



Registration of a Charge

Company name: **FES RESOURCES LIMITED**

Company number: **SC309742**

Received for Electronic Filing: **05/11/2015**



X4JI36ZD

Details of Charge

Date of creation: **29/10/2015**

Charge code: **SC30 9742 0001**

Persons entitled: **EQUITIX MA INFRASTRUCTURE LIMITED**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **ADRIAN MAWLABAUX, SOLICITOR**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 309742

Charge code: SC30 9742 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 29th October 2015 and created by FES RESOURCES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th November 2015 .

Given at Companies House, Edinburgh on 6th November 2015

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

fladgate

Date: 29 October 2015

CHARGE OVER BANK ACCOUNT

FES RESOURCES LIMITED

and

EQUITIX MA INFRASTRUCTURE LIMITED

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DATE:

2015

PARTIES:

- (1) **FES RESOURCES LIMITED** a company incorporated in Scotland with registration number SC309742 which has its registered office at Forth House, Pirnhall Business Park, Stirling, FK7 8HW (**Borrower**); and
- (2) **EQUITIX MA INFRASTRUCTURE LIMITED** a company incorporated in England and Wales with registration number 0943273 which has its registered office at 10-11 Charterhouse Square, London EC1M 6EH (**Lender**).

1. Interpretation

The definitions and interpretative provisions in Schedule 1 apply to this charge.

2. Covenant to pay

The Borrower will on demand pay and discharge all the Secured Liabilities.

3. Security*Fixed charge*

- 3.1 By way of continuing security in favour of the Lender for the payment and discharge of the Secured Liabilities, the Borrower with full title guarantee and free from all Security Interests charges by way of fixed charge all its rights, title and interest in and to the Deposit.

Notice of Security

- 3.2 The Borrower must, within one Business Day following execution of this charge, give a notice of the grant of the security under this agreement to the Account Bank in the form set out in Schedule 2.
- 3.3 The Borrower shall use all reasonable endeavours to procure that the Account Bank acknowledges receipt of such notice to it in writing, substantially in the form set out in Schedule 3 within three Business Days of service of such notice.

4. Trust

- 4.1 The parties acknowledge that the Lender will, by reason of this charge, have a proprietary interest in the proceeds of all book and other debts from time to time owed to the Borrower (**Book Debts**).
- 4.2 The Borrower will ensure that all of the Book Debts are paid into the Account.
- 4.3 In recognition of the proprietary interest that the Lender has over the Book Debts, the Lender and the Borrower agree that, if the Book Debts are not paid into the Account, they will be impressed by trust such that the entire beneficial interest in the Book Debts will vest in the Lender (subject to the equity of redemption).

5. Set-off

In addition to any lien or right to which the Lender may be entitled by law, upon the occurrence of a Default Event which is continuing and subject to the terms of the Intercreditor Agreement, the Lender may at any time, apply all or part of the Deposit towards satisfaction of such of the Secured Liabilities as are then due and payable.

6. Restrictions

The Borrower will not without the previous written consent of the Lender:

- 6.1 create or permit to arise any Security Interest on the Secured Assets, other than the charge created by this agreement;

- 6.2 sell, assign or otherwise dispose of the Secured Assets; or
- 6.3 cause or permit to be done anything which may, in the opinion of the Lender, jeopardise or otherwise prejudice the value to the Lender of the Secured Assets.

7. Representations and warranties

- 7.1 The Borrower represents and warrants to the Lender that:
 - 7.1.1 it is absolutely, solely and beneficially entitled to all the Secured Assets as at the date of this agreement;
 - 7.1.2 no charges or other encumbrances in the nature of a Security Interest exist over the Secured Assets, other than the charge created by this agreement;
 - 7.1.3 it has not disposed of or agreed to dispose of the benefit of any of its right, title and interest in and to the Secured Assets;
 - 7.1.4 the obligations imposed on it under this agreement constitute legal, valid and binding obligations;
 - 7.1.5 it holds and/or is in compliance with all registrations licences permits consents or other authorisations and all applicable laws and regulations, including environmental laws and regulations, necessary for or required for the conduct of its business;
 - 7.1.6 it is in compliance with all the terms and conditions of this agreement;
 - 7.1.7 the Borrower has no bank accounts other than the Account.
- 7.2 These representations and warranties are continuing representations and warranties and will be deemed to be repeated on each day by reference to the then existing circumstances, until all the Secured Liabilities have been repaid or discharged in full.

