



**Registration of a Charge**

Company name: **FLOW ENERGY LIMITED**

Company number: **07489062**



X70R63M2

Received for Electronic Filing: **28/02/2018**

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**Details of Charge**

Date of creation: **20/02/2018**

Charge code: **0748 9062 0002**

Persons entitled: **1798 VOLANTIS CATALYST FUND II LTD  
LMAP EPSILON LIMITED  
PALM ACTIVE ENERGY, LP  
PALM GLOBAL SMALL CAP MASTER FUND LP**

**There are more than four persons entitled to the charge.**

Brief description: **ALL CURRENT AND FUTURE REAL PROPERTY AND INTELLECTUAL PROPERTY (IN EACH CASE EXCEPT FOR ANY EXCLUDED ASSETS) OWNED BY THE COMPANY, IN EACH CASE AS SPECIFIED (AND DEFINED) IN THE DEBENTURE REGISTERED BY THIS FORM MR01 (THE "DEBENTURE") AND INCLUDING THE DOMAIN NAME FLOWENERGY.UK.COM, FOR MORE DETAILS PLEASE REFER TO THE DEBENTURE.**

**Contains fixed charge(s).**

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

**Contains negative pledge.**

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**Authentication of Form**

## 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 COMPOSITE ORIGINAL INSTRUMENT.**

Certified by: **ERICA HUGHES**



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

Company number: 7489062

Charge code: 0748 9062 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th February 2018 and created by FLOW ENERGY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 28th February 2018 .

Given at Companies House, Cardiff on 5th March 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

20 February

2018

**FLOW ENERGY LIMITED**

- in favour of -

**1798 VOLANTIS CATALYST FUND II LTD, LMAP  
EPSILON LIMITED, PALM ACTIVE ENERGY, LP AND  
OTHERS**

**GUARANTEE AND DEBENTURE**

- relating to -

**FLOW ENERGY LIMITED**

**FLOWGROUP PLC**

**(i) UP TO £5,000,000 SECURED LOAN NOTES DUE AUGUST 2018**

**(ii) £20,000,000 FIXED RATE CONVERTIBLE LOAN NOTES 2020**



Matter ref 165012/000001  
F3/HUGHESER/59147/1

Hogan Lovells International LLP  
Atlantic House, Holborn Viaduct, London EC1A 2FG

Save if material redacted pursuant to s859G of the  
Companies Act 2006, I certify that this is a true and  
complete copy of the composite original seen by me

Name: \_\_\_\_\_

Title: Solicitor

Date: \_\_\_\_\_

26-2-2018

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THIS DEED is made and delivered on

20 February

2018

BY:

- (1) **Flow Energy Limited** (registered in England and Wales with company registration number 07489062), whose registered office is at Felaw Maltings, 48 Felaw Street, Ipswich, Suffolk, IP2 8PN (the "**Chargor**") in favour of
- (2) **1798 Volantis Catalyst Fund II Ltd, LMAP Epsilon Limited, Palm Active Energy, LP, Palm Global Small Cap Master Fund LP and Provincial House Estates Limited (UK)** (the "**Original Noteholders**").

**WHEREAS:**

- (A) On 12 June 2017, Flowgroup plc ("**FPLC**"), a company incorporated in England and Wales with company number 05819555 and the holding company of the Chargor, entered into an instrument pursuant to which FPLC issued £20,000,000 fixed rate convertible loan notes due 2020 (the "**2017 Loan Notes**")
- (B) By resolution of its board of directors passed on or about the date of this Agreement 2018, the Chargor has authorised the issue of its up to £5,000,000 secured loan notes due August 2018 (the "**2018 Loan Notes**").
- (C) The Chargor has agreed with the Original Noteholders to enter into this Deed to guarantee the obligations of FPLC in respect of the 2017 Loan Notes and to secure its obligations under such guarantee and its obligations as issuer of the 2018 Loan Notes to the Secured Creditors, in each case as set out herein.

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed and each Legal Charge (as defined below):

"**2017 Notes Instrument**" means the instrument dated 12 June 2017 of FPLC constituting £20,000,000 7.5% fixed rate convertible loan notes due 2020 of FPLC.

"**2017 Noteholder**" means a person for the time being entered in the Register (as defined in the 2017 Notes Instrument) as holder of any 2017 Notes.

"**2017 Notes**" means from time to time the notes then outstanding and issued pursuant to the 2017 Notes Instrument or, as the case may be, the principal amounts represented by them and for the time being issued and outstanding, and a reference to a "**2017 Note**" is a reference to any one of such 2017 Notes.

"**2018 Notes Instrument**" means any loan note instrument entered into or to be entered into by the Chargor as contemplated in the 2018 Subscription Agreement for the issue of a tranche of the up to £5,000,000 secured loan notes due August 2018 of the Chargor.

"**2018 Noteholder**" means a person for the time being entered in the Register (as defined in a 2018 Notes Instrument) as holder of any 2018 Notes.

"**2018 Notes**" means from time to time the notes then outstanding and issued pursuant to the 2018 Notes Instruments or, as the case may be, the principal amounts represented by

them and for the time being issued and outstanding, and a reference to a **"2018 Note"** is a reference to any one of such 2018 Notes.

**"2018 Subscription Agreement"** means the subscription agreement dated on or around the date of this Deed between, amongst others, the Chargor and Palm Active Energy, LP, 1798 Volantis Catalyst Fund II Ltd and LMA Epsilon Limited as subscribers for the issue in one or more tranches of up to 5,000,000 secured loan notes due August 2018 of the Chargor.

**"Acceleration Event"** means that an Event of Default has occurred under and as defined in one or more Notes Instruments and accordingly the Majority Noteholders have resolved to enforce the Security constituted by this Deed.

**"Account"** means each of the accounts opened or maintained by the Chargor with any bank, building society, financial institution or other person (including any renewal, re-designation, replacement, subdivision or subaccount of such account) and the debt or debts represented thereby.

**"Charged Assets"** means all of the assets and undertaking of the Chargor which from time to time are the subject of any Security created or expressed to be created by it in favour of the Secured Creditors by or pursuant to this Deed and any Legal Charge.

**"Collateral Rights"** means all rights, powers and remedies of the Secured Creditors provided by or pursuant to this Deed and/or any Legal Charge or by law.

**"Excluded Assets"** means the Chargor's interest in the whole or any part of the Charged Assets in respect of which the creation of any Fixed Security by the Chargor is prohibited either absolutely or without consent.

**"Existing Security"** means:

- (a) the debenture dated 18 December 2015 granted by the Chargor in favour of Shell Energy Europe Limited; and
- (b) any other Security from time to time granted by the Chargor in favour of Shell Energy Europe Limited pursuant to the requirements of the Global Agreement.

**"Fixed Security"** means any mortgage, fixed charge or assignment expressed to be constituted by or pursuant to Clause 4 (*Fixed Security*) of this Deed.

**"Global Agreement"** means the agreement dated 9 December 2015 between the Chargor and Shell Energy Europe Limited.

**"Insurance Policy"** means each policy of insurance specified in Schedule 4 (*Insurance Policies*) and any policy of insurance in which the Chargor may from time to time have an interest (as amended or supplemented).

**"Intellectual Property"** means the intellectual property specified in Schedule 3 (*Intellectual Property*) and any patents, trademarks, service marks, designs, business and trade names, copyrights, design rights, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests, whether registered or unregistered, and the benefit of all applications and rights to use such assets in which the Chargor may from time to time have an interest.

**"Investments"** means the securities specified in Schedule 2 (*Shares and Investments*) and any:



- (a) stocks, shares, debentures and certificates of deposit and other instruments creating or acknowledging indebtedness, including alternative finance investment bonds (but not including the Shares);
- (b) interests in collective investment schemes, in whatever form or jurisdiction any such scheme is established, including partnership interests;
- (c) warrants and other instruments entitling the holder to subscribe for or acquire any investments described in paragraphs (a) or (b) above;
- (d) certificates and other instruments conferring contractual or property rights (other than options) in respect of the investments in paragraphs (a), (b) or (c) above; and
- (e) options to acquire any investments described in paragraphs (a), (b), (c) or (d) above,

in each case whether held directly by or to the order of the Chargor or by any trustee, nominee, custodian, fiduciary or clearance system on its behalf (including all rights against any such trustee, nominee, custodian, fiduciary or clearance system including, without limitation, any contractual rights or any right to delivery of all or any part of the Investments from time to time).

**"Land Registry"** means the official land registry for England and Wales.

**"Legal Charge"** means a charge by way of legal mortgage in respect of all or any part of the Real Property between the Chargor and the Secured Creditors substantially in the form of Schedule 5 (*Form of Legal Charge*).

**"Majority Noteholders"** means the Noteholders (or any one of them) acting in accordance with:

- (a) a resolution passed at a meeting of the Noteholders duly convened and held in accordance with the provisions of Schedule 10 (*Provisions as to Meetings of Noteholders*) by:
  - (i) a majority consisting of not less than sixty per cent. of the persons voting at the meeting upon a show of hands; or
  - (ii) if a poll is demanded, by a majority consisting of not less than sixty per cent. of the votes given on the poll; or
- (b) a written resolution signed in accordance with paragraph 20 of Schedule 10 (*Provisions as to Meetings of Noteholders*).

**"Monetary Claims"** means any book and other debts and monetary claims owing to the Chargor and any proceeds of such debts and claims (including any claims or sums of money deriving from or in relation to any Intellectual Property, any Investment, the proceeds of any Insurance Policy, any court order or judgment, any contract or agreement to which the Chargor is a party and any other assets, property, rights or undertaking of the Chargor).

**"Mortgaged Property"** means the freehold and leasehold property specified in the schedule to each Legal Charge and any freehold or leasehold property specified in Schedule 1 (*Mortgaged Property*).

**"Noteholders"** means the 2017 Noteholders and the 2018 Noteholders (being, at the date of this Deed, the Original Noteholders).

**"Notes"** means the 2017 Notes and the 2018 Notes.

**"Notes Instruments"** means the 2017 Notes Instrument and the 2018 Notes Instruments.

**"Notice of Assignment"** means a notice of assignment in substantially the form set out in Schedule 7 (*Form of Notice of Assignment of Insurance Policy*).

**"Notice of Charge"** means a notice of charge in substantially the form set out in Schedule 6 (*Form of Notice of Security to Account Bank*) and Schedule 9 (*Investments: Broker's Notice of Charge and Undertaking*).

**"Obligor"** means:

- (a) the Chargor; and
- (b) FPLC in its capacity as issuer of the 2017 Notes.

**"Party"** means a party to this Deed.

**"Real Property"** means (including as provided in Clause 1.6 (*Real Property*)), the Mortgaged Property and any present or future freehold or leasehold or immovable property and any other interest in land or buildings and any rights relating thereto in which the Chargor has an interest.

**"Receiver"** means a receiver, receiver and manager or, where permitted by law, an administrative receiver and that term will include any appointee made under a joint or several appointment.

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

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

**"Secured Creditors"** means any Receiver and each of the Noteholders.

**"Secured Obligations"** means all present and future obligations and liabilities of the Obligors (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by the relevant Obligor or by some other person) to the Secured Creditors under or pursuant to each of the Transaction Documents including any liability in respect of any further advances made under the Transaction Documents, except for any obligation or liability which, if it were included, would cause that obligation or liability or any of the Security in respect thereof, to be unlawful, prohibited or invalid by or under any applicable law.

**"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 the date of this Deed and ending on the date on which the Noteholders are satisfied that the Secured Obligations have been

irrevocably and unconditionally discharged in full and no Noteholder is under any further actual or contingent obligation to make advances or provide other financial accommodation to the Chargor, FPLC or any other person under any of the Transaction Documents.

**"Share Charge"** means the charge over the shares in the Chargor granted on or around the date of this Deed by FPLC in favour of the Original Noteholders.

**"Shares"** means all shares or similar securities held by the Chargor as investments or in subsidiaries.

**"Subordination Deed"** means the subordination deed dated on or around the date of this Deed between the Chargor, FPLC, the Noteholders and Shell Energy Europe Limited.

**"Tangible Moveable Property"** means any plant, machinery, office equipment, computers, vehicles, furniture, fittings and other chattels (excluding any for the time being forming part of the Chargor's stock in trade or work in progress).

**"Transaction Document"** means this Deed, the 2018 Subscription Agreement, any Legal Charge, each Notes Instrument, the Share Charge, and any other document designated as such by the Majority Noteholders and the Chargor.

## 1.2 Interpretation

Unless the context otherwise requires, the interpretative provisions set out in the paragraphs below shall apply in this Deed.

- (a) References to any Party shall be construed so as to include that Party's respective successors in title, permitted assigns and permitted transferees.
- (b) **"Including"** and **"in particular"** shall not be construed restrictively but shall mean respectively "including, without prejudice to the generality of the foregoing" and "in particular, but without prejudice to the generality of the foregoing".
- (c) A **"person"** includes any person, firm, company, corporation, government, state or agency of a state or any association, joint venture, trust or partnership (whether or not having separate legal personality) of two or more of the foregoing.
- (d) **"Property"** includes any interest (legal or equitable) in real or personal property and any thing in action.
- (e) **"Variation"** includes any variation, amendment, accession, novation, restatement, modification, assignment, transfer, supplement, extension, deletion or replacement however effected and "vary" and "varied" shall be construed accordingly.
- (f) **"Writing"** includes facsimile transmission legibly received except in relation to any certificate, notice or other document which is expressly required by this Deed to be signed and "written" has a corresponding meaning.
- (g) References to this Deed or to any other document (including any Transaction Document) include references to this Deed or such other document as varied in any manner from time to time, even if changes are made to the composition of the parties to this Deed or such other document or to the nature or amount of any facilities made available under such other document.

