



Registration of a Charge

Company name: **APUS ENERGY LIMITED**

Company number: **09153837**

Received for Electronic Filing: **13/02/2015**



X416JHFM

Details of Charge

Date of creation: **02/02/2015**

Charge code: **0915 3837 0001**

Persons entitled: **FERN TRADING LIMITED**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **TRACEY SPEVACK**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 9153837

Charge code: 0915 3837 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 2nd February 2015 and created by APUS ENERGY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 13th February 2015 .

Given at Companies House, Cardiff on 16th February 2015

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



Companies House



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

DATED 2nd FEBRUARY 2015

- (1) APUS ENERGY LIMITED
- (2) FERN TRADING LIMITED

CHARGE OVER SECURITIES
- relating to the shares in -
Cadoxton Reserve Power Limited

Reference: KMH/OC826



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THIS DEED is dated

2ND FEBRUARY

2015

PARTIES

- (1) **APUS ENERGY LIMITED**, a company registered in England and Wales with registered number 09153837, whose registered office is at First Floor, 18 Park Place, Cardiff CF10 3DQ ("**Chargor**"); and
- (2) **FERN TRADING LIMITED** incorporated and registered in England and Wales with company number 06447318 whose registered office is at 20 Old Bailey, London EC4M 7AN ("**Fern**").

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this Deed:

"Borrower" has the meaning given to that expression in the Loan Agreement;

"Business Day" a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London;

"Charged Shares" means each and all of the shares which form part of the Securities;

"Delegate" any person appointed by Fern or any Receiver pursuant to clause 13 and any person appointed as attorney of Fern, Receiver or Delegate;

"Event of Default" as defined in the debenture to be given by the Subsidiary in favour of Fern on or about the date of this deed:

"Financial Collateral" shall have the meaning given to that expression in the Financial Collateral Regulations;

"Financial Collateral Regulations" the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226);

"Incapacity" means, in relation to a person, the insolvency, liquidation, dissolution, winding-up, administration, receivership, or other incapacity or any analogous proceeding of or in relation to that person whatsoever;

"Investment Agreement" means each investment agreement (howsoever described) entered into or to be entered into between the Chargor and Fern and as amended from time to time;

"Limitation Act" means the Limitation Act 1980;

"Loan Agreement" means the loan agreement to be entered into between Fern, the Subsidiary and the Chargor on or about the date of this Deed;

"LPA 1925" Law of Property Act 1925;

"Receiver" a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by Fern under clause 11;

"Secured Assets" all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this Deed;

"Secured Liabilities" (i) all present and future monies, obligations and liabilities owed by the Subsidiary to Fern, whether actual or contingent and whether owed

jointly or severally, as principal or surety or in any other capacity, together with all interest (including, without limitation, default interest) accruing in respect of those monies or liabilities and (ii) all other money and liabilities expressed to be secured hereby and all other obligations and liabilities of the Chargor under this Deed;

"Securities" means:

- (a) all the securities detailed in Schedule;
- (b) any further securities substituted or added from time to time pursuant to the provisions of this Deed;
- (c) any additional shares in the issued share capital of the Borrower in the future legally or beneficially owned by the Chargor;
- (d) any Securities Rights relating to the Charged Shares;
- (e) any proceeds, money, dividends, interest and other distributions, return of capital, marketable securities, accretions rights, benefits, or other property whatsoever now or in the future declared, payable or otherwise distributable in respect of the Charged Shares or the Securities Rights, whether by reason of a payment of a dividend, the making of a distribution of any kind, a rights issue, allotment, offer, conversion, exchange, substitution, consolidation, sub-division, redemption, pre-emption, sale, option, bonus, capitalisation, warrant, cancellation, re-classification, reconstruction, amalgamation, winding up or otherwise, in each case relating to the Charged Shares;

"Securities Rights" means any present or future right of the Chargor arising from the Charged Shares to acquire (by purchase or otherwise) any property from the Borrower including any additional marketable shares in the Borrower, whether shares (bonus or otherwise) warrants, options, notes, convertible securities or otherwise and however that right arises;

"Security Financial Collateral Arrangement" shall have the meaning given to that expression in the Financial Collateral Regulations;

"Security" any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect;

"Security Period" the period starting on the date of this Deed and ending on the date on which Fern is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding;

"Subsidiary" Cadoxton Reserve Power Limited, a company registered in England and Wales under number 09127592, whose registered office is at First Floor, 18 Park Place, Cardiff CF10 3DQ.

