



**Registration of a Charge**

Company name: **COUR WINDFARM HOLDINGS LIMITED**

Company number: **SC502631**



X4JCPVEH

Received for Electronic Filing: **02/11/2015**

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**Details of Charge**

Date of creation: **28/10/2015**

Charge code: **SC50 2631 0001**

Persons entitled: **KFW IPEX-BANK GMBH (AS SECURITY TRUSTEE)**

Brief description:

**Contains floating charge(s) .**

**Contains negative pledge.**

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**Authentication of Form**

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

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**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: **PINSENT MASONS LLP**



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

Company number: 502631

Charge code: SC50 2631 0001

The Registrar of Companies for Scotland hereby certifies that a charge dated 28th October 2015 and created by COUR WINDFARM HOLDINGS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd November 2015 .

Given at Companies House, Edinburgh on 3rd 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

**FLOATING CHARGE**

by

**COUR WINDFARM HOLDINGS LIMITED**  
as Chargor

In favour of

**KFW IPEX-BANK GMBH**  
as Security Trustee

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**HOLDGO BOND AND FLOATING CHARGE** In respect of the  
**COUR WIND FARM PROJECT**

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**Pinsent Masons**

## **FLOATING CHARGE by**

- (1) **COUR WINDFARM HOLDINGS LIMITED**, Incorporated in Scotland (Registered Number SC502631) whose registered office is at 13 Queen's Road, Aberdeen, Scotland AB15 4YL (the "Chargor")

in favour of

- (2) **KFW IPEX-BANK GMBH**, a private limited company existing under German Law, registered with number HRB 79744 in the Amtsgericht (Local Court) of Frankfurt am Main, Germany and having its registered office at Palmengartenstrasse 6-9, 60325 Frankfurt am Main, Germany as Security Trustee for the Finance Parties under and as defined in the Facilities Agreement, and its successor(s) as such Security Trustee (the "Security Trustee").

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Security unless the context requires otherwise:

"**Act**" means the Insolvency Act 1986 as amended by the Insolvency Act 2000 and the Enterprise Act 2002 or, where the context so requires, any of those enactments;

"**Default Rate**" means the rate of default interest specified in clause 10.4 (*Default Interest*) of the Facilities Agreement;

"**Facilities Agreement**" means the agreement so called dated on or around the date of this Security entered into among, *inter alios*, (i) Cour Wind Farm (Scotland) Limited as Borrower; (ii) the Chargor as Holder; and (iii) KFW IPEX-BANK GMBH as Original Lender, Mandated Lead Arranger, Agent and Security Trustee as amended, supplemented, novated, extended or restated from time to time;

"**Receiver**" means any receiver or administrative receiver appointed in respect of the Secured Assets under this Security (whether by the Chargor or the Court) and includes joint receivers;

"**Secured Assets**" means the whole of the property (including uncalled capital) which is or may from time to time, while this Security is in force, be comprised in the property and undertaking of the Chargor;

"**Secured Obligations**" means all or any monies, liabilities and obligations, whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, surety or otherwise, which are now or may at any time hereafter (whether before or at any time after demand) be or become due in any manner by the Obligors to the Security Trustee or any of the Finance Parties under the Facilities Agreement and the other Finance Documents, and all or any monies, liabilities and obligations due by the Chargor under or pursuant to this Security; and

"**Security**" means these presents (and, as the context may require or imply, the floating charge hereby created) as amended, supplemented, novated, extended or restated from time to time.

### **1.2 Facilities Agreement definitions**

In this Security, unless the context requires otherwise terms defined in clause 1.1 (*Definitions*) of the Facilities Agreement shall have the same meaning in this Security.

### **1.3 Interpretation**

The provisions of clauses 1.2 to 1.3 of the Facilities Agreement shall apply *mutatis mutandis* to this Security as if set out in full herein.

### **1.4 Conflict**

If there is any conflict between the provisions of this Security and the provisions of the Facilities Agreement, the provisions of the Facilities Agreement shall prevail.

If this Security is subject to the terms of the Security Trust and Intercreditor Deed, in the event of any conflict between the terms of this Security and the Security Trust and Intercreditor Deed, the terms of the Security Trust and Intercreditor Deed shall apply.

## **2 FLOATING CHARGE**

### **2.1 Floating Charge**

In security for the payment and discharge of the Secured Obligations, the Chargor hereby GRANTS a FLOATING CHARGE over the Secured Assets in favour of the Security Trustee.