8. Undertakings

Operation of the Accounts

- 8.1 Subject to clause 8.2 the Borrower has signing rights in relation to the Account and shall be authorised to operate the Account and exercise or direct the exercise of all its rights in relation thereto, in a manner which does not adversely affect this charge, the rights or interests of the Lender or cause a Default Event to occur.
- 8.2 At any time by notice to the Borrower, on the occurrence of a Default Event, which is continuing, the Lender may:
 - 8.2.1 operate the Account;
 - 8.2.2 notify the Borrower that its rights to operate the Account are suspended, such notice to take effect in accordance with its terms; and
 - 8.2.3 withdraw from, and apply amounts standing to the credit of, the Account in or towards any purpose for which monies in any Account may be applied pursuant to the terms of the Facility Agreement and/or the Intercreditor Agreement.
- 8.3 The Lender may at any time following a Default Event which is continuing, serve a blocking request on the Account Bank in order to block the Account. Following the delivery of such blocking request, only the Lender or a third party appointed by it shall have all powers to give instructions to the Account Bank in relation to the Account.

Information request

8.4 The Borrower will, on the date of this agreement, provide the Lender with:

8.4.1 a copy of a statement from the Account Bank showing the balance on the Account, failing which confirmation from the Account Bank of the balance on the Account, at a date no earlier than five Business Days prior to such date;

8.4.2 the Account Bank's terms and conditions applying to the Account, and thereafter will, promptly upon receipt thereof, provide the Lender with copies of monthly bank statements and any changes to the Account Bank's terms and conditions applying to the Account from time to time.

8.5 In addition to its obligations under clause 8.4.1 above, the Borrower will use all reasonable endeavours to provide the Lender, on the date of this agreement, with a copy of a statement from the Account Bank showing the balance on the Account, failing which confirmation from the Account Bank of the balance on the Account, as at such date.

8.6 The Lender, acting reasonably, may at any time request that the Borrower provide it with any reports, statements or other document, or information in relation to the Account and the transactions realised thereon. Upon receipt of a request for information, the Borrower shall provide promptly, or instruct the Account Bank to provide the Lender with such information as requested by the Lender.

9. Further assurance

The Borrower shall at its own expense ensure any documents are executed and any acts and things are done which the Lender may reasonably require from time to time for:

9.1 giving effect to, perfecting or protecting the Security;

9.2 facilitating the realisation of any Secured Asset; or

9.3 facilitating the exercise of all powers, authorities and discretions vested in the Lender or in any Receiver.

10. Enforcement

10.1 The security created by this agreement will become enforceable and, for the purposes of all powers implied by statute, including without limitation section 101 LPA 1925, the Secured Liabilities will be deemed to have become due upon the occurrence of a Default Event.

10.2 Sections 93 and 103 LPA 1925 do not apply to this agreement.

10.3 At any time after the security created by this agreement has become enforceable, the Lender may apply the Deposit in payment or discharge of the Secured Liabilities, in such order as the Lender may decide.

11. Lender's liability

11.1 The Lender will not be liable to account as mortgagee in possession in respect of the Deposit.

11.2 The Lender will not be liable for any loss or damage resulting from any act or default in relation to this agreement other than loss or damage caused by the Lender's wilful default or negligence.

12. Power of attorney

The Borrower, by way of security irrevocably appoints the Lender to be the attorney of the Borrower, with full power of substitution and delegation, in the Borrower's name and on the

Borrower's behalf and as the Borrower's act and deed to sign or execute all deeds, instruments and documents or take continue or defend any proceedings which may be required by the Lender in connection with the proper exercise of its powers under this agreement.

13. Cumulative and continuing security

- 13.1 This agreement is a continuing security to the Lender regardless of any intermediate payment or discharge of the whole or any part of the Secured Liabilities.
- 13.2 This agreement is in addition to any other security, present or future, held by the Lender for the Secured Liabilities and will not merge with or prejudice such other security or any contractual or legal rights of the Lender.

14. Release of security

- 14.1 Upon the Lender being satisfied that the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full, and following a written request from the Borrower, the Lender will release the security provided for in this agreement.
- 14.2 Any receipt, release or discharge of the security provided for in this agreement or of any liability arising under it will not release or discharge the Borrower from any liability which may exist independently of this agreement to the Lender.

