



Registration of a Charge

Company name: **TORMYWHEEL WIND FARM LIMITED**

Company number: **SC272942**



X9325F4X

Received for Electronic Filing: **15/04/2020**

Details of Charge

Date of creation: **09/04/2020**

Charge code: **SC27 2942 0006**

Persons entitled: **CLOSE LEASING LIMITED**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT 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: **CMS CAMERON MCKENNA NABARRO OLSWANG LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 272942

Charge code: SC27 2942 0006

The Registrar of Companies for Scotland hereby certifies that a charge dated 9th April 2020 and created by TORMYWHEEL WIND FARM LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 15th April 2020 .

Given at Companies House, Edinburgh on 15th April 2020

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**

DATE: 9 APRIL 2020

SECURITY OVER ACCOUNT AND DEPOSIT MONEYS

Between

TORMYWHEEL WIND FARM LIMITED

and

CLOSE LEASING LIMITED

CMS Cameron McKenna Nabarro Olswang LLP
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THIS DEED is made on the 9th day of April 2020

BETWEEN:

- (1) **TORMYWHEEL WIND FARM LIMITED**, a company incorporated in Scotland (registered number SC272942) having its registered office is at C/O Womble Bond Dickinson (Uk) Llp, 2 Semple Street, Edinburgh, Scotland, EH3 8BL (the “Chargor”); and
- (2) **CLOSE LEASING LIMITED**, a company incorporated in England and Wales under the Companies Acts (registered number 06377532) (the “Lender”).

WHEREAS:

- (A) The Board of Directors of the Chargor is satisfied that the giving of the security contained or provided for in this Deed is in the interests of the Chargor and has passed a resolution to that effect.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Deed:

“Account”: the account (account number [REDACTED], sort code [REDACTED] and account reference “Tormywheel Wind Farm Limited - Receipts” opened or to be opened in the name of the Chargor with the Account Bank on or before the date of this Deed and/or (where the context permits) any account from time to time substituted for or additional to the same (including in each case such account as redesignated and/or renumbered from time to time).

“Account Bank”: Close Brothers Limited.

“Authorisation”: an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

“Business Day”: means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

“Charged Property”: all the assets of the Chargor which from time to time are the subject of any security created or expressed to be created in favour of the Lender by or pursuant to this Deed.

“Default Rate”: has the meaning given to that term in the Guarantee Facility Agreement.

“Deposit Moneys”: all moneys in any currency from time to time deposited in or standing to the credit of the Account (including all moneys in any currency representing the renewal or replacement of or for any such deposits), all interest from time to time accrued or accruing on all such moneys, all or any moneys payable or repayable pursuant to such deposits or in respect of the Account and in each case the debts represented thereby.

“Expenses”: all costs (including legal fees), charges, expenses and damages sustained or incurred by the Lender at any time in connection with the Charged Property or the Secured Liabilities or in taking, holding or perfecting this Deed or in protecting, preserving, defending or enforcing the security constituted by this Deed or in exercising any rights, powers or remedies provided by or pursuant to this Deed (including any right or power to make payments on behalf of the Chargor under the terms of this Deed) or by law in each case on a full indemnity basis.

“Guarantee Facility Agreement”: means the guarantee facility agreement originally dated 26 September 2017 as amended on or around the date of this Deed between (1) the Chargor and (2) the Lender.

“LPA”: the Law of Property Act 1925.

“Secured Liabilities”: all present and future indebtedness, moneys, obligations and liabilities of the Chargor to the Lender, in whatever currency denominated, whether actual or contingent, whether owed jointly or severally or as principal or as surety or in some other capacity and whether or not the Lender was an original party to the relevant transaction and in whatever name or style, including all interest, discount, commission and fees for which the Chargor may be or become liable to the Lender, together with all Expenses and all interest under Clause 2.2 (*Interest*).

“Security”: a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

Construction

1.2 Any reference in this Deed to:

1.2.1 the “Lender”, the “Chargor”, the “Account Bank” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

1.2.2 “assets” includes present and future properties, revenues and rights of every description;

1.2.3 a “benefit” includes the right to demand or receive money, to exercise all or any rights available at law or in equity, to compel performance and/or to give any notice;

1.2.4 “indebtedness” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

1.2.5 a “person” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

1.2.6 a “regulation” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and

1.2.7 a provision of law is a reference to that provision as amended or re-enacted.

