



Registration of a Charge

Company name: **BEATRICE OFFSHORE WINDFARM LIMITED**

Company number: **SC350248**

Received for Electronic Filing: **26/07/2019**



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Details of Charge

Date of creation: **17/07/2019**

Charge code: **SC35 0248 0009**

Persons entitled: **MUFG BANK, LTD AS SECURITY TRUSTEE**

Brief description: **ALL AND WHOLE GROUND AT BLACKHILLOCK, KEITH BEING 14.2 HECTARES IN MEASUREMENT AND BEING THE SUBJECTS REGISTERED IN THE LAND REGISTER OF SCOTLAND UNDER TITLE NUMBER BNF10339 AND AS FURTHER DESCRIBED IN THE INSTRUMENT.**

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 SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

GAENOR CASSELL



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 350248

Charge code: SC35 0248 0009

The Registrar of Companies for Scotland hereby certifies that a charge dated 17th July 2019 and created by BEATRICE OFFSHORE WINDFARM LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th July 2019 .

Given at Companies House, Edinburgh on 29th July 2019

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

EXECUTION VERSION

 Burness Paull



For and on behalf of Burness Paull LLP at Edinburgh on 25/07/2019
I certify that, save for the material redacted pursuant to section 859G of
the Companies Act 2006, this copy instrument is a correct copy of the
original instrument.

BEATRICE OFFSHORE WINDFARM LIMITED
as Chargor

in favour of

MUFG Bank, Ltd
as Security Trustee

STANDARD SECURITY
in respect of ground at Blackhillock, Keith (Title Number BNFI0339)

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INSTRUMENT

by

- (1) **BEATRICE OFFSHORE WINDFARM LIMITED**, a company incorporated in Scotland under the Companies Acts with registered number SC350248 and having its registered office at Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ (the "**Chargor**")

in favour of

- (2) **MUFG BANK, LTD**, registered as an overseas company in the UK with registered number FC004549 and having a place of business at Ropemaker Place, 25 Ropemaker Street, London, EC2Y 9AN as security trustee for the Secured Creditors (the "**Security Trustee**")

CONSIDERING THAT:

- (A) The board of directors of the Chargor is satisfied that entering into this Instrument would be most likely to promote the success of the Chargor for the benefit of its members as a whole and to the further benefit and advantage of the Chargor.
- (B) The Security Trustee holds the benefit of this Instrument for the Secured Creditors on the terms of the Finance Documents.

NOW IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Instrument:

"Common Terms and Facilities Agreement" means the common terms and facilities agreement dated on or about the date of execution of this Instrument between, among others, the Chargor as Borrower, Beatrice Offshore Windfarm Holdco Limited as Holdco, MUFG Bank, Ltd as Intercreditor Agent and Security Trustee, the Original Senior Lenders and Original Hedging Banks;

"Delegate" means a delegate or sub-delegate appointed by the Security Trustee or a Receiver in accordance with the Finance Documents;

"Finance Document" has the meaning given to it in the Common Terms and Facilities Agreement;

"Intercreditor Agreement" means the intercreditor agreement dated on or about the date of execution of this Instrument between, amongst others, the Chargor and the Security Trustee;

"Officer" means in relation to a person, means any officer, employee or agent of that person;

"Secured Assets" means ALL and WHOLE ground at Blackhillock, Keith being 14.2 hectares in measurement and being the subjects registered in the Land Register of Scotland under Title Number BNF10339 together with (One) the whole buildings and erections thereon (Two) the fittings and fixtures therein and thereon (Three) the parts, privileges and pertinents thereof (Four) the whole rights common, mutual and exclusive effecting thereto and (Five) the Chargor's whole right, title and interest, present and future, therein and thereto;

"Secured Creditor" has the meaning given to that term in the Intercreditor Agreement;

"Secured Debt" has the meaning given to it in the Intercreditor Agreement;

"Security" has the meaning given to that term in the Common Terms and Facilities Agreement;

"Security Interests" means all or any of the Security created or expressed to be created in favour of the Security Trustee by or pursuant to this Instrument; and

"Senior Discharge Date" has the meaning given to that term in the Intercreditor Agreement.

1.2 Incorporation of defined terms

Unless a contrary indication appears, terms defined in the Common Terms and Facilities Agreement have the same meaning in this Instrument.

1.3 Construction

1.3.1 Any reference in this Instrument to a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document or other agreement or instrument.