1.2 Interpretation

In this Deed:

- (a) reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment or re-enactment or extension and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts;

- (b) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (c) unless the context otherwise requires, words in the singular include the plural and in the plural include the singular;
- (d) a reference to a clause or Schedule is to a clause of, or Schedule to, this Deed, unless the context otherwise requires;
- (e) a reference to **this Deed** (or any provision of it) or any other document shall be construed as a reference to this Deed, that provision or that document as it is in force for the time being and as amended in accordance with its terms or with the agreement of the relevant parties;
- (f) a reference to a **person** shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, or any state or any agency of any person;
- (g) a reference to an **amendment** includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);
- (h) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;
- (i) a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;
- (j) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (k) a reference to **determines** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it;
- (l) a reference to the **Chargor** or Fern shall include its successors, permitted transferees and permitted assigns; and
- (m) clause and schedule headings shall not affect the interpretation of this Deed.

1.3 **Inconsistency**

If there is any conflict or an inconsistency between any provisions of this Deed, any provision of the Loan Agreement, an Investment Agreement, the provisions of the Loan Agreement will prevail and thereafter the Investment Agreements will prevail.

1.4 **Clawback**

If Fern considers that an amount paid by the Chargor in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed.

1.5 **Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of an agreement evidencing the Secured Liabilities (including but not limited to the Investment Agreement) and of any side letters between any parties in relation to such agreements are incorporated into this Deed.

1.6 Third party rights

Save as expressly provided in clause 15.2, a person who is not a party to this Deed (other than a permitted successor or assign, any Receiver or any Delegate) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

1.7 Perpetuity period

If the rule against perpetuities applies to any trust created by this Deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

1.8 Schedules

The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

1.9 Covenant to Pay

- (a) The Chargor covenants with Fern that it shall discharge all Secured Liabilities on their due date in accordance with their respective terms.
- (b) Notwithstanding any other provision to the contrary in this Deed, the amount recoverable from the Chargor under and/or pursuant to this Deed (other than in the case of wilful default and/or fraud of the Chargor) shall be limited to an amount equivalent to that realised from the Securities.

2. CHARGOR AS PRINCIPAL DEBTOR AND INDEMNITY

As a separate and independent stipulation, the Chargor agrees that if any purported obligation or liability of the Chargor which would have been the subject of this Deed had it been valid and enforceable is not or ceases to be valid or enforceable against the Chargor on any ground whatsoever whether or not known to Fern (including, without limitation, any irregular exercise or absence of any corporate power or lack of authority of, or breach of duty by, any person purporting to act on behalf the Chargor or any legal or other limitation, whether under the Limitation Act or otherwise or any disability or Incapacity or any change in the constitution of the Chargor), the Chargor shall nevertheless be liable to Fern in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Chargor was the principal debtor in respect thereof. As an original and independent obligation, the Chargor hereby agrees to keep Fern fully indemnified on demand against all damages, losses, costs and expenses arising from any failure of the Chargor to perform or discharge any such purported obligation or liability or resulting from any of the obligations of the Chargor in respect of any Secured Liabilities being or becoming void or voidable or unenforceable or ineffective against the Chargor (including all expenses incurred by Fern in preserving or enforcing or attempting to preserve and enforce its rights under this Deed).

3. GRANT OF SECURITY

3.1 Legal mortgage

As a continuing security for the payment and discharge of the Secured Liabilities, the Chargor with full title guarantee charges to Fern, by way of first fixed charge, the Securities and their proceeds of sale.

4. LIABILITY OF THE CHARGOR

4.1 Liability not discharged

The Chargor's liability under this Deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, Fern that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) Fern renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission that, but for this clause 4.1, might have discharged, or otherwise prejudiced or affected, the liability of the Chargor.

4.2 Immediate recourse

The Chargor waives any right it may have to require Fern to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this Deed against the Chargor.

5. REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties

The Chargor makes the representations and warranties set out in this clause 5 to Fern.

5.2 Approvals

- (a) That the Chargor is a limited liability company duly incorporated and validly existing under the laws of England and Wales;
- (b) That all necessary approvals and consents (whether governmental or otherwise) in relation to the making, performance and validity of this Deed and the transactions contemplated by this Deed have been obtained and remain in full force and effect;
- (c) That the security created by this Deed does not contravene or result in the contravention of any of the provisions of its memorandum and articles of association;
- (d) That this Deed does not and will not conflict with or result in any breach or constitute a default under any agreement, instrument or obligation to which the Chargor is a party or by which it is bound.

