

MR01

Particulars of a charge

183903/26

A fee is payable with this form.  
Please see 'How to pay' on the  
last page

You can use the WebF  
Please go to www.comp

to file this form online

✓ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

✗ **What this form is NOT**  
You may not use this form to  
register a charge where  
instrument Use form M

SATURDAY



A26

\*A38KU9UW\*

24/05/2014

#350

COMPANIES HOUSE

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery



You **must** enclose a certified copy of the instrument with this form. This will be scanned and placed on the public record

**1** Company details

Company number / 0 8 1 5 8 0 0 6

Company name in full / Sunsav 4 (Pyworthy) Ltd

For official use

→ **Filling in this form**

Please complete in typescript or in  
bold black capitals

All fields are mandatory unless  
specified or indicated by \*

**2** Charge creation date

Charge creation date / d2 d2 m0 m5 y2 y0 y1 y4

**3** Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name / Bayerische Landesbank (Lender)

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge



MR01

Particulars of a charge

4

**Description**

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security

**Continuation page**

Please use a continuation page if you need to enter more details

Description

The leasehold property registered at the Land Registry with title absolute under title number DN632985 and known as land at Pyworthy, Holsworthy, Devon EX22 6AJ

5

**Fixed charge or fixed security**

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ **Yes**

☐ **No**

6

**Floating charge**

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☒ **Yes** Continue

☐ **No** Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☒ **Yes**

7

**Negative Pledge**

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ **Yes**

☐ **No**



MR01

Particulars of a charge

8

**Trustee statement ①**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

**Signature**

Please sign the form here

Signature

Signature

X

Addashew Goddard LLP

X

This form must be signed by a person with an interest in the charge



# MR01

## Particulars of a charge

### Presenter information

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name **HUSSAA/326016-46**

Company name **Addleshaw Goddard LLP**

Address **Milton Gate**

**60 Chiswell Street**

Post town **London**

County/Region

Postcode **E C 1 Y 4 A G**

Country **United Kingdom**

DX **47 London**

Telephone **020 7606 8855**

### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.

### Checklist

**We may return forms completed incorrectly or with information missing**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy

### Important information

**Please note that all information on this form will appear on the public record.**

### How to pay

**A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.**

Make cheques or postal orders payable to 'Companies House'

### Where to send

**You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below.**

**For companies registered in England and Wales**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1

### Further information

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**





**FILE COPY**

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

Company number: 8158006

Charge code: 0815 8006 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 22nd May 2014 and created by SUNSAVE 4 (PYWORTHY) LTD was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th May 2014.

Of

Given at Companies House, Cardiff on 30th May 2014



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**



Dated 22 May 2014

**SUNSAVE 4 (PYWORTHY) LTD**  
as Company

**BAYERISCHE LANDESBANK**  
as Lender

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**DEBENTURE**

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WE HEREBY CERTIFY THAT THIS IS  
A TRUE COPY (AS REDACTED) OF  
THE ORIGINAL

ADDLESHAW GODDARD LLP

DATE 23 MAY 2014  
ADDLESHAW GODDARD LLP

ADDLESHAW GODDARD



## Contents

Clause		Page
1	Interpretation	1
2	Covenant to pay	6
3	Fixed Charges	6
4	Assignments	7
5	Floating Charge	9
6	Continuing Security	10
7	Representations and Warranties	11
8	General undertakings	14
9	Accounts and Receipts	16
10	Assigned Contracts	17
11	Investments	18
12	Intellectual Property Rights	20
13	Real Property	21
14	Insurances	24
15	Further Assurance	25
16	Power to Remedy	25
17	Enforcement of Security	26
18	Administrators and Receivers	27
19	Application of proceeds	29
20	Power of Attorney	30
21	Protection of Lender and Receivers	30
22	Protection of Third Parties	30
23	Delegation by Lender	30
24	Redemption of Prior Mortgages	31
25	Release of the Security	31
26	Payments	31
27	Costs and Expenses	32
28	Assignments and Transfers	33
29	Remedies and Waivers	33
30	Set-off	33
31	Additional provisions	34
32	Notices	35
33	The Land Registry	35
34	Governing Law and Jurisdiction	36
35	Counterparts and effectiveness	36

## Schedule

1	Assigned Contracts	38
2	Assigned Accounts	40
3	Real Property	41
4	Forms of Notice and Acknowledgement of Assignment	42
	Part 1 - Form of Notice to Insurer	42
	Part 2 - Form of Acknowledgement of Assignment	44
	Part 3 - Form of Notice to Bank with whom Account Maintained	45
	Part 4 - Form of Acknowledgement of Assignment	46
	Part 5 - Form of Notice to Assigned Contract counterparty	48
	Part 6 - Form of Acknowledgement of Assignment	50



This Debenture is made on

22 May 2014

**Between**

- (1) **Sunsave 4 (Pyworthy) Ltd** a limited company incorporated and existing under the laws of England (registered number 08158006) having its registered office at 14 High Cross, Truro, Cornwall, TR1 2AJ, United Kingdom (**Company**), and
- (2) **Bayerische Landesbank** an entity organised and incorporated under the laws of Germany, whose registered office is at Brienner Str 18, 80333 Munich (**Lender**, which expression includes its successors and assigns)

**Whereas**

- (A) The Lender is willing to make certain loan facilities available to the Company on the terms and subject to the conditions set out in the Facilities Agreement (as defined below).
- (B) It is a condition precedent to the making of loans under the Facilities Agreement that the Company shall have executed and delivered this Debenture.
- (C) The Board of Directors of the Company is satisfied that the Company is entering into this Debenture for the purposes of its business and that its doing so benefits the Company
- (D) The Lender and the Company intend this Debenture to take effect as a deed (even though the Lender only executes it under hand)

**It is agreed**

**1 Interpretation**

**1.1 Definitions**

In this Debenture the following terms have the meanings given to them in this clause

**Account** means any account now or in the future opened or maintained by the Company with a bank or other financial institution (and any replacement account or subdivision or subaccount of that account), all amounts from time to time standing to the credit of, or accrued or accruing on, such account and all Related Rights

**Acknowledgement** means a duly completed acknowledgement of assignment in the form set out in the relevant part of schedule 4 (Forms of Notice and Acknowledgement of Assignment), or such other form as the Lender may agree, being

- (a) Part 1B in the case of Insurances
- (b) Part 2B in the case of Assigned Accounts
- (c) Part 3B in the case of Assigned Contracts

**Assigned Accounts** means the Accounts detailed in schedule 2 (Assigned Accounts) and any other Account from time to time designated in writing as an Assigned Account by the Lender and the Company

**Assigned Contracts** means



- (a) the contracts detailed in schedule 1 (Assigned Contracts)
- (b) any other contract from time to time designated in writing as a Project Document by the Lender and the Company

**Charged Accounts** means

- (a) the accounts detailed in schedule 2 (Assigned Accounts)
- (b) each Collateral Account
- (b) any other Account maintained by the Company with the Lender designated in writing as a Charged Account by the Lender and the Company

**Collateral Account** means any Account that may from time to time be opened by the Company with the Lender pursuant to clause 9.1 (Accounts General)

**Default Rate** means the rate of 2 per cent per annum over the rate at which the Lender was being offered deposits in an amount comparable to and in the currency of the relevant sum by prime banks in the London interbank market for such period or periods as the Lender may from time to time select

**Facilities Agreement** means the facilities agreement dated on or about the date hereof and made between the Company as borrower and the Lender

**Fixtures** means, in relation to any Real Property, all fixtures and fittings (including trade fixtures and fittings) and fixed plant, machinery and equipment and other items attached to the relevant Real Property whether or not constituting a fixture at law

**Hazardous Substance** means any substance, pollutant, contaminant, waste or emission (whether gas, vapour, liquid or other emission) defined or regulated as a hazardous substance in or under any Environmental Laws

**Insurances** means all contracts and policies of insurance of whatever nature which are, from time to time, taken out by or on behalf of the Company or (to the extent of such interest) in which the Company has an interest

**Intellectual Property Rights** means all patents, trade marks, service marks, designs, design rights, utility models, business names, topographical or similar rights, copyrights, moral rights, database rights, rights in inventions, domain names, computer software, know-how, trade secrets and confidential information and other intellectual property rights and any interests (including by way of licence) subsisting anywhere in the world in any of the foregoing (in each case whether registered or not and including all applications for the same) owned by the Company

**Investments** means all stocks, shares, debentures, bonds, notes, commercial paper, certificates of deposit, interests in collective investment schemes and other securities and investments of any kind whatsoever and all warrants, options or other rights to subscribe for, purchase or otherwise acquire any securities and investments, whether held directly by the Company or to the order of the Company or by any custodian, nominee, fiduciary, clearance system or other similar person on its behalf (and all rights against any such person)

**Liabilities** means any present or future obligations or liabilities for the payment of money, whether in respect of principal, interest or otherwise, whether actual or contingent, whether owed jointly or severally and whether as principal or surety or in any other capacity and



including any amount which would constitute such a liability but for any discharge, non-provability, unenforceability or non-allowability of the same in any insolvency or other proceedings

**Monetary Claims** means any book and other debts and monetary claims owing to the Company and any proceeds thereof (including any claims or sums of money deriving from or in relation to any Intellectual Property Rights or any Investment, the proceeds of any insurance, any court order, judgment or decree, any contract or agreement to which the Company is a party and any other assets, property or undertaking of the Company)

**Notice of Assignment** means a duly completed notice of assignment in the form set out in the relevant part of schedule 4 (Forms of Notice and Acknowledgement of Assignment) being

- (a) Part 1A in the case of Insurances
- (b) Part 2A in the case of Assigned Accounts
- (c) Part 3A in the case of Assigned Contracts

or in such other form as may be approved by the Lender

**Planning Acts** means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991 and any re-enactment, variation or modification of any of them and any orders, regulations or permissions made, issued or granted under or by virtue of the foregoing Acts or any of them

**Real Property** means any freehold or leasehold property in England and Wales and all rights, easements and privileges from time to time attached or appurtenant thereto and all buildings, erections and Fixtures from time to time situated on or forming part of such freehold or leasehold property

**Receiver** means a receiver and manager or any other receiver (whether appointed pursuant to this Debenture or any statute, by a court or otherwise) of all or any of the Secured Assets and shall, where permitted by law, include an administrative receiver

**Related Rights** means, in relation to any asset

- (a) the proceeds of sale of all or any part of that asset
- (b) all rights under any licence, agreement for sale or agreement for lease in respect of that asset
- (c) all rights, powers, benefits, claims, contracts, warranties, remedies, security, guarantees, indemnities or covenants for title in respect of that asset
- (d) any monies, proceeds or income paid or payable in respect of that asset

**Report on Title** means any report on title from time to time in relation to any Real Property of the Company addressed to the Lender

**Secured Assets** means all of the assets, rights, title, interests and benefits of the Company from time to time the subject of the Security



**Secured Creditors** means the Lender and any Receiver appointed under any Security Document

**Secured Obligations** means all present and future Liabilities of the Company (whether entered into solely or jointly with one or more persons and whether as principal or surety) to the Secured Creditors (or any of them) under or in relation to any one or more of the Finance Documents (including, without limitation, all Liabilities arising out of any extension, variation, modification, restatement or novation of such Finance Documents whatsoever)