1.3 Clause and Schedule headings are for ease of reference only.

1.4 Any reference in this Deed to the Guarantee Facility Agreement or any other agreement or other document shall be construed as a reference to the Guarantee Facility Agreement or that other agreement or document as the same may have been, or may from time to time be, restated, varied, amended, supplemented, substituted, novated or assigned, whether or not as a result of any of the same:

1.4.1 there is an increase or decrease in any facility made available under the Guarantee Facility Agreement or other agreement or document or an increase or decrease in the period for which any facility is available or in which it is repayable;

- 1.4.2 any additional, further or substituted facility to or for such facility is provided;
 - 1.4.3 any rate of interest, commission or fees or relevant purpose is changed;
 - 1.4.4 the identity of the parties is changed;
 - 1.4.5 the identity of the providers of any security is changed;
 - 1.4.6 there is an increased or additional liability on the part of any person; or
 - 1.4.7 a new agreement is effectively created or deemed to be created.
- 1.5 Any reference in this Deed to this “Deed” shall be deemed to be a reference to this Deed as a whole and not limited to the particular Clause, Schedule or provision in which the relevant reference appears and to this Deed as amended, novated, assigned, supplemented, extended or restated from time to time and any reference in this Deed to a “Clause” or a “Schedule” is, unless otherwise provided, a reference to a Clause or a Schedule of this Deed.
- 1.6 Unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.
- 1.7 Where any provision of this Deed is stated to include one or more things, that shall be by way of example or for the avoidance of doubt only and shall not limit the generality of that provision.
- 1.8 It is intended that this document shall take effect as and be a deed of the Chargor notwithstanding the fact that the Lender may not execute this document as a deed.
- 1.9 Any change in the constitution of the Lender or its absorption of or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person shall not in any way prejudice or affect its rights under this Deed.
- 1.10 Any liberty or power which may be exercised or any determination which may be made under this Deed by the Lender may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

Third Party Rights

- 1.11 Nothing in this Deed is intended to confer on any person any right to enforce or enjoy the benefit of any provision of this Deed which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

2. COVENANT TO PAY

Covenant to Pay

- 2.1 The Chargor covenants with the Lender that it shall pay, perform and discharge the Secured Liabilities as and when the same fall due for payment, performance or discharge in accordance with their terms or, in the absence of any such express terms, on demand.

Interest

- 2.2 The Chargor covenants with the Lender to pay interest on any amounts due under Clause 2.1 (*Covenant to Pay*) from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of any person) at such rate as may from time to time be fixed by the Lender and, if not so fixed, at the Default Rate, on the basis that all such interest will be payable upon such days in each year as the Lender shall from time to time fix and will be compounded with rests on such days in each year in the event of it not being so paid but without prejudice to the right of the Lender to require payment of such interest on demand at

any time and provided that, in the case of any Expense, such interest shall accrue and be payable as from the date on which the relevant Expense arose without the necessity for any demand being made for payment.

3. GRANT OF SECURITY

Assignment

- 3.1 The Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, assigns absolutely to the Lender by way of a first legal assignment all of its present and future right, title, benefit and interest in and to the Account and the Deposit Moneys.

Release of Security

- 3.2 Upon the Secured Liabilities being discharged in full to the satisfaction of the Lender, the Lender shall, at the request and cost of the Chargor, reassign to the Chargor the property and assets assigned to the Lender pursuant to Clause 3.1 above, subject to Clauses 12.3 and 12.4 (*Reinstatement*) and without recourse to, or any representation or warranty by, the Lender or any of its nominees.

4. PERFECTION OF SECURITY

Notice of Charge

- 4.1 The Chargor shall, on the date of this Deed, give or join the Lender in giving a notice to the Account Bank in the form set out in Part 1 of Schedule 1 (*Form of Notice of charge*) or in such other form as the Lender may reasonably require (duly signed by or on behalf of the Chargor) and shall procure that the Account Bank promptly provides to the Lender a duly signed acknowledgement of that notice in the form set out in Part 2 of Schedule 1 or in such other form as the Lender may reasonably require.