5.3 Security valid

This Deed creates (or once entered into, will create):

- (a) valid, legally binding and enforceable Security for the obligations expressed to be secured by it; and
- (b) subject to registration under the Companies Act 2006 and, in the case of real property registration at HM Land Registry, perfected Security over the assets expressed to be subject to security in it,

in favour of Fern, having the priority and ranking expressed to be created in this Deed and ranking ahead of all (if any) Security and rights of third parties except those preferred by law and is no liable to be set aside or avoided on liquidation, administration or bankruptcy or otherwise.

5.4 Ownership of Secured Assets

It is the legal and beneficial owner of the Secured Assets.

5.5 No Security

The Secured Assets are free from any Security other than the Security created by this Deed.

5.6 No adverse claims

It has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them.

5.7 No adverse covenants

There are no covenants, agreements, reservations, conditions, interests, rights or other matters whatsoever that materially and adversely affect the Secured Assets.

5.8 Avoidance of security

No Security expressed to be created under this Deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Chargor or otherwise.

5.9 No prohibitions or breaches

The entry into this Deed by the Chargor does not, and will not, constitute a breach of any agreement or instrument binding on the Chargor or its assets.

5.10 Securities

- (a) The Securities are duly authorised fully paid and are not subject to any option to purchase or similar rights.
- (b) No constitutional document of an issuer of the Securities, nor any other agreement:
 - (i) restricts or inhibits any transfer of the Securities on creation or enforcement of the security constituted by this Deed; or
 - (ii) contains any rights of pre-emption in relation to the Securities.

5.11 Times for making representations and warranties

The representations and warranties set out in clause 5.2 to clause 5.10 are made by the Chargor on the date of this Deed and on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

6. GENERAL COVENANTS

6.1 Negative pledge and disposal restrictions

The Chargor shall not at any time, except with the prior written consent of Fern:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this Deed;
- (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets;
- (c) permit any person other than the Chargor or Fern or the nominees or agent of Fern to be registered as the holder of the Securities or any part thereof;
- (d) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party.

6.2 Preservation of Secured Assets

The Chargor shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by Fern, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this Deed.

6.3 Liabilities

The Chargor will:

- (a) ensure that there are no monies or liabilities outstanding in respect of any of the Securities; and
- (b) punctually pay all calls, subscription monies and other monies payable on or in respect of any of the Securities and indemnify and keep indemnified Fern and its nominees against any cost, liabilities or expenses which it or they may suffer or incur as are result of any failure by the Chargor to pay the same.

6.4 Information

The Chargor will:

- (a) deliver to Fern a copy of every circular, notice, report, set of accounts or other document received by the Chargor in respect of or in connection with any of the Securities promptly on receipt by the Chargor of such document; and
- (b) promptly deliver to Fern all such information concerning the Securities as Fern may reasonably request from time to time.

6.5 Payment of outgoings

The Chargor shall promptly pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Secured Assets and, on demand, produce evidence of payment to Fern.

6.6 Chargor's waiver of set-off

The Chargor waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Chargor under this Deed).

7. SECURITIES COVENANTS

7.1 Deposit of title documents

- (a) The Chargor shall:
 - (i) on the execution of this Deed or promptly on the written request of Fern, deposit with Fern all stock or share certificates and other documents of title or evidence of ownership relating to any Securities owned by the Chargor at that time; and
 - (ii) on the purchase or acquisition by it of Securities after the date of this Deed, deposit with Fern all stock or share certificates and other documents of title or evidence of ownership relating to those Securities upon written request by Fern.
- (b) At the same time as depositing documents with Fern in accordance with clause 7.1(a)(i) or clause 7.1(a)(ii), the Chargor shall also deposit with Fern:
 - (i) all stock transfers forms relating to the relevant Securities duly completed and executed by or on behalf of the Chargor, but with the name of the transferee, the consideration and the date left blank; and
 - (ii) any other documents (in each case duly completed and executed by or on behalf of the Chargor) that Fern may request in order to enable it or any of its nominees, or any purchaser or transferee, to be registered as the owner of, or otherwise obtain a legal title to, or to perfect its security interest in any of the relevant Securities

so that Fern may, at any time and without notice to the Chargor, complete and present those stock transfer forms and other documents to the issuer of the Securities for registration.

7.2 Nominations

- (a) The Chargor shall terminate with immediate effect all nominations it may have made (including, without limitation, any nomination made under section 145 or section 146 of the Companies Act 2006) in respect of any Securities and, pending that termination, procure that any person so nominated:
 - (i) does not exercise any rights in respect of any Securities without the prior written approval of Fern; and
 - (ii) immediately on receipt by it, forward to Fern all communications or other information received by it in respect of any Securities for which it has been so nominated.
- (b) The Chargor shall not, during the Security Period, exercise any rights (including, without limitation, any rights under sections 145 and 146 of the Companies Act 2006) to nominate any person in respect of any of the Securities.

