



**Registration of a Charge**

Company name: **BOREAS HOLDCO LIMITED**

Company number: **08693195**



X6DIRNBT

Received for Electronic Filing: **24/08/2017**

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**Details of Charge**

Date of creation: **18/08/2017**

Charge code: **0869 3195 0002**

Persons entitled: **BNP PARIBAS, LONDON BRANCH**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **NORTON ROSE FULBRIGHT LLP**



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

Company number: 8693195

Charge code: 0869 3195 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 18th August 2017 and created by BOREAS HOLDCO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th August 2017 .

Given at Companies House, Cardiff on 29th August 2017

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 18 AUGUST 2017

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**BOREAS HOLDCO LIMITED**

as Chargor

**BNP PARIBAS, LONDON BRANCH**

as Security Trustee

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

Sign & Dated Norton Rose Fulbright  
24.08.17

**SHAREHOLDER DEBENTURE**

in relation to the project financing of the  
London Array 1 Offshore Wind Farm

^  
NORTON ROSE FULBRIGHT

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DEED DATED 18 AUGUST 2017

## PARTIES

- (1) Boreas Holdco Limited (incorporated in England and Wales with company number 08693195) and whose registered office is at 4th Floor, 40 Dukes Place, London, EC3A 7NH, as **Chargor**;
- (2) BNP Paribas, London Branch as **Security Trustee**.

IT IS AGREED as follows:

## Interpretation

### 1 Definitions and interpretation

#### Definitions

- 1.1 Unless the context otherwise requires or unless otherwise defined in this Deed, words and expressions defined in the Common Terms and Facilities Agreement and the Intercreditor Agreement shall have the same meaning when used in this Deed. In addition, the following expressions shall have the meanings specified next to each:

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

**Charged Assets** means those assets which are from time to time the subject of clause 2.2

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

**Default Rate** means the rate specified in clause 8.3 of the Common Terms and Facilities Agreement

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

**Dividends**, in relation to any Share, means:

- (a) dividends and distributions of any kind and any other sum received or receivable in respect of that Share;

- (b) shares or other Rights accruing or offered by way of redemption, bonus, option or otherwise in respect of that Share;
- (c) allotments, offers and rights accruing or offered in respect of that Share; and
- (d) any other Rights attaching to, deriving from or exercisable by virtue of the ownership of, that Share

**Final Discharge Date** has the meaning given to this term in the Intercreditor Agreement.

**Insolvency Event**, in relation to a person, means:

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

**Insolvency Legislation** means:

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

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

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

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

**Receiver** means an Administrative Receiver or a Specific Receiver

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

**Secured Creditor Security** means the Security created by this Deed and any other existing or future Security granted by the Chargor to the Security Trustee to secure the payment and discharge of Secured Obligations

**Secured Creditor Security Document** means a document creating or evidencing Secured Creditor Security

**Secured Obligations** means Obligations from time to time incurred by the Borrower under or in connection with the Finance Documents when they become due for payment or discharge, the Offtaker Debt and the Cash Out Debt, except for any obligation which, if it were so included, would result in this Deed contravening Section 678 or 679 of the Companies Act 2006

**Shares** means the A Shares held by the Chargor, including, without limitation, those set out in Part A of Schedule 2 (*Security assets*) and any A Shares issued to the Chargor by the Borrower after the date of this Deed

**Shareholder Loan** means each loan made by the Chargor under or pursuant to each Shareholder Loan Document and includes the principal amount outstanding and all interest, fees and other amounts payable to the Chargor under or pursuant to the Shareholder Loan Document

**Shareholder Loan Document** means:

- (a) any agreement specified in Part B of Schedule 2 (*Security assets*); and
- (b) any other agreement for the provision of debt financing between the Chargor and the Borrower whether in writing or otherwise, other than one to be repaid pursuant to the Refinancing Distribution in accordance with the Common Terms and Facilities Agreement.

