



Registration of a Charge

Company name: **EQUITIX NCP SCOTTISH GP LIMITED**

Company number: **SC565924**



X7WEFB3C

Received for Electronic Filing: **03/01/2019**

Details of Charge

Date of creation: **21/12/2018**

Charge code: **SC56 5924 0002**

Persons entitled: **SMBC LEASING (UK) 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 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: **EDWARD NORMAN**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 565924

Charge code: SC56 5924 0002

The Registrar of Companies for Scotland hereby certifies that a charge dated 21st December 2018 and created by EQUITIX NCP SCOTTISH GP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd January 2019 .

Given at Companies House, Edinburgh on 3rd January 2019

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



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

DATED 21 December 2018

EQUITIX NCP ENGLISH GP LIMITED

AND

EQUITIX NCP (S) LP
AS CHARGORS

EQUITIX NCP ENGLISH LP
AS PARTNERSHIP

IN FAVOUR OF

SMBC LEASING (UK) LIMITED
AS THE SECURITY TRUSTEE

PARTNERS' SECURITY AGREEMENT

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THIS AGREEMENT (this "**Agreement**") is made by way of deed on 21 December 2018

BETWEEN

- (1) **EQUITIX NCP ENGLISH GP LIMITED** a company incorporated in the jurisdiction of England and Wales (registered no. 10823792) with its registered office at Welken House, 10-11 Charterhouse Square, London, United Kingdom, EC1M 6EH in its own capacity (the "**General Partner**");
- (2) **EQUITIX NCP (S) LP** a limited partnership registered in the jurisdiction of Scotland (registered partnership SL31898) with its registered office at c/o Harper Macleod LLP, Citypoint, 65 Haymarket Terrace, Edinburgh, EH12 5HD, acting by its general partner **EQUITIX NCP SCOTTISH GP LIMITED** a company registered in the jurisdiction of Scotland (company number SC565924) (the "**Limited Partner**");

(together referred to as the "**Chargors**"),

- (3) **EQUITIX NCP ENGLISH LP** a limited partnership registered in the jurisdiction of England and Wales (registered partnership LP18174) with its registered office at Welken House, 10-11 Charterhouse Square, London, United Kingdom, EC1M 6EH acting by its general partner **EQUITIX NCP ENGLISH GP LIMITED** a company incorporated in the jurisdiction of England and Wales (registered no. 10823792) with its registered office at Welken House, 10-11 Charterhouse Square, London, United Kingdom, EC1M 6EH (the "**Partnership**" and the "**Borrower**"); and
- (4) **SMBC LEASING (UK) LIMITED** in its capacity as security trustee for the Finance Parties (the "**Security Trustee**").

RECITALS:

- (A) Further to the Facility Agreement the Lender(s) will lend funds to the Borrower (all terms as defined below).
- (B) As security for the amount advanced by the Lender(s), pursuant to the Facility Agreement, the Chargors have agreed to enter into this Agreement.
- (C) It is intended by the parties to this Agreement that this document will take effect as a deed despite the fact that a party may only execute this Agreement under hand.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Authorisation**" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

"Charged Assets" means all of the assets and undertaking of each Chargor which from time to time are the subject of any Security created or expressed to be created by it in favour of the Security Trustee by or pursuant to this Agreement.

"Collateral Rights" means all rights, powers and remedies of the Finance Parties provided by this Agreement or by law.

"Direct Borrower Parent" means Equitix NCP Scottish GP Limited.

"Facility Agreement" means the term loan facility agreement dated on or about the date of this Agreement between the Borrower as borrower, the General Partner, as general partner, the Original Lender, the Security Trustee and SMBC Leasing (UK) Limited as agent and arranger.

"Finance Party" means the Agent, the Arranger, the Security Trustee or a Lender.

"Liabilities" means any present or future liability (actual or contingent) whether or not matured or liquidated, together with:

- (a) any refinancing, novation, deferral or extension of that liability;
- (b) any further advance which may be made under any agreement expressed to be supplemental to any document in respect of that liability, together with all related interest, fees and costs;
- (c) any claim for damages or restitution in the event of rescission of that liability or otherwise;
- (d) any claim flowing from any recovery by a payment or discharge in respect of that liability on the grounds of preference or otherwise; and
- (e) any amount (such as post insolvency interest) which would be included in any of the above but for its discharge, non-provability, unenforceability or non allowability in any insolvency or other proceedings.

"LPGP Chargor" means Equitix MA Partridge Limited, in its capacity as chargor under the Pledge over Shares in the Limited Partner GP.

"Obligor" means the Borrower, the Limited Partner, the General Partner, the Nominee, the Direct Borrower Parent, the Subordinated Lender(s), and the LPGP Chargor.

"Outstanding Indebtedness" means, at any time, all amounts outstanding under the Facility Agreement and all Liabilities whatsoever then or thereafter payable by any Relevant Obligor to a Finance Party under this Agreement and/or any other Finance Document.

