

# M

CHWP000

COMPANIES FORM No. 466(Scot)

## Particulars of an instrument of alteration to a floating charge created by a company registered in Scotland

# 466

A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge.

Please do not  
write in  
this margin

Pursuant to section 410 and 466 of the Companies Act 1985

Please complete  
legibly, preferably  
in black type, or  
bold block lettering

\* insert full name  
of company

To the Registrar of Companies  
(Address overleaf - Note 6)

For official use

Company number



SC301188

Name of company

\* Spark Energy Limited

Date of creation of the charge (note 1)

24 December 2015

Description of the instrument creating or evidencing the charge or of any ancillary document which has been altered (note 1)

Debenture

Names of the persons entitled to the charge

Macquarie Bank Limited, London Branch

COMPANIES HOUSE  
02 MAY 2017  
EDINBURGH FRONT DESK

Short particulars of all the property charged

The liabilities of any of the Spark Group to MBL under or pursuant to the WETA (as defined pursuant to the Debenture) and each Finance Document (as defined pursuant to the Debenture) including any other present and future monies, obligations and liabilities owed by any of the Spark Group to MBL, together with all interest (including without limitation, default interest) accruing in respect of those monies, obligations or liabilities.

Presenter's name address and  
reference (if any):

Brodies LLP  
15 Atholl Crescent  
Edinburgh  
EH3 8HA  
LBL.PZA.MAC1553.5

For official use (02/06)

Charges Section

Post room

TUESDAY



SCT 02/05/2017 #13  
COMPANIES HOUSE

Names, and addresses of the persons who have executed the instrument of alteration (note 2)

The Royal Bank of Scotland PLC, registered in the UK with number SC90312 (the "Bank");  
Spark Energy Limited, registered in the UK with number SC301188 whose registered office is at Ettrick  
Riverside, Dunsdale Road, Selkirk, United Kingdom, TD7 5EB ("SEL");  
Macquarie Bank Limited, London Branch, a company incorporated in Australia, and registered in  
England and Wales with company number FC018220, acting through its London Branch with registered  
number BR002678, whose registered office is at Ropemaker Place, 28 Ropemaker Street, London  
EC2Y 9HD ("MBL").

*Please do not  
write in  
this margin*

*Please complete  
legibly, preferably  
in black type, or  
bold block lettering*

Date(s) of execution of the instrument of alteration

21 April 2017

A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the company of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

The Obligors undertake to the Bank and MBL that it shall not grant any further fixed or floating charges over all or any of its assets including its heritable, real or leasehold property (and whether or not such security is in favour of the Bank or MBL) without the written consent of the Bank and MBL.

Short particulars of any property released from the floating charge

None

The amount, if any, by which the amount secured by the floating charge has been increased

None

Please do not  
write in  
this margin

Please complete  
legibly, preferably  
in black type, or  
bold black lettering

MBL and the Bank with the consent of the Obligors, agree that the Securities shall rank inter se in point of security in the following order of priority:

1. firstly, the Bank's Securities to the extent of the Bank Priority Sum;
2. secondly, MBL Assignations to the extent of the MBL Priority Sum;
3. thirdly, the MBL Floating Charges and the MBL Debentures *pari passu* to the extent of the MBL Priority Sum not satisfied under paragraph 2. above;
4. fourthly, the Bank's Securities for £500,000, to the extent not recovered or paid pursuant to the Bank Priority Sum;
5. fifthly, the MBL Securities for the remainder of all sums secured thereby; then
6. finally, the Bank's Securities for the remainder of all sums secured thereby.

Definitions:

"Bank Documents" means the Bank's Securities and the Bank's Facility Letter;

"Bank Priority Sum" means (a) an amount equal to the aggregate of (i) £500,000; plus (ii) one year's interest on such amount together with all commission, charges, expenses, fees, legal and other costs (on a full indemnity basis) charged or incurred by the Bank in respect of such aggregate amount, pursuant to the Bank Documents or (b) such other sum(s) as may be agreed in writing between the Bank and MBL in substitution for that amount;

"Bank's Debenture" means the debenture dated on or around 28 April 2016 granted by the Guarantor in favour of the Bank and creating certain fixed and floating charges over the assets of the Guarantor;

"Bank's Floating Charge" means the floating charge dated on or around 28 April 2016 granted by SEL in favour of the Bank and creating, *inter alia*, a floating charge over the assets of SEL;

"Bank's Facility Letter" means the facility letter from the Bank to SEL dated on or around 28 April 2016;

"Bank's Securities" means the Bank's Debenture and the Bank's Floating Charge;

"Facility Agreement" means the facilities agreement dated on or around the date of the Instrument of Alteration and entered into between, among others, SEL as borrower, the Guarantor as guarantor and MBL as lender;

"Guarantor" means Spark Energy Supply Limited;

"Instrument of Alteration" means the amended and restated deed of priority between MBL, the Bank and SEL dated 21 April 2017;

"MBL Assignations" means the assignation in security in respect of accounts dated 24 December 2015 and the assignation in security in respect of accounts dated 21 April 2017, each granted by SEL to MBL;

"MBL Debentures" means (i) a debenture dated 24 December 2015 and granted by SEL and the Guarantor to MBL and created in part fixed charges and in part a floating charge over the assets of SEL and the Guarantor, and (ii) a debenture dated 21 April 2017 and granted by SEL and the Guarantor to MBL and creating in part fixed charges and in part a floating charge over the assets of SEL and the Guarantor;

"MBL Floating Charges" means the Scots law bond and floating charge dated 24 December 2015 granted by SEL to MBL and the Scots law bond and floating charge dated 21 April 2017 granted by SEL to MBL;

Please complete  
legibly, preferably  
in black type, or  
bold block lettering

"MBL Priority Sum" means (a) all amounts owed to MBL under the Facility Agreement, the WETA, the ISDA, the MBL Securities and any other document designated as a "Finance Document" under the WETA (and notified as such by MBL to the Bank) and any other document designated as a "Finance Document" under the Facility Agreement (and notified as such by MBL to the Bank); plus (b) all outgoing costs, charges, expenses, fees (including legal and other costs) and liabilities (on a full indemnity basis) incurred by MBL on enforcement or on exercising its rights in relation to an Enforcement Action (as defined in the Instrument of Alteration) or (c) such other sum(s) as may be agreed in writing between the Bank and MBL in substitution for that amount;

"MBL Securities" means the MBL Debentures, the MBL Assignations and the MBL Floating Charges;

"Obligors" means SEL and the Guarantor;

"Secured Liabilities" means the respective liabilities secured by the Securities;

"Securities" means the Bank's Securities and MBL Securities; and

"Spark Group" shall be a collective reference to SEL, Spark Gas Shipping Limited, the Guarantor and Spark Generation Limited.