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

**Transferee** means the person or entity to which the Chargor is transferring its legal and beneficial interest in the Shares

- 1.2 Without prejudice to the generality of clause 1.1 the following words and expressions have the meanings given to them in the Common Terms and Facilities Agreement and/or the Intercreditor Agreement, namely: **Accounts Agreement, Borrower, Business Day, Condition Precedent, Event of Default, Facility Agent, Finance Documents, Finance Parties, Intercreditor Agreement, JOA, JOA Direct Agreement, Lenders, Secured Creditor and Secured Creditors, Security, Security Trustee, Shareholder Loan, Subsidiary, Tax, Third Parties Act and VAT.**



## **Interpretation**

- 1.3 Clause 1.2 (*Construction*) and clause 31 (*Set-off*) of the Common Terms and Facilities Agreement will be incorporated in this Deed as if references to "this Agreement" were references to this Deed and with any other necessary changes.
- 1.4 This Deed shall be read together with the Common Terms and Facilities Agreement and the Intercreditor Agreement and, in the event of any conflict or inconsistency between the provisions of this Deed and the provisions of the Common Terms and Facilities Agreement and the Intercreditor Agreement, the relevant provisions of the Common Terms and Facilities Agreement and the Intercreditor Agreement shall prevail. In the case of any conflict between the Common Terms and Facilities Agreement and the Intercreditor Agreement, the provisions of the Intercreditor Agreement shall prevail.
- 1.5 Where this Deed imposes an obligation on the Chargor to do something if required or requested by the Security Trustee, it will do so as soon as practicable after it becomes aware of the requirement or request.
- 1.6 It is intended that this document takes effect as a deed even though the Security Trustee may only execute it under hand.
- 1.7 Where a definition of a type of asset in this Deed contains a number of categories each category will be construed as separate from each other category.
- 1.8 References to any enactment include that enactment as amended or re-enacted; and, if an enactment is amended, any provision of this Deed which refers to that enactment will be amended in such manner as the Security Trustee, after consultation with the Chargor, determines to be necessary in order to preserve the intended effect of this Deed.

## **Parties and third parties**

- 1.9 The Rights expressly conferred on each of the Secured Creditors, each Receiver and each Officer of the Security Trustee or a Receiver under this Deed are enforceable by each of them under the Third Parties Act.
- 1.10 No other term of this Deed is enforceable under the Third Parties Act by anyone who is not a party to this Deed.
- 1.11 The parties to this Deed may terminate this Deed or vary any of its terms without the consent of any third party. However, they may not terminate this Deed or vary any of its terms if this would have the effect of terminating or adversely affecting:
- (a) the Rights of the Secured Creditors under this Deed without its consent; or

- (b) the Rights of a Receiver or of an Officer of the Security Trustee or a Receiver under this Deed without its consent, but only to the extent that it has notified the Security Trustee that it intends to enforce that clause at the time of the termination or variation.

## **Security**

### **2 Charges**

2.1 The charges contained in this clause 2:

- (a) are given to the Security Trustee as trustee for the Secured Creditors;
- (b) secure the payment and discharge of the Secured Obligations; and
- (c) are given with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

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

- (a) the Shares; and
- (b) each Shareholder Loan under each Shareholder Loan Document,

and in any Rights accruing to, derived from or otherwise connected with them (including Dividends, the proceeds of Disposal and any warrants, options and other Rights to subscribe for or otherwise acquire Shares).

### **3 Set-off**

The Rights set out in clause 31 (*Set-Off*) of the Common Terms and Facilities Agreement are in addition to the Security conferred on the Security Trustee under this Deed.

### **4 Restrictions**

4.1 The Chargor will ensure that the restrictions contained in this clause 4 are complied with unless the Secured Creditors agrees to the contrary.

4.2 No Security will exist over, or in relation to, any Charged Asset other than the Secured Creditor Security.

4.3 There will be no Disposal of any Charged Asset except as expressly permitted by the Common Terms and Facilities Agreement or the Intercreditor Agreement.

### **5 Transfer of Shares**

5.1 Subject to Clauses 5.2 and 5.3 the Chargor must not sell, transfer, licence or otherwise dispose any Shares.

5.2 The Chargor shall be entitled to transfer any Shares to the extent that it is permitted to do so in accordance with clause 7.4 (*Mandatory Prepayment - Change of Control*) of the Common Terms and Facilities Agreement and clause 18.6 (*Assignment by Shareholder*) of the Intercreditor Agreement, provided that any Transferee has:

- (a) executed a debenture substantially in the form of this Deed (with any necessary amendment agreed to by the Security Trustee) in favour of the Security Trustee in respect of the Shares to be transferred and any Shareholder Loan and Shareholder Loan Documents pursuant to Clause 6 (*Transfer of Loans*);
- (b) entered into an Intercreditor Accession Deed (as defined in the Intercreditor Agreement) to become a party to the Intercreditor Agreement; and
- (c) provided a legal opinion addressed to the Finance Parties in respect of such debenture and the Intercreditor Accession Deed (in form and substance and from a counsel satisfactory to the Security Trustee, acting reasonably) confirming that (i) the proposed Transferee has the capacity to enter into an Intercreditor Accession Deed and the debenture, (ii) the proposed Transferee's signatory (or signatories) have been duly authorised, (iii) such documentation required to be entered into by the proposed Transferee has been duly executed in accordance with its constitutional documents and all applicable laws and (iv) the obligations of the proposed Transferee created pursuant to the documentation entered into are legally valid and binding on, and enforceable against it (subject to the legal reservations set out therein)

in each case prior to or at the same time as such transfer.