15. New account

- 15.1 If the Lender receives notice of any subsequent Security Interest affecting the Secured Assets, the Lender may open a new account for the Borrower in its books.
- 15.2 If the Lender does not open such a new account, it will be deemed to have done so at the time when it received notice of the subsequent Security Interest and as from that time all payments made by the Borrower to the Lender will be treated as having been credited to the new account and will not operate to reduce the amount secured by this agreement as at the time when the notice was received.

16. Certificates

A certificate signed by an official of the Lender as to the amount of the Deposit, will in the absence of manifest error, be conclusive evidence against the Borrower.

17. Redesignation of Account

If the Account is redesignated or renumbered all the terms of this agreement will apply to the redesignated or renumbered account.

18. Further assurance

The Borrower will at its own cost and at the Lender's request execute any document and take any action required by the Lender to perfect or protect the security over the Deposit.

19. Indemnity

- 19.1 The Borrower will indemnify and keep indemnified the Lender from and against any and all expenses claims liabilities losses taxes costs duties fees and charges suffered, incurred or made by it:
 - 19.1.1 in the exercise, preservation or enforcement of any rights, powers or discretions vested in the Lender pursuant to this agreement; or
 - 19.1.2 on the release of any part of the Deposit from the security created by this agreement.

- 19.2 The Lender may retain and pay all matters mentioned in clause 19.1 out of money received under the powers conferred by this agreement.

20. Currency indemnity

- 20.1 If any payment in connection with this agreement is made or falls to be satisfied in a currency other than the currency in which the relevant payment is expressed to be payable, to the extent that the payment received by the Lender, at the rate of exchange, falls short of the amount expressed to be payable in connection with this agreement the Borrower will indemnify the Lender against the amount of that shortfall.
- 20.2 For the purposes of clause 20.1 **rate of exchange** means the rate at which the Lender on or about the date of the relevant payment is able to purchase the currency in which the payment is expressed to be payable and will take into account any premium and other costs of exchange.

21. Costs

The Borrower will pay to the Lender on demand all costs fees and expenses, including, but not limited to, legal fees and expenses, and taxes on such items incurred by the Lender or for which the Lender may become liable in connection with:

- 21.1 the preserving or enforcing of, or attempting to preserve or enforce, any of its rights under this agreement;
- 21.2 any variation of or amendment or supplement to, any of the terms of this agreement; and
- 21.3 any consent or waiver required from the Lender in relation to this agreement.

22. Payment

- 22.1 All payments to be made by the Borrower under this agreement will be paid in immediately available, freely transferable cleared funds to an account nominated from time to time by the Lender for this purpose.
- 22.2 The Borrower will make all payments under this agreement without set-off or counterclaim and without withholding or deducting, except where required by law, any Taxes. If the Borrower is required by law to make any such withholdings or deductions, the Borrower will pay to the Lender additional amounts to ensure that the Lender receives a net amount equal to the full amount it would have received if no withholding or deduction had been required.

23. Notices

- 23.1 Any notices or other communication given under this agreement must be in writing and served:
- 23.1.1 by hand delivery to the recipient;
- 23.1.2 by first class recorded delivery post addressed to the relevant party's address as specified in this agreement or such other address as a party may have last notified to the others; or
- 23.1.3 by fax to the following fax numbers or such other fax numbers as a party may have last notified to the others together with a confirmatory copy sent by first class post:

<i>Party</i>	<i>Number</i>
Borrower	01786 819 600

<i>Party</i>	<i>Number</i>
with a copy to the Borrower's Solicitors marked for the attention of Ian Mitchell.	0131 228 9900
Lender	020 7250 7330
with a copy to the Lender's Solicitors marked for the attention of Andrew Bessemer Clark.	020 3036 7706

- 23.2 Any notice given pursuant to clause 23.1 is deemed to have been served:
- 23.2.1 if delivered by hand, at the time of delivery;
 - 23.2.2 if sent by post, within 48 hours of posting, exclusive of Sundays; and
 - 23.2.3 if sent by fax, at the completion of transmission during business hours at its destination or, if not within business hours, at the opening of business hours at its destination on the next Business Day but subject to:
 - 23.2.3.1 proof by the sender that it holds a printed transmission report confirming despatch of the transmitted notice;
 - 23.2.3.2 the sender not receiving any telephone calls from the recipient, to be confirmed in writing, that the fax has not been received in a legible form; and
 - 23.2.3.3 despatch of the notice by post in accordance with clause 23.1.2 on the same day as its transmission.
- 23.3 For the purpose of clause 23.2, **business hours** means between 9.00 a.m. and 5.30 p.m.

