



Registration of a Charge

Company name: **NEW EARTH SOLUTIONS GROUP LIMITED**

Company number: **04368018**

Received for Electronic Filing: **03/06/2015**



X48SACUX

Details of Charge

Date of creation: **29/05/2015**

Charge code: **0436 8018 0036**

Persons entitled: **NORDDEUTSCHE LANDESBANK GIROZENTRALE**

Brief description: **ANY LAND, SHIP, AIRCRAFT OR INTELLECTUAL PROPERTY ACQUIRED AFTER 29 MAY 2015, FOR MORE DETAILS PLEASE REFER TO THE CHARGE INSTRUMENT.**

Contains fixed charge(s).

Contains floating charge(s) .

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION**

**FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL
INSTRUMENT.**

Certified by:

NORTON ROSE FULBRIGHT LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 4368018

Charge code: 0436 8018 0036

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th May 2015 and created by NEW EARTH SOLUTIONS GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd June 2015 .

Given at Companies House, Cardiff on 4th June 2015

The above information was communicated by electronic means and authenticated
by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



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

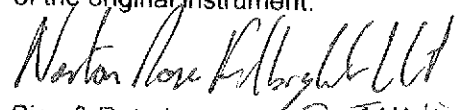
Dated 29 MAY 2015

NEW EARTH SOLUTIONS GROUP LIMITED
as Chargor

and

NORDDEUTSCHE LANDESBANK GIROZENTRALE
as Security Trustee

I certify that, save for material
redacted pursuant to s.859G
of the Companies Act 2006,
this copy instrument is a correct copy
of the original instrument.


Sign & Dated 2 JUNE 2015

DEBENTURE

 **NORTON ROSE FULBRIGHT**

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Deed dated 29 MAY 2015

PARTIES

Chargor	New Earth Solutions Group Limited
Security Trustee	Norddeutsche Landesbank Girozentrale as security trustee for the Finance Parties from time to time

SUMMARY

Chargor	New Earth Solutions Group Limited
Chargee	Norddeutsche Landesbank Girozentrale as security trustee for the Finance Parties from time to time
Charged Assets	all assets of the Chargor from time to time
Secured Obligations	all liabilities of the Chargor under the Finance Documents, which include the loan agreement dated on or about the same date as this Deed between (among others) New Earth Solutions Group Limited and Norddeutsche Landesbank Girozentrale (as amended or replaced from time to time)
Type of security	fixed and floating charges
Law	English law

IT IS AGREED as follows:

Interpretation

1 Definitions and interpretation

Definitions

1.1 In this Deed:

Administrative Receiver means one or more administrative receivers appointed, or to be appointed, under this Deed

Administrator means one or more administrators appointed, or to be appointed, under this Deed

Agent has the meaning given to it in the Loan Agreement

Charged Assets means the Fixed Charge Assets and the Floating Charge Assets

Chargor means New Earth Solutions Group Limited (previously known as New Earth Solutions Limited) (Company Number 04368018) having its registered address at Key House, 35 Black Moor Road, Ebblake Industrial Estate, Dorset, BH31 6AT

Debt means a monetary claim of any kind (whether present, future or contingent and whether originally owing to the person entitled to it or acquired by that person from someone else) and all Rights (including Security) connected with it

Default Rate means the rate specified in clause 17 of the Loan Agreement

Disposal means any transfer or other disposal of an asset or of an interest in an asset, or the creation of any Right over an asset in favour of another person, but not the creation of Security

Enforcement Time means any time at which a Trigger Event has occurred and is continuing and:

- (a) any amount owing by the Chargor under a Finance Document is payable but has not been paid;
- (b) an Event of Default has occurred and is continuing; or
- (c) any step is being taken by any person to put the Chargor into administration,

provided that the Finance Parties will be permitted to take Protective Enforcement Action while no Trigger Event is continuing

Equipment means all plant, machinery, vehicles and other equipment used in a business, except equipment of a type which is disposed of in the ordinary course of trading, and all warranties and other Rights relating to them

Event of Default has the meaning given to it in the Loan Agreement

Finance Parties means each of the Lenders and the Agent (including as Security Trustee), and any other person defined as such in the Loan Agreement

Finance Documents means:

- (a) the Loan Agreement;
- (b) this Deed;
- (c) any other document defined as such in the Loan Agreement; and
- (d) any other document designated as such by the Security Trustee and the Chargor at any time

Finance Party Security means the Security created by this Deed and any other existing or future Security granted by an Obligor to the Security Trustee to secure the payment and discharge of Secured Obligations

Finance Party Security Document means a document creating or evidencing Finance Party Security, including the Security Documents (as such term is defined in the Loan Agreement)

Financial Indebtedness has the meaning given to it in the Loan Agreement

Fixed Charge Assets means those assets which are from time to time the subject of clauses 3.2, 3.3 and 3.6

Floating Charge Assets means those assets which are from time to time the subject of clause 3.5

Insolvency Event, in relation to a person, means:

- (a) the dissolution, liquidation, provisional liquidation, administration, administrative receivership or receivership of that person or the entering into by that person of a voluntary arrangement or scheme of arrangement with creditors;
- (b) any analogous or similar procedure in any jurisdiction other than England; or
- (c) any other form of procedure relating to insolvency, reorganisation or dissolution in any jurisdiction

Insolvency Legislation means:

- (a) the Insolvency Act 1986 and secondary legislation made under it; and
- (b) any other primary or secondary legislation in England from time to time relating to insolvency or reorganisation

Intellectual Property means:

- (a) any intellectual property acquired after the date of this Deed which is designated as Intellectual Property by the Chargor and the Security Trustee on or about the time of its acquisition; and
- (b) all other copyright (including rights in computer software), patents, trade marks, trade names, service marks, business names (including internet domain names), design rights, database rights, semi-conductor topography rights and all other intellectual property or similar proprietary rights (whether registered or not and including applications to register or rights to apply for registration) which, in each case, are of a type which are not disposed of in the ordinary course of trading

Investment means:

- (a) the shares described in Schedule 2 (*Investments*);
- (b) any shares or loan capital held in a Subsidiary;
- (c) any investment acquired after the date of this Deed which is designated as an Investment by the Chargor and the Security Trustee on or about the time of its acquisition; and
- (d) any other debt or equity security or any warrant or option to acquire or subscribe for any such security (whether it is held directly or through a custodian, clearing house or other person) unless it is of a type which is not held as an investment and is accordingly disposed of in the ordinary course of trading,

and any accretions to them and other Rights arising in connection with them, including dividends

Key Account means:

- (a) an account described in Schedule 3 (*Key Accounts*);
- (b) any account that replaces an account described in Schedule 3 (*Key Accounts*);
- (c) any account established after the date of this Deed which is designated as a Key Account by the Chargor and the Security Trustee on or about the time of its establishment; and

- (d) any other account with a bank or financial institution which cannot be drawn on by the account holder in the ordinary course of its trading without the consent of the Security Trustee

Key Contract means:

- (a) any "Key Project Agreement" as defined in the NESFM Facilities Agreement in which the Chargor has Rights;
- (b) any "Project Document" as defined in the term facility agreement dated 19 September 2014 and made between, amongst others, New Earth Energy (Avonmouth) Limited and Macquarie Bank Limited (as agent) in which the Chargor has Rights;
- (c) any contract entered into after the date of this Deed which is designated as a Key Contract by the Chargor and the Security Trustee on or about the time it was entered into; and
- (d) any material contracts related to the Borrower or the Waste Group with actual or contingent obligations or liabilities in excess of £100,000 or any agreements relating to the sale of assets of the Waste Group (including any exclusivity agreements),

in each case as it may from time to time be amended, restated, novated or replaced (however fundamentally)

Land means:

- (a) freehold, leasehold or commonhold land;
- (b) any estate or interest in, and any Rights attaching or relating to, that land; and
- (c) any buildings, fixtures and fittings (including trade fixtures and fittings) and other equipment attached to, situated on or forming part of that land

Lenders means the persons defined as such in the Loan Agreement

Loan Agreement means the loan agreement dated on or about the same date as this Deed between the Chargor and the Finance Parties, as it may from time to time be amended, restated, novated or replaced (however fundamentally, including by an increase of any size in the amount of the facilities made available under it, the alteration of the nature, purpose or period of those facilities or the change of its parties)

Majority Lenders has the meaning given to it in the Loan Agreement

NESFM Facilities Agreement means the facilities agreement dated 2 October 2007 as amended and restated 31 July 2008, on 21 August 2009, on 17 November 2009 and 19

September 2011 between, amongst others, New Earth Solutions Facilities Management Limited as Borrower, Norddeutsche Landesbank Girozentrale as Arranger, Original Lender, Agent, Account Bank and Security Trustee and the Cooperative Bank plc as Original Lender and Arrangers

Obligations, in relation to a person, means all obligations or liabilities of any kind of that person from time to time, whether they are:

- (a) to pay money or to perform (or not to perform) any other act;
- (b) express or implied;
- (c) present, future or contingent;
- (d) joint or several;
- (e) incurred as a principal or surety or in any other manner; or
- (f) originally owing to the person claiming performance or acquired by that person from someone else

Officer, in relation to a person, means any officer, employee or agent of that person

Protective Enforcement Action means any action by the Security Trustee to join or intervene in or otherwise support any proceedings brought by any other person arising from or relating to the enforcement of any Security over assets of the Chargor, any expropriation, attachment, sequestration, distress or execution affecting any assets of the Chargor with a view to substantiating, preserving or protecting its interest in the relevant asset.

Receiver means an Administrative Receiver or a Specific Receiver

Right means any right, privilege, power or immunity, or any interest or remedy, of any kind, whether it is personal or proprietary

Secured Obligations means the Obligations undertaken to be paid or discharged in clause 2 (*Payment of Secured Obligations*)

Security means:

- (a) any mortgage, charge, pledge, lien, hypothecation, assignment by way of security, trust arrangement for the purpose of providing security or other security interest of any kind in any jurisdiction;

- (b) any proprietary interest over an asset, or any contractual arrangement in relation to an asset, in each case created in relation to Financial Indebtedness and which has the same commercial effect as if security had been created over it; and
- (c) any right of set-off created by agreement

Security Trustee means Norddeutsche Landesbank Girozentrale, London Brach, 1 Wood Street, London EC2V 7WT or any other person appointed as security trustee for the Finance Parties under the Finance Documents

Specific Receiver means one or more receivers or managers appointed, or to be appointed, under this Deed who is not an Administrative Receiver

Subsidiary has the meaning given to it in the Loan Agreement

Third Parties Act means the Contracts (Rights of Third Parties) Act 1999

Trigger Event means:

- (a) an "NESFM Event of Default" or "Insolvency Event"; or
 - (b) there are no further amounts standing to the credit of the "Cash Collateral Account" and subject to the "Cash Collateral Account Charge",
- (as those terms are defined in the Loan Agreement).

VAT means value added tax.

Interpretation

1.2 In this Deed:

- (a) the table of contents, the summary and the headings are inserted for convenience only and do not affect the interpretation of this Deed;
- (b) references to clauses and schedules are to clauses of, and schedules to, this Deed;
- (c) references to the Loan Agreement, any Finance Document or any other document are to that document as from time to time amended, restated, novated or replaced, however fundamentally;
- (d) references to a person include an individual, firm, company, corporation, unincorporated body of persons and any government entity;
- (e) references to a person include its successors in title, permitted assignees and permitted transferees;

- (f) words importing the plural include the singular and vice versa; and
 - (g) references to any enactment include that enactment as amended or re-enacted; and, if an enactment is amended, any provision of this Deed which refers to that enactment will be amended in such manner as the Security Trustee, after consultation with the Chargor, determines to be necessary in order to preserve the intended effect of this Deed.
- 1.3 Where this Deed imposes an obligation on the Chargor to do something if required or requested by the Security Trustee, it will do so as soon as practicable after it becomes aware of the requirement or request.
- 1.4 It is intended that this document takes effect as a deed even though the Security Trustee may only execute it under hand.
- 1.5 This Deed may be executed in counterparts.
- 1.6 The provisions of any other Finance Document relating to:
- (a) any disposition of an interest in land; or
 - (b) any obligation of the Lenders to make further advances,
- are deemed to be incorporated in this Deed.
- 1.7 Where a definition of a type of asset in clause 1.1 contains a number of categories, each category will be construed as separate from each other category.

Parties and third parties

- 1.8 The Rights expressly conferred on each of the Finance Parties, each Receiver and each Officer of the Security Trustee or a Receiver under this Deed are enforceable by each of them under the Third Parties Act.
- 1.9 No other term of this Deed is enforceable under the Third Parties Act by anyone who is not a party to this Deed.
- 1.10 The parties to this Deed may terminate this Deed or vary any of its terms without the consent of any third party. However, they may not terminate this Deed or vary any of its terms if this would have the effect of terminating or adversely affecting:
- (a) the Rights of the Finance Parties under this Deed without its consent; or
 - (b) the Rights of a Receiver or of an Officer of the Security Trustee or a Receiver under this Deed without its consent, but only to the extent that it has notified the Security Trustee that it intends to enforce that clause at the time of the termination or variation.

Security

2 Payment of Secured Obligations

- 2.1 The Chargor will pay or otherwise discharge all Obligations from time to time incurred by it under or in connection with the Finance Documents when they become due for payment or discharge.

3 Charges

- 3.1 The charges contained in this clause 3:

- (a) are given to the Security Trustee as trustee for the Finance Parties;
- (b) secure the payment and discharge of the Secured Obligations; and
- (c) are given with full title guarantee.

- 3.2 The Chargor charges, by way of first legal mortgage all other Land now owned by it and in any Rights accruing to, derived from or otherwise connected with it (including insurances and proceeds of Disposal and of insurances).

- 3.3 The Chargor charges, by way of first fixed charge, all of the Rights which it now has and all of the Rights which it obtains at any time in the future in:

- (a) Land, other than that charged under clause 3.2;
- (b) Equipment;
- (c) Investments;
- (d) Key Contracts;
- (e) Key Accounts;
- (f) Intellectual Property;
- (g) Debts; and
- (h) goodwill and uncalled capital,

and in any Rights accruing to, derived from or otherwise connected with them (including insurances and proceeds of Disposal and of insurances)

- 3.4 In respect of Key Contracts and Key Accounts (and Debts related to such Key Accounts), to the extent that any such Right described in clause 3.3 is not capable of being so charged (or if

granting such charge is in breach of such Key Contract by the Chargor), the charge of that Right purported to be effected by clause 3.3 shall operate as a charge of any damages, compensation, remuneration, profit, rent or income which the Chargor may derive from that right or be awarded or entitled to in respect of that right.

- 3.5 The Chargor charges, by way of first floating charge, its undertaking and all its present and future assets other than those effectively charged under clauses 3.2 or 3.3.
- 3.6 The Security Trustee may convert all or part of the floating charge created by the Chargor under clause 3.5 into a fixed charge by giving notice to that effect to the Chargor and specifying the identity of the assets concerned. This may be done on one or more occasion, but only (a) during an Enforcement Time or (b) if the Security Trustee reasonably considers that its security over the assets concerned is in jeopardy and that it is necessary to do so to protect or preserve its security.

4 Set-off

- 4.1 Each Finance Party may at any time set off any matured Secured Obligation due from the Chargor (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Chargor, regardless of the place of payment, booking branch or currency of either obligation.
- 4.2 If the obligations are in different currencies, the Finance Parties may convert either obligation at a market rate of exchange in its usual course of trading for the purpose of the set-off.
- 4.3 These Rights are in addition to the security conferred on the Security Trustee under this Deed.

5 Restrictions

- 5.1 The Chargor will ensure that the restrictions contained in this clause 5 are complied with unless the Security Trustee agrees to the contrary.
- 5.2 No Security will exist over, or in relation to, any Charged Asset other than as permitted under the Loan Agreement.
- 5.3 There will be no Disposal of any Fixed Charge Asset.
- 5.4 There will be no Disposal of any Floating Charge Asset otherwise than for market value in the ordinary course of trading of the Chargor.

6 Perfection

General action

- 6.1 The Chargor will, at its own expense, create all such Security, execute all such documents, give all such notices, effect all such registrations (whether at the Companies Registry, an asset registry or otherwise), deposit all such documents and do all such other things as the Security Trustee may require from time to time in order to:
- (a) ensure that it has an effective first-ranking fixed charge (or, in the case of Land then owned by the Chargor, a charge by way of legal mortgage) over the Fixed Charge Assets, subject only to such Permitted Security as the Security Trustee has agreed should rank in priority;
 - (b) ensure that it has an effective first-ranking floating charge over the Floating Charge Assets, subject only to such Permitted Security as the Security Trustee has agreed should rank in priority; and
 - (c) facilitate the enforcement of the Finance Party Security, the realisation of the Charged Assets or the exercise of any Rights held by the Security Trustee or any Receiver or Administrator under or in connection with the Finance Party Security.
- 6.2 The scope of clause 6.1 is not limited by the specific provisions of the rest of this clause 6 or by any other provision of the Finance Party Security Documents.

Notification

- 6.3 If, after the date of this Deed, the Chargor acquires (a) Rights in Land, (b) a new Subsidiary or (c) Rights in any other material asset, it will notify the Security Trustee as soon as reasonably practicable and will provide it with such information about the acquisition as the Security Trustee may reasonably require.

Land

- 6.4 If required to do so by the Security Trustee, the Chargor will execute a first charge by way of legal mortgage over any Land in England and Wales owned by it at that time which is not already the subject of such a charge in favour of the Security Trustee, in any form which the Security Trustee may reasonably require.
- 6.5 The Chargor agrees to the entry of the following restriction in the proprietorship register of the title to any Land in England and Wales which now or in the future is the subject of a charge by way of legal mortgage in favour of the Security Trustee and which is, or is required to be, registered at the Land Registry:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the Charge dated [date of this Deed] in favour of [beneficiaries] of [address for service] referred to in the Charges Register."

- 6.6 If any Land in which the Chargor has Rights now or in the future is required to be registered at the Land Registry, the Chargor will, within the relevant priority period under the Land Charges Act 1972:
- (a) apply to the Land Registry for first registration of the title to that Land and registration of the Chargor as proprietor of that Land and notify the Security Trustee of its title number; and
 - (b) if so required by the Security Trustee, create a first charge by way of legal mortgage over that Land in favour of the Security Trustee or, if not so required, procure that this Deed is noted in the charges register of that Land.
- 6.7 If any Land in which the Chargor has Rights is already registered when those Rights are acquired, the Chargor will within the priority period of the relevant Land Registry Official Search:
- (a) apply to the Land Registry for its title to that Land to be registered and give notice of the title number to the Security Trustee; and
 - (b) if so required by the Security Trustee, create a first charge by way of legal mortgage over that Land in favour of the Security Trustee or, if not so required, procure that this Deed is noted in the charges register of that Land.
- 6.8 If any Land in which the Chargor has Rights now or in the future is not required to be registered at the Land Registry, the Chargor will, within the relevant priority period under the Land Charges Act 1972, apply to register a Class C Land Charge in respect of this Deed at the Land Charges Registry if the title deeds and documents to that Land are not deposited with the Security Trustee under clause 6.10 (*Documents*).
- 6.9 The Chargor will procure the entry of a note of the obligation to make further advances under the terms of the Loan Agreement on the Charges Register of any registered land forming part of the Land over which it has created a charge by way of legal mortgage in favour of the Security Trustee.
- 6.10 The Chargor will deposit with the Security Trustee all deeds and documents of title and all leases, licences and other ancillary documents received by it or on its behalf in relation to its Land.

Equipment

- 6.11 If required to do so by the Security Trustee, the Chargor will create a first legal mortgage over any Equipment owned by it at that time, in any form which the Security Trustee may reasonably require.

Shares

- 6.12 If, at any time, the Chargor owns shares in a Subsidiary, it will:
- (a) on the date of this Deed (or, if it acquires the shares later, as soon as practicable after it does so), deposit with the Security Trustee all certificates or other documents of title to those shares and stock transfer forms for them, executed in blank by the Chargor;
 - (b) if required to do so by the Security Trustee (and to the extent that the Chargor is able to do so) amend the articles of association of the Subsidiary concerned in the manner reasonably required by the Security Trustee (and procure that the Subsidiary takes, or omits to take, all such other steps as the Security Trustee may require) in order to enable it to enforce its security without restriction; and
 - (c) if reasonably required to do so by the Security Trustee, procure that the Security Trustee or its nominee becomes registered as the legal owner of the shares concerned.

Key Accounts and Key Contracts

- 6.13 If, at any time, the Chargor has a Right in respect of a Key Account or a Key Contract, it will, on demand by the Security Trustee (or, if it acquires the Right later, as soon as practicable after it does so):
- (a) deliver a notice of this Deed to the other parties to the relevant Key Account or Key Contract substantially in the form set out in the applicable part of Schedule 4 (*Notice and acknowledgement of charge*); and
 - (b) use its best endeavours to procure that those parties deliver an acknowledgement of the notice to the Security Trustee substantially in the form set out in that part of that Schedule as soon as reasonably practicable.
- 6.14 The Chargor shall procure that, by no later than 5 Business Days from the date of this deed, Macquarie Bank Limited (in its capacity as agent for the relevant finance parties under the term facility agreement dated 19 September 2014 and made between, amongst others, New Earth Energy (Avonmouth) Limited and Macquarie Bank Limited (as agent)) shall provide its consent to the Security contemplated by this Deed.

Subsequent security

- 6.15 If a Finance Party receives notice that any Security has been created over Charged Assets which the Finance Documents do not permit to rank in priority to the Finance Party Security, that Finance Party will be treated as if it had immediately opened a new account for the Chargor, and all payments received by that Finance Party from the Chargor will be treated as if they had been credited to the new account and will not reduce the amount then due from the Chargor to that Finance Party.

Financial Collateral

- 6.16 The parties to this Deed designate those Charged Assets which constitute Financial Collateral to be under the control of the Security Trustee, whether they are the subject of a fixed charge or of a floating charge under this Deed.

Enforcement

7 Enforcement

Time for enforcement

- 7.1 The Security Trustee may enforce the Finance Party Security granted by the Chargor at any time which is an Enforcement Time or if the Chargor requests it to do so.

Methods of enforcement

- 7.2 The Security Trustee may enforce the Finance Party Security granted by the Chargor by:
- (a) appointing an Administrator of the Chargor;
 - (b) if permitted to do so by the Insolvency Legislation, appointing an Administrative Receiver of the Chargor;
 - (c) appointing a Specific Receiver of assets of the Chargor;
 - (d) going into possession of, receiving the benefit of, or selling assets of the Chargor, giving notice to the Chargor or any other person in relation to any assets of the Chargor, exercising a right of set-off or in any other way it may decide; or
 - (e) taking any other action it may decide in any jurisdiction other than England.
- 7.3 To the extent that the Finance Party Security granted by the Chargor arises under a security financial collateral arrangement, the Security Trustee may also enforce it by giving written notice to the Chargor that it is appropriating those Charged Assets which consist of financial collateral. On receipt of that notice by the Chargor, the Security Trustee will automatically become the absolute owner of that financial collateral, and the Chargor will have no further interest in it. The value of the financial collateral will, as soon as practicable after it has been established, be applied in discharge of the equivalent amount of the Secured Obligations in accordance with clause 8 (*Application of proceeds*). For this purpose, the Security Trustee will value the financial collateral as follows:
- (a) in the case of cash, by reference to its face value received by the Security Trustee;
 - (b) in the case of credit claims, by reference to the amount actually recovered by the Security Trustee; and
 - (c) in the case of financial instruments, by reference to such public indices, valuations or other matters as the Security Trustee may reasonably decide.

Expressions defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 will have the same meanings in this clause.

- 7.4 An Administrator must be appointed in accordance with the Insolvency Legislation.
- 7.5 A Receiver must be appointed by an instrument in writing, and otherwise in accordance with the Insolvency Legislation.
- 7.6 The appointment of a Receiver may be made subject to such limitations as are specified by the Security Trustee in the appointment.
- 7.7 If more than one person is appointed as a Receiver, each person will have power to act independently of any other, except to the extent that the Security Trustee may specify to the contrary in the appointment.
- 7.8 Subject to the Insolvency Legislation, the Security Trustee may remove or replace any Receiver.
- 7.9 If required by the Insolvency Legislation, an Administrator or Receiver must be a person qualified to act as such under it.

Powers on enforcement

- 7.10 An Administrator will have the powers given to him by the Insolvency Legislation.
- 7.11 An Administrative Receiver will have:
 - (a) the powers given to him by the Insolvency Legislation;
 - (b) the powers given to a mortgagee or a receiver by the Law of Property Act 1925, but without the restrictions contained in section 103 of that Act; and
 - (c) the power to do, or omit to do, on behalf of the Chargor, anything which the Chargor itself could have done, or omitted to do, if its assets were not the subject of Security and the Chargor were not in insolvency proceedings.
- 7.12 A Specific Receiver will have the same powers as an Administrative Receiver in respect of the assets over which he is appointed.
- 7.13 The Security Trustee will, if it enforces the Finance Party Security granted by the Chargor itself, have the same powers as an Administrative Receiver in respect of the assets which are the subject of the enforcement.
- 7.14 Except to the extent provided by law, none of the powers described in this clause 7 will be affected by an Insolvency Event in relation to the Chargor.

Status and remuneration of Receiver

- 7.15 A Receiver will be the agent of the Chargor until the Chargor goes into liquidation. He will have no authority to act as agent for the Security Trustee, even in the liquidation of the Chargor.
- 7.16 The Security Trustee may from time to time determine the remuneration of any Receiver.

Third parties

- 7.17 A person dealing with the Security Trustee or with a Receiver is entitled to assume, unless it has actual knowledge to the contrary, that:
- (a) those persons have the power to do those things which they are purporting to do; and
 - (b) they are exercising their powers properly.

8 Application of proceeds

All money received by the Security Trustee or a Receiver under or in connection with the Finance Documents (whether during, or before, enforcement of the Finance Party Security) will, subject to the rights of any persons having priority, be applied in the following order of priority:

- (a) first, in or towards payment of all amounts payable to the Security Trustee, any Receiver or their Officers under clause 16 (*Expenses, liability and indemnity*) and all remuneration due to any Receiver under or in connection with the Finance Party Security;
- (b) secondly, in or towards payment of the Secured Obligations in such order as is required by the Finance Documents (and, if any of the Secured Obligations are not then payable, by payment into a suspense account until they become payable); and
- (c) thirdly, in payment of any surplus to the Chargor or other person entitled to it.

Undertakings

9 Land and Equipment

9.1 The Chargor will:

- (a) comply with all material statutory, regulatory, environmental and contractual obligations relating to its Land or its use; and
- (b) comply with all obligations imposed on it, and enforce the observance and performance of all obligations of all other persons, under any lease of its Land.

9.2 The Chargor will keep its Land and Equipment in good repair, working order and condition and permit the Security Trustee and its representatives to enter and view their state and condition upon giving reasonable notice to the Chargor.

9.3 The Chargor will not, without the prior written consent of the Security Trustee:

- (a) grant or extend any lease, agreement for lease or licence, or part with or share possession or occupation, of its Land;
- (b) grant any licence or permission to any occupier to assign, underlet, part with possession or occupation or change the use of its Land;
- (c) determine, accept or agree to accept the surrender of any leasehold interest in any of its Land;
- (d) apply to the Land Registry to register the whole or any part of its Land as commonhold land or establish a commonhold association in respect of any of its Land; or
- (e) make a material change to the use of any of its Land.

10 Investments

10.1 During an Enforcement Time (and also once the Finance Party Security is being enforced), the Security Trustee will be entitled to receive all distributions in respect of the Chargor's Investments for application in accordance with clause 8 (*Application of proceeds*). Otherwise, the Chargor will be entitled to receive those distributions.

10.2 During an Enforcement Time (and also once the Finance Party Security is being enforced), but only upon written notice to the Chargor, the Security Trustee will be entitled to exercise all voting and other Rights in respect of the Chargor's Investments. Otherwise, the Chargor will be entitled to exercise those Rights.

- 10.3 To the extent that the holder of those Investments is not the person entitled to receive those distributions and exercise those Rights, the holder will pay the distributions to the person entitled to them and will exercise those Rights in accordance with the reasonable requirements of the person entitled to exercise them.
- 10.4 The Chargor will promptly pay all calls, instalments or other payments which from time to time become due in respect of any of its Investments, and the Security Trustee will not in any circumstances incur any liability in respect of them.

11 Key Contracts, Key Accounts and Debts

- 11.1 The Chargor will:
- (a) comply with all of its obligations under each Key Contract; and
 - (b) use its best endeavours to ensure that the Security Trustee receives the full benefit of each Key Contract.
- 11.2 The Chargor will not:
- (a) agree to alter the terms of, or terminate, any Key Contract or Key Account; or
 - (b) waive its rights under a Key Contract or Key Account; or
 - (c) assign a Key Contract,
- without the consent of the Security Trustee.
- 11.3 The Security Trustee will give its consent under clause 11.2 if, in its reasonable opinion, any such alteration or waiver will not materially affect the effectiveness or value of its security over the Key Contract or Key Account concerned.
- 11.4 The Chargor will not make any withdrawal from any Key Account except with the prior consent of the Security Trustee or as permitted under the Loan Agreement.
- 11.5 The Security Trustee will give its consent under clause 11.4 if the withdrawal is permitted under the Loan Agreement.
- 11.6 The Chargor will promptly collect all Debts as agent for the Security Trustee and pay all their proceeds into such accounts as the Security Trustee may from time to time specify.

12 Intellectual Property

- 12.1 The Chargor will promptly notify the Security Trustee of its acquisition of, or agreement to acquire, material Intellectual Property and any action taken to register the Intellectual Property.

12.2 The Chargor will:

- (a) take all necessary action to safeguard and maintain its Rights in connection with Intellectual Property, including obtaining all necessary registrations and paying all applicable renewal fees and licence fees;
- (b) not allow any Intellectual Property to be abandoned or cancelled or to lapse; and
- (c) protect its Intellectual Property against theft, loss, destruction, unauthorised access, copying or use by third parties and, immediately on becoming aware of any material infringement of, or challenge to, any of its Intellectual Property, inform the Security Trustee and take any steps at the cost of the Chargor as the Security Trustee may from time to time reasonably specify in relation to the infringement or challenge.

13 Insurance

13.1 The Chargor will:

- (a) maintain insurances in relation to its business and assets with reputable underwriters or insurance companies of a type, to the extent and in an amount which is usual for companies carrying on similar businesses whose practice it is not to self-insure;
- (b) punctually pay all premiums and other money payable under its contracts of insurance and comply with their other provisions; and
- (c) within 15 days of notice from the Security Trustee ensure that the Security Trustee's interest is noted on the Chargor's contracts of insurance.

13.2 During an Enforcement Time (and also once the Finance Party Security has been enforced), all payments in respect of any contract of insurance will be paid to the Security Trustee for application in accordance with clause 8 (*Application of proceeds*). Otherwise, all such payments will be applied in reinstatement of the assets concerned.

14 General undertakings

14.1 The Chargor will take all steps as are necessary to preserve the value and marketability of its Charged Assets.

14.2 The Chargor will notify the Security Trustee as soon as it becomes aware of any matter which might reasonably be expected to have an adverse effect on the Rights of the Security Trustee under the Finance Party Security. Those matters include a breach or purported breach of a Key Contract by any party to it and a claim by any person to an interest in a Charged Asset.

14.3 The Chargor will provide to the Security Trustee:

- (a) such information about the Charged Assets;
 - (b) such information about the extent to which it has complied with its obligations under this Deed; and
 - (c) copies of such documents which create, evidence or relate to its Charged Assets,
- as the Security Trustee may from time to time reasonably request.

14.4 The Finance Parties may exchange between themselves any information relating to the Chargor.

14.5 If the Chargor does not comply with its obligations under this Deed, the Security Trustee may do so on the Chargor's behalf on such basis as the Security Trustee may decide. That Chargor will indemnify the Security Trustee on demand against the amount certified by the Security Trustee to be the cost, loss or liability suffered by it as a result of doing so.

Miscellaneous

15 Duration of the security

- 15.1 The Obligations of the Chargor under the Finance Documents and the security created by the Finance Party Security will continue until the Secured Obligations have been irrevocably and unconditionally paid or discharged in full, regardless of any intermediate payment or discharge in whole or in part.
- 15.2 If any payment by the Chargor or any other security provider or any release given by the Security Trustee (whether in respect of the Secured Obligations or any security for them or otherwise) is avoided or reduced as a result of insolvency or any similar event:
- (a) the liability of the Chargor under this Deed will continue as if the payment, release, avoidance or reduction had not occurred; and
 - (b) the Security Trustee will be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, release, avoidance or reduction had not occurred.
- 15.3 Section 93 of the Law of Property Act 1925 will not apply to the Finance Party Security.

16 Expenses, liability and indemnity

- 16.1 The Chargor will, on demand, pay all legal and other costs and expenses (including any stamp duty, registration or other similar taxes) properly incurred by the Security Trustee or by any Receiver in connection with the Finance Party Security. This includes any costs and expenses relating to the enforcement or preservation of the Finance Party Security or the Charged Assets and to any amendment, waiver, consent or release required in connection with the Finance Party Security.
- 16.2 Neither the Security Trustee nor a Receiver nor any of their Officers will be in any way liable or responsible to the Chargor for any loss or liability of any kind arising from any act or omission by it of any kind (whether as mortgagee in possession or otherwise) in relation to the Charged Assets or the Finance Party Security, except to the extent caused by its own negligence or wilful misconduct.
- 16.3 The Chargor will, on demand, indemnify each of the Security Trustee, a Receiver and their Officers in respect of all costs, expenses, losses or liabilities of any kind which it incurs or suffers in connection with:
- (a) anything done or omitted in the exercise of the powers conferred on it under the Finance Party Security, unless it was caused by its negligence or wilful misconduct;

- (b) a claim of any kind (whether relating to the environment or otherwise) made against it which would not have arisen if the Finance Party Security had not been granted and which was not caused by its negligence or wilful misconduct; or
- (c) any breach by the Chargor of the Finance Documents.

17 Payments

- 17.1 All payments by the Chargor under the Finance Party Security Documents will be made in full, without any set-off or other deduction.
- 17.2 If any tax or other sum must be deducted from any amount payable by the Chargor under the Finance Party Security Documents, the Chargor will pay such additional amounts as are necessary to ensure that the recipient receives a net amount equal to the full amount it would have received before such deductions.
- 17.3 All amounts payable by the Chargor under the Finance Party Security Documents are exclusive of VAT. The Chargor will, in addition, pay any applicable VAT on those amounts.
- 17.4 If the Chargor fails to make a payment to a person under the Finance Party Security Documents, it will pay interest to that person on the amount concerned at the Default Rate from the date it should have made the payment until the date of payment (after, as well as before, judgment).
- 17.5 No payment by the Chargor (whether under a court order or otherwise) will discharge the Obligation of the Chargor unless and until the Finance Parties have received payment in full in the currency in which the Obligation is denominated. If, on conversion into that currency, the amount of the payment falls short of the amount of the Obligation concerned, the Finance Parties will have a separate cause of action against the Chargor for the shortfall.
- 17.6 Any certification or determination by the Security Trustee of an amount payable by the Chargor under this Deed is, in the absence of manifest error, conclusive evidence of that amount.

18 Remedies

- 18.1 The Rights created by this Deed are in addition to any other Rights of the Finance Parties against the Chargor or any other security provider under any other documentation, the general law or otherwise. They will not merge with or limit those other Rights, and are not limited by them.
- 18.2 No failure by a Finance Party to exercise any Right under this Deed will operate as a waiver of that Right. Nor will a single or partial exercise of a Right by a Finance Party preclude its further exercise.

- 18.3 If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision in any other respect or under the law of any other jurisdiction will be affected or impaired in any way.

19 Power of attorney

The Chargor, by way of security, irrevocably appoints each of the Security Trustee and any Receiver severally to be its attorney to do anything:

- (a) which the Chargor is obliged to do under the Finance Party Security Documents; and
- (b) which the attorney may require to exercise any of the Rights conferred on it by the Finance Party Security Documents or by law.

20 The Security Trustee

- 20.1 The Security Trustee may be replaced by a successor in accordance with the Loan Agreement.
- 20.2 On the date of its appointment, the successor Security Trustee will assume all the Rights and Obligations of the retiring Security Trustee. However, this does not apply to any Obligations of the retiring Security Trustee which arise out of its acts or omissions as Security Trustee before the appointment of the successor, in respect of which the retiring Security Trustee will continue to have the Obligations imposed by, and the Rights contained in, this Deed and the Loan Agreement.
- 20.3 The retiring Security Trustee will, at the Chargor's expense, provide its successor with copies of those of its records as Security Trustee as its successor properly requires to perform its functions as Security Trustee.

21 Notices

- 21.1 Any notice or other communication to a party to this Deed must be in writing. It must be addressed for the attention of such person, and sent to such address or fax number as that party may from time to time notify to the other parties.
- 21.2 It will be deemed to have been received by the relevant party on receipt at that address or fax number.
- 21.3 The initial administrative details of the parties are contained in Schedule 1 (*Initial administrative details of the parties*) but a party may amend its own details at any time by notice to the other party.

- 21.4 Any notice to the Chargor may alternatively be sent to its registered office or to any of its places of business or to any of its directors or its company secretary; and it will be deemed to have been received when delivered to any such places or persons.

22 Law

- 22.1 This Deed and any non-contractual obligations connected with it are governed by English law.

This Deed has been executed as a deed, and it has been delivered on the date stated at the beginning of this Deed.

Schedule 1
Initial administrative details of the parties

Party	Address	Fax number	Email address	Attention
New Earth Solutions Group Limited (as Chargor)	Key House, 35 Black Moor Road, Ebblake Industrial Estate, Dorset IM2 4RB	+44(0)1202829283	jonathanfogg@premiergroupiom.com davewhitaker@premiergroupiom.com	Jonathan Fogg, David Whitaker
Norddeutsche Landesbank Girozentrale (as Security Trustee)	1 Wood Street, London, EC2V7WT	+44(0)2074541288	sfagency@nordlb.com	Head of Agency

Schedule 2
Investments

Name of the company	Number of shares	Class	Nominal value per share
New Earth Energy Limited	167,909	Ordinary Shares	£0.01
New Earth Solutions Group Trustee Limited	100	Ordinary Shares	£1
New Earth Solutions Limited	1	Ordinary Share	£1

Schedule 3
Key Accounts

Bank	Sort Code	Account Holder	Account Name	Account Number
National Westminster Bank plc	[REDACTED]	New Earth Sol Group	[REDACTED]	[REDACTED]
National Westminster Bank plc	[REDACTED]	New Earth Solutions	[REDACTED]	[REDACTED]
National Westminster Bank plc	[REDACTED]	New Earth Solutions	[REDACTED]	[REDACTED]
National Westminster Bank plc	[REDACTED]	New Earth Sol Group	[REDACTED]	[REDACTED]
National Westminster Bank plc	[REDACTED]	New Earth Solutions	[REDACTED]	[REDACTED]

Schedule 4
Notice and acknowledgment of charge

Part A

Form of notice of charge of Key Contract

To: [Counterparty]

Date: •

Dear Sirs

Notice of Charge

- 1 We give you notice that, under a debenture dated • entered into by us (and others) in favour of • (the **Security Trustee**), we have charged to the Security Trustee by way of first fixed charge all of our rights in *[insert details of agreement concerned]* (the **Agreement**).
- 2 We will remain liable for our obligations under the Agreement. The Security Trustee has no obligations under it.
- 3 We have agreed with the Security Trustee not to terminate or amend the Agreement or to waive any of its terms without the consent of the Security Trustee.
- 4 We instruct you to:
 - (a) make all payments due to us under the Agreement to the Security Trustee *[insert an account number if required]* (whose receipt will be a good discharge to you for such payments); and
 - (b) disclose to the Security Trustee, without further approval from us, such information regarding the Agreement as the Security Trustee may from time to time request and to send it copies of all notices issued by you under the Agreement.
- 5 This instruction cannot be varied or terminated without the consent of the Security Trustee.
- 6 Please sign the enclosed acknowledgement and return it to the Security Trustee at *[address]* marked for the attention of •.

.....

for and on behalf of

[Chargor]

Acknowledgement of Charge

To: [Security Trustee]

- 1 We acknowledge receipt of the notice [described above];
- 2 We have not received notice that any other person has an interest in the Agreement.
- 3 We will comply with the instructions in the notice.
- 4 We agree that no amendment or termination of the Agreement, nor any waiver of its terms, will be effective unless it is approved by the Security Trustee.
- 5 We will not exercise any right of set-off against payments owing by us under the Agreement unless they arise out of the Agreement itself.

Executed as a)

deed by)

[Counterparty]) Director

acting by:)

Director/Secretary

Date: •

Part B

Form of notice of charged Key Account

To: [Account Bank]

Date: ●

Dear Sirs

Notice of Charge

- 1 We give you notice that, under a debenture dated ● entered into by us (and others) in favour of ● (the **Security Trustee**), we have charged to the Security Trustee by way of first fixed charge all of our rights in our ● account with you (no. ●) (the **Account**).
- 2 We have agreed with the Security Trustee not to close the Account or to amend or waive any of its terms without the consent of the Security Trustee.
- 3 We instruct you:
 - (a) to honour withdrawals from the Account if requested by the Security Trustee;
 - (b) not to honour any withdrawals from the Account if requested by us, unless our instructions are countersigned by the Security Trustee; and
 - (c) disclose to the Security Trustee, without further approval from us, such information regarding the Account as the Security Trustee may from time to time request and to send it copies of all statements and other notices issued by you in connection with the Account.
- 4 These instructions cannot be varied or terminated without the consent of the Security Trustee.
- 5 Please sign the enclosed acknowledgement and return it to the Security Trustee at [address] marked for the attention of ●.

.....

for and on behalf of

[Chargor]

Acknowledgement of Charge

To: [Security Trustee]

- 1 We acknowledge receipt of the notice [described above].
- 2 We have not received notice that any other person has an interest in the Account.
- 3 We will comply with the instructions in the notice.
- 4 We will not, without the Security Trustee's consent, permit any amount to be withdrawn from the Account.
- 5 We will not, without the Security Trustee's consent, exercise any right of combination, consolidation or set-off which we may have in respect of the Account.

Executed as a)

deed by)

[Account Bank]) Authorised signatory

acting by:)

Authorised signatory

Date: ●

SIGNATORIES

The Chargor

Executed as a deed by

NEW EARTH SOLUTIONS GROUP LIMITED

acting by:

[Redacted signature]

Director

in the presence of:

[Redacted signature]

Name of witness:

ASCHAM JAMES CLARK

[Redacted signature]

Address:

BURGES SALMON
LLP
ONE GLASS WHARF
BRISTOL
BS2 0ZX

The Security Trustee

NORDDEUTSCHE LANDESBANK GIROZENTRALE

by:

.....

Authorised signatory

SIGNATORIES

The Chargor

Executed as a deed by

NEW EARTH SOLUTIONS GROUP LIMITED

acting by:



Director

in the presence of:



Name of witness:

Address:

The Security Trustee

NORDDEUTSCHE LANDESBANK GIROZENTRALE

by: A. T. STUCKEY FDRUGALLO



Authorised signatory