5.3 Contemporaneously with a transfer of Shares to a Transferee in accordance with Clause 5.2:

- (a) the Security Trustee shall return to the Chargor any certificates or other documents provided to it in respect of the Shares being transferred by the Chargor to the Transferee;
- (b) the definition of "Shares", Clause 9.5 (*Shares*) and Schedule 2 (*Security assets*) in this Deed will be amended to reflect the number of Shares transferred by the Chargor to the Transferee;
- (c) the Chargor will be released from its obligations under this Deed in respect of the Shares which have been transferred to the Transferee; and
- (d) to the extent the Chargor has retained ownership of any Share, the Chargor shall each comply with the requirements of Clause 8.4(a) in respect of the Shares held by it.

## **6 Transfer of Loans**

Where a transfer of Shares is permitted under Clause 5 (*Transfer of Shares*):

- (a) the Chargor shall be entitled to transfer to a Transferee any Shareholder Loans and Shareholder Loan Documents in equal proportion to the Shares transferred under Clause 5 (*Transfer of Shares*) to such Transferee; and
- (b) contemporaneously with a transfer of Shareholder Loans and Shareholder Loan Documents to a Transferee in accordance with paragraph (a) above:
  - (i) the Security Trustee shall return to the Chargor any certificates or other documents provided to it under this Deed in respect of the Shareholder Loans and Shareholder Loan Documents being transferred by the Chargor to the Transferee;
  - (ii) the definitions of "Shareholder Loan" and "Shareholder Loan Document" in this Deed will be amended to reflect the Shareholder Loans and Shareholder Loan Documents transferred by the Chargor to the Transferee; and
  - (iii) the Chargor will be released from its obligations under this Deed in respect of the Shareholder Loans and Shareholder Loan Documents which have been transferred to the Transferee.

## **7 Limited Recourse**

- 7.1 Notwithstanding anything in this Deed and subject to paragraph 7.3 below, the liability of the Chargor in respect of this Deed shall be limited to the amount recovered by the Security Trustee or the Receiver (*or agent acting on behalf of either*) on enforcement of the Security under this Deed.
- 7.2 If, following enforcement of the Security Creditor Security, the Security Trustee or the Receiver fails to recover all of the Secured Obligations payable or any other moneys payable under a Finance Document, the Security Trustee shall not, except as expressly provided in this Clause 7 (*Limited Recourse*) be entitled to recover any shortfall or commence proceedings to recover any shortfall, from the Chargor.
- 7.3 Nothing in this Clause 7 (*Limited Recourse*) shall:
  - (a) prevent the Security Trustee demanding or taking action to recover either any Secured Obligations from any party which has or holds any Charged Assets to the extent of the value of the Charged Assets or any other moneys owing under a guarantee, indemnity or undertaking given by that party;
  - (b) operate to release, prejudicially affect or discharge any obligation of any person who has given any security or guarantee in respect of, or otherwise provided security for, any Secured Obligations;

- (c) affect or limit the liability of the Chargor, or release or discharge the Chargor from liability, in respect of, or prevent the Security Trustee from taking any action or commencing any proceedings against the Chargor in respect of:
  - (i) any representation and warranty made or regarded as made under a Finance Document by the Chargor that is or becomes false, misleading or incorrect or any breach of any representation, warranty or undertaking under this Deed; or
  - (ii) any fraudulent act by the Chargor or its officers, agents or employees;
- (d) affect or limit the liability of any person (other than the Chargor) under or in respect of any Finance Document; or
- (e) affect any right of a Finance Party to seek equitable relief through court proceedings including, without limitation, an order for specific performance or an injunction.