24. Assignments

- 24.1 This agreement will be binding upon the respective heirs and successors of the parties.
- 24.2 The Borrower may not assign or transfer all or any part of its rights and/or obligations under this agreement.
- 24.3 This agreement and all or any of the rights and obligations under it may be assigned or transferred by the Lender to a party to which it transfers its rights as Lender under the Facility Agreement.

25. General

- 25.1 Time is of the essence of this agreement both as regards the dates and periods mentioned and as regards any dates or periods which may be substituted for them in accordance with this agreement or by agreement in writing by the parties.
- 25.2 Neither party will be affected by any delay or failure in exercising or any partial exercising of its rights under this agreement unless he has signed an express written waiver or release.
- 25.3 The provisions of this agreement, and the rights and remedies of the parties under this agreement are cumulative and are without prejudice and in addition to any rights or remedies at law or in equity. No exercise by a party of any one right or remedy under this agreement, or at law or in equity, will, except if the contrary is expressly stated, hinder or prevent the exercise by it of any such other right or remedy.

- 25.4 Any provision in this agreement which is held by any competent court or tribunal to be illegal or unenforceable will to the extent necessary be regarded as omitted from this agreement and the enforceability of the remainder will not be affected.
- 25.5 The Lender, at any time and from time to time, may delegate by power of attorney or in any other manner to any person or persons all or any of the powers, authorities and discretions which are for the time being exercisable by the Lender under this agreement in relation to all or any part of the Secured Assets. Any such delegation may be made upon such terms and subject to such regulations as the Lender may think fit. The Lender will not be in any way liable or responsible to the Borrower for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate.
- 25.6 The construction, validity and performance of this agreement are governed by the laws of England and Wales.

26. Execution as a deed

This agreement has been executed as a deed but is not delivered until it has been dated.

Schedule 1
Definitions and interpretation
(Clause 1)

1. The provisions of Schedule 1 apply to the interpretation of this agreement including the schedules.
2. The following words and expressions have the following meanings:

Account	Borrower's account number 10020268 with sort code 824303 held by the Borrower with the Account Bank.
Account Bank	Clydesdale Bank Plc.
Book Debts	has the meaning given to it in clause 4.1.
Business Day	a day between Monday and Friday inclusive on which clearing banks are open in the City of London.
Default Event	any Default Event specified in clause 12 of the Facility Agreement (subject to the provisions of clause 13.1 of the Facility Agreement) other than a Default Event set out in clause 12.1.10 of the Facility Agreement.
Deposit	all amounts now or in the future standing to the credit of the Account together with accrued interest, and including all of the Borrower's right to repayment of such amounts.
Facility Agreement	a facility agreement between the Borrower and the Lender dated 5 October 2015 in respect of a loan of £11,920,000.
Intercreditor Agreement	An intercreditor agreement between the Borrower, the Lender and Forth Holdings Limited dated on or about the date of this agreement in respect of the Secured Liabilities.
LPA 1925	Law of Property Act 1925.
Secured Assets	the assets of the Borrower charged to the Lender pursuant to clause 3.1 of this charge.
Secured Liabilities	all the Borrower's liabilities to the Lender of any kind and in any currency, whether present or future, actual or contingent and whether incurred alone or jointly with another, together with the Lender's costs charges commission and expenses.
Security Interest	any option mortgage charge whether fixed or floating pledge lien hypothecation assignment security interest retention of title or other encumbrance of any kind securing, or any right conferring, a priority of payment in respect of any obligation of any person or a

contractual right relating to shares or to any asset or liability.

Taxes

all present or future taxes levies duties imports charges fees deductions or withholdings of any nature which are imposed levied collected or withheld pursuant to any regulation having the force of law.