1.3.2 The provisions in clause 1.2 (Construction) of the Common Terms and Facilities Agreement apply to this Instrument, except that references to the Common Terms and Facilities Agreement shall be construed as references to this Instrument.

1.3.3 Where this Instrument imposes an obligation on the Chargor to do something if required or requested by the Security Trustee, it will do so promptly after it becomes aware of the requirement or request unless otherwise specified in this Instrument.

1.3.4 This Instrument is subject to the Intercreditor Agreement. In the event of any inconsistency between the terms of this Instrument and the terms of the Intercreditor Agreement, the terms of the Intercreditor Agreement shall prevail.

1.4 Third-party rights

1.4.1 Unless expressly provided to the contrary in a Finance Document, this Instrument does not confer on any person who is not a party to this Instrument any right to enforce or otherwise invoke this Instrument or any part of it under the Contract (Third Party Rights) (Scotland) Act 2017.

1.4.2 Notwithstanding any term of any Finance Document, the consent of any person who is not a party to this Instrument is not required to rescind or vary this Instrument at any time.

2 BOND

The Chargor shall, on demand of the Security Trustee, pay the Secured Debt when due in accordance with its terms.

3 CHARGE

The Chargor as security for the payment and discharge of all the Secured Debt hereby grants in favour of the Security Trustee as trustee for the Secured Creditors a standard security over the Secured Assets.

4 STANDARD CONDITIONS

The Standard Conditions specified in Schedule 3 (the “**Standard Conditions**”) to the Conveyancing and Feudal Reform (Scotland) Act 1970 (the “**1970 Act**”) and any lawful variation thereof operative for the time being, shall apply and the Chargor agrees that the Standard Conditions shall be varied to the effect that:

4.1 the Chargor shall not create or agree to create any subsequent security over the Secured Assets or any part thereof except with the prior written consent of the Security Trustee; and

4.2 wherever and to the extent that the Standard Conditions are inconsistent with the terms of the Common Terms and Facilities Agreement, or where there is an obligation which is either more onerous than an equivalent obligation or is not contained in the Common

Terms and Facilities Agreement, the terms of the Common Terms and Facilities Agreement shall insofar as permitted by the 1970 Act prevail and that to such extent the Standard Conditions shall be varied insofar as lawful and applicable by the terms of the Common Terms and Facilities Agreement.

5 ENFORCEMENT

Upon the occurrence of an Event of Default which is continuing, and the Security Trustee giving notice to the Chargor that this Instrument is enforceable:

- 5.1 the Chargor, shall be held to be in default within the meaning of Standard Condition 9(1)(b) of the Standard Conditions; and
- 5.2 the Security Trustee shall be able to take warrant of summary ejection against the Chargor, for the purposes of obtaining possession of the Secured Assets.

6 ORDER OF APPLICATION

All amounts received or recovered by the Security Trustee pursuant to the terms of this Instrument shall be held by the Security Trustee on trust to apply them at any time, subject to the rights of any creditors having priority, in the order provided in clause 8.1 (Proceeds of Enforcement Security – Order of Application) of the Intercreditor Agreement.

7 PROTECTION OF SECURITY

- 7.1 Subject to Clause 8 (Discharge of Security), the Security Interests are continuing Security and will extend to the ultimate balance of the Secured Debt, regardless of any intermediate payment or discharge in whole or in part.
- 7.2 If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or the other Obligor or any security for those obligations or otherwise) is made by a Secured Creditor in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation or otherwise, without limitation, then the liability of the Chargor and the other Obligor and the Security Interests will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 7.3 The Security Interests are in addition to and are not in any way prejudiced by any other guarantee or security now or subsequently held by any Secured Creditor.
- 7.4 If, at any time, any provision of this Instrument is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision in any other respect or under the law of any other jurisdiction will be affected or impaired in any way.

- 7.5 No failure to exercise, nor any delay in exercising, on the part of any Secured Creditor, Receiver or Delegate, any right or remedy under any Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No waiver or election to affirm any of the Finance Documents on the part of any Secured Creditor, Receiver or Delegate shall be effective unless in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Finance Documents are cumulative and not exclusive of any rights or remedies provided by law, including the right to appoint an Administrator under the Insolvency Act 1986.
- 7.6 At any time after a Secured Creditor has received or is deemed to have received notice of any subsequent Security affecting all or any part of the Secured Assets, that Secured Creditor may open a new account in the name of the Chargor (whether or not it permits any existing account to continue). If that Secured Creditor does not open such a new account, it shall be treated as if it had done so when the relevant notice was received or deemed to have been received and as from that time all payments made by or on behalf of the Chargor to that Secured Creditor shall be credited or be treated as having been credited to the relevant new account and not as having been applied in reduction of the Secured Debt as at the time the relevant notice was received or deemed to have been received.
- 7.7 Neither the obligations of the Chargor under this Instrument nor the Security Interests will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under any Finance Document or any of the Security Interests (without limitation and whether or not known to it or any Secured Creditor) including:
- 7.7.1 any time, waiver or consent granted to, or composition with, the Chargor, the other Obligor or any other person;
 - 7.7.2 the release of the Chargor, the other Obligor or any other person under the terms of any composition or arrangement with any creditor;
 - 7.7.3 the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Chargor, the other Obligor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
 - 7.7.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor, the other Obligor or any other person;

