



Registration of a Charge

Company Name: **WAINSTONES INVESTMENTS LIMITED**

Company Number: **03090966**



Received for filing in Electronic Format on the: **14/12/2021**

XAJC6HFV

Details of Charge

Date of creation: **08/12/2021**

Charge code: **0309 0966 0003**

Persons entitled: **THORPE MARSH POWER LIMITED**

Brief description:

Contains fixed charge(s).

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **JOHN EDWARDS - COMPANY SECRETARY**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 3090966

Charge code: 0309 0966 0003

The Registrar of Companies for England and Wales hereby certifies that a charge dated 8th December 2021 and created by WAINSTONES INVESTMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 14th December 2021 .

Given at Companies House, Cardiff on 15th December 2021

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 8 December 2021

(1) THORPE MARSH POWER LIMITED

(2) WAINSTONES INVESTMENTS LIMITED

DEBENTURE

THIS DEBENTURE is made on the 8th December 2021

BETWEEN:

- (1) **THORPE MARSH POWER LIMITED** a company incorporated in England and Wales under number 06637894 whose registered office is at 26 Ellerbeck Court, Stokesley Business Park, Stokesley, North Yorkshire, TS9 5PT (hereinafter known as the "Lender"); and
- (2) **WAINSTONES INVESTMENTS LIMITED** a company incorporated in England and Wales under number 3090966 whose registered office is at 26 Ellerbeck Court, Stokesley Business Park, Stokesley, North Yorkshire, TS9 5PT (hereinafter known as the "Borrower").

WHEREAS:

- A. The Lender agreed to provide the Borrower with a loan on the terms of the Facility Agreement.
- B. The Borrower has received the loan from the Lender under the Facility Agreement.
- C. The Borrower has agreed to create the security for the loan required by the Lender by entering into this Debenture.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 Words and expressions defined in the Facility Agreement will have the same meanings in this Debenture unless they are expressly defined in this Debenture.

1.2 In this Debenture, unless the context otherwise requires, the following expressions have the following meanings:

"Assigned Agreements" means the agreements (if any) listed in schedule 1;

"Charged Assets" means all the assets, goodwill and undertakings of the Borrower present or future for the time being subject to the security interests created by this Debenture (including those listed in Schedule 1 (if any));

"Costs" means all costs, charges or expenses of any kind including, without limitation, costs and damages in connection with litigation, professional fees,

disbursements and any value added tax to be charged on those costs, charges, expenses and disbursements;

"Debenture" means this Debenture;

"Default Rate" means 4% above the RBS PLC base rate from time to time;

"Encumbrance" means any mortgage, charge, pledge, lien or other security interest of any kind, and any right of set off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having similar effect to the provision of security, other than liens arising by operation of law in the ordinary course of the Borrower's business;

"Event of Default" means

- (a) Any breach by the Borrower of the terms of any Finance Document;
- (b) Any failure by the Borrower to repay immediately upon demand any monies advanced under any Finance Agreement;
- (c) The Borrower is unable (or is deemed by any law or court to be) or admits inability to pay its debts as they fall due, stops or suspends (or announces an intention to stop or suspend) making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness or makes a general assignment for the benefit of, or a composition with, its creditors;
- (d) A moratorium is agreed, declared or comes into force in respect of any indebtedness of the Borrower;
- (e) Any step is taken or event occurs in any jurisdiction which would have an analogous or equivalent effect to those set out in clauses (c) or (d) above;
- (f) Any corporate action, legal proceedings or other procedure or step is taken in relation to (i) the suspension of payments, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower (ii) a composition, compromise, assignment or arrangement with any creditor of the Borrower (iii) the appointment of a liquidator receiver administrative receiver administrator compulsory manager judicial custodian trustee in bankruptcy or similar officer in respect of the Borrower or any

of its material assets or (iv) enforcement of any security over any assets of the Borrower

“Facility Agreement” means the loan agreement of even date between the Lender and the Borrower;

“Finance Document” means the Facility Agreement, and any other document designed as such by the Lender and the Borrower;

“Insurance” means each contract or policy of insurance to which the Borrower is a party or in which it has an interest;

“Intellectual Property” means copyright, patents, know-how, trade secrets, trade marks, trade names, the right to sue in passing off, design right, get-up, database right, customer lists, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future, (v) to which the Borrower is or may be entitled and (vi) wherever existing and the benefit of any agreement or any licence for the use of any such right;