- (h) The singular shall include the plural and vice versa and any gender shall include the other genders.
- (i) Clauses, paragraphs and Schedules shall be construed as references to Clauses and paragraphs of, and Schedules to, this Deed.
- (j) Any reference to any statute or statutory instrument or any section of it shall be deemed to include a reference to any statutory modification or re-enactment of it for the time being in force in relation to the particular circumstances.
- (k) Headings in this Deed are inserted for convenience and shall not affect its interpretation.
- (l) Reference to any matter, action or thing being permitted under the Transaction Documents includes such matter, action or thing not being prohibited under the Transaction Documents.

### **1.3 Incorporation of provisions into each Legal Charge**

Clauses 6.1 (*Negative pledge and restriction on dealings*), 6.2 (*Implied covenants for title*), 7.1 (*Further assurance*), 14 (*Enforcement of Security*), 15 (*Extension of Powers and Right of Appropriation*), 16 (*Appointment of Receiver or Administrator*), 17 (*Powers of Receivers*), 20 (*Power of Attorney*), 25 (*Release of Security*), 28 (*Notices*), 29 (*Expenses, stamp taxes and indemnity*), 30 (*Discretion and delegation*), 31 (*Governing Law*) and 33 (*Third Party Rights*) of this Deed are deemed to form part of each Legal Charge as if expressly incorporated into each Legal Charge and as if references in those Clauses to (a) this Deed were references to that Legal Charge and (b) the Charged Assets were references to the assets of the Chargors from time to time charged in favour of, or assigned (whether at law, or in equity) to the Noteholders by or pursuant to that Legal Charge.

### **1.4 Conflict**

It is agreed that each Legal Charge is supplemental to this Deed and to the extent the provisions of this Deed conflict with those of any Legal Charge, the provisions of that Legal Charge shall prevail.

### **1.5 Present and future assets**

- (a) A reference in this Deed or any Legal Charge to any Mortgaged Property, Charged Asset or other asset includes, unless the contrary intention appears, present and future Mortgaged Property, Charged Assets and other assets.
- (b) The absence of or incomplete details of any Charged Assets in any Schedule shall not affect the validity or enforceability of any Security under this Deed or any Legal Charge.

### **1.6 Real Property**

- (a) A reference in this Deed or in any Legal Charge to a mortgage, assignment or charge of any freehold, leasehold or commonhold property includes all buildings, fixtures and fittings from time to time on or forming part of that property and all Related Rights.
- (b) The terms of each Transaction Document are incorporated into this Deed, each Legal Charge and each other Transaction Document to the extent required for any

purported disposition of any Real Property contained in any Transaction Document to be a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989.

**1.7 Separate Security**

Clauses 4.1 (*Mortgage of Real Property*) to 4.12 (*Assignment of Insurance Policies*) shall be construed as creating a separate and distinct mortgage, fixed charge or assignment over each relevant asset within any particular class of assets defined in this Deed or any Legal Charge and the failure to create an effective mortgage, fixed charge or assignment (whether arising out of this Deed or any Legal Charge or any act or omission by any party) over any one asset shall not affect the nature or validity of the mortgage, charge or assignment imposed on any other asset whether within that same class of assets or not.

**1.8 Secured Creditors assume no obligation**

No Secured Creditor shall be under any obligation in relation to the Charged Assets as a consequence of this Deed or any Legal Charge and the Chargors shall at all times remain liable to perform all obligations in respect of the Charged Assets.

**1.9 Existing Security**

Notwithstanding any other provision of this Deed, the Security constituted pursuant to this Deed, all rights and remedies of each Secured Creditor, and all undertakings and representations of the Chargor under this Deed, are subject to the Existing Security and, in the event of any conflict between the provisions of this Deed and the Existing Security, the Existing Security shall prevail.

**1.10 Subordination Deed overrides**

The rights and remedies of the Secured Creditors pursuant to this Deed are subject to the provisions of the Subordination Deed and, in the event of any conflict between the Subordination Deed and this Deed, the provisions of the Subordination Deed will prevail.

**2. COVENANT TO PAY**

**2.1 Covenant to pay**

The Chargor:

- (a) covenants with and undertakes to the Secured Creditors that it will duly and punctually pay or discharge the Secured Obligations in the manner provided in each Notes Instrument, this Deed and the other Transaction Documents and shall indemnify each Secured Creditor against any losses, costs, charges, expenses and liabilities arising from any breach or failure by the Chargor to pay, discharge and satisfy the Secured Obligations in accordance with their respective terms; and
- (b) covenants and guarantees that it will, on the written demand of the Majority Noteholders, pay or discharge to the Noteholders all indebtedness now or in the future owing or incurred by FPLC to the Noteholders in respect of the 2017 Notes, in each case whether on or after such demand.

**2.2 Guarantee protections:**

- (a) **Reinstatement:** If any discharge, release or arrangement (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is made by a Secured Creditor in whole or in part on the basis of any payment,

security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor under this Deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.

(b) **Waiver of defences:** The obligations of the Chargor under this Deed will not be affected by an act, omission, matter or thing which, but for this Clause 2.2, would reduce, release or prejudice any of its obligations under this Charge (without limitation and whether or not known to it or any Secured Creditor) including:

- (i) any time, waiver or consent granted to, or composition with, the Chargor, any Obligor or other person;
- (ii) the release of the Chargor, any Obligor or any other person under the terms of any composition or arrangement with any creditor of any Obligor;
- (iii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Chargor, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (iv) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor, an Obligor or any other person;
- (v) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Transaction Document or any other document or Security including without limitation, any change in the purpose of; any extension of or increase in any facility or the addition of any new facility under any Transaction Document or other document or Security;
- (vi) any unenforceability, illegality or invalidity of any obligation of any person under any Transaction Document or any other document or Security; or
- (vii) any insolvency or similar proceedings.

(c) **Guarantor Intent:** Without prejudice to the generality of Clause 2.2(b) (*Waiver of Defences*), the Chargor expressly confirms that it intends that the Secured Obligations for which it grants security under this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Transaction Documents and/or any facility or amount made available under any of the Transaction Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

(d) **Immediate recourse:** The Chargor waives any right it may have of first requiring any Secured Creditor (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before

enforcing this Deed. This waiver applies irrespective of any law or any provision of a Transaction Document to the contrary.

- (e) **Appropriations:** Until all Secured Obligations have been irrevocably paid in full, each Secured Creditor (or any trustee or agent on its behalf) may refrain from applying or enforcing any other moneys, security or rights held or received by that Secured Creditor (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same.
- (f) **Deferral of the Chargor's rights:** Until all Secured Obligations have been irrevocably paid in full and unless the Majority Noteholders otherwise direct, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations or of a liability arising under this Deed:
  - (i) to be indemnified by an Obligor;
  - (ii) to claim any contribution from any other guarantor of any Obligor's obligations under the Transaction Documents;
  - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Creditors under the Transaction Documents or of any other guarantee or security taken pursuant to, or in connection with, the Transaction Documents by any Secured Creditor;
  - (iv) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Security, guarantee, undertaking or indemnity has been given pursuant to, or in connection with, the Transaction Documents;
  - (v) to exercise any right of set-off against any Obligor; and/or
  - (vi) to claim or prove as a creditor of any Obligor in competition with any Secured Creditor.

If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable the Secured Obligations to be repaid in full on trust for the Secured Creditors and shall promptly pay or transfer the same as the Majority Noteholders may direct for application in accordance with the Transaction Documents.

## 2.3 Proviso

The covenants contained in this Clause and the security created by this Deed shall not extend to or include any liability or sum which would otherwise cause any such covenant or security to be unlawful or prohibited by any applicable law.

## 2.4 Default interest

If the Chargor fails to pay any amount payable by it under this Deed or any Legal Charge on its due date, interest shall accrue on the overdue amount (both before and after judgment) at the rate determined in accordance with and on the terms set out in the relevant Transaction Document or at such other rate as may be agreed between the Chargor and the relevant Secured Creditor from time to time.

### **3. COMMON PROVISIONS**

#### **3.1 Common provisions as to all Security**

All the Security constituted by or pursuant to this Deed and any Legal Charge is:

- (a) (subject to the Existing Security) created with full title guarantee;
- (b) created in favour of the Original Noteholders; and
- (c) continuing security for the payment and discharge of all the Secured Obligations.

#### **3.2 Consent for Fixed Security**

- (a) The Chargor creates each Fixed Security subject to obtaining any necessary consent to such Fixed Security from any relevant third party.
- (b) The Fixed Security from time to time constituted by this Deed shall not extend to the Chargor's interest in the Excluded Assets unless and until any relevant consent has been obtained or any restriction on the creation of Security over any such asset is removed.

### **4. FIXED SECURITY**

#### **4.1 Mortgage of Real Property**

The Chargor charges, by way of second ranking legal mortgage (subject to the Existing Security), the Mortgaged Property.

#### **4.2 Fixed charge over Real Property**

The Chargor charges (to the extent not validly and effectively charged by way of second ranking legal mortgage (subject to the Existing Security) pursuant to Clause 4.1 (*Mortgage of Real Property*)), by way of second ranking fixed charge (subject to the Existing Security), all of its rights, title and interest from time to time in and to all the Real Property and all Related Rights.

#### **4.3 Fixed charge over Tangible Moveable Property**

The Chargor charges, by way of second ranking fixed charge (subject to the Existing Security), all of its rights, title and interest from time to time in and to the Tangible Moveable Property and all Related Rights.

#### **4.4 Fixed charge over Accounts**

The Chargor charges, by way of second ranking fixed charge (subject to the Existing Security), all of its rights, title and interest from time to time in and to the Accounts and all Related Rights.

#### **4.5 Fixed charge over contracts**

The Chargor charges, by way of second ranking fixed charge (subject to the Existing Security), all of its rights, title and interest from time to time in and to any contract or agreement to which the Chargor is a party including (but not limited to) each of its interest or currency rate swap, cap, floor, collar or option transactions and all Related Rights.



**4.6 Fixed charge over Monetary Claims**

The Chargor charges, by way of second ranking fixed charge (subject to the Existing Security), all of its rights, title and interest from time to time in and to the Monetary Claims (other than any claims which are otherwise subject to a fixed charge or assignment (at law or in equity) pursuant to this Deed) and all Related Rights (to the extent not already charged under this Clause 4.6).

**4.7 Fixed charge over Investments**

The Chargor charges, by way of second ranking fixed charge (subject to the Existing Security), all of its rights, title and interest from time to time in and to the Investments and all dividends, interest and other monies payable in respect of those Investments and all Related Rights (whether derived by way of redemption, bonus, preference, options, substitution, conversion, compensation or otherwise).

**4.8 Fixed charge over Shares**

The Chargor charges, by way of second ranking fixed charge (subject to the Existing Security), all of its rights, title and interest from time to time in and to the Shares and all dividends, interest and other monies payable in respect of those Shares and all Related Rights (whether derived by way of redemption, bonus, preference, options, substitution, conversion, compensation or otherwise).

**4.9 Fixed charge over Intellectual Property**

The Chargor charges, by way of second ranking fixed charge (subject to the Existing Security), all of its rights, title and interest from time to time in and to the Intellectual Property and all Related Rights.

**4.10 Fixed charge over goodwill**

The Chargor charges, by way of second ranking fixed charge (subject to the Existing Security), all of its rights, title and interest from time to time in and to any goodwill, rights and claims in relation to the uncalled capital of the Chargor.

**4.11 Fixed charge over other assets**

The Chargor charges (to the extent not validly and effectively assigned pursuant to Clause 4.12 (*Assignment of Insurance Policies*), by way of second ranking fixed charge (subject to the Existing Security), all of its rights, title and interest from time to time in and to each Insurance Policy (including the Insurance Policy in Part B of Schedule 4) and all Related Rights in relation to each of those assets.

**4.12 Assignment of Insurance Policies**

The Chargor assigns and agrees to assign absolutely, all of its rights, claims, title and interest from time to time in and to the proceeds of each Insurance Policy (excluding the Insurance Policy in Part B of Schedule 4) and all Related Rights solely to the extent that such relates to the Chargor subject always to a proviso for reassignment on irrevocable discharge in full of the Secured Obligations.

**5. FLOATING CHARGE**

**5.1 Floating charge**

- (a) The Chargor charges by way of second ranking floating charge (subject to the Existing Security) in favour of the Original Noteholders all present and future assets and undertaking of the Chargor.
- (b) The floating charge created by paragraph (a) of Clause 5.1 above shall be deferred in point of priority to all Fixed Security validly and effectively created by the Chargor under the Transaction Documents in favour of the Original Noteholders as security for the Secured Obligations.
- (c) Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by paragraph (a) of Clause 5.1 above.