**Secured Real Property** means all of the Real Property from time to time subject of the Security

**Security** means the security created or intended to be created by this Debenture

**Security Period** means the period beginning on the date of this Debenture and ending on the date upon which the Lender is satisfied that

- (a) none of the Secured Creditors is under any obligation (whether actual or contingent) to make advances or provide other financial accommodation to the Company under any of the Finance Documents
- (b) all Secured Obligations have been unconditionally and irrevocably paid and discharged in full

**Subsidiary** means in relation to any person, any entity which is controlled directly or indirectly by that person and any entity (whether or not so controlled) treated as a subsidiary in the latest financial statements of that person from time to time, and **control** for this purpose means the direct or indirect ownership of the majority of the voting share capital of such entity or the right or ability to direct its affairs and/or to control the composition of a majority of the board of directors (or equivalent body) of such entity, in each case whether by virtue of ownership of share capital, contract or otherwise

**Tangible Moveable Property** means any plant, machinery, office equipment, computers, vehicles and all other chattels (excluding any for the time being forming part of the Company's stock-in-trade or work in progress) now or at any time hereafter belonging to the Company or (to the extent of such interest) in which the Company has an interest and the benefit of all contracts and warranties relating to the same

## 1.2 Defined Terms

Unless this Debenture provides otherwise or the context otherwise requires, a term which is defined (or expressed to be subject to a particular construction) in the Facilities Agreement shall have the same meaning (or be subject to the same construction) in this Debenture

## 1.3 Incorporation of Terms

The terms of the Finance Documents are incorporated into this Debenture to the extent required for any purported disposition contained in this Debenture to be a valid disposition in accordance with Section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989

## 1.4 References to Agreements

Unless otherwise stated, any reference in this Debenture to any agreement or document (including any reference to this Debenture or any other Finance Document or to any



agreement or document entered into pursuant to or in accordance with such agreement or document) shall be construed as a reference to

- (a) such agreement or document as amended, restated, varied, novated or supplemented from time to time, and
- (b) any agreement or document whereby such agreement or document is so amended, varied, supplemented or novated or which is entered into pursuant to or in accordance with any such agreement or document

#### 1 5 Certificates

A certificate of any Secured Creditor as to the amount of any Secured Obligation owed to it shall be prima facie evidence of the existence and amount of such Secured Obligation

#### 1 6 Statutes

Any reference in this Debenture to a statute or statutory provision shall, unless the contrary is indicated, be construed as a reference to such statute or statutory provision as the same shall have been amended or re-enacted

#### 1 7 Implied Covenants

In accordance with Rule 68 of the Land Registration Rules 2003

- (a) the covenants set out in Section 3(1) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to clauses 3 (Fixed Charges), 4 (Assignments) and 5 (Floating Charge) save for the words **other than any charges, encumbrances or rights which that person does not and could not reasonably be expected to know about**,
- (b) the covenants set out in Section 3(2) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to clauses 3 (Fixed Charges), 4 (Assignments) and 5 (Floating Charge) save for the words **except to the extent that such liabilities and rights are, by reason of (i) being, at the time of the disposition, only potential liabilities and rights in relation to the property or (ii) being liabilities and rights imposed or conferred in relation to property generally, not such as to constitute defects in title**, and
- (c) the covenants set out in Section 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 shall not extend to clauses 3 (Fixed Charges), 4 (Assignments) and 5 (Floating Charge)

#### 1 8 Nominees

If the Lender causes or requires shares or any other asset to be registered in the name of a nominee for the Lender, any reference in this Debenture to the Lender shall, if the context so permits or requires, be construed as a reference to each of the Lender and such nominee

#### 1 9 Third Party Rights

- (a) A person which is not a party to this Debenture (a **third party**) shall have no rights to enforce any of its provisions except that



- (i) a third party shall have those rights it would have had if the Contracts (Rights of Third Parties) Act 1999 had not come into effect, and
  - (ii) each of clauses 27.4 (Indemnity), 27.5 (Value Added Tax), 30 (Set-off), 31.3 (Currency Conversion) and 31.4 (Currency Indemnity) shall be enforceable by any third party referred to in such clause as if such third party were a party to this Debenture
- (b) The parties to this Debenture may vary or rescind this Debenture without the consent of any third party

#### **1.10 Clause and Schedule Headings**

- (a) Unless otherwise stated, any reference in this Debenture to a clause or a schedule shall be construed as a reference to a clause of or a schedule to this Debenture.
- (b) Clause and schedule headings are for ease of reference only and shall not affect the construction of this Debenture

### **2 Covenant to pay**

#### **2.1 Covenant to Pay**

The Company agrees that it will irrevocably and unconditionally pay and discharge in full the Secured Obligations when due and payable in accordance with the terms of the relevant Finance Documents or, if no time for payment is specified in respect of the same, promptly on demand of the Lender

#### **2.2 Interest**

Any Secured Obligation which is owed by the Company under this Debenture and is not paid when due shall bear interest at the Default Rate from the due date until the date on which such Secured Obligation is unconditionally and irrevocably paid in full and such interest shall accrue from day to day (after as well as before judgment) and be payable by the Company on demand of the Lender

### **3 Fixed Charges**

The Company, with full title guarantee and as continuing security for the payment and discharge of the Secured Obligations, charges in favour of the Lender, in each case together with all Related Rights

- (a) by way of first legal mortgage, all of the Real Property (if any) specified in schedule 3 (Real Property) and all other Real Property now vested in the Company,
- (b) by way of first fixed charge, all the Company's present and future right, title and interest in and to and the benefit of (but in the case of clauses (iv), (v) and (vi) below only if and to the extent the rights in question have not been effectively assigned pursuant to clause 4 (Assignments) or such rights have been effectively assigned but such assignment has not been perfected by the service of the appropriate Notice of Assignment)
  - (i) to the extent not effectively charged pursuant to clause (a) above, all estates or interests in any Real Property (whether such interests are freehold, leasehold or licenses) vested in, or acquired by, it,



- (ii) all Tangible Moveable Property,
- (iii) all Charged Accounts,
- (iv) all Investments;
- (v) the Insurances and any proceeds received thereunder,
- (vi) (to the extent that the same do not fall within any other paragraph of this clause 3 (Fixed Charges)), the Assigned Contracts and any related guarantees,
- (vii) all Intellectual Property Rights,
- (viii) all Monetary Claims other than any claims that are otherwise subject to a fixed charge pursuant to this Debenture,
- (ix) all Authorisations (statutory or otherwise) held in connection with the business of the Company or the use of any asset of the Company and the right to recover and receive all compensation which may at any time become payable to it in respect of the same,
- (x) all present and future goodwill and uncalled capital of the Company, and
- (xi) suppliers guarantees (inverters, modules and fixed mounted),

provided that this clause 3 (Fixed Charges) shall not prevent the Company from disposing of any asset in accordance with the terms of the Finance Documents

#### **4 Assignments**

##### **4.1 Assignments**

Subject to clause 4.2 (Non-Assignable Rights), the Company, with full title guarantee and as continuing security for the payment and discharge of the Secured Obligations, assigns absolutely on a first priority basis to the Lender all its present and future, actual and contingent right, title and interest in and to and the benefit of (in each case together with all Related Rights)

- (a) the Insurances and all proceeds in respect of Insurances and all benefits thereof (including all claims of whatsoever nature relating thereto and returns of premium in respect thereof),
- (b) any amounts standing to the credit of any Assigned Account and/or any debt represented by that account,
- (c) all Assigned Contracts and any related guarantees and all monies which at any time may be or become payable to the Company pursuant thereto and the net proceeds of any claims, awards and judgments which may at any time be receivable or received by the Company pursuant thereto,
- (d) the Investments and all monies which at any time may be or become payable to the Company pursuant thereto and the net proceeds of any claims, awards and judgments which may at any time be receivable or received by the Company pursuant thereto,



- (e) all Intellectual Property Rights, and
- (f) suppliers guarantees (inverters, modules and fixed mounted)

#### **4.2 Non-Assignable Rights**

The Company declares that to the extent that any right, title, interest or benefit in or in respect of any asset described in clause 4.1 (Assignments) cannot be or is not effectively assigned pursuant to clause 4.1 for whatever reason, the Company shall.

- (a) promptly notify the Lender of the same and the reasons therefor,
- (b) hold the benefit of the same on trust for the Lender as security for the payment and discharge of the Secured Obligations, and
- (c) take such steps as the Lender may require to remove such impediment to an assignment

#### **4.3 Notice of Assignment**

Promptly upon the execution of this Debenture and thereafter upon the request of the Lender, the Company shall (unless such notice is contained in a duly executed Finance Document) give notice of the assignments effected pursuant to clause 4.1 (Assignments) by sending a Notice of Assignment to

- (a) in relation to the Insurances, each of the insurers party to each Insurance Agreement, and the Company shall (i) ensure that each such policy and contract of Insurance has endorsed on it a copy of the Notice of Assignment relating thereto and (ii) procure that each person to whom any such Notice of Assignment is given shall promptly, and in any event within 15 Business Days of the date of such Notice of Assignment, duly sign and return the form of the relevant Acknowledgement,
- (b) in relation to the Assigned Accounts, each bank or other financial institution with which each such Assigned Account is maintained, and the Company shall procure that each person to whom any such Notice of Assignment is given shall promptly, and in any event within 5 Business Days of the date of such Notice of Assignment, duly sign and return the form of the relevant Acknowledgement, and
- (c) in relation to the Assigned Contracts, each debtor or obligor party to each such Assigned Contract (including any relevant landlord or tenant), and the Company shall procure that each person to whom any such Notice of Assignment is given shall promptly, and in any event within 5 Business Days of the date of such Notice of Assignment, duly sign and return the form of the relevant Acknowledgement



#### 4.4 Licence Back of Intellectual Property Rights

The Lender hereby grants to the Company an exclusive, royalty-free licence to use and to have used on its behalf and to sub-license all Intellectual Property Rights assigned under this clause 4 at any time prior to the Security becoming enforceable. Subject to clause 12.1(b) (Intellectual Property Rights), the grant of licence under this clause includes the grant to the Company of the sole right to take action against, and compromise or make settlements with, any third parties infringing the Intellectual Property Rights in satisfaction of the Company's obligations under clause 12.2(b) (Protection)

### 5 Floating Charge

#### 5.1 Creation of Floating Charge

- (a) The Company, with full title guarantee and as continuing security for the irrevocable and unconditional payment and discharge of the Secured Obligations, charges in favour of the Lender by way of a first floating charge all its undertaking and assets whatsoever and wheresoever both present and future, not effectively charged pursuant to clause 3 (Fixed Charges) or effectively assigned pursuant to clause 4 (Assignments)
- (b) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created pursuant to this clause 5

#### 5.2 Conversion of Floating Charge

- (a) The Lender may at any time, by notice to the Company, convert the floating charge created under this Debenture with immediate effect into a fixed charge if
  - (i) the Security becomes enforceable in accordance with clause 17 (Enforcement of Security),
  - (ii) the Lender in good faith considers any of the Secured Assets to be in danger of being seized or sold under or pursuant to any form of distress, attachment, execution or other legal process or otherwise to be in jeopardy, or
  - (iii) the Lender considers such conversion to be necessary or desirable to protect the priority of the Security,

and such fixed charge shall apply to all assets the subject of the floating charge unless and to the extent that such notice otherwise specifies
- (b) The floating charge created under this Debenture shall (in addition to the circumstances in which the same will occur under general law) automatically be converted into a fixed charge (without notice) as regards all the assets subject to the floating charge at such time
  - (i) upon the convening of a meeting of the members of the Company to consider a resolution to wind up the Company,
  - (ii) upon the presentation of a petition to wind up the Company or the presentation or making of an application for a warrant of execution, a writ of fieri facias or a third party debt order or charging order in respect of any of the Secured Assets the subject of the floating charge under this Debenture,



