



**Registration of a Charge**

Company name: **BELENUS ENERGY LIMITED**

Company number: **09820130**



X84L52Z5

Received for Electronic Filing: **02/05/2019**

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**Details of Charge**

Date of creation: **30/04/2019**

Charge code: **0982 0130 0001**

Persons entitled: **INVESTEC BANK PLC AS SECURITY TRUSTEE**

Brief description:

**Contains fixed 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: **WATSON FARLEY & WILLIAMS LLP**



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

Company number: 9820130

Charge code: 0982 0130 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th April 2019 and created by BELENUS ENERGY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd May 2019 .

Given at Companies House, Cardiff on 3rd May 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

Dated 30 April 2019

**BELENUS ENERGY LIMITED**  
as Chargor

and

**INVESTEC BANK PLC**  
as Security Trustee

**HOLDCO SECURITY AGREEMENT**  
relating to  
the Spittleborough site

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THIS AGREEMENT is made on 30 April 2019

## PARTIES

- (1) **BELENUS ENERGY LIMITED**, a company incorporated in England with registered number 09820130 whose registered office is at 6th Floor, 33 Holborn, London, EC1N 2HT as chargor (the "**Chargor**")
- (2) **INVESTEC BANK PLC**, a company incorporated in England with registration number 00489604 whose registered office is at 30 Gresham Street, London EC2V 7QP as security trustee on behalf of the Secured Parties (the "**Security Trustee**").

## BACKGROUND

- (A) Further to the Facility Agreement (as defined below) the Original Lender agreed to make the Facility available to the Borrower.
- (B) It is a requirement for the Facility continuing to be made available that the Chargor enters into this Agreement.
- (C) It is intended by the parties to this Agreement that this document will take effect as a deed despite the fact that a party may only execute this Agreement under hand.
- (D) The Security Trustee is acting under and holds the benefit of the rights conferred upon it in this Agreement on trust for the Secured Parties.

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement:

**"Charged Portfolio"** means the Shares and the Related Assets.

**"Collateral Rights"** means all rights, powers and remedies of the Security Trustee provided by this Agreement or by law.

**"Disputes"** has the meaning given to it in Clause 26 (*Jurisdiction and Enforcement*).

**"Facility Agreement"** means the facility agreement dated 19 September 2014, as amended from time to time, between, amongst others, the Borrower, the Arranger, the Original Lenders, the Facility Agent and the Security Trustee, each as defined in such agreement as amended, varied, novated or supplemented from time to time.

**"Regulations"** has the meaning given to it in Clause 7.3 (*Right of Appropriation*).

**"Related Assets"** means all dividends, interest and other monies at any time payable at any time in respect of the Shares and all other rights, benefits and proceeds in respect of or derived from the Shares (whether by way of redemption, bonus, preference, option, substitution, conversion, compensation or otherwise) held by, to the order or on behalf of the Chargor at any time.

**"Shares"** means the entire ordinary share capital of the Borrower held by, to the order or on behalf of the Chargor at any time.

## **1.2 Terms defined in other Finance Documents**

Unless defined in this Agreement or the context otherwise requires, a term defined in the Facility Agreement or in any other Finance Document has the same meaning in this Agreement or any notice given under or in connection with this Agreement.

## **1.3 Construction**

In this Agreement the rules of interpretation contained in clause 1.2 (*Construction*) of the Facility Agreement shall apply to the construction of this Agreement or any notice given under or in connection with this Agreement.

## **1.4 Third Party Rights**

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

# **2 COVENANT TO PAY AND CHARGE**

## **2.1 Covenant to Pay**

The Chargor covenants with the Security Trustee as trustee for the Secured Parties that it shall discharge all Secured Obligations on their due date in accordance with their respective terms provided that the liability of the Chargor shall be limited to the proceeds of enforcement of the Shares from time to time.

## **2.2 Charge**

The Chargor charges the Charged Portfolio with full title guarantee and by way of first fixed charge, in favour of the Security Trustee, as continuing security for the payment and discharge of the Secured Obligations.

## **2.3 Interest on Demands**

If the Chargor fails to pay any sum on the due date for payment of that sum the Chargor shall pay interest on any such sum (before and after any judgment and to the extent interest at a default rate is not otherwise being paid on such sum) from the date of demand until the date of payment calculated on a daily basis at the rate determined in accordance with the provisions of clause 8.3 (*Default Interest*) of the Facility Agreement.