Documents

- 4.2 The Chargor shall promptly deposit with the Lender, and permit the Lender during the subsistence of this Deed to hold and retain, at any branch of the Lender or with any correspondents or other agents of the Lender all certificates of deposit, deposit receipts and other documents or securities from time to time relating to the Charged Property, together, where appropriate, with all forms of transfer or other instructions (duly executed) relating to the Charged Property as the Lender may from time to time reasonably require.

5. FURTHER ASSURANCE

Further Assurance

- 5.1 The Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Lender may reasonably specify (and in such form as the Lender may reasonably require in favour of the Lender or its nominee(s)) to:
- 5.1.1 perfect the security created or intended to be created in respect of the Charged Property;
 - 5.1.2 facilitate the exercise of any rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law; and/or

- 5.1.3 facilitate the realisation of the assets which form part of, or are intended to form part of, the Charged Property.

Necessary Action

- 5.2 The Chargor shall 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 Lender by or pursuant to this Deed.

Implied Covenants for Title

- 5.3 The charge made by the Chargor under this Deed is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994, save that the covenants set out in Section 2(1)(a) and Section 3 of that Act shall extend to the Chargor without, in each case, the benefit of Section 6(2) of that Act.

6. REPRESENTATIONS

Binding Obligations

- 6.1 The obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations and (without limiting the generality of the foregoing) this Deed creates the security which it purports to create and that security is valid and effective.

Power and Authority

- 6.2 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, this Deed and the transactions contemplated by this Deed.
- 6.3 No limit on its powers will be exceeded as a result of the grant of security contemplated by this Deed.

Non-conflict with Other Obligations

- 6.4 The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the security under this Deed do not and will not conflict with:
- 6.4.1 any law or regulation applicable to it;
- 6.4.2 its constitutional documents; or
- 6.4.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument,
- nor (except as provided in this Deed) result in the existence or imposition of, or oblige it to create, any Security in favour of any person over all or any of its assets.

Validity and Admissibility in Evidence

- 6.5 All authorisations, consents, approvals, resolutions, licences, exemptions, filings, notarisations or registrations required or desirable to:
- 6.5.1 enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;
- 6.5.2 make this Deed admissible in evidence in its jurisdiction of incorporation; and

6.5.3 enable it to create any security expressed to be created by it by or pursuant to, or, as the case may be, any security expressed to have been created by it and to be evidenced in, this Deed and to ensure that such security has the priority and ranking it is expressed to have,

have been obtained or effected and are in full force and effect..

Governing Law and Enforcement

6.6 The choice of English law as the governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation.

6.7 Any judgment obtained in the courts of England in relation to this Deed (or, in the case that this Deed confers jurisdiction to settle disputes on any other courts, any judgment obtained in those other courts) will be recognised and enforced in its jurisdiction of incorporation.

6.8 It has entered into this Deed for private, commercial purposes and, in any proceedings taken in its jurisdiction of incorporation in relation to this Deed, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

No Filing or Stamp Taxes

6.9 Under the law of its jurisdiction of incorporation it is not necessary that this Deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar taxes or fees be paid on or in relation to this Deed or the transactions contemplated by this Deed, except registration of a certified copy of this Deed at Companies House under Section 859A of the Companies Act 2006 and payment of associated fees, which registration and fees will be made and paid promptly after the date of this Deed.

Creation of Security

6.10 This Deed creates or, as applicable, evidences in favour of the Lender the security which it purports to create or evidence with the ranking and priority which it is expressed to have.

6.11 Without limiting Clause 6.10 above, its payment obligations under this Deed rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

Good Title to Assets

6.12 It has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as it is being conducted.

6.13 It is the sole legal and beneficial owner of the assets over which it purports to grant security under this Deed.

Continuing Representations

6.14 The Chargor undertakes with the Lender that the representations and warranties in this Clause 6 will be true and accurate throughout the continuance of this Deed by reference to the facts and circumstances existing from time to time.

7. GENERAL UNDERTAKINGS

General

7.1 The undertakings in this Clause 6 remain in force from the date of this Deed for so long as any amount is outstanding under this Deed.

Negative Pledge

- 7.2 The Chargor shall not create or extend or permit to arise or subsist any Security (other than any Security constituted by this Deed) over the whole or any part of the Charged Property, other than with the prior written consent of the Lender.

Restriction on Disposals

- 7.3 The Chargor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, assign, transfer or otherwise dispose of the whole or any part of the Charged Property, other than with the prior written consent of the Lender.

