to it relating to the Charged Assets and any sums so recovered.

### 3.2 Assignments

3.2.1 As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee assigns to the Lender absolutely all the Chargor's rights, title and interest from time to time in and to each of the following assets:

- (a) the proceeds of any Insurance Policies; and
- (b) all right, title and interest to which the Chargor is now or may in the future become entitled in respect of proceeds of any order of the court made pursuant to sections 238(3), 239(3), 242, 243, 222 or 423(2) of the Insolvency Act 1986.

3.2.2 Without prejudice to the other provisions of this Debenture, if for any reason the assignment of any of the assets or rights referred to in this Clause 3.2 (*Assignments*) is found to be ineffective or if any sums payable in respect of such assets or rights are received by the Chargor at any time after the Security constituted by this Debenture has become enforceable, the Chargor shall hold the benefit of such assets or rights and any such sums received by it in trust for the Lender and shall account to the Lender for or otherwise apply all such sums as the Lender may direct and shall otherwise at its own cost take such action and execute such documents as the Lender may require.

### 3.3 Floating Charge

3.3.1 The Chargor with full title guarantee charges to the Lender by way of first floating charge all present and future undertaking, property, assets and rights of the Chargor (except to the extent they are for the time being effectively charged or assigned under Clauses 3.2 (*Fixed Security*) or 3.3 (*Assignments*)).

- 3.3.2 Paragraph 14 of Schedule B1 of the Insolvency Act 1986 applies to the floating charge created pursuant to this Clause 3.3.

**3.4 Crystallisation of floating charge by notice**

The Lender may at any time by written notice to the Chargor convert the floating charge created by Clause 3.3.1 (*Floating Charge*) with immediate effect into a fixed charge as regards any part of the Charged Assets specified by the Lender in that notice if:

- (a) the Lender considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy; or
- (b) the Lender considers that it is necessary in order to protect the priority of the security; or
- (c) the Chargor so requests.

**3.5 Automatic crystallisation of floating charge**

Notwithstanding Clause 3.4 (Crystallisation of floating charge by notice) above, the floating charge created by Clause 3.3.1 (*Floating Charge*) shall automatically and immediately be converted (without notice) into a fixed charge over all the assets subject to the floating charge if:

- (a) an Event of Default occurs or if there is a breach of any provision of this Agreement;
- (b) the Chargor:
  - (a) creates, or attempts to create, over all or any part of the Charged Assets any Security without the prior written consent of the Lender;
  - (b) disposes, or attempts to dispose of, all or any part of the Charged Assets without the prior written consent of the Lender;
- (c) a receiver is appointed over all or any of the Charged Assets that is subject to the floating charge;
- (d) any person levies (or attempts to levy) any distress, attachment, execution or other process against all or any part of the Charged Assets;
- (e) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Chargor or an administrator is appointed to the Chargor; or
- (f) any person gives notice to appoint an administrator of the Chargor or files such a notice with the court which is not frivolous or vexatious and is not discharged, stayed or withdrawn within 14 days of commencement.

**3.6 Assets acquired after any floating charge crystallisation**

Any asset acquired by the Chargor after any crystallisation of the floating charge created under this Debenture which, but for such crystallisation, would be subject to a floating charge shall (unless the Lender confirms in

writing to the contrary) be charged to the Lender by way of first fixed charge.

### **3.7 Non application to unlawful security**

The Security created pursuant to Clause 3 (*Grant of Security*) shall not extend to any asset situated outside England and Wales to the extent, and for so long as, any such Security would be unlawful under the laws of the jurisdiction in which such asset is situated.

### **3.8 Separate Security**

Clauses 3.2 (Fixed Security) and 3.3 (*Assignment*) shall be construed as creating a separate and distinct mortgage, fixed charge or assignment over each relevant asset within any particular class of assets defined in this Debenture and the failure to create an effective mortgage, fixed charge or assignment over any one asset shall not affect the nature or validity of the mortgage, charge or assignment imposed on any other asset whether within that same class of assets or not.

## **4 Perfection of Security**

### **4.1 Title Documents**

The Chargor shall, on the execution of this Debenture (or, if later, the date of acquisition of the relevant Charged Asset), to the extent that such items have not previously been deposited with the Lender, deposit with the Lender and the Lender shall, for the duration of this Debenture be entitled to hold:

- (a) all deeds and documents of title relating to the Charged Assets which are in the possession or control of the Chargor (if these are not within the possession and/or control of the Chargor, the Chargor undertakes to obtain possession of all such deeds and documents of title);
- (b) if required by the Lender all Insurance Policies;
- (c) if required by the Lender, all certificates or other documents of title to the Investments, including in the case of any shares acquired by the Chargor from time to time stock transfer forms executed in blank on behalf of the Chargor; and
- (d) at the request of the Lender, all documents relating to the Book Debts as the Lender may specify from time to time.

### **4.2 Notices to be given by the Chargor**

The Chargor shall, no later than five Business Days after the date of this Debenture:

- (a) give notice to the relevant insurers of the assignment of the Chargor's rights and interest in and under all Insurance Policies pursuant to Clause 3.2.1(a) (*Assignments*) and use all reasonable endeavours to procure that each addressee of such notice promptly provides an acknowledgement of the Lender's interest to the Lender;
- (b) give notice to any bank, financial institution or other person (excluding the Lender) with whom the Chargor has an Account of the charging of the Accounts to the Lender pursuant to Clause 3.1(k) (*Fixed Security*)

substantially in the form set out in Schedule 1 (as applicable) and use all reasonable endeavours to procure that each addressee of such notice promptly provides an acknowledgement of the Lender's interest to the Lender.