**5.2 Crystallisation: by notice**

The Majority Noteholders may at any time by notice in writing to the Chargor convert the floating charge created pursuant to Clause 5.1 (*Floating charge*) with immediate effect into a fixed charge as regards any property or assets other than an Excluded Asset specified in the notice if

- (a) an Acceleration Event has occurred and the relevant default is continuing;
- (b) the Majority Noteholders reasonably consider that any of the Charged Assets may be in jeopardy or in danger or being seized or sold pursuant to any form of legal process;
- (c) the Majority Noteholders consider that it is necessary in order to protect the priority of the security; or
- (d) the Chargor requests the Majority Noteholders to exercise any of their powers under this Deed or any Legal Charge.

**5.3 Crystallisation: automatic**

Notwithstanding Clause 5.2 (*Crystallisation: by notice*) and without prejudice to any law which may have a similar effect, the floating charge created pursuant to Clause 5.1 (*Floating Charge*) will automatically be converted (without notice) with immediate effect into a fixed charge as regards all the assets subject to the floating charge if:

- (a) the Chargor creates or attempts to create any Security (other than any Security permitted under the terms of the Transaction Documents), over any of the Charged Assets;
- (b) any person levies or attempts to levy any distress, execution or other process against any of the Charged Assets; and
- (c) a resolution is passed or an order is made for the winding-up or dissolution of the Chargor.

**6. PROVISIONS AS TO SECURITY AND PERFECTION**

**6.1 Negative pledge and restriction on dealings**

Except as permitted under the Transaction 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 Assets or dispose of or otherwise deal with any part of the Charged Assets.

**6.2 Implied covenants for title**

- (a) The covenants set out in sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clauses 4 (*Fixed Security*) or 5 (*Floating charge*).
- (b) It shall be implied in respect of Clauses 4 (*Fixed Security*) and 5 (*Floating charge*) that, subject to the Existing Security, the Chargors are disposing of the Charged Assets free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

**6.3 Notice of Security; Accounts**

The Chargor shall, if requested by the Majority Noteholders from time to time after the occurrence of an Acceleration Event, promptly deliver (or procure the delivery of) to counsel acting for the Noteholders (as notified to the Chargor by the Majority Noteholders by not less than five business days' notice) a Notice of Charge in relation to the Accounts duly executed by, or on behalf of, the Chargor and the Chargor shall use all reasonable endeavours to procure from each account bank, building society, financial institution or other person with which any Account is opened or maintained, an acknowledgement in the form set out in such Notice of Charge.

**6.4 Notice of Security: other assets**

- (a) The Chargor shall, on the date of this Deed or, if later, when requested by the Majority Noteholders from time to time, promptly deliver (or procure the delivery of) to counsel acting for the Noteholders (as notified to the Chargor by the Majority Noteholders by not less than five business days' notice) a Notice of Assignment or a Notice of Charge (as appropriate) duly executed by, or on behalf of, the Chargor in relation to any asset (other than the Accounts) which is the subject of the Fixed Security and any floating charge which is converted into a fixed charge pursuant to Clauses 5.2 (*Crystallisation: by notice*) and 5.3 (*Crystallisation: automatic*).
- (b) The Chargor shall use all reasonable endeavours to procure from each recipient of such a Notice of Assignment or a Notice of Charge (as appropriate) an acknowledgement in the form set out therein.

**6.5 Deposit of documents of title: Investments**

Subject to Clause 6.8 (*No obligation during continuance of Existing Security*), after the occurrence of an Acceleration Event the Chargor shall promptly on the request of the Majority Noteholders, deposit (or procure the deposit of) with such person as the Majority Noteholders may designate by not less than five business days' notice to the Chargor all of the Investments and any certificates and other documents of title representing the Investments to which the Chargor (or its nominee(s)) is or becomes entitled, together with any other document which the Majority Noteholders may reasonably request (in such form and executed in such manner as the Majority Noteholders may reasonably require

(including stock transfer forms or other instruments of transfer executed in blank by it or on its behalf), with a view to perfecting or improving its security over the Investments or to registering any Investment in its name or the name of any nominee(s).

**6.6 Deposit of share certificates**

Subject to Clause 6.8 (*No obligation during continuance of Existing Security*), the Chargor shall:

- (a) on the date of this Deed, deposit (or procure the deposit of) with such person as the Majority Noteholders may designate by not less than five business days' notice to the Chargor all certificates or other documents of title to the Shares and stock transfer forms (executed in blank by it or on its behalf); and
- (b) promptly upon the accrual, offer or issue of any stocks, shares, warrants or other securities in respect of or derived from the Shares (or upon acquiring any interest therein), notify the Noteholders of that occurrence and deposit (or procure the deposit of) with such person as the Majority Noteholders may designate by not less than five business days' notice to the Chargor (i) all certificates or other documents of title representing such items and (ii) such stock transfer forms or other instruments of transfer (executed in blank by it or on its behalf) in respect thereof as the Majority Noteholders may request.

**6.7 Deposit of title deeds**

Subject to Clause 6.8 (*No obligation during continuance of Existing Security*), the Chargor shall:

- (a) on the date of this Deed or any Legal Charge (and promptly upon the acquisition by it of any interest in any Real Property at any time) deposit (or procure the deposit of) with such person as the Majority Noteholders may designate by not less than five business days' notice to the Chargor all deeds, certificates and other documents constituting or evidencing title to such Real Property; and
- (b) at any time thereafter deposit (or procure the deposit of) with such person as the Majority Noteholders may designate by not less than five business days' notice to the Chargor any further such deeds, certificates and other documents, promptly upon coming into possession of any or those items.

**6.8 No obligation during continuance of Existing Security**

The Chargor shall not be required to comply with any of the provisions of Clause 6.5 (*Deposit of documents of title: Investments*) to Clause 6.7 (*Deposit of Title Deeds*) above to the extent that any such Investments, certificates, stock transfer forms, deeds and other documents of title and any other documents are required to be deposited with Shell Energy Europe Limited pursuant to the Existing Security.

**6.9 Application to the Land Registry**

The Chargor hereby consents to an application being made to the Land Registry to enter a restriction in the proprietorship register of any registered land at any time forming part of the Real Property.

#### **6.10 Registration of Intellectual Property**

The Chargor shall, if requested by the Majority Noteholders, execute all such documents and do all such acts as the Majority Noteholders may reasonably require to record the interest of the Noteholders in any registers relating to any registered Intellectual Property.

#### **6.11 Further advances**

- (a) Subject to the terms of the Transaction Documents, the Noteholders are under an obligation to make further advances to the Obligors and that obligation will be deemed to be incorporated in this Deed as if set out in this Deed.
- (b) The Chargor consents to an application being made to the Land Registry to enter the obligation to make further advances on the Charges Register or any registered land forming part of the Charged Assets.

### **7. FURTHER ASSURANCE**

#### **7.1 Further assurance**

- (a) The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in paragraph (b) of Clause 7.1 below.
- (b) The Chargor shall promptly, at its own cost, enter into, execute and complete a Legal Charge over any Real Property in England and Wales not already the subject of a registrable Legal Charge and do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notarisations, registrations, notices and instructions) as the Majority Noteholders may reasonably specify (and in such form as the Majority Noteholders may reasonably require) in favour of the Noteholders:
  - (i) to create, perfect and/or protect the Security created or intended to be created in respect of the Charged Assets (which may include the execution by the Chargor or a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Assets) or for the exercise of the Collateral Rights;
  - (ii) to confer on the Noteholders Security over any asset or undertaking of the Chargor located in any jurisdiction outside England and Wales equivalent or similar to the Security intended to be conferred by or pursuant to this Deed and each Legal Charge to which it is a party; and/or
  - (iii) to facilitate the realisation of the Charged Assets.

#### **7.2 Necessary action**

The Chargor shall take all such action as is available to it (including making all filings and registrations and applying for relief against forfeiture) as may be necessary or as may reasonably be requested by the Majority Noteholders for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Noteholders by or pursuant to this Deed and each Legal Charge.

#### **7.3 Consents**

- (a) Subject to paragraph (b) below, the Chargor shall, as soon as possible, use all reasonable endeavours to obtain any consents necessary including any consent

necessary for any Legal Charge or to remove any restriction on the creation of Security (in each case in form and substance satisfactory to the Majority Noteholders, acting reasonably) to enable the assets of the Chargor including each of the Excluded Assets to be the subject of the relevant Fixed Security pursuant to this Deed and each Legal Charge. Immediately upon obtaining any such consent or removing any such restriction, the asset concerned will become subject to that Fixed Security and the Chargor shall promptly deliver a copy of such consent or evidence of such removal to the Noteholders.

- (b) The obligation of the Chargor under paragraph (a) above in respect to any necessary consent from Shell Energy Europe Limited shall be deemed to be satisfied by delivery of the consent letter dated on or around the date of this Deed from Shell Energy Europe Limited and referring to this Deed.

## **8. SHARES AND INVESTMENTS**

### **8.1 Prior rights under Existing Security: Shares**

The rights of the Noteholders under this Clause 8 are subject to the rights of Shell Energy Europe Limited under the Existing Security and, in the event of any conflict between this Deed and the Existing Security, the Existing Security shall prevail.

### **8.2 Dividends prior to an Acceleration Event**

Prior to the occurrence of an Acceleration Event, the Chargor shall be entitled to all dividends, interest and other monies arising from the Shares.

### **8.3 Dividends after an Acceleration Event**

Upon the occurrence of an Acceleration Event, the Majority Noteholders may, at their discretion, in the name of the Chargor or otherwise and without any further consent or authority from the Chargor, apply all dividends, interest and other monies arising from the Shares as though they were the proceeds of sale in accordance with Clause 18 (*Application of Monies*).

### **8.4 Voting rights prior to an Acceleration Event**

Prior to the giving of notice pursuant to Clause 8.5 (*Voting rights after an Acceleration Event*), the Chargor shall be entitled to exercise all voting rights in relation to the Shares.

### **8.5 Voting rights after an Acceleration Event**

At any time after the occurrence of an Acceleration Event, the Majority Noteholders may, at their discretion, (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor):

- (a) exercise (or refrain from exercising) any voting rights in respect of the Shares; and
- (b) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Shares including the right, in relation to any company whose shares or other securities are included in the Shares, to concur or participate in:
  - (i) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);

- (ii) the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
- (iii) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,

in each case in the manner and on the terms the Majority Noteholders think fit, and the proceeds of any such action shall form part of the Shares.

#### **8.6 Waiver of voting rights by Majority Noteholders**

- (a) The Majority Noteholders may, in their absolute discretion and without any consent or authority from the Chargor, at any time, by notice to the Chargor (which notice shall be irrevocable) elect to give up the right to exercise (or refrain from exercising) all voting rights and powers in respect of the Shares conferred or to be conferred on the Noteholders pursuant to Clause 8.5 (*Voting rights after an Acceleration Event*).
- (b) Once a notice has been issued by the Majority Noteholders under paragraph (a) of this Clause 8.6, on and from the date of such notice the Noteholders shall cease to have the rights to exercise or refrain from exercising voting rights and powers in respect of the Shares conferred or to be conferred on them pursuant to Clause 8.5 (*Voting rights after an Acceleration Event*) or any other provision of this Deed and all such rights will be exercisable by the Chargor. The Chargor shall be entitled, on and from the date of such notice, to exercise all voting rights and powers in relation to the Shares.

#### **8.7 Shares: Voting rights**

The Chargor shall not exercise (and shall procure that any nominee acting on its behalf does not exercise) its voting rights in relation to the Shares in any manner, or otherwise permit or agree to or concur or participate in any:

- (a) variation of the rights attaching to or conferred by all or any part of the Shares;
- (b) increase in the issued share capital of any company whose shares are charged pursuant to this Deed;
- (c) exercise, renunciation or assignment of any right to subscribe for any shares or securities; or
- (d) reconstruction, amalgamation, sale or other disposal of any company or any of the assets or undertaking of any company (including the exchange, conversion or reissue of any shares or securities as a consequence thereof) whose shares are charged pursuant to this Deed, which, in the opinion of the Majority Noteholders, would prejudice the value of, or the ability of the Noteholders to realise, the Security created by this Deed provided that the proceeds of any such action shall form part of the Shares.

#### **8.8 Investments and Shares: Payment of calls**

The Chargor shall pay when due all calls or other payments which may be or become due in respect of any of the Investments and Shares, and in any case of default by it in such payment, the Majority Noteholders may, if they think fit, make such payment on its behalf in which case any sums paid by any Noteholder shall be reimbursed by the Chargor to

that Noteholder on demand and shall carry interest from the date of payment by that Noteholder until reimbursed in accordance with Clause 2.2 (*Default interest*).

**8.9 Investments: Exercise of rights**

The Chargor shall not exercise any of its rights and powers in relation to any of the Investments in any manner which would prejudice the value of, or the ability of the Noteholders to realise, the Security created by this Deed.

**9. ACCOUNTS**

**9.1 Accounts: Notification and variation**

- (a) The Chargor shall promptly deliver to the Noteholders on the date of this Deed (and, if any change occurs thereafter, on the date of such change), details of each Account opened or maintained by it with any bank, building society, financial institution or other person.
- (b) The Chargor shall not, without the Majority Noteholders' prior written consent (or as required pursuant to the Existing Security), permit or agree to any variation of the rights attaching to any Account or close any Account.