"Partnership Deed" means the partnership deed between the General Partner and the Limited Partner and dated on or about the date hereof in relation to the Borrower.

"Partnership Documents" means the Partnership Deed and all other contracts and agreements relating to the partnership between the General Partner and the Limited

Partner constituting the Borrower which are designated a Partnership Document for the purposes of this Agreement with the consent of the Agent and the Borrower.

"Partnership Interests" means all of a Chargor's, right, title, share and interest from time to time in and to:

- (a) the capital of, and the assets of, the Partnership;
- (b) the Partnership Documents;
- (c) and all Related Rights.

"Receiver" means a receiver or receiver and manager or administrative receiver of the whole or any part of the Transaction Security.

"Related Rights" means, in relation to the Partnership Interests, any moneys, distributions and proceeds paid or payable in respect of that asset, including all dividends, interest and all other rights, benefits or proceeds derived from that asset (whether by way of redemption, bonus, preference, option, substitution, conversion or otherwise).

"Relevant Obligor" means the Borrower, the General Partner, the Limited Partner, the Nominee, the LPGP Chargor and the Direct Borrower Parent.

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or other agreement or arrangement having a similar effect.

"Secured Obligations" means, at any time, the aggregate of the Outstanding Indebtedness and all liabilities and obligations (whether actual or contingent, whether now existing or hereafter arising, whether or not for the payment of money, and including any obligation or liability to pay damages) which are now or which may at any time and from time to time thereafter be due, owing, payable or incurred or be expressed to be due, owing, payable or incurred from or by any Relevant Obligor to any one or more of the Finance Parties under this Agreement or any of the Finance Documents (in each case as amended, supplemented, varied, restated, assigned, transferred, novated or replaced from time to time (including on any refinancing)), and shall for the avoidance of doubt include any and all varied, additional and/or increased payment and/or other liabilities an obligations that result from (i) any amendment, supplement, variation, restatement, assignment, transfer, novation or replacement from time to time with respect to any Finance Document and/or (ii) any change in the economic terms that apply from time to time with respect to the transactions contemplated by the Finance Documents.

"Security Period" means the period commencing on the date of this Agreement and terminating on the date on which all of the Secured Obligations have been paid, repaid, satisfied, performed and discharged in full.

"Share" means any stock, share, debenture or other security.

"Subordinated Lender" means Equitix NCP (S) LP.

"Subordinated Loan Agreement" means the loan agreement of even date herewith and made between the Subordinated Lender(s) and the Borrower.

"Subordinated Loan Documents" means:

- (a) the Subordinated Loan Agreement; and
- (b) any other document which the Borrower and the Agent acting on the instructions of the Majority Lenders designate in writing.

1.2 Terms defined in the Facility Agreement

Unless defined in this Agreement or the context otherwise requires, a term defined in the Facility Agreement (including by reference to any other agreement) has the same meaning in this Agreement or any notice given under or in connection with this Agreement.

1.3 Construction

Clauses 1.2 (*Construction*) and 1.3 (*Currency symbols and definitions*) of the Facility Agreement will apply as if incorporated in this Agreement or in any notice given under or in connection with this Agreement in full, as if all references in that Clause to the Facility Agreement were a reference to this Agreement or that notice.

1.4 Third Party Rights

Clause 1.4 (*Third party rights*) of the Facility Agreement will apply as if incorporated in this Agreement in full, as if all references in that Clause to the Facility Agreement are references to this Agreement.

1.5 Role of the Security Trustee

In acting hereunder, the Security Trustee does so in accordance with its terms of appointment under the Facility Agreement and is entitled to the protections set out therein. In the event of any conflict or inconsistency between the terms of this Agreement and the Facility Agreement with regard to the rights, powers, discretions or obligations of the Security Trustee, the terms of the Facility Agreement will prevail.

2. COVENANT TO PAY

2.1 Covenant to pay

The Chargors covenant with the Security Trustee to discharge each of the Secured Obligations on their due date in accordance with their respective terms.

2.2 Default interest

If any Chargor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (both before and after judgment) from the date of demand until the date of payment calculated on a daily basis at the rate determined in accordance with, and on the terms set out in, clause 9.6 (*Default interest*) of the Facility Agreement.

3. FIXED CHARGE

Each Chargor charges by way of first fixed charge, all of its rights, title and interest from time to time in the Partnership Interests.

4. PROVISIONS AS TO SECURITY AND PERFECTION

4.1 Security Trustee Assumes No Obligations

The Security Trustee shall not be under any obligation in relation to the Charged Assets as a consequence of this Agreement and each Chargor shall at all times remain liable to perform all obligations expressed to be assumed by it in respect of the Charged Assets and the Partnership Documents.