- (iii) if a notice of the intended appointment of an administrator to the Company is made or if a resolution is passed or an order is made or otherwise formal steps or proceedings are undertaken for the winding up, dissolution, administration or re-organisation of the Company,
- (iv) upon the issue and notice of distraint by HM Revenue and Customs or other competent authority, or upon any steps being taken to distraint for rent against any property of the Company, or
- (v) if the Company fails to comply with its covenant in clause 8.2 (Negative Pledge and Disposals) of this Debenture,

provided that nothing in this Debenture shall cause the floating charge to crystallise by reason of the Company obtaining or of anything being done with a view to the Company obtaining a moratorium under Section 1A of and Schedule A1 to the Insolvency Act 1986

- (c) The giving of notice by the Lender pursuant to clause (a) above in relation to any of the Secured Assets shall not be construed as a waiver or abandonment of the right of the Lender to serve similar notices in respect of any other of the Secured Assets or of any other of the rights of the Secured Creditors (or any of them) under any Finance Document

## **6 Continuing Security**

### **6.1 Continuing and Independent Security**

The Security shall constitute and be continuing security which shall not be released or discharged by any intermediate payment or settlement of all or any of the Secured Obligations, shall continue in full force and effect until the end of the Security Period and is in addition to and independent of, and shall not prejudice or merge with, any other security (or any right of set-off) which the Lender or any other Secured Creditor may hold at any time for the Secured Obligations or any of them

### **6.2 New Accounts**

If the Lender receives notice of any Encumbrance created or arising after the date of this Debenture in respect of the Secured Assets or any of them or makes demand of the Company for payment of any or all of the Secured Obligations

- (a) the Lender may open a new account or accounts in respect of any or all of the Secured Obligations (and if it does not do so it shall be treated as if it had done so at the time it received such notice or made such demand), and
- (b) thereafter any amounts paid to the Lender in respect of the Secured Obligations, or realised or recovered by the Lender under this Debenture, shall be credited to a new account (or be treated as having been so credited) and not applied (or be treated as having been applied) in or towards payment of all or any of the Secured Obligations.

### **6.3 Avoidance of Payments**

Where any release, discharge or other arrangement in respect of any Secured Obligation or any security the Lender may hold for such Secured Obligation is given or made in reliance on any payment or other disposition which is avoided or must be repaid in an insolvency, liquidation or otherwise, and whether or not the Lender has conceded or compromised any



claim that any such payment or other disposition will or should be avoided or repaid, this Debenture and the Security shall continue as if such release, discharge or other arrangement had not been given or made

#### **6.4 Appropriation**

Neither the Lender nor any other Secured Creditor shall be obliged to apply any sums held or received by it in respect of the Secured Obligations in or towards payment of the Secured Obligations and any such sum shall be held by or paid to the Lender for application pursuant to the terms of this Debenture

### **7 Representations and Warranties**

The Company makes the representations and warranties set out in clauses 7.1 (Status and Due Authorisation) to 7.14 (Account Terms) to each Secured Creditor and acknowledges that each of the Secured Creditors has entered into the Finance Documents to which it is party in reliance on such representations and warranties

#### **7.1 Status and Due Authorisation**

It is a limited liability company incorporated under the laws of England with power to enter into this Debenture and to exercise its rights and perform its obligations under this Debenture and all corporate and other action required to authorise its execution of this Debenture and its performance of its obligations under this Debenture has been duly taken

#### **7.2 Binding Obligations**

The obligations expressed to be assumed by it in this Debenture are legal and valid obligations binding on it in accordance with the terms of this Debenture and no limit on its powers will be exceeded as a result of the creation of the Security or the performance of its obligations under this Debenture

#### **7.3 Execution of this Debenture**

Its execution of this Debenture and the exercise of its rights and performance of its obligations under this Debenture do not and will not conflict with

- (a) any agreement, mortgage, bond or other instrument or treaty to which it is a party or which is binding upon it or any of its assets or, except as provided in this Debenture or the other Security Documents, result in a requirement for the creation of any Encumbrance over any of its asset in any way,
- (b) its constitutional documents, or
- (c) any applicable law, regulation or official or judicial order.

#### **7.4 All Actions Taken**

All acts, conditions and things required to be done, fulfilled and performed in order to

- (a) enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it in this Debenture,
- (b) ensure that the obligations expressed to be assumed by it in this Debenture are legal, valid and binding and have or will have first ranking priority, and



- (c) make this Debenture admissible in evidence in England,

have been done, fulfilled and performed

#### **7 5 No Deductions or Withholdings**

It will not be required to make any deduction for or withholding on account of tax from any payment it may make under this Debenture

#### **7 6 No Filing or Stamp Taxes**

It is not necessary that this Debenture be filed, recorded or enrolled with any court or other authority in England or that any stamp, registration or similar tax be paid on or in relation to this Debenture save that it is registrable under the Companies Act 2006 and under the Land Registration Act 2002

#### **7.7 No Winding-up**

It has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against it for its winding-up, dissolution, administration or re-organisation or for the appointment of a Receiver or similar officer of it or of any or all of its assets or revenues nor have any steps which are similar or which would have similar effect been taken, whether in its jurisdiction of incorporation or elsewhere

#### **7 8 No Adverse Interests**

- (a) Subject only to the Security, no person other than the Company has any legal or beneficial interest (or any right to claim any such interest) in the Secured Assets and the Company has not received notice of any such claim
- (b) Save as otherwise expressly permitted under the Finance Documents, it has not transferred, mortgaged, charged or otherwise disposed of (or agreed to transfer, mortgage, charge or otherwise dispose of), whether by way of security or otherwise, the benefit of all or any of its right, title and interest in and to the Secured Assets or any part of the Secured Assets

#### **7 9 Investments**

- (a) It is the sole beneficial owner of each of its Investments and any Related Rights and it and/or its nominee is the legal owner of its Investments and all such Related Rights
- (b) Its Investments and all Related Rights are within the Company's disposition and control and the terms of each Investment and each Related Right, if applicable, and of the Memorandum and Articles of Association or other constitutive documents of each issuer of such Investments do not restrict or otherwise limit the Company's ability to transfer, mortgage, charge or otherwise grant security in respect of any of its Investments and/or the Related Rights
- (c) It will not take any action whereby the rights attaching to, or the Security over, its Investments and the Related Rights are altered, diluted or otherwise adversely affected except with the prior written consent of the Lender
- (d) As at the date of this Debenture, its Investments are fully paid or credited as fully paid and no calls have been made in respect of them which remain unpaid



- (e) Save as otherwise expressly permitted under the Finance Documents, it has not sold or granted any rights of pre-emption over or agreed to sell or grant any right of pre-emption over or otherwise disposed of or agreed to dispose of the benefit of all or any of its rights, title, interests or benefits in, to or in respect of all or any of its Investments or any of the Related Rights

#### 7 10 Report on Title

All the information supplied by it in connection with the preparation of any Report on Title was and remains complete and true in all material respects and there is no information which has not been disclosed to the Lender which might reasonably be expected to affect adversely the value of the Real Property the subject of any such Report on Title, the Security to the extent it relates to such Real Property, or the decision of any Lender in considering whether to provide finance to the Company

#### 7 11 Real Property

Save as disclosed in writing to the Lender prior to the date of this Debenture, or as otherwise expressly permitted under the Finance Documents

- (a) the Company is the legal and beneficial owner of all the Real Property specified in schedule 3 (Real Property) and has good and marketable title to such Real Property
- (b) All of the Real Property owned by the Company is free from any mortgage, debenture, charge, rent charge or any other Encumbrance (save for those created by or pursuant to this Debenture).
- (c) There subsists no breach of any Planning Acts, bye-laws or local authority or statutory requirements which would or might have a Material Adverse Effect on the value of all or any part of the Real Property owned by the Company
- (d) There are no covenants, agreements, stipulations, reservations, conditions, interest, rights or other matters whatsoever affecting all or any part of the Real Property owned by the Company (save for those created by or pursuant to this Debenture)
- (e) Nothing has arisen or been created or is subsisting which would be or would create an overriding interest over or which might have a Material Adverse Effect on the value of all or any part of the Real Property owned by the Company
- (f) No facilities necessary for the enjoyment and use of all or any part of the Real Property owned by the Company, are enjoyed by such Real Property on terms entitling any person to terminate or curtail its or their use
- (g) The Company has received no notice of any adverse claims by any person in respect of the ownership of all or any part of the Real Property owned by the Company, or any interest in it, nor has any acknowledgement been given to any person in respect of any such claim on any such Real Property
- (h) All of the Real Property owned by the Company is free from any tenancies or licences.



**7 12 Intellectual Property Rights**

- (a) The Intellectual Property Rights owned by the Company or licensed to it are all the Intellectual Property Rights required by it in order for it to carry on, maintain and operate its business, properties and assets
- (b) The Company is not infringing any Intellectual Property Rights of any third party
- (c) The Intellectual Property Rights owned by the Company are free of any Encumbrances (save for those created by or pursuant to this Debenture) and any other rights or interests (including, without limitation, any licences) in each case in favour of third parties
- (d) None of the Intellectual Property Rights owned by the Company is being infringed, nor is there any threatened infringement of the same

**7 13 Assigned Contracts**

- (a) No payments owed to it under the Assigned Contracts are subject to any right of set-off (or similar right)
- (b) It is not in default under any of the Assigned Contracts and none of the Assigned Contracts are capable of being terminated or have been terminated
- (c) There is no prohibition on assignment (by way of security) to the Lender under any of the Assigned Contracts

**7 14 Account Terms**

The terms on which its Accounts are maintained do not restrict or otherwise limit its right to transfer or charge such Accounts

**7 15 Repetition**

The representations and warranties set out in clauses 7 1 (Status and Due Authorisation) to 7 14 (Account Terms)

- (a) shall survive the execution of each Finance Document and each drawdown under the Facilities Agreement, and
- (b) are made on the date of this Debenture and, save in the case of clause 7 9(d) (Investments), are deemed to be repeated on each day during the Security Period with reference to the facts and circumstances then existing

**8 General undertakings****8 1 Authorisations**

The Company shall obtain, comply with the terms of and do all that is necessary to maintain in full force and effect all Authorisations (including Environmental Permits), and make all filings, notifications and notarisations which at any time or from time to time it is required to obtain or make

- (a) for the operation, maintenance, repair and/or development of the Plant and/or for any other purpose connected with the Project,



- (b) to enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it under this Debenture, and
- (c) to ensure the legality, validity, enforceability or admissibility in evidence in each relevant jurisdiction of this Debenture

## 8.2 Negative Pledge and Disposals

The Company will not create, grant, extend or permit to subsist any Encumbrance over all or any of its present or future revenues or assets other than a Permitted Encumbrance