# **3 DEPOSIT OF CERTIFICATES AND RELATED RIGHTS**

## **3.1 Deposit of certificates**

The Chargor will immediately upon the execution of this Agreement (or upon coming into possession of the Chargor at any time) deposit (or procure there to be deposited) with the Security Trustee all certificates and other documents of title to the Shares, and stock transfer forms (executed in blank by or on behalf of the Chargor) in respect of the Shares.

## **3.2 Related Assets**

The Chargor shall, promptly upon the accrual, offer or issue of any Related Assets (in the form of stocks, shares, warrants or other securities) in which the Chargor has a beneficial interest, procure the delivery to the Security Trustee of (a) all certificates and other documents of title representing those Related Assets and (b) such duly executed blank stock transfer forms or other instruments of transfer in respect of those Related Assets as the Security Trustee may require.

## **4 VOTING RIGHTS AND DIVIDENDS**

### **4.1 Voting rights and dividends prior to an Event of Default**

Prior to the occurrence of an Event of Default, the Chargor shall:

- (a) apply all dividends, interest and other monies arising from the Charged Portfolio in accordance with the terms of the Facility Agreement;
- (b) subject to Clause 5.2(e) (*Voting Rights*) be entitled to exercise all voting rights in relation to the Charged Portfolio.

### **4.2 Voting rights and dividends after an Event of Default**

Upon the occurrence of an Event of Default, the Security Trustee may, at its discretion, (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor):

- (a) exercise (or refrain from exercising) any voting rights in respect of the Charged Portfolio;
- (b) apply all dividends, interest and other monies arising from the Charged Portfolio as though they were the proceeds of sale under this Agreement;
- (c) transfer the Charged Portfolio into the name of the Security Trustee or such nominee(s) of the Security Trustee as it shall require; and
- (d) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Charged Portfolio including the right, in relation to any company whose shares or other securities are included in the Charged Portfolio, to concur or participate in:
  - (i) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);
  - (ii) the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
  - (iii) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,

in each case in the manner and on the terms the Security Trustee thinks fit, and the proceeds of any such action shall form part of the Charged Portfolio.

## **5 CHARGOR'S REPRESENTATIONS AND UNDERTAKINGS**

### **5.1 Representations**

The Chargor makes the following representations and warranties to the Security Trustee and acknowledges that the Security Trustee has become a party to this Agreement in reliance on these representations and warranties:

- (a) **Status**
  - (i) It is a corporation with limited liability, duly incorporated and validly existing under the law of England.
  - (ii) It has the power to own its assets and carry on its business as it is being conducted.

**(b) Binding obligations**

The obligations expressed to be assumed by it in the Transaction Documents to which it is a party are, subject to any general principles of law limiting its obligations, which are specifically referred to in any legal opinion delivered pursuant to clause 4 (*Conditions of Utilisation*) of the Facility Agreement, legal, valid, binding and enforceable obligations.

**(c) Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this Agreement (including any transfer of the Shares on creation or enforcement of the security constituted by this Agreement) and the other Transaction Documents to which it is a party do not and shall not:

**(i) conflict with:**

- (A)** any law or regulation applicable to it;
- (B)** its or any of its subsidiaries constitutional documents; or
- (C)** any agreement or instrument binding upon it, any of its assets or the Shares or constitute a default or a termination event (howsoever described) under any such agreement or instrument, in each case, which has or is reasonably likely to have a Material Adverse Effect; or

**(ii) result in the existence of, or oblige it to create, any security over the Shares other than as permitted under clause 24.4 (*Negative pledge*) of the Facility Agreement.**

**(d) Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is a party and the transactions contemplated by those Transaction Documents.

**(e) Governing law and judgments**

- (i)** The choice of law set out in each Finance Document to which it is a party as the governing law of such Finance Document will be recognised and enforced in its jurisdiction of incorporation.
- (ii)** Any judgment obtained in the jurisdiction of such governing law and (if applicable) an award obtained in an arbitration forum to which it has submitted will be recognised and enforced in its jurisdiction of incorporation.

**(f) Insolvency**

No:

- (i)** corporate action, legal proceeding or other procedure or step described in clause 25.7 (*Insolvency proceedings*) of the Facility Agreement; or
- (ii)** creditors' process described in clause 25.8 of the Facility Agreement (*Creditors' process*),

has been taken or, to its knowledge, threatened in relation to it and none of the circumstances described in clause 25.6 (*Insolvency*) of the Facility Agreement applies to it.