Details of Account

- 7.4 The Chargor shall not, without the Lender's prior written consent, permit or agree to any variation of the rights attaching to the Account or close the Account.
- 7.5 The Chargor shall promptly:
- 7.5.1 notify the Lender of any change in the details of the Account; and
 - 7.5.2 deliver to the Lender copies of all statements showing the balance from time to time on the Account.

Restrictions on Repayment and Withdrawals

- 7.6 Notwithstanding any term express or implied pursuant to which any of the Deposit Moneys are or may be deposited in or paid to the credit of the Account, the Chargor undertakes and agrees with the Lender that it shall not:
- 7.6.1 make any request or demand to the Account Bank for the payment or repayment of all or any part of the Deposit Moneys; and/or
 - 7.6.2 withdraw all or any part of the Deposit Moneys,
- except in any case with the prior written consent of the Lender.

Authorisations

- 7.7 The Chargor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect, and supply certified copies to the Lender of, any Authorisation required under any law or regulation of its jurisdiction of incorporation:
- 7.7.1 to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of this Deed; and
 - 7.7.2 to enable it to properly operate its business or to preserve, maintain or renew any Charged Property.

Compliance with Laws and Regulations

- 7.8 The Chargor shall comply in all respects with all laws and regulations to which it or any Charged Property may be subject, if failure so to comply would materially impair its ability to perform its obligations under this Deed.

Information and Notification

- 7.9 The Chargor shall promptly supply to the Lender such information as the Lender may reasonably require about the Charged Property and its compliance with the terms of this Deed

and such further information regarding its financial condition, assets and operations as the Lender may reasonably request.

- 7.10 The Chargor shall promptly notify the Lender in writing of any action, claim or demand made by or against it in connection with all or any part of the Charged Property or of any fact, matter or circumstance which may with the passage of time give rise to such an action, claim or demand, together with the Chargor's proposals for settling, liquidating, compounding or contesting the same and shall, subject to the Lender's approval of such proposals, implement them at its own expense.

Not Jeopardise Security

- 7.11 The Chargor shall not do or cause or permit to be done anything which might in any way depreciate, jeopardise or otherwise prejudice the value to the Lender of the security constituted or intended to be constituted by this Deed. In particular, but without limitation, the Chargor shall not release, grant time or indulgence or compound with any third party or do or omit to do any other act or thing which may delay or prejudice the right of the Lender to receive payment of all or any part of the Deposit Moneys.

8. ENFORCEMENT OF SECURITY

When Security becomes Enforceable

- 8.1 At any time after a notice by the Lender demanding payment, performance and/or discharge of any of the Secured Liabilities shall have been served by the Lender on the Chargor, the security constituted by this Deed is immediately enforceable and the Lender shall be entitled to exercise, without notice and without prejudice to the Lender's other rights under this Deed or by virtue of general law, at any time or times and in such manner as the Lender shall think fit, all or any of the rights, powers and remedies held by it as assignee of the Charged Property and, in particular, but without limitation, to:
- 8.1.1 demand and receive or recover by legal process all or any part of the Deposit Moneys and on payment to give an effectual discharge for them;
 - 8.1.2 exercise all such other rights, powers and remedies as the Chargor is then entitled to exercise in relation to the Charged Property (or might, but for the terms of this Deed, exercise) to the exclusion of the Chargor (and the Chargor shall exercise all such rights, powers and remedies in accordance with the instructions of the Lender); and
 - 8.1.3 do all such acts, deeds and things as the Lender may consider necessary or proper in relation to any of the rights, powers and remedies referred to above.

Financial Collateral

- 8.2 To the extent that any of the Charged Property constitutes "financial collateral" and this Deed and the obligations of the Chargor under this Deed 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 (the "FCA Regulations")), the Lender shall have, in addition, the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any part of such financial collateral in or towards satisfaction of the Secured Liabilities in accordance with Clause 11.1 (*Order of Application*). For this purpose, the parties agree that the value of such financial collateral shall be, in the case of cash, the amount standing to the credit of the Account, together with all interest accrued but unposted, at the time that the right of appropriation is exercised. The parties further agree that the manner

of valuation provided for in this Clause 8.2 shall constitute a commercially reasonable manner of valuation for the purposes of the FCA Regulations.