7.3 Additional registration obligations

The Chargor shall:

- (a) obtain all consents, waivers, approvals and permissions that are necessary, under the articles of association (or otherwise) of an issuer, for the transfer of the Securities to Fern or its nominee, or to a purchaser on enforcement of this Deed; and

- (b) procure the amendment of the share transfer provisions (including, but not limited to, deletion of any pre-emption provisions) under the articles of association, other constitutional document or otherwise of each issuer in any manner that Fern may require in order to permit the transfer of the Securities to Fern or its nominee, or to a purchaser on enforcement of this Deed.

7.4 Dividends and voting rights before enforcement

- (a) Before the security constituted by this Deed becomes enforceable, the Chargor may retain and apply for its own use all dividends, interest and other monies paid or payable in respect of the Securities and, if any are paid or payable to Fern or any of its nominees, Fern will hold all those dividends, interest and other monies received by it for the Chargor and will pay them to the Chargor promptly on request; and
- (b) before the security constituted by this Deed becomes enforceable, the Chargor may exercise all voting and other rights and powers in respect of the Securities or, if any of the same are exercisable by Fern or any of its nominees, to direct in writing the exercise of those voting and other rights and powers provided that:
 - (i) it shall not do so in any way that would breach any provision of this Deed or for any purpose inconsistent with this Deed; and
 - (ii) the exercise of, or the failure to exercise, those voting rights or other rights and powers would not, in Fern's opinion, have an adverse effect on the value of the Securities or otherwise prejudice Fern's security under this Deed.
- (c) The Chargor shall indemnify Fern against any loss or liability incurred by Fern (or its nominee) as a consequence of Fern (or its nominee) acting in respect of the Securities at the direction of the Chargor.
- (d) Fern shall not, by exercising or not exercising any voting rights or otherwise, be construed as permitting or agreeing to any variation or other change in the rights attaching to or conferred by any of the Securities that Fern considers prejudicial to, or impairing the value of, the security created by this Deed.

7.5 Dividends and voting rights after enforcement

After the security constituted by this Deed has become enforceable:

- (a) all dividends and other distributions paid in respect of the Securities and received by the Chargor shall be held by the Chargor on trust for Fern and immediately paid to Fern or, if received by Fern, shall be retained by Fern; and
- (b) all voting and other rights and powers attaching to the Securities shall be exercised by, or at the direction of, Fern and the Chargor shall, and shall procure that its nominees shall, comply with any directions Fern may give, in its absolute discretion, concerning the exercise of those rights and powers.

7.6 Calls on Securities

The Chargor shall promptly pay all calls, instalments and other payments that may be or become due and payable in respect of all or any of the Securities. The Chargor acknowledges that Fern shall not be under any liability in respect of any such calls, instalments or other payments.

7.7 No alteration of constitutional documents or rights attaching to Securities

The Chargor shall not, without the prior written consent of Fern, amend, or agree to the amendment of:

- (a) the memorandum or articles of association, or any other constitutional documents, of any issuer that is not a public company; or
- (b) the rights or liabilities attaching to any of the Securities.

7.8 Preservation of Securities

The Chargor shall ensure (as far as it is able to by the exercise of all voting rights, powers of control and other means available to it) that any issuer that is not a public company shall not:

- (a) consolidate or subdivide any of its Securities, or reduce or re-organise its share capital in any way;
- (b) issue any new shares or stock; or
- (c) refuse to register any transfer of any of its Securities that may be lodged for registration by, or on behalf of, Fern or the Chargor in accordance with this Deed.

7.9 Securities information

The Chargor shall, promptly following receipt, send to Fern copies of any notice, circular, report, accounts and any other document received by it that relates to the Securities.

8. POWERS OF FERN

8.1 Power to remedy

- (a) Fern shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Chargor of any of its obligations contained in this Deed.
- (b) The Chargor irrevocably authorises Fern and its agents to do all things that are necessary or desirable for that purpose.
- (c) Any monies expended by Fern in remedying a breach by the Chargor of its obligations contained in this Deed shall be reimbursed by the Chargor to Fern on a full indemnity basis and shall carry interest in accordance with clause 15.1.