## 8.3 No obligations

Notwithstanding anything to the contrary in this Debenture

- (a) the Company shall remain liable to perform all the obligations assumed by it under or in respect of the Secured Assets,
- (b) the exercise by the Lender or any Receiver (or any other delegate) of any of the rights, benefits, interest or claims secured by this Debenture shall not release the Company from any of its obligations towards the Lender, and
- (c) neither the Lender nor any Receiver (or any other delegate) shall be under any obligation or liability to the Company under or in respect of any of the Secured Assets including, without limitation, to
  - (i) perform (as a result of the non performance, or mis-performance, of the Company) any of the obligations assumed by the Company under or in respect of the Secured Assets or the Finance Documents,
  - (ii) enforce payment or performance of any obligations of any person party to any of the Secured Assets, or
  - (iii) make any enquiry as to the nature or sufficiency of any payment received by it under or in respect of this Debenture or any of the Secured Assets

## 8.4 No Prejudicial Action and Maintenance

- (a) The Company shall not
  - (i) take any action which would cause any of the representations made in clause 7 (Representations and Warranties) to be untrue or incorrect in any respect at any time during the Security Period, or
  - (ii) do or permit to be done anything which could reasonably be expected to prejudice the Security
- (b) The Company shall
  - (i) promptly notify the Lender of the occurrence of any event which results in (or might reasonably be expected to result in) any of the representations contained in clause 7 (Representations and Warranties) being untrue or incorrect in any respect when made or when deemed to be repeated,



- (ii) keep or cause to be kept all the Secured Assets in good working order and condition (fair wear and tear arising from the use of the Secured Assets in the ordinary course of its business excepted), and
- (iii) ensure that representatives of the Lender (with or without surveyors, workmen or others) are able at all reasonable times and on reasonable notice to view the condition of any of the Secured Assets

## **9 Accounts and Receipts**

### **9.1 Accounts General**

- (a) The Company will
  - (i) except in respect of such Accounts which are held with the Lender, deliver to the Lender on the date of this Debenture details of each of its Accounts (and, if any change in such detail (including any renewal or redesignation of any such Account) occurs after the date of this Debenture or any new Account is opened, details of such change or new Account on the date of such change or opening),
  - (ii) not, without the prior written consent of the Lender, permit or agree to any variation of the rights attaching to, or close, any Account, and
  - (iii) open such new Collateral Accounts, as the Lender shall require (whether before or after the Security has become enforceable) for the purposes of clause 9.4 (Book and Other Debts after Security becomes Enforceable)
- (b) Without prejudice and in addition to clause 8.2 (Negative Pledge and Disposals)
  - (i) the benefit of each Charged Account and each Assigned Account shall not be capable of assignment or charge in whole or in part (save pursuant to this Debenture), and
  - (ii) the Company agrees that it will not assign (whether by way of sale or mortgage), charge or otherwise seek to deal with or dispose of all or any part of any Charged Account or any Assigned Account without the prior written consent of the Lender

### **9.2 Charged Accounts**

- (a) Until the end of the Security Period, the Lender (in its capacity as the bank with whom each Charged Account is maintained) shall have no obligation to repay any amounts standing to the credit of any Charged Account (and any interest thereon shall be credited to the relevant Charged Account)
- (b) The Company authorises the Lender (in its capacity as the bank with whom each Charged Account is maintained) to endorse any statement in relation to any Charged Account or other document relating to any Charged Account with a statement to the effect that
  - (i) the benefit of such Charged Account is not capable of assignment or charge without the prior written consent of the Lender,



- (ii) the Company has agreed not to assign, charge or otherwise deal with the indebtedness evidenced by such Charged Account without the prior written consent of the Lender, and
- (iii) the benefit of such Charged Account is subject to a first fixed charge in favour of the Lender.

### 9.3 Withdrawals

The Company shall not make any withdrawal from any Charged Account or, as the case may be, any Assigned Account without the prior written consent of the Lender (in its capacity as such)

### 9.4 Book and Other Debts after Security becomes Enforceable

If and to the extent that the Lender so specifies, at any time after the Security has become enforceable, the Company shall pay the proceeds of payment or realisation of such of the Company's assets comprising temporary and other investments, book and other debts, royalties, fees and income of like nature or other monies received by the Company as the Lender may require into such Collateral Account(s) as the Lender may from time to time specify and pending such payment shall hold all such receipts on trust for the Lender

### 9.5 Accounts after Security becomes Enforceable

Upon the Security becoming enforceable, the Lender shall be deemed to have designated in writing all Accounts other than the Charged Accounts and the Assigned Accounts as Assigned Accounts or, in the case of any such Accounts maintained with the Lender, Charged Accounts and at any time thereafter, the Lender may

- (a) in relation to such new Assigned Accounts, require the Company to, and the Company shall immediately on request, serve a Notice of Assignment in the appropriate form on each bank or other financial institution with which any such Account is maintained and the Company shall comply with its obligation under clause 4.3 (Notice of Assignment) to obtain an Acknowledgement of each such Notice of Assignment, and
- (b) exercise from time to time, all rights, powers and remedies of the Company in relation to any or all of its Accounts, including to demand and receive all and any monies standing to the credit of any such Accounts

## 10 Assigned Contracts

### 10.1 Documents

The Company will deliver to the Lender promptly following execution of the same

- (a) details of all Assigned Contracts entered into by it after the date of this Debenture, and
- (b) such documents relating to the Assigned Contracts as the Lender may reasonably require

### 10.2 No Amendments

The Company will not



- (a) amend, supplement, supersede or waive any provision of any Assigned Contract, exercise any right to rescind, cancel or terminate any Assigned Contract or release any counterparty from any obligations under any Assigned Contract, or
- (b) waive any breach by any counterparty or consent to any act or omission which would otherwise constitute such a breach,

except as permitted by the terms of the other Finance Documents.

### 10.3 Performance

The Company will

- (a) use all reasonable efforts to maintain all Project Documents or in case a Project Document is terminated shall use all reasonable efforts to replace such Project Document,
- (b) comply with, and perform, in all respects, all of its obligations under each of the Assigned Contracts, in particular comply with any payment obligations on the date when they fall due at the latest,
- (c) diligently maintain, preserve, exercise, enforce and pursue all of its material rights under the Assigned Contracts, and
- (d) promptly on becoming aware of the same, notify the Lender of
  - (i) all default notices, termination notices, all other material notices, all material final reports or plans and all other material information delivered to, or by or on behalf of, the Company under any Assigned Contract,
  - (ii) details of any actual, proposed or threatened amendment, waiver cancellation, suspension or termination or revocation prior to the stated maturity or term thereof, of any Assigned Contract,
  - (iii) copies of any amendment or waiver to any Assigned Contract, and
  - (iv) promptly (and in any event within ten (10) days) on becoming aware of its occurrence, notice and details of the occurrence of any force majeure event (howsoever defined) under any Assigned Contract

### 10.4 Restriction on Dealing

Without prejudice and in addition to clause 8.2 (Negative Pledge and Disposals) the Company will not assign, transfer, charge or otherwise deal with or dispose of any Assigned Contract or any of the Company's rights, title, interest and benefits in, to and in respect of any Assigned Contract

## 11 Investments

### 11.1 Deposit of Certificates

The Company will



- (a) on the date of acquisition in respect of any additional shares deliver to the Lender (i) the share certificates and (ii) stock transfer forms (duly executed in blank by or on behalf of the Company or its nominee as appropriate), and
- (b) on the date of this Debenture, or if later, on the date of acquisition of any Investment deposit with the Lender (or as the Lender may direct) all share certificates and documents of title or evidence of ownership in relation to such Investments and any Related Rights and execute and deliver to the Lender all such other transfer forms and documents as may be requested by the Lender in order to enable the Lender (or its nominee) to become registered as the owner, or otherwise obtain legal title to such Investments and Related Rights

## **11 2 Not Prejudice**

Without prejudice and in addition to clause 8 4 (No Prejudicial Action and Maintenance), the Company shall not, by the exercise of any voting rights or otherwise, permit or agree to

- (a) any variation of the rights attaching to or conferred by all or any part of its Investments, or
- (b) any increase in the issued share capital of any company whose shares are charged pursuant to this Debenture, or
- (c) any other matter,

in each case which, in the opinion of the Lender would, or would be reasonably likely to, impair the value of, or prejudice the ability of the Lender to realise, the Security or otherwise prejudice the interest of the Lender under any Finance Document

## **11 3 Calls and other Payments**

The Company shall pay when due all calls or other requests for payments made in respect of any of its Investments and the Related Rights, but if the Company fails to make any such payment the Lender may (but shall not be obliged to) make such payment on behalf of the Company and if the Lender does so the Company shall promptly on demand of the Lender pay to the Lender an amount equal to such payment

## **11 4 Notices**

The Company shall, promptly upon receipt by it, deliver to the Lender copies of any notices, reports, accounts, statements, circulars or any other documents relating to any of its Investments or the Related Rights

## **11 5 Rights Before Security Enforceable**

Unless and until the Security has become enforceable, the Company shall continue to be entitled

- (a) to receive and retain all dividends, interest and other monies arising from the Investments and the Related Rights, and
- (b) subject to clause 11 2 (Not Prejudice), to exercise all voting rights in relation to the Investments



**11 6 Rights after Security Enforceable**

At any time after the Security has become enforceable, the Lender may at its discretion (in the name of the Company or otherwise and without any further consent or authority from the Company)

- (a) complete all stock transfer forms and other documents of title then held by the Lender pursuant to this Debenture in the name of the Lender (or its nominee) and the Company shall extend the fullest co-operation to the Lender to secure the prompt registration of such transfer and the prompt issue of a new certificate or certificates for the relevant Investments in the name of the Lender (or its nominee),
- (b) exercise (or refrain from exercising) any voting rights in respect of any of the Company's Investments and all other powers and rights conferred on or exercisable by a legal or beneficial owner of the Investments,
- (c) apply all dividends, interest and other monies arising from or pursuant to the Company's Investments as if they were proceeds of sale under this Debenture, and
- (d) exercise or refrain from exercising the rights of a legal owner of the Investments, including the right, in relation to any company whose shares or other securities are included in the Investments, 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 realisation, modification or variation of any rights or liabilities attaching to any such shares or securities, and
  - (iii) the exercise, renunciation or assignment of any right to subscribe for any such shares or securities,

in each case in such manner and on such terms as the Lender may think fit

**12 Intellectual Property Rights****12 1 Notification**

- (a) The Company will notify the Lender with details of all Intellectual Property Rights (including applications for registration) granted to or filed by or on behalf of the Company that come into existence after the date of this Debenture, and
- (b) promptly notify the Lender of any existing or future contract for it to acquire (by licence or otherwise) any Intellectual Property Rights.