A fee is payable to  
Companies House  
in respect of each  
register entry for a  
mortgage or  
charge.  
(See Note 5)

Signed



Date

21/5/17

On behalf of ~~[company]~~ [chargee]

#### Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc as the case may be, should be given. For the date of creation of a charge see section 410(5) of the Companies Act. ☐ delete as appropriate
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders are to be made payable to Companies House.
6. The address of the Registrar of Companies is: Companies Registration Office, 139 Fountainbridge, Edinburgh EH3 9FF DX 235 Edinburgh or LP - 4 Edinburgh 2



**FILE COPY**

**CERTIFICATE OF THE REGISTRATION  
OF AN ALTERATION TO A FLOATING CHARGE**

COMPANY NO. 301188  
CHARGE CODE SC30 1188 0007

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 21 APRIL 2017 WERE DELIVERED  
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985  
ON 2 MAY 2017

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 24  
DECEMBER 2015

BY SPARK ENERGY LIMITED

IN FAVOUR OF  
MACQUARIE BANK LIMITED

GIVEN AT COMPANIES HOUSE, EDINBURGH 12 MAY 2017



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

EXECUTION VERSION

Amendment and Restatement Deed in respect of  
Deed of Priority dated 28 April 2016

CERTIFIED A TRUE  
COPY SAVE FOR THE  
MATERIAL REDACTED  
PURSUANT TO S859G  
OF THE COMPANIES  
ACT 2006.

*Brian Seep*  
BRODIES LLP  
Solicitors

15/2017

Ref: MAC1553.5

Dated 21 APRIL 2017

MACQUARIE BANK LIMITED, LONDON BRANCH

SPARK ENERGY LIMITED

THE ROYAL BANK OF SCOTLAND PLC

## **Contents**

<b>1</b>	<b>Interpretation</b>	<b>2</b>
<b>2</b>	<b>Amendment and restatement</b>	<b>2</b>
<b>3</b>	<b>Counterparts</b>	<b>2</b>
<b>4</b>	<b>Governing law</b>	<b>3</b>
	<b>Schedule – Amended and Restated Deed of Priority</b>	<b>4</b>

## **Amendment and Restatement Deed**

Dated 21 APRIL 2017

### **Between**

- (1) MACQUARIE BANK LIMITED, LONDON BRANCH (MBL);
- (2) SPARK ENERGY LIMITED (the Debtor); and
- (3) THE ROYAL BANK OF SCOTLAND PLC (the Bank).

### **Recitals**

The Parties have entered into this Deed in order to evidence the amendments referred to in Clause 2 (*Amendment and restatement*) of this Deed.

It is agreed:

### **1 Interpretation**

- 1.1 Words and expressions defined in the Amended Deed of Priority shall have the same meanings in this Deed unless otherwise defined or the context otherwise requires, and

*Amended Deed of Priority* means the Original Deed of Priority, as amended and restated by this Deed in the form set out in the Schedule (*Amended and Restated Deed of Priority*) to this Deed.

*Original Deed of Priority* means the deed of priority entered into between the Parties and dated 28 April 2016.

*Parties* means each of MBL, the Debtor and the Bank.

- 1.2 Clause headings in this Deed are for convenience only and will not be taken into account in the interpretation of this Deed.

### **2 Amendment and restatement**

With immediate effect from the date of this Deed, the Original Deed of Priority shall be amended and restated in the form set out in the Schedule (*Amended and Restated Deed of Priority*) of this Deed.

### **3 Counterparts**

This Deed (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original but all the counterparts together will be one and the same instrument.



#### **4 Governing law**

This Deed shall be construed and receive effect in accordance with the laws of England and Wales, save that where the Securities are governed by the law of Scotland the applicable provisions of this Deed of Priority and any non-contractual obligations arising out of or in connection with this Deed of Priority are governed by Scots law and any terms particular to the laws of England and Wales shall be construed in accordance with Scots law and, insofar as not already subject thereto, the parties submit to the non-exclusive jurisdiction of the English courts..

These presents, consisting of this and the preceding pages are executed as a deed and delivered on the date appearing at the beginning of this Deed..

**Schedule – Amended and Restated Deed of Priority**

**DEED OF PRIORITY BETWEEN CHARGES**

**DATED 28 APRIL 2016 AS AMENDED AND RESTATED PURSUANT TO AN AMENDMENT  
AND RESTATEMENT DEED DATED 21 APRIL 2017**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this deed of priority, the following definitions apply:

**Amendment and Restatement Deed** means the amendment and restatement deed dated 21 APRIL 2017 and made between MBL, the Debtor and the Bank;  
**Bank** means The Royal Bank of Scotland PLC, registered in the UK with number SC290312;

**Bank**

**Bank Documents** means the Bank's Securities and the Bank's Facility Letter;

**Bank's Facility Letter** means the facility letter from the Bank to the Debtor dated on or around 28 April 2016;

**Bank Priority Sum** means (a) an amount equal to the aggregate of (i) £500,000; plus (ii) one year's interest on such amount together with all commission, charges, expenses, fees, legal and other costs (on a full indemnity basis) charged or incurred by the Bank in respect of such aggregate amount, pursuant to the Bank Documents, or (b) such other sum(s) as may be agreed in writing between the Bank and MBL in substitution for that amount;

**Bank's Debenture** means the debenture dated on or around 28 April 2016, granted by the Guarantor in favour of the Bank and creating certain fixed and floating charges over the assets of the Guarantor;

**Bank's Floating Charge** means the floating charge dated on or around 28 April 2016, granted by the Debtor in favour of the Bank and creating, inter alia, a floating charge over the assets of the Debtor;

**Bank's Securities** means the Bank's Debenture and the Bank's Floating Charge;

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

<b>Creditor</b>	means the Bank and MBL;
<b>Debtor</b>	means Spark Energy Limited, registered in the UK with number SC301188 whose registered office is at Ettrick Riverside, Dunsdale Road, Selkirk, Scotland, TD7 5EB;
<b>Debtor's Obligations</b>	means all the Debtor's liabilities of any kind (whether present or future actual or contingent and whether incurred alone or jointly with another) including commission banking charges interest and expenses;
<b>Deed of Priority</b>	means this deed of priority;
<b>Enforcement Action</b>	means the taking of any of the following actions: (1) appointing a receiver or administrator pursuant to or in respect of any of the Securities; (2) exercising a power of sale or otherwise utilising the rights given to a creditor under any of the Securities; (3) suing for or instituting any creditor's process (whether before or after judgement) against an Obligor in respect of payment of any of the Secured Liabilities; (4) petitioning for (or voting in favour of any resolution for) or initiating or supporting or taking any steps with a view to insolvency, liquidation, reorganisation, administration, receivership or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or any similar proceedings involving an Obligor, whether by petitioning, convening a meeting, voting for a resolution or otherwise; (5) as against any Obligor, the exercising of any rights of set-off, retention, combination of accounts or similar right in respect of the Secured Liabilities; (6) as against any Obligor, enforcing any guarantee or other assurance held in support of, or in respect of the Secured Liabilities or exercising any rights thereunder on default; or (7) bringing or supporting any legal proceedings against an Obligor or applying for any order for an injunction or specific performance in respect of an Obligor in relation to any of the Secured Liabilities, provided that Enforcement Action shall not include the service of a notice of default and demand by any Creditor to any Obligor;
<b>Facility Agreement</b>	means the facilities agreement dated on or around the date of the Amendment and Restatement Deed and entered into between, among others, the Debtor as borrower, the Guarantor as guarantor and MBL as lender;
<b>Guarantor</b>	means Spark Energy Supply Limited, registered in the UK with number 5857467 whose registered office is at Regent House, 316 Beulah Hill, Upper Norwood, London SE19 3HF;
<b>ISDA</b>	means the terms for the sale and purchase of, or financial trade in respect of, electricity and gas, based on ISDA master agreement (multicurrency - cross border) between MBL and the Debtor, dated on or about 24 December 2015;