### **2.2 Negative pledge and ranking**

Save as expressly permitted under the Finance Documents:

- (a) the Chargor shall not create any fixed security or other floating charge over any part of the Secured Assets ranking in priority to or equally with or postponed to this Security after its execution of this Security except any fixed security in favour of the Security Trustee; and
- (b) this Security shall rank in priority to any fixed security or other floating charge created by the Chargor after its execution of this Security except any fixed security created in favour of the Security Trustee.

## **3 PROTECTION OF SECURITY**

### **3.1 Continuing security**

This Security shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force and may not be revoked until the Secured Obligations have been fully and unconditionally paid or discharged.

### **3.2 No prejudice**

This Security shall be in addition to and shall not in any way prejudice or be prejudiced by any other security, right or remedy which the Security Trustee or any other Finance Party may now or at any time hereafter hold for all or any part of the Secured Obligations.

### **3.3 No waiver**

Failure or delay on the part of the Security Trustee in exercising any right, power or discretion under or pursuant to this Security shall not operate as a waiver thereof, nor will any single or partial exercise of any such right, power or discretion preclude any other or further exercise thereof. The rights, powers and discretions contained in this Security are in addition to and not in substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.

### **3.4 Severability**

The provisions of this Security shall be severable and distinct from one another and if at any time one or more of such provisions is or becomes or is declared void, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Security shall not in any way be affected or impaired thereby.

### **3.5 Non impairment**

The Chargor agrees that none of its obligations or the Security Trustee's rights, powers and discretions under this Security shall be reduced, discharged or otherwise adversely affected by:

- (a) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any security or any right or remedy which the Security Trustee or any other Finance Party may have now or in the future from or against the Chargor or any other person in respect of any of the Secured Obligations; or
- (b) any failure, act or omission by the Security Trustee or any other person in taking up, perfecting or enforcing any security or guarantee from or against the Chargor or any other person in respect of the Secured Obligations; or
- (c) any increase in or waiver or discharge of any of the Secured Obligations or any termination, amendment, variation, supplement, restatement, novation or replacement of the Facilities Agreement and/or any other the Finance Documents; or
- (d) any grant of time, indulgence, waiver or concession to the Chargor or any other person; or
- (e) any of the administration, receivership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Chargor or any other person; or
- (f) any invalidity, illegality, unenforceability, irregularity or frustration of any of the Secured Obligations; or
- (g) anything done or omitted to be done by the Security Trustee or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Chargor under this Security.

### **3.6 Further assurance**

The Chargor shall promptly after being requested to do so by the Security Trustee do all such acts and things and execute and deliver all such documents as the Security Trustee may require for perfecting or protecting this Security or its priority or for creating such fixed security or charge over any of the Secured Assets as the Security Trustee may reasonably request (and in such form as the Security Trustee may reasonably require) or for facilitating the realisation or application of the Secured Assets and the exercise of the rights, powers and discretions conferred on the Security Trustee or the Receiver under this Security.

### **3.7 New accounts**

At any time after the Security Trustee or any other Finance Party has received or is deemed to be affected by notice (whether actual or constructive) of the creation of any subsequent security, charge or encumbrance over or affecting any part of the Secured Assets or the proceeds of realisation other than as permitted under this Security, the Security Trustee or any other Finance Party may open a new account or accounts with the Chargor. If the Security Trustee does not open a new account or accounts it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such

notice and as from that time all payments made to the Security Trustee or any other Finance Party shall be credited or be treated as having been credited to the new account or accounts and shall not operate to reduce the amount covered by this Security.

#### **4 POWER OF ATTORNEY**

##### **4.1 Appointment**

The Chargor hereby irrevocably appoints the Security Trustee, whether or not a Receiver has been appointed, and separately also any Receiver, as its attorney on its behalf and in its name or otherwise, at such times and in such a manner as the attorney may think fit:

- (a) to do anything which the Chargor is obliged to do (but has not done) under this Security including, without limitation, to create any fixed security or charge over any of the Secured Assets; and
- (b) generally to exercise all or any of the rights, powers and discretions conferred on the Security Trustee or the Receiver in relation to the Secured Assets under this Security.

##### **4.2 Ratification**

The Chargor hereby ratifies and confirms and agrees to ratify and confirm whatever its attorney may do or purport to do in the exercise or purported exercise of the power of attorney given by the Chargor under this Clause.

##### **4.3 Exercise of power**

The appointment effected under Clause 4.1 (*Appointment*) shall take effect immediately (in the case of the Receiver, upon his/her appointment), but the powers conferred shall only become exercisable upon this Security becoming enforceable or if the Chargor does not fulfil any of its obligations under Clause 3.6 (*Further Assurance*) within two Business Days of notice from the Security Trustee or the Receiver to do so.