**12 2 Protection**

The Company will

- (a) make such applications for patents and for registration of designs, trade marks or service marks and pay such application, search, translation, registration and renewal fees, and similar amounts as are necessary fully to protect and to keep in force all of its Intellectual Property Rights, and



- (b) take such steps as may be necessary (including, without limitation, the institution of legal proceedings) to prevent third parties infringing any of its Intellectual Property Rights

### 12.3 Not Prejudice

Without prejudice and in addition to clause 8.4 (No Prejudicial Action and Maintenance), the Company will not, without the prior written consent of the Lender

- (a) sell, assign, transfer, license, mortgage or otherwise dispose of or encumber all or any part of its Intellectual Property Rights, or
- (b) permit any such Intellectual Property Rights to be abandoned or cancelled, to lapse or to be liable to any claim of revocation for non-use or otherwise

## 13 Real Property

### 13.1 General Real Property Undertakings

The Company shall

- (a) keep or cause to be kept in good and substantial repair, decoration and good working order all buildings and erections on its Real Property and other plant, machinery, implements and other effects for the time being owned by it and where necessary replace the same with items of similar quality and value,
- (b) ensure that the Lender or any authorised representative of the Lender is able at all reasonable times, and on receipt of reasonable notice, to inspect and enter into or onto (as the case may be) any of its Real Property,
- (c) not fix or permit the affixing of any property to any of its Real Property which property is not itself a Secured Asset,
- (d) duly and punctually perform and at all times observe all covenants and stipulations (restrictive or otherwise) affecting all or any part of its Real Property and indemnify each Secured Creditor in respect of any breach thereof (or if the lessor and, to the extent necessary, ensure that all such matters to be complied with by any third party are so complied with) and not do or suffer to be done any act or thing whereby any lease or leases comprising such Real Property may become liable to forfeiture or otherwise be determined or agree any variation, surrender or termination thereof without the prior written consent of the Lender,
- (e) promptly notify the Lender in writing upon the acquisition by the Company of any Real Property after the date of this Debenture and of any Encumbrance existing in respect of any Real Property acquired by it after the date of this Debenture and, on demand of the Lender and at the cost of the Company, execute and deliver to the Lender a charge by way of legal mortgage (or such other security as the Lender may require) in favour of the Lender of any Real Property and all Fixtures relating thereto which becomes vested in it after the date of this Debenture to secure the payment or discharge of the Secured Obligations in such form as the Lender may require, in the case of any leasehold property in relation to which the consent of the landlord is required in order for the Company to perform any of the foregoing obligations, the Company shall use its reasonable endeavours to obtain such consent promptly and shall notify the Lender in writing upon receipt of such consent,



- (f) use its Real Property only for such purpose or purposes as may for the time being be authorised as the permitted use or user thereof under or by virtue of the Planning Acts,
- (g) not without the prior written consent of the Lender, carry out or permit to be carried out on any part of its Real Property any development (within the meaning of that expression in the Planning Acts and being a development in respect of which the permission of the local planning authority is required) or make any application for planning permission,
- (h) not, without the prior written consent of the Lender
  - (i) grant or agree to grant or otherwise suffer to be created (whether in exercise or independently of, any statutory power) any lease, tenancy, contractual licence or interest to occupy or permit to assign, underlet or part with possession of all or any part of its Real Property,
  - (ii) accept a surrender of any lease, tenancy, contractual licence or interest to occupy,
  - (iii) agree any reduction in the rent payable or release, defer, waive or vary any obligation under, or the terms of, or exercise any option or power to break, determine or extend any such lease,
  - (iv) commence any forfeiture proceedings in respect of any lease,
  - (v) agree to any rent review in respect of any lease,
  - (vi) consent to any assignment of any tenant's interest under any lease, or
  - (vii) grant any sublease or confer upon any person any contractual licence or right to occupy all or any part of its Real Property,
- (i) in respect of any Real Property which is acquired after the date of this Debenture by or on behalf of the Company, the title to which is or is required to be registered at the Land Registry under the Land Registration Act 2002, promptly notify the Lender of the title number(s), make the necessary application to the Land Registry for the registration of the Company as the Registered Proprietor thereof, and contemporaneously with the making of such application to the Land Registry, apply to the Chief Land Registrar to enter a Notice in respect of the legal mortgage referred to in clause (e) above in the charges register and to enter the restriction set out in clause 33 (The Land Registry) (as repeated in the said legal mortgage) in the proprietorship register in each case in respect of each such registrable title, and shall procure that each such Notice and each such restriction is so entered,
- (j) deposit with the Lender (who shall be entitled to hold the same during the Security Period) (i) all deeds and documents of title relating to its Real Property (whenever acquired by the Company), (ii) all Local Land Charges, Land Charges and Land Registry Search Certificates and similar documents received by or on behalf of the Company within the three months immediately prior to the date of this Debenture or, in the event any Real Property is acquired after the date of this Debenture, within the three months prior to the acquisition of such Real Property and (iii) any leases and agreements for lease granted by or to the Company from time to time,



- (k) grant the Lender, or its lawyers on request, all facilities within the power of the Company to enable such lawyers to carry out investigations of title of all or any part of the Real Property of the Company which is or may become subject to this Security, and enquiries into such matters in connection therewith as would usually be carried out by a prudent mortgagee, all such investigations and enquiries shall be at the expense of the Company,
- (l) promptly on demand by the Lender, provide to the Lender a Report on Title in relation to any of its Real Property which is or may become subject to this Security,
- (m) not, without the prior written consent of the Lender, enter into any negotiations with any competent authority with regard to the compulsory acquisition of any of its Real Property or consent to the compulsory acquisition of any of its Real Property, and, if so requested by the Lender permit the Lender or its authorised representatives to conduct such negotiations or to give such consent on the Company's behalf, or
- (n) within 14 days after the receipt by the Company of any application, requirement, order or notice served or given by any public, local or other authority with respect to any of the Real Property (or any part of it) deliver a copy to the Lender and inform the Lender of the steps taken or proposed to be taken to comply with the relevant requirement,
- (o) not appoint any managing agent of any of its Real Property without the prior consent of, and on terms approved by, the Lender and the Company shall ensure that each such managing agent (i) enters into a duty of care agreement with the Lender in form and substance satisfactory to the Lender and (ii) acknowledges to the Lender that it has notice of the Security, if any such managing agent is in default of its obligations under the relevant management agreement and, as a result, the Company is entitled to terminate that management agreement then, if the Lender so requires, the Company must promptly use all reasonable endeavours to terminate the management agreement and appoint a new managing agent whose identity and terms of appointment are acceptable to the Lender,
- (p) if the Company fails to observe or perform any undertaking affecting any of the Real Property (or any part of it), allow the Lender or its agents and contractors to
  - (i) enter into any part of the Real Property,
  - (ii) comply with or object to any notice served on the Company in respect of the Real Property, and
  - (iii) take any action as the Lender may reasonably consider necessary or desirable to prevent or remedy any breach of any such term or to comply with or object to any such notice,

and the Company shall immediately on request by the Lender pay the costs and expenses of the Lender or its agents and contractors incurred in connection with any action taken by it under this clause (p); and

- (q) perform all its obligations under any law or regulation in any way related to or affecting the Real Property



**13 2 Secured Real Property**

The Company shall

- (a) promptly pay, as and when the same shall become payable, all rent, taxes, rates, duties, charges, assessments and outgoings whatsoever payable in respect of any of the Secured Real Property and produce to the Lender on demand the related receipts,
- (b) promptly, and in any event within 14 days after the receipt by the Company of any application, requirement, order or notice served or given by any public or local or any other authority with respect to any of the Secured Real Property, give written notice of the same to the Lender and within seven days of demand produce the same or a copy thereof to the Lender together with details of the steps taken or proposed to be taken to comply with any such application, requirement, order or notice,
- (c) duly and punctually perform and observe all its obligations in connection with the Secured Real Property under any present or future statute or any regulation, order or notice made or given,
- (d) in the case of any plant, machinery or equipment subject to a fixed charge located on leasehold premises (where the Company is not the lessor), obtain written confirmation from the lessor of such premises that it waives absolutely all rights it may have now or at any time in the future over such plant, machinery and/or equipment; and
- (e) if so requested by the Lender, place and maintain on each Secured Real Property subject to a fixed charge hereunder, in a conspicuous place, an identification plaque containing the following wording

**"Notice of Charge**

This [*description of relevant Secured Real Property*] is subject to a first fixed charge in favour of Bayerische Landesbank"

and not conceal, alter or remove such plaque or permit it to be concealed, altered or removed

**14 Insurances****14 1 Insured Risks**

The Company shall insure and keep insured those of the Secured Assets of an insurable nature against loss or damage by fire and other risks normally insured against by persons carrying on the same class of business as that carried on by it in accordance with clause 15 4 of the Facilities Agreement

**14 2 Note of Interest**

The Company shall procure that a note of the interest of the Lender is endorsed, and the Lender is endorsed as co-insured and loss payee, upon all Insurances which shall at any time during the subsistence of this Security be effected, maintained or held by the Company or any person



**14 3 Avoidance of Insurance and Premiums**

The Company shall

- (a) not do or omit to do, or permit or suffer to be done or omitted to be done, anything which might render any of the Insurances void, voidable or unenforceable; and
- (b) promptly pay or procure payment of all premiums and do all other things necessary to keep all of the Insurances in force and, on demand of the Lender, produce to the Lender on demand the policy, certificate or cover note relating to each Insurance and related premium receipts

**15 Further Assurance****15 1 Further Assurance: General**

The Company shall from time to time and at its own expense, give all such assurances and do all such things as the Lender may require or consider desirable to enable the Lender to perfect, preserve, protect or realise the Security or the priority of the Security or to exercise any of the rights conferred on the Lender or the Secured Creditors by this Debenture or by law and to that intent the Company shall execute all such instruments, deeds and agreements, obtain all consents, approvals and other authorisations necessary to create legally and validly, without any breach of contract or duty, the fixed charges and to effect the assignments envisaged under clauses 3 (Fixed Charges) and 4 (Assignments) respectively, and shall give all such notices and directions as the Lender may consider expedient. The obligations of the Company under this clause 15 are in addition to the covenants for further assurance deemed to be included by virtue of the Law of Property (Miscellaneous Provisions) Act 1994

**15 2 Consents**

The Company shall use best endeavours to obtain (in form and content satisfactory to the Lender) as soon as possible any consents necessary to enable the assets of the Company to be the subject of an effective fixed charge or assignment pursuant to clauses 3 (Fixed Charges) and 4 (Assignments) respectively and, immediately upon obtaining any such consent, the asset concerned shall become subject to such Security and the Company shall promptly deliver a copy of each consent to the Lender

**16 Power to Remedy**

Without prejudice to the Lender's rights under clause 8 (General undertakings), if the Company fails to comply with any of its obligations in relation to any of its assets under this Debenture, or the Lender considers that the Company has failed to comply with any such obligations, the Lender may, if it thinks fit (but without any obligation) take such steps as it deems appropriate to remedy such failure (including, without limitation, the carrying out of repairs, the putting in place of insurance or the payment of costs, charges or other expenses) and the Company will co-operate with and will grant the Lender or its agents or contractors such access as the Lender may require to the relevant assets or otherwise in order to facilitate the taking of such steps



**17 Enforcement of Security****17.1 Security Enforceable**

The Security shall become immediately enforceable if an Event of Default has occurred and is continuing

**17.2 Enforcement**

At any time after the Security has become enforceable, the Lender may in its absolute discretion enforce all or any part of the Security and exercise any of the rights conferred on it by this Debenture or by law at such times and in such manner as it thinks fit

**17.3 Rights of the Company on Enforcement**

Upon the Security becoming enforceable, the Company may not, without the prior written consent of the Lender, withdraw any monies from any Account, compromise, compound, vary, discharge, postpone or release any of its rights to receive monies or otherwise waive any rights of action in relation to the Secured Assets or do or omit to do anything which may delay or prejudice the full recovery thereof other than, save to the extent the Lender otherwise instructs the Company in writing, granting extensions to normal trade credit in accordance with its reasonable and, in the circumstances then prevailing, prudent management of its debtors on a normal commercial basis

**17.4 Power of Sale**

At any time after the Security has become enforceable, the Lender may (without notice to the Company) sell or otherwise dispose of the Secured Assets or any of them and shall be entitled to apply the proceeds of such sale or other disposal in paying the costs of such sale or disposal and thereafter in or towards the discharge of the Secured Obligations or otherwise as provided for in this Debenture.