“Investments” means:

- (a) each stock, share, debenture, loan stock, security, interest in any investment fund and any other comparable investment (whether or not marketable) whether owned directly by or to the order of the Borrower or by any trustee, fiduciary or clearance system on its behalf; and
- (b) all other rights attaching or relating to securities or investments and all cash or other securities or investments in the future deriving from Investments or such rights,

in each case now or in the future owned by it or (to the extent of its interest) in which it now or in the future has an interest;

“Land” means any right or interest in or over land wherever situated, including without limitation any buildings and fixtures on land, and the benefit of any covenants or rights owed to any person or enforceable by such person by virtue of the ownership, possession or occupation of land and/or all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or

in the future (and from time to time) owned by the Borrower or in which the Borrower holds an interest;

“Receiver” means a receiver appointed pursuant to this Debenture or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and an administrative receiver;

“Secured Liabilities” means the liabilities of the Borrower to the Lender under the Facility Agreement and the obligations contained in clause 2 and the other provisions of this Debenture and any interest, commission, costs, charges and expenses of the Lender and all money, liabilities and obligations now or in the future owed or incurred by the Borrower to the Lender (including those under this Debenture) whether actual or contingent, sole or joint, as principal or as surety, including without limitation any liability of the Borrower to a third party which subsequently becomes payable to the Lender by assignment or otherwise and any interest, commission, costs, charges and expenses of the Lender;

“Securities” means all right, title and interest of the Borrower, now or in the future, in any (i) stocks, (ii) shares, (ii) instruments creating or (iv) acknowledging any debt or other securities issued by any person;

“Security Interest” means any mortgage, charge, assignment, pledge, lien, right of set-off, hypothecation, encumbrance, priority or other security interest (whether fixed or floating) including, without limitation, any ‘hold-back’ or ‘flawed-asset’ arrangement together with any preferential right, retention of title, deferred purchase, leasing, sale or purchase, sale and leaseback arrangement, trust agreement, declaration of trust, trust arising by operation of law, any option or agreement for any of the same or any agreement which has substantially the same commercial or substantive effect as the creation of security; and

“Security Period” the period starting on the date of this Debenture and ending on the day on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

- 1.3 The headings in this Debenture are for convenience only and shall not affect its interpretation.
- 1.4 The Schedules form part of this Debenture and shall have the same force and effect as if set out in the body.

- 1.5 Persons shall include companies and other legal entities.
- 1.6 Unless the context otherwise admits words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa.
- 1.7 Reference to any statutory provisions in this Debenture shall include any statutory provisions, which amends or replaces it.
- 1.8 References to persons include individuals, unincorporated bodies, government entities, companies and corporations.

2. **Borrower's Obligations**

- 2.1 The Borrower covenants with the Lender that it will pay and discharge to the Lender the Secured Liabilities on written demand when due.
- 2.2 The making of one demand under this Debenture will not stop the Lender making any further demands.
- 2.3 The Lender will not make any demand unless it is entitled to do so.

3. **Security**

- 3.1 As continuing security for the payment and discharge of the Secured Liabilities the Borrower charges to the Lender with full title guarantee:
 - 3.1.1 All plant, machinery, vehicles, computers, office and other equipment and the benefit of all contracts, licences and warranties relating thereto;
 - 3.1.2 All its right, title and interest in and to all Investments owned by it from time to time and all corresponding distribution rights;
 - 3.1.3 All book and other debts arising in the ordinary course of trading ("Book Debts") and all rights and claims against third parties and against any security in respect of Book Debts;
 - 3.1.4 All debts and monetary claims (other than Book Debts) and all rights against third parties in respect of such debts and claims;
 - 3.1.5 All monies standing to its credit in any accounts it may have from time to time with any bank, financial institution or other person;
 - 3.1.6 All its intellectual property rights;
 - 3.1.7 The benefit of all licences and all other consents and agreements held by it in connection with the use of any of its assets;
 - 3.1.8 Its goodwill; and
 - 3.1.9 If not effectively assigned by clause 3.2 all its right title and interest in and to (and claims under) the Assigned Agreements.
- 3.2 As further continuing security for the payment and discharge of the Secured Liabilities the Borrower assigns absolutely with full title guarantee to the Lender all its:

- 3.2.1 rights to and title from time to time in all policies of insurance and all proceeds of them either now or in the future held by, or written in favour of, the Borrower or in which it is otherwise interested;
 - 3.2.2 right title and interest in and to (and claims under) the Assigned Agreements to which it is a party and any guarantees, warranties and/or other agreements collateral to the Assigned Agreements;
- and all related property rights in respect of the above.
- 3.3 Until the occurrence of an Event of Default but subject to clause 3.7 and to the terms of the Finance Documents the Borrower may continue to deal with counterparties to the relevant Assigned Agreements.
 - 3.4 As further continuing security for the payment and discharge of the Secured Liabilities the Borrower charges to the Lender with full title guarantee by way of first floating charge the Borrower's bank accounts and other assets (including Land) not otherwise effectively charged by clause 3.1.
 - 3.5 This Debenture will remain as continuing security in favour of the Lender, regardless of the settlement of any account or any other matter whatever and will be without prejudice and in addition to any and all other rights, remedies or security which is or are in place now or in the future in respect of any Charged Assets in favour of the Lender for the payment of an indebtedness.
 - 3.6 The Borrower will on the demand of the Lender execute and deliver to the Lender at the cost of the Borrower any document that the Lender reasonably requires further to secure the payment of the Secured Liabilities, or to create, enhance or perfect any fixed security over any of the Charged Assets or to give full effect to this Debenture or to vest title to any of the Charged Assets in the Lender or the Lender's nominee or any purchaser.

- 3.7 The Borrower shall promptly after the date of this deed (or as the case may be after execution of any Assigned Agreements entered into after the date of this deed) give notice to the other parties to the Assigned Agreements that it has assigned its rights under the applicable Assigned Agreements to the Lender. The forms of such notices shall be as reasonably approved by the Lender. The Borrower will use its reasonable endeavours to ensure that each party served with any such notice countersigns by way of acknowledgement and acceptance and returns the notice to the Borrower within 14 days of the execution of this deed (or, as the case may be, the execution of such Assigned Agreement).

4. **Crystallisation**

- 4.1 The floating charge created by clause 3.4 will crystallise into a fixed charge:
- 4.1.1 by notice in writing given by the Lender to the Borrower at any time after the security constituted by this Debenture becomes enforceable, specifying the Charged Assets over which the crystallisation will take effect and if no Charged Assets are specified, the notice shall take effect over all the Charged Assets of the Borrower; or
 - 4.1.2 automatically and instantly without notice if the Borrower resolves, without the Lender's prior written consent, to take or takes any step to:
 - a) create an Encumbrance over any or all of the Charged Assets;
 - b) create a trust over any or all of the Charged Assets;
 - c) dispose of any or all of the Charged Assets, except if such disposal is in the ordinary course of the Borrower's business;
 - 4.1.3 automatically and instantly without notice if any person resolves, without the Lender's prior written consent, to take or takes any step to levy any distress, execution, sequestration or other process against any or all of the Charged Assets; or
 - 4.1.4 automatically and instantly without notice if an Event of Default occurs.
- 4.2 Any charge by the Borrower that has crystallised under clause 4.1 may, by notice in writing given at any time by the Lender to the Borrower, be reconverted into a floating charge in relation to the Charged Assets specified in the notice and if no Charged Assets are specified, the notice shall take effect over all the Charged Assets of the Borrower.

5. Borrower's Representations and Warranties

5.1 The Borrower represents and warrants to the Lender as follows:

5.1.1 The Borrower is the legal and beneficial owner of the Charged Assets free from any Encumbrance other than the Encumbrances created by this Debenture.

5.1.2 The Borrower has not received or acknowledged notice of any material adverse claim by any person in respect of the Charged Assets and there are no covenants, agreements, conditions, interests rights or other matters which may materially adversely affect the Charged Assets.

5.1.3 The Borrower has at all times complied in all material respects with all applicable laws and regulations and has not breached any law or regulation which would materially adversely affect the Charged Assets.

5.1.4 The Charged Assets are not subject to terms entitling a third party to terminate or limit the use of any facility necessary for the enjoyment and use of the Charged Assets.