#### **5 UNDERTAKINGS**

The Chargor undertakes that it shall:

- (a) on request deposit with the Security Trustee all title deeds, certificates and other documents of title or evidence of ownership in relation to the Secured Assets;
- (b) promptly notify the Security Trustee of its acquisition of any heritable, freehold or leasehold property, and if so requested, deposit with the Security Trustee all title deeds, leases and other documents of title or evidence of ownership or occupation in relation to that property; and
- (c) notify the Security Trustee promptly on becoming aware of any creditor executing diligence, (whether effectual or not), levying distress or execution, or serving any garnishee order against the Chargor or any of the Secured Assets.

#### **6 ENFORCEMENT**

##### **6.1 Enforceable**

This Security shall be enforceable immediately upon, or at any time after:

- (a) an Event of Default occurring which is continuing; or
- (b) the Chargor requesting the appointment of a Receiver or administrator.

## **6.2 Appointment of Receiver or administrator**

**6.2.1** At any time after this Security has become enforceable the Security Trustee shall be entitled;

- (a) to appoint one or more persons as a Receiver or Receivers in respect of the Secured Assets, or apply to the Court for such appointment;
- (b) to appoint one or more persons as an administrator or administrators of the Chargor;
- (c) to make an administration application in respect of the Chargor; or
- (d) to give notice of intention to appoint an administrator or administrators in respect of the Chargor.

**6.2.2** The appointment of a Receiver or Receivers or an administrator or administrators, or the giving of notice of intention to appoint an administrator or administrators, shall be effected by the Security Trustee by written instrument or notice in accordance with and in such form as may be prescribed under the Act. If any such person so appointed as Receiver or administrator is removed from office by the Court or otherwise ceases to act, the Security Trustee shall be entitled (subject to the provisions of the Act) to appoint a replacement in the same manner.

## **6.3 Powers of Receiver**

A Receiver appointed under this Security shall have the following powers in addition to those specified in Schedule 2 of the Act:

- (a) to promote or procure the incorporation of any new company (whether or not a subsidiary of the Chargor), to transfer any part of the Secured Assets to such company for any form of consideration (including shares, debentures, loan stock or loan capital in such company), and/or to subscribe for or otherwise acquire shares, debentures, loan stock or loan capital in such company in name of the Chargor, or the Receiver, or its or his/her nominee or trustee;
- (b) subject to the articles of association, to convene extraordinary general meetings of the Chargor;
- (c) generally, without prejudice to the other provisions of this Clause to exercise all the rights, powers and discretions in respect of the Secured Assets it would be entitled to exercise if it were the absolute owner thereof, to implement and exercise all or any of the Chargor's power and/or rights and/or obligations under any agreement forming a part of the Secured Assets and to do all acts and things the Receiver may consider necessary or expedient for the realisation of the Secured Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Obligations; and
- (d) in respect of any of the Secured Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Act or any other enactment or rule of law on receivers or receivers and managers (or analogous officers) in that jurisdiction.

## **6.4 Agent of Chargor**

The Receiver shall be the agent of the Chargor for all purposes of and in all respects arising under this Security and, except as otherwise provided by the Act, the Chargor alone shall be responsible for his/her acts, omissions, neglects and defaults and for all liabilities and obligations incurred by him/her, and his/her remuneration costs, charges and expenses.



## **6.5 Application of proceeds**

All monies realised by the Receiver or otherwise arising from the enforcement of this Security shall, subject always to Clause 6.6 (*Monies on suspense account*) and Clause 7 (*Discharge*), the claims of creditors ranking in priority to or *pari passu* with the claims of the Security Trustee under this Security, and the terms of Section 60 of the Act, be applied by the Security Trustee and the Receiver in or towards settlement of the Secured Obligations in accordance with clause 14 (*Application of Recoveries*) of the Security Trust and Intercreditor Deed.

## **6.6 Monies on suspense account**

Nothing in this Security shall limit the right of the Receiver and/or the Security Trustee (and the Chargor acknowledges that the Receiver and/or the Security Trustee are so entitled) if and for so long as the Receiver and/or the Security Trustee in its discretion shall consider it appropriate, to place all or any monies arising from the enforcement of this Security into a suspense account or accounts (which may be an account or accounts with the Security Trustee or any other Finance Party, without any obligation to apply the same or any part thereof in or toward the discharge of the Secured Obligations provided that if the aggregate of such monies so placed to the credit of such suspense account or accounts shall equal or exceed the Secured Obligations, the Receiver and/or the Security Trustee shall, subject always to Clause 7 (*Discharge*), forthwith apply the same towards settlement of the Secured Obligations.