8.2 Exercise of rights

The rights of Fern under clause 8.1 are without prejudice to any other rights of Fern under this Deed. The exercise of any rights of Fern under this Deed shall not make Fern liable to account as a mortgagee in possession.

8.3 Fern has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this Deed on a Receiver may, after the security constituted by this Deed has become enforceable, be exercised by Fern in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

8.4 Conversion of currency

- (a) For the purpose of, or pending the discharge of, any of the Secured Liabilities, Fern may convert any monies received, recovered or realised by it under this Deed (including the proceeds of any previous conversion under this clause 8.4) from their existing currencies of denomination into any other currencies of denomination that Fern may think fit.
- (b) Any such conversion shall be effected at HSBC Bank plc then prevailing spot selling rate of exchange for such other currency against the existing currency.
- (c) Each reference in this clause 8.4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

8.5 New accounts

- (a) If Fern receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, Fern may open a new account for the Chargor in Fern's books. Without prejudice to Fern's right to combine accounts, no money paid to the credit of the Chargor in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If Fern does not open a new account immediately on receipt of the notice, or deemed notice, under clause 8.5(a), then, unless Fern gives express written notice to the contrary to the Chargor, all payments made by the Chargor to Fern shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by Fern.

8.6 Fern's set-off rights

If Fern has more than one account for the Chargor in its books, Fern may at any time after:

- (a) the security constituted by this Deed has become enforceable; or
- (b) Fern has received, or is deemed to have received, notice of any subsequent Security or other interest affecting all or any part of the Secured Assets

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account that may be in debit. After making any such transfer, Fern shall notify the Chargor of that transfer.

8.7 Indulgence

Fern may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this Deed (whether or not any such person is jointly liable with the Chargor) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this Deed or to the liability of the Chargor for the Secured Liabilities.

9. WHEN SECURITY BECOMES ENFORCEABLE

9.1 Security becomes enforceable on an Event of Default

The security constituted by this Deed shall be immediately enforceable if an Event of Default occurs and is continuing PROVIDED THAT if the relevant Event of Default is the presentation or service of an application for an administration

order, notice of intention to appoint or notice of appointment of administrator then there shall be no requirement for the Event of Default to be continuing.

9.2 Discretion

After the security constituted by this Deed has become enforceable, Fern may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

10. ENFORCEMENT OF SECURITY

10.1 Enforcement powers

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this Deed) shall, as between Fern and a purchaser from Fern, arise on and be exercisable at any time after the execution of this Deed, but Fern shall not exercise such power of sale or other powers until the security constituted by this Deed has become enforceable under clause 9.1.
- (b) Section 103 of the LPA 1925 does not apply to the security constituted by this Deed.

10.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise Fern and any Receiver, at any time after the security constituted by this Deed has become enforceable, whether in its own name or in that of the Chargor, to:

- (a) grant a lease or agreement to lease;
- (b) accept surrenders of leases; or
- (c) grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it

whether or not at a premium and containing such covenants on the part of the Chargor, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as Fern or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

10.3 Access on enforcement

- (a) At any time after Fern has demanded payment of the Secured Liabilities or if the Chargor defaults in the performance of its obligations under this Deed or the Loan Agreement, the Chargor will allow Fern or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where Fern or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Chargor for, or by any reason of, that entry.
- (b) At all times, the Chargor must use its best endeavours to allow Fern or its Receiver access to any premises for the purpose of clause 10.3(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

10.4 **Prior Security**

At any time after the security constituted by this Deed has become enforceable, or after any powers conferred by any Security having priority to this Deed shall have become exercisable, Fern may:

- (a) redeem that or any other prior Security;
- (b) procure the transfer of that Security to it; and
- (c) settle and pass any account of the holder of any prior Security.

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor. All monies paid by Fern to an encumbrancer in settlement of any of those accounts shall, as from its payment by Fern, be due from the Chargor to Fern on current account and shall bear interest and be secured as part of the Secured Liabilities.

10.5 **Protection of third parties**

No purchaser, mortgagee or other person dealing with Fern, any Receiver or Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power Fern, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to Fern, any Receiver or any Delegate is to be applied.

10.6 **Privileges**

Each Receiver and Fern is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

10.7 **No liability as mortgagee in possession**

Neither Fern, any Receiver, nor any Delegate shall be liable to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

10.8 **Conclusive discharge to purchasers**

The receipt of Fern or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, Fern, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

10.9 **Right of appropriation**

- (a) To the extent that:
 - (i) the Secured Assets constitute Financial Collateral; and
 - (ii) this Deed and the obligations of the Chargor under it constitute a Security Financial Collateral Arrangement

Fern shall have the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that Fern may, in its absolute discretion, determine.