<b>MBL</b>	means Macquarie Bank Limited, London Branch, a company incorporated in Australia, and registered in England and Wales with company number FC018220, acting through its London Branch with registered number BR002678, whose registered office is at Ropemaker Place, 28 Ropemaker Street, London EC2Y 9HD;
<b>MBL Assignations</b>	means the assignation in security in respect of accounts dated 24 December 2015 and the assignation in security in respect of accounts dated on or about the date of the Amendment and Restatement Deed, each granted by the Debtor to MBL;
<b>MBL Debentures</b>	means (i) a debenture 24 December 2015 and granted by the Debtor and the Guarantor to MBL and creating in part fixed charges and in part a floating charge over the assets of the Debtor and the Guarantor, respectively, and (ii) a debenture dated on or around the date of the Amendment and Restatement Deed and granted by the Debtor and the Guarantor to MBL and creating in part fixed charges and in part a floating charge over the assets of the Debtor and the Guarantor, respectively;
<b>MBL Documents</b>	means the Facility Agreement, the WETA, the ISDA, the MBL Securities, any other document designated as a "Finance Document" under the WETA (and notified as such by MBL to the Bank) and any other document designated as a "Finance Document" under the Facility Agreement (and notified as such by MBL to the Bank);
<b>MBL Floating Charges</b>	means the Scots law bond and floating charge dated 24 December 2015 granted by the Debtor to MBL and the Scots law bond and floating charge granted by the Debtor to MBL and dated on or around the date of the Amendment and Restatement Deed;
<b>MBL Priority Sum</b>	means (a) all amounts owed to MBL under the Facility Agreement, the WETA, the ISDA, the MBL Securities and any other document designated as a "Finance Document" under the WETA (and notified as such by MBL to the Bank) and any other document designated as a "Finance Document" under the Facility Agreement (and notified as such by MBL to the Bank); plus (b) all outgoing costs, charges, expenses, fees (including legal and other costs) and liabilities (on a full indemnity basis) incurred by MBL on enforcement or on exercising its rights in relation to an Enforcement Action or (c) such other sum(s) as may be agreed in writing between the Bank and MBL in substitution for that amount;
<b>MBL Securities</b>	means the MBL Debentures, the MBL Assignations and the MBL Floating Charges;
<b>Obligors</b>	means the Debtor and the Guarantor;
<b>Secured Account</b>	means any of the following accounts:

Name of Company	Account Type	Account Bank	Sort Code	Account Number
Spark Energy Ltd	RBS Deposit Account	RBS		
Spark Energy Ltd	MBL Security	RBS		
Spark Energy Ltd	Collections Account	RBS		
Spark Energy Ltd	Current Account	RBS		
Spark Gas Shipping Limited	Gas Shipping	RBS		
Spark Energy Supply Ltd	Spark Energy Supply	RBS		
Spark Energy Ltd	Old Collections	HSBC		
Spark Energy Ltd	Old Current	HSBC		

**Secured Liabilities** means the respective liabilities secured by the Securities;

**Securities** means the Bank's Securities and MBL Securities;

**WETA** means the Wholesale Energy Trading Agreement between MBL, the Debtor, Spark Energy Supply Limited, Spark Gas Shipping Limited, Spark Energy Finance Plc and Spark Generation Ltd., dated 24 December 2015, as amended from time to time.

1.2 The expressions "Bank", "Debtor", "Guarantor" and "MBL" where the context admits include their respective successors in title and assigns.

1.3 The expressions "Bank's Securities" and "MBL Securities" include any substituted or further security taken at any time by the Bank or MBL respectively from the Debtor and/or the Guarantor but do not include any security which the Bank or MBL may take from any third party.

## 2. PRIORITY AGREEMENT

2.1 MBL and the Bank with the consent of the Obligors, agree that the Securities shall rank *inter se* in point of security in the following order of priority:

2.1.1 firstly, the Bank's Securities to the extent of the Bank Priority Sum;

2.1.2 secondly, the MBL Assignations to the extent of the MBL Priority Sum;

2.1.3 thirdly, the MBL Floating Charges and the MBL Debentures *pari passu* to the extent of the MBL Priority Sum not satisfied under 2.1.2 above;

2.1.4 fourthly, the Bank's Securities for £500,000, to the extent not recovered or paid pursuant to the Bank Priority Sum;

- 2.1.5 fifthly, the MBL Securities for the remainder of all sums secured thereby; then
- 2.1.6 finally, the Bank's Securities for the remainder of all sums secured thereby.
- 2.2 The ranking and priority set out in Clause 2.1 shall take effect notwithstanding any of the following:
- 2.2.1 the nature of, and any provision contained in any of, the securities created by the Securities and the dates of execution and registration of any of them;
- 2.2.2 the date or dates on which monies have been or may be advanced or become due, owing or payable under the Securities and any fluctuation from time to time in the amounts secured by the Securities including any reduction of those amounts to nil;
- 2.2.3 the appointment of a liquidator, administrative receiver, receiver, administrator or other similar officer in respect of an Obligor or over all or any part of its assets;
- 2.2.4 the granting of time or any other indulgence to an Obligor or any other person or the release, compounding or otherwise dealing with an Obligor or any other person or the receipt of moneys whether arising from a voluntary sale of any assets subject to any of the Securities or in respect of any security or guarantee held by the Bank in respect of sums owing thereto, or MBL in respect of sums owing thereto, or otherwise prior to taking any Enforcement Action;
- 2.2.5 the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or take any Enforcement Action against an Obligor or any other person by any Creditor;
- 2.2.6 the sale or other disposal of any land or buildings or any interest in any land or buildings prior to taking any Enforcement Action;
- 2.2.7 any present or future mortgage or other charge granted by an Obligor to any Creditor (other than the Securities) (unless otherwise agreed in writing by the Creditors); and/or
- 2.2.8 the provisions of Sections 464 and 466 of the Companies Act 1985 or any other rule of law which might operate to the contrary.
- 2.3 The Bank and MBL agree to hold in trust any money received pursuant to the Bank's Floating Charge or the MBL Securities (as applicable) to give effect to the priorities declared by this Deed of Priority.
- 2.4 Notwithstanding the provisions of sections 464 and 466 of the Companies Act 1985 or any other rule of law which might operate to the contrary effect, the foregoing provisions as to ranking shall be valid and effective irrespective of the date or dates on which sums advanced or to be advanced by any of the Creditors to the Obligors or have been or shall be drawn out by or debited to the Obligors, the Creditors having no concern over the composition of or fluctuations in the sum or sums due by the Obligors to any of the other parties hereto.
- 2.5 Each of the Securities shall rank as provided in this Deed of Priority as a continuing security for repayment of the amounts owing to the respective Creditor from time to time by the Debtor or by any person or company whose obligations to such Creditor are guaranteed by the Debtor, including the Guarantor.