Timed Deposits

- 8.3 The rights and powers of the Lender contained in this Clause 8 shall apply notwithstanding that:
- 8.3.1 all or any part of the Deposit Moneys may have been or may be deposited for a fixed or minimum period or be subject to a period of notice;
 - 8.3.2 any interest on the Deposit Moneys is calculated by reference to a fixed or minimum period; and/or
 - 8.3.3 any such fixed or minimum period or period of notice may or may not have expired or been given.
- 8.4 The Chargor authorises the Lender at any time after the security constituted by this Deed has become enforceable to break or determine the Deposit Moneys in whole or in part and/or to renew all or any of the Deposit Moneys for such fixed periods as the Lender may (in its absolute discretion) from time to time think fit.

9. EXTENSION AND VARIATION OF THE LPA

Statutory Powers

- 9.1 The rights and powers of the Lender contained in Clause 7 (*Enforcement of Security*) shall be in addition to and not to the prejudice of all or any of the powers, authorities and discretions conferred by the LPA (as varied or extended by this Deed) on mortgagees or otherwise conferred by law on mortgagees. For the purposes of all powers implied by the LPA, such powers shall arise (and the Secured Liabilities shall be deemed to have become due and payable for that purpose) on the date of this Deed and shall be immediately exercisable by the Lender at any time after the security constituted by this Deed has become enforceable.

Restrictions

- 9.2 Section 103 of the LPA (restricting the power of sale) and Section 93 of the LPA (restricting the right of consolidation) shall not apply to the security constituted by this Deed.

10. POWER OF ATTORNEY

Appointment and Powers

- 10.1 The Chargor, by way of security, irrevocably appoints the Lender 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:
- 10.1.1 carrying out any obligation imposed on the Chargor by this Deed; and
 - 10.1.2 enabling the Lender to exercise, or delegate the exercise of, any of the rights, powers, authorities and discretions conferred on it or him by or pursuant to this Deed or by law (including the exercise of any right of an absolute legal or beneficial owner of the Charged Property).

Ratification

- 10.2 The Chargor shall ratify and confirm whatever any attorney does or purports to do pursuant to its appointment under Clause 10.1 (*Appointment and Powers*).

11. APPLICATION OF PROCEEDS

Order of Application

11.1 All moneys received or recovered by the Lender pursuant to this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the LPA) be applied in the following order (but without prejudice to the right of the Lender to recover any shortfall from the Chargor):

11.1.1 in or towards payment of all Secured Liabilities or such part of them as is then due and payable to the Lender in such order as the Lender may select; and

11.1.2 in payment of the surplus (if any) to the Chargor or other person entitled to it.

11.2 Clause 11.1 (*Order of Application*) will override any appropriation made by the Chargor.

New Accounts

11.3 If the Lender at any time receives, or is deemed to have received, notice of any subsequent Security or other interest affecting all or any of the Charged Property or of any disposal of any Charged Property which is prohibited by the terms of this Deed or of any other matter which may cause the security constituted by this Deed to cease to be a continuing security, the Lender may open a new account with the Chargor.

11.4 If the Lender does not open a new account, 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. As from that time all payments made by or on behalf of the Chargor to the Lender shall be credited or be treated as having been credited to the new account of the Chargor and not as having been applied in reduction of the Secured Liabilities.

12. NO LIABILITY

No Liability

12.1 The Lender shall not in any circumstances (either by reason of taking possession of any Charged Property or for any other reason and whether as mortgagee in possession or on any other basis) be liable to account to the Chargor for anything, except actual receipts, or be liable to the Chargor for any costs, charges, losses, liabilities or expenses arising from the realisation of any Charged Property or from any act, default or omission of the Lender or any of its officers, agents or employees in relation to the Charged Property or from any exercise or purported exercise or non-exercise by the Lender of any power, authority or discretion provided by or pursuant to this Deed or by law or for any other loss of any nature whatsoever in connection with the Charged Property or this Deed (including, without limitation, any loss of interest caused by the determination before maturity of any Deposit Moneys or by the fluctuation in any exchange rate at which currency may be bought or sold by the Lender).

No Duty of Enquiry

12.2 Neither the Lender nor its nominee(s) shall be liable to observe or perform any condition or obligation assumed by the Chargor under or in respect of the Charged Property or be under any duty to the Chargor or any other person to make any enquiry into the nature or sufficiency of any payment received by it in respect of the Charged Property or to present or file or make any claim, take any action or do any other act or thing for the purpose of collecting and/or enforcing the payment of any amount to which it may be entitled in respect of the Charged Property or to

enforce any of the other rights, title, interest or benefits assigned under this Deed or to which the Lender may at any time be entitled pursuant to this Deed.