(b) The value of any Secured Assets appropriated in accordance with this clause shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by any other method that Fern may select (including independent valuation).

(c) The Chargor agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

11. RECEIVER

11.1 Appointment

At any time after the security constituted by this Deed has become enforceable, or at the request of the Chargor, Fern may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

11.2 Removal

Fern may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

11.3 Remuneration

Fern may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this Deed, which shall be due and payable immediately on its being paid by Fern.

11.4 Power of appointment additional to statutory powers

The power to appoint a Receiver conferred by this Deed shall be in addition to all statutory and other powers of Fern under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

11.5 Power of appointment exercisable despite prior appointments

The power to appoint a Receiver (whether conferred by this Deed or by statute) shall be, and remain, exercisable by Fern despite any prior appointment in respect of all or any part of the Secured Assets.

11.6 Agent of the Chargor

Any Receiver appointed by Fern under this Deed shall be the agent of the Chargor and the Chargor shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Chargor goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of Fern.

12. POWERS OF RECEIVER

12.1 General

- (a) Any Receiver appointed by Fern under this Deed shall, in addition to the powers conferred on him by statute, have the powers set out in clause 12.2 to clause 12.14.
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of any other Receiver.
- (c) Any exercise by a Receiver of any of the powers given by clause 12 may be on behalf of the Chargor, the directors of the Chargor (in the case of the power contained in clause 12.8) or himself.

12.2 Remuneration

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that Fern may prescribe or agree with him.

12.3 Realise Secured Assets

A Receiver may collect and get in the Secured Assets or any part of them in respect of which he is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

12.4 Dispose of Secured Assets

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

12.5 Valid receipts

A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

12.6 Make settlements

A Receiver may make any arrangement, settlement or compromise between the Chargor and any other person that he may think expedient.

12.7 Bring proceedings

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as he thinks fit.

12.8 Make calls on Chargors members

A Receiver may make calls conditionally or unconditionally on the members of the Chargor in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Chargor on its directors in respect of calls authorised to be made by them.

12.9 Powers under the LPA 1925

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

12.10 Borrow

A Receiver may, for any of the purposes authorised by this clause 12, raise money by borrowing from Fern (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which he is appointed on any terms that he thinks fit (including, if Fern consents, terms under which that security ranks in priority to this Deed).

12.11 Redeem prior Security

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Chargor, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

12.12 Delegation

A Receiver may delegate his powers in accordance with this Deed.

12.13 Absolute beneficial owner

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.

12.14 Incidental powers

A Receiver may do any other acts and things:

- (a) that he may consider desirable or necessary for realising any of the Secured Assets;
- (b) that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this Deed or law; and
- (c) that he lawfully may or can do as agent for the Chargor.

13. DELEGATION

13.1 Delegation

Fern or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this Deed (including the power of attorney granted under clause 17.1).

13.2 Terms

Fern and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

13.3 Liability

Neither Fern nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

14. APPLICATION OF PROCEEDS

14.1 Order of application of proceeds

All monies received by Fern, a Receiver or a Delegate pursuant to this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

- (a) in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of Fern (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this Deed, and of all remuneration due to any Receiver under or in connection with this Deed;
- (b) in or towards payment of or provision for the Secured Liabilities pro rata or in any order and manner that Fern determines; and
- (c) in payment of the surplus (if any) to the Chargor or other person entitled to it.

14.2 Appropriation

Neither Fern, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

14.3 Suspense account

All monies received by Fern, a Receiver or a Delegate under this Deed:

- (a) may, at the discretion of Fern, Receiver or Delegate, be credited to any suspense or securities realised account;
- (b) shall bear interest, if any, at the rate agreed in writing between Fern and the Chargor; and
- (c) may be held in that account for so long as Fern, Receiver or Delegate thinks fit.

15. COSTS AND INDEMNITY

15.1 Costs

The Chargor shall pay to, or reimburse, Fern and any Receiver on demand, on a full indemnity basis, all costs, charges, expenses, taxes and liabilities of any kind (including, without limitation, legal, printing and out-of-pocket expenses) incurred by Fern, any Receiver or any Delegate in connection with:

- (a) this Deed or the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of Fern's, a Receiver's or a Delegate's rights under this Deed;
- (c) taking proceedings for, or recovering, any of the Secured Liabilities

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Chargor).