**(g) Ownership**

As at the date of this Agreement the Chargor is the beneficial (and following entry into the register of members of the Borrower will become the legal and beneficial) owner of the entire ordinary share capital of the Borrower.

**(h) Unissued share capital and share options**

It is not under any commitment or obligation to issue any of its unissued share capital and it has not entered into any commitment or arrangement to issue any or all of its authorised and unissued share capital, and no person has any right or option to call for or require the issuance of any share or security convertible into any share in the capital of the Chargor.

**(i) Transaction Documents**

The Transaction Documents to which it is a party are the only agreements under which it has any material rights, obligations or liabilities.

**(j) Security**

Subject to the reservations specifically referred to in any legal opinion given in relation to this Agreement, the Security created by this Agreement:

- (i) is enforceable in accordance with the terms of this Agreement and is not restricted or inhibited by the terms of its constitutional documents;
- (ii) has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* Security; and
- (iii) is not subject to avoidance in the event of any winding-up, dissolution or administration involving the Borrower or the Chargor.

**(k) Ownership of Shares**

It is the sole legal and beneficial owner of the Charged Portfolio free and clear of all security interests save as created by this Agreement and has not sold or disposed of or granted any options or pre-emption rights in respect of any of its right, title and interest, in the Charged Portfolio (other than as permitted under the Finance Documents to which it is a party) and all of the Shares are validly issued, fully paid and are not subject to any options to purchase, pre-emption rights or similar rights or other restrictions upon disposal which would operate to restrict in any way their disposal by the Security Trustee should it come to enforce its security over the Charged Portfolio contained in this Agreement.

**(l) Consents**

All Consents, which are required by HoldCo under the Transaction Documents have been obtained or effected and are in full force and effect.

**(m) Pari passu**

- (i) All unsecured and unsubordinated claims of a Secured Party against it under the Finance Documents, to which it is a party, rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except for those creditors

whose claims are mandatorily preferred by laws of general application to companies.

- (ii) Its claims against any other party under the Project Documents will rank at least pari passu with the claims of all other unsecured and unsubordinated creditors of such party.

**(n) Deduction of Tax**

It is not required to make any deduction for or on account of tax from any payment it may make under the Finance Documents to which it is a party.

**(o) No filing or stamp taxes**

It is not necessary that any of the Finance Documents to which it is a party be filed, recorded or enrolled with any court or other authority or that any stamp, registration, notarial or similar Tax or fees be paid on or in relation to any of the Finance Documents to which it is a party or the transactions contemplated by such documents, except registration of particulars of the Borrower Debenture and this Agreement at the Companies Registration Office in England and Wales under Section 860 of the Companies Act 2006 and, in the case of the Borrower Debenture, at the Land Registry and payment of associated fees which registration and fees will be made and paid promptly after the date of the relevant Finance Documents to which it is a party.

**(p) Centre of main interests and establishments**

- (i) It has its "centre of main interests" (as that term is used in Article 3(1) of the Council of the European Union Regulation No. 2015/848 on Insolvency Proceedings (the "Regulation")) in England or Wales.
- (ii) It has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any jurisdictions other than the Relevant Jurisdiction.

**(q) No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief) been started or threatened against it (or against its directors).

**(r) Compliance with laws**

As at the date of this Agreement, it is in compliance with all Applicable Laws in all material respects.

**(s) Not Used**

**(t) Financial statements**

- (i) Its most recent financial statements delivered pursuant to clause 18.1 (*Financial statements*) of the Facility Agreement:
  - (A) have been prepared in accordance with GAAP;
  - (B) disclose all of its liabilities (contingent or otherwise) and all of its unrealised or anticipated losses to the extent required under GAAP; and

- (C) give a true and fair view of (if audited) or fairly present (if unaudited) its financial condition as at the end of, and results of operations for the period to which they relate.
  - (ii) There has been no material adverse change in its assets, business, operations or financial condition since the date as at which the most recent financial statements delivered pursuant to clause 18.1 (*Financial statements*) of the Facility Agreement were prepared.
- (u) **Accounting Reference Date**

Its accounting reference date is 31 December.
- (v) **Liabilities**
  - (i) It has no Financial Indebtedness other than under the Finance Documents to which it is a party.
  - (ii) It has no undisclosed material liabilities and it does not have any material obligation other than those which arise under the terms of the Transaction Documents to which it is a party.
  - (iii) The HoldCo Loan Agreement and the constitutional documents of the Borrower and the Chargor contain all the material terms of all the **arrangements between the Borrower and the Chargor**.
- (w) **Holding Company**