The Chargor shall obtain the Lender's prior approval of the form of any notice or acknowledgement to be used under this Clause 4.2.

## **5 Further Assurance**

### **5.1 General**

The Chargor shall at its own expense take whatever action the Lender or Receiver may require for:

- (a) creating, perfecting or protecting any security intended to be created by this Debenture; or
- (b) facilitating the realisation of any Charged Asset or the exercise of any right, power or discretion exercisable by the Lender or any Receiver or any of its delegates or sub-delegates in respect of any Charged Asset.

### **5.2 Specific Obligations**

The obligations assumed by the Chargor under Clause 5.1 (*General*) include:

- (a) the execution of any transfer, conveyance, assignment or assurance of any property, whether to the Lender or to its nominee; or
- (b) the giving of any notice, order or direction and the making of any registration,

which, in any such case, the Lender may think expedient.

## **6 Representations and Warranties**

### **6.1 Representations and warranties**

The Chargor represents and warrants to the Lender that:

- (a) it is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation;
- (b) it has the power to own its assets and carry on its business as it is being conducted; and
- (c) the obligations expressed to be assumed by it in this Debenture are legal, valid, binding and enforceable obligations.

### **6.2 The Charged Assets**

6.2.1 The Chargor is the absolute legal and beneficial owner of all the Charged Assets free from any Security (other than any Security created pursuant to this Debenture or as otherwise permitted by the Lender).

6.2.2 The Chargor has not received or acknowledged notice of any adverse claim by any person in respect of the Charged Assets or any interest in it.

- 6.2.3 No Security expressed to be created under this Debenture is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.
- 6.2.4 There are no agreements or arrangements (including any restrictions on transfer or rights of pre-emption) affecting the Charged Assets in any way or which would or might in any way fetter or otherwise prejudice the rights of the Chargor or any mortgagee or Lender of the Charged Assets.
- 6.2.5 There is no breach of any law or regulation which materially adversely affects the Charged Assets.
- 6.2.6 No facility necessary for the enjoyment and use of the Charged Assets is subject to terms entitling any person to terminate or curtail its use.
- 6.2.7 Nothing has arisen, has been created or is subsisting which would be an overriding interest in any Property and the Chargor has not sold or granted (or agreed to sell or grant) any right of pre-emption over, or any lease or tenancy of or otherwise disposed of, the benefit of its right, title and interest in and to any of the Charged Assets.
- 6.2.8 The Investments are fully paid and not subject to any option to purchase or similar rights and the constitutional documents of the companies in respect of which the Investments are issued do not and could not restrict or inhibit (whether absolutely, partly, under a discretionary power or otherwise) the transfer of the Investments pursuant to the enforcement of the security created by or pursuant to this Debenture.
- 6.2.9 The Insurances Policies are in full force and effect and free from Security (other than under this Debenture or as otherwise permitted by the Lender) and there has been no material breach of any of the obligations thereunder.
- 6.2.10 There is no prohibition on assignment in any Insurance Policy or the relevant clauses of any of them, and the entry into this Debenture by the Chargor does not and will not constitute a breach of any Insurance Policy or any other agreement or instrument binding on the Chargor or its assets.
- 6.2.11 The Intellectual Property owned by the Chargor is all the Intellectual Property required by it in order to carry on its business as it is being conducted.
- 6.2.12 The Chargor does not, in carrying on its business, infringe any Intellectual Property of any third party.
- 6.2.13 To the knowledge of the Chargor, no Intellectual Property owned by them is being infringed, nor is there any threatened infringement of any such Intellectual Property.

### **6.3 Time when representations are made**

The representations and warranties set out in this Clause 6 are made on the date of this Debenture and shall be deemed to be made on each Repayment Date by reference to the facts and circumstances then existing.

## **7 Negative Pledge and Disposals**

The Chargor undertakes that it shall not at any time during the Security Period, except with the prior written consent of the Lender:



- (a) create, purport to create or permit to subsist any Security on, or in relation to, any of the Charged Assets other than Security created by this Debenture; or
- (b) sell, assign, transfer, grant, lease, 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 Assets except as permitted pursuant to the Facility Agreement;
- (c) create or grant (or purport to create or grant) any interest in the Charged Assets in favour of a third party; or
- (d) enter into any option agreement or arrangement having a similar effect to any of the actions referred to above in this Clause 7.

## **8 General Undertakings**

The Chargor undertakes as follows:

### **8.1 Authorisations**

The Chargor shall promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) supply certified copies to the Lender of,

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

### **8.2 Compliance with laws**

The Chargor shall comply in all respects with all laws and regulations to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under this Debenture.

### **8.3 Material adverse change**

The Chargor undertakes that there has been no material adverse change to any of the information or the financial position or prospects of the Chargor delivered to the Lender by the Chargor.

### **8.4 Immunity**

The Chargor undertakes that it does not have immunity from suit in any legal proceedings.

### **8.5 Pari passu ranking**

The Chargor shall ensure that at all times any unsecured and unsubordinated claims the Lender has against it under this Debenture rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies.

### **8.6 Events of Default**

The Chargor undertakes to promptly notify the Lender of any breach of the Facility Agreement or a breach of any provision of this Agreement on becoming aware of its occurrence or if any breach of the Facility Agreement or a breach of any provision of this Agreement is reasonably anticipated.

#### **8.7 Preservation of Charged Assets**

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

#### **8.8 Enforcement of rights**

The Chargor shall use all reasonable endeavours to:

- (a) procure the prompt observance and performance of the covenants and other obligations imposed on the Chargor's counterparties; and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Charged Assets which the Lender may require from time to time.