## **8 Perfection**

### **General action**

- 8.1 The Chargor will, at its own expense, create all such Security, execute all such documents, give all such notices, effect all such registrations (whether at Companies House, an asset registry or otherwise), deposit all such documents and do all such other things as the Security Trustee may reasonably require from time to time in order to:
- (a) ensure that the Security Trustee has an effective first-ranking fixed charge over the Charged Assets; and
  - (b) facilitate the enforcement of the Secured Creditor Security, the realisation of the Charged Assets or the exercise of any Rights held by the Security Trustee or any Receiver under or in connection with the Secured Creditor Security.
- 8.2 The scope of clause 8.1 is not limited by the specific provisions of the rest of this clause 8 or by any other provision of the Secured Creditor Security Documents.

### **Notification**

- 8.3 If, after the date of this Deed, the Chargor acquires or agrees to acquire any Shares, it will notify the Security Trustee as soon as reasonably practicable and will provide it with such information about the acquisition as the Security Trustee may reasonably require.

### **Shares**

- 8.4 The Chargor will:

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

#### **Shareholder Loan Documents**

- 8.5 If, at any time, the Chargor has a Right in respect of a Shareholder Loan pursuant to a Shareholder Loan Document, it will, on the date of this Deed (or, if it acquires the Right later, as soon as practicable after it does so):
- (a) deliver a notice of this Deed to the other parties to the relevant Shareholder Loan Document substantially in the form set out in the applicable part of Schedule 3 (*Notice and acknowledgement of charge*); and
  - (b) use its reasonable endeavours to procure that those parties deliver an acknowledgement of the notice to the Security Trustee substantially in the form set out in that part of that Schedule as soon as reasonably practicable.

#### **Subsequent Security**

- 8.6 If a Secured Creditor receives notice that any Security has been created over Charged Assets, that Secured Creditor will be treated as if it had immediately opened a new account for the Chargor, and all payments received by that Secured Creditor from the Chargor will be treated as if they had been credited to the new account and will not reduce the amount then due from the Chargor to that Secured Creditor.

## **Representations and warranties**

### **9 Representations and warranties**

- 9.1 The Chargor makes the representations and warranties set out in this Clause 9 (*Representations and Warranties*) to each Secured Finance Party.

#### **Nature of security, ranking and priority**

- 9.2 Subject to any general principles of law which are specifically referred to in any legal opinion delivered as a Condition Precedent, the Security Interests created by this Deed constitute legal, valid and enforceable Security Interests in favour of the Security Trustee which rank in the priority specified under this Deed.

#### **Shares**

- 9.3 The Shares are fully paid.
- 9.4 Other than the B Shares, the Shares represent the whole of the issued share capital of the Borrower.
- 9.5 The Chargor is the sole legal and beneficial owner of the Shares.

#### **Stamp duties**

- 9.6 As at the date of this Deed, no stamp or registration duty or similar Tax or charge is payable in its jurisdiction of incorporation in respect of this Deed other than those specifically referred to in any legal opinion delivered as a Condition Precedent.

#### **Immunity**

- 9.7 To the extent that the Chargor may in any jurisdiction claim for itself or its assets any immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction such immunity (whether or not claimed) may be attributed to itself or its assets, it hereby irrevocably agrees not to claim, and hereby irrevocably waives, such immunity to the full extent permitted by the laws of such jurisdiction.
- 9.8 The Chargor hereby consents generally, in respect of any legal action or proceeding arising out of or in connection with this Deed, to the giving of any relief or the issue of any process in connection with this Deed, including the making, enforcement or execution against any property or assets whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in any proceedings.
- 9.9 The Chargor irrevocably and unconditionally acknowledges that the execution, delivery and performance of this Deed constitute private and commercial (and not public or governmental) acts of



the Chargor done and performed for private and commercial (and not public or governmental) purposes.

**No adverse consequences**

9.10 Subject to any general principles of law which are specifically referred to in any legal opinion delivered as a Condition Precedent:

- (a) it is not necessary under the laws of its jurisdiction of incorporation:
  - (i) in order to enable any Finance Party to enforce its rights under this Deed; or
  - (ii) by reason of the entry into of any Finance Document or the performance by it of its obligations under this Deed,  
  
that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in its jurisdiction of incorporation; and
- (b) no Finance Party is or will be deemed to be resident, domiciled or carrying on business in its jurisdiction of incorporation by reason only of the entry into, performance and/or enforcement of this Deed.

