

# MR01

## Particulars of a charge



Companies House

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

You can use the WebFiling  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

☒ **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 for**  
You may not use this form to  
register a charge where the charge  
instrument Use form MR02



A19

\*A3MIURCX\*  
11/12/2014  
COMPANIES HOUSE

#177

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. **Do not send the original**

### 1 Company details

Company number 03053574

Company name in full SANTANDER EQUITY INVESTMENTS LIMITED

For official use

→ **Filing 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 04/12/2014

### 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 ABBEY NATIONAL TREASURY SERVICES PLC

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

<b>4</b>	<b>Brief description</b>	
Brief description	Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument	Please submit only a short description if there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument"  Please limit the description to the available space
<b>5</b>	<b>Other charge or fixed security</b>	
	Does the instrument include a charge (which is not a floating charge) or fixed security over any tangible or intangible or (in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box  <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
<b>6</b>	<b>Floating charge</b>	
	Is the instrument expressed to contain a floating charge? Please tick the appropriate box  <input type="checkbox"/> <b>Yes</b> Continue <input checked="" type="checkbox"/> <b>No</b> Go to <b>Section 7</b>  Is the floating charge expressed to cover all the property and undertaking of the company? <input type="checkbox"/> <b>Yes</b>	
<b>7</b>	<b>Negative Pledge</b>	
	Do any of the terms of the charge prohibit or restrict the company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box  <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>	
<b>8</b>	<b>Trustee statement <sup>1</sup></b>	
	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  <input type="checkbox"/>	<sup>1</sup> This statement may be filed after the registration of the charge (use form MR06)
<b>9</b>	<b>Signature</b>	
Signature	Please sign the form here  <div data-bbox="341 1850 1134 1984"> <div>Signature</div> <div>X WATSON FARLEY &amp; WILLIAMS LLP X</div> </div> This form must be signed by a person with an interest in the charge	

# MRO1

## Particulars of a charge



### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name **TIM WILLIAMS - 53826489**

Company name **WATSON FARLEY & WILLIAMS LLP**

Address **15 APPOLD STREET**

Post town **LONDON**

County/Region

Postcode **E C 2 4 2 H B**

Country **UK**

DX

Telephone **020 7814 8000**



### 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: 3053574

Charge code: 0305 3574 0005

The Registrar of Companies for England and Wales hereby certifies that a charge dated 4th December 2014 and created by SANTANDER EQUITY INVESTMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th December 2014.

*P*

Given at Companies House, Cardiff on 16th December 2014



**Companies House**



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

Dated 4 December 2014

**SANTANDER EQUITY INVESTMENTS LIMITED**  
as Chargor

and

**ABBEY NATIONAL TREASURY SERVICES PLC**  
(trading as Santander Global Banking & Markets)

as Beneficiary

**SENIOR SHARE SECURITY AGREEMENT**

relating to

Kelmarsh Wind Farm Project

WE HEREBY CERTIFY THIS DOCUMENT TO BE A TRUE  
COPY OF THE ORIGINAL  
WATSON FARLEY & WILLIAMS LLP  
WATSON FARLEY & WILLIAMS LLP  
15 Appold Street  
London EC2A 2HB  
United Kingdom

WATSON FARLEY  
&  
WILLIAMS

## Index

Clause		Page
1	Definitions and Interpretation	1
2	Covenant to Pay and Charge	2
3	Deposit of Certificates and Related Rights	2
4	Voting Rights and Dividends	3
5	Chargor's Representations and Undertakings	3
6	Further Assurance	7
7	Security Enforcement	7
8	Application of Moneys	8
9	Extension and Variation of The Law of Property Act 1925	9
10	Appointment of Receiver	9
11	Powers of Receivers	10
12	Protection of Purchasers	10
13	Power of Attorney	11
14	Effectiveness of Security	11
15	Release Of Security	13
16	Retention of Agreement	14
17	Subsequent Security Interests	14
18	Suspense Accounts and Currency Conversion	14
19	Assignment	14
20	Notices	15
21	Costs, Expenses, Stamp Taxes and Indemnity	15
22	Discretion and Delegation	15
23	Miscellaneous	15
24	Governing Law and Jurisdiction	16

THIS AGREEMENT is made on 4 December 2014

## PARTIES

- (1) **SANTANDER EQUITY INVESTMENTS LIMITED**, a limited liability company incorporated in England with registered number 03053574 whose registered office is at 2 Triton Square, Regent's Place, London NW1 3AN as chargor (the "**Chargor**"), and
- (2) **ABBEY NATIONAL TREASURY SERVICES PLC** (trading as Santander Global Banking & Markets) as the beneficiary (the "**Beneficiary**")

## BACKGROUND

- (A) Further to the Senior Loan Agreement (as defined below) the Lender will make available to the Borrower the loan facility thereunder
- (B) It is a condition precedent to the loan facility being made available that the Chargor enters into this Agreement
- (C) It is intended by the parties to this Agreement that this document will take effect as a deed despite the fact that a party may only execute this Agreement under hand

## OPERATIVE PROVISIONS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement

"**Borrower**" means Kelmarsh Wind Farm Limited, in its capacity as borrower under the Senior Loan Agreement

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

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

"**Delegate**" means any delegate, agent, attorney or co-trustee appointed by the Beneficiary or by any Receiver

"**Disputes**" has the meaning given to it in Clause 24 (*Governing Law and Jurisdiction*)

"**Junior Share Security Agreement**" means the agreement to be entered into between the Chargor and the Beneficiary in connection with the Shareholder Loan Facility, creating second-ranking Security over the shares in the Borrower held by the Chargor

"**Receiver**" means an administrative receiver, a receiver or a receiver and manager (and shall include any joint administrative receivers, joint receivers or joint receivers and managers) of the whole or any part of the Charged Portfolio

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

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

**"Secured Obligations"** means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by the Borrower or by some other person) of the Borrower to the Lender under each of the Finance Documents

**"Senior Loan Agreement"** means the facility agreement to be entered into between the Borrower and the Lender, each as defined in such agreement as amended, varied, novated or supplemented from time to time

**"Shareholders' Agreement"** means the shareholders' agreement entered into between the Borrower, (ii) the Chargor, and (iii) Blue Energy Jupiter Acquisition Limited on or around the date of this Agreement

**"Shares"** means all of the ordinary A share capital of the Borrower currently held by the Chargor at the date of this Agreement, and any further ordinary shares in the capital of the Borrower held by, to the order or on behalf of the Chargor at any time in the future

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

Unless defined in this Agreement or the context otherwise requires, a term defined in the Senior Loan Agreement has the same meaning in this Agreement or any notice given under or in connection with this Agreement

## **2 COVENANT TO PAY AND CHARGE**

### **2.1 Covenant to Pay**

The Chargor covenants with the Beneficiary that it shall discharge all Secured Obligations on their due date in accordance with their respective terms provided that the liability of the Chargor shall be limited to the proceeds of enforcement of the Shares from time to time

### **2.2 Charge**

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

### **2.3 Interest on demands**

If the Chargor fails to pay any sum on the due date for payment of that sum the Chargor shall pay interest on any such sum (before and after any judgment and to the extent interest at the default rate is not otherwise being paid on such sum) from the date of demand until the date of payment calculated on a daily basis at the rate determined in accordance with clause 11 (*Default Interest*) of the Senior Loan Agreement

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

### **3.1 Deposit of certificates**

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

### **3.2 Related Assets**

The Chargor shall, promptly upon the accrual, offer or issue of any Related Assets (in the form of stocks, shares, warrants or other securities) in which the Chargor has a beneficial



interest, procure the delivery to the Beneficiary of (a) all certificates and other documents of title representing those Related Assets and (b) such duly executed blank stock transfer forms or other instruments of transfer in respect of those Related Assets as the Beneficiary may require

#### **4 VOTING RIGHTS AND DIVIDENDS**

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

Prior to the occurrence of an Event of Default (which is continuing), the Chargor shall

- (a) be entitled to receive and retain all dividends, interest and other monies arising from the Charged Portfolio,
- (b) subject to Clause 5 2(e) (*Voting Rights*) be entitled to exercise all voting rights in relation to the Charged Portfolio

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

Upon the occurrence of an Event of Default (which is continuing), the Beneficiary may, at its discretion, (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor)

- (a) exercise (or refrain from exercising) any voting rights in respect of the Charged Portfolio,
- (b) apply all dividends, interest and other monies arising from the Charged Portfolio as though they were the proceeds of sale under this Agreement,
- (c) transfer the Charged Portfolio into the name of the Beneficiary or such nominee(s) of the Beneficiary as it shall require, and
- (d) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Charged Portfolio in the manner and on the terms the Beneficiary thinks fit, and the proceeds of any such action shall form part of the Charged Portfolio

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

##### **5.1 Representations**

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

##### **(a) Status**

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

##### **(b) Binding obligations**

The obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations, legal, valid, binding and enforceable obligations

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

The entry into and performance by it of, and the transactions contemplated by, this Agreement (including any transfer of the Shares on creation or enforcement of the Security constituted by this Agreement) do not and shall not

- (i) conflict with
  - (A) any law or regulation applicable to it,
  - (B) its or any of its subsidiaries constitutional documents, or
  - (C) any agreement or instrument binding upon it, any of its assets or the Shares, or
- (ii) result in the existence of, or oblige it to create, any Security over the Shares other than as permitted under the terms of the Senior Loan Agreement

**(d) Power and authority**

It has the power and authority to enter into, and to exercise its rights and perform its obligations under, this Agreement

**(e) Governing law and judgments**

- (i) The choice of law of this Agreement will be recognised and enforced in its jurisdiction of incorporation
- (ii) Any judgment obtained in the jurisdiction of such governing law and (if applicable) an award obtained in an arbitration forum to which it has submitted will be recognised and enforced in its jurisdiction of incorporation

**(f) Insolvency**

It has not taken any corporate action nor have any other steps been taken or legal proceedings been started or threatened against it for its bankruptcy, winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee, bankruptcy trustee or similar officer of it or of any or all of its assets and revenues

**(g) Ownership**

As at the date of this Agreement, the Chargor is the legal owner of all of the Shares which constitute the whole of the ordinary A share capital of the Borrower

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

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

**(i) Security**

The Security created by this Agreement

- (i) is enforceable in accordance with the terms of this Agreement and is not restricted or inhibited by the terms of its constitutional documents,

- (ii) has or will have first ranking priority and it is not subject to any prior ranking or *pari passu* Security, and
- (iii) is not subject to avoidance in the event of any winding-up, dissolution or administration involving the Borrower or the Chargor

**(j) Ownership of Shares**

It is the sole legal and beneficial owner of the Charged Portfolio free and clear of all security interests save as created by this Agreement and the Junior Share Security Agreement and has not sold or disposed of or granted any options or pre-emption rights in respect of any of its right, title and interest, in the Charged Portfolio. All of the Shares are validly issued, fully paid and are not subject to any options to purchase, pre-emption rights or similar rights or other restrictions upon disposal, other than those set out in the Shareholders' Agreement, which would operate to restrict in any way their disposal by the Beneficiary should it come to enforce its Security over the Charged Portfolio contained in this Agreement

**(k) Pari passu**

All unsecured and unsubordinated claims of the Beneficiary against it under this Agreement rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors except for those creditors whose claims are mandatorily preferred by laws of general application to companies

**(l) Deduction of Tax**

It is not required to make any deduction for or on account of tax from any payment it may make under this Agreement

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

It is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority or that any stamp, registration, notarial or similar Tax or fees be paid on or in relation to this Agreement or the transactions contemplated hereunder, except registration of particulars of this Agreement at the Companies Registration Office in England and Wales under Section 860 of the Companies Act 2006 and payment of associated fees which registration and fees will be made and paid promptly after the date of this Agreement

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

- (i) It has its "centre of main interests" (as that term is used in Article 3(1) of the Council of the European Union Regulation No 1346/2000 on Insolvency Proceedings (the "Regulation")) in England or Wales
- (ii) It has no "establishment" (as that term is used in Article 2(h) of the Regulation) in any jurisdictions other than in England and Wales

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

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency has (to the best of its knowledge and belief) been started or threatened against it (or against its directors)

**(p) Liabilities**

- (i) It has no undisclosed material liabilities and it does not have any material obligation other than those which arise under the terms of this Agreement

- (ii) The constitutional documents of the Borrower and the Chargor, the Senior Loan Agreement and the Shareholder Loan Facility contain all the material terms of all the arrangements between the Borrower and the Chargor

**(q) Repetition**

The representations set out in this Clause 5.1 (*Representations*) are made by the Chargor on the date of this Agreement. With the exception of the representation set out in paragraph (j) and those representations stated to be given on the date of this Agreement, each other representation is deemed to be made by the Chargor on the date of this Agreement and on the date each Loan is made under the Senior Loan Agreement, in each case by reference to the facts and circumstances then subsisting.

**5.2 Undertakings**

**(a) Authorisations**

The Chargor shall promptly

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

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

**(b) Compliance with laws**

The Chargor shall comply in all respects with all laws to which it may be subject.

**(c) Disposals and Negative pledge**

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

**(d) Calls on Shares**

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

**(e) Voting Rights**

The Chargor shall not

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

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

## **6 FURTHER ASSURANCE**

### **6.1 Covenant for Further Assurance**

The Chargor will promptly at its own cost do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Beneficiary may specify for the purpose of perfecting the Security created or intended to be created in respect of the Charged Portfolio or for the exercise of the rights, powers and remedies of the Beneficiary provided by or pursuant to this Agreement or by law in each case in accordance with the rights vested in it under this Agreement

## **7 SECURITY ENFORCEMENT**

### **7.1 Time for Enforcement**

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

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

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

Neither the Beneficiary nor any Receiver shall be liable to account as mortgagee or mortgagee in possession in respect of all or part of the Charged Portfolio or be liable for any loss upon realisation or for any neglect, default or omission of any nature whatsoever in

connection with the Charged Portfolio for which a mortgagee or mortgagee in possession might otherwise be liable

### **7.3 Right of Appropriation**

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

## **8 APPLICATION OF MONEYS**

### **8.1 Application of proceeds**

All sums received by the Beneficiary or by a Receiver pursuant to the terms of this Agreement or in connection with the realisation or enforcement of all or any part of the Security created by this Agreement shall, subject to any claims ranking in priority to the Security created by this Agreement, be held by the Beneficiary or the Receiver upon trust and shall be applied in the order provided for in Clause 8.2 (*Order of distributions*).

### **8.2 Order of distributions**

- (a) FIRSTLY, in or towards the payment of all costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver (or Delegate of the Receiver) and the exercise of any of his rights, including his remuneration and all outgoings paid by him,
- (b) SECONDLY, in discharging any sums owing to the Beneficiary, or any Delegate of the Beneficiary,
- (c) THIRDLY, in payment of all costs and expenses incurred by the Beneficiary in connection with any realisation or enforcement of the Security taken in accordance with the terms of this Agreement,
- (d) FOURTHLY, in or towards the discharge of the Secured Obligations in the following order
  - (i) in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under the Finance Documents,
  - (ii) in or towards payment pro rata of any principal due but unpaid under the Finance Documents, and
  - (iii) in or towards payment pro rata of any other sum due but unpaid under the Finance Documents
- (e) FIFTHLY, if neither the Borrower nor the Chargor is under any further actual or contingent liability under any Finance Document, in payment to any person to whom the Beneficiary is obliged to pay in priority to the Borrower or the Chargor (as applicable), and
- (f) SIXTHLY, the balance, if any, in payment to the Borrower, the Chargor or any other person entitled to it

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

### **9.1 Extension of Powers**

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

### **9.2 Restrictions**

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

### **9.3 Statutory powers**

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

## **10 APPOINTMENT OF RECEIVER**

### **10.1 Appointment and Removal**

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

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

### **10.2 Capacity of Receivers**

Each person appointed to be a Receiver pursuant to Clause 10.1 (*Appointment and Removal*) shall be

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

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

### **10.3 Statutory Powers of Appointment**

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

## **11 POWERS OF RECEIVERS**

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

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

## **12 PROTECTION OF PURCHASERS**

### **12.1 Consideration**

The receipt of the Beneficiary or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Portfolio or making any acquisition, the Beneficiary or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit

### **12.2 Protection of purchasers**

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



## **13 POWER OF ATTORNEY**

### **13.1 Appointment and Powers**

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

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

### **13.2 Ratification**

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

## **14 EFFECTIVENESS OF SECURITY**

### **14.1 Continuing Security**

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

### **14.2 Cumulative Rights**

The Security created by or pursuant to this Agreement and the Collateral Rights shall be cumulative, in addition to and independent of every other Security which the Beneficiary may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. No prior Security held by the Beneficiary over the whole or any part of the Charged Portfolio shall merge into the Security constituted by this Agreement

### **14.3 No prejudice**

The Security created by or pursuant to this Agreement and the Collateral Rights shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Borrower or any other person, or the Beneficiary or by any other thing which might otherwise prejudice that Security or any Collateral Right

### **14.4 Remedies and Waivers**

No failure on the part of the Beneficiary to exercise, nor any delay on its part in exercising, any Collateral Right shall operate as a waiver of that Collateral Right or constitute an election

to affirm this Agreement. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

#### **14.5 No liability**

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

#### **14.6 Implied Covenants for Title**

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

#### **14.7 Waiver of defences**

The obligations of the Chargor under this Agreement, the Security created pursuant to this Agreement and the Collateral Rights will not be affected by any act, omission, matter or thing which, but for this Clause 14.7 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Agreement and the Security constituted by or pursuant to this Agreement (without limitation and whether or not known to it or any Secured Party) including

- (a) any time, waiver or consent granted to, or composition with, the Borrower, the Chargor or other person,
- (b) the release of the Borrower, the Chargor or any other person under the terms of any composition or arrangement with any creditor of the Borrower and/or the Chargor,
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, the Borrower, the Chargor or other person or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any Security,
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower, the Chargor or any other person,
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Finance Document or any other document or Security or of the Secured Obligations (including, without limitation, any change in the purpose of, any extension of, or any variation or increase in any facility or the addition of any new facility under any Finance Document or other document),
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or Security or of the Secured Obligations, or
- (g) any insolvency or similar proceedings

#### **14.8 Immediate recourse**

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

#### **14.9 Deferral of Rights**

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

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

#### **14.10 Turnover Trust**

- (a) The Chargor shall not accept or permit to subsist any collateral from the Borrower or any other person in respect of any rights the Chargor may have arising out of this Agreement. If, despite this provision, any such collateral shall be accepted or subsisting the Chargor acknowledges that the Chargor's rights under such collateral shall be held on trust for the Beneficiary, to the extent necessary to enable all amounts which may be or become payable to the Beneficiary by the Borrower under or in connection with the Finance Documents to be repaid in full, and the Chargor shall if requested promptly transfer the same to the Beneficiary or as it may direct for application in accordance with Clause 8.2 (*Order of distributions*).
- (b) If the Chargor receives any benefit, payment or distribution relating to the rights mentioned in Clause 14.9 (*Deferral of Rights*) above, it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Beneficiary by the Borrower under or in connection with the Finance Documents to be repaid in full on trust for the Beneficiary and shall promptly pay or transfer the same to the Beneficiary or as it may direct for application in accordance with Clause 8.2 (*Order of distributions*).