4.2 [Not used]

4.3 Release

Upon the expiry of the Security Period, the Security Trustee shall, at the request and cost of the Chargors execute and do such reasonable acts as may be necessary to release the Charged Assets from the Security created by this Agreement, subject to Clause 11.8 (*Avoidance of Payments*) and without recourse to, or any representation or warranty by, the Security Trustee or any of its nominee(s).

4.4 Notice of Security: Partnership Documents

Immediately upon the date of this Agreement, in relation to all Partnership Documents as the Security Trustee may require, or if later, upon the entry into of any such Partnership Documents, each Chargor shall:

- (a) deliver to the Security Trustee a duly executed notice addressed to the relevant Partnership Documents counterparty of the Security constituted by this Agreement, such notice being substantially in the form set out in Schedule 1 (*Form of Notice of Charge of Partnership Documents*); and
- (b) use all reasonable endeavours to procure from the relevant counterparty to such Partnership Document an acknowledgement in the form set out in such notice of security.

For the avoidance of doubt, this Clause 4.4 constitutes notice to the Partnership of the Security constituted by this Agreement (and each other matter referred to herein), and agreement and acknowledgement of each such matter (including the creation of the security interests) on behalf of the Partnership and no other notice or acknowledgement will be required to be given on this regard.

5. FURTHER ASSURANCE

5.1 Extension of implied covenant

The covenant set out in section 2(1)(b) of the Law of Property (*Miscellaneous Provisions*) Act 1994 shall extend to include the obligations set out in Clause 5.2 (*Covenant for Further Assurance*) below.

5.2 Covenant for Further assurance

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

- (a) create, perfect, protect and/or maintain the Security created or intended to be created in respect of the Charged Assets (which may include the execution by the Chargors of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Assets) or for the exercise of any rights, powers and remedies of the Security Trustee or provided by or pursuant to this Agreement or by law;
- (b) confer on the Security Trustee Security over any of the Charged Assets located in any jurisdiction outside England and Wales equivalent or similar to the security intended to be conferred by or pursuant to this Agreement; and/or
- (c) while an Event of Default is continuing, facilitate the realisation of the Charged Assets.

5.3 Prescribed Wording

The following covenants shall be implied in respect of any action taken by the Borrower to comply with its obligations under Clause 5.2 (*Covenant for Further Assurance*):

- (a) each Chargor has the right to take such action in respect of the Charged Assets; and
- (b) each Chargor will at its own cost do all that it reasonably can to give the Security Trustee or its nominee the title and/or rights that it purports to give.

6. PARTNERSHIP INTERESTS

6.1 Rights prior to an Event of Default

Prior to the occurrence of an Event of Default which is continuing, the relevant Chargor shall be entitled to:

- (a) receive all dividends or distributions, interest and other moneys arising from the Partnership Interests; and
- (b) exercise all voting rights in relation to the Partnership Interests.

6.2 Rights after an Event of Default

Upon the occurrence of an Event of Default which is continuing, Security Trustee may, at its discretion, (in the name of any Chargor or otherwise and without any further consent or authority from each Chargor):

- (a) compel performance of the Partnership Deed and/or any other Partnership Document;
- (b) exercise (or refrain from exercising) any voting rights in respect of the Partnership Interests;
- (c) apply all dividends or distributions, interest and other moneys arising from the Partnership Interests in accordance with Clause 13 (*Application of proceeds*);
- (d) transfer the Partnership Interests into the name of such nominee(s) of the Security Trustee as it shall require; and
- (e) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by of the Chargors in respect of the Partnership Interests, in the manner and on the terms the Security Trustee thinks fit.

6.3 Partnership Interests: Exercise of rights

No Chargor shall permit or agree to or concur or participate in any variation of the rights attaching to or conferred by all or any part of the Partnership Interests; which in the opinion of the Security Trustee would prejudice the value of, or the ability of the Security Trustee to realise, the security created by this Agreement **provided that** the proceeds of any such action shall form part of the Partnership Interests.

6.4 Partnership Interests: Payment of calls

Each Chargor shall pay when due all calls or other payments which may be or may become due in respect of the Partnership Interests to the extent that the relevant Chargor agreed to make a capital contribution under the terms of the Partnership Deed prior to any enforcement or other action taken by a Finance Party under this Agreement), and in any case of default by it in such payment, the Security Trustee may, if it thinks fit (but with no obligation to do so), make such payment on its behalf in which case any sums paid by the Security Trustee shall be reimbursed by each Chargor to the Security Trustee on demand and shall carry interest from the date of payment by the Security Trustee until reimbursed at the rate from time to time applicable to unpaid sums specified in the Subordination Agreement.