**Jurisdiction/governing law**

9.11 Subject to any general principles of law which are specifically referred to in any legal opinion delivered as a Condition Precedent:

- (a) its:
  - (i) irrevocable submission under this Deed to the jurisdiction of the courts of England;
  - (ii) agreement that this Deed and any non-contractual obligations arising out of or in connection with it are governed by English law; and
  - (iii) agreement not to claim any immunity to which it or its assets may be entitled,  
  
are legal, valid and binding under the laws of its jurisdiction of incorporation; and
- (b) any judgment obtained in England in connection with this Deed will be recognised and be enforceable by the courts of its jurisdiction of incorporation.

**Times for making representations and warranties**

9.12 The representations and warranties set out in this Deed are made on the date of this Deed.

## Enforcement

### 10 Enforcement

#### Time for enforcement

- 10.1 Without prejudice to clause 17 (*Buy-Out Option*) of the Intercreditor Agreement, the Security Trustee may enforce the Secured Creditor Security at any time an Event of Default has occurred and is continuing, or if the Chargor requests it to do so.

#### Methods of enforcement

- 10.2 The Security Trustee may enforce the Secured Creditor Security by:
- (a) if permitted to do so by the Insolvency Legislation, appointing an Administrative Receiver of the Chargor;
  - (b) appointing a Specific Receiver of assets of the Chargor;
  - (c) becoming the registered holder of, going into possession of, receiving the benefit of, or selling the Charged Assets, giving notice to the Chargor or any other person in relation to any of the Charged Assets, exercising a right of set-off or in any other way it may decide; or
  - (d) taking any other analogous action it may decide in any jurisdiction other than England.
- 10.3 To the extent that the Secured Creditor Security arises under a security financial collateral arrangement, the Security Trustee may also enforce it by giving written notice to the Chargor that it is appropriating those Charged Assets which consist of financial collateral. On receipt of that notice by the Chargor, the Security Trustee will automatically become the absolute owner of that financial collateral, and the Chargor will have no further interest in it. The value of the financial collateral will, as soon as practicable after it has been established, be applied in discharge of the equivalent amount of the Secured Obligations in accordance with clause 11 (*Application of proceeds*). For this purpose, the Security Trustee will value the financial collateral as follows:
- (a) in the case of cash, by reference to its face value received by the Security Trustee;
  - (b) in the case of credit claims, by reference to the amount actually recovered by the Security Trustee; and
  - (c) in the case of financial instruments, by reference to such public indices, valuations or other matters as the Security Trustee may reasonably decide.

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

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

**Powers on enforcement**

- 10.9 An Administrative Receiver will have:
- (a) the powers given to him by the Insolvency Legislation;
  - (b) the powers given to a mortgagee or a receiver by the Law of Property Act 1925, but without the restrictions contained in section 103 of that Act; and
  - (c) the power to do, or omit to do, on behalf of the Chargor, anything which the Chargor itself could have done, or omitted to do, if its assets were not the subject of Security and the Chargor were not in insolvency proceedings.
- 10.10 A Specific Receiver will have the same powers as an Administrative Receiver in respect of the assets over which he is appointed.
- 10.11 The Security Trustee will, if it enforces the Secured Creditor Security itself, have the same powers as an Administrative Receiver in respect of the assets which are the subject of the enforcement.
- 10.12 Except to the extent provided by law, none of the powers described in this clause 10 will be affected by an Insolvency Event in relation to the Chargor.

**Status and remuneration of Receiver**

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

### **Third parties**

10.15 A person dealing with the Security Trustee or with a Receiver is entitled to assume, unless it has actual knowledge to the contrary, that:

- (a) those persons have the power to do those things which they are purporting to do; and
- (b) they are exercising their powers properly.

## **11 Application of proceeds**

All money received by the Security Trustee or a Receiver under or in connection with the Finance Documents (whether during, or before, enforcement of the Secured Creditor Security) will, subject to the rights of any persons having priority, be applied in or towards payment of the Secured Obligations in such order as is set out in clause 11 (*Proceeds of Enforcement*) of the Intercreditor Agreement (and, if any of the Secured Obligations are not then payable, by payment into a suspense account until they become payable).