**9.2 Accounts: Operation before an Acceleration Event**

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.

**9.3 Accounts: Operation after an Acceleration Event**

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 Majority Noteholders (or as required by Shell Energy Europe Limited pursuant to the Existing Security).

**9.4 Accounts: Application of monies**

Each relevant Noteholder shall, upon the occurrence of an Acceleration Event, be entitled without notice to 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 18 (*Application of Monies*).

**10. INSURANCES**

**10.1 Prior rights under Existing Security: Insurances**

The obligations of the Chargor and the rights of the Noteholders under this Clause 10 are subject to the rights of Shell Energy Europe Limited under the Existing Security and, in the event of any conflict between this Deed and the Existing Security, the Existing Security shall prevail.

**10.2 Insurance: Undertakings**

The Chargor shall at all times during the Security Period:

- (a) keep the Charged Assets insured in accordance with ordinary business practice;



- (b) promptly pay all premiums and other monies payable under all its Insurance Policies and promptly upon request, produce to the Noteholders a copy of each policy and evidence (in form and substance acceptable to the Majority Noteholders, acting reasonably) of the payment of such sums; and
- (c) after the occurrence of an Acceleration Event if required by the Majority Noteholders (but subject to the provisions of any lease of the Charged Assets), deposit with such person as the Majority Noteholders may designate by not less than five business days' notice to the Chargor all Insurance Policies relating to the Charged Assets.

#### **10.3 Insurance: Default**

If the Chargor defaults in complying with Clause 10.1 (*Insurance: Undertakings*), the Majority Noteholders may (without any obligation to do so) effect or renew any such insurance on such terms, in such name(s) and in such amount(s) as they reasonably considers appropriate, and all monies spent by any Noteholder in doing so shall be reimbursed by the Chargor to that Noteholder on demand and shall carry interest from the date of payment by that Noteholder until reimbursed in accordance with Clause 2.2 (*Default interest*).

#### **10.4 Application of Insurance proceeds**

All monies received under any Insurance Policies relating to the Charged Assets shall (subject to the rights and claims of any person having prior rights to such monies):

- (a) prior to the occurrence of an Acceleration Event, be applied in repairing, replacing, restoring or rebuilding the property or assets damaged or destroyed; and
- (b) after the occurrence of an Acceleration Event, be held upon trust for the Secured Creditors for application in accordance with Clause 18 (*Application of Monies*) and the Chargor waives any right it may have to require that any such monies are applied in reinstatement of any part of the Charged Assets.

### **11. REAL PROPERTY**

#### **11.1 Property: Notification**

The Chargor shall immediately notify the Noteholders of any contract, conveyance, transfer or other disposition for the acquisition by the Chargor (or its nominee(s)) of any Real Property.

#### **11.2 Lease covenants**

The Chargor shall, in relation to any lease, agreement for lease or other right to occupy to which all or any part of the Charged Assets is at any time subject:

- (a) pay the rents (if the lessee) and observe and perform in all material respects the covenants, conditions and obligations imposed on the lessor or (if the lessee) on the lessee; and
- (b) not do any act or thing whereby any lease or other document which gives any right to occupy any part of the Charged Assets becomes or may become subject to determination or any right of re-entry or forfeiture prior to the expiration of its term.

### 11.3 General property undertakings

The Chargor shall:

- (a) repair and keep in good and substantial repair and condition to the reasonable satisfaction of the Majority Noteholders all the Real Property at any time forming part of the Charged Assets;
- (b) not at any time without the prior written consent of the Majority Noteholders sever or remove any of the fixtures forming part of the Real Property or any of the plant or machinery (other than stock in trade or work in progress) on or in the Charged Assets (except for the purpose of any necessary repairs or replacement of it); and
- (c) comply with and observe and perform (a) all applicable requirements of all planning and environmental legislation, regulations and bye-laws relating to the Real Property, (b) any conditions attaching to any planning permissions relating to or affecting the Real Property and (c) any notices or other orders made by any planning, environmental or other public body in respect of all or any part of the Real Property.

### 11.4 Entitlement to remedy

- (a) If the Chargor fails to comply with any of the undertakings contained in this Clause 11, the Majority Noteholders shall be entitled (with such agents, contractors and others as it sees fit), to do such things as may in the reasonable opinion of the Majority Noteholders be required to remedy such failure and all monies spent by any Noteholder in doing so shall be reimbursed by the Chargor on demand with interest from the date of payment by that Noteholder until reimbursed in accordance with Clause 2.2 (*Default interest*).
- (b) The exercise by any Noteholder of its powers under this Clause 11.4 shall not render that Noteholder liable to account as mortgagee in possession.

## 12. UPON ENFORCEMENT

### 12.1 Application of Proceeds

Each Noteholder will apply the amounts received or recovered on enforcement of the Security as follows:

- (a) **first**, in or towards satisfaction of the Chargor's liability to any Tax Authority for any Taxes in respect of the Notes;
- (b) **second**, in or towards satisfaction of any reasonably incurred costs and expenses of the Noteholders;
- (c) **third**, in or towards satisfaction, *pro rata* and *pari passu* according to the respective amounts thereof, of principal and interest due and payable on the Notes (for the avoidance of doubt on a *pari passu* basis between the 2017 Notes and the 2018 Notes); and
- (d) **fourth**, any surplus to the Chargor for its own account.

**12.2 Moneys held on trust**

All moneys received by any Noteholder in respect of the Secured Obligations after the security constituted by this Deed becomes enforceable shall be held by it on trust to be applied in respect of the Secured Obligations in accordance with Clause 12.1.

**13. GENERAL UNDERTAKINGS**

**13.1 Intellectual Property**

The Chargor shall during the Security Period in respect of any Intellectual Property which is material to or required in connection with its business:

- (a) take all such steps and do all such acts as may be necessary to preserve and maintain the subsistence, validity and value of any such Intellectual Property; and
- (b) not use or permit any such Intellectual Property to be used in any way which may materially and adversely affect its value.

**13.2 Information and access**

The Chargor shall from time to time on request of the Majority Noteholders, furnish the Noteholders with such information as the Majority Noteholders may reasonably require about the Chargor's business and affairs, the Charged Assets and its compliance with the terms of this Deed and each Legal Charge and the Chargor shall permit the Majority Noteholders, their representatives, professional advisers and contractors, free access at all reasonable times and on reasonable notice (a) to inspect and take copies and extracts from the books, accounts and records of the Chargor and (b) to view the Charged Assets (without becoming liable as mortgagee in possession).

**14. ENFORCEMENT OF SECURITY**

**14.1 Enforcement**

Any time after the occurrence of:

- (a) an Acceleration Event; or
- (b) a request from the Chargor to the Noteholders that the Majority Noteholders exercise any of their powers under this Deed or any Legal Charge,

the Security created by or pursuant to this Deed and each Legal Charge is immediately enforceable and the Majority Noteholders, without notice to the Chargor or prior authorisation from any court, in their absolute discretion may:

- (i) enforce all or any part of that Security (at the times, in the manner and on the terms they think fit (including whether for cash consideration or otherwise) and take possession of and hold or dispose of all or any part of the Charged Assets; and
- (ii) whether or not they have appointed a Receiver, exercise all or any of the rights, powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Deed and each Legal Charge) on mortgagees and by this Deed and each Legal Charge on any Receiver or otherwise conferred by law on mortgagees or Receivers.

#### 14.2 **Effect of moratorium**

No Noteholder shall be entitled to exercise its rights under Clause 14.1 (*Enforcement*) or Clause 5.2 (*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 Act 1986.

#### 15. **EXTENSION OF POWERS AND RIGHT OF APPROPRIATION**

##### 15.1 **Extension of powers**

The power of sale or other disposal conferred on the Noteholders and on any Receiver by this Deed and each Legal Charge shall operate as a variation and extension of the statutory power of sale under section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on the date of this Deed or any Legal Charge.

##### 15.2 **Restrictions**

The restrictions contained in sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Deed or any Legal Charge or to the exercise by Noteholders of their right to consolidate all or any of the Security created by or pursuant to this Deed or any Legal Charge with any other Security in existence at any time or to its power of sale, which powers may be exercised by the Noteholders without notice to the Chargor on or at any time after this Deed or any Legal Charge has become enforceable in accordance with Clause 14 (*Enforcement of Security*).

##### 15.3 **Power of leasing**

- (a) The statutory powers of leasing may be exercised by the Majority Noteholders at any time on or after this Deed or any Legal Charge has become enforceable in accordance with Clause 14 (*Enforcement of Security*) and the Majority Noteholders and any Receiver may make any lease or agreement for lease, accept surrenders of leases and grant options on such terms as it shall think fit, without the need to comply with sections 99 and 100 of the Law of Property Act 1925.
- (b) For the purposes of sections 99 and 100 of the Law of Property Act 1925, the expression "**Mortgagor**" will include any incumbrancer deriving title under the Chargor and neither section 99(18) nor section 100(12) of the Law of Property Act 1925 will apply.
- (c) The Chargor shall not have, at any time during the Security Period, the power pursuant to section 99 of the Law of Property Act 1925, to make any lease in respect of any Real Property without the prior written consent of the Majority Noteholders or as permitted pursuant to the terms of the Transaction Documents.

##### 15.4 **Right of appropriation**

To the extent that the provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003, as amended, (the "**Regulations**") apply to a Charged Asset, the Majority Noteholders shall have the right to appropriate all or any part of that Charged Asset in or towards the payment or discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor. For this purpose, the parties agree that the value of that Charged Asset shall be:

- (a) in the case of cash, the amount standing to the credit of each of the Accounts, together with any accrued but unposted interest, at the time of appropriation; and
- (b) in the case of any Investments and/or Shares, the market value of such Investments and/or Shares determined by the Majority Noteholders by reference to a public index or independent valuation, or by such other process as the Majority Noteholders may select.

In each case, the parties agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

## **16. APPOINTMENT OF RECEIVER OR ADMINISTRATOR**

### **16.1 Appointment and removal**

After the Security created by or pursuant to this Deed or any Legal Charge has become enforceable in accordance with Clause 14.1 (*Enforcement*), the Majority Noteholders may by deed or otherwise:

- (a) without prior notice to the Chargor:
  - (i) appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets; or
  - (ii) appoint two or more Receivers of separate parts of the Charged Assets; or
  - (iii) remove (so far as they are lawfully able) any Receiver so appointed; or
  - (iv) appoint another person(s) as an additional or replacement Receiver(s); or
  - (v) appoint one or more persons to be an administrator of the Chargor pursuant to paragraph 14 of Schedule B1 of the Insolvency Act 1986; and
- (b) following notice to the Chargor, appoint one or more persons to be an administrator of the Chargor pursuant to paragraph 12 of Schedule B1 of the Insolvency Act 1986.

### **16.2 Capacity of Receivers**

Each person appointed to be a Receiver pursuant to Clause 16.1 (*Appointment and removal*) shall be:

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver;
- (b) for all purposes deemed to be the agent of the Chargor which shall be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver shall at any time act as agent for any Secured Creditor; and
- (c) entitled to remuneration for his services at a rate to be fixed by the Majority Noteholders from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

**16.3 Statutory powers of appointment**

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Noteholders under the Law of Property Act 1925 (as extended by this Deed and each Legal Charge) or otherwise and such powers shall remain exercisable from time to time by the Majority Noteholders in respect of any part of the Charged Assets.

**17. POWERS OF RECEIVERS**

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

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

**18. APPLICATION OF MONIES**

All monies received or recovered by any Noteholder or any Receiver pursuant to this Deed or any Legal Charge 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 the Law of Property Act 1925) be applied first in the payment of the costs, charges and expenses incurred and payments made by the Receiver, the payment 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 Noteholders (notwithstanding any purported appropriation by the Chargor) in accordance with the terms hereof.

**19. PROTECTION OF PURCHASERS**

**19.1 Consideration**

The receipt of any Noteholder or any Receiver shall be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Assets or making

any acquisition, the Majority Noteholders or any Receiver may do so for such consideration, in such manner and on such terms as they think fit.

**19.2 Protection of purchasers**

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

**20. POWER OF ATTORNEY**

**20.1 Appointment and powers**

The Chargor by way of security irrevocably appoints any Receiver to be its attorney and in its name, on its behalf and as its act and deed to:

- (a) execute, deliver and perfect a Legal Charge over any Real Property not already the subject of a registerable Legal Charge; and
- (b) execute, deliver and perfect all other documents and do all things which the attorney may consider to be required or desirable for:
  - (i) carrying out any obligation imposed on the Chargor by this Deed, any Legal Charge or any other agreement binding on the Chargor to which the 2017 Noteholders or the 2018 Noteholders (collectively) are party (including the execution and delivery of any deeds, charges, assignments or other security and any transfers or the Charged Assets and perfecting and/or releasing the Security created or intended to be created in respect of the Charged Assets); and
  - (ii) enabling the Noteholders and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Deed, each Legal Charge or by law (including, after the occurrence of an Acceleration Event, the exercise of any right of a legal or beneficial owner of the Charged Assets).

**20.2 Ratification**

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise of purported exercise of all or any of his powers save in the case of fraud, gross negligence or wilful default.