**17.5 Statutory Powers**

For the purposes of all powers implied by statute, the Secured Obligations shall be deemed to have become due and payable on the date of this Debenture

**17.6 Law of Property Act**

Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Debenture or to any exercise by the Lender of its right to consolidate mortgages or its power of sale. The statutory powers of leasing conferred on the Lender shall be extended so as to authorise the Lender to lease, make agreements for leases, accept surrenders of leases and grant such options as the Agent shall think fit and without the need to comply with any of the provisions of Sections 99 and 100 of the Law of Property Act 1925, and clause 17.2 (Enforcement) shall operate as a variation and extension of Section 101 of such Act

**17.7 Appropriation of Financial Collateral**

To the extent that the Secured Assets constitute **financial collateral** and this Debenture constitutes a **security financial collateral arrangement** (as defined in the Financial Collateral Arrangements (No) Regulations 2003 (SI 2003 No 3226)), the Lender may appropriate all or any part of the Secured Assets in or towards satisfaction of the Secured Obligations, the value of the property so appropriated being the amount standing to the credit



of the relevant Account (where the property is the benefit of an Account) or (in any other case) such amount as the Lender shall determine in a commercially reasonable manner

## **18 Administrators and Receivers**

### **18.1 Appointment of Administrator**

At any time after the Security has become enforceable, the Lender may appoint an administrator pursuant to the power contained in paragraph 14 of Schedule B1 to the Insolvency Act 1986

### **18.2 Appointment of Receivers**

At any time after the Security has become enforceable or if the Company requests it to do so, the Lender may, by written instrument and without notice to the Company, appoint any one or more persons as Receiver of such part of the Secured Assets as may be permitted by law

### **18.3 Status of Receivers**

Each Receiver shall.

- (a) be entitled to act individually as well as jointly with any other person appointed as Receiver, and
- (b) for all purposes be deemed to be the agent of the Company (and no Receiver shall at any time act as agent for the Lender) and shall as such agent be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Law of Property Act 1925

### **18.4 Powers of a Receiver**

- (a) Every Receiver appointed pursuant to clause 18.2 (Appointment of Receivers) shall have and be entitled to exercise all of the powers set out in clause (b) below in addition to (i) all the powers conferred by the Law of Property Act 1925 (as extended by this Debenture) on any receiver appointed under such Act and (ii) (whether or not such Receiver is an administrative receiver) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986
- (b) The powers referred to in the first sentence of clause 18.4(a) above are
  - (i) to take immediate possession of, get in and collect all or any part of the Secured Assets over which he is appointed,
  - (ii) to carry on the business of the Company insofar as it relates to the Secured Assets over which he is appointed as it may think fit, including the entering into of contracts and the repudiation, rescission or variation of any contract to which the Company is a party, and the acquisition or hiring of assets,
  - (iii) to make and effect all repairs and insurances and do all other acts which the Company might do in the ordinary course of its business or is obliged to do under the terms of this Debenture whether for the protection or for the improvement of the Secured Assets over which he is appointed and to commence and/or complete any building operations on the Company's Real Property over which he is appointed and to apply for and maintain any planning permissions, building regulation approvals and any other



permissions, consents or licences, in each case as it may in his absolute discretion think fit,

- (iv) to appoint, discharge and vary the terms of employment or other engagement of managers, officers, agents, accountants, servants, workmen and others for the purposes of this Debenture upon such terms as to remuneration or otherwise as it may think proper,
- (v) for the purpose of exercising any of the powers, authorities and discretions conferred on it by or pursuant to this Debenture and/or of defraying any costs, charges, losses or expenses (including remuneration) which shall be incurred by it in the exercise thereof or for any other purpose, to raise and borrow money either unsecured or on the security of all or any part of the Secured Assets over which he is appointed either in priority to the Security or otherwise and generally on such terms and conditions as it may think fit and no person lending such money shall be concerned to enquire as to the propriety or purpose of the exercise of such power or to see to the application of any money so raised or borrowed,
- (vi) to sell, lease, exchange, grant options or licences over, convert into money and realise or otherwise deal with, all or any part of the Secured Assets over which he is appointed by public auction or private contract and generally in such manner and on such terms as it shall think proper. Without prejudice to the generality of the foregoing, it may do any of these things for a consideration consisting of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over such period as it may think fit. Fixtures, other than landlord's fixtures, may be severed and sold separately from the property containing them without the consent of the Company,
- (vii) to let all or any part of the Real Property over which he is appointed for such term and at such rent (with or without a premium) as it may think proper and to accept a surrender of any lease or tenancy thereof on such terms as it may think fit (including the payment of money to a lessee or tenant on a surrender),
- (viii) to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Company or relating in any way to the Secured Assets over which he is appointed or any part thereof,
- (ix) to bring, prosecute, enforce, defend and abandon any actions, suits and proceedings in relation to the Secured Assets over which he is appointed or any part thereof as may seem to it to be expedient,
- (x) to give valid receipts for all moneys and execute all assurances and things which it may think proper or desirable for realising the Secured Assets over which he is appointed,
- (xi) to form a Subsidiary or Subsidiaries of the Company (whether by acquisition or otherwise) and to supervise and manage the same and to transfer or otherwise dispose to any such Subsidiary all or any part of the Secured Assets over which he is appointed,



- (xii) to make or require the directors of the Company to make calls upon the holders of share capital in the Company and to enforce payment of any unpaid calls as it sees fit,
- (xiii) to enter into or otherwise grant guarantees, indemnities or otherwise incur obligations in respect of the liabilities of third parties and to make payments due in relation to the same, and
- (xiv) to do all such other acts and things as it may consider desirable or necessary for realising all or any part of the Secured Assets over which he is appointed or incidental or conducive to any of the matters, powers or authorities conferred on a Receiver under or by virtue of this Debenture, to exercise in relation to all or any part of the Secured Assets over which he is appointed all such powers, authorities and things as it would be capable of exercising if it were the absolute beneficial owner of the same, and to use the name of the Company for all or any of such purposes

#### **18.5 Removal and Remuneration**

- (a) The Lender may whenever it may deem it expedient (and so far as it is lawfully able), by written instrument (i) remove any Receiver appointed by it and (ii) appoint a new Receiver in the place of any Receiver whose appointment has been terminated and may from time to time fix the remuneration of any Receiver appointed by it without the limitations imposed by Section 109 of the Law of Property Act 1925
- (b) The Company shall be solely responsible for the payment of the remuneration of any Receiver appointed pursuant to this Debenture

#### **18.6 Lender's Rights**

To the fullest extent permitted by law, all or any of the powers, authorities and discretions which are conferred by this Debenture (either expressly or impliedly) upon a Receiver in respect of the Secured Assets may, after the Security has become enforceable, be exercised by the Lender in relation to the whole or any part of the Secured Assets irrespective of whether or not a Receiver of all or any part of such Secured Assets has been appointed

#### **19 Application of proceeds**

Any moneys held or received by the Lender or by any Receiver under or pursuant to this Debenture 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 by the Lender or by such Receiver at such times as the Lender or the Receiver considers expedient, in the following order of priority

- (a) firstly, in or towards payment of any amounts payable to the Lender for its own account under or in connection with this Debenture (including any remuneration payable to the Lender or by it as aforesaid),
- (b) secondly, in or towards payment of all costs, charges, expenses and remuneration incurred by or payable to any Receiver,
- (c) thirdly, in or towards payment of all other Secured Obligations, and
- (d) fourthly, after the end of the Security Period, in payment of the surplus (if any) to the Company or such other person as may be entitled thereto.



**20 Power of Attorney****20.1 Appointment**

By way of security for the performance of its obligations under this Debenture, the Company irrevocably appoints the Lender and any Receiver (and their respective delegates and sub-delegates) to be its attorney acting severally (or jointly with any other such attorney or attorneys) and on its behalf and in its name or otherwise to do any and every thing which the Company is obliged to do under the terms of this Debenture or which such attorney considers necessary or desirable in order to exercise the rights conferred on it by or pursuant to this Debenture or by law

**20.2 Ratification**

The Company ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed under this Debenture shall do in its capacity as such

**21 Protection of Lender and Receivers****21.1 No Liability as Mortgagee in Possession**

Neither the Lender nor any Receiver shall, by reason of it or such Receiver entering into possession of all or any part of the Secured Assets or taking any action permitted by this Debenture, be liable to account as mortgagee in possession or otherwise be liable for any loss of any kind or for any default or omission for which a mortgagee in possession might be liable

**21.2 Receivers and Mortgagees**

Each Receiver and the Lender shall be entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 (as extended by this Debenture) on mortgagees and receivers when such receivers have been duly appointed thereunder and the Company alone shall be responsible for the Lender's and each Receiver's contracts, engagements, acts, omissions, defaults and losses and for all liabilities incurred by either of them and none of the Secured Creditors shall incur any liability therefor (either to the Company or to any other person)

**22 Protection of Third Parties**

No purchaser, mortgagee or other person or company dealing with the Lender or any Receiver or the agents of any of them shall have any need to enquire whether the Secured Obligations have become due and payable, or whether any power which the Lender or any Receiver is purporting to exercise has become exercisable or whether any of the Secured Obligations remains outstanding nor to have regard to the application of any money paid to the Lender or to such Receiver

**23 Delegation by Lender**

The Lender may at any time and from time to time delegate by power of attorney or in any other manner to any person or persons all or any of the powers, authorities and discretions which are for the time being exercisable by the Lender under this Debenture in relation to all or any part of the Secured Assets. Any such delegation may be made upon such terms (including power to sub-delegate) and subject to such regulations as the Lender may think fit. The Lender shall not be in any way liable or responsible to the Company for any loss or



damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate

## **24 Redemption of Prior Mortgages**

The Lender may, at any time after the Security has become enforceable, redeem any prior encumbrance over all or any part of the Secured Assets or procure the transfer of such encumbrance to itself and may settle and pass the accounts of the prior mortgagee, chargee or encumbrancer. Any accounts so settled and passed shall be conclusive and binding on the Company. All principal moneys, interest, costs, charges and expenses of and incidental to such redemption and transfer shall be paid by the Company to the Lender on demand.

## **25 Release of the Security**

### **25.1 Release of Secured Assets**

After the end of the Security Period, the Lender shall, at the request and cost of the Company, execute all such documents and do such other things as may be required to release the Secured Assets from the Security and procure the reassignment to the Company of the property and assets assigned to the Lender pursuant to this Debenture, in each case subject to clause 31.2 (Potentially Avoided Payments) and without recourse to or any representation or warranty by or from the Lender.

### **25.2 Re-assignment of Intellectual Property Rights**

All Intellectual Property Rights assigned to the Lender under clause 4.1(e) (Assignments) shall, at the end of the Security Period, be re-assigned unconditionally to the Company and this clause 25.2 shall operate as an assignment of such Intellectual Property Rights effective as of the date of the end of the Security Period.