- 2.6 In so far as necessary to give effect to the provisions of this Deed of Priority, the Securities are hereby varied and this Deed of Priority shall constitute an instrument of alteration for the purposes of section 466 of the Companies Act 1985.
- 2.7 For the avoidance of doubt, the parties acknowledge and agree that (1) the ranking of the Securities shall not be prejudiced or affected in any way by any right competent to any of the parties hereto to recover all or any part of the sums secured by the Securities from any third party, cautioner or guarantor and (2) the terms of this Deed of Priority will apply notwithstanding the terms of any ranking provisions contained in the Securities.
- 2.8 Each Obligor undertakes to the Creditors that it shall not grant any further fixed or floating charges over all or any of its assets including its heritable, real or leasehold property (and whether or not such security is in favour of any Creditor) without the written consent of the Creditors.
- 2.9 The Bank and MBL each acknowledge and agree, for the avoidance of doubt, that nothing in this Deed of Priority is intended to govern, amend, or otherwise regulate MBL's rights under or in relation to the bond and floating charge dated 24 December 2015 between MBL and Spark Generation Limited or the bond and floating charge dated on or about the date of the Amendment and Restatement Deed between MBL and Spark Generation Limited (in each case, including but not limited to MBL's rights to enforce its security thereunder).
3. **ASSIGNMENT**
- 3.1 MBL undertakes not to assign or transfer its Securities (as applicable) or their rights or obligations under this Deed of Priority to any other person without first procuring that such person enters into a deed with (i) the Bank and (ii) each Obligor, upon the same terms as this Deed of Priority.
- 3.2 The Bank undertakes not to assign or transfer its Securities (as applicable) or their rights or obligations under this Deed of Priority to any other person without first procuring that such person enters into a deed with (i) MBL and (ii) each Obligor, upon the same terms as this Deed of Priority.
4. **BOOK DEBTS OR OTHER DEBTS AND DEPOSITS**
- 4.1 Notwithstanding the terms of any charge on book debts or other debts contained in the MBL Debentures and any covenant in the MBL Debentures by the Obligors to pay any book debts or other debts into the Obligors' accounts with MBL or with the Bank or some other bank, MBL and the Obligors agree that, to the extent that there is any conflict between the terms of the MBL Debentures and the Bank's Floating Charge in relation to such terms:
- 4.1.1 the Obligors shall comply with their covenant in relation to the payment of book debts and other debts contained in the Bank's Floating Charge and shall not be in breach of its covenant in the MBL Debentures by reason of its so complying; and
- 4.1.2 the Bank shall be entitled to credit any payments received in respect of book debts and other debts to any Secured Account of an Obligor with the Bank.



4.2. In respect of any credit balance from time to time on any current account of an Obligor with the Bank, the Bank may notwithstanding any charge over such credit balance contained in the MBL Debentures:

4.2.1 at any time prior to MBL or an Obligor giving to the Bank written notice that (a) an event of default or termination event (howsoever described) has occurred in accordance with the MBL Documents; or (b) MBL has appointed a receiver or taken any other step to enforce or perfect its security in accordance with the MBL Documents, permit that Obligor to draw upon any such credit balance; and

4.2.2 at any time set off the whole or any part of the Debtor's Obligations to the Bank against any such credit balance and any sums so set off by the Bank shall count towards any calculation of the Bank Priority Sum or.

4.3 In respect of any credit balance from time to time on any current account of an Obligor with MBL, MBL may:

4.3.1 permit that Obligor to draw upon any such credit balance; and

4.3.2 at any time set off the whole or any part of the Debtor's Obligations to MBL pursuant to the Facility Agreement, the WETA, the ISDA and/or MBL Securities against any such credit balance and any sums so set off by MBL shall count towards any calculation of the MBL Priority Sum.

## 5. ENFORCEMENT

5.1 The Bank and MBL shall be entitled to take such Enforcement Action as they see fit but provided that:

5.1.1 the other has given its prior written consent to such Enforcement Action; or

5.1.2 they have given prior written notice of their intention to do so to the other and consult with the other in relation to the appointment of a suitable person as receiver or administrator pursuant to the relevant Security for a period of not less than 5 Business Days (the "Consultation Period").

5.2 During the Consultation Period, the Bank or MBL (the "Purchaser", as appropriate) may give the other (the "Seller", as appropriate) notice (the "Transfer Notice") that it (the Purchaser) requires the Seller to transfer to the Purchaser of all, but not part, of the liabilities and obligations due by the Obligors to the Seller under the Bank Documents or the MBL Documents, as appropriate (the "Relevant Debt"). In the event that the Transfer Notice is served by the Purchaser on the Seller, the Purchaser shall purchase the Relevant Debt to the extent that such amount falls within the Bank Priority Sum or the MBL Priority Sum, as appropriate, at par, within 5 Business Days of the date of the Transfer Notice.

5.3 The Creditors hereby undertake to each other that, in the event of a liquidator of an Obligor, an administrator of an Obligor or a receiver of all or any part of the assets of an Obligor distributing the proceeds of sale of those assets otherwise than in accordance with the terms of this Deed of Priority and one or any of the others being prejudiced thereby, they will compensate the party or parties so prejudiced to the extent to which it is *hijacked* by such prejudice but no further.

- 5.4 Subject to clauses 5.5 and 5.6 below, the Creditors hereby undertake to each other that, in the event of that release of security held by either Creditor is required as part of a sale process following Enforcement Action, they will consider all requests to release security in good faith and in a timely fashion.
- 5.5 The Bank undertakes to MBL that in the event that realisations sufficient to satisfy the Bank Priority Sum pursuant to clause 2.1.1 of this Deed of Priority have been made, the Bank will not unreasonably withhold or delay the release of its Securities at the request of an administrator of an Obligor or a receiver of all or any part of the assets of an Obligor.
- 5.6 MBL undertakes to the Bank that in the event that realisations sufficient to satisfy the MBL Priority Sum pursuant to clauses 2.1.2 and 2.1.3 of this Deed of Priority have been made, MBL will not unreasonably withhold or delay the release of its Securities at the request of an administrator of an Obligor or a receiver of all or any part of the assets of an Obligor.

## **6. WAIVER OF CONFIDENTIALITY**

The Obligors agree that the Bank and MBL may disclose to each other from time to time such information as they possess concerning the business property liabilities affairs and accounts of the Obligors.