**21. EFFECTIVENESS OF SECURITY**

**21.1 Continuing security**

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

**21.2 Cumulative rights**

The Security created by or pursuant to this Deed and each Legal Charge, and the Collateral Rights, shall be cumulative, in addition to and independent of every other Security which any Secured Creditor may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security. No prior Security held by any Secured Creditor over the whole or any part of the Charged Assets shall merge into the Security constituted by this Deed and each Legal Charge.

**21.3 No prejudice**

The Security created by or pursuant to this Deed and each Legal Charge; and the Collateral Rights, shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person, or by any other thing which might otherwise prejudice that Security or any Collateral Right.

**21.4 Remedies and waivers**

No failure on the part of any Secured Creditor to exercise, nor any delay on its part in exercising, any Collateral Right, shall operate as a waiver of that Collateral Right or constitute an election to affirm this Deed or any Legal Charge. No election to affirm this Deed or any Legal Charge on the part of any Secured Creditor shall be effective unless it is in writing. No single or partial exercise of any Collateral Right shall preclude any further or other exercise of that or any other Collateral Right.

**21.5 No liability**

No Noteholder or Receiver shall be liable:

- (a) to account as a mortgagee or mortgagee in possession; or
- (b) for any loss arising by reason of taking any action permitted by this Deed or any Legal Charge or any neglect or default in connection with the Charged Assets or taking possession of or realising all or any part of the Charged Assets,

except in the case of fraud, gross negligence or wilful default upon its part.

**21.6 Partial invalidity**

If, at any time, any provision of this Deed or any Legal Charge is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed and each Legal Charge nor of such provision under the laws of any other jurisdiction shall in any way be affected or impaired thereby and, if any part of the Security intended to be created by or pursuant to this Deed or any Legal Charge is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

**22. PRIOR SECURITY INTERESTS**

- (a) In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking Security against any of the Charged Assets or in case of exercise by any Noteholder or any Receiver of any power of sale under this Deed or any Legal Charge, the Majority Noteholders may redeem



such prior Security or procure the transfer thereof to a nominee selected by the Majority Noteholders.

- (b) The Noteholders may settle and agree the accounts of the prior Security and any accounts so settled and agreed will be conclusive and binding on the Chargor.
- (c) All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargor to the relevant Noteholder(s) on demand together with accrued interest thereon calculated in accordance with Clause 2.2 (*Default interest*).

**23. SUBSEQUENT SECURITY INTERESTS**

If a Secured Creditor at any time receives or is deemed to have received notice of any subsequent Security, assignment or transfer affecting all or any part of the Charged Assets which is prohibited by the terms of any Transaction Document, all payments thereafter by or on behalf of the Chargor to that Secured Creditor will (in the absence of any express contrary appropriation by the Chargor) be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations at the time that notice was received.

**24. SUSPENSE ACCOUNTS**

All monies received, recovered or realised by the Secured Creditors under this Deed and each Legal Charge (including the proceeds of any conversion of currency) may in the discretion of the Majority Noteholders be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Majority Noteholders consider appropriate for so long as they may think fit (the interest being credited to the relevant account) pending their application from time to time in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

**25. RELEASE OF SECURITY**

**25.1 Release of Security**

Upon the expiry of the Security Period, the Noteholders shall, at the request and cost of the Chargor, release and cancel the Security constituted by this Deed and each Legal Charge and procure the reassignment to the Chargor of the property and assets assigned to the Noteholders pursuant to this Deed and each Legal Charge, in each case subject to Clause 25.2 (*Clawback*) and without recourse to, or any representation on or warranty by, any Noteholder or any of their nominees.

**25.2 Clawback**

If the Majority Noteholders consider (acting reasonably) that any amount paid or credited to the Noteholders is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws, the liability of the Chargor under this Deed or any Legal Charge and the Security constituted by those documents will continue and such amount will not be considered to have been irrevocably discharged.

**26. SET-OFF**

The Chargor authorises each Noteholder (but no Noteholder shall be obliged to exercise such right), after the occurrence of an Acceleration Event, to set off against the Secured

Obligations any amount or other obligation (contingent or otherwise) owing by that Noteholder to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the relevant Noteholder in accordance with Clause 18 (*Application of monies*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

27. **ASSIGNMENT**

27.1 **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 or any Legal Charge.

27.2 **Assignments and transfers by Noteholders**

In the event of an assignment or transfer by an Original Noteholder (the "**Transferring Noteholder**") of all or any of its rights and obligations under the Notes (in each case, in accordance with the terms of the relevant Notes Instrument):

- (a) the Chargor shall, at the request and cost of the Transferring Noteholder, do all such acts and execute all such documents as the Transferring Noteholder may reasonably specify (and in such form as the Transferring Noteholder may reasonably require) to confer on the assignee or transferee of such rights and obligations (the "**Transferee Noteholder**"), if not an Original Noteholder, the benefit of the Security intended to be conferred by this Deed and any Legal Charge as if the Transferee Noteholder had been an Original Noteholder; and
- (b) each other Noteholder shall, at the request and cost of the Transferring Noteholder, do all such acts and execute all such documents and do all such other things as may be necessary or desirable to enable the Chargor to comply with its obligations under paragraph (a) above,

**provided** that no act contemplated under this Clause 27.2 shall be required if such act would or would reasonably be expected to have a material adverse effect on the Original Noteholders (provided that the release coupled with the immediate retaking of the Security intended to be conferred pursuant to this Deed and any Legal Charge (and the restarting of any related period during which Security, or any guarantee and indemnity, is capable of being avoided by virtue of any bankruptcy, insolvency, liquidation or similar laws), shall not, in itself, constitute such a material adverse effect.

28. **NOTICES**

28.1 A notice under or in connection with this Deed (a "**Notice**"):

- (a) shall be in writing;
- (b) shall be in the English language; and
- (c) shall be
  - (i) delivered personally; or
  - (ii) sent by first class post pre-paid recorded delivery (and air mail if overseas); or
  - (iii) by fax; or

- (iv) by email (with a copy delivered by another method listed in paragraphs (i) to (iii) above,

to the Party due to receive the Notice at its address set out in this Deed or to another address, person, fax number specified by that Party by not less than seven days' written notice to the other Party received before the Notice was despatched.

28.2 The address referred to in clause 28.1(c) is:

- (a) in the case of the Chargor:

Address: Felaw Maltings Ground Floor, 48 Felaw Street, Ipswich IP2 8PN

email: [andrew.beasley@flowenergy.uk.com](mailto:andrew.beasley@flowenergy.uk.com)

Marked for the attention of Andrew Beasley with a copy to:

email: [david.lloyd@flowgroup.uk.com](mailto:david.lloyd@flowgroup.uk.com)

Marked for the attention of: Finance Director

- (b) In the case of the Noteholders:

**1798 Volantis Catalyst Fund II Ltd**

Address: c/o Lombard Odier Asset Management (USA) Corp, 452 Fifth Avenue, 25th Floor, New York, NY 10018, United States of America

Fax: +1 212 295 6220

email: [1798-Legal@lombardodier.com](mailto:1798-Legal@lombardodier.com)

Marked for the attention of General Counsel

**LMAP Epsilon Limited**

Address: c/o Lombard Odier Asset Management (USA) Corp, 452 Fifth Avenue, 25th Floor, New York, NY 10018, United States of America

Fax: +1 212 295 6220

email: [1798-Legal@lombardodier.com](mailto:1798-Legal@lombardodier.com)

Marked for the attention of General Counsel

**Palm Active Energy, LP**

Address: 19 West Elm Street, Greenwich, Connecticut 06830, United States

email: [jhorowitz@palmventures.com](mailto:jhorowitz@palmventures.com); [btirpak@palmventures.com](mailto:btirpak@palmventures.com);

[cconnors@palmventures.com](mailto:cconnors@palmventures.com); [john.clark@akingump.com](mailto:john.clark@akingump.com)

Marked for the attention of Joshua Horowitz / Bradley Tirpak / Craig Connors

**Palm Global Small Cap Master Fund LP**

Address: c/o Palm Ventures LLC, 19 West Elm Street, Greenwich, Connecticut 06830, United States

email: [jhorowitz@palmventures.com](mailto:jhorowitz@palmventures.com); [btirpak@palmventures.com](mailto:btirpak@palmventures.com);

[cconnors@palmventures.com](mailto:cconnors@palmventures.com); [john.clark@akingump.com](mailto:john.clark@akingump.com)

Marked for the attention of Joshua Horowitz / Bradley Tirpak / Craig Connors

**Provincial House Estates Limited (UK)**

Address: 22 The Causeway, Bishop's Stortford, Hertfordshire CM23 2EJ

email: [dwarburton@marshgate-developments.com](mailto:dwarburton@marshgate-developments.com); [jhorowitz@palmventures.com](mailto:jhorowitz@palmventures.com);

[btirpak@palmventures.com](mailto:btirpak@palmventures.com); [cconnors@palmventures.com](mailto:cconnors@palmventures.com)

Marked for the attention of David Warburton / Joshua Horowitz / Bradley Tirpak / Craig Connors

- 28.3 A Notice given under Clause 28.1 is effective when actually received or, with respect to a notice given by email, when a non-automated response is received confirming receipt.

**29. EXPENSES, STAMP TAXES AND INDEMNITY**

**29.1 Expenses**

The Chargor shall, from time to time on demand of the Majority Noteholders, reimburse the Noteholders for all the costs and expenses (including legal fees) on a full indemnity basis together with any VAT thereon incurred by them in connection with the exercise, preservation and/or enforcement of any of the Collateral Rights or the Security contemplated by this Deed or any Legal Charge or any proceedings instituted by or against any Noteholder as a consequence of taking or holding the Security or of enforcing the Collateral Rights, and shall carry interest from the date of such demand until so reimbursed in accordance with Clause 2.2 (*Default interest*).

**29.2 Stamp Taxes**

The Chargers shall pay all stamp, registration, notarial and other taxes and fees to which this Deed and any Legal Charge, the Security contemplated in this Deed and any Legal Charge or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Noteholders on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

**30. DISCRETION AND DELEGATION**

**30.1 Discretion**

Any liberty or power which may be exercised or any determination which may be made under this Deed or under any Legal Charge by any Noteholder or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

**30.2 Delegation**

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

**31. WAIVERS AND COUNTERPARTS**

**31.1 Waivers**

No waiver by any Secured Creditor of any of its rights under this Deed shall be effective unless given in writing.

**31.2 Counterparts**

- (a) This Deed may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.
- (b) This Deed shall not come into effect until each Party has executed at least one counterpart.

**32. GOVERNING LAW**

- 32.1 This Deed and all non-contractual or other obligations arising out of or in connection with it are governed by English law.
- 32.2 The courts of England have exclusive jurisdiction to settle any dispute arising from or connected with this Deed (a "**Dispute**") (including a dispute regarding the existence, validity or termination of this Deed or relating to any non-contractual or other obligation arising out of or in connection with this Deed) or the consequences of its nullity.
- 32.3 The Parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and, accordingly, that they will not argue to the contrary.

**33. THIRD PARTY RIGHTS**

- 33.1 Pursuant to the Contracts (Rights of Third Parties) Act 1999:
- (a) the provisions of Clause 15 (*Extension of powers and right of appropriation*) to Clause 21 (*Effectiveness of Security*) shall be directly enforceable by any Receiver; and
  - (b) the provisions of Clause 19 (*Protection of purchasers*) shall be directly enforceable by any purchaser.
- 33.2 Subject to Clause 33.1 above, a person who is not a Party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 33.3 The Chargor and the Majority Noteholders may by agreement vary any term of this Deed (including this Clause 33) without the necessity of obtaining any consent from any other person.

**THIS DEED** has been executed as, and is intended to take effect as, a deed by the Chargor and has been signed by each Noteholder on the date written on the first page of this Deed.

**SCHEDULE 1**

**Mortgaged Property**

<b>Property Description</b>	<b>Title Number</b>
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None	
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**SCHEDULE 2**

**Shares and Investments**

**Shares**

<b>Name of Company</b>	<b>Issued Capital Share</b>	<b>Description and Number of Shares Held</b>	<b>Share Certificate Number(s)</b>
None			

**Investments**

<b>Name of Issuer/Obligor</b>	<b>Description of Investment</b>	<b>Document Evidencing or Indicating Title</b>
None		

**SCHEDULE 3**

**Intellectual Property**

Domain name

WHOIS record:

FLOWENERGY.UK.COM

Domain ID – D879404-CNIC

Registrant ID – IGS662322640

Registrant Organisation – Flow Energy Limited

Registrant Name – IT Support



**SCHEDULE 4**

**Insurance Policies**

**Part A**

<b>Insurer</b>	<b>Policy Number</b>	<b>Description</b>
Catlin Insurance Company (UK) Limited	1147243/0	Employers Liability
Catlin Insurance Company (UK) Limited	1147243/0	Public/Products Liability

**Part B**

<b>Insurer</b>	<b>Policy Number</b>	<b>Description</b>
ACE European Group Limited	UKCANC71794	Excess Liability Public/Products

**SCHEDULE 5**

**Form of Legal Charge**

Dated [            ]

**FLOW ENERGY LIMITED**

in favour of

**1798 VOLANTIS CATALYST FUND II LTD, LMAP EPSILON LIMITED, PALM ACTIVE ENERGY, LP AND  
OTHERS**

**LEGAL CHARGE**

relating to

**[SPECIFY PROPERTIES]**

THIS CHARGE is made by way of deed on

[•]

BY:

- (1) **Flow Energy Limited** (registered in England and Wales with company registration number 07489062), whose registered office is at Felaw Maltings, 48 Felaw Street, Ipswich, Suffolk, IP2 8PN (the "**Chargor**") in favour of
- (2) **1798 Volantis Catalyst Fund II Ltd, LMAP Epsilon Limited, Palm Active Energy, LP, Palm Global Small Cap Master Fund LP and Provincial House Estates Limited (UK)** (the "**Original Noteholders**")<sup>1</sup>.

THIS DEED WITNESSES as follows:

1. **LEGAL CHARGE**

The Chargor charges with (subject to the Existing Security) full title guarantee in favour of the Secured Creditors, for the payment and discharge of the Secured Obligations, by way of second ranking legal mortgage (subject to the Existing Security), the freehold and leasehold property specified [against its name] in the Schedule (the "**Mortgaged Property**").

2. **IMPLIED COVENANTS FOR TITLE**

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

3. **APPLICATION TO THE LAND REGISTRY**

The Chargor consents to an application being made to the Land Registry to enter the following restriction in the proprietorship register of any registered land forming part of the Mortgaged Property:

"No disposition of the registered estate by the proprietor of the registered estate[, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction,] is to be registered without a written consent signed by the proprietor for the time being of the charge dated [ ] in favour of [ ] referred to in the charges register [or their conveyancer]."

4. **FURTHER ADVANCES**

Subject to the terms of the Transaction Documents, the Noteholders are under an obligation to make further advances to the Obligors and that obligation will be deemed to be incorporated in this Legal Charge as if set out in this Legal Charge. The Chargor consents to an application being made to the Land Registry to enter the obligation to make further advances on the charges register relating to the Mortgaged Property.

<sup>1</sup> Note – ensure that the list of Original Noteholders is up to date

5. GOVERNING LAW

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

**THIS CHARGE** has been executed as, and is intended to take effect as, a deed by the Chargor and has been signed by the Original Noteholders on the date written on the first page of this Legal Charge.

**SCHEDULE 1 TO THE LEGAL CHARGE**

**Mortgaged Property**

*[Specify property which is the subject of a separate Legal Charge]*

Property Description

Title Number

EXECUTION PAGE TO LEGAL CHARGE

Executed as a deed by **Flow Energy** )  
**Limited** acting by [name of director] in )  
the presence of [name of witness] )

Director

Witness' signature

Witness' address

Signed by [*insert name of Original*  
**Noteholder**] acting by an authorised  
signatory

Authorised signatory<sup>2</sup>

Incorporate appropriate signature blocks for each Original Noteholder

SCHEDULE 6

Form of Notice of Security to Account Bank

To: [Account holding financial institution]

Date: [ ]

Dear Sirs

We give you notice that, by a guarantee and debenture dated [ ] (the "**Deed**"), we have charged by way of fixed charge to [1798 Volantis Catalyst Fund II Ltd, LMAP Epsilon Limited, Palm Active Energy, LP, Palm Global Small Cap Master Fund LP and Provincial House Estates Limited (UK)] (the "**Noteholders**") all of our right, title and interest in and to the account[s] listed below maintained with your [bank/building society/financial institution] (including any renewal, redesignation, replacement, subdivision or subaccount of such account) and the debt or debts represented thereby:

Account Name[s]: [ ]

Sort Code[s]: [ ]

Account No[s]: [ ]

[repeat list as necessary]

We irrevocably instruct and authorise you to disclose to the Noteholders without any reference to or further authority from us and without any inquiry by you as to the justification for such disclosure, such information relating to [the]/[any] account's] maintained with you from time to time as the Noteholders may request you to disclose to them.

This letter and all non-contractual obligations arising out of or in connection with it are governed by and will be construed in accordance with the laws of England and Wales.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to counsel for the Noteholders at Akin Gump Strauss Hauer & Feld LLP, Bishops Square, London E1 6EG marked for the attention of John Clarke.

Yours faithfully,

for and on behalf of  
**Flow Energy Limited**

**Form of Acknowledgement of Notice of Security by Account Bank**

To: Akin Gump Strauss Hauer & Feld LLP, Bishops Square, London E1 6EG acting on behalf of [1798 Volantis Catalyst Fund II Ltd, LMAP Epsilon Limited, Palm Active Energy, LP, Palm Global Small Cap Master Fund LP and Provincial House Estates Limited (UK)] (the "Noteholders")

Date: [ ]

Dear Sirs

We confirm receipt from Flow Energy Limited (the "**Chargor**") of a notice dated [ ] of a fixed charge upon the terms of a guarantee and debenture dated [ ] (the "**Deed**") of all the Chargor's right, title and interest in and to, and all monies (including interest) from time to time standing to the credit or the following account[s] which [is/are] maintained with us and the debt or debts represented thereby:

[List relevant accounts here]

(the "**Account[s]**").

We confirm that the balance standing to the Account[s] at today's date is [ ], no fees or periodic charges are payable in respect of the Account[s] and there are no restrictions on (a) the payment of the credit balance on the Account[s] [(except, in the case of a time deposits the expiry of the relevant period)] or (b) the creation of Security over the Account[s] in favour of the Noteholders or any third party.

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.

We confirm that, [other than the security granted in favour of Shell Energy Europe Limited on [insert date]] we have not received notice of the interest of any third party in [any of] the Account[s] and will not, without the consent of the Noteholders, amend or vary any rights attaching to the Account[s].

This letter and all non-contractual obligations arising out of or in connection with it are to be governed by and will be construed in accordance with English law.

Yours faithfully,

for and on behalf of

[Account Bank/other financial institution]

cc. Flow Energy Limited

**SCHEDULE 7**

**Form of Notice of Assignment of Insurance Policy**

To: [Insert name of Insurer]

Date: [ ]

Dear Sirs

We give you notice that, by a guarantee and debenture dated [ ] (the "**Deed**"), we have assigned to [1798 Volantis Catalyst Fund II Ltd, LMAP Epsilon Limited, Palm Active Energy, LP, Palm Global Small Cap Master Fund LP and Provincial House Estates Limited (UK)] (the "**Noteholders**") all our right, title and interest in and to the proceeds of [insert details of relevant insurance policy] (the "**Policy of Insurance**") to the extent that they relate to Flow Energy Limited.

Subject to the terms of this notice, with effect from your receipt of this notice we instruct and authorise you to:

1. make all payments and claims [in excess of £[ ]] under or arising from the Policy of Insurance in respect of Flow Energy Limited to [insert relevant account number and sort code] or otherwise to the order of the Noteholders as the Noteholders may specify in writing from time to time; and
2. disclose to the Noteholders, without further approval from us, such information regarding the Policy of Insurance (to the extent it relates to Flow Energy Limited) as the Noteholders may from time to time request and to send to counsel acting for the Noteholders copies of all notices issued by you under the Policy of Insurance (to the extent that they relate to Flow Energy Limited).

This notice is subject to any prior notice of the grant of security in respect of the Policy of Insurance to Shell Energy Europe Limited and, to the extent that the provisions of this notice conflict with the provisions of such prior notice, the provisions of that prior notice shall prevail.

We will remain liable to perform all our obligations under the Policy of Insurance and no Noteholder is under any obligation of any kind whatsoever under the Policy of Insurance nor under any liability whatsoever in the event of any failure by us to perform our obligations under the Policy of Insurance.

With effect from your receipt of this notice all rights, interests and benefits whatsoever accruing to or for the benefit of ourselves arising from the Policy of Insurance (including all rights to compel performance) to the extent that they relate to Flow Energy Limited belong to and are exercisable by the Noteholders.

This letter and all non-contractual obligations arising out of or in conjunction with it are governed by and will be construed in accordance with the laws of England and Wales.

Please acknowledge receipt of this notice by signing the acknowledgement on the enclosed copy letter and returning it to counsel for the Noteholders at Akin Gump Strauss Hauer & Feld LLP, Bishops Square, London E1 6EG marked for the attention of John Clarke.

Yours faithfully,

for and on behalf of  
**Flow Energy Limited**



**Form of Acknowledgement of Assignment from Insurer**

To: Akin Gump Strauss Hauer & Feld LLP, Bishops Square, London E1 6EG acting on behalf of [1798 Volantis Catalyst Fund II Ltd, LMAP Epsilon Limited, Palm Active Energy, LP, Palm Global Small Cap Master Fund LP and Provincial House Estates Limited (UK)] (the "Noteholders")

Date: [ ]

Dear Sirs

We acknowledge receipt of a notice dated [ ] in the terms set out above and confirm that [other than the security granted in favour of Shell Energy Europe Limited on [insert date]] we have not received notice of:

- (a) any assignment or charge of or over any of the rights, interests and benefits specified in such notice; or
- (b) the interest of any third party in any of the rights, interests and benefits specified in such notice,

and will make all payments in the manner and to the account specified in that notice. We confirm that we have made all necessary arrangements for all future payments payable under such Policy of Insurance (to the extent that they relate to Flow Energy Limited), to be made into the account specified in the notice.

We further confirm that:

- 1. no amendment, waiver or release or any such rights, interest and benefits will be effective without the prior written consent of the Noteholders;
- 2. no termination of such rights, interests or benefits will be effective unless we have given the Noteholders 21 days' written notice of the proposed termination and specifying the action necessary to avoid such termination;
- 3. the Chargor will remain liable to perform all its obligations under the Policy of Insurance and no Noteholder is under any obligation of any kind whatsoever under the Policy of Insurance nor under any liability whatsoever in the event of any failure by the Chargor to perform its obligations under the Policy of Insurance; and
- 4. no breach or default on the part of the Chargor of any of the terms of such Policy of Insurance will be deemed to have occurred unless we have given notice of such breach to the Noteholders specifying how to make good such breach.

We unconditionally and irrevocably waive all rights of set-off, lien, combination of accounts and similar rights (however described) which we may have now or in the future to the extent that such rights relate to amounts owed to us by the Chargor (and the proceeds thereof) and we will send you copies of all statements, orders and notices given by us relating to such debt.

This letter and all non-contractual obligations arising out of or in connection with it are governed by and will be construed in accordance with the laws of England and Wales.

Yours faithfully,

for and on behalf of [Insert name of Insurer]  
cc. Flow Energy Limited

## SCHEDULE 8

### Form of Insurance Broker's Letter of Undertaking

To: Akin Gump Strauss Hauer & Feld LLP, Bishops Square, London E1 6EG acting on behalf of [1798 Volantis Catalyst Fund II Ltd, LMAP Epsilon Limited, Palm Active Energy, LP, Palm Global Small Cap Master Fund LP and Provincial House Estates Limited (UK)] (the "**Noteholders**")

Date: [ ]

Dear Sirs

We, [insert name of insurance Broker] in our capacity as insurance brokers to **Flow Energy Limited** (the "**Chargor**") agree to use our best endeavours as follows in respect of the following insurances [ ] (including any renewal of the same) (the "**Insurances**"), in each case subject to our obligations under any similar undertaking given by us to Shell Energy Europe Limited in connection with the Insurances (the "**Shell Undertaking**") and in the event of any conflict between the provisions of this undertaking and the Shell Undertaking the provisions of the Shell Undertaking shall prevail:

1. To give notice to you in writing as soon as practicable upon our becoming aware of:
  - (a) any underwriter or insurer cancelling or giving notice of cancellation or suspension of any of the Insurances;
  - (b) any actual or proposed material alteration to or termination, cancellation, suspension or expiry (in the latter case, which is not immediately followed by renewal upon the same terms with the same underwriters or insurers) of any of the Insurances;
  - (c) any default in the payment of any premium, or failure of the Chargor to instruct us to renew any of the Insurances not less than thirty days prior to the date of renewal of the Insurances;
  - (d) any act or omission on the part of any insured party or of any event of which we have knowledge, which will invalidate or render unenforceable, in whole or in part, any of the Insurances; or
  - (e) our ceasing to act as insurance brokers to the Chargor.
2. Promptly upon written request made by you, to supply to you and/or your insurance consultants copies of all policies, cover notes, certificates, endorsements, renewal receipts and confirmation of renewal and payment of premiums in respect of the Insurances and to make available to you the original of any of these which are required by you in connection with the making of an insurance claim where these are held by us, provided that the Chargor consents to us doing this.
3. To hold the insurance slips or contracts, the policies and any renewals or new policies or any policies substituted with your consent for those and the benefit of the insurances relating to them to your order and to hold any cover notes, certificates, endorsements, renewal receipts and confirmation of renewal and payment of premiums in respect of the Insurances, to the extent held by us, to your order.
4. To pay to you without set-off or deduction of any kind for any reason (other than in respect of employers liability, public liability and professional indemnity policies and

unpaid premiums if required by underwriters or insurers) any and all proceeds from the Insurances received by us from the insurers except as might otherwise be permitted in the loss payable clause endorsed on any of the insurances [*an account for payment of the proceeds may also be specified*].

5. To allow you an opportunity by thirty days' notice in writing of paying any unpaid premium or unpaid premium instalments or amounts due to us and not operate by reason of such unpaid amount any cancellation clause.
6. To procure the agreement of underwriters or insurers to endorse on each and every applicable policy as and when the same is issued, a Notice of Assignment (in the form of Schedule 7 (*Form of Notice of Assignment of Insurances*) to the Deed dated [     ]) dated and signed by the Chargor and acknowledged by the insurers in accordance with market practice.
7. Notwithstanding anything in this letter, we are and remain solely the agent of the Chargor, and with the exception of our obligations hereunder, owe duties only to the Chargor. We accept no responsibility whatsoever for any loss, damage or expense which any person (other than the Chargor) may suffer as a result of our failure, arising from the circumstances beyond our control, to comply with the undertakings in this letter save for any loss, damage or expense arising from our wilful default or negligence.

The above agreement is given subject to our continuing appointment as insurance brokers to the Chargor and shall automatically cease upon termination of our appointment and subject to the Chargor confirming its consent to the giving by us of the undertakings contained in this agreement.

Yours faithfully,

for and on behalf of  
[insert name of Insurance Broker]

cc. Flow Energy Limited

**SCHEDULE 9**

**Investments: Broker's Notice of Charge and Undertaking**

**Part A - Form of Broker's Notice of Charge**

To: [Broker]

Date: [ ]

Dear Sirs,

We refer to the terms of the guarantee and debenture (the "**Deed**") dated [ ] entered into by us in favour of [1798 Volantis Catalyst Fund II Ltd, LMAP Epsilon Limited, Palm Active Energy, LP, Palm Global Small Cap Master Fund LP and Provincial House Estates Limited (UK)] (the "**Noteholders**"), a copy of which is attached hereto]. Terms defined in the Deed shall have the same meanings in this notice.

Notice is hereby given by us to you that, by and pursuant to the Deed, we have charged to the Noteholders all of our rights and benefits in and to [Shares/Investments].

We should be grateful if you would acknowledge receipt of this notice by returning the enclosed copy to counsel for the Noteholders at Akin Gump Strauss Hauer & Feld LLP, Bishops Square, London E1 6EG marked for the attention of John Clarke [reference may also be made to the Broker's Undertaking if it is being delivered to the Broker with this Notice].

Yours faithfully,

For and on behalf of  
**Flow Energy Limited**

On copy only:

Duly received and acknowledged for and on behalf of [Broker]

Dated:

**Part B - Form of Broker's Undertaking**

To: **Flow Energy Limited** and

Akin Gump Strauss Hauer & Feld LLP, Bishops Square, London E1 6EG acting on behalf of [1798 Volantis Catalyst Fund II Ltd, LMAP Epsilon Limited, Palm Active Energy, LP, Palm Global Small Cap Master Fund LP and Provincial House Estates Limited (UK)] (the **"Noteholders"**)

Date:

Dear Sirs,

1. We refer to the guarantee and debenture (the **"Deed"**) dated [ ] entered into by Flow Energy Limited (the **"Chargor"**) in favour of the Noteholders under which all of the Chargor's right, title and interest in and to [the Shares/Investments] (as defined in the Deed) were charged to the Noteholders. Terms defined in the Deed have the same meaning when used in this Undertaking. Our obligations under this Undertaking are subject to our obligations under any similar undertaking given by us to Shell Energy Europe Limited in connection with the Existing Security (the **"Shell Undertaking"**) and in the event of any conflict between the provisions of this undertaking and the Shell Undertaking the provisions of the Shell Undertaking shall prevail.
2. We understand that:
  - (a) we may from time to time be asked to deliver certificates, substantially in the form attached to this Undertaking (**"Broker's Certificates"**), to the Noteholders in relation to [the Shares/Investments] purchased, or to be purchased, by us on behalf of the Chargor;
  - (b) amounts may, from time to time, be disbursed to us for the account of the Chargor by or on behalf of both or either of the Chargor and/or the Noteholders for application in or towards the purchase on behalf of the Chargor of any [Shares/Investments] which it may have agreed to purchase; and
  - (c) all amounts disbursed to us for the account of the Chargor by or on behalf of both or either of the Chargor and/or the Noteholders, and all [Shares/Investments] purchased or held by us on behalf of the Chargor, are subject to Security in favour of the Noteholders **provided that** this does not prejudice any lien or other encumbrance that we may have over such [Shares/Investments] purchased by us for which payment has not been received by us.
3. We agree that (subject to paragraph 4), in consideration of the obligations expressed to be assumed in paragraphs 5 and 6, we shall hold all amounts disbursed to us for the account of the Chargor by or on behalf of both or either of the Chargor and/or the Noteholders in a separate account and we shall apply each such amount:
  - (a) **first**, in or towards the purchase by us on behalf of the Chargor of the [Shares/Investments] in relation to which such amount was so disbursed to us;
  - (b) **secondly**, in or towards the payment by us on behalf of the Chargor of any stamp duty payable in connection with the purchase of such [Shares/Investments]; and
  - (c) **thirdly**, in or towards the payment of our commission and any relevant levy for the purchase of such [Shares/Investments].

4. No amount received by us in respect of any [Shares/Investments] shall be applied in accordance with the terms set out above unless;
- (a) immediately before such application, we hold for the account of the Chargor in respect of such [Shares/Investments] sufficient amounts to enable us to pay on behalf of the Chargor all amounts owing by it in respect of all such [Shares/Investments], our fees, stamp duty and any Stock Exchange levy payable in respect of its purchase of such [Shares/Investments]; and
  - (b) to the extent that any such amount is being applied in the purchase of any such [Shares/Investments] in the form of registered shares, we receive, against application of such amount:
    - (i) a duly completed and duly executed stock transfer form transferring the title to such [Shares/Investments] to the Chargor (or such other person as it may have designated with the prior approval of the Noteholders) and either all share certificates and other evidence of title to such [Shares/Investments] or such indemnities or other evidence of the vendor's title to such [Shares/Investments] as would normally be accepted by English stockbrokers; or
    - (ii) such evidence (such as stock notes) of a beneficial entitlement functionally equivalent to such [Shares/investments] and held by the Chargor (or such other person as it may have designated) in any pool of shares registered in the name of any nominee from time to time of The London Stock Exchange Limited or other evidence of such entitlement as would normally be accepted by English stockbrokers; and
  - (c) to the extent any such amount is being applied in the purchase of any such Shares/Investments in the form or bearer instruments, we receive, against application of such amount:
    - (i) definitive bearer certificates in respect of such [Shares/Investments] (having attached thereto the interest coupons relating to them); or
    - (ii) such evidence of instructions given by the seller (or any financial institution acting as nominee for the seller) to any relevant clearance system that such [Shares/investments] are to be credited to a securities account in the name of the Chargor in such clearance system as would normally be accepted by an English financial institution dealing in such [Shares/Investments] (or securities similar thereto) within such clearance system; and
    - (iii) we shall promptly deliver to counsel acting for the Noteholders all documents (including the relevant contract notes) relating to the purchase of any [Shares/investments] or otherwise purchased by or on behalf of the Chargor at any time after the date of this undertaking received or produced by us and, pending such delivery, we shall hold the same to the order of the Noteholders.
5. The Chargor and the Noteholders shall take all steps open to you to ensure that:
- (a) all amounts disbursed to us for the account of the Chargor by or on behalf of the Noteholders are paid into such account of ours with such bank in London as we

shall from time to time have specified by prior written notice to the Chargor and the Noteholders; and

- (b) the Noteholders shall promptly notify us of all amounts disbursed by them to us for the account of the Chargor specifying, in relation to each such amount, the [Shares/Investments] in respect of which such amount is so disbursed.
- 6. The Chargor shall:
  - (a) pay all amounts disbursed to us by it or on its behalf into our account as specified above; and
  - (b) promptly notify us of all amounts disbursed by it or on its behalf to us specifying, in relation to each such amount, the [Shares/Investments] in respect of which such amount is so disbursed.
- 7. We should be grateful if you would confirm that you agree to the terms of this letter and to our utilising the amounts disbursed to us for the account of the Chargor by or on behalf of the Chargor in the manner described in this undertaking by countersigning the enclosed copy of this letter and returning it to us.
- 8. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

Yours faithfully,

for and on behalf of  
[Broker]

[On copy:]

We hereby acknowledge receipt of the letter dated [ ] attached to this acknowledgement and confirm our agreement to the terms of such letter and to your utilising the amounts disbursed to you for the account of the Chargor by or on behalf of the Chargor [or the Secured Creditors] in the manner described in the letter.

for and on behalf of  
**Flow Energy Limited**

By:

Dated:

for and on behalf of  
**LMAP Epsilon Limited** acting through its  
discretionary asset manager **Lombard Odier  
Asset Management (USA) Corp**

By:

Dated:

for and on behalf of  
**1798 Volantis Catalyst Fund II Ltd** acting  
through its discretionary asset manager  
**Lombard Odier Asset Management (USA)  
Corp**

By:

Date:

for and on behalf of  
**Palm Active Energy, LP**

By:

Date:

for and on behalf of  
**Palm Global Small Cap Master Fund LP**

By:

Dated:

for and on behalf of  
**Provincial House Estates Limited (UK)**

By:

Date:



**Part C - Form of Broker's Certificate**

To: Akin Gump Strauss Hauer & Feld LLP, Bishops Square, London E1 6EG acting on behalf of [1798 Volantis Catalyst Fund II Ltd, LMAP Epsilon Limited, Palm Active Energy, LP, Palm Global Small Cap Master Fund LP and Provincial House Estates Limited (UK)] (the "Noteholders")

Attention: [ ]

Date: [ ]

Dear Sirs,

We refer to the undertaking (the "**Undertaking**") dated [ ] and given by us in favour of **Flow Energy Limited** (the "**Chargor**") and the Noteholders.

We hereby certify that (*delete as appropriate*):

- (a) we have purchased [number] [Shares/Investments] on behalf of the Chargor at an aggregate purchase price of £[ ] and the Chargor has paid for such [Shares/Investments];
- (b) an amount of £[ ] was payable, and has been paid, by the Chargor in respect of stamp duty and our fees and any relevant levy in relation to the purchase of the [Shares/Investments] referred to above;
- (c) we have purchased, or agreed to purchase, the following [Shares/Investments] on behalf of the Chargor:

No. of [Shares/Investments]	Purchase Price

and the purchase price of such [Shares/Investments] is now due from the Chargor or will fall due from the Chargor on or before [ ];

- (d) an amount of £[ ] is payable by the Chargor in respect of stamp duty, our fees and any relevant levy in relation to the purchase of the [Shares/Investments] referred to above;
- (e) the purchase of the [Shares/Investments] referred to above were all made or agreed by or on behalf of the Chargor on or before [ ];
- (f) we have issued no other certificates to you in substantially this form in relation to any of the [Shares/investments] referred to above.

Yours faithfully,

for and on behalf of  
[Broker]

## **Schedule 10**

### **Provisions as to Meetings of Noteholders**

#### **1. CONVENING MEETINGS**

- 1.1 The Chargor may convene a meeting of the Noteholders at any time.
- 1.2 The Chargor shall convene a meeting of the Noteholders immediately on receipt of a requisition from Noteholders holding at the date of the deposit of the requisition:
- (a) not less than sixty per cent. in principal amount of the 2017 Notes outstanding at that date; or
  - (b) not less than sixty per cent. in principal amount of the 2018 Notes outstanding at that date.
- 1.3 The requisition:
- (a) shall state the objects of the meeting;
  - (b) shall be signed by the requisitionists and deposited at the Chargor's registered office address (the "**Registered Office**"); and
  - (c) may consist of several documents in like form each signed by one or more requisitionists.
- 1.4 The meeting shall be held at such place in the United Kingdom as the Chargor, acting reasonably, may decide.

#### **2. LENGTH AND FORM OF NOTICE**

- 2.1 A meeting shall be called by not less than 21 clear days' notice.
- 2.2 The notice of meeting shall specify:
- (a) the place, date and time of the meeting;
  - (b) the terms of each resolution to be proposed; and
  - (c) with reasonable prominence, that a Noteholder entitled to attend and vote may appoint one or more proxies to attend and, on a poll, vote instead of the Noteholder and that a proxy need not also be a Noteholder.
- 2.3 The accidental omission to send a notice of meeting or, in cases where it is sent out with the notice, an instrument of proxy to, or the non-receipt of either by a Noteholder does not invalidate the proceedings at a meeting.

#### **3. QUORUM**

- 3.1 No business may be transacted at a meeting unless a quorum is present. The absence of a quorum does not prevent the appointment of a chairman in accordance with paragraph 5 of this schedule, which is not treated as part of the business of the meeting.
- 3.2 The quorum for a meeting is a person or persons holding or representing by proxy 20 per cent. in aggregate principal amount of the Notes outstanding at the date of the meeting.

#### **4. PROCEDURE IF QUORUM NOT PRESENT**

- 4.1 If a quorum is not present within twenty minutes (or such longer period as the chairman in his absolute discretion may decide) from the time fixed for the start of the meeting or if during the meeting a quorum ceases to be present, the meeting:
- (a) if convened on the requisition of the Noteholders, shall be dissolved; or
  - (b) in any other case, shall stand adjourned to such time (being not less than 14 clear days nor more than 28 clear days later) and place as the chairman (or, in default, the board of directors of the Chargor (the "**Board**") may decide.
- 4.2 At an adjourned meeting the quorum shall be the Noteholders present in person or by proxy, whatever the aggregate principal amount of the Notes held by them. If a quorum is not present within five minutes (or such longer period as the chairman in his absolute discretion may decide) from the time fixed for the start of the meeting or if during the meeting a quorum ceases to be present, the adjourned meeting shall be dissolved.
- 4.3 The Chargor shall give not less than seven clear days' notice of any meeting adjourned for the lack of a quorum and the notice shall comply with paragraph 2.2 of this schedule and shall state the quorum requirement.

5. **CHAIRMAN**

- 5.1 A person nominated by Noteholders holding more than 60 per cent. of the aggregate principal amount of the Notes outstanding at the relevant time shall preside as chairman at a meeting.
- 5.2 The Noteholders present at the meeting shall select one of their number to be Chairman if:
- (a) no person has been nominated pursuant to paragraph 5.1 of this schedule; or
  - (b) at the meeting, the person nominated pursuant to paragraph 5.1 of this schedule is not present within five minutes after the time fixed for the start of the meeting or is not willing to act.

6. **RIGHT TO ATTEND AND SPEAK**

Each member of the Board and any person authorised by the Board may attend and speak at a meeting whether or not he is a Noteholder.

7. **POWER TO ADJOURN**

- 7.1 The chairman may, with the consent of a meeting at which a quorum is present and shall, if so directed by the meeting adjourn a meeting from time to time and from place to place or for an indefinite period.
- 7.2 Without prejudice to any other power which he may have under the provisions of this schedule or at common law, the chairman may, without the consent of the meeting, interrupt or adjourn a meeting from time to time and from place to place or for an indefinite period if he decides that it has become necessary to do so in order to:
- (a) secure the proper and orderly conduct of the meeting;
  - (b) give all persons entitled to do so a reasonable opportunity of speaking and voting at the meeting; or
  - (c) ensure that the business of the meeting is properly disposed of.

**8. NOTICE OF ADJOURNED MEETING**

Without prejudice to paragraph 4.3 of this schedule, whenever a meeting is adjourned for 28 clear days or more or for an indefinite period, at least seven clear days' notice specifying the place, the date and the time of the adjourned meeting and the general nature of the business to be transacted shall be given to the Noteholders and each member of the Board. Except in these circumstances and subject to paragraph 4.3, it is not necessary to give notice of an adjourned meeting or of the business to be transacted at the adjourned meeting.

**9. BUSINESS AT ADJOURNED MEETING**

No business may be transacted at an adjourned meeting other than the business which might properly have been transacted at the meeting from which the adjournment took place.

**10. METHOD OF VOTING**

10.1 At a meeting, a resolution put to the vote of the meeting is decided by a show of hands unless (before or on the declaration of the result of the show of hands) a poll is duly demanded.

10.2 A poll may be demanded on a question by the chairman of the meeting or a Noteholder or Noteholders present in person or by proxy representing in total not less than one-twentieth in aggregate principal amount of the Notes outstanding at the date of the meeting.

10.3 A demand by a proxy is deemed to be a demand by the Noteholder appointing the proxy.

10.4 Unless a poll is demanded and the demand is not withdrawn, a declaration by the chairman that the resolution has been carried, or carried by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the book containing the minutes of proceedings, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

**11. PROCEDURE ON A POLL**

11.1 If a poll is properly demanded, it shall be taken in such manner as the chairman may direct. He may appoint scrutineers, who need not be Noteholders, and may fix a time and place for declaring the result of the poll. The result of the poll is deemed to be the resolution of the meeting at which the poll is demanded.

11.2 A poll demanded on the election of a chairman or on any question of adjournment shall be taken at the meeting and without adjournment. A poll demanded on another question shall be taken at such time and place as the chairman may decide, either at once or after an interval or adjournment (but not more than 30 clear days after the date of the demand).

11.3 No notice need be given of a poll not taken immediately if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.

11.4 The demand for a poll may be withdrawn but only with the consent of the chairman. A demand withdrawn in this way validates the result of a show of hands declared before the demand is made. In the case of a poll demanded before the declaration of the result of a show of hands, the meeting shall continue as if the demand had not been made.

11.5 The demand for a poll (other than on the election of the chairman or on a question of adjournment) does not prevent the meeting continuing for the transaction of business other than the question on which a poll has been demanded.

11.6 On a poll, votes may be given in person or by proxy and a Noteholder entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

## 12. VOTES OF NOTEHOLDERS

12.1 At a meeting every Noteholder present in person has on a show of hands one vote and every Noteholder present in person or by proxy has on a poll one vote for every £1 in aggregate principal amount of the Note or Notes of which he is the holder.

12.2 In the case of joint holders of a Note, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and seniority is determined by the order in which the names of the holders stand in the Register applicable to the relevant Notes (as defined in the relevant Notes Instrument).

## 13. CASTING VOTE

In the case of an equality of votes the chairman has, on a show of hands and on a poll, a casting vote in addition to any vote to which he is entitled as a Noteholder.

## 14. VOTING BY PROXY

14.1 An instrument appointing a proxy shall be in writing in any usual form (or in another form approved by the Board) executed by the appointor or his duly constituted attorney or, if the appointor is a company, under its seal or under the hand of its duly authorised officer or attorney or other person authorised to sign.

14.2 An instrument of proxy is deemed (unless the contrary is stated in it) to confer authority to demand or join in demanding a poll and to vote on a resolution or amendment of a resolution put to, or other business which may properly come before, the meeting or meetings for which it is given, as the proxy thinks fit.

14.3 A proxy need not be a Noteholder.

14.4 A Noteholder may appoint more than one proxy to attend on the same occasion. When two or more valid but differing instruments of proxy are delivered for the same Note for use at the same meeting, the one which is last validly delivered (regardless of its date or the date of its execution) shall be treated as replacing and revoking the other or others as regards that Note.

14.5 Deposit of an instrument of proxy does not prevent a Noteholder attending and voting in person at the meeting or an adjournment of the meeting or on a poll.

14.6 An instrument of proxy is (unless the contrary is stated in it) valid for an adjournment of the meeting as well as for the meeting or meetings to which it relates. An instrument of proxy is valid for 12 months from the date of execution.

14.7 The Chargor may send an instrument of proxy to all or none of the persons entitled to receive notice of and to vote at a meeting. If sent the instrument shall provide for two-way voting (without prejudice to a right to abstain) on all resolutions set out in the notice of meeting.

15. **DEPOSIT OF PROXY**

15.1 An instrument of proxy, and (if required by the Board) a power of attorney or other authority under which it is executed or a copy of it notarially certified or certified in some other way approved by the Board, shall be:

- (a) deposited at the Registered Office, or another place in the United Kingdom specified in the notice convening the meeting or in an instrument of proxy or other accompanying document sent by the Chargor in relation to the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting or the taking of a poll at which the person named in the instrument proposes to vote;
- (b) in the case of a meeting adjourned for less than 28 days but more than 48 hours or in the case of a poll taken more than 48 hours after it is demanded, deposited as required by paragraph 15.1(a) not less than 24 hours before the time appointed for the holding of the adjourned meeting or the taking of the poll; or
- (c) in the case of a meeting adjourned for less than 48 hours or in the case of a poll not taken immediately but taken not more than 48 hours after it was demanded, delivered at the adjourned meeting or at the meeting at which the poll was demanded to the chairman or to the secretary or to a director of the Chargor.

15.2 An instrument of proxy not deposited or delivered in accordance with paragraph 15.1(a) is invalid.

16. **WHEN VOTES BY PROXY VALID THOUGH AUTHORITY REVOKED**

A vote given or poll demanded by a proxy or authorised representative of a company is valid despite termination of his authority unless notice of termination is received by the Chargor at the Registered Office (or other place specified for depositing the instrument of proxy) at least one hour before the time for holding the meeting or adjourned meeting at which the vote is given or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) the time appointed for the taking of the poll at which the vote is cast.

17. **CORPORATE REPRESENTATIVE**

A company which is a Noteholder may, by resolution of its directors or other governing body, authorise a person to act as its representative at a meeting of Noteholders (the "**representative**"). In addition, the discretionary asset manager of a Noteholder shall be deemed to be an authorised representative of such Noteholder without any requirement for further action on the part of the Noteholder. The representative may exercise on behalf of the company (in respect of that part of the company's holding of Notes to which the authorisation relates) those powers that the company could exercise if it were an individual Noteholder. The company is for the purposes of this schedule deemed to be present in person at a meeting if the representative is present. Each reference to attendance and voting in person is to be construed accordingly. A member of the Board or the secretary of the Chargor or other person authorised for the purpose by the secretary may require the representative to produce a certified copy of the resolution of authorisation (or in the case of a discretionary asset manager, reasonable evidence that such representative is the discretionary asset manager of the relevant Noteholder) before permitting him to exercise his powers.

18. **OBJECTIONS TO AND ERROR IN VOTING**

No objection may be made to the qualification of a voter or to the counting of, or failure to count, a vote, except at the meeting or adjourned meeting at which the vote objected to is tendered or at which the error occurs. An objection properly made shall be referred to the chairman and only invalidates the result of the voting if, in the opinion of the chairman, it is of sufficient magnitude to affect the decision of the meeting. The decision of the chairman is conclusive and binding on all concerned.

**19. AMENDMENTS TO RESOLUTIONS**

If an amendment proposed to a resolution under consideration is ruled out of order by the chairman the proceedings on the substantive resolution are not invalidated by an error in his ruling.

**20. NOTEHOLDERS' WRITTEN RESOLUTIONS**

A resolution in writing executed by or on behalf of Noteholders holding the requisite majority in aggregate principal amount of Notes for the time being outstanding who would have been entitled to vote upon it if it had been proposed at a meeting at which he was present is as effective as if it had been passed at a meeting duly convened and held. A resolution in writing may consist of several instruments in the same form each duly executed by or on behalf of one or more Noteholders.

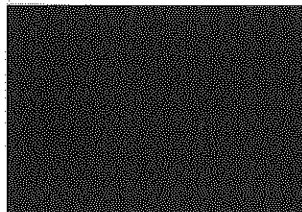
**21. MINUTES OF MEETINGS**

- 21.1 The Chargor shall cause minutes of all proceedings of meetings of the Noteholders to be entered in books kept for that purpose.
- 21.2 A minute, if purporting to be signed by the chairman of the meeting at which the proceedings took place, or by the chairman of the next meeting, is conclusive evidence of the proceedings.
- 21.3 Where minutes have been made in accordance with paragraph 21 of the proceedings at a meeting then, until the contrary is proved, the meeting is deemed duly held and convened, and all proceedings had at the meeting to have been duly had.

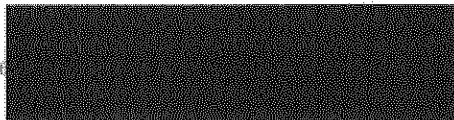
EXECUTION PAGE TO DEED

Executed as a deed by **Flow Energy Limited** acting by a director in the presence of:

)  
)  
)



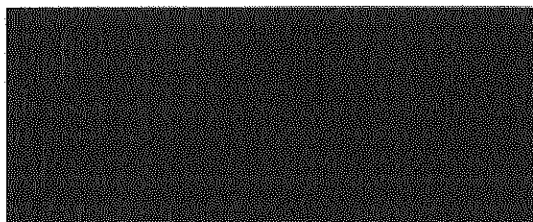
Witness' signature



Witness' name:

*DA Lloyd*

Witness' address



Signed by: .....

Name: .....

For and on behalf of **1798 Volantis Catalyst Fund II Ltd** acting through its discretionary asset manager **Lombard Odier Asset Management (USA) Corp** in the presence of:

Name: .....

Signed by: .....

Name: .....

Signed by: .....

Name: .....

For and on behalf of **LMAP Epsilon Limited** acting through its discretionary asset manager **Lombard Odier Asset Management (USA) Corp** in the presence of:

Name: .....



EXECUTION PAGE TO DEED

Executed as a deed by **Flow Energy** )  
**Limited** acting by a director in the )  
presence of: )

Witness' signature

Witness' name:

Witness' address

Signed by: .....

Name:

For and on behalf of **1798 Volantis Catalyst Fund II Ltd** acting through its discretionary  
asset manager **Lombard Odier Asset Management (USA) Corp**  
in the presence of:

Name: .....

Signed by: .....

Name: *Raymond Mouhadab*

For and on behalf of **LMAP Epsilon Limited** acting through its discretionary asset manager  
**Lombard Odier Asset Management (USA) Corp**  
in the presence of:

Name: *Raymond Mouhadab*

Signed by: .....

Name: *Stephen Crisman*

Signed by

Name: Joshua S. Horowitz

For and on behalf of **Palm Active Energy, LP** in

Name: Heather Advari

Signed by

Name: Joshua S. Horowitz

For and on behalf of **Palm Global Small Cap Master Fund LP** in

Name: Heather Advari

Signed by

Name: Joshua S. Horowitz

For and on behalf of **Provincial House Estates Limited (UK)** in

Name: Heather Advari