## Undertakings

### 12 General Undertakings

- 12.1 Following an Event of Default (and also once the Secured Creditor Security is being enforced), the Security Trustee will be entitled to receive all distributions in respect of the Chargor's Shares, the Dividends and Shareholder Loan Documents for application in accordance with clause 11 (*Application of proceeds*). Otherwise, the Chargor will be entitled to receive those distributions for application in accordance with the Intercreditor Agreement.
- 12.2 Following an Event of Default (and also once the Secured Creditor Security is being enforced), but only upon written notice to the Chargor, the Security Trustee will be entitled to exercise all voting and other Rights in respect of the Chargor's Shares and the Dividends and the Shareholder Loan Documents. Otherwise, the Chargor will be entitled to exercise those Rights.
- 12.3 To the extent that the holder of those Shares and the Shareholder Loan Documents is not the person entitled to receive those distributions and exercise those Rights, the holder will pay the distributions to the person entitled to them and will exercise those Rights in accordance with the reasonable requirements of the person entitled to exercise them.
- 12.4 The Chargor will promptly pay all calls, instalments or other payments which from time to time become due in respect of any of its Shares and the Shareholder Loan Documents, and the Security Trustee will not in any circumstances incur any liability in respect of them.

### 13 Shareholder Loans

- 13.1 The Chargor must:
- (a) ensure the Shareholder Loan Documents are in a form acceptable to the Majority Lenders (acting reasonably); and
  - (b) not materially amend a Shareholder Loan Document without Majority Lender Consent; and
  - (c) the Chargor must supply the Security Trustee and any Receiver with copies of each Shareholder Loan Document and any information and documentation relating to any Shareholder Loan Document reasonably requested by the Security Trustee or any Receiver.

### 14 Shares

- 14.1 The Chargor will not permit the Borrower to:
- (a) cancel, increase, create, issue or put under option (i) any share capital (other than B Shares) or (ii) any loan capital convertible into shares; or

- (b) Other than in relation to B Shares, make any alteration to, grant any rights in relation to or otherwise re-organise, purchase or reduce its share capital or reserves in any way.
- 14.2 The Chargor will not convene a meeting of the Borrower with a view to passing a resolution that the Borrower be wound up.
- 14.3 The Chargor will notify the Security Trustee as soon as it becomes aware of any matter which might reasonably be expected to have an adverse effect on the Rights of the Secured Creditors under the Secured Creditor Security. Those matters include a claim by any person to an interest in a Charged Asset.
- 14.4 The Chargor will provide to the Security Trustee:
  - (a) such information about the Charged Assets;
  - (b) such information about the extent to which it has complied with its obligations under this Deed; and
  - (c) copies of such documents which create, evidence or relate to its Charged Assets,

*as the Security Trustee may from time to time reasonably request.*
- 14.5 If the Chargor does not comply with its obligations under this Deed, the Security Trustee may do so on the Chargor's behalf on such basis as the Security Trustee (acting on behalf of the Secured Creditors) may reasonably decide. The Chargor will indemnify the Security Trustee on demand against the amount certified by the Security Trustee to be the cost, loss or liability suffered by it as a result of doing so.

## Miscellaneous

### 15 Third party security protections

#### Continuing obligations

- 15.1 Subject to clause 20 (*Release*) this charge is a continuing security and will extend to the ultimate balance of sums payable by the Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

#### Reinstatement

- 15.2 If any discharge, release or arrangement (whether in respect of the obligations of the Borrower or any security for those obligations or otherwise) is made by the Lenders in whole or in part on the faith 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.

#### Waiver of defences

- 15.3 The obligations of the Chargor under this Deed will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this Deed (without limitation and whether or not known to it or to the Lenders), including:
- (a) any time, waiver or consent granted to, or composition with, the Borrower or any other person;
  - (b) the release of the Borrower or any other person;
  - (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Borrower or any 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;
  - (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Borrower or any other person;
  - (e) any amendment (however fundamental) or replacement of a Finance Document or any other document or security;
  - (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
  - (g) any insolvency or similar proceedings.

### **Immediate recourse**

- 15.4 The Chargor waives any right it may have of first requiring the Lenders (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 claiming from the Chargor under this Deed. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

### **Appropriations**

- 15.5 Until the Secured Obligations have been irrevocably and unconditionally discharged in full, the Lenders (or any trustee or agent on its behalf) or a Receiver may at any time after the Secured Creditor Security has become enforceable:
- (a) refrain from applying or enforcing any other money, security or Rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Obligations, or apply and enforce the same in the manner and order it thinks fit (whether against those amounts or otherwise) and the Chargor will not be entitled to the benefit of the same; and
  - (b) hold in an interest-bearing suspense account any money received from the Chargor or on account of the Chargor's liability under this Deed.