#### **8.9 Notice of Breaches**

The Chargor shall immediately on becoming aware of any of the same give the Lender notice in writing of any breach of representation or warranty, or covenant set out in this Debenture.

#### **8.10 Information**

The Chargor shall provide the Lender with all information which it may reasonably request in relation to the Charged Assets.

#### **8.11 Book Debts**

Until all the security constituted by this Debenture is discharged the Chargor shall:

- 8.11.1 collect and realise all Book Debts in the ordinary course of its business. For the avoidance of doubt, it is hereby declared that for the purpose of this Debenture, the ordinary course of business of the Chargor does not include or extend to the selling, assigning or in any other way factoring or discounting any Book Debts. The Chargor shall hold the proceeds of such collection and realisation of the Book Debts upon trust for the Lender pending payment of such proceeds into the Book Debts Account;
- 8.11.2 if the Lender so requires, pay the proceeds of such collection and realisation into the Book Debts Account;
- 8.11.3 not except with the prior written consent of the Lender, withdraw from the Book Debts Account all or any monies standing to the credit of the Book Debts Account; and
- 8.11.4 if called upon to do so by the Lender execute a legal assignment of the Book Debts to the Lender in such terms as the Lender may in its discretion require, give such notice of that legal assignment to the debtors from whom the Book Debts are due, owing or incurred and take any such other step as the Lender may in its discretion require to perfect such legal assignment.

## 8.12 Environmental matters

The Chargor shall:

- (a) comply in all material respects with: (i) the terms and conditions of all Environmental Licences applicable to it, and (ii) all other applicable Environmental Law; and
- (b) promptly upon receipt of the same, notify the Lender of any claim, notice or other communication served on it in respect of:
  - (i) any liability on it to clean up any contamination; or
  - (ii) any alleged breach of any Environmental Law.

## 8.13 Intellectual Property

The Chargor shall:

- (a) take all necessary action to safeguard and maintain present and future rights in, or relating to, the Intellectual Property including, without limitation, observing all covenants and stipulations relating to such rights, and paying all applicable renewal fees, licence fees and other outgoings; and
- (b) not use or permit any such Intellectual Property to be used in any way which may materially and adversely affect its value.

## 9 Investments

### 9.1 Investments – after an Event of Default or a breach of any provision of this Agreement

After the occurrence of an Event of Default or a breach of any provision of this Agreement and (to the extent capable of remedy within its terms) for so long as it is unremedied or has not been waived by the Lender, the Lender may, at its discretion (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor):

- (a) exercise (or refrain from exercising) any voting rights in respect of the Investments;
- (b) apply all dividends, interest and other monies arising from the Investments in accordance with Clause 18 (*Application of Monies*);
- (c) transfer the Investments into the name of such nominee(s) of the Lender as it shall require; and
- (d) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Investments,

in such manner and on such terms as the Lender may think fit, and the proceeds of any such action shall form part of the Charged Assets.

### 9.2 Payment of Calls

The Chargor shall pay when due all calls or other payments which may be or become due in respect of any of the Investments, and in any case of default by the Chargor in such payment, the Lender may, if it thinks fit, make such payment on behalf of the Chargor in which case any sums paid

by the Lender shall be reimbursed by the Chargor to the Lender on demand and shall carry interest from the date of payment by the Lender until reimbursed at the rate and in accordance with Clause 2.2 (*Interest on demands*).

### 9.3 Limited obligations of the Lender

At any time whether or not at that time any of the Investments is registered in the name of the Lender or its nominee, the Lender shall have no duty:

- (a) to make any payment or to ensure that any dividends, distributions, interest or other monies payable in respect of that Investment are duly and promptly paid or received by it or its nominees;
- (b) to verify that the correct amounts are paid or received;
- (c) to take any action in connection with the taking up of any (or any offer of any) stocks, shares, rights, monies or other property paid, distributed, accruing or offered at any time by way of interest, dividend, redemption, bonus rights, preference, option, warrant or otherwise on, or in respect of, or in substitution for, that Investment;
- (d) to perform any obligation of the Chargor in relation to that Investment; or
- (e) to present or file any claim or take any other action to collect or enforce the payment of any amount to which it may be entitled under this Debenture.

### 9.4 Exercise of Rights

The Chargor shall not exercise any of its rights and powers in relation to any of the Investments in any manner which, in the opinion of the Lender, would prejudice the value of, or the ability of the Lender to realise, the security created by this Debenture.

### 9.5 No alteration of Investments

The Chargor shall not, without the prior written consent of the Lender (such consent not to be unreasonably withheld or delayed), amend, or agree to the amendment of, the memorandum or articles of association or any other constitutional documents of any issuer that is not a public company, or the rights or liabilities attaching to any of the Investments.

## 10 Accounts

### 10.1 Interests in the accounts

All monies from time to time standing to the credit of each Account, the debt represented by them and each Account is free from:

- (a) any Security; and
- (b) any interest or claims of third parties, other than the Security constituted by this Debenture.

### 10.2 Notification and Variation

The Chargor:

- (a) shall promptly deliver to the Lender on the date of this Debenture (and, if any change occurs thereafter, on the date of such change), details of each Account maintained by it with any bank or financial institution (other than with the Lender); and
- (b) shall not, without the Lender's prior written consent, permit or agree to any variation of the rights attaching to any Account or close any Account.

### 10.3 **Operation after an Event of Default or a breach of any provision of this Agreement**

After the occurrence of an Event of Default or a breach of any provision of this Agreement, the Chargor shall not be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account except with the prior consent of the Lender.