The Chargor has not traded or incurred any liabilities or commitments (actual or contingent, present or future) other than acting as a Holding Company of the Borrower.
- (x) **Repetition**

The representations set out in this Clause 5.1 (*Representations*) are made by the Chargor on the date of this Agreement. With the exception of the representations set out in paragraphs (j) and (s) and those representations stated to be given on the date of this Agreement, each other representation is deemed to be made by the Chargor by reference to the facts and circumstances then existing on the date of this Agreement, the date of the Utilisation Request, each Utilisation Date and the first day of each Interest Period.

## 5.2 Undertakings

### (a) Authorisations

The Chargor shall promptly:

- (i) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (ii) supply certified copies to the Security Trustee of,

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

### (b) Compliance with laws

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

**(c) Disposals and Negative pledge**

- (i) The Chargor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntarily or involuntarily, to sell, lease, transfer or otherwise dispose of the whole or any part of the Charged Portfolio.
- (ii) The Chargor shall not create or permit to subsist any Security over any of its present or future assets and will not create or permit to subsist any security interest on any part of the Charged Portfolio or otherwise deal with any part of the Charged Portfolio, save under the Finance Documents.

**(d) Calls on Shares**

The Chargor undertakes to pay all calls or other payments when due in respect of any part of the Charged Portfolio. If the Chargor fails to make any such payment the Security Trustee may make that payment on behalf of the Chargor and any sums so paid by the Security Trustee shall be reimbursed by the Chargor on demand together with interest on those sums. Such interest shall be calculated from the due date up to the actual date of payment (after, as well as before, judgment) in accordance with Clause 2.3 (*Interest on Demands*).

**(e) Voting Rights**

The Chargor shall not:

- (i) exercise (and shall procure that any nominee acting on its behalf does not exercise) its voting rights and powers in relation to the Charged Portfolio; or
- (ii) otherwise permit or agree to, or concur or participate in any (i) variation of the rights attaching to or conferred by all or any part of the Charged Portfolio (ii) increase in the issued share capital of any company whose shares are charged pursuant to this Agreement (iii) exercise, renunciation or assignment of any right to subscribe for any shares or securities or (iv) reconstruction, amalgamation, sale or other disposal of any company or any of the assets of any company (including the exchange, conversion or reissue of any shares or securities as a consequence thereof) whose shares are charged under this Agreement,

in each case in a manner which in the opinion of the Security Trustee (acting reasonably) would prejudice the value of, or the ability of the Security Trustee to realise, the security created by this Agreement provided that the proceeds of any such action shall form part of the Charged Portfolio.

**6 FURTHER ASSURANCE**

**6.1 Covenant for Further Assurance**

The Chargor will promptly at its own cost do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may specify (and in such form as the Security Trustee may require in favour of the Security Trustee or its nominee(s)) for the purpose of perfecting the security created or intended to be created in respect of the Charged Portfolio (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Portfolio) or for the exercise of the rights, powers and remedies of the Security Trustee provided by or pursuant to this Agreement or by law in each case in accordance with the rights vested in it under this Agreement.

## **6.2 Prescribed Wording**

The following covenants shall be implied in respect of any action taken by the Chargor to comply with its obligations under Clause 6.1 (*Covenant for Further Assurance*):

- (a) the Chargor has the right to take such action in respect of the Charged Portfolio; and
- (b) the Chargor will at its own cost do all that it reasonably can to give the Security Trustee or its nominee the title and/or rights that it purports to give.

## **7 SECURITY ENFORCEMENT**

### **7.1 Time for Enforcement**

At any time after the occurrence of an Event of Default (as long as it is continuing) or if the Chargor requests the Security Trustee to exercise any of its powers under this Agreement or if a petition or application is presented for the making of an administration order in relation to the Chargor or if any person who is entitled to do so gives written notice of its intention to appoint an administrator of the Chargor or files such a notice with the court, the security created by or pursuant to this Agreement is immediately enforceable and the Security Trustee may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

- (a) secure and perfect its title to all or any part of the Charged Portfolio (including transferring the Charged Portfolio into the name of the Security Trustee or its nominees);
- (b) enforce all or any part of that security (at the times, in the manner and on the terms it thinks fit) and take possession of and hold, sell or otherwise dispose of all or any part of the Charged Portfolio (at the time, in the manner and on the terms it thinks fit); and
- (c) whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Agreement) on chargees and by this Agreement on any Receiver or otherwise conferred by law on chargees or Receivers.