13. EFFECTIVENESS OF SECURITY

Continuing Security

- 13.1 The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, unless and until discharged by the Lender, and will extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

Cumulative Rights

- 13.2 The security constituted by this Deed and all rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law shall be cumulative, in addition to and independent of any right of set-off, combination, lien or other rights exercisable by the Lender as banker against any person and of any other guarantee or Security now or subsequently held by the Lender for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior Security held by the Lender over the whole or any part of the Charged Property shall be superseded by, supersede or merge into, the security constituted by this Deed.

Reinstatement

- 13.3 If any discharge, release or arrangement (whether in respect of the obligations of the Chargor or any Security for those obligations or otherwise) is made by the Lender in whole or in part on the faith of any payment, Security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor under, security constituted by this Deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 13.4 The Lender may concede or compromise any claim that any payment or any discharge is liable to avoidance or restoration.

Waiver of Defences

- 13.5 Neither the obligations of the Chargor under this Deed nor the security constituted by this Deed nor the rights, powers and remedies of the Lender provided by or pursuant to this Deed or by law will be affected by an act, omission, matter or thing which, but for this Clause 13.5, would reduce, release or prejudice any of its obligations under this Deed, any of that security or any of those rights, powers and remedies (without limitation and whether or not known to it or the Lender) including:
- 13.5.1 any time, waiver or consent granted to, or composition with, the Chargor or any other person;
 - 13.5.2 the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of any person;
 - 13.5.3 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 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;

- 13.5.4 any incapacity or lack of power, authority or legal personality of, or dissolution or change in the members or status of, the Chargor or any other person;
- 13.5.5 any variation, amendment, novation, supplement, extension (whether of maturity or otherwise), substitution, restatement (in each case however fundamental and of whatsoever nature and whether or not more onerous) or replacement of any agreement, account arrangement, transaction or engagement entered into by the Chargor with the Lender or any other document or Security including without limitation any change in the purpose of, any extension of or any increase in, any facility or the addition of any new facility under any such agreement, account arrangement, transaction or engagement or any other document or Security;
- 13.5.6 any unenforceability, illegality or invalidity of any obligation of the Chargor or any other person under any agreement, account arrangement, transaction or engagement entered into by the Chargor with the Lender or any other document or Security; or
- 13.5.7 any insolvency or similar proceedings.

Immediate Recourse

- 13.6 The Chargor waives any right it may have of first requiring the Lender to proceed against or enforce any other rights or Security or claim payment from any person or file any proof or claim in any insolvency, administration, winding up or liquidation proceedings relating to any person before claiming from it under this Deed. This waiver applies irrespective of any law to the contrary.

Appropriations

- 13.7 Until all the Secured Liabilities which may be or become payable by the Chargor under or in connection with this Deed have been irrevocably paid, performed and discharged in full, the Lender may:

- 13.7.1 without affecting the liability of the Chargor under this Deed:

- (a) refrain from applying or enforcing any other moneys, Security or rights held or received by it in respect of the Secured Liabilities; or
- (b) apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to direct the appropriation of any such moneys, Security or rights or to enjoy the benefit of the same; and/or

- 13.7.2 hold in a suspense account any moneys received from the Chargor or on account of the Chargor's liability in respect of the Secured Liabilities. Amounts standing to the credit of any such suspense account shall bear interest at a rate considered by the Lender to be a fair market rate.

No Security held by Chargor

- 13.8 The Chargor shall not take or receive any Security from any person in connection with its liability under this Deed. However, if any such Security is so taken or received by the Chargor:
 - 13.8.1 it shall be held by the Chargor on trust for the Lender, together with all moneys at any time received or held in respect of such Security, for application in or towards payment and discharge of the Secured Liabilities; and

13.8.2 on demand by the Lender, the Chargor shall promptly transfer, assign or pay to the Lender all Security and all moneys from time to time held on trust by the Chargor under this Clause 13.8.