### 10.4 **Application of Monies**

The Lender shall, following the occurrence of an Event of Default or if there is a breach of any provision of this Agreement, be entitled without notice to apply, transfer or set-off any or all of the credit balances from time to time on any Account in or towards the payment or other satisfaction of all or part of the Secured Obligations in accordance with Clause 18 (*Application of Monies*).

## 11 **Insurances**

### 11.1 **Insurance: undertakings**

The Chargor shall at all times during the subsistence of this Debenture:

- (a) keep the Charged Assets insured with reputable and responsible insurers previously approved by the Lender in such manner and to such extent as is reasonable and customary for an enterprise engaged in the same or similar business and in the same or similar localities against such risks and contingencies as the Lender may in its absolute discretion require;
- (b) if required by the Lender, cause each insurance policy or policies relating to the Charged Assets to contain (in form and substance reasonably satisfactory to the Lender) an endorsement naming the Lender as sole loss payee in respect of all claims until such time as the Lender notifies the insurer(s) to the contrary;
- (c) promptly pay all premiums and other monies payable under all its Insurance Policies and promptly upon request, produce to the Lender a copy of each policy and evidence (reasonably acceptable to the Lender) of the payment of such sums; and
- (d) if required by the Lender (but subject to the provisions of any lease of the Charged Assets), deposit all Insurance Policies relating to the Charged Assets with the Lender.

### 11.2 **Insurance: Default**

If the Chargor defaults in complying with Clause 11.1 (*Insurance: Undertakings*), the Lender may effect or renew any such insurance on such terms, in such name(s) and in such amount(s) as it reasonably considers

appropriate, and all monies expended by the Lender in doing so shall be reimbursed by the Chargor to the Lender on demand and shall carry interest from the date of payment by the Lender until reimbursed at the rate specified in Clause 2.2 (*Interest on Demands*).

### **11.3 Application of insurance proceeds**

All monies received under any Insurance Policies relating to the Charged Assets shall (subject to the rights and claims of any person having prior rights to such monies and subject to the terms of the relevant insurance policy), prior to the occurrence of an Event of Default or a breach of any provision of this Agreement be applied in repairing, replacing, restoring or rebuilding the property or assets damaged or destroyed and after the occurrence of an Event of Default or a breach of any provision of this Agreement, the Chargor shall hold such monies upon trust for the Lender pending payment to the Lender for application in accordance with Clause 18 (*Application of Monies*) and the Chargor waives any right it may have to require that any such monies are applied in reinstatement of any part of the Charged Assets.

## **12 Powers of the Lender**

### **12.1 Power to Remedy**

If the Chargor fails to comply with any of its obligations under this Debenture and that failure is not remedied within seven days of the Lender giving notice of such failure to the Chargor, the Lender shall be entitled (but shall not be bound) to remedy such non-compliance and the Chargor irrevocably authorises the Lender and its agents to do all such things as are necessary or desirable for that purpose.

### **12.2 Exercise of Rights**

The rights of the Lender under Clause 12.1 are without prejudice to any other rights of the Lender under this Debenture. The exercise of those rights shall not make the Lender liable to account as a mortgagee in possession.

### **12.3 Indulgence**

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

### **12.4 Right of appropriation**

To the extent that any part of the Charged Assets constitutes Financial Collateral and this Debenture and the obligations of the Chargor hereunder constitute a Security Financial Collateral Arrangement, the Lender shall have the right, at any time after the Security constituted this Debenture has become enforceable, to appropriate all or any of the Charged Assets in or towards the payment and/or discharge of the Secured Liabilities in such order as the Lender in its absolute discretion may from time to time determine. The value of any Charged Asset appropriated in accordance with this Clause 12.4 shall be the price of that Charged Asset at the time the right of appropriation is exercised as listed on any recognised market index,

or determined by such other method as the Lender may select (including independent valuation). The Chargor agrees that the methods of valuation provided for in this Clause 12.4 are commercially reasonable for the purposes of the Financial Collateral Regulations.

### **13 Enforcement and Powers of the Lender**

#### **13.1 When Security becomes enforceable**

The power of sale and other powers conferred by section 101 of the Law of Property Act 1925 and all other enforcement powers conferred by this Debenture shall be immediately exercisable at any time after an Event of Default or a breach of any provision of this Agreement has occurred.

#### **13.2 Discretion as to enforcement**

After this Security has become enforceable, the Lender may in its absolute discretion enforce all or any part of this Security in any manner it sees fit.

#### **13.3 Statutory Power of Sale**

The statutory powers of sale and other powers conferred by the Law of Property Act 1925 shall, as between the Lender and a purchaser from the Lender, arise on and be exercisable at any time after the execution of this Debenture, but the Lender shall not exercise such power of sale until the security constituted by this Debenture has become enforceable.

#### **13.4 Extension of Statutory Powers**

The statutory powers of leasing conferred on the Lender are extended so as to authorise the Lender to lease, make agreements for leases at a premium or otherwise, accept surrenders or leases and grant options or vary or reduce any sum payable under any leases or tenancy agreements as the Lender may think fit, without the need to comply with any provision of Section 99 or 100 of the Law of Property Act 1925.

#### **13.5 Restrictions**

Section 103 of the Law of Property Act 1925 (restricting the power of sale) and Section 93 of the Law of Property Act 1925 (restricting the right of consolidation) do not apply to the security constituted by this Debenture.

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

Neither the Lender, nor any Receiver nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Charged Assets, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Charged Assets for which a mortgagee in possession might be liable as such.