7. CHARGOR'S REPRESENTATIONS AND UNDERTAKINGS

7.1 Representations

Each Chargor makes the following representations and warranties to the Security Trustee and acknowledges that the Security Trustee has become a party to this Agreement in reliance on these representations and warranties:

(a) *Partnership Document in force*

Each Partnership Document is in full force and effect, enforceable in accordance with its terms and at the date specified above the Chargors are not in breach of any term or condition of such Partnership Document.

(b) *No restrictions*

There are no restrictions on the Chargor's ability to charge the Charged Assets, whether contained in a Partnership Document or in any other document.

(c) *Binding obligations*

Subject to any general principles of law as at the date of this Agreement limiting its obligations which are specifically referred to in any legal opinion delivered pursuant to any provision of the Facility Agreement, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations; and create a first ranking security over the Charged Assets.

(d) *Ownership of Charged Assets*

(i) It is the sole legal and beneficial owner of the Charged Assets free and clear of all security interests except as created by this Agreement. It has not sold or disposed of or granted any option to purchase, pre-emption rights or other similar rights in respect of any of its right, title and interest in the Charged Assets (other than as permitted under the Finance Documents). None of the Charged Assets are subject to any pre-emption rights or other restrictions upon disposal which would operate to restrict in any way their disposal by the Security Trustee should it come to enforce its security contained in this Agreement,

(ii) Any capital contribution required to be made to the Partnership in accordance with the terms of the Partnership Deed has been made.

(e) *Validity and admissibility in evidence*

All authorisations required:

(i) to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Agreement; and

(ii) to make this Agreement admissible in evidence in its jurisdiction of incorporation,

have been obtained or effected and are in full force and effect except for registration of particulars of this Agreement at Companies House under the Companies Act 2006 and payment of associated fees, which registrations, filings, taxes and fees will be made and paid within twenty-one (21) days of the date of this Agreement.

(f) *Repetition*

The representations set out in paragraphs (a) (*Partnership Document in force*) to (e) (*Validity and admissibility in evidence*) are deemed to be made by each Chargor by reference to the facts and circumstances then existing on each Fixed Utilisation Date and on the first day of each Interest Period.

7.2 Undertakings

(a) *Disposals and Negative pledge*

In this Clause 7.2(a), "**Quasi-Security**" means an arrangement or transaction described in sub-clause 7.2(c) below.

Except as permitted under sub-clause 7.2(c) below:

(b) Neither Chargor shall create or permit to subsist any Security over any of the Charged Assets.

(c) Neither Chargor shall:

(i) sell, transfer or otherwise dispose of the whole or any part of the Charged Assets any of its assets on terms whereby they are or may be leased to or re-acquired by any Chargor;

(ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;

(iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set off or made subject to a combination of accounts; or

(iv) enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

(d) Sub-clauses 7.2(b) and 7.2(c) above do not apply to any Security or (as the case may be) Quasi-Security, which is a Permitted Lien.

(e) *Not Jeopardise*

Each Chargor agrees not do or permit to be done any act or thing which might jeopardise the rights of the Security Trustee in the Charged Assets or which might adversely affect or diminish the value of the Charged Assets;

(f) *No variation*

Each Chargor agrees not to vary, rescind or amend any Partnership Document other than in accordance with the Reserved Discretions without the prior written consent of the Security Trustee;

(g) *No set off etc*

Subject to paragraph 7.2(h) below, and except as expressly permitted or required pursuant to the Facility Agreement, each Chargor shall not take or omit to take any action which might result in (i) the alteration or impairment of any rights in the Charged Assets; (ii) any default of any of its obligations under any Partnership Document; (iii) any right to terminate any Partnership Document becoming exercisable by the relevant Obligor; or (iv) any counterclaims or rights of set-off arising under any Partnership Document; and

(h) *Enforcement*

Each Chargor shall:

- (i) not take any action under any Partnership Document to enforce its rights as lender thereunder nor waive nor grant any relief in respect of any breach by the relevant Equitix Obligor thereunder without the prior written consent of the Security Trustee; and
- (ii) take any action under any Partnership Document that (A) it is entitled to take pursuant to the terms thereof and (B) that the Security Trustee instructs it to take.

8. POWER OF ATTORNEY

8.1 Appointment and Powers

Each Chargor, by way of security, irrevocably appoints the Security Trustee and any Receiver severally to be its attorney (with full power of substitution) and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things that the attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on each Chargor under this Agreement or any other agreement binding on each Chargor to which the Security Trustee is a party (including the execution and delivery of any deeds, charges, assignments or other Security and any transfers of the assets subject to the Security and perfecting and/or releasing the Security created or intended to be created in respect of the relevant assets); or
- (b) enabling the Security Trustee and any Receiver to exercise, or delegate the exercise of, all or any of the Collateral Rights.

8.2 Ratification

Each Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of his powers.