## **6.7 Balance**

The rights powers and discretions conferred on the Receiver under this Clause are subject only to his/her obligation to account to the Chargor or any other person entitled thereto for any balance of the Secured Assets or their proceeds remaining in his/her hands after the Secured Obligations have been fully and unconditionally paid and discharged.

## **6.8 Third parties**

6.8.1 No purchaser from or other person dealing with the Receiver in relation to the Secured Assets shall be concerned to enquire whether any of the powers exercised or purported to be exercised by him/her hereunder has become exercisable, whether any of the Secured Obligations remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.

6.8.2 The receipt or discharge of the Receiver shall be an absolute discharge to any purchaser or other person dealing with the Receiver in relation to the Secured Assets and any such purchaser or third party shall not have any obligation to enquire after or see to the application of any payments made by it to the Receiver or at its direction.

## **7 DISCHARGE**

### **7.1 Discharge**

When the Secured Obligations have been fully and unconditionally paid or discharged the Security Trustee shall at the Chargor's request, and at its expense, discharge this Security. Any payment or realisation in respect of the Secured Obligations which in the opinion of the Security Trustee is liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, shall not be regarded as having been irrevocably settled or discharged until the expiry of the period during which it may be challenged on any such ground.

### **7.2 Retention of Security**

If any payment or realisation in respect of the Secured Obligations is, in the Security Trustee's opinion, liable to be avoided or otherwise invalidated or adjusted by law, including

any enactment or rule of law relating to insolvency, the Security Trustee shall be entitled to retain this Security undischarged until the expiry of the period during which it may be challenged on any such ground.

### **7.3 Avoidance of payments**

The Security Trustee's right to recover the Secured Obligations in full shall not be affected or prejudiced by any payment or realisation which is avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, or by any release or discharge given by the Security Trustee on the faith of any such payment or realisation.

## **8 LIABILITY OF RECEIVER AND SECURITY TRUSTEE**

The Security Trustee and any Receiver shall not in any circumstances be liable to the Chargor or any other person for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Security or any realisation, appropriation or application of the Secured Assets or from any act, default or omission of the Security Trustee or any Receiver, or its, or his/her officers, employees or agents in relation to the Secured Assets or otherwise in connection with this Security, except to the extent caused by the wilful default or gross negligence of the Security Trustee or any receiver or its or his/her officers, employees or agents.

## **9 MISCELLANEOUS**

### **9.1 Assignment**

9.1.1 The Security Trustee may at any time (without notice or consent) assign the benefit of this Security or any of its rights or obligations hereunder in accordance with the Finance Documents.

9.1.2 The Chargor may not assign, transfer or otherwise deal with the benefit or burden of this Security or any of its rights or obligations hereunder.

### **9.2 Entire agreement**

This Security constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Security.

### **9.3 Non-reliance**

Each of the parties acknowledges and agrees that in entering into this Security it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party to this Security or not) other than as expressly set out in this Security.

### **9.4 Amendments**

No amendment or variation of this Security shall be effective unless it is in writing and signed by or on behalf of each of the parties.

## **10 COMMUNICATIONS**

The provisions of clause 46 (*Notices*) of the Facilities Agreement shall apply *mutatis mutandis* to this Security as if set out in full herein.

11 **GOVERNING LAW**

This Security and any non contractual claims or disputes arising from it shall be governed by and construed in accordance with the law of Scotland and in so far as not already subject thereto the parties irrevocably submit to the non-exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents consisting of this and the 7 preceding pages are executed as follows:


SUBSCRIBED for and on behalf of  
**COUR WINDFARM HOLDINGS LIMITED**  
at *London*  
on the *28<sup>th</sup>* day  
of *October* 2015  
by

..... Director / Attorney  
*MATTHEW WILLIAMS* Full Name

..... Witness  
*MICHAEL URQUHART* Full Name

*C/O DLA PIPER SCOTLAND LLP* Address  
*SELLERS HOUSE, AXMINSTER SQUARE*  
*EDINBURGH EH1 2AA*

SUBSCRIBED for and on behalf of  
KFW IPEX-BANK GMBH

at *London*  
on the *28<sup>th</sup>* day  
of *October* 2015  
by 


its duly authorised signatory

*Sleyen Khu*  
*Vice President* Full Name  


its duly authorised signatory

*Andrew Culverhouse*  
*Vice President* Full Name

In the presence of

 Witness  
*Cindy Low* Full Name  
Address

30 Crown Place  
Pinsent Masons  
London  
EC2A 4ES