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

Neither the Security Trustee nor any Receiver shall be liable to account as mortgagee or mortgagee in possession in respect of all or part of the Charged Portfolio or be liable for any loss upon realisation or for any neglect, default or omission of any nature whatsoever in connection with the Charged Portfolio for which a mortgagee or mortgagee in possession might otherwise be liable.

### **7.3 Right of Appropriation**

To the extent that any of the Charged Portfolio constitutes "financial collateral" and this Agreement and the obligations of the Chargor hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226), as amended, (the "**Regulations**") the Security Trustee shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be the market price of the Shares determined by the Security Trustee by reference to a public index or by such other process as the Security Trustee may select, including independent valuation. The parties agree that the method of valuation provided for in this Agreement shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## **8 EXTENSION AND VARIATION OF THE LAW OF PROPERTY ACT 1925**

### **8.1 Extension of Powers**

The power of sale or other disposal conferred on the Security Trustee and on the Receiver by this Agreement shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Agreement.

### **8.2 Restrictions**

The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to the exercise by the Security Trustee of its right to consolidate all or any of the security created by or pursuant to this Agreement with any other security in existence at any time or to its power of sale, which powers may be exercised by the Security Trustee without notice to the Chargor on or at any time after the occurrence of an Event of Default (which is continuing).

### **8.3 Statutory powers**

The powers conferred by this Agreement on the Security Trustee are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the Law of Property Act 1925, the Insolvency Act 1986 or otherwise by law and in the case of any conflict between the powers contained in any such Act and those conferred by this Agreement the terms of this Agreement will prevail.

## **9 APPOINTMENT OF RECEIVER**

### **9.1 Appointment and Removal**

At any time after having been requested to do so by the Chargor or after this Agreement becomes enforceable in accordance with Clause 7 (*Security Enforcement*), the Security Trustee may by deed or otherwise (acting through an authorised officer of the Security Trustee), without prior notice to the Chargor:

- (a) appoint one or more persons to be a Receiver of the whole or any part of the Charged Portfolio;
- (b) appoint two or more Receivers of separate parts of the Charged Portfolio respectively;
- (c) remove (so far as it is lawfully able) any Receiver so appointed; and
- (d) appoint another person(s) as an additional or replacement Receiver(s).

### **9.2 Capacity of Receivers**

Each person appointed to be a Receiver pursuant to Clause 9.1 (*Appointment and Removal*) shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver;
- (b) for all purposes deemed to be the agent of the Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for the Security Trustee; and

- (c) entitled to remuneration for his services at a rate to be fixed by the Security Trustee from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

### **9.3 Statutory Powers of Appointment**

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Trustee under the Law of Property Act 1925 (as extended by this Agreement) or otherwise and such powers shall remain exercisable from time to time by the Security Trustee in respect of any part of the Charged Portfolio.

## **10 POWERS OF RECEIVERS**

Every Receiver shall (subject to any restrictions in the instrument appointing him but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to the Charged Portfolio in respect of which he was appointed, and as varied and extended by the provisions of this Agreement (in the name of or on behalf of the Chargor or in his own name and, in each case, at the cost of the Chargor):

- (a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
- (b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (c) all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor itself could do or omit to do; and
- (d) the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to:
  - (i) any of the functions, powers, authorities or discretions conferred on or vested in him;
  - (ii) the exercise of the Collateral Rights (including realisation of all or any part of the Charged Portfolio); or
  - (iii) bringing to his hands any assets of the Chargor forming part of, or which when got in would be, Charged Portfolio.

## **11 APPLICATION OF MONIES**

All moneys received or recovered by the Security Trustee or any Receiver pursuant to this Agreement or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied first in the payment of the costs, charges and expenses incurred and payments made by the Receiver, the payment of his remuneration and the discharge of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Security Trustee (notwithstanding any purported appropriation by the Chargor) in accordance with clauses 26.3 (*Post-enforcement Payment Priorities*) and 26.4 (*Insufficient Amounts*) of the Facility Agreement.