### **25.3 Partial release of security**

If pursuant to the terms of the Finance Documents, the Company is entitled to withdraw the proceeds of any book and other debts standing to the credit of a Charged Account or an Assigned Account or make disposals in accordance with clause 16.5 (Disposals) of the Facilities Agreement, and, as a result, those proceeds and/or assets (as applicable) are in any way released from the fixed charge or floating charge created pursuant to clauses 3 (Fixed Charges) and 5 (Floating Charge), the release will in no way derogate from the subsistence and continuance of the charge on all other outstanding book and other debts of the Company and the proceeds of those debts.

## **26 Payments**

### **26.1 Grossing Up**

All payments by the Company under this Debenture shall be made free and clear of, and without deduction for or on account of, tax except, in the latter case, to the extent that the Company is required by law to make payment subject to tax. If any tax or amounts in respect of tax must be deducted, or any other deductions must be made, from any amounts payable or paid by the Company, or paid or payable by the Lender to any Secured Creditor, under this Debenture, the Company shall pay such additional amounts as may be necessary to ensure that the relevant Secured Creditor receives a net amount equal to the full amount which it would have received had payment not been made subject to tax.



**26 2 No Set-Off**

All payments by the Company under this Debenture shall be made free and clear of and without deduction for or on account of any set-off or counter claim

**26 3 Manner of Payment**

Each payment made by the Company under this Debenture shall be paid in the manner in which payments are to be made by the Company under the Facilities Agreement

**27 Costs and Expenses****27 1 Transaction Costs**

The Company shall from time to time on demand of the Lender pay to the Lender all costs and expenses (including costs for notarisation and/or translation, legal costs, technical advising costs, valuation costs and all other out-of-pocket expenses) with any VAT thereon incurred by the Lender in connection with the negotiation and execution of this Debenture or any related documents, and the implementation of the arrangements contemplated in this Debenture or any related documents, at the times and in the manner specified in such demand

**27 2 Preservation and Enforcement Costs**

The Company shall immediately on demand of the Lender pay to the Lender and each Secured Creditor all documented costs and expenses (including costs for notarisation and/or translation, legal costs, technical advising costs, valuation costs and all other out-of-pocket expenses) incurred by the Lender in connection with any variation, amendment, waiver, consent or approval relating to this Debenture or in connection with the preservation, enforcement or the attempted preservation or enforcement of any of the rights of the Lender under this Debenture

**27 3 Taxes**

The Company shall promptly pay all stamp, registration, documentary and other taxes, including any penalties, fines, supplements, surcharges or interest relating to such taxes, to which this Debenture or any judgment given in connection with this Debenture is or at any time may be subject and shall from time to time on demand of the Lender indemnify each Secured Creditor against any liabilities, costs, claims and expenses (including legal fees) resulting from any failure to pay or any delay in paying any such tax.

**27 4 Indemnity**

The Company shall indemnify and hold harmless the Lender and any and every Receiver on demand from and against any and all costs, claims, losses, expenses (including legal fees) and liabilities, and any VAT thereon, which the Lender or a Receiver may incur as a result of the occurrence of any Event of Default, the enforcement of the Security or the exercise or enforcement by the Lender or a Receiver of any of the rights conferred on it or them by this Debenture or by law

**27 5 Value Added Tax**

- (a) All amounts expressed to be payable under this Debenture by the Company to a Secured Creditor shall be exclusive of any VAT. If VAT is chargeable on any supply made by a Secured Creditor to the Company under this Debenture (whether that



supply is taxable pursuant to the exercise of an option or otherwise), the Company shall pay to that Secured Creditor (in addition to and at the same time as paying that consideration) an amount equal to the amount of the VAT as further consideration

- (b) No payment or other consideration to be made or furnished to the Company pursuant to or in connection with this Debenture may be increased or added to by reference to (or as a result of any increase in the rate of) any VAT which shall be or may become chargeable in respect of any taxable supply
- (c) Where this Debenture requires any party to reimburse a Secured Creditor for any costs or expenses, that party shall also pay any amount of those costs or expenses incurred referable to VAT charged thereon

## **28 Assignments and Transfers**

### **28 1 The Company's Rights**

None of the rights and benefits of the Company under this Debenture shall be capable of being assigned or transferred and the Company undertakes not to seek to assign or transfer all or any of such rights and benefits

### **28 2 The Lender's Rights**

The Lender may assign or transfer all or any of its rights and benefits under this Debenture without the consent of the Company

## **29 Remedies and Waivers**

No failure by the Lender to exercise, nor any delay by the Lender in exercising, any right or remedy under this Debenture shall operate as a waiver thereof nor shall any single or partial exercise of any such right or remedy prevent any further or other exercise thereof or the exercise of any other such right or remedy

## **30 Set-off**

### **30 1 Right to Set-Off**

Each Secured Creditor may (to the extent that the same is beneficially owned by it) set off its rights in respect of any matured Secured Obligation against any obligation (whether or not matured) owed by such Secured Creditor to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, such Secured Creditor may convert either obligation at a market rate of exchange in its usual course of business for the purpose of effecting such set-off

### **30.2 No Obligation**

No Secured Creditor shall be obliged to exercise any right given to it by clause 30 1 (Right to Set-Off)

### **30 3 Time Deposits**

Without prejudice to clause 30 1 (Right to Set-Off), if any time deposit matures on any Account the Company has with any Secured Creditor at a time within the Security Period when



- (a) the Security has become enforceable, and
- (b) no amount of the Secured Obligations is due and payable,

such time deposit shall automatically be renewed for such further period as such Secured Creditor in its absolute discretion considers appropriate

### **31 Additional provisions**

#### **31 1 Partial Invalidity**

If at any time any provision of this Debenture is or becomes illegal, invalid or unenforceable in any respect or any or all of the Security is or becomes ineffective in any respect under the law of any jurisdiction, such illegality, invalidity, unenforceability or ineffectiveness shall not affect

- (a) the legality, validity or enforceability of the remaining provisions of this Debenture or the effectiveness in any other respect of such Security, or
- (b) the legality, validity or enforceability of such provision or the effectiveness of such Security under the laws of any other jurisdiction

#### **31 2 Potentially Avoided Payments**

If the Lender determines that an amount paid to a Secured Creditor under any Finance Document is capable of being avoided, reduced or otherwise set aside on the liquidation or administration of the person by whom such amount was paid, then for the purposes of this Debenture, such amount shall be regarded as not having been paid and the liability of the Company under this Debenture and the Security shall continue.

#### **31 3 Currency Conversion**

In order to apply any sum held or received by the Lender or a Receiver in or towards payment of the Secured Obligations, the Lender or such Receiver may purchase an amount in another currency and the rate of exchange to be used shall be that at which, at such time as it considers appropriate, the Lender or such Receiver is able to effect such purchase

#### **31 4 Currency Indemnity**

If any sum due from the Company under this Debenture or any order or judgment given or made in relation to this Debenture has to be converted from the currency (**first currency**) in which the same is payable under this Debenture or under such order or judgment into another currency (**second currency**) for the purpose of (a) making or filing a claim or proof against the Company, (b) obtaining an order or judgment in any court or other tribunal or (c) enforcing any order or judgment given or made in relation to this Debenture, the Company shall indemnify and hold harmless each Secured Creditor from and against any loss it suffers or incurs as a result of any discrepancy between (i) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (ii) the rate or rates of exchange at which such Secured Creditor may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order, judgment, claim or proof

#### **31 5 Rights Cumulative**

The rights and remedies provided by this Debenture are cumulative and not exclusive of any rights or remedies provided by law



**31 6 Unfettered Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Debenture by the Lender or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons

**32 Notices****32 1 Communications in Writing**

Each communication to be made under this Debenture shall be made in writing and, unless otherwise stated, shall be made by fax or letter

**32 2 Giving of Notice**

Any communication or document to be made or delivered by one person to another pursuant to this Debenture shall (unless that other person has by 15 days' written notice to the other specified another address or fax number) be made or delivered to that other person at the address or fax number identified in the Facilities Agreement and shall be deemed to have been made or delivered when despatched (in the case of any communication made by fax) or (in the case of any communication made by letter) when left at that address or (as the case may be) five days after being deposited in the post postage prepaid in an envelope addressed to the intended recipient at that address

**32 3 Notices to the Lender**

Any communication or document to be made or delivered to the Lender shall be effective only when received by the Lender and then only if it is expressly marked for the attention of the department or officer identified in the Facilities Agreement or such other department or officer as the Lender shall from time to time specify for this purpose

**33 The Land Registry**

In respect of the Real Property specified in schedule 3 (Real Property) the title to which is registered at the Land Registry and in respect of any other registered title(s) against which this Debenture may be noted, the Company hereby undertakes to make or procure that there is made a due and proper application to the Land Registry (with the Lender's consent as proprietor of the relevant registered charge)

- (a) for a restriction in the following terms to be entered on the Proprietorship Register relating thereto

"No disposition or dealing of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written consent signed by the proprietor for the time being of the charge dated [insert date] in favour of Bayerische Landesbank referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its secretary or conveyancer",

- (b) to enter a note of the obligation to make further advances by the Secured Creditors on the charges register of any registered land forming part of the Secured Assets, and
- (c) to note this Debenture on the charges register.



**34 Governing Law and Jurisdiction****34.1 Governing Law**

This Debenture and any non-contractual obligations arising out of or in connection with it shall be governed by, and construed in accordance with, English law

**34.2 English courts**

Each of the Company and the Lender irrevocably agrees that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Debenture or any non-contractual obligations arising out of or in connection with this Debenture (respectively **Proceedings** and **Disputes**) and, for such purposes, irrevocably submits to the jurisdiction of such courts

**34.3 Appropriate Forum**

The Company irrevocably waives any objection which it might now or hereafter have to Proceedings being brought or Disputes settled in the courts of England and agrees not to claim that any such court is not a convenient or appropriate forum

**34.4 Proceedings in Other Jurisdictions**

Nothing in clause 34.2 (English courts) shall (and nor shall it be construed so as to) limit the right of the Lender to take Proceedings against the Company in any other court of competent jurisdiction nor shall the taking of Proceedings in any one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

**34.5 General Consent**

The Company consents generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings

**34.6 Waiver of Immunity**

To the extent that the Company may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself, its assets or revenues such immunity (whether or not claimed), the Company irrevocably agrees not to claim, and irrevocably waives, such immunity to the full extent permitted by the laws of such jurisdiction

**35 Counterparts and effectiveness****35.1 Counterparts**

This Debenture may be executed in counterparts and both such counterparts taken together shall be deemed to constitute one and the same instrument



**35.2 Effectiveness**

This Debenture shall take effect and be delivered as a deed on the date on which it is stated to be made

**In witness whereof** this Debenture has been executed as a deed by the Company and has been signed on behalf of the Lender



## Schedule 1

## Assigned Contracts

Description	Parties
EPC Contract	1 The Company 2 ib vogt GmbH
O&M Agreement	1 The Company 2 vogt Solar Limited
Electricity Supply Agreement	1 The Company 2 Total Gas & Power Limited
Grid Connection Contract	1 The Company 2 Western Power Distribution (South West) plc
Power Purchase Agreement	1 The Company 2 Total Gas & Power Limited
Meter Operator Agreement	1 The Company 2 WPD Smart Metering Limited
Lease Agreement	1 The Company 2 John Axford Burnard, Stella Jane Burnard and Mark William Burnard
Facility A Hedge Agreement	1. The Company 2 The Lender
Shareholders' Agreement	1 The Company 2 ib vogt GmbH 3 Mr Paul Grunow
Option Agreement	4 The Company 5 John Axford Burnard, Stella Jane Burnard and Mark William Burnard
Escrow Account Letter	1 John Axford Burnard, Stella Jane Burnard and Mark William Burnard 2 Murrell Associates Limited