5.1.5 Nothing has arisen, has been created or is subsisting, which would be an overriding interest in any Land.

5.1.6 No Encumbrance expressed to be created by this Debenture is liable to be avoided or otherwise set aside on the liquidation or administration of the Borrower or otherwise.

5.2 The Borrower repeats the representations and warranties in clause 5.1 above on each date on which the representations and warranties in the Facility Agreement are deemed to be repeated during the Security Period.

6. Borrower's Undertakings and Covenants

6.1 The Borrower covenants not, without the prior written consent of the Lender, to:

6.1.1 (except in the case of assets charged by way of floating charge only which the Borrower may deal with in the ordinary course of its business) part with possession of, or transfer, sell, lease, assign or otherwise dispose of all or any of the Charged Assets, or attempt or agree to do so;

- 6.1.2 create, attempt to create, allow to subsist any mortgage, debenture, charge or pledge, increase the amount secured by the Debenture, permit any lien (except a lien arising by operation of law in the ordinary course of trading) or other encumbrance to arise on or affect all or any of the Charged Assets;
 - 6.1.3 permit any person to be registered as proprietor of any of the Charged Assets under the Land Registration Act 2002 or create or permit to arise any unregistered interest which overrides first registration affecting such property within Schedule 1 of that Act, to become entitled to any proprietary right or interest which might affect the value of any land fixtures or fixed plant and machinery charged by this Debenture;
 - 6.1.4 redeem or purchase its own shares or pay dividends of an unusual amount;
 - 6.1.5 cancel, assign or allow to lapse its interest under any credit sale, hire purchase, leasing, rental, licence or similar agreement and to produce proof of payments due under such agreements on request from the Lender;
 - 6.1.6 do or allow any act or omission which may prejudice the value to the Lender of the Charged Assets; or
 - 6.1.7 create any subsidiaries.
- 6.2 The Borrower covenants that it will, unless, in any case, the Lender has given its written consent otherwise:
 - 6.2.1 carry on its business properly and efficiently and not materially change how it conducts its business;
 - 6.2.2 supply to the Lender such information relating to the Borrower's business, assets and liabilities as the Lender may reasonably require;
 - 6.2.3 notify the Lender in writing of any breach of this Debenture, any Finance Document or any other security document, immediately on it becoming aware of such breach;

6.2.4 within 7 working days give notice to:

- a) any contracting party to an agreement to be assigned to the Lender of the Lender's interest in such agreement and procure that such contracting party acknowledge the Lender's interest; and
- b) any bank or financial institution with whom the Borrower holds an account of the Lender's interest in such account and procure that such bank or financial institution acknowledge the Lender's interest.

6.2.5 get in and realise, in the ordinary course of business, all book and other debts and other assets charged under clause 3.2, on receipt pay all monies received in respect of such assets into the account as the Lender may specify prior to which the Borrower will hold such monies on trust for the Lender and execute such assignment of any such asset as the Lender may require;

6.2.6 in relation to the Land observe all covenants, not enter into any onerous or restrictive obligation, effect or allow any development within the Town and Country Planning Acts, do, allow or omit anything infringing any statute or regulation and maintain and keep them in good and substantial repair;

6.2.7 maintain all plant, machinery, fixtures, fittings, vehicles, computers and office and other equipment part of the Charged Assets in good working order and condition;

6.2.8 in relation to the Intellectual Property part of the Charged Assets observe all covenants and obligations and maintain and renew all relevant registrations, permits and licences;

6.2.9 institute, pursue and defend proceedings relating to the Charged Assets as required to protect their value and apply monies from such proceedings in discharge of sums due to the Lender;

- 6.2.10 at its own expense, keep insured any of the Charged Assets to their full replacement value including professional fees and other expenses with reputable insurers against risks normally insured for assets of that type in the name of the Borrower or, at the Lender's request, the joint names of the Borrower and the Lender;
- 6.2.11 punctually pay all insurance premiums, have the Lender's interest noted on the policy and produce the insurance documents including any receipt on request of the Lender and apply monies received from insurance in discharge of its obligations under this Debenture. If the Borrower does not maintain insurance, the Lender may do so at the Borrower's expense;
- 6.2.12 punctually pay, and indemnify the Lender against, all monies due in respect of the Charged Assets;
- 6.2.13 comply with all statutory, regulatory and other requirements applying to the Charged Assets except where actually or potentially adverse to the Lender's interest, when the Borrower will immediately consult