## **12 PROTECTION OF PURCHASERS**

### **12.1 Consideration**

The receipt of the Security Trustee or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Portfolio or making any

acquisition, the Security Trustee or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

## **12.2 Protection of purchasers**

No purchaser or other person dealing with the Security Trustee or any Receiver shall be bound to inquire whether the right of the Security Trustee or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Trustee or such Receiver in such dealings.

## **13 POWER OF ATTORNEY**

### **13.1 Appointment and Powers**

The Chargor by way of security irrevocably appoints the Security Trustee and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on the Chargor by this Agreement or any other agreement binding on the Chargor to which the Security Trustee is party (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Portfolio);
- (b) enabling the Security Trustee to exercise, or delegate the exercise of, all or any of the Collateral Rights; and
- (c) enabling any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Agreement or by law.

### **13.2 Ratification**

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

## **14 EFFECTIVENESS OF SECURITY**

### **14.1 Continuing Security**

- (a) The security created by or pursuant to this Agreement shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Security Trustee.
- (b) No part of the security from time to time intended to be constituted by this Agreement will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

### **14.2 Cumulative Rights**

The security created by or pursuant to this Agreement and the Collateral Rights shall be cumulative, in addition to and independent of every other security which the Security Trustee or any other Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. No prior security held by the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Secured Parties over the whole or any part of the Charged Portfolio shall merge into the security constituted by this Agreement.

### **14.3 No prejudice**

The security created by or pursuant to this Agreement and the Collateral Rights shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Borrower or any other person, or the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Secured Parties or by any variation of the terms of the trust upon which the Security Trustee holds the security or by any other thing which might otherwise prejudice that security or any Collateral Right.

#### **14.4 Remedies and Waivers**

No failure on the part of the Security Trustee to exercise, nor any delay on its part in exercising, any Collateral Right shall operate as a waiver of that Collateral Right or constitute an election to affirm this Agreement. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

#### **14.5 No Liability**

None of the Security Trustee, its nominee(s) or any Receiver shall be liable by reason of (a) taking any action permitted by this Agreement or (b) any neglect or default in connection with the Charged Property or (c) taking possession of or realising all or any part of the Charged Property, except in the case of gross negligence or wilful default upon its part.

#### **14.6 Partial Invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

#### **14.7 Implied Covenants for Title**

- (a) The covenants set out in Sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clause 2.2 (*Charge*).
- (b) It shall be implied in respect of Clause 2.2 (*Charge*) that the Chargor is charging the Charged Portfolio free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

#### **14.8 Waiver of defences**

The obligations of the Chargor under this Agreement, the security created pursuant to this Agreement and the Collateral Rights will not be affected by any act, omission, matter or thing which, but for this Clause 14.8 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Agreement and the security constituted by or pursuant to this Agreement (without limitation and whether or not known to it or any Secured Party) including:

- (a) any time, waiver or consent granted to, or composition with, any Obligor or other person;
- (b) the release of any Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
- (c) 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, any Obligor or other person or any non-presentment or non-observance of any formality or other

requirement in respect of any instruments or any failure to realise the full value of any security;

- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Obligor or any other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Finance Document or any other document or security or of the Secured Obligations (including, without limitation, any change in the purpose of, any extension of, or any variation or increase in any facility or the addition of any new facility under any Finance Document or other document);
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security or of the Secured Obligations; or
- (g) any insolvency or similar proceedings.

#### **14.9 Immediate recourse**

The Chargor waives any right it may have of first requiring the Security Trustee or a Secured Party to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Agreement. This waiver applies irrespective of any provision of this Agreement to the contrary.

#### **14.10 Deferral of Rights**

Until such time as the Secured Obligations have been discharged in full, the Borrower will not exercise any rights which it may have by reason of performance by it of its obligations under this Agreement:

- (a) to be indemnified by any Obligor;
- (b) to claim any contribution from any guarantor of any Obligor's obligations under this Agreement or any other Finance Document; and/or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Security Trustee under this Agreement or the Security Trustee or any other Secured Party under any other guarantee or other Finance Document or security taken pursuant to, or in connection with, this Agreement or any other Finance Document by the Security Trustee or any Secured Party.