### **Deferral of Chargor's rights**

- 15.6 Unless the Lenders otherwise direct, the Chargor will not exercise any Rights (including rights of set-off) which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Deed:
- (a) to be indemnified or reimbursed by the Borrower;
  - (b) to claim any contribution from any other obligor in relation to the Borrower's obligations under the Finance Documents;
  - (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lenders under the Finance Documents or of any other guarantee or security taken under, or in connection with, the Finance Documents by the Lenders;
  - (d) to bring legal or other proceedings for an order requiring the Borrower to make any payment, or perform any obligation, in respect of which the Chargor has given a guarantee, undertaking or indemnity under this Deed;
  - (e) to exercise any right of set-off against the Borrower; and/or
  - (f) to claim or prove as a creditor of the Borrower in competition with the Lenders.



- 15.7 If the Chargor receives any benefit, payment or distribution in relation to such Rights it will promptly pay an equal amount to the Lenders for application in accordance with this Deed.
- 15.8 Clauses 15.6 and 15.7 only apply until all the Secured Obligations have been irrevocably and unconditionally discharged in full.
- 15.9 This Deed is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Lenders.

## **16 Duration of the Security**

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

## **17 Expenses, liability and indemnity**

- 17.1 The Chargor will, on demand, pay all legal and other costs and expenses (including any stamp duty, registration or other similar taxes):
- (a) reasonably incurred by the Security Trustee or by any Receiver in connection with the enforcement or preservation of the Secured Creditor Security or the Charged Assets; and
  - (b) without prejudice to clause 25.2 (*Transaction expenses*) of the Intercreditor Agreement, reasonably incurred by Security Trustee or any Receiver in connection with any other matter relating to the Secured Creditor Security, including any amendment, waiver, consent or release required in connection with the Secured Creditor Security.
- 17.2 Neither the Security Trustee nor a Receiver nor any of their Officers will be in any way liable or responsible to the Chargor for any loss or liability of any kind arising from any act or omission by it of any kind (whether as mortgagee in possession or otherwise) in relation to the Charged Assets or the

Secured Creditor Security, except to the extent caused by its own gross negligence or wilful misconduct.

## **18 Payments**

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

## **19 Remedies**

- 19.1 The Rights created by this Deed are in addition to any other Rights of the Secured Creditors against the Chargor or any other security provider under any other documentation, the general law or otherwise. They will not merge with or limit those other Rights, and are not limited by them.
- 19.2 No failure by a Secured Creditor to exercise any Right under this Deed will operate as a waiver of that Right. Nor will a single or partial exercise of a Right by a Secured Creditor preclude its further exercise.
- 19.3 If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision in any other respect or under the law of any other jurisdiction will be affected or impaired in any way.

## **20 Release**

20.1 The Security Trustee shall, at the request and cost of the Chargor, release the Charged Assets from this Security in accordance with:

- (a) clause 12(m)(ii) (*Pre-Emption Provisions*) of the JOA Direct Agreement; or
- (b) clause 14 (*Deadlock Resolution*) of the JOA.

20.2 Promptly after the Final Discharge Date the Security Trustee must, at the request and cost of the Chargor, take whatever action is reasonably necessary to release the Charged Assets from the Secured Creditor Security.

## **21 Power of attorney**

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

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

## **22 The Security Trustee**

22.1 The Security Trustee may be replaced by a successor in accordance with the Intercreditor Agreement.

22.2 On the date of its appointment, the successor Security Trustee will assume all the Rights and Obligations of the retiring Security Trustee. However, this does not apply to any Obligations of the retiring Security Trustee which arise out of its acts or omissions as Security Trustee before the appointment of the successor, in respect of which the retiring Security Trustee will continue to have the Obligations imposed by, and the Rights contained in, this Deed and the Intercreditor Agreement.

22.3 The retiring Security Trustee will, at the Chargor's expense, provide its successor with copies of those of its records as Security Trustee as its successor properly requires it to perform its functions as Security Trustee.

## **23 Notices**

23.1 Any notice or other communication to a party to this Deed must be in writing. It must be addressed for the attention of such person, and sent to such address or fax number as that party may from time to time notify to the other parties.

23.2 It will be deemed to have been received by the relevant party on receipt at that address or fax number.

The initial administrative details of the parties are contained in Schedule 1 (*Initial administrative details of the parties*) but a party may amend its own details at any time by notice to the other party.

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

## **24 Counterparts**

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

## **25 Law and jurisdiction**

- 25.1 This Deed and any non-contractual obligations connected with it are governed by English law.
- 25.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of, or in connection with, this Deed or any non-contractual obligations connected with this Deed (including a dispute regarding the existence, validity or termination of or any non-contractual obligation arising out of or in connection with this Deed) (a **Dispute**).
- 25.3 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly that they will not argue to the contrary.
- 25.4 Clause 25.2 is for the benefit of the Secured Creditors only. As a result, no Secured Creditor shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Creditors may take concurrent proceedings in any number of jurisdictions.

### **25.5 Waiver of immunity**

The Chargor irrevocably and unconditionally:

- (a) agrees not to claim in any jurisdiction, for itself or in respect of its assets, immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and waives such present or future immunity, whether claimed or not; and
- (b) consents generally to the giving of any relief or the issue of any process in connection with any proceedings, including the making, enforcement or execution against any property of any nature (irrespective of its use or intended use) of any order or judgement which may be made or given in any proceedings.

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

**Schedule 1**  
**Initial administrative details of the parties**

Party	Address	Fax number	Email	Attention
Chargor	4th Floor, 40 Dukes Place, London, EC3A 7NH	[REDACTED]	[REDACTED]	Patrick Côté
	<i>Copy to:</i>  Edifice Jacques- Parizeau  1000 Place Jean- Paul-Riopelle  Montréal (Québec)  Canada H2Z 2B3	[REDACTED]	[REDACTED]	Francois Duquette
Security Trustee	10 Harewood Avenue, London, NW1 6AA	[REDACTED]	[REDACTED]	Agency UK/ Claudine Todd

**Schedule 2**  
**Security assets**

**Part A: Shares**

Name of the Company	Class of Shares	Number of Shares
<i>Boreas Holdco Limited</i> (CRN 08693195)	A Shares	100

**Part B: Shareholder Loan Documents**

1. The amendment and restatement deed dated on or about the date of this Deed between Boreas (Investment) Limited, Boreas Holdco Limited and Caisse de dépôt et placement du Québec relating to, among other things, a subordinated loan agreement originally dated 25 March 2014

**Schedule 3**  
**Notice and acknowledgment of charge**

**Part A**

**Form of notice of charge of Shareholder Loans**

To: [Counterparty]

Date: [●]

Dear Sirs

**Notice of Charge**

- 1 We give you notice that, under a shareholder debenture dated [●] entered into by us (and others) in favour of [●] (the **Security Trustee**), we have charged to the Security Trustee all of our rights in *[insert details of agreement concerned]* (the **Agreement**).
- 2 We remain liable for our obligations under or in connection with the Agreement. The Security Trustee has no obligations under it.
- 3 We instruct you to:
  - (a) make all payments due to us under the Agreement to account named *[[name of Borrower] – Proceeds Account]* Account number [ ] with *[name of Account Bank]* at [ ] unless and until the Security Trustee gives you notice to the contrary, in which case you will comply with the directions of the Security Trustee[ (whose receipt will be a good discharge to you for such payments)]; and
  - (b) send to the Security Trustee copies of all notices issued by you under the Agreement.
- 4 This instruction cannot be varied or terminated without the consent of the Security Trustee.
- 5 Please sign the enclosed acknowledgement and return it to the Security Trustee at *[address]* marked for the attention of [●]

.....

for and on behalf of

**[Chargor]**

### Acknowledgement of Charge

To: [Security Trustee]  
[Address]  
Attention: [●]

- 1 We acknowledge receipt of the notice [described above];
- 2 We have not received notice that any other person has an interest in the Agreement.
- 3 We confirm that we will pay all sums due and payable and give notices under the contract as directed in that notice.
- 4 [We will comply with the instructions in the notice.]

Executed as a )

deed by .....

[Counterparty] ) Director

acting by: ) .....

Director/Secretary

Date: •



**SIGNATORIES**

**The Chargor**

**EXECUTED as a DEED by  
BOREAS HOLDCO LIMITED**

acting by

and

)

[Redacted]

)

Name: Rana Ghorayeb

Authorised signatory

[Redacted]

)

Name: Louis St-Maurice

Authorised signatory

The Security Trustee


EXECUTED as a DEED by BNP Paribas, London Branch in its capacity as Security Trustee

By:  .....

Authorised Signatory

Name: *Victoria - Oudine* MONLEAU

In the presence of:

 .....

Witness signature

Name: *MARLEY ALI*

Address:

Occupation *TRAINING SOLICITOR*

 **NORTON ROSE FULBRIGHT**

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