**Schedule 2****Assigned Accounts**

<b>Account Name</b>	<b>Account Number</b>	<b>Account holding bank</b>
Operating Account	[REDACTED] 17 00 GBP	Commerzbank AG, London Branch
Working Capital Account	[REDACTED] 17 01 GBP	Commerzbank AG, London Branch
Distribution Account	[REDACTED] 17 02 GBP	Commerzbank AG, London Branch



**Schedule 3**

**Real Property**

The leasehold property registered at the Land Registry with title absolute under title number DN632985 and known as land at Pyworthy, Holsworthy, Devon EX22 6AJ



## Schedule 4

## Forms of Notice and Acknowledgement of Assignment

## Part 1 - Form of Notice to Insurer

To **[Insert name of Insurer]**

[Date]

Dear Sirs,

- 1 We hereby give you notice that, pursuant to a Debenture dated ♦ 2014 we have charged and assigned to Bayerische Landesbank (**Lender**) all our rights, title, interests and benefits in, to or in respect of the following insurance policies with you (**Insurances**) including all claims and returns of premiums in respect thereof to which we are, or may at any future time become, entitled

***[List all insurance policies in respect of which notice given]***

- 2 Notwithstanding the issue of this notice of assignment, the Company shall at all times perform its obligations and comply with its liabilities arising pursuant to the Insurances
- 3 With effect from your receipt of this notice we hereby request and instruct that
- (a) you immediately name the Lender as co-insured and loss payee in respect of each of the Insurances,
  - (b) upon the security granted by the Debenture in respect of the Insurances becoming enforceable (as notified to you by the Lender)
    - (i) all payments under or arising from the Insurances are to be made to the Lender or to its order,
    - (ii) all remedies provided for in the Insurances or available at law or in equity are to be exercisable by the Lender, and
    - (iii) all rights to compel the performance of the Insurances, and all other rights, title, interests and benefits whatsoever accruing to or the benefit of ourselves arising therefrom shall belong to, and are to be exercisable by, the Lender, and
  - (c) you give notice to the Lender promptly in writing
    - (i) if we propose to cancel or give notice of cancellation of any Insurance, at least 30 days before such cancellation is to take effect,
    - (ii) of any material alteration or the termination or expiry of any such Insurance, at least 30 days before such alteration, termination or expiry is to take effect, and



- (iii) of any default in the payment of any premium or failure to renew any such Insurance and shall give the Lender not less than 30 days in which to pay the defaulted premium without cancelling the policy during such 30-day period

- 4 This Notice of Assignment and the Acknowledgment, and any non-contractual obligations arising out of or in connection with them, shall be governed by and construed in accordance with English law

Please confirm your receipt of this notice and your acknowledgement of the matters and instructions set out above by signing and dating the Acknowledgement of Assignment set out on the enclosed copy of this notice, and returning the same to the Lender with a copy to ourselves

Yours faithfully

. . .  
for and on behalf of  
**Sunsave 4 (Pyworthy) Ltd**



**Part 2 - Form of Acknowledgement of Assignment**

***[To be printed only on the copy of the Notice of Assignment given]***

To      Bayerische Landesbank as Lender  
         Bavaria House  
         13/14 Appold Street  
         London  
         EC2A 2NB

[Makī Tanabe, Structured Finance, Project Finance Energy EMEA]

Dear Sirs,

We hereby acknowledge receipt of a notice in the terms set out above (**Notice**)

We confirm that we shall hereafter act in accordance with the Notice and that we have not received any other notice of any other third party interests whether by way of assignment or charge in respect of any of the Insurances

We further confirm that no amendment or termination of any of the Insurances shall be effective unless we have given you 30 days' prior written notice of our intention to so amend or terminate the same

Yours faithfully

...  
(Authorised signatory)

**[Insurer]**

Date.



**Part 3 - Form of Notice to Bank with whom Account Maintained**

To **[Account Bank]**

[Date]

Dear Sirs,

- 1 We hereby give you notice that pursuant to a Debenture dated ♦ 2014 we have charged and assigned to Bayerische Landesbank (**Lender**), all our rights, title, interests and benefits in, to or in respect of the following account[s] (**Account[s]**) including all monies which may be payable in respect of the Accounts

***[List all accounts (including account no.) in respect of which notice given]***

- 2 You may continue to deal with us in relation to the Account[s] until you receive written notice to the contrary from the Lender
- 3 Please note that after you have received written notice in accordance with paragraph 2 above, all payments and communications in respect of the Account[s] should only be made to the Lender (or to its order) and no monies may be released from the Account[s] without the prior written consent of the Lender and you shall apply any money standing to the credit of the Account[s] in accordance with the instructions from time to time of the Lender unless and until it delivers a notice to you informing you otherwise
- 4 You are hereby authorised and instructed, without requiring further approval from us, to provide the Lender with such information relating to the Account[s] as it may from time to time request and to send copies of all notices issued by you under the Account[s] to the Lender as well as to us
- 5 These instructions may not be revoked, nor may the terms of the Account[s] be amended, varied or waived without the prior written consent of the Lender
- 6 This Notice of Assignment and the Acknowledgment, and any non-contractual obligations arising out of or in connection with them, shall be governed by and construed in accordance with English law

Please acknowledge receipt of this notice by signing and dating the acknowledgement set out on the enclosed copy and returning it to the Lender

Yours faithfully

for and on behalf of  
**Sunsave 4 (Pyworthy) Ltd**



**Part 4 - Form of Acknowledgement of Assignment****[To be printed only on copy of the relevant Notice of Assignment given]**

To Bayerische Landesbank as Lender  
 Bavaria House  
 13/14 Appold Street  
 London  
 EC2A 2NB

[Maki, Structured Finance, Project Finance Energy EMEA]

Dear Sirs,

We acknowledge receipt of a notice in the terms set out above (**Notice**) We confirm that we have not received notice of any previous assignments or charges of or over any of the rights, title, interests and benefits in, to or in respect of the Account[s] and that we will comply with the terms of the Notice

We further agree and confirm that

- 1 no fees or periodic charges are payable in respect of the Account[s], and there are no restrictions on (i) the payment of the credit balance on the Account[s] or (ii) the assignment of the Account[s] to the Lender or any third party,
- 2 we have not received notice of any other assignment of, charge over or trust or other third party interests in respect of the Account[s] and we will not, without the Lender's consent
  - (a) exercise any right of
    - (i) lien over assets held or controlled by Sunsave 4 (Pyworthy) Ltd or any Subsidiary or Holding Company (as such terms are defined in section 1159 of the Companies Act 2006) on behalf of Sunsave 4 (Pyworthy) Ltd,
    - (ii) combination,
    - (iii) consolidation,
    - (iv) blocking the Account(s), or
    - (v) set-off,
 which we may have in respect of the Account[s], or
  - (b) amend or vary any rights attaching to the Account[s], and
- 3 we will act only in accordance with the instructions given by the Lender or persons authorised by the Lender and we shall send all statements and other notices given by us relating to the Account to the Lender

Yours faithfully



For and on behalf of *[Insert name of Bank with whom Account Maintained]*

By

Date



## Part 5 - Form of Notice to Assigned Contract counterparty

To **[Insert name of counterparty]**

[Date]

Dear Sirs,

- 1 We hereby give you notice that pursuant to a Debenture dated ♦ 2014 we have charged and assigned to Bayerische Landesbank (**Lender**), all our rights, title, interests and benefits in, to or in respect of **[details of contract / lease]** (**Assigned Contract**) including all monies which may be payable in respect of the Assigned Contract
- 2 With effect from your receipt of this notice we hereby give you notice that we have agreed that
  - (a) all remedies provided for in the Assigned Contract or available at law or in equity shall be exercisable by the Lender,
  - (b) all rights to compel performance of the Assigned Contract shall be exercisable by the Lender (although the Company shall remain liable to perform all the obligations assumed by it under the Assigned Contract and neither the Lender nor any Receiver or other delegate shall at any time be under any obligation or liability to you under or in respect of the Assigned Contract by virtue of this notice), and
  - (c) all rights, title, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Assigned Contract belong to the Lender and no material amendment to, variation or waiver of any of the terms or conditions of the Assigned Contract may be made without the Lender's consent
- 3 Upon the security granted by the Debenture in respect of the Assigned Contract becoming enforceable (as notified to you by the Lender in writing), all monies payable by you to the Company pursuant to the Assigned Contract shall be paid in accordance with the instructions of the Lender
- 4 You are hereby authorised and instructed, without requiring further approval from us, to provide the Lender with such information relating to the Assigned Contract as it may from time to time request and to send copies of all notices issued by you under the Assigned Contract to the Lender as well as to us
- 5 These instructions may not be revoked, nor may the terms of the Assigned Contract be amended, varied or waived without the prior written consent of the Lender
- 6 This Notice of Assignment and the Acknowledgment, and any non-contractual obligations arising out of or in connection with them, shall be governed by and construed in accordance with English law



Please acknowledge receipt of this notice by signing and dating the acknowledgement set out on the enclosed copy and returning it to the Lender

Yours faithfully

.....  
for and on behalf of  
**Sunsave 4 (Pyworthy) Ltd**



**Part 6 - Form of Acknowledgement of Assignment**

***[To be printed only on copy of the relevant Notice of Assignment given]***

To      Bayerische Landesbank as Lender  
         Bavaria House  
         13/14 Appold Street  
         London  
         EC2A 2NB

[Maki Tanabe, Structured Finance, Project Finance Energy EMEA]

Dear Sirs,

We acknowledge receipt of a notice in the terms set out above (**Notice**) We confirm that we have not received notice of any previous assignments or charges of or over any of the rights, title, interests and benefits in, to or in respect of the Assigned Contract and that we will comply with the terms of the Notice

Yours faithfully

.....  
For and on behalf of  
***[insert name of contract counterparty]***

By

Date



**Signatories****The Company**

Executed as a deed by )  
**Sunsave 4 (Pyworthy) Ltd** )  
 acting by , a ) Director  
 director, in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness

**Lender**

Executed as a deed by )  
**Bayerische Landesbank** )  
 acting by *Maki Tanabe* ) Director  
 a director, in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness

Executed as a deed by )  
**Bayerische Landesbank** )  
 acting by *Maki Tanabe* a director, in the ) Director  
 presence of *Ac Brown*

Signature of witness

Name of witness

Address of witness

Occupation of witness

*Amesha Siddiqui*  
 ADDLESHAW GODDARD LLP  
 60 CHISWELL STREET  
 LONDON  
 EC1Y 4AG

*Amesha Siddiqui*  
 ADDLESHAW GODDARD LLP  
 60 CHISWELL STREET  
 LONDON  
 EC1Y 4AG



**Signatories**

**The Company**

Executed as a deed by )  
**Sunsave 4 (Pyworthy) Ltd** )  
 acting by *C. ANTON MILNER* , a ) Director  
 director, in the presence of



Signature of witness

Name of witness

**Eric Buchmann**

Address of witness

Occupation of witness *Salvador*

**Lender**

Executed as a deed by )  
**Bayerische Landesbank** )  
 acting by ) Director  
 a director, in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness

Executed as a deed by )  
**Bayerische Landesbank** )  
 acting by Maki Tanabe, a director, in the ) Director  
 presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness