



Registration of a Charge

Company name: **FIRMUS ENERGY (DISTRIBUTION) LIMITED**

Company number: **05375370**



X7FF4V0P

Received for Electronic Filing: **28/09/2018**

Details of Charge

Date of creation: **21/09/2018**

Charge code: **0537 5370 0004**

Persons entitled: **COMMERZBANK FINANCE & COVERED BOND S.A., 25, RUE EDWARD STEICHEN L-2540 LUXEMBOURG AS SECURITY AGENT (AS TRUSTEE FOR EACH OF THE SECURED PARTIES)**

Brief description:

Contains fixed charge(s).

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

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:

CLIFFORD CHANCE LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 5375370

Charge code: 0537 5370 0004

The Registrar of Companies for England and Wales hereby certifies that a charge dated 21st September 2018 and created by FIRMUS ENERGY (DISTRIBUTION) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th September 2018 .

Given at Companies House, Cardiff on 2nd October 2018

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 21 September **2018**

(1) FIRMUS ENERGY (DISTRIBUTION) LIMITED (as Chargor)

(2) COMMERZBANK FINANCE & COVERED BOND S.A. (as Security Agent)

**CHARGE OVER ACCOUNTS
AND
FLOATING CHARGE**

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THIS DEED is made on 21 September 2018

BETWEEN:-

- (1) **FIRMUS ENERGY (DISTRIBUTION) LIMITED** a company registered in England and Wales with company number 05375370 whose registered office is at 35 Great St. Helen's, London, England, EC3A 6AP (the "**Chargor**"); and
- (2) **COMMERZBANK FINANCE & COVERED BOND S.A.** (the "**Security Agent**", which expression includes its successors and assigns) (as agent and security trustee for itself and each of the Secured Parties on the terms and conditions set out in the Intercreditor Agreement).

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

"1881 Act"	means the Conveyancing and Law of Property Act 1881
"1911 Act"	means the Conveyancing Act 1911
"2011 Act"	means the Energy Act (Northern Ireland) 2011
"Acceleration Event"	means the Security Agent exercising any of its rights under clause 25.20 (<i>Acceleration</i>) of the Facilities Agreement
"Account"	means each of the accounts opened or maintained in Northern Ireland by the Chargor with any Account Bank (including any renewal, redesignation, replacement, subdivision or subaccount of such account) and the debt or debts represented thereby, including, but not limited to, each account of the Chargor described in Schedule 1 (<i>Accounts</i>), and excluding any account subject to the Security created pursuant to the Debenture (together the " Accounts ")
"Account Balance"	means the balance from time to time standing to the credit of each Account and all other rights and benefits accruing to or arising in connection with each Account (including, but not limited to, any entitlement to interest)
"Account Bank"	means Ulster Bank Limited, the Security Agent and any other bank, building society, financial institution or other person with whom the Chargor opens or maintains an Account
"Authority"	means the Northern Ireland Authority for Utility Regulation or the Department for the Economy, as applicable, or a successor to either of them
"Charged Property"	means all the property, assets and undertaking of the Chargor which from time to time are, or are expressed to be, the subject of the Security created in favour of the Security Agent by or pursuant to this Deed
"Collateral Rights"	means all rights, powers and remedies of the Security

	Agent provided by or pursuant to this Deed or by law
"Conveyance Licence"	means the licence for the conveyance of gas in Northern Ireland granted to Bord Gáis Éireann and assigned to the Chargor as modified from time to time
"Debenture"	means the English law governed debenture dated on or about the date of this Deed entered into by the Chargor in favour of the Security Agent
"Deed of Release"	means the deed of release dated on or about the date of this Deed and made between, amongst others, Deka Energy Enterprises Limited (company number 08876173) and NatWest Markets plc (formerly known as The Royal Bank of Scotland plc)
"Delegate"	means any delegate, agent, attorney or co-trustee appointed by the Security Agent
"Effective Time"	has the meaning given to that term in the Deed of Release
"Facilities Agreement"	means the facilities agreement dated on or about the date of this Deed and made between, among others, the Chargor as an Original Borrower, the Original Lenders referred to therein and the Security Agent
"Firmus (Supply)"	means Firmus Energy (Supply) Limited a company registered in England and Wales with company number 05369108 whose registered office is at 35 Great St. Helen's, London, England, EC3A 6AP
"Group"	has the meaning given to that term in the Facilities Agreement
"Intercreditor Agreement"	the intercreditor agreement dated on or about the date of this Deed and made between, amongst others, Commerzbank Finance & Covered Bond S.A. as agent, the Security Agent, Deka Energy Associates Limited as original parent and original subordinated creditor and Deka Energy Enterprises Limited as the company
"Licence"	means each of: <ul style="list-style-type: none"> (a) the Conveyance Licence; (b) the licence for the supply of gas in Northern Ireland granted on 24 March 2005 to Bord Gáis Éireann and assigned to Firmus (Supply) as modified from time to time; (c) the licence for the supply of gas in Northern Ireland granted on 9 June 2006 to Firmus (Supply) as modified from time to time; and (d) the licence for the supply of electricity in Northern Ireland granted on 12 November 2008 to Firmus (Supply) as modified from time to time

"Notice of Charge and Assignment"	means a notice of charge and assignment in the form set out in Schedule 2 (<i>Form of Notice of Charge and Assignment</i>)
"Party"	means a party to this Deed
"Receiver"	means any receiver, receiver and manager or administrative receiver of the whole or any part of the Charged Property and that term will include any appointee made under a joint or several appointment
"Regulations"	means the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I.2003/3226) (as amended by the Financial Collateral Arrangements (No 2) Regulations 2003 (Amendment) Regulations 2009 (S.I. 2009/2462)) or any equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements and "Regulation" means any of them
"Relevant Asset"	means any "relevant asset" as the term is defined in the Conveyance Licence
"Secured Obligations"	means all the Liabilities and all other present and future obligations at any time due, owing or incurred by the Chargor to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity
"Security"	means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect
"Security Period"	means the period beginning on and from the Effective Time and ending on the Final Discharge Date

1.2 Incorporation of terms

Unless the context otherwise requires or unless defined in this Deed, all words and expressions defined or whose interpretation is provided for in the Facilities Agreement, the Intercreditor Agreement or in any other Finance Document have the same meanings in this Deed.

1.3 Interpretation

- 1.3.1 The principles of interpretation set out in Clauses 1.2 (*Construction*) to 1.5 (*Currency symbols and definitions*) of the Facilities Agreement shall apply to this Deed insofar as they are relevant to it and in this Deed, unless the context otherwise requires, a reference to a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, restated or replaced (however fundamentally) and includes any increase in, extension of, or change to, any facility made available under that Finance Document or other agreement or instrument.
- 1.3.2 References to any matter being "permitted" under any agreement shall include references to such matters not being prohibited or otherwise approved under such agreement.

1.4 **Acknowledgement**

The Chargor acknowledges that the Security Agent enters into this Deed for itself and as trustee for the Secured Parties who shall be entitled to the full benefit of this Deed.

1.5 **Effect as a deed**

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Security Agent.

1.6 **Third party rights**

Clauses 1.6 (*Third party rights*) and 35.2 (*Certificates and determinations*) of the Facilities Agreement are deemed to form part of this Deed as if expressly incorporated into it and as if all references in those clauses to the Facilities Agreement were references to this Deed.

1.7 **Regulatory Restriction**

Clause 24.35 (*Regulatory Restrictions*) of the Facilities Agreement will apply as if set out in full in this Deed.

2. **COVENANT TO PAY**

2.1 **Secured Obligations**

The Chargor covenants with the Security Agent that it shall, on demand of the Security Agent, pay and discharge and satisfy the Secured Obligations in accordance with their respective terms (provided and to the extent that the same have become due in accordance with their respective terms).

3. **CHARGES**

3.1 **Fixed Charge and Assignment**

As a continuing security for the payment and discharge of the Secured Obligations, and with effect from the Effective Time, the Chargor as beneficial owner charges by way of first fixed charge and assigns absolutely to the Security Agent all amounts standing to the credit of the Accounts and all its present and future right, title and interest in and to, and all benefits accruing under or in connection with, the Account Balance, subject to a proviso for reassignment on redemption.

3.2 **Floating Charge**

As a continuing security for the payment and discharge of the Secured Obligations and with effect from the Effective Time, the Chargor as beneficial owner charges to the Security Agent by way of first floating charge all of its rights, title and interest from time to time in the whole of its property, assets and undertaking, present and future and wherever situated which are not for any reason effectively charged, mortgaged or assigned (whether in law or equity) by way of fixed security by this Deed.

3.3 **Qualifying floating charge**

Paragraph 15 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 will apply to the floating charge created by this Deed.

3.4 **Exclusion of Relevant Assets**

Notwithstanding any other term of this Deed, the Security from time to time constituted by this Deed shall not extend to the Chargor's interest in any Relevant Asset or any

asset, the granting of Security in respect of which is prohibited under the terms of any Licence or the 2011 Act, is only permitted with the consent of the Authority, or which relates to any asset which is the subject of the Security created by the Debenture.

4. **CRYSTALLISATION OF FLOATING CHARGE**

4.1 **Crystallisation: By Notice**

Subject to Clause 9.6 (*Effect of moratorium*), the Security Agent may at any time by notice in writing to the Chargor convert the floating charge created by Clause 3.2 (*Floating Charge*) with immediate effect into a fixed charge as regards any property or assets specified in such notice if:-

- 4.1.1 an Acceleration Event has occurred;
- 4.1.2 the Security Agent considers, acting reasonably, that any of the Charged Property may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process;
- 4.1.3 the Security Agent considers, acting reasonably, that it is necessary (acting reasonably) in order to protect the priority of the Security created by or pursuant to this Deed; or
- 4.1.4 the Chargor requests the Security Agent to exercise any of its powers under this Deed.

4.2 **Crystallisation: Automatic**

The floating charge created by Clause 3.2 (*Floating Charge*) will automatically be converted (without notice) with immediate effect into a fixed charge as regards all of the undertaking and assets subject to the floating charge if:-

- 4.2.1 the Chargor creates or attempts to create any Security (other than as permitted pursuant to the terms of the Facilities Agreement) over any of the Charged Property; or
- 4.2.2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Property; or
- 4.2.3 any step is taken (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional liquidator, administrator or Receiver in respect of the Chargor, over all or any part of its assets, or if such person is appointed.

4.3 **Crystallisation: Moratorium where directors propose voluntary arrangement**

The floating charge created by Clause 3.2 (*Floating Charge*) may not be converted into a fixed charge solely by reason of:-

- 4.3.1 the obtaining of a moratorium; or
- 4.3.2 anything done with a view to obtaining a moratorium under Schedule A1 to the Insolvency (Northern Ireland) Order 1989.

5. **NOTICE OF CHARGE AND ASSIGNMENT**

The Chargor shall, on or before the date falling five Business Days after the date on which the Effective Time occurs or if later, on or before the date falling ten Business Days after the date on which an Account is opened:-

- 5.1.1 deliver to the relevant Account Bank a Notice of Charge and Assignment; and
- 5.1.2 use reasonable endeavours to procure that the relevant Account Bank acknowledges receipt of that notice substantially in the form set out in Schedule 3 (*Form of Acknowledgement and Confirmation*).

6. ACCOUNTS

6.1 Accounts: Interest

- 6.1.1 Subject to Clause 6.1.2, interest accruing on the Account Balance shall be paid into the relevant Account at the rate agreed from time to time between the relevant Account Bank and the Chargor.
- 6.1.2 Until the Security created by this Deed becomes enforceable, interest accruing on the Account Balance shall be paid to the Chargor.

6.2 Accounts: before an Acceleration Event

Without prejudice to the first fixed charge and assignment created pursuant to Clause 3.1 (*Fixed Charge and Assignment*), the Chargor shall, prior to the occurrence of an Acceleration Event, be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account.

6.3 Accounts: after an Acceleration Event

- 6.3.1 The Security Agent shall, upon the occurrence of an Acceleration Event be entitled without notice to exercise from time to time all rights, powers and remedies held by it as assignee and charge of the Accounts and to:-
 - (a) demand and receive all and any moneys due under or arising out of each Account;
 - (b) exercise all such rights as the Chargor were then entitled to exercise in relation to such Account or might, but for the terms of this Deed, exercise; and
 - (c) apply, transfer or set-off any or all of the credit balances from time to time on any Account in or towards the payment or other satisfaction of all or part of the Secured Obligations in accordance with Clause 11 (*Application of Moneys*).
- 6.3.2 After the occurrence of an Acceleration Event, the Chargor shall not be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Account except with the prior consent of the Security Agent (in its capacity as such).

7. COVENANTS

The covenant in this Clause 7 remain in force from the date of this Deed until the expiry of the Security Period.

7.1 Security

Except as permitted under the Finance Documents the Chargor shall not at any time during the Security Period create or permit to subsist any Security over all or any part of the Charged Property or dispose of or otherwise deal with any part of the Charged Property.

8. FURTHER ASSURANCE

8.1 Extension of implied covenant

The covenant set out in section 7 of the 1881 Act shall extend to include the obligations set out in Clause 8.2 below.

8.2 Further assurance

Subject to the Agreed Security Principles, the Chargor shall promptly, at its own cost, take all such action (including making all filings, registrations and notarisations) and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may specify (and in such form as the Security Agent may require) in favour of the Security Agent or its nominee(s):

8.2.1 to create, perfect, protect and/or maintain the Security created or intended to be created in respect of the Charged Property (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Property) or for the exercise of the Collateral Rights;

8.2.2 to confer on the Security Agent Security over any asset or undertaking of the Chargor located in any jurisdiction outside Northern Ireland equivalent or similar to the Security intended to be conferred by or pursuant to this Deed; and/or

8.2.3 to facilitate the realisation of the Charged Property.

9. DEMAND AND ENFORCEMENT

9.1 Enforcement

Subject to Clause 9.6 (*Effect of moratorium*) and to the 2011 Act, the Security created by this Deed shall become immediately enforceable upon:-

9.1.1 the occurrence of an Acceleration Event;

9.1.2 any request being made by the Chargor to the Security Agent for the appointment of a Receiver or an administrator, or for the Security Agent to exercise any other power or right available to it; or

9.1.3 the occurrence of any event causing, or purporting to cause, the floating charge created by this Deed to become fixed in relation to any Charged Property.

9.2 Powers on enforcement

At any time after the Security created by this Deed has become enforceable, the Security Agent may (without prejudice to any other rights and remedies and without notice to the Chargor) do all or any of the following (provided that such action is taken in accordance with the terms of the Intercreditor Agreement):-

9.2.1 exercise the power of sale under section 19 of the 1881 Act and section 4 of the 1911 Act together with all other powers and rights conferred on mortgagees by the 1881 Act and the 1911 Act as varied and extended by this Deed, without the restrictions contained in sections 20 or 24(1) of the 1881 Act;

9.2.2 exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to

any Charged Property, without the restrictions imposed by sections 18 of the 1881 Act and section 3 of the 1911 Act;

- 9.2.3 apply the Account Balance (whether on or before the expiry of any fixed or minimum period for which it has been placed with the relevant Account Bank) in or towards satisfaction of the Secured Obligations or any part of them;
- 9.2.4 without prejudice to clause 9.2.1, exercise all the powers and rights which may be exercisable by the beneficial owner of the Accounts or the Account Balance and all other powers and rights conferred on mortgagees by the 1881 Act and the 1911 Act, as varied and extended by this Deed, without the restrictions contained in sections 20 or 24(1) of the 1881 Act;
- 9.2.5 subject to Clause 10.1 (*Method of appointment or removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Charged Property;
- 9.2.6 to the extent that any Charged Property constitutes Financial Collateral, as defined in the Regulations, appropriate it and transfer the title in and to it to the Security Agent insofar as not already transferred, subject to paragraphs (1) and (2) of Regulation 18; and
- 9.2.7 appoint an administrator of the Chargor.

9.3 **Disposal of the Charged Property**

In exercising the powers referred to in Clause 9.2 (*Powers on enforcement*), the Security Agent or any Receiver may sell or dispose of all or any of the Charged Property at the times, in the manner and order, on the terms and conditions and for the consideration determined by it in accordance with the terms of the Intercreditor Agreement.

9.4 **Same rights as Receiver**

Any rights conferred by any Finance Document upon a Receiver may be exercised by the Security Agent, or to the extent permitted by law, an administrator, after the Security created by this Deed has become enforceable, whether or not the Security Agent was taken possession or appointed a Receiver of the Charged Property.

9.5 **Delegation**

The Security Agent, may delegate in any manner to any person any rights exercisable by the Security Agent under any Finance Document. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Security Agent thinks fit.

9.6 **Effect of moratorium**

The Security Agent shall not be entitled to exercise its rights under Clause 9.1 (*Enforcement*) or Clause 4.1 (*Crystallisation: by notice*) where the right arises as a result of an Acceleration Event occurring solely due to any person obtaining, or taking steps to obtain, a moratorium pursuant to Schedule A1 of the Insolvency (Northern Ireland) Order 1989.

10. RECEIVERS

10.1 Method of appointment or removal

Every appointment or removal of a Receiver, any delegate or any other person by the Security Agent under this Deed shall be in writing under the hand of any officer or manager of the Security Agent (subject to any requirement for a court order in the case of the removal of an administrative receiver).

10.2 Removal

The Security Agent may (subject to the application of article 55 of the Insolvency (Northern Ireland) Order 1989) remove any person from office in relation to all or any part of the Charged Property of which he is the Receiver and at any time (before or after any person shall have vacated office or ceased to act as Receiver in respect of any of the Charged Property) appoint a further or other Receiver or Receivers over all or any part of the Charged Property.

10.3 Powers

Every Receiver shall have and be entitled to exercise all the powers:-

- 10.3.1 of the Security Agent under this Deed;
- 10.3.2 conferred by the 1881 Act on mortgagees in possession and on receivers appointed under the 1881 Act;
- 10.3.3 of an administrative receiver set out in Schedule 1 to the Insolvency (Northern Ireland) Order 1989 (whether or not the Receiver is an administrative receiver);
- 10.3.4 in relation to all or any part of the Charged Property, which he would have if he were its only beneficial owner; and
- 10.3.5 to do all things incidental or conducive to any functions, powers, authorities or discretions conferred or vested in the Receiver.

10.4 Receiver as agent

The Receiver shall be the agent of the Chargor (which shall be solely liable for his acts, defaults, remuneration, losses and liabilities) unless and until the Chargor goes into liquidation, from which time he shall act as principal and shall not become the agent of the Security Agent.

10.5 Joint or several

If two or more persons are appointed as Receivers of all or any part of the Charged Property, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

10.6 Receiver's remuneration

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by the Security Agent and the maximum rate specified in section 24(6) of the 1881 Act shall not apply.

11. **APPLICATION OF MONEYS**

11.1 **Application of moneys**

All moneys received or recovered and any non-cash recoveries made or received by the Security Agent or any Receiver pursuant to this Deed or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of section 24(8) of the 1881 Act) be applied first in the payment or other discharge of the costs, charges and expenses incurred and payments made by the Receiver, the payment or other discharge of his remuneration and the discharge of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Security Agent (notwithstanding any purported appropriation by the Chargor) in accordance with the terms of the Intercreditor Agreement.

11.2 Clause 11.1 will override any appropriation made by the Chargor.

12. **POWER OF ATTORNEY**

12.1 **Appointment**

The Chargor irrevocably and by way of security appoints:-

12.1.1 the Security Agent (whether or not a Receiver has been appointed);

12.1.2 any delegate or sub-delegate of, or other person nominated in writing by, an officer of the Security Agent; and

12.1.3 (as a separate appointment) each Receiver,

severally as the Chargor's attorney and attorneys with power to do any act, and execute and deliver any deed or other document (including any Notice of Charge and Assignment), on behalf of and in the name of the Chargor, which the Chargor could be required to do or execute under any provision of this Deed, or which the Security Agent in its sole opinion may consider to be necessary or desirable (acting reasonably) for carrying out any obligation imposed on the Chargor under this Deed, perfecting its title to all or any part of the Charged Property or enabling the Security Agent or the Receiver to exercise, or delegate the exercise of, any of the Collateral Rights (including, after the occurrence of an Acceleration Event, the exercise of any right of a legal or beneficial owner of the Charged Assets).

12.2 **Ratification**

The Chargor ratifies and confirms and agrees to ratify and confirm whatever any attorney appointed pursuant to Clause 12.1 (*Appointment*) does or purports to do in the exercise or purported exercise of all or any of the powers, acts or other matters referred to in Clause 12.1 (*Appointment*).

13. **PROTECTION OF THIRD PARTIES**

13.1 **Statutory powers**

In favour of any purchaser, the statutory powers of sale and of appointing a Receiver which are conferred upon the Security Agent, as varied and extended by this Deed, and all other powers of the Security Agent, shall be deemed to arise (and the Secured Obligations shall be deemed due and payable for that purpose) at the Effective Time.

13.2 **Purchasers**

No purchaser from or other person dealing with the Security Agent, any person to whom it has delegated any of its powers, or the Receiver, shall be concerned:-

- 13.2.1 to enquire whether any of the powers which the Security Agent or a Receiver have exercised has arisen or become exercisable;
- 13.2.2 to enquire whether the Secured Obligations remain outstanding or whether any event has happened to authorise the Receiver to act; or
- 13.2.3 as to the propriety or validity of the exercise of those powers,

and the title and position of a purchaser or such person shall not be impeachable by reference to any of those matters.

13.3 **Receipts**

All the protection to purchasers contained in sections 21 and 22 of the 1881 Act, article 52(3) of the Insolvency (Northern Ireland) Order 1989 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any other Secured Party, any Receiver or any person to whom any of them have delegated any of their powers.

14. **PROTECTION OF THE SECURED PARTIES AND ANY RECEIVER**

14.1 **Not mortgagee in possession**

Without prejudice to any other provision of this Deed, and except in the case of gross negligence or wilful default upon its part, none of the Security Agent, any Receiver or any of their respective officers or employees shall be liable:-

- 14.1.1 to account as mortgagee in possession; or
- 14.1.2 for any default or omission for which a mortgagee in possession might be liable,

and if and whenever the Security Agent or any Receiver enters into possession of all or any part of the Charged Property it shall be entitled at any time it or he thinks fit to relinquish possession.

14.2 **Continuing protection**

The provisions of this Clause 14 (*Protection of the Secured Parties and any Receiver*) shall continue in full force and effect notwithstanding any release or discharge of this Deed or the discharge of any Receiver from office.

15. **PROVISIONS RELATING TO THE SECURITY AGENT**

15.1 **Powers and discretions**

The rights, powers and discretions given to the Security Agent in this Deed:-

- 15.1.1 may be exercised as often as, and in such manner as, the Security Agent thinks fit;
- 15.1.2 are cumulative, and are not exclusive of any of its rights under the general law; and

15.1.3 may only be waived in writing and specifically, and any delay in the exercise, or non-exercise of, any right, is not a waiver of it.

15.2 **Trusts**

The perpetuity period for any trusts constituted by this Deed shall be 80 years.

16. **PRESERVATION OF SECURITY**

16.1 **Continuing Security**

This Deed shall be a continuing security to the Security Agent and shall remain in force until expressly discharged in writing by the Security Agent notwithstanding any intermediate settlement of account or other matter or thing whatsoever.

16.2 **Additional Security**

This Deed is without prejudice and in addition to, and shall not merge with, any other right, remedy or Security of any kind which the Security Agent or any other Secured Party may have now or at any time in the future for or in respect of any of the Secured Obligations.

16.3 **Immediate recourse**

The Chargor waives any right it may have of first requiring any Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights of Security or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

16.4 **Appropriations**

During the Security Period each Secured Party may:-

16.4.1 refrain from applying or enforcing any monies, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Obligations, or, subject to Clause 11.1 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Obligations or otherwise) and the Chargor shall not be entitled to the same; and

16.4.2 hold in an interest-bearing suspense account any moneys received from the Chargor on or account of the Secured Obligations.

16.5 **New Accounts**

If the Security Agent or any other Secured Party receives notice (whether actual or otherwise) of any subsequent Security over or affecting any of the Charged Property or if a petition is presented or a resolution passed in relation to the winding up of the Chargor, it may close the current account or accounts and/or open a new account or accounts for the Chargor. If the Security Agent or any other Secured Party does not open a new account or accounts immediately it shall nevertheless be treated as if it had done so at the time when the relevant event occurred, and as from that time all payments made by the Chargor to that Secured Party shall be credited or be treated as having been credited the new account or accounts and shall not operate to reduce the Secured Obligations.

16.6 **Further Advances**

For the purposes of section 43(1) of the Land Registration Act (Northern Ireland) 1970 the Security Agent confirms on behalf of the Lenders that the Lenders shall make further advances to the Borrowers on the terms and subject to the conditions of the Finance Documents.

16.7 **Deferral of Chargor's rights**

During the Security Period and unless the Security Agent otherwise directs, the Chargor shall not exercise any rights which it may have by reason of performance of its obligations under this Deed or the enforcement of the Security created by this Deed:-

- 16.7.1 to receive or claim payment from, or be indemnified by an Obligor;
- 16.7.2 to claim any contribution from any guarantor of, or provider of Security in respect of, any Obligor's obligations under the Finance Documents;
- 16.7.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of any Secured Party under any Finance Document or of any guarantee or Security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
- 16.7.4 to exercise any right of set-off against any Obligor; and/or
- 16.7.5 to claim or prove as a creditor of any Obligor in competition with any Secured Party.

17. **RELEASE**

17.1 **Release of Security**

Upon the expiry of the Security Period, the Security Agent shall promptly, at the request and cost of the Chargor, release and cancel the Security created by this Deed and procure the reassignment to the Chargor of the property and assets assigned to the Security Agent pursuant to this Deed, in each case subject to Clause 17.2 (*Reinstatement*) and without recourse to, or any representation or warranty by, the Security Agent or any of its nominees.

17.2 **Reinstatement**

If the Security Agent considers (acting reasonably) that any amount paid or credited to any Secured Party under any Finance Document (whether in respect of the obligations of the Chargor or any Obligor or any Security for those obligations or otherwise) is capable of being avoided, reduced or otherwise set aside:-

- 17.2.1 that amount shall not be considered to have been paid for the purposes of determining whether the Secured Obligations have been irrevocably and unconditionally paid and discharged; and
- 17.2.2 the liability of the Chargor and the Security created by this Deed shall continue as if that amount had not been paid or credited.

17.3 **Consolidation**

Section 17 of the 1881 Act dealing with the consolidation of mortgages shall not apply to this Deed.

18. **CHANGES TO THE PARTIES**

18.1 **No assignments or transfers by Chargor**

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Deed.

18.2 **Assignments by the Security Agent**

The Security Agent may assign all or any of its rights under this Deed to the extent permitted by the terms of the Debt Documents. The Security Agent shall be entitled to disclose such information concerning the Chargor and this Deed as the Security Agent considers appropriate to any actual or proposed direct or indirect assignee or to any person to whom information may be required to be disclosed by any applicable law.

18.3 **Successors**

This Deed shall remain in effect despite any amalgamation or merger (however effected) relating to the Security Agent. References to the Security Agent shall include (i) any transferee, assignee or successor in title of the Security Agent, (ii) any entity into which the Security Agent is merged or converted or with which it may be consolidated, (iii) any legal entity resulting from any merger, conversion or consolidation to which such Security Agent is a party and (iv) any other person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Security Agent under this Deed and the Intercreditor Agreement or to which, under such laws, those rights and obligations have been transferred (such person described in (i) to (iv) being a successor to the Security Agent for all purposes under the Finance Documents).

19. **MISCELLANEOUS PROVISIONS**

19.1 **Severability**

If any provision of this Deed is illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-

19.1.1 the validity or enforceability of any other provision, in any jurisdiction; or

19.1.2 the validity or enforceability of that particular provision, in any other jurisdiction.

19.2 **Amendments and variations**

This Deed shall remain in full force and effect notwithstanding any amendment, restatement, novation or supplementation of the Finance Documents (including any increase in the amount of the Secured Obligations).

19.3 **Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provide by law.

19.4 **Counterparts**

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

20. **GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by the laws of Northern Ireland.

21. **ENFORCEMENT**

21.1 **Jurisdiction of Northern Irish Courts**

21.1.1 The courts of Northern Ireland have exclusive jurisdiction to settle any dispute (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "**Dispute**").

21.1.2 The Parties agree that the courts of Northern Ireland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

21.1.3 This Clause 21.1 (*Jurisdiction of Northern Irish Courts*) is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

EXECUTED AS A DEED and delivered on the date appearing at the beginning of this Deed.

SCHEDULE 1 - ACCOUNTS

Chargor	Account number	Account name	Account bank	Sort code
Firmus Energy (Distribution) Limited (company number 05375370)	██████	firmus energy Distribution Limited	Ulster Bank Limited	██████
Firmus Energy (Distribution) Limited (company number 05375370)	██████	firmus energy Distribution Limited	Ulster Bank Limited	██████

SCHEDULE 2

FORM OF NOTICE OF CHARGE AND ASSIGNMENT

[On Chargor's headed notepaper]

To: [] [Account Bank]

Attention: []

Date: []

Dear Sirs

Account number [] Sort code [] (the "Account")

1. We refer to the Account, as it may from time to time be re-designated or re-numbered.
2. We hereby give you notice that by a deed of charge and assignment dated [] between us and Commerzbank Finance & Covered Bond S.A. (the "**Security Agent**") we have charged (by way of fixed charge) and assigned to the Security Agent (as agent and trustee for itself and certain other banks and financial institutions) absolutely all or any of the amounts now or from time to time deposited by us or on our behalf to the credit of the Account and all other amounts which at any time may stand to the credit of the Account together with any interest accrued or accruing from time to time on any of those amounts and all our rights in respect of those amounts or the Account (together, the "**Account Balance**").
3. Regardless of any previous authorisations or instructions which we may have given you we irrevocably authorise and instruct you (without making any further enquiry):-
 - 3.1 to disclose to the Security Agent any information relating to us, the Account and the Account Balance which the Security Agent may from time to time request you to disclose to it;
 - 3.2 we are permitted to withdraw or otherwise transfer the whole or any part of the money standing to the credit of the Account until you receive written notice from the Security Agent that we may no longer do so; and
 - 3.3 to comply with the terms of any written notice or instructions relating to or purporting to relate to the Account or the Account Balance which you may receive from the Security Agent.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by the laws of Northern Ireland.
5. Please confirm your acceptance of the above instructions to the Security Agent in the form of the attached Acknowledgement and Confirmation, with a copy to us.

Yours faithfully

For and on behalf of Firmus Energy (Distribution) Limited

copy: **Commerzbank Finance & Covered Bond S.A.**

SCHEDULE 3

FORM OF ACKNOWLEDGEMENT AND CONFIRMATION

[On Account Bank's headed notepaper]

To: Commerzbank Finance & Covered Bond S.A.
25, rue Edward Steichen
L-2540 Luxembourg

Attention: []

Date: []

Dear Sirs

Account number [] Sort code [] (the "Account")

1. We acknowledge receipt of a notice dated [] (the "**Notice**") from Firmus Energy (Distribution) Limited (company number 05375370) (the "**Chargor**") of a charge and security assignment (the "**Charge**") by the Chargor to you of certain amounts from time to time standing to the credit of the Account, together with the Account Balance (as defined in the Notice).
2. We confirm that:-
 - 2.1 the sum of £[] stands to the credit of the Account as at the date of this letter;
 - 2.2 we accept the instructions contained in the Notice and agree to comply with the terms of the Notice;
 - 2.3 we have not received notice of any:-
 - 2.3.1 other assignment of or encumbrance over the Account Balance or the Account; or
 - 2.3.2 interest, claim or right in or to either of them by any third party,and we shall promptly give you notice of any actual, potential or asserted assignment, encumbrance, interest, claim or right of which we become aware; and
 - 2.4 we unconditionally and irrevocably waive all rights of set-off, lien, combination or consolidation of accounts and security in respect of any Account[s] and similar rights (however described) which we may have now or in the future in respect of [each of] the Account[s] or the balance thereon to the extent that such rights relate to amounts owed to us by the Chargor.
3. We are aware that you are relying on this letter in connection with your rights under the Charge.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by the laws of Northern Ireland.

Yours faithfully

For and on behalf of [REDACTED] [*Account Bank*]

copy: Firmus Energy (Distribution) Limited

The Chargor

EXECUTED as a Deed
by FIRMUS ENERGY (DISTRIBUTION) LIMITED

acting by PETER MOORE, a director, in
the presence of:-

)
)
)
)
)



Director

Signature of witness:



Name of witness:

Address:

Occupation:

V
SARAH JOHNSON
POLLEN HOUSE, LONDON
WIS 3NP
DIRECTOR

The Security Agent

SIGNED for and on behalf of
COMMERZBANK FINANCE & COVERED
BOND S.A.

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