## **7. TITLE DEEDS AND DOCUMENTS**

The Obligors and MBL agree that MBL shall hold all title deeds and documents relating to any heritable or other property charged by the Bank's Securities.

## **8. NOTICES**

- 8.1 Any notice hereunder may be sent by post or fax or delivered to:

8.1.1 MBL at:

Address: Ropemaker Place, 28 Ropemaker Street, London, EC2Y 9HD  
Attention: Legal Risk Management, Fixed Income, Currencies and Commodities  
Fax: (+44 20) 3037 5700  
Tel: (+44 20) 3037 2000  
Email: [ficc.notices@macquarie.com](mailto:ficc.notices@macquarie.com)

With a copy to:

Address: 50 Martin Place, Sydney NSW 2000, Australia  
Attention: Executive Director, Legal Risk Management Division, Fixed Income, Currencies and Commodities  
Fax: (+61 2) 8232 4540  
Tel: (+61 2) 8232 3333

8.1.2 the Bank at:

Address: The Royal Bank of Scotland plc, Gemini Building, First Floor, 24 St  
Andrew Square, Edinburgh EH2 1AF  
Attention: Steven Ireland

8.1.3 the Obligors at:

Address: Ettrick Riverside, Dunsdale Road, Selkirk, Scotland, TD7 5EB  
Attention: the Directors  
Fax: 0131 226 8240

With a copy to:

- (i) The Chairman and Chief Financial Officer  
Spark Energy Limited  
Ettrick Riverside Business Centre  
Dunsdale Road Selkirk Scotland  
TD7 5EB; and
- (ii) by to the following address: [james.paget@limerstoncap.com](mailto:james.paget@limerstoncap.com).

8.1.4 Or, in each case, any alternative address or fax number provided in writing by the relevant party to the other parties.

8.2 All notices or other communications to be made or given under this Deed of Priority shall be in writing and shall be by first-class pre-paid post or by fax.

8.3 Receipt shall be deemed to have occurred forty-eight hours after posting (unless hand delivered and then at the time of delivery) and if by fax when sent provided a transmission report is received.

8.4 No delivery shall be deemed to be ineffective where it has been sent to MBL, the Bank, or the Obligors in accordance with the provisions above on the grounds only that it has not been copied to any relevant parties.

9. **PRE-ENFORCEMENT RECEIPTS**

Receipts by the Bank or MBL arising other than from the exercise of the powers of enforcement under the Bank's Securities or the MBL Securities shall not be taken into account for the purposes of this deed and shall not be considered to be a payment towards or in reduction of the Bank Priority Sum or the MBL Priority Sum.

10. **COUNTERPARTS**

This Deed of Priority may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original but all the counterparts shall together constitute the one Deed of Priority. No counterpart shall be effective until each party has executed at least one counterpart.

**11. GOVERNING LAW**

This Deed of Priority shall be construed and receive effect in accordance with the law of England and Wales, save that where the Securities are governed by the law of Scotland the applicable provisions of this Deed of Priority and any non-contractual obligations arising out of or in connection with this Deed of Priority are governed by Scots law and any terms particular to the law of England and Wales shall be construed in accordance with Scots law and, insofar as not already subject thereto, the parties submit to the non-exclusive jurisdiction of the English courts.

*[remainder of page blank]*

**Execution pages**

Signed as a deed by )  
MACQUARIE BANK LIMITED, )  
London Branch )

**Matthew Booth**  
Division Director

Signature of witness: )

Name of witness: )

Occupation: )

Address: )

Place:

**Paul Weston**  
Associate Director

Signed as a deed by )  
SPARK ENERGY LIMITED )

Signature of witness: )

Name of witness: )

Occupation: )

Address: )

Place:

Signed as a deed by )

)  
THE ROYAL BANK OF )  
SCOTLAND PLC )

\_\_\_\_\_

Signature of witness: )

)  
Name of witness: )

)  
Occupation: )

)  
Address: )

\_\_\_\_\_

Place:

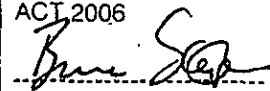
12.15.17 02:49 / 0121216

EXECUTION VERSION

**Amendment and Restatement Deed in respect of  
Deed of Priority dated 28 April 2016**

Dated 21 APRIL 2017

CERTIFIED A TRUE  
COPY SAVE FOR THE  
MATERIAL REDACTED  
PURSUANT TO S859G  
OF THE COMPANIES  
ACT 2006

  
BRODIES LLP  
Solicitors

1151 2017

Ref: MAC1553.5

MACQUARIE BANK LIMITED, LONDON BRANCH

SPARK ENERGY LIMITED

THE ROYAL BANK OF SCOTLAND PLC

## **Contents**

		<b>2</b>
<b>1</b>	<b>Interpretation</b>	<b>2</b>
<b>2</b>	<b>Amendment and restatement</b>	<b>2</b>
<b>3</b>	<b>Counterparts</b>	<b>3</b>
<b>4</b>	<b>Governing law</b>	<b>4</b>

**Schedule – Amended and Restated Deed of Priority**



## **Amendment and Restatement Deed**

Dated 21 APRIL 2017

### **Between**

- (1) MACQUARIE BANK LIMITED, LONDON BRANCH (MBL);
- (2) SPARK ENERGY LIMITED (the Debtor); and
- (3) THE ROYAL BANK OF SCOTLAND PLC (the Bank).

### **Recitals**

The Parties have entered into this Deed in order to evidence the amendments referred to in Clause 2 (*Amendment and restatement*) of this Deed.

### **It is agreed:**

#### **1 Interpretation**

- 1.1 Words and expressions defined in the Amended Deed of Priority shall have the same meanings in this Deed unless otherwise defined or the context otherwise requires, and

**Amended Deed of Priority** means the Original Deed of Priority, as amended and restated by this Deed in the form set out in the Schedule (*Amended and Restated Deed of Priority*) to this Deed.

**Original Deed of Priority** means the deed of priority entered into between the Parties and dated 28 April 2016.

**Parties** means each of MBL, the Debtor and the Bank.

- 1.2 Clause headings in this Deed are for convenience only and will not be taken into account in the interpretation of this Deed.

#### **2 Amendment and restatement**

With immediate effect from the date of this Deed, the Original Deed of Priority shall be amended and restated in the form set out in the Schedule (*Amended and Restated Deed of Priority*) of this Deed.

#### **3 Counterparts**

This Deed (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original but all the counterparts together will be one and the same instrument.

#### **4 Governing law**

This Deed shall be construed and receive effect in accordance with the laws of England and Wales, save that where the Securities are governed by the law of Scotland the applicable provisions of this Deed of Priority and any non-contractual obligations arising out of or in connection with this Deed of Priority are governed by Scots law and any terms particular to the laws of England and Wales shall be construed in accordance with Scots law and, insofar as not already subject thereto, the parties submit to the non-exclusive jurisdiction of the English courts.

These presents, consisting of this and the preceding pages are executed as a deed and delivered on the date appearing at the beginning of this Deed.