#### **14.11 Turnover Trust**

- (a) The Chargor shall not accept or permit to subsist any collateral from any Obligor or any other person in respect of any rights the Chargor may have arising out of this Agreement: if, despite this provision, any such collateral shall be accepted or subsisting the Chargor acknowledges that the Chargor's rights under such collateral shall be held on trust for the Security Trustee and the Secured Parties, to the extent necessary to enable all amounts which may be or become payable to the Security Trustee and the Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full, and the Chargor shall if requested promptly transfer the same to the Security Trustee or as it may direct for application in accordance with clauses 26.3 (*Post-enforcement Payment Priorities*) and 26.4 (*Insufficient Amounts*) of the Facility Agreement.
- (b) If the Chargor receives any benefit, payment or distribution relating to the rights mentioned in Clause 14.10 (*Deferral of Rights*) above, it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the

Security Trustee and the Secured Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Security Trustee and the Secured Parties and shall promptly pay or transfer the same to the Security Trustee or as it may direct for application in accordance with clauses 26.3 (*Post-enforcement Payment Priorities*) and 26.4 (*Insufficient Amounts*) of the Facility Agreement.

## **15 RELEASE OF SECURITY**

### **15.1 Release**

Upon the Secured Obligations being discharged in full and none of the Secured Parties being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor, the Borrower or any other person under any of the Finance Documents, the Security Trustee shall, at the request and cost of the Chargor, release and cancel the security constituted by this Agreement without recourse to, and without any representation or warranty by, the Security Trustee or any of its nominees.

### **15.2 Avoidance of Payments**

If the Security Trustee considers that any amount paid or credited to it or any other Secured Party is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Chargor under this Agreement and the security constituted by this Agreement shall continue and such amount shall not be considered to have been irrevocably paid.

## **16 RETENTION OF AGREEMENT**

The Security Trustee may retain this Agreement, the security constituted by or pursuant to this Agreement and all documents relating to or evidencing ownership of all or any part of the Charged Portfolio (other than any share certificate or stock transfer form delivered by the Chargor pursuant to this Agreement) for a period of seven months after any discharge in full of the Secured Obligations Provided that if at any time during that seven month period a petition or application is presented for an order for the winding-up of, or the making of an administration order in respect of, the Chargor or any person who is entitled to do so gives written notice of its intention to appoint an administrator of the Chargor or files such a notice with the court or the Chargor commences to be wound-up voluntarily or any analogous proceedings are commenced in respect of it, the Security Trustee may continue to retain such security and such documents (other than any share certificate or stock transfer form delivered by the Chargor pursuant to this Agreement) for such further period as the Security Trustee may determine and the security and such documents shall be deemed to have continued to be held as security for the Secured Obligations.

## **17 SET-OFF**

The Chargor authorises the Security Trustee (but the Security Trustee shall not be obliged to exercise such right), after the occurrence of an Event of Default which is continuing, to set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Security Trustee to the Chargor and apply any credit balance to which the Borrower is entitled on any account with the Security Trustee in accordance with Clause 11 (*Application of Monies*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

## **18 SUBSEQUENT SECURITY INTERESTS**

If the Security Trustee (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent security affecting all or any part of the Charged Property or any assignment or transfer of the Charged Property which is prohibited by the terms of this Agreement or the Facility

Agreement, all payments thereafter by or on behalf of the Chargor to the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Secured Parties shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations as at the time when the Security Trustee received such notice.

## **19 SUSPENSE ACCOUNTS AND CURRENCY CONVERSION**

### **19.1 Suspense Accounts**

All monies received, recovered or realised by the Security Trustee under this Agreement (including the proceeds of any conversion of currency) may in the discretion of the Security Trustee be credited to any interest bearing suspense or impersonal account maintained with the Security Trustee or any bank, building society or financial institution as it considers appropriate and may be held in such account for so long as the Security Trustee may think fit pending their application from time to time (as the Security Trustee is entitled to do in its discretion) in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

### **19.2 Currency Conversion**

For the purpose of or pending the discharge of any of the Secured Obligations the Security Trustee may convert any money received, recovered or realised or subject to application by it under this Agreement from one currency to another, as the Security Trustee thinks fit and any such conversion shall be effected at the Security Trustee's spot rate of exchange for the time being for obtaining such other currency with the first currency.

## **20 ASSIGNMENT**

The Security Trustee may assign and transfer all or any of its rights and obligations under this Agreement to any person to whom it transfers its rights and/or obligations under the Facility Agreement. Subject to clause 46 (*Confidentiality*) of the Facility Agreement, the Security Trustee shall be entitled to disclose such information concerning the Chargor (or any other person) and this Agreement as the Security Trustee considers appropriate to any actual or proposed direct or indirect successor or to any person to whom information may be required to be disclosed by any applicable law.