### **15 RELEASE OF SECURITY**

#### **15.1 Release**

Upon the Secured Obligations being discharged in full and the Beneficiary not being under any further actual or contingent obligation to make advances or provide other financial accommodation to the Borrower or any other person under the Senior Loan Agreement, the Beneficiary shall, at the request and cost of the Chargor, release and cancel the Security constituted by this Agreement without recourse to, and without any representation or warranty by, the Beneficiary or any of its nominees.

#### **15.2 Avoidance of Payments**

If the Beneficiary considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the

liability of the Chargor under this Agreement and the Security constituted by this Agreement shall continue and such amount shall not be considered to have been irrevocably paid

## **16 RETENTION OF AGREEMENT**

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

## **17 SUBSEQUENT SECURITY INTERESTS**

If the Beneficiary at any time receives or is deemed to have received notice of any subsequent Security affecting all or any part of the Charged Portfolio or any assignment or transfer of the Charged Portfolio which is prohibited by the terms of this Agreement or the Senior Loan Agreement, all payments thereafter by or on behalf of the Chargor to the Beneficiary or any of the other Secured Parties shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations as at the time when the Beneficiary received such notice

## **18 SUSPENSE ACCOUNTS AND CURRENCY CONVERSION**

### **18.1 Suspense Accounts**

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

### **18.2 Currency Conversion**

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

## **19 ASSIGNMENT**

The Beneficiary may assign or transfer all or any of its rights, benefits and obligations under this Agreement to an Affiliate of the Beneficiary, without requiring any consent or approval of the Borrower or the Chargor

## **20 NOTICES**

Each communication to be made under or in connection with this Agreement shall be made in writing and in accordance with clause 15 (*Notices*) of the Senior Loan Agreement

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

### **21.1 Costs and Expenses**

Without double-counting, clauses 9 (*Taxes and Indemnities*) of the Senior Loan Agreement shall apply to this Agreement, *mutatis mutandis*, as if set out in full herein

### **21.2 Stamp Taxes**

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

### **21.3 Indemnity**

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

## **22 DISCRETION AND DELEGATION**

### **22.1 Discretion**

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

### **22.2 Delegation**

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

## **23 MISCELLANEOUS**

**23.1** No failure by the Beneficiary to exercise, nor any delay by the Beneficiary in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law

**23.2** A person who is not a party to this Agreement has no right under The Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement

23.3 The invalidity, illegality or unenforceability of any provision in this Agreement shall not affect the continuation in force of the remainder of this Agreement and, if any part of the Security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security

23.4 This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument

## 24 GOVERNING LAW AND JURISDICTION

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

24.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "Dispute")

24.3 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary

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

## THE CHARGOR

EXECUTED as a DEED )  
by SANTANDER EQUITY INVESTMENTS LIMITED )  
in the presence of )

Signature of ~~director~~ <sup>attorney</sup> 

Name of ~~director~~ <sup>attorney</sup> THOMAS WEST

Signature of witness 

Name of Witness JESSICA GREENWOOD

Address of Witness LFW, 15 APPOLD STREET  
LONDON, EC2A 2HB

Occupation of witness SOLICITOR

THE BENEFICIARY

SIGNED by  
ABBEY NATIONAL TREASURY SERVICES PLC  
(trading as Santander Global Banking & Markets)

By

OLIVER ALEXANDER  
INES BERNARDO

) O. H.  
)  
) Ines Bernardo

Address

2 TRITON SQUARE, LONDON, NW1 3AN

Fax

Attention

DIRECTORS - INES BERNARDO