**Schedule – Amended and Restated Deed of Priority**

**DEED OF PRIORITY BETWEEN CHARGES**

**DATED 28 APRIL 2016 AS AMENDED AND RESTATED PURSUANT TO AN AMENDMENT  
AND RESTATEMENT DEED DATED 21 APRIL 2017**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this deed of priority, the following definitions apply:

**Amendment and Restatement Deed** means the amendment and restatement deed dated 21 APRIL 2017 and made between MBL, the Debtor and the Bank;

**Bank** means The Royal Bank of Scotland PLC, registered in the UK with number SC90312;

**Bank Documents**

**Bank Documents** means the Bank's Securities and the Bank's Facility Letter;

**Bank's Facility Letter** means the facility letter from the Bank to the Debtor dated on or around 28 April 2016;

**Bank Priority Sum** means (a) an amount equal to the aggregate of (i) £500,000; plus (ii) one year's interest on such amount together with all commission, charges, expenses, fees, legal and other costs (on a full indemnity basis) charged or incurred by the Bank in respect of such aggregate amount, pursuant to the Bank Documents, or (b) such other sum(s) as may be agreed in writing between the Bank and MBL in substitution for that amount;

**Bank's Debenture** means the debenture dated on or around 28 April 2016, granted by the Guarantor in favour of the Bank and creating certain fixed and floating charges over the assets of the Guarantor;

**Bank's Floating Charge** means the floating charge dated on or around 28 April 2016, granted by the Debtor in favour of the Bank and creating, inter alia, a floating charge over the assets of the Debtor;

**Bank's Securities** means the Bank's Debenture and the Bank's Floating Charge;

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

**Creditor** means the Bank and MBL;

**Debtor** means Spark Energy Limited, registered in the UK with number SC301188 whose registered office is at Ettrick Riverside, Dunsdale Road, Selkirk, Scotland, TD7 5EB;

**Debtor's Obligations** means all the Debtor's liabilities of any kind (whether present or future actual or contingent and whether incurred alone or jointly with another) including commission banking charges interest and expenses;

**Deed of Priority** means this deed of priority;

**Enforcement Action** means the taking of any of the following actions: (1) appointing a receiver or administrator pursuant to or in respect of any of the Securities; (2) exercising a power of sale or otherwise utilising the rights given to a creditor under any of the Securities; (3) suing for or instituting any creditor's process (whether before or after judgement) against an Obligor in respect of payment of any of the Secured Liabilities; (4) petitioning for (or voting in favour of any resolution for) or initiating or supporting or taking any steps with a view to insolvency, liquidation, reorganisation, administration, receivership or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or any similar proceedings involving an Obligor, whether by petitioning, convening a meeting, voting for a resolution or otherwise; (5) as against any Obligor, the exercising of any rights of set-off, retention, combination of accounts or similar right in respect of the Secured Liabilities; (6) as against any Obligor, enforcing any guarantee or other assurance held in support of, or in respect of the Secured Liabilities or exercising any rights thereunder on default; or (7) bringing or supporting any legal proceedings against an Obligor or applying for any order for an injunction or specific performance in respect of an Obligor in relation to any of the Secured Liabilities, provided that Enforcement Action shall not include the service of a notice of default and demand by any Creditor to any Obligor;

**Facility Agreement** means the facilities agreement dated on or around the date of the Amendment and Restatement Deed and entered into between, among others, the Debtor as borrower, the Guarantor as guarantor and MBL as lender;

**Guarantor** means Spark Energy Supply Limited, registered in the UK with number 5857467 whose registered office is at Regent House, 316 Beulah Hill, Upper Norwood, London SE19 3HF;

**ISDA** means the terms for the sale and purchase of, or financial trade in respect of, electricity and gas, based on ISDA master agreement (multicurrency - cross border) between MBL and the Debtor, dated on or about 24 December 2015;

**MBL** means Macquarie Bank Limited, London Branch, a company incorporated in Australia, and registered in England and Wales with company number FC018220, acting through its London Branch with registered number BR002678, whose registered office is at Ropemaker Place, 28 Ropemaker Street, London EC2Y 9HD;

**MBL Assignations** means the assignation in security in respect of accounts dated 24 December 2015 and the assignation in security in respect of accounts dated on or about the date of the Amendment and Restatement Deed, each granted by the Debtor to MBL;

**MBL Debentures** means (i) a debenture 24 December 2015 and granted by the Debtor and the Guarantor to MBL and creating in part fixed charges and in part a floating charge over the assets of the Debtor and the Guarantor, respectively, and (ii) a debenture dated on or around the date of the Amendment and Restatement Deed and granted by the Debtor and the Guarantor to MBL and creating in part fixed charges and in part a floating charge over the assets of the Debtor and the Guarantor, respectively;

**MBL Documents** means the Facility Agreement, the WETA, the ISDA, the MBL Securities, any other document designated as a "Finance Document" under the WETA (and notified as such by MBL to the Bank) and any other document designated as a "Finance Document" under the Facility Agreement (and notified as such by MBL to the Bank);

**MBL Floating Charges** means the Scots law bond and floating charge dated 24 December 2015 granted by the Debtor to MBL and the Scots law bond and floating charge granted by the Debtor to MBL and dated on or around the date of the Amendment and Restatement Deed;

**MBL Priority Sum** means (a) all amounts owed to MBL under the Facility Agreement, the WETA, the ISDA, the MBL Securities and any other document designated as a "Finance Document" under the WETA (and notified as such by MBL to the Bank) and any other document designated as a "Finance Document" under the Facility Agreement (and notified as such by MBL to the Bank); plus (b) all outgoing costs, charges, expenses, fees (including legal and other costs) and liabilities (on a full indemnity basis) incurred by MBL on enforcement or on exercising its rights in relation to an Enforcement Action or (c) such other sum(s) as may be agreed in writing between the Bank and MBL in substitution for that amount;

**MBL Securities** means the MBL Debentures, the MBL Assignations and the MBL Floating Charges;

**Obligors** means the Debtor and the Guarantor;

**Secured Account** means any of the following accounts:

Name of Company	Account Type	Account Bank	Sort Code	Account Number
Spark Energy Ltd	RBS Deposit Account	RBS		
Spark Energy Ltd	MBL Security	RBS		
Spark Energy Ltd	Collections Account	RBS		
Spark Energy Ltd	Current Account	RBS		
Spark Gas Shipping Limited	Gas Shipping	RBS		
Spark Energy Supply Ltd	Spark Energy Supply	RBS		
Spark Energy Ltd	Old Collections	HSBC		
Spark Energy Ltd	Old Current	HSBC		

**Secured Liabilities** means the respective liabilities secured by the Securities;

**Securities** means the Bank's Securities and MBL Securities;

**WETA** means the Wholesale Energy Trading Agreement between MBL, the Debtor, Spark Energy Supply Limited, Spark Gas Shipping Limited, Spark Energy Finance Plc and Spark Generation Ltd., dated 24 December 2015, as amended from time to time.

1.2 The expressions "Bank", "Debtor", "Guarantor" and "MBL" where the context admits include their respective successors in title and assigns.

1.3 The expressions "Bank's Securities" and "MBL Securities" include any substituted or further security taken at any time by the Bank or MBL respectively from the Debtor and/or the Guarantor but do not include any security which the Bank or MBL may take from any third party.

## 2. PRIORITY AGREEMENT

2.1 MBL and the Bank with the consent of the Obligors, agree that the Securities shall rank *inter se* in point of security in the following order of priority:

2.1.1 firstly, the Bank's Securities to the extent of the Bank Priority Sum;

2.1.2 secondly, the MBL Assignations to the extent of the MBL Priority Sum;

2.1.3 thirdly, the MBL Floating Charges and the MBL Debentures *pari passu* to the extent of the MBL Priority Sum not satisfied under 2.1.2 above;

2.1.4 fourthly, the Bank's Securities for £500,000, to the extent not recovered or paid pursuant to the Bank Priority Sum;

- 2.1.5 fifthly, the MBL Securities for the remainder of all sums secured thereby; then
- 2.1.6 finally, the Bank's Securities for the remainder of all sums secured thereby.
- 2.2 The ranking and priority set out in Clause 2.1 shall take effect notwithstanding any of the following:
- 2.2.1 the nature of, and any provision contained in any of, the securities created by the Securities and the dates of execution and registration of any of them;
- 2.2.2 the date or dates on which monies have been or may be advanced or become due, owing or payable under the Securities and any fluctuation from time to time in the amounts secured by the Securities including any reduction of those amounts to nil;
- 2.2.3 the appointment of a liquidator, administrative receiver, receiver, administrator or other similar officer in respect of an Obligor or over all or any part of its assets;
- 2.2.4 the granting of time or any other indulgence to an Obligor or any other person or the release, compounding or otherwise dealing with an Obligor or any other person or the receipt of moneys, whether arising from a voluntary sale of any assets subject to any of the Securities or in respect of any security or guarantee held by the Bank in respect of sums owing thereto, or MBL in respect of sums owing thereto, or otherwise prior to taking any Enforcement Action;
- 2.2.5 the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or take any Enforcement Action against an Obligor or any other person by any Creditor;
- 2.2.6 the sale or other disposal of any land or buildings or any interest in any land or buildings prior to taking any Enforcement Action;
- 2.2.7 any present or future mortgage or other charge granted by an Obligor to any Creditor (other than the Securities) (unless otherwise agreed in writing by the Creditors); and/or
- 2.2.8 the provisions of Sections 464 and 466 of the Companies Act 1985 or any other rule of law which might operate to the contrary.
- 2.3 The Bank and MBL agree to hold in trust any money received pursuant to the Bank's Floating Charge or the MBL Securities (as applicable) to give effect to the priorities declared by this Deed of Priority.
- 2.4 Notwithstanding the provisions of sections 464 and 466 of the Companies Act 1985 or any other rule of law which might operate to the contrary effect, the foregoing provisions as to ranking shall be valid and effective irrespective of the date or dates on which sums advanced or to be advanced by any of the Creditors to the Obligors or have been or shall be drawn out by or debited to the Obligors, the Creditors having no concern over the composition of or fluctuations in the sum or sums due by the Obligors to any of the other parties hereto.
- 2.5 Each of the Securities shall rank as provided in this Deed of Priority as a continuing security for repayment of the amounts owing to the respective Creditor from time to time by the Debtor or by any person or company whose obligations to such Creditor are guaranteed by the Debtor, including the Guarantor.



- 2.6 In so far as necessary to give effect to the provisions of this Deed of Priority, the Securities are hereby varied and this Deed of Priority shall constitute an instrument of alteration for the purposes of section 466 of the Companies Act 1985.
- 2.7 For the avoidance of doubt, the parties acknowledge and agree that (1) the ranking of the Securities shall not be prejudiced or affected in any way by any right competent to any of the parties hereto to recover all or any part of the sums secured by the Securities from any third party, cautioner or guarantor and (2) the terms of this Deed of Priority will apply notwithstanding the terms of any ranking provisions contained in the Securities.
- 2.8 Each Obligor undertakes to the Creditors that it shall not grant any further fixed or floating charges over all or any of its assets including its heritable, real or leasehold property (and whether or not such security is in favour of any Creditor) without the written consent of the Creditors.
- 2.9 The Bank and MBL each acknowledge and agree, for the avoidance of doubt, that nothing in this Deed of Priority is intended to govern, amend, or otherwise regulate MBL's rights under or in relation to the bond and floating charge dated 24 December 2015 between MBL and Spark Generation Limited or the bond and floating charge dated on or about the date of the Amendment and Restatement Deed between MBL and Spark Generation Limited (in each case, including but not limited to MBL's rights to enforce its security thereunder).
3. **ASSIGNMENT**
- 3.1 MBL undertakes not to assign or transfer its Securities (as applicable) or their rights or obligations under this Deed of Priority to any other person without first procuring that such person enters into a deed with (i) the Bank and (ii) each Obligor, upon the same terms as this Deed of Priority.
- 3.2 The Bank undertakes not to assign or transfer its Securities (as applicable) or their rights or obligations under this Deed of Priority to any other person without first procuring that such person enters into a deed with (i) MBL and (ii) each Obligor, upon the same terms as this Deed of Priority.
4. **BOOK DEBTS OR OTHER DEBTS AND DEPOSITS**
- 4.1 Notwithstanding the terms of any charge on book debts or other debts contained in the MBL Debentures and any covenant in the MBL Debentures by the Obligors to pay any book debts or other debts into the Obligors' accounts with MBL or with the Bank or some other bank, MBL and the Obligors agree that, to the extent that there is any conflict between the terms of the MBL Debentures and the Bank's Floating Charge in relation to such terms:
- 4.1.1 the Obligors shall comply with their covenant in relation to the payment of book debts and other debts contained in the Bank's Floating Charge and shall not be in breach of its covenant in the MBL Debentures by reason of its so complying; and
- 4.1.2 the Bank shall be entitled to credit any payments received in respect of book debts and other debts to any Secured Account of an Obligor with the Bank.

4.2 In respect of any credit balance from time to time on any current account of an Obligor with the Bank, the Bank may notwithstanding any charge over such credit balance contained in the MBL Debentures:

4.2.1 at any time prior to MBL or an Obligor giving to the Bank written notice that (a) an event of default or termination event (howsoever described) has occurred in accordance with the MBL Documents; or (b) MBL has appointed a receiver or taken any other step to enforce or perfect its security in accordance with the MBL Documents, permit that Obligor to draw upon any such credit balance; and

4.2.2 at any time set off the whole or any part of the Debtor's Obligations to the Bank against any such credit balance and any sums so set off by the Bank shall count towards any calculation of the Bank Priority Sum or.

4.3 In respect of any credit balance from time to time on any current account of an Obligor with MBL, MBL may:

4.3.1 permit that Obligor to draw upon any such credit balance; and

4.3.2 at any time set off the whole or any part of the Debtor's Obligations to MBL pursuant to the Facility Agreement, the WETA, the ISDA and/or MBL Securities against any such credit balance and any sums so set off by MBL shall count towards any calculation of the MBL Priority Sum.

## 5. ENFORCEMENT

5.1 The Bank and MBL shall be entitled to take such Enforcement Action as they see fit but provided that:

5.1.1 the other has given its prior written consent to such Enforcement Action; or

5.1.2 they have given prior written notice of their intention to do so to the other and consult with the other in relation to the appointment of a suitable person as receiver or administrator pursuant to the relevant Security for a period of not less than 5 Business Days (the "Consultation Period").

5.2 During the Consultation Period, the Bank or MBL (the "Purchaser", as appropriate) may give the other (the "Seller", as appropriate) notice (the "Transfer Notice") that it (the Purchaser) requires the Seller to transfer to the Purchaser of all, but not part, of the liabilities and obligations due by the Obligors to the Seller under the Bank Documents or the MBL Documents, as appropriate (the "Relevant Debt"). In the event that the Transfer Notice is served by the Purchaser on the Seller, the Purchaser shall purchase the Relevant Debt to the extent that such amount falls within the Bank Priority Sum or the MBL Priority Sum, as appropriate, at par, within 5 Business Days of the date of the Transfer Notice.

5.3 The Creditors hereby undertake to each other that, in the event of a liquidator of an Obligor, an administrator of an Obligor or a receiver of all or any part of the assets of an Obligor distributing the proceeds of sale of those assets otherwise than in accordance with the terms of this Deed of Priority and one or any of the others being prejudiced thereby, they will compensate the party or parties so prejudiced to the extent to which it is *lucratius* by such prejudice but no further.

5.4 Subject to clauses 5.5 and 5.6 below, the Creditors hereby undertake to each other that, in the event of that release of security held by either Creditor is required as part of a sale process following Enforcement Action, they will consider all requests to release security in good faith and in a timely fashion.

5.5 The Bank undertakes to MBL that in the event that realisations sufficient to satisfy the Bank Priority Sum pursuant to clause 2.1.1 of this Deed of Priority have been made, the Bank will not unreasonably withhold or delay the release of its Securities at the request of an administrator of an Obligor or a receiver of all or any part of the assets of an Obligor.

5.6 MBL undertakes to the Bank that in the event that realisations sufficient to satisfy the MBL Priority Sum pursuant to clauses 2.1.2 and 2.1.3 of this Deed of Priority have been made, MBL will not unreasonably withhold or delay the release of its Securities at the request of an administrator of an Obligor or a receiver of all or any part of the assets of an Obligor.

## 6. WAIVER OF CONFIDENTIALITY

The Obligors agree that the Bank and MBL may disclose to each other from time to time such information as they possess concerning the business property liabilities affairs and accounts of the Obligors.

## 7. TITLE DEEDS AND DOCUMENTS

The Obligors and MBL agree that MBL shall hold all title deeds and documents relating to any heritable or other property charged by the Bank's Securities.

## 8. NOTICES

8.1 Any notice hereunder may be sent by post or fax or delivered to:

8.1.1 MBL at:

Address: Ropemaker Place, 28 Ropemaker Street, London, EC2Y 9HD  
Attention: Legal Risk Management, Fixed Income, Currencies and Commodities  
Fax: (+44 20) 3037 5700  
Tel: (+44 20) 3037 2000  
Email: [ficc.notices@macquarie.com](mailto:ficc.notices@macquarie.com)

With a copy to:

Address: 50 Martin Place, Sydney NSW 2000, Australia  
Attention: Executive Director, Legal Risk Management Division, Fixed Income, Currencies and Commodities  
Fax: (+61 2) 8232 4540  
Tel: (+61 2) 8232 3333

8.1.2 the Bank at:

Address: The Royal Bank of Scotland plc, Gemini Building, First Floor, 24 St  
Andrew Square, Edinburgh EH2 1AF  
Attention: Steven Ireland

8.1.3 the Obligors at:

Address: Ettrick Riverside, Dunsdale Road, Selkirk, Scotland, TD7 5EB  
Attention: the Directors  
Fax: 0131 226 8240

With a copy to:

- (i) The Chairman and Chief Financial Officer  
Spark Energy Limited  
Ettrick Riverside Business Centre  
Dunsdale Road Selkirk Scotland  
TD7 5EB; and
- (ii) by to the following address: james.paget@linnerstoncap.com,

8.1.4 Or, in each case, any alternative address or fax number provided in writing by the relevant party to the other parties.

8.2 All notices or other communications to be made or given under this Deed of Priority shall be in writing and shall be by first-class pre-paid post or by fax.

8.3 Receipt shall be deemed to have occurred forty-eight hours after posting (unless hand delivered and then at the time of delivery) and if by fax when sent provided a transmission report is received.

8.4 No delivery shall be deemed to be ineffective where it has been sent to MBL, the Bank, or the Obligors in accordance with the provisions above on the grounds only that it has not been copied to any relevant parties.

## 9. PRE-ENFORCEMENT RECEIPTS

Receipts by the Bank or MBL arising other than from the exercise of the powers of enforcement under the Bank's Securities or the MBL Securities shall not be taken into account for the purposes of this deed and shall not be considered to be a payment towards or in reduction of the Bank Priority Sum or the MBL Priority Sum.

## 10. COUNTERPARTS

This Deed of Priority may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original but all the counterparts shall together constitute the one Deed of Priority. No counterpart shall be effective until each party has executed at least one counterpart.

11. **GOVERNING LAW**

This Deed of Priority shall be construed and receive effect in accordance with the law of England and Wales, save that where the Securities are governed by the law of Scotland the applicable provisions of this Deed of Priority and any non-contractual obligations arising out of or in connection with this Deed of Priority are governed by Scots law and any terms particular to the law of England and Wales shall be construed in accordance with Scots law and, insofar as not already subject thereto, the parties submit to the non-exclusive jurisdiction of the English courts.

*[remainder of page blank]*

**Execution pages**

Signed as a deed by )  
MACQUARIE BANK LIMITED, )  
London Branch )

\_\_\_\_\_

Signature of witness: )

Name of witness: )

Occupation: )

Address: )

\_\_\_\_\_

Place:

Signed as a deed by )  
SPARK ENERGY LIMITED )

\_\_\_\_\_

Signature of witness: )

Name of witness: )

Occupation: )

Address: )

\_\_\_\_\_

DEBBIE HARDING  
SOLICITOR

\_\_\_\_\_

Place:

SELKIRK

Signed as a deed by )

)  
THE ROYAL BANK OF )  
SCOTLAND PLC )

  
Denise Jones


Signature of witness: )

)  
Name of witness: )

)  
Occupation: )

)  
Address: )

)  
Place: )

  
Documentor

The Royal Bank of Scotland Group  
Credit Documentation  
9th Floor  
1 Hardman Boulevard  
Manchester  
M3 3AQ