14. PAYMENTS

Manner of Payments

14.1 The Chargor shall make all payments required to be made by it under this Deed available to the Lender (unless a contrary indication appears in this Deed) for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment. Payment shall be made in the currency in which the relevant indebtedness is denominated or, if different, is expressed to be payable and to such account in the principal financial centre of the country of that currency with such bank as the Lender specifies.

15. EXPENSES, STAMP TAXES AND INDEMNITIES

Expenses

15.1 The Chargor shall promptly on demand pay to the Lender the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing, execution and perfection of this Deed and any other documents referred to in this Deed and in responding to, evaluating, negotiating or complying with any request for an amendment, waiver or consent made by the Chargor in relation to this Deed.

15.2 The Chargor shall, within three business days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the defence, protection and/or preservation of, any rights, remedies and powers under this Deed or the security constituted, or intended to be constituted, by this Deed and any proceedings instituted by or against the Lender as a consequence of taking or holding the security constituted, or intended to be constituted, by this Deed or enforcing any such rights, powers and remedies.

Stamp Taxes

15.3 The Chargor shall pay, and shall promptly on demand indemnify the Lender against any cost, loss or liability it incurs in relation to, all stamp duty, registration and similar Taxes payable in connection with the entry into, performance or enforcement, of this Deed, the security constituted by this Deed or any judgment given in connection with this Deed.

General Indemnity

15.4 The Chargor shall, notwithstanding the release or discharge of all or any part of the security constituted by this Deed, promptly indemnify the Lender against any cost, loss, liability or damage incurred by it as a result of:

15.4.1 any default or delay by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Deed;

15.4.2 the taking, holding, protection or enforcement of the security constituted by this Deed; and

15.4.3 the exercise of any of the rights, powers, discretions and remedies vested in the Lender by this Deed or by law in respect of the Charged Property.

Lender may Debit Account

- 15.5 The Lender may, without prejudice to any other right, power or remedy, at any time and from time to time and without further authority from or notice to the Chargor, debit and charge any account of the Chargor with any cost or expense referred to in this Clause 14.

16. CERTIFICATES AND DETERMINATIONS

Any certificate or determination by the Lender of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

17. PARTIAL INVALIDITY

If, at any time, any provision of this Deed 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 of this Deed nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired and, if any part of the security constituted, or intended to be constituted, by this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

18. REMEDIES AND WAIVERS

- 18.1 No failure to exercise, nor any delay in exercising, on the part of the Lender, any right, remedy or power under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right, remedy or power prevent any further or other exercise or the exercise of any other right, remedy or power. The rights, remedies and powers provided in this Deed are cumulative and not exclusive of any rights, remedies or powers provided by law.
- 18.2 Any amendment, waiver or consent by the Lender under this Deed must be in writing and may be given subject to any conditions thought fit by the Lender. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.

19. NOTICES

All notices and demands shall be given in accordance with the notice provisions contained in the Guarantee Facility Agreement.

20. COUNTERPARTS

This Deed 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 Deed. Delivery of an electronic counterpart of this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

21. ASSIGNMENT

The Lender may assign, charge or transfer all or any of its rights under this Deed without the consent of the Chargor. The Lender may disclose any information about the Chargor and this Deed as the Lender shall consider appropriate to any actual or proposed direct or indirect successor or to any person to whom information is required to be disclosed by any applicable law or regulation.

22. GOVERNING LAW

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

23. ENFORCEMENT

Jurisdiction

- 23.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a “Dispute”).
- 23.2 The Chargor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary or take proceedings relating to a Dispute in any other courts.
- 23.3 Clauses 23.1 and 23.2 above are for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.
- 23.4 Without prejudice to Clauses 23.1 and 23.2 above, the Chargor further agrees that proceedings relating to a Dispute may be brought in the courts of Scotland and irrevocably submits to the jurisdiction of such courts.

IN WITNESS of which this Deed has been entered into as a deed and is intended to be and is delivered on the day and year first before written.