#### **13.7 Protection of Third Parties**

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

- (a) to enquire whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged, or whether the power the

Lender or a Receiver is purporting to exercise has become exercisable; or

- (b) to see to the application of any money paid to the Lender or any Receiver.

## **14 Receiver**

### **14.1 Appointment of Receiver**

14.1.1 At any time after the security constituted by this Debenture has become enforceable, or at the request of the Chargor, the Lender may, without further notice:

- (a) appoint by way of deed, or otherwise in writing, any one or more person or persons to be a receiver, or a receiver and manager, of all or any part of the Charged Assets; and
- (b) (subject to section 45 of the Insolvency Act 1986) from time to time, by way of deed, or otherwise in writing, remove any person appointed to be Receiver and may, in a similar manner, appoint another in his place.

Where more than one person is appointed Receiver, they shall have power to act separately (unless the appointment by the Lender specifies to the contrary).

14.1.2 The Lender may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the Law of Property Act 1925 and the remuneration of the Receiver shall be a debt secured by this Debenture which shall be due and payable immediately upon its being paid by the Lender.

### **14.2 Agent of the Chargor**

14.2.1 A Receiver will be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor alone is responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver.

14.2.2 The Lender will incur no liability (either to the Chargor or to any other person) by reasons of the appointment of a Receiver or for any other reason.

## **15 Powers of Receiver**

### **15.1 Powers of Receiver**

Any Receiver appointed by the Lender under this Debenture shall, in addition to the powers conferred on him by the Law of Property Act 1925 and the Insolvency Act 1986, have the power to do all such acts and things as an absolute owner could do in the management of such of the Charged Assets over which the Receiver is appointed and, in particular, a Receiver may:

- (a) undertake or complete any works of repair, building or development on the Properties;



- (b) grant, or accept surrenders of, any leases or tenancies affecting the Properties on such terms and subject to such conditions as he thinks fit;
- (c) provide services and employ, or engage, such managers, contractors and other personnel and professional advisors on such terms as he deems expedient;
- (d) make such elections for value added tax purposes as he thinks fit;
- (e) charge and receive such sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) as the Lender may prescribe or agree with him;
- (f) collect and get in the Charged Assets or any part of it in respect of which he is appointed and make such demands and take such proceedings as may seem expedient for that purpose, and to take possession of the Charged Assets with like rights;
- (g) carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Chargor;
- (h) grant options and licences over all or any part of the Charged Assets, sell or concur in selling, assign or concur in assigning, lease or concur in leasing and accept or concur in accepting surrenders of leases of, all or any of the property of the Chargor in respect of which he is appointed in such manner and generally on such terms and conditions as he thinks fit (fixtures and plant and machinery may be severed and sold separately from the premises in which they are contained without the consent of the Chargor), and to carry any such sale, assignment, leasing or surrender into effect. Any such sale may be for such consideration as the Receiver thinks fit and he may promote, or concur in promoting, a Chargor to purchase the property to be sold;
- (i) sell and assign all or any of the Book Debts in respect of which he is appointed in such manner, and generally on such terms and conditions, as he thinks fit;
- (j) make any arrangement, settlement or compromise between the Chargor and any other person which he may think expedient;
- (k) make substitutions of, or improvements to, the Equipment as he may think expedient;
- (l) make calls conditionally or unconditionally on the members of the Chargor in respect of the uncalled capital with such and the same powers for that purpose, and for the purpose of enforcing payments of any calls so made, as are conferred by the Articles of Association of the Chargor on its directors in respect of calls authorised to be made by them;
- (m) appoint managers, officers, servants, workmen and agents for the purposes of this Clause 15 at such salaries, for such periods and on such terms as he may determine;

- (n) if he thinks fit, but without prejudice to the indemnity in Clause 21 (*Costs and Indemnities*), effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the Insurance Policies;
- (o) exercise all powers provided for in the Law of Property Act 1925 in the same way as if he had been duly appointed under that act, and exercise all powers provided for an administrative receiver in Schedule 1 of the Insolvency Act 1986;
- (p) for any of the purposes authorised by this Clause 15 raise money by borrowing from the Lender (or from any other person) on the security of all or any of the Charged Assets in respect of which he is appointed on such terms as he shall think fit (including, if the Lender consents, terms under which such security ranks in priority to this Debenture);
- (q) redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by him; and
- (r) do all such other acts and things as he may consider incidental or conducive to any of the matters or powers in this Clause 15, or which he lawfully may or can do as agent for the Chargor.

## 15.2 Conflict

If and to the extent that there is any ambiguity or conflict between:

- 15.2.1 the powers conferred on the Receiver by the Act and those powers listed in schedule 1 of the Insolvency Act; and
  - 15.2.2 the powers conferred by this Clause 15,
- the powers conferred by this Clause 15 shall prevail.

## 15.3 Scope of powers

Any exercise of any of the powers given by this Clause 15 may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in paragraph (l) of Clause 16.1) or himself.

## 15.4 Liquidation of the Chargor

The powers conferred by this Clause 15 on Receivers shall continue to apply notwithstanding the winding-up or dissolution of the Chargor.

## 16 Liability of the Receiver

### 16.1 Receipts

The Receiver shall not, by reason of any entry by it into, or the taking by it of, possession of the Charged Assets or for any other reason (and whether as mortgagee in possession or on any other basis):

- 16.1.1 be liable to account to the Chargor for anything except the Receiver's actual receipts arising from the exercise of his powers under this Debenture; or
- 16.1.2 be liable to the Chargor for any loss or damage arising from:

- (a) any act, default or omission of the Receiver in relation to the Charged Assets; or
- (b) any exercise or non-exercise by the Receiver of any power, authority or discretion conferred on him in relation to the Security Assets under this Debenture, the Act or the Insolvency Act; or

be liable to the Chargor on the grounds that a better price could or might have been obtained on any realisation, sale or other disposal of the Charged Assets.