- 7.7.5 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- 7.7.6 any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- 7.7.7 any insolvency or similar proceedings.
- 7.8 Without prejudice to the generality of Clause 7.7, the Chargor expressly confirms that it intends that the Security Interests shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with the Project or any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.
- 7.9 The Chargor waives any right it may have of first requiring any Secured Creditor (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Instrument. This waiver applies irrespective of any law or provision of a Finance Document to the contrary.
- 7.10 Until all amounts which may be or become payable by the Obligors or the Chargor under or in connection with the Finance Documents have been irrevocably paid in full and all facilities which might give rise to Secured Debt have terminated, each Secured Creditor (or any trustee or agent on its behalf) may:
- 7.10.1 refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Creditor (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- 7.10.2 hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Instrument (the interest being credited to the relevant account).
- 7.11 Until all amounts which may be or become payable by the Obligors or the Chargor under or in connection with the Finance Documents have been irrevocably paid in full

and all facilities which might give rise to Secured Debt have terminated and unless the Security Trustee otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under the Finance Documents:

- 7.11.1 to be indemnified by the other Obligor;
 - 7.11.2 to claim any contribution from any other provider of Security for or guarantor of any Obligor's obligations under the Finance Documents;
 - 7.11.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Creditors under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Creditor;
 - 7.11.4 to bring legal or other proceedings for an order requiring the other Obligor to make any payment, or perform any obligation, in respect of which such Obligor had given a guarantee, undertaking or indemnity under any Finance Document;
 - 7.11.5 to exercise any right of set-off against the other Obligor; and/or
 - 7.11.6 to claim or prove as a creditor of the other Obligor in competition with any Secured Creditor.
- 7.12 If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Secured Creditors by the other Obligor or the Chargor under or in connection with the Finance Documents to be repaid in full on trust for the Secured Creditors and shall promptly pay or transfer the same to the Security Trustee or as the Security Trustee may direct for application in accordance with Clause 6 (Order of application).
- 7.13 Any certification or determination by the Security Trustee or any Receiver of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

8 DISCHARGE OF SECURITY

- 8.1 Subject to Clause 8.2, if the Security Trustee is satisfied that the Senior Discharge Date has occurred, the Security Trustee shall at the request and cost of the Chargor release, reassign or discharge (as appropriate) the Secured Assets from the Security Interests, without recourse to, or any representation or warranty by, the Security Trustee or any of its nominees.

- 8.2 If the Security Trustee considers that any amount paid or credited to any Secured Creditors under any Finance Document is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Secured Debt have been irrevocably paid and discharged.

9 FURTHER ASSURANCE

- 9.1 The Chargor shall at its own expense promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, standard securities, charges, pledges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)):

9.1.1 to perfect the Security created or intended to be created under or evidenced by this Instrument (which may include the execution of a mortgage, standard security, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Security Interests) or for the exercise of any rights, powers and remedies of the Security Trustee or the Secured Creditors provided by or pursuant to the Finance Documents or by law; or

9.1.2 to confer on the Security Trustee, or confer on the Secured Creditors, Security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Instrument; and/or

9.1.3 to facilitate the realisation of the assets which are, or are intended to be, the subject of the Security Interests.

- 9.2 The Chargor shall at its own expense take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Trustee or the Secured Creditors by or pursuant to this Instrument.

10 POWER OF ATTORNEY

- 10.1 The Chargor by way of security irrevocably appoints the Security Trustee and each Delegate severally to be its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

10.1.1 to do anything which the Chargor is obliged to do under any Finance Document to which it is party but has failed to do (including to do all such acts or execute all such documents, assignments, transfers, mortgages, standard securities, charges, pledges, notices, instructions, filings and registrations as the Security Trustee may reasonably specify (and in such

form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)); and

10.1.2 to exercise any of the rights conferred on the Security Trustee or any Delegate in relation to the Secured Assets or under any Finance Document or under any law.