15.2 Indemnity

The Chargor shall indemnify Fern, each Receiver and each Delegate, and their respective employees and agents, on a full indemnity basis against any cost, charge, expense, tax, loss, liability or damage incurred by any of them as a result of:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this Deed or by law in respect of the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this Deed; or
- (c) any default or delay by the Chargor in performing any of its obligations under this Deed.

Any past or present employee or agent may enforce the terms of this clause 15.2 subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

16. FURTHER ASSURANCE

16.1 Further assurance

The Chargor shall, at its own expense, take whatever action Fern or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security intended to be created by this Deed;
- (b) facilitating the realisation of any Secured Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by Fern or any Receiver in respect of any Secured Asset

including, without limitation (if Fern or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to Fern or to its nominee) and the giving of any notice, order or direction and the making of any registration.

17. POWER OF ATTORNEY

17.1 Appointment of attorneys

By way of security, the Chargor irrevocably appoints Fern, every Receiver and every Delegate separately to be the attorney of the Chargor and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Chargor is required to execute and do under this Deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this Deed or by law on Fern, any Receiver or any Delegate.

17.2 Ratification of acts of attorneys

The Chargor ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in clause 17.1.

18. RELEASE

Subject to clause 20.4, on the expiry of the Security Period (but not otherwise), Fern shall, at the request and cost of the Chargor, take whatever action is necessary to:

- 18.1 release the Secured Assets from the security constituted by this Deed; and
- 18.2 reassign the Secured Assets to the Chargor.

19. ASSIGNMENT AND TRANSFER

19.1 Assignment by Fern

- (a) At any time, without the consent of the Chargor, Fern may assign or transfer the whole or any part of Fern's rights and/or obligations under this Deed to any person.
- (b) Fern may disclose to any actual or proposed assignee or transferee any information about the Chargor, the Secured Assets and this Deed that Fern considers appropriate.

19.2 Assignment by the Chargor

The Chargor may not assign any of its rights, or transfer any of its obligations, under this Deed, or enter into any transaction that would result in any of those rights or obligations passing to another person.

20. FURTHER PROVISIONS

20.1 Independent security

This Deed shall be in addition to, and independent of, any other security or guarantee that Fern may hold for any of the Secured Liabilities at any time. No prior security held by Fern over the whole or any part of the Secured Assets shall merge in the security created by this Deed.

20.2 Continuing security

This Deed shall:

- (a) remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until Fern discharges this Deed in writing;
- (b) be in addition to any present or future other guarantee, security or other right or remedy in respect of the Secured Liabilities held by or available to Fern; and
- (c) not be in any way prejudiced or affected by the existence of any other guarantee, security or other rights or remedies available to Fern in respect of the Secured Liabilities or by the same becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the dealing with, exchanging, varying or failing to perfect or enforce any of the same or giving time for payment or indulgence or compounding with any other person liable.

20.3 Liability unconditional

The liability of the Chargor shall not be affected nor shall this Deed be discharged, reduced, prejudiced or affected by:

- (a) the insolvency, liquidation, dissolution, winding-up or administration or receivership or other incapacity or analogous proceeding of or in relation to the Chargor or any other person liable;
- (b) Fern granting any time or waiver, or any other indulgence or concession to, or compounding with, discharging, releasing or varying the liability of the Chargor or any other person liable or renewing, determining, varying or increasing any accommodation, facility or transaction or otherwise dealing with the same in any manner whatsoever or concurring in, accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from the Chargor or any other person liable; or
- (c) any variation or amendment of, or waiver or release granted under or in connection with any agreement evidencing the Secured Liabilities or any other security or any guarantee or indemnity or other document; or
- (d) the taking, holding, failure to take or hold, varying, realisation, non-enforcement, non-perfection or release by Fern or any other person of any other security or any guarantee or indemnity or other document; or
- (e) any change in the constitution of the Chargor; or
- (f) any amalgamation, merger or reconstruction that may be effected by Fern with any other person; or
- (g) the existence of any claim, set-off or other right which the Chargor may have at any time against Fern or any other person; or
- (h) the making or absence of any demand for payment or discharge of any Secured Obligations of the Chargor or any other person, whether by Fern or any other person; or any arrangement or compromise entered into by Fern with the Chargor or any other person; or
- (i) any other thing done or omitted or neglected to be done by Fern or any other person or any other dealing, fact, matter or thing which, but for this provision, might operate to discharge, prejudice or affect any of the liability of the Chargor had it been a principal debtor instead of a guarantor or by anything done or omitted which but for this provision might operate to exonerate the Chargor.