## **16.2 Protection of the Receiver**

The Receiver shall be entitled to all the rights, powers, privileges and immunities which the Act confers on mortgagees and receivers duly appointed under the Act.

## **17 Powers and protection of the Lender**

### **17.1 Rights and powers etc**

All the rights, powers, authorities and discretions which are expressly or impliedly conferred by this Debenture on a Receiver may, after this Security has become enforceable, be exercised by the Lender in respect of the Charged Assets whether or not a Receiver has been or is later appointed.

### **17.2 Protections**

All the protections and immunities which this Debenture provides for a Receiver shall be available to the Lender when the Lender is exercising the rights, powers, authorities and discretions conferred on the Lender by this Debenture.

### **17.3 Environmental**

Neither the Lender nor any Receiver shall have any liability or responsibility for any costs, claims, charges or expenses of whatsoever nature in respect of remedying any contamination of the Property whatsoever in the event that any request or notice of remediation is served on the Chargor or the Lender or any Receiver by any governmental authority or by any other third party.

## **18 Application of Monies**

### **18.1 Order of application**

All monies received by the Lender or a Receiver in the exercise of any enforcement powers conferred by this Debenture shall be applied:

- (a) first in paying all unpaid fees, costs and other liabilities incurred by or on behalf of the Lender (and any Receiver, attorney or agent appointed by it);
- (b) second in paying the remuneration of any Receiver (as agreed between the Receiver and the Lender);
- (c) third in or towards discharge of the Secured Liabilities in such order and manner as the Lender determines; and

- (d) finally in paying any surplus to the Chargor or any other person entitled to it.

## 18.2 **Chargor's appropriation**

Clause 18.1 (*Order of application*) shall override any appropriation made by the Chargor.

## 18.3 **Recovery of shortfall**

This Clause 18 (*Application of monies*) does not prejudice the right of the Lender to recover any shortfall from the Chargor.

## 18.4 **Statutory**

The protection given to purchasers in sections 104 and 107 of the Law of Property Act 1925 shall apply equally to purchasers and other persons dealing with the Lender or a Receiver.

## 19 **Power of Attorney**

### 19.1 **Appointment and Powers**

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

- (a) the Chargor is required to execute and do under this Debenture, including execute any document required by the Lender under Clause 3.8 (*Perfection of Security*); and/or
- (b) any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this Debenture or by law on the Lender or any Receiver.

### 19.2 **Ratification of Acts of Attorney**

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything which any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in Clause 19.1.

### 19.3 **Appointment of an Administrator**

19.3.1 The Lender may, without notice to the Chargor, appoint any one or more persons to be an administrator of the Chargor pursuant to Paragraph 14 Schedule B1 of the Insolvency Act 1986 if this Debenture becomes enforceable.

19.3.2 Any appointment under this paragraph 19.3. shall:

- (a) be in writing signed by a duly authorised signatory of the Lender; and
- (b) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986, when the requirements of paragraph 18 of that Schedule B1 are satisfied.

19.3.3 The Lender may (subject to any necessary approval from the court) end the appointment of an Administrator by notice in writing in accordance with this

paragraph 19.3 and appoint a replacement for any Administrator whose appointment ends for any reason under that paragraph.

## 20 **Reinstatement**

If any discharge or arrangement is made in whole or in part on the faith of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation or otherwise without limitation, the liability of the Chargor under this Debenture will continue as if the discharge or arrangement had not occurred.

## 21 **Costs and Indemnity**

### 21.1 **Costs**

The Chargor shall pay to, or reimburse, the Lender and any Receiver on demand, on a full indemnity basis, all Costs incurred by the Lender and/or any Receiver in relation to:

- (a) this Debenture or the Charged Assets;
- (b) protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Lender's or Receiver's rights under this Debenture;
- (c) suing for, or recovering, any of the Secured Liabilities,

(including, without limitation, the Costs of any proceedings in relation to this Debenture or the Secured Liabilities). Such Costs shall bear interest at the default rate of interest specified in Clause 2.2 (*Interest on demands*) and shall be secured as part of the Secured Liabilities.

### 21.2 **Indemnities**

21.2.1 The Lender and any Receiver, and their respective employees and agents, shall be indemnified on a full indemnity basis out of the Charged Assets in respect of all actions, liabilities and Costs incurred or suffered in or as a result of:

- (a) the exercise, or purported exercise, of any of the powers, authorities or discretions vested in them under this Debenture;
- (b) any matter or thing done, or omitted to be done, in relation to the Charged Assets under those powers; or
- (c) any default or delay by the Chargor in performing any of its obligations under this Debenture.

21.2.2 The Chargor shall indemnify the Lender and any Receiver and their respective employees, agents, directors and officers (the **Indemnified Parties**) against costs, expenses or liabilities suffered or incurred by any Indemnified Parties arising out of or in connection with any successful claim made against any Indemnified Parties by any person or agency of a state in respect of an actual breach by the Chargor of an Environmental Law.

## 22 **Release**

Subject to Clause 27.3 (*Discharge unconditional*), on the expiry of the Security Period (but not otherwise), the Lender shall, at the request and

cost of the Chargor, take whatever action is necessary to release the Charged Assets from the Security constituted by this Debenture.

## **23 Assignment and Transfer**

### **23.1 Assignment by Lender**

At any time, without the consent of the Chargor, the Lender may assign or transfer the whole or any part of the Lender's rights and/or obligations under this Debenture to any person.