10.2 The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 10.1.

11 PAYMENTS

11.1 All payments by the Chargor under this Instrument shall be made in full, without any set-off or other deduction, unless a deduction is required by law, and to such account, with such financial institution and in such other manner as the Security Trustee may direct.

11.2 Clause 14.2 (Tax gross-up) of the Common Terms and Facilities Agreement shall apply as if it were set out in full in this Instrument, save that references in that clause to "Finance Party" shall be treated in this Instrument as being to "Secured Creditor or Delegate".

11.3 No payment by the Chargor (whether under a court order or otherwise) will discharge the obligations of the Chargor unless and until the Secured Creditors have received payment in full in the currency in which the Obligation is denominated. If, on conversion into that currency, the amount of the payment falls short of the amount of the Obligation concerned, the Secured Creditors will have a separate cause of action against the Chargor for the shortfall.

11.4 If the Security Interests are enforced at a time when no amount is due under the Finance Documents but any such amount may or will become due, the Security Trustee or the Receiver may pay the proceeds of any recoveries effected by it into a suspense account.

12 COSTS AND EXPENSES

12.1 The Chargor shall pay to the Security Trustee the amount of all costs, losses, liabilities and expenses (including legal fees) incurred by the Security Trustee or any Receiver subject to and in accordance with clause 18 (Enforcement Costs) of the Common Terms and Facilities Agreement.

12.2 Clause 14.8 (VAT) of the Common Terms and Facilities Agreement shall apply as if it were set out in full in this Instrument, save that references in that clause to "Finance Party" shall be treated in this Instrument as being to "Secured Creditor or Delegate".

13 INDEMNITY

The Chargor shall, within three Business Days of demand, indemnify the Security Trustee and any Receiver against any cost, loss, liability or expense incurred by it or them as a result of:

- 13.1 any breach by the Chargor of this Instrument;
- 13.2 a claim of any kind (whether relating to the environment or otherwise) made against it which has arisen due to its taking, holding, protection or enforcement of the Security Interest, unless caused by its gross negligence or wilful misconduct; or
- 13.3 the exercise or purported exercise of any of the rights, powers, discretions, authorities and remedies conferred on it or them by this Instrument or otherwise relating to the Secured Assets.

14 RESIGNATION OF THE SECURITY TRUSTEE

The Security Trustee may be replaced by a successor in accordance with the Intercreditor Agreement.

15 ASSIGNATION BY THE SECURITY TRUSTEE

The Security Trustee may assign and transfer all of its rights and obligations under this Instrument to a replacement Security Trustee appointed in accordance with the terms of the Intercreditor Agreement. Upon such assignation and transfer taking effect, the replacement Security Trustee shall be and be deemed to be acting for itself and as trustee for the Secured Creditors for the purposes of this Instrument in place of the previous Security Trustee.

16 NOTICES

All notices, requests, demands and other communications to be given under this Instrument shall be given and/or be deemed to be given in the same manner as notices to be given under the Common Terms and Facilities Agreement and the terms of clause 35 (Notices) of the Common Terms and Facilities Agreement shall apply *mutatis mutandis* to this Instrument as though that clause were set out in full in this Instrument.

17 GOVERNING LAW AND JURISDICTION

This Instrument shall be governed by, and construed in all respects in accordance with, the law of Scotland and, for the benefit of the Security Trustee, the Chargor irrevocably submits to the non-exclusive jurisdiction of the Scottish courts but without prejudice to the ability of the Security Trustee to proceed against the Chargor in any other appropriate jurisdiction.

18. WARRANTICE AND CONSENT TO REGISTRATION

18.1 The Chargor hereby grants warrantice.

18.2 A certificate signed by any official, manager or equivalent account officer of the Security Trustee shall, in the absence of manifest error, conclusively determine the Secured Debt at any relevant time. The Chargor hereby consents to the registration of this Instrument and of any such certificate for preservation. IN WITNESS WHEREOF these presents consisting of this and the preceding ten pages are executed as follows:

SUBSCRIBED for and on behalf of
the said BEATRICE OFFSHORE
WINDFARM LIMITED

at Perth, Scotland

on 28 June 2019

by James Smith

Print Full Name

Director

before this witness

Bernard O'CONNOR

Print Full Name

Witness

Address

Inveralmond House

200 Dunkeld Road, Perth,

PH1 3AQ