9. SECURITY ENFORCEMENT

9.1 Time for Enforcement

Any time after the occurrence of:

- (a) an Event of Default (as long as it is continuing); or
- (b) a request from the Borrower to the Security Trustee that it exercise any of its powers under this Agreement,

the Security created by or pursuant to this Agreement shall be immediately enforceable and the Security Trustee may, without notice to any Chargor or prior authorisation from any court, in its absolute discretion:

- (i) secure and perfect its title to the Charged Assets (including transferring the same into the name of the Security Trustee or its nominee(s)) or otherwise exercise in relation to the Charged Assets all the rights of an absolute owner;
- (ii) 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, dispose of, apply or transfer all or any part of the Charged Assets (and any assets of the Borrower which, when got in, would be part of the Charged Assets), at the times, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration); and
- (iii) whether or not it has appointed a Receiver, exercise all or any of the rights, powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Agreement) on mortgagees and by this Agreement on any Receiver or otherwise conferred by law on mortgagees or Receivers.

9.2 Power of sale

- (a) The power of sale or other disposal conferred on the Security Trustee and on the Receiver by this Agreement shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Agreement.
- (b) The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to the exercise by the Security Trustee of its right to consolidate all or any of the Security created by or pursuant to this Agreement with any other security in existence at any time or to its power of sale.

9.3 Certificate

A certificate in writing by an officer or agent of the Security Trustee that the power of sale or disposal has arisen and is exercisable shall be conclusive evidence of that fact, in favour of a purchaser of all or any part of the Charged Assets.

9.4 Chargee's liability

Neither the Security Trustee nor any Receiver will be liable to account as mortgagee or mortgagee in possession in respect of the Charged Assets or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever in connection with the Charged Assets for which a mortgagee or mortgagee in possession might as such be liable.

9.5 Right of Appropriation

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 9 (*Security Enforcement*) to the extent that any part of the Charged Assets constitutes "financial collateral" and this Agreement and the obligations of the Chargors hereunder constitute a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226), as amended, (the "**Regulations**"), the Security Trustee shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargors. For this purpose, the parties agree that a commercially reasonable method of valuing the Charged Assets shall be in the case of the Charged Assets their market value determined by the Security Trustee by reference to a public index, independent valuation or by such other process as the Security Trustee may select.

9.6 Statutory powers

The powers conferred by this Agreement on the Security Trustee are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the Law of Property Act 1925, the Insolvency Act 1986 or otherwise by law and in the case of any conflict between the powers contained in any such Act and those conferred by this Agreement the terms of this Agreement will prevail.

10. RECEIVERS

10.1 Appointment and Removal

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 9 (*Security Enforcement*), the Security Trustee may by deed or otherwise (acting through an authorised officer of the Security Trustee), without prior notice to the Chargors:

- (a) appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets;
- (b) appoint one or more Receivers of separate parts of the Charged Assets;
- (c) remove (so far as it is lawfully able) any Receiver so appointed; and
- (d) appoint another person(s) as an additional or replacement Receiver(s).

10.2 Capacity of Receivers

Each person appointed to be a Receiver pursuant to Clause 10.1 (*Appointment and Removal*) will be:

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

10.3 Statutory powers of appointment

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

10.4 Powers of Receivers

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

- (a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
- (b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (c) all the powers and rights of an absolute owner and power to do or omit to do anything which a Chargor itself could do or omit to do;
- (d) the power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise any subsequent delegation or any revocation of such power, authority or discretion by the Receiver itself; and

- (e) the power to do all things (including bringing or defending proceedings in the name or on behalf of a Chargor) which seem to the Receiver to be incidental or conducive to:
 - (i) any of the functions, powers, authorities or discretions conferred on or vested in him;
 - (ii) the exercise of any of the Collateral Rights (including realisation of all or any part of the Charged Assets); or
 - (iii) bringing to his hands any assets of the Chargors forming part of, or which when got in would be, the Charged Assets.

10.5 Consideration

The receipt of the Security Trustee or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Assets or making any acquisition, the Security Trustee or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

10.6 Protection of purchasers

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

10.7 Discretions

Any liberty or power which may be exercised or any determination which may be made under this Agreement by the Security Trustee or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

11. EFFECTIVENESS OF COLLATERAL

11.1 Collateral Cumulative

The collateral constituted by this Agreement and the Collateral Rights shall be cumulative, in addition to and independent of every other security which the Security Trustee may at any time hold for the Secured Obligations or any rights, powers and remedies provided by law. No prior Security held by the Security Trustee (whether in its capacity as trustee or otherwise) or any of the other Finance Parties over the whole or any part of the Charged Assets shall merge into the Security created by this Agreement.

11.2 No Waiver

No failure to exercise, nor any delay in exercising, on the part of the Security Trustee, any right or remedy under this Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the

exercise of any other right or remedy of the Security Trustee. The rights and remedies are cumulative and not exclusive of any rights or remedies provided by law.

11.3 Illegality, Invalidity, Unenforceability

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

11.4 No liability

None of the Security Trustee, its nominee(s) or any Receiver appointed pursuant to this Agreement shall be liable by reason of (a) taking any action permitted by this Agreement or (b) any neglect or default in connection with the Charged Assets or (c) the taking possession or realisation of all or any part of the Charged Assets, except in the case of gross negligence or wilful misconduct upon its part.

11.5 Implied Covenants for Title

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

11.6 Continuing Security

- (a) The Security from time to time constituted by this Agreement is a continuing Security and will remain in full force and effect as a continuing Security until released or discharged by the Security Trustee.
- (b) No part of the Security from time to time constituted by this Agreement will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.

11.7 Immediate recourse

Each Chargor waives any right it may have of first requiring the Security Trustee to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Chargor under this Agreement. This waiver applies irrespective of any law or any provision of this Agreement to the contrary.

11.8 Avoidance of Payments

Notwithstanding Clause 4.3 (*Release*) if the Security Trustee considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of each Chargor under this

Agreement and the Security constituted by this Agreement shall continue and that amount shall not be considered to have been irrevocably paid.

11.9 No prejudice

The Security created by or pursuant to this Agreement and the Collateral Rights shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to each Chargor or any other person by the Security Trustee or by any other thing which might otherwise prejudice the Security or the Collateral Rights.

12. EXPENSES, STAMP TAXES, INDEMNITY

12.1 Transaction expenses

Each Chargor shall within three (3) Business Days of demand pay the Security Trustee and any Receiver, to the extent that Security Trustee or such Receiver (as applicable) is not otherwise reimbursed by the Borrower in respect thereof pursuant to the Facility Agreement, the amount of all costs and expenses (including legal fees), together with any VAT thereon, reasonably incurred by any of them in connection with the negotiation, preparation, printing and execution of this Agreement and any other documents referred to in this Agreement.

12.2 Enforcement costs

Each Chargor shall, to the extent that such amounts are not otherwise paid by the Borrower pursuant to the Facility Agreement, within three (3) Business Days of demand, pay to the Security Trustee the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the preservation of any rights under, this Agreement.

12.3 Stamp Taxes

Each Chargor shall to the extent that such amounts are not otherwise paid by the Borrower pursuant to the Facility Agreement, pay all stamp, registration and other taxes to which this Agreement, the Security or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Trustee within three (3) Business Days of demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

12.4 Indemnity

The provisions of clause 15.4 (*Indemnity to the Security Trustee*) of the Facility Agreement shall be incorporated *mutatis mutandis* into this Agreement.

13. APPLICATION OF PROCEEDS

All monies received or recovered and any non-cash recoveries made or received by the Security Trustee or any Receiver pursuant to this Agreement or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied by the

Security Trustee (notwithstanding any purported appropriation by any Chargor) in accordance with the terms of the Facility Agreement.

14. OTHER SECURITY

14.1 Redemption or transfer

In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking security in case of exercise by the Security Trustee or any Receiver of any power of sale under this Agreement the Security Trustee may redeem such prior Security or procure the transfer thereof to itself.

14.2 Accounts

The Security Trustee may settle and pass the accounts of the prior Security and any accounts so settled and passed will be conclusive and binding on the Chargors.

14.3 Costs of redemption or transfer

All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargors to the Security Trustee on demand together with accrued interest thereon calculated in accordance with clause 9.6 (*Default interest*) of the Facility Agreement.

14.4 Subsequent Interests

If the Security Trustee at any time receives notice of any subsequent mortgage, assignment, charge or other interest affecting all or any part of the Charged Assets, all payments made by any Chargor to the Security Trustee after that time 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 Obligations as at the time when the Security Trustee received notice.

15. SUSPENSE ACCOUNTS

All monies received, recovered or realised by the Security Trustee under this Agreement (including the proceeds of any conversion of currency) may in the discretion of the Security Trustee be credited to any interest bearing suspense or impersonal account maintained with the Security Trustee or any bank, building society or financial institution as it considers appropriate and may be held in such account for so long as the Security Trustee may think fit (the interest being credited to the relevant account) pending their application from time to time (as the Security Trustee is entitled to do in its discretion) in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

16. CURRENCY CONVERSION

For the purpose of, or pending the discharge of, any of the Secured Obligations, if the Security Trustee receives or recovers any monies in a currency other than the currency in which the relevant Secured Obligations are due, the Security Trustee may (without being under any obligation to do so) convert any such monies received or recovered by

the Security Trustee from one currency to the currency in which the Secured Obligations are due, at the spot rate at which the Security Trustee is able to purchase the currency in which the Secured Obligations are due with the amount received.

17. CURRENCY INDEMNITY

(a) If any sum due from any Chargor under this Agreement (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

- (i) making or filing a claim or proof against the relevant Chargor;
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the relevant Chargor shall, to the extent the Security Trustee is not otherwise indemnified in respect thereof by the Borrower pursuant to the Facility Agreement, as an independent obligation, within three Business Days of demand, indemnify the Security Trustee against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) Each Chargor waives any right it may have in any jurisdiction to pay any amount under this Agreement in a currency or currency unit other than that in which it is expressed to be payable.

18. ASSIGNMENT

18.1 No assignments or transfers by Chargor

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

18.2 Assignment by the Security Trustee

The Security Trustee may assign all or any of its rights under this Agreement to any person to whom it is permitted to transfer any of its rights under the relevant Finance Documents. The Security Trustee shall be entitled to disclose such information concerning the Chargor and this Agreement as the Security Trustee considers appropriate to any actual or proposed direct or indirect assignee or to any person to whom information may be required to be disclosed by any applicable law.

18.3 Security Trustee Successors

This Agreement shall remain in effect despite any amalgamation or merger (however effected) relating to the Security Trustee; and references to the Security Trustee shall include any assignee or successor in title of the Security Trustee and any person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights

and obligations of the Security Trustee under this Agreement or to which, under such laws, those rights and obligations have been transferred.

19. NOTICES

The provisions of clause 32 (*Notices*) of the Facility Agreement shall be incorporated mutatis mutandis into this Agreement.

20. DISCRETION AND DELEGATION

20.1 Discretion

Any liberty or power which may be exercised or any determination which may be made under this Agreement by the Security Trustee or any Receiver may, subject to the terms and conditions of the Facility Agreement be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

20.2 Delegation

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

21. CALCULATION AND CERTIFICATES

The provisions of clause 35 (*Calculations and Certificates*) of the Facility Agreement shall be incorporated mutatis mutandis into this Agreement.

22. WAIVERS AND COUNTERPARTS

22.1 Amendments

The provisions of clause 38 (*Amendments and Waivers*) of the Facility Agreement shall be incorporated *mutatis mutandis* into this Agreement.

22.2 Waivers

No waiver by the Security Trustee of any of its rights under this Agreement shall be effective unless given in writing.

22.3 Counterparts

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

23. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

24. ENFORCEMENT

24.1 Jurisdiction of English Courts

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- (c) This Clause 24 is for the benefit of the Security Trustee only. As a result and notwithstanding paragraph (a) of Clause 24.1, it does not prevent the Security Trustee from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Trustee may take concurrent proceedings in any number of jurisdictions.

THIS AGREEMENT has been signed on behalf of the Security Trustee and executed as a deed by the General Partner and the Limited Partner and is intended to be and is hereby delivered by it as a deed on the date specified above.

SCHEDULE 1
FORM OF NOTICE OF CHARGE OF PARTNERSHIP DOCUMENTS

PART I
NOTICE OF CHARGE

To: [Partnership Document counterparty]

Date: [•]

Dear Sirs,

We give you notice that, by a partners' security agreement dated [•] (the "**Partners' Security Agreement**"), we have charged in favour of SMBC Leasing (UK) Limited (the "**Security Trustee**") as trustee for the Finance Parties over all our rights, title and interest in, to and under the [*describe Partnership Document*] dated [•] between [•] relating to [•] including all monies payable thereunder (the "**Contract**").

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

With effect from the date on which you are notified by the Security Trustee that an Event of Default has occurred and is continuing under the terms of the Facility Agreement:

- (a) [all payments by you to us arising from the Contract shall be paid to, or at the direction of, the Security Trustee];
- (b) all remedies provided for under the Contract (or otherwise available) are exercisable by, or at the direction of, the Security Trustee; and
- (c) all rights, title and interest whatsoever accruing to or for the benefit of ourselves arising under the Contract (including all rights to compel performance) shall be exercisable by, or at the direction of, the Security Trustee.

You are authorised and instructed to disclose to the Security Trustee, without further approval from us, such information regarding the Contract as the Security Trustee may from time to time request and to send copies of all notices issued by you under the Contract to the Security Trustee as well as to us.

These instructions may not be revoked, nor may the terms of the Contract be amended, varied, waived or terminated, without the prior written consent of the Security Trustee.

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

Would you please confirm your agreement to the above by sending the enclosed acknowledgement to the Security Trustee with a copy to us.

Yours faithfully

[*Chargor Name*]

PART II
ACKNOWLEDGEMENT OF NOTICE OF CHARGE

To: SMBC Leasing (UK) Limited (as Security Trustee)

Date: [•]

Dear Sirs

We confirm receipt of a notice of charge dated [•] created by [*Chargor Name*] (the "**Chargor**") in favour of SMBC Leasing (UK) Limited (the "**Security Trustee**") over all the Chargor's rights, title and interest in and to the Contract (as defined in that notice).

We confirm that:

- (a) we will comply with the terms of such notice; and
- (b) we have not received notice of any prior security over, or the interest of any third party in, the Contract.

We further confirm that:

- (a) no amendment, waiver or release of any such rights, interests and benefits will be effective without the prior written consent of the Security Trustee;
- (b) no termination of such rights, title and interest will be effective unless we have given the Security Trustee 21 days' written notice of the proposed termination and specifying the action necessary to avoid such termination;
- (c) the Chargor will remain liable to perform all its obligations under the Contract and the Security Trustee is under no obligation of any kind whatsoever under the Contract nor under any liability whatsoever in the event of any failure by the Chargor to perform its obligations under the Contract; and
- (d) no breach or default on the part of the Chargor of any of the terms of the Contract will be deemed to have occurred unless we have given notice of such breach to the Security Trustee specifying how to make good such breach.

[We confirm that we have made all necessary arrangements for all future payments payable under the Contract to be made as specified in the notice.]

We have not claimed or exercised, and waive all future rights to claim or exercise, any rights of set-off, lien, counterclaim or other similar right now or in the future relating to amounts owed to us by the Chargor.

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

Yours faithfully

[Contract
cc. [*Chargor Name*]

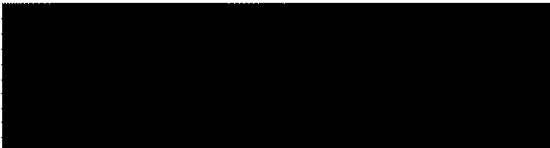
counterparty]

EXECUTION PAGE – PARTNERS' SECURITY AGREEMENT

THE CHARGORS

EXECUTED as a **DEED** by
EQUITIX NCP ENGLISH GP LIMITED
acting by its duly authorised signatory/attorney
in the presence of:

)
)
)
)



Signature of Witness

Sophie Chapman

Name of Witness

Trainee Solicitor

Occupation of Witness

Stephenson Harwood LLP

1 Finsbury Circus
London EC2M 7SH

Address of Witness

Address:

c/o Equitix Management Services Limited

10-11 Charterhouse Square

London EC1M 6EH

Attention: Jonjo Challands

Fax no: 0207 549 7517

Email: jchallands@equitix.co.uk

EXECUTION PAGE – PARTNERS' SECURITY AGREEMENT

THE CHARGORS

EXECUTED as a **DEED** by)
EQUITIX NCP (S) LP)
acting by its general partner)
EQUITIX NCP SCOTTISH GP LIMITED)
in the presence of:)



Signature of Witness

Sophie Chapman Name of Witness
Trainee Solicitor
Stephenson Harwood LLP Occupation of Witness
1 Finsbury Circus Address of Witness
London EC2M 7SH

Address:

c/o Equitix Management Services Limited
10-11 Charterhouse Square
London EC1M 6EH

Attention: Jonjo Challands

Fax no: 0207 549 7517

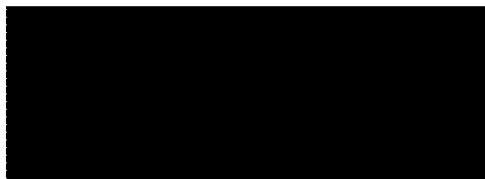
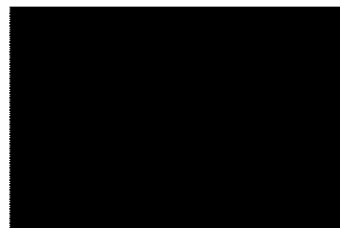
Email: jchallands@equitix.co.uk

EXECUTION PAGE – PARTNERS' SECURITY AGREEMENT

PARTNERSHIP

EXECUTED as a **DEED** by
EQUITIX NCP ENGLISH LP
acting through its general partner
EQUITIX NCP ENGLISH GP LIMITED
acting by its duly authorised signatory/attorney
in the presence of:

)
)
)
)
)
)



Signature of Witness

Sophie Chapman

Name of Witness

Trainee Solicitor

Occupation of Witness

Stephenson Harwood LLP

1 Finsbury Circus

Address of Witness

London EC2M 7SH

Address:

c/o Equitix Management Services Limited

10-11 Charterhouse Square

London EC1M 6EH

Attention: Jonjo Challands

Fax no: 0207 549 7517

Email: jchallands@equitix.co.uk

EXECUTION PAGE – PARTNERS' SECURITY AGREEMENT

SECURITY TRUSTEE

EXECUTED as a DEED
by SMBC LEASING (UK) LIMITED
acting by TONY MATTU

)
)
)



Signature of witness

DAVID ALFREY

Name of witness

Coffed Chase Ltd, 10 Upper Bank Street, E14 5JJ
London

Address of witness

Lease

Occupation of witness

Address: 99 Queen Victoria Street

London EC4V 4EH

Fax no.: 020 7786 1749

For the attention of: Lease Administrator