3. A Default Event will be "**continuing**" if it has not been waived by the Lender.
4. All references to a statutory provision include references to:
 - 4.1 any statutory modification, consolidation or re-enactment of it, whether before or after the date of this agreement, for the time being in force;
 - 4.2 all statutory instruments or orders made pursuant to it; and
 - 4.3 any statutory provision of which that statutory provision is a re-enactment or modification.
5. Words denoting the singular include the plural and vice versa; words denoting any gender include all genders; and words denoting persons include corporations, partnerships, other unincorporated bodies and all other legal entities and vice versa.
6. The provisions of this schedule apply unless the meaning attributed is inconsistent with the context of the relevant word or expression.
7. Unless otherwise stated, a reference to a clause, party or a schedule is a reference to respectively a clause in or a party or schedule to this agreement.
8. Any preliminary section and the clause headings are inserted for ease of reference only and do not affect the construction of this agreement.
9. If there is any conflict between the provisions of this agreement and the provisions of the Facility Agreement, the provisions of the Facility Agreement will prevail.

Schedule 2

Form of notice of charge of the Charged Account

To: **Clydesdale Bank PLC**

Date: [•]

Dear Sirs

We give you notice that we have charged to Equitix MA Infrastructure Limited in its capacity as lender (**Lender**) all of our right, title and interest in and to the Charged Account (as defined in the schedule to this letter) including any renewal or redesignation of such account and all monies standing to the credit of such account from time to time.

With effect from the date of your receipt of this notice:

1. any existing payment instructions affecting the Charged Account are to be terminated upon receipt of written notice from the Lender and all payments and communications in respect of the Charged Account thereafter should be made to the Lender or to its order;
2. the Charged Account will not be capable of being accessed by way of on-line banking and any on-line banking instructions or codes relating to the Charged Account are to be immediately terminated;
3. all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Charged Account belong to the Lender upon receipt of written notice from the Lender;
4. we may continue to withdraw monies from the Charged Account until you receive written notice from the Lender that we may no longer do so; and
5. we irrevocably and unconditionally authorise and instruct you to disclose to the Lender such information relating to the Charged Account (including the balance of the account) as the Lender may from time to time request you to provide.

This notice and any non contractual obligations arising out of or in connection with it are governed by English law.

Please accept this notice by signing the enclosed acknowledgement and returning it to the Lender at Welken House, 10-11 Charterhouse Square, London EC1M 6EH marked for the attention of Achal Bhuwania.

Yours faithfully

For and on behalf of

FES Resources Limited

as Borrower

Schedule*Charged Account*

<i>Account name</i>	<i>Account number</i>	<i>Sort Code</i>
FES Resources Limited	10020268	824303

**Schedule 3
Acknowledgment**

[ON COPY ONLY:]

To: Equitix MA Infrastructure Limited
 Welken House, 10-11 Charterhouse Square, London EC1M 6EH

FAO:

At the request of FES Resources Limited and Equitix MA Infrastructure Limited we acknowledge receipt of the notice of charge, on the terms attached, in respect of the Charged Account (as described in those terms). We confirm that:

1. we have not received notice of any previous assignments of, charges over or trusts in respect of, the Charged Account and we will not, without the Lender's consent:
 - 1.1 exercise any right of combination, consolidation or set-off which we may have in respect of the Charged Account; or
 - 1.2 amend or vary any rights attaching to the Charged Account, other than by way of changes to the Business Current Account terms and conditions or if required by statute or regulation;
2. we hereby waive any right of pledge over the Charged Account that may arise pursuant to the Business Current Account terms and conditions;
3. we will comply with the terms of the notice of charge.

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

For and on behalf of Clydesdale Bank PLC

By: [•]

Date: [•]

Borrower

Executed as a deed by
FES RESOURCES LIMITED
acting by a director in the presence of:

Signature.....

Print name..... DYLAN FLETCHER.....

Witness' signature: 

Witness' name: CLAIRE MCNALLY

Address: 90 FES LTD, FORTH HOUSE, PRINHALL BUSINESS PARK, STIRLING

Occupation: FINANCE DIRECTOR.

Lender

Executed as a deed by
EQUITIX MA INFRASTRUCTURE LIMITED
acting by a director in the presence of:

Signature.....

Print name.....

Witness' signature:

Witness' name:

Address:

Occupation:

Borrower

Executed as a deed by
FES RESOURCES LIMITED
acting by a director in the presence of:

Signature.....

Print name.....

Witness' signature:

Witness' name:

Address:

Occupation:

Lender

Executed as a deed by
EQUITIX MA INFRASTRUCTURE LIMITED
acting by a director in the presence of:

Signature.....

Print name..... *Huan Crossley*

Witness' signature: *Andrew Benem Clark*

Witness' name: *Andrew Benem Clark*

Address: *16 Creek Green St*

London

Occupation: *Solicitor*