SCHEDULE 1

FORM OF NOTICE OF CHARGE

Part 1 - Form of Notice

To: **Close Brothers Limited**

Address: 10 Crown Place, London, EC2A
4FT

[Date]

Dear Sirs

Close Leasing Limited (the “Lender”) and **Tormywheel Wind Farm Limited** (the “Company”) HEREBY GIVE NOTICE that by a charge contained in a security deed dated **2020** and made between the Company and the Lender (the “Security Deed”), the Company charged by way of first fixed charge absolutely to the Lender, by way of security, all of its present and future right, title, benefit and interest in and to the following account:

The [deposit] account (account number [REDACTED], sort code [insert sort code] and account reference “**Tormywheel Wind Farm Limited - Receipts** (the “Account”) and all moneys in any currency from time to time deposited in or standing to the credit of the Account (including all moneys in any currency representing the renewal or replacement of or for any such deposits), all interest from time to time accrued or accruing on all such moneys, all or any moneys payable or repayable pursuant to such deposits or in respect of the Account and in each case the debts represented thereby (the “Deposit Moneys”).

Accordingly, the Company hereby irrevocably and unconditionally instructs and authorises you:

- (a) to disclose to the Lender, without any reference to or further authority from the Company and without any enquiry by you as to the justification for such disclosure, such information relating to the Account and the Deposit Moneys as the Lender may at any time and from time to time request you to disclose to it;
- (b) to hold the Deposit Moneys to the order of the Lender;
- (c) not to permit any withdrawal by the Company of all or any part of the Deposit Moneys without the prior written consent of the Lender;
- (d) to pay or release all or any part of the Deposit Moneys in accordance with the written instructions of the Lender at any time and from time to time; and
- (e) to comply with the terms of any other written notice or instructions that you receive at any time and from time to time from the Lender in any way relating to the Security Deed, the Account or the Deposit Moneys without any reference to or further authority from the Company and without any enquiry by you as to the justification for or validity of such notice or instructions.

The Company confirms that:

- (i) in the event of any conflict between communications received from it and from the Lender, the communication from the Lender shall prevail;
- (ii) none of the instructions, authorisations or confirmations in this Notice of Assignment (the “Notice”) can be revoked or varied in any way except with the Lender’s specific written consent; and

- (iii) any written notice or instructions given to you by the Lender in accordance with this Notice shall be conclusive.

Kindly acknowledge receipt of this Notice and confirm your agreement to it by signing the enclosed form of acknowledgement and returning it to the Lender at c/o CMS Cameron McKenna Nabarro Olswang LLP, Saltire Court, 20 Castle Terrace, Edinburgh, EH12EN for the attention of Jennifer Stewart.

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

Yours faithfully,

.....
for and on behalf of
Tormywheel Wind Farm Limited

Part 2 - Form of Acknowledgement

[on duplicate]

To: Close Leasing Limited

Address: c/o CMS Cameron McKenna
Nabarro Olswang LLP, Saltire
Court, 20 Castle Terrace,
Edinburgh, EH12EN

Attention: Jennifer Stewart

[Date]

Dear Sirs

We acknowledge receipt of the Notice of Assignment of which this is a copy. Terms and expressions defined in that Notice shall have the same meanings when used in this acknowledgment. We agree to and confirm the following:

- (a) we accept and will comply with the terms of the Notice;
- (b) we have not received notice of any other charge, assignment or other third party right or interest whatsoever in, of or affecting the Account or the Deposit Moneys;
- (c) we have not claimed or exercised and will not claim or exercise (except with the Lender's prior written consent) any security interest, right of set-off, consolidation or counterclaim or any other right against or in respect of the Account or the Deposit Moneys, except in respect of our usual administrative and transactional fees and charges in relation to the Account.; and
- (d)
- (e) we shall not permit the Company to make any withdrawal of the Deposit Moneys without the prior written consent of the Lender.

Yours faithfully

.....
for and on behalf of
Close Brothers Limited

EXECUTION PAGE

THE CHARGOR

EXECUTED AS A DEED by
TORMYWHEEL WIND FARM
LIMITED

on being signed by a Director

)

)

)

)

)

(Director)

before a witness

)

(Witness)

CHRIS JOURNEYAY

(Print name)

17 LANBURY RD

LONDON SE15 3DB

(Witness Address)

THE LENDER

Signed on behalf of:

CLOSE LEASING LIMITED

By: (Attorney)

EXECUTION PAGE

THE CHARGOR

EXECUTED AS A DEED by
TORMYWHEEL WIND FARM

LIMITED

on being signed by a Director

before a witness

.....
(Director)

.....
(Witness)

.....
(Print name)

.....
(Witness Address)

THE LENDER

Signed on behalf of:

CLOSE LEASING LIMITED

By: [REDACTED] (Attorney)