## **21 NOTICES**

### **21.1 Communications in writing**

Each communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **21.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

#### **The Security Trustee**

Address: 30 Gresham Street, London EC2V 7QP

Fax: +44 (0)207 597 4913

Attention: Global Lending Operations Transaction Management Team

E-mail: andrew.nosworthy@investec.co.uk

**Chargor**

Address: 6th Floor 33 Holborn, London, England, England, EC1N 2HT

Fax: N/A

E-mail: ReLegalNotices@octopusinvestments.com

Attention: Ben Thompson

or any substitute address or fax number or department or officer as the Party may notify to the Security Trustee (or the Security Trustee may notify to the Chargor, if a change is made by the Security Trustee) by not less than five (5) Business Days' notice.

**21.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address.
- (b) Any communication or document to be made or delivered to the Security Trustee will be effective only when actually received by the Security Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Security Trustee's signature below (or any substitute department or officer as shall be specified for this purpose).

**21.4 Electronic communication**

- (a) Any communication to be made between the Security Trustee and the Chargor under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Security Trustee and the Chargor:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Security Trustee and the Chargor will be effective only when actually received in readable form and in the case of any electronic communication made by the Chargor to the Security Trustee only if it is addressed in such a manner as the Security Trustee shall specify for this purpose.

**21.5 English language**

Any notice given under or in connection with this Agreement must be in English.

## **22 COSTS, EXPENSES, STAMP TAXES AND INDEMNITY**

### **22.1 Costs and Expenses**

Without double-counting, clauses 16.1 (*Transaction Expenses*) to 16.3 (*Enforcement Costs*) of the Facility Agreement shall apply to this Agreement, *mutatis mutandis*, as if set out in full herein.

### **22.2 Stamp Taxes**

The Chargor shall pay all stamp, registration and other taxes to which this Agreement, the security constituted by or pursuant to this Agreement or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Trustee on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

### **22.3 Indemnity**

The Chargor shall, notwithstanding any release or discharge of all or any part of the security, indemnify the Security Trustee, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by the Chargor of the provisions of this Agreement, the exercise or purported exercise of any of the rights and powers conferred on them by this Agreement or otherwise relating to the Charged Portfolio.

## **23 DISCRETION AND DELEGATION**

### **23.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Agreement by the Security Trustee or any Receiver may, subject to the terms and conditions of the Facility Agreement or except as otherwise provided under this Agreement, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

### **23.2 Delegation**

Each of the Security Trustee and any Receiver shall have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Security Trustee or the Receiver itself.

## **24 WAIVERS AND COUNTERPARTS**

### **24.1 Waivers**

No waiver by the Security Trustee of any of its rights under this Agreement shall be effective unless given in writing.

### **24.2 Counterparts**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

**25 GOVERNING LAW**

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

**26 JURISDICTION AND ENFORCEMENT**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement, the consequences of its nullity or any non-contractual obligations arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 26 (*Jurisdiction and Enforcement*) is for the benefit of the Security Trustee only. As a result, and notwithstanding paragraph (a) above, it does not prevent the Security Trustee from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.

**THIS AGREEMENT** has been signed on behalf of the Security Trustee and executed as a deed by the Chargor and is delivered by it on the date specified above.

EXECUTION PAGE

THE CHARGOR

EXECUTED as a DEED )  
by BELENUS ENERGY LIMITED )  
in the presence of: )

Signature of director



Name of director

Kathryn Stenton

Signature of witness



Name of Witness

Address of Witness

HANNAH RICHARDSON  
ASSET MGT ADMIN  
33 HOLBORN EC1N 2HT

Occupation of witness

SECURITY TRUSTEE

EXECUTED as a DEED

)  
)  
)  
)  
)

For and on behalf of  
INVESTEC BANK PLC

(authorised signatory)

(authorised signatory)

EXECUTION PAGE

THE CHARGOR

EXECUTED as a DEED  
by BELENUS ENERGY LIMITED  
in the presence of:

)  
)  
)

Signature of director .....

Name of director .....

Signature of witness .....

Name of Witness .....

Address of Witness .....

.....

.....

Occupation of witness .....

SECURITY TRUSTEE

EXECUTED as a DEED

For and on behalf of  
INVESTEC BANK PLC

)  
)  
)  
)  
)

[Redacted Signature]

Andrew Neill  
Authorised Signatory

.....  
(authorised signatory)

[Redacted Signature]

Steven Cowland  
Authorised Signatory

.....  
(authorised signatory)