20.4 Discharge conditional

Any release, discharge or settlement between the Chargor and Fern shall be deemed conditional on no payment or security received by Fern in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) Fern or its nominee may retain this Deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that Fern deems necessary to provide Fern with security against any such avoidance, reduction or order for refund; and
- (b) Fern may recover the value or amount of such security or payment from the Chargor subsequently as if the release, discharge or settlement had not occurred.

20.5 Certificates

A certificate or determination by Fern as to any amount for the time being due to it from the Chargor under this Deed shall be, in the absence of any manifest error, conclusive evidence of the amount due.

20.6 Rights cumulative

The rights and remedies of Fern conferred by this Deed are cumulative, may be exercised as often as Fern considers appropriate, and are in addition to its rights and remedies under the general law.

20.7 Amendments

Any amendment of this Deed shall be in writing and signed by, or on behalf of, each party.

20.8 Waivers and consents

Any waiver of any right or remedy (whether arising under this Deed or under the general law), or any consent given under this Deed, is only effective if it is in writing and signed by the waiving, varying or consenting party, and applies only in the circumstances for which it was given, and shall not prevent the party giving it from subsequently relying on the relevant provision.

20.9 Further exercise of rights

No act or course of conduct or negotiation by, or on behalf of, Fern shall, in any way, preclude Fern from exercising any right or remedy under this Deed or constitute a suspension or variation of any such right or remedy.

20.10 Delay

No delay or failure to exercise any right or remedy under this Deed shall operate as a waiver of that right or remedy or constitute an election to affirm this Deed. No election to affirm this Deed on the part of Fern shall be effective unless it is in writing.

20.11 Single or partial exercise

No single or partial exercise of any right or remedy under this Deed shall prevent any further or other exercise of that right or remedy, or the exercise of any other right or remedy under this Deed.

20.12 Consolidation

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this Deed.

20.13 Partial invalidity

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Deed under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modification necessary to give effect to the commercial intention of the parties.

20.14 Counterparts

This Deed may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.

21. NOTICES

21.1 Service

Each notice or other communication required to be given under, or in connection with, this Deed shall be:

- (a) in writing, delivered personally or sent by pre-paid first-class letter or fax; and
- (b) sent:
 - (i) to the Chargor at its registered address as stated at the beginning of this Deed; and
 - (ii) to Fern at its registered address as stated at the beginning of this Deed

or to any other address or fax number as is notified in writing by one party to the other from time to time.

21.2 Receipt by the Chargor

Any notice or other communication that Fern gives shall be deemed to have been received:

- (a) if sent by fax, when received in legible form;
- (b) if given by hand, at the time of actual delivery; and
- (c) if posted, on the second Business Day after the day it was sent by pre-paid first-class post.

A notice or other communication given as described in clause 21.2(a) or clause 21.2(b) on a day that is not a Business Day, or after normal business hours, in the place it is received, shall be deemed to have been received on the next Business Day.

21.3 Fern

- (a) Any notice or other communication given to Fern shall be deemed to have been received only on actual receipt.
- (b) Upon being notified of the appointment of a successor to Fern, the Chargor shall enter the name of that successor as Fern in its register of charges as the holder of this Debenture.

22. GOVERNING LAW AND JURISDICTION

22.1 Governing law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

22.2 Jurisdiction

The parties to this Deed irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Deed or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of Fern to take proceedings against the Chargor in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions,

whether concurrently or not, to the extent permitted by the law of that other jurisdiction.

22.3 Other service

The Chargor irrevocably consents to any process in any proceedings under clause 22.2 being served on it in accordance with the provisions of this Deed relating to service of notices. Nothing contained in this Deed shall affect the right to serve process in any other manner permitted by law.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE
THE SECURITIES

Issued by (Company name and registered number)	Number	Denomination or Type	Held by
Cadoxton Reserve Power Limited (Registered Number 09127592)	One	Ordinary Share of £1.00	Apus Energy Limited (Registered Number 09153837)

and any further securities whatsoever issued by the Borrower to the Chargor or substituted or added from time to time pursuant to the provisions of this Deed.

EXECUTED as a **DEED** by
APUS ENERGY LIMITED
acting by a director:
in the presence of:



Name: *KATE BLACKWELL*

Address: *38 ATNEY ROAD, PUTNEY, SW15 2RS*

Occupation: *EXECUTIVE ASSISTANT*

EXECUTED as a **DEED** by
FERN TRADING LIMITED
acting by a director:
in the presence of:



Name:



Address:

Occupation:

CHARLOTTE HUGHES
33 HOLBORN
LONDON EC1N 2HT
EXECUTIVE ASSISTANT