### **23.2 Assignment by Chargor**

The Chargor may not assign any of its rights, or transfer any of its obligations, under this Debenture or enter into any transaction which would result in any of those rights or obligations passing to another person save with the prior written consent of the Lender.

## **24 Set-off**

### **24.1 Set-off Rights**

24.1.1 The Lender may set off any matured obligation due from the Chargor (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to the Chargor, regardless of the place of payment, booking branch or currency of either obligation.

24.1.2 If the Lender has more than one account for the Chargor in its books, the Lender may at any time after:

- (a) the security constituted by this Debenture has become enforceable; or
- (b) the Lender has received notice of any subsequent Security or other interest affecting all or any part of the Charged Assets,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account which may be in debit (but the Lender shall notify the Chargor of the transfer once made).

### **24.2 Different Currencies**

The Lender may exercise its rights under clause 24.1 (*Set-off rights*) notwithstanding that the amounts concerned may be expressed in different currencies and the Lender is authorised to effect any necessary conversions at a market rate of exchange selected by it.

### **24.3 Unliquidated Claims**

If the relevant obligation or liability is unliquidated or unascertained, the Lender may set-off the amount which it estimates (in good faith and acting reasonably) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

### **24.4 No Set Off**

The Chargor will pay all amounts payable under this Debenture without any set off, counterclaim or deduction whatsoever unless required by law in which event the Chargor will pay an additional amount to ensure that the payment recipient receives the amount which would have been payable had no deduction been required to have been made.

## 25 **New Accounts**

If the Lender receives notice of any subsequent Security, or other interest, affecting all or part of the Charged Assets, the Lender may open a new account for the Chargor in the Lender's books. No money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities. If the Lender does not open a new account immediately on receipt of that notice, then, unless the Lender gives express written notice to the contrary to the Chargor, all payments made by the Chargor to the Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Lender.

## 26 **Currency**

For the purpose of, or pending the discharge of, any of the Secured Liabilities, the Lender may convert any monies received, recovered or realised by the Lender under this Debenture (including the proceeds of any previous conversion under this Clause 26) from their existing currencies of denomination into such other currencies of denomination as the Lender may think fit. Any such conversion shall be effected at the Lender's then prevailing spot selling rate of exchange for such other currency against the existing currency. Each reference in this Clause 26 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

## 27 **Further Provisions**

### 27.1 **Independent security**

This Debenture shall be in addition to, and independent of, every other security or guarantee which 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 Assets shall merge in the security created by this Debenture.

### 27.2 **Continuing security**

This Debenture 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 Debenture in writing.

### 27.3 **Discharge conditional**

Any release, discharge or settlement between the Chargor 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 pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Lender or its nominee may retain this Debenture and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Charged Assets, for such period as the Lender deems necessary to provide the Lender with

security against any such avoidance, reduction or order for refund;  
and

- (b) the Lender may recover the value or amount of such security or payment from the Chargor subsequently as if such release, discharge or settlement had not occurred.

#### **27.4 Certificates**

A certificate or determination by the Lender as to any amount for the time being due to it from the Chargor shall (in the absence of any manifest error) be conclusive evidence of the amount due.

#### **27.5 Rights cumulative**

The rights and powers of the Lender conferred by this Debenture are cumulative, may be exercised as often as the Lender considers appropriate, and are in addition to its rights and powers under the general law.

#### **27.6 Waivers**

Any waiver or variation of any right by the Lender (whether arising under this Debenture or under the general law) shall only be effective if it is in writing and signed by the Lender and applies only in the circumstances for which it was given, and shall not prevent the Lender from subsequently relying on the relevant provision.

#### **27.7 Limitation of Lender responsibility**

The Lender shall not be liable:

- (a) to observe or perform any of the obligations or liabilities expressed to be assumed by the Chargor under, or pursuant to any Charged Assets;
- (b) to take any steps necessary to preserve any Charged Assets;
- (c) to enforce any term of any Charged Asset against any person;
- (d) to make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this Debenture; or
- (e) to make any payment in respect of any condition or obligation in relation to the Charged Assets.

#### **27.8 Further exercise of rights**

No act or course of conduct or negotiation by or on behalf of the Lender shall, in any way, preclude the Lender from exercising any right or power under this Debenture or constitute a suspension or variation of any such right or power.

#### **27.9 Delay**

No delay or failure to exercise any right or power under this Debenture shall operate as a waiver.



**27.10 Single or partial exercise**

No single or partial exercise of any right under this Debenture shall prevent any other or further exercise of that or any other right.

**27.11 Partial invalidity**

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Debenture under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modification necessary to give effect to the commercial intention of the parties.

**27.12 Further assurance**

Each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Debenture.

**27.13 Counterparts**

- (a) This Debenture 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 the one agreement.
- (b) Transmission of the executed signature page of a counterpart of this agreement by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

**27.14 Third party rights**

- (a) A person who is not a party to this Debenture shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Debenture.
- (b) The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Debenture are not subject to the consent of any other person.

**27.15 Notices****27.15.1 Delivery**

Each notice or other communication required to be given to a party under or in connection with this Debenture shall be:

- (a) in writing;
- (b) delivered by hand, by pre-paid first-class post or other next working day delivery service, or sent by email; and
- (c) sent to:

- (a) the Chargor at:  
the Chargor's registered office  
Attention: Winston Reed  
Email: winston@willandbiogas.com
- (b) the Lender at:  
4<sup>th</sup> Floor 36 Spital Square London England E1 6DY  
Attention: Philip Gerrard  
Email: contracts@privilege.finance

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

#### **27.15.2 Receipt by Chargor**

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

- (a) if delivered by hand, at the time it is left at the relevant address;
- (b) if sent by email, at the time of transmission; and
- (c) if posted by pre-paid first-class post or other next working day delivery service, on the second Business Day after posting.

A notice or other communication given as described in Clause 27.15.2(a) or Clause 27.15.1(b) 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.

#### **27.15.3 Receipt by Lender**

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

#### **27.15.4 Service of proceedings**

This Clause 27.15.4 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.

#### **27.15.5 No notice by email**

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

### **28 Governing Law and Jurisdiction**

#### **28.1 Governing law**

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

**28.2 Jurisdiction**

The parties to this Debenture irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Debenture or its subject matter or formation (including non-contractual disputes or claims).

**28.3 Other service**

The Chargor irrevocably consents to any process in any proceedings being served on it in accordance with the provisions of this Debenture relating to service of notices. Nothing contained in this Debenture shall affect the right to serve process in any other manner permitted by law.

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

## Schedule 1: Forms of notice to banks operating an account

To: **[insert name and address of Account Bank]** (the **Account Bank**)

Dated: **[•]**

Dear Sirs,

### Re: **Willand Biogas LLP - Security over Bank Accounts**

We notify you that, pursuant to a debenture (the **Debenture**) dated **[insert date]** between, Willand Biogas LLP (the **Chargor**) and Privilege Project Finance Limited (the **Lender**), the Chargor charged to the Lender all its right, title and interest in and to the monies from time to time standing to the credit of the accounts identified in the schedule to this notice and to any other accounts from time to time maintained with you by the Chargor (the **Charged Accounts**) and to all interest (if any) accruing on the Charged Accounts.

We irrevocably authorise and instruct you:

1. to hold all monies from time to time standing to the credit of the Charged Accounts to the order of the Lender and to pay all or any part of those monies to the Lender (or as it may direct) promptly following receipt of written instructions from the Lender to that effect; and
2. to disclose to the Lender any information relating to the Chargor and the Charged Accounts which the Lender may from time to time request you to provide; and
3. that the provisions of this Notice, may only be revoked or varied with the prior written consent of the Lender.

Please sign and return the enclosed copy of this notice to the Lender (with a copy to the Chargor) by way of your confirmation that:

- (a) you accept the instructions contained in this notice and agree to act in accordance with the provisions of this notice;
- (b) you have not received notice that the Chargor has assigned its rights to the monies standing to the credit of the Charged Accounts or otherwise granted any security or other interest over those monies in favour of any third party;
- (c) you will not exercise any right to combine accounts or any rights of set-off or lien or any similar rights in relation to the monies standing to the credit of the Charged Accounts, except for the netting of credit and debit balances pursuant to current account netting arrangements previously approved in writing by the Lender; and
- (d) you have not claimed or exercised, nor do you have outstanding any right to claim or exercise against the Chargor, any right of set-off, counter-claim or other right relating to the Charged Accounts.

By counter-signing this notice the Lender confirms that the Chargor may make withdrawals from the Charged Accounts until such time as the Lender shall notify you (with a copy to the Chargor) in writing that their permission is withdrawn. That permission may be withdrawn or modified by the Lender in its absolute discretion at any time.

The provisions of this notice and any non-contractual obligations arising out of or in relation to this notice are governed by English law.

#### Schedule

Name	Account Bank	Sort Code	Account Number	Address of branch where account is held

Yours faithfully,

.....  
for and on behalf of  
**Willand Biogas LLP**

Counter-signed by

.....  
for and on behalf of  
**Privilege Project Finance Limited**

*[On acknowledgement copy]*

To: **Privilege Project Finance Limited**

Copy to: **Willand Biogas LLP**

We acknowledge receipt of the above notice and confirm the matters set out in paragraphs (a) to (d) above.

.....  
for and on behalf of  
*[Insert name of Account Bank]*

Dated: [●]

**Execution Page**

This Debenture 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 )  
 Privilege Project Finance Limited )  
 acting by a director and its secretary )  
 or two directors or a director in the )  
 presence of a witness who attests )  
 his signature: )

sign here:

Director

print name:

RHYS GERVAIS

In the presence of:

Witness

print name: SUE ROWDON

print address:

11, HIGH ST. SUTTON, ELY CB6 2RB

CONTRACTS MANAGER

profession:

sign here:

Director/Secretary/Witness

print name:

ANDREW VERNAU

Executed as a Deed by )  
 Willand Biogas LLP acting by two )  
 members or a member in the )  
 presence of a witness who attests )  
 his signature: )

sign here:

Member

print name:

In the presence of:

sign here:

Member/Witness

print name:

Witness

print name:

print address:

profession:

**Execution Page**

This Debenture 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 )  
**Privilege Project Finance Limited** )  
 acting by a director and its secretary )  
 or two directors or a director in the )  
 presence of a witness who attests )  
 his signature: )

sign here:

\_\_\_\_\_  
**Director**  
 print name:

In the presence of:

sign here:

\_\_\_\_\_  
**Director/Secretary/Witness**  
 print name:

\_\_\_\_\_  
**Witness**

print name:

print address:

\_\_\_\_\_  
 profession:

Executed as a Deed by )  
**Willand Biogas LLP** acting by two )  
 members or a member in the )  
 presence of a witness who attests )  
 his signature: )

sign here:

\_\_\_\_\_  
**Member**  
 print name:

In the presence of:

sign here:

\_\_\_\_\_  
**Member/Witness**  
 print name:

\_\_\_\_\_  
**Witness**

print name:

print address:

\_\_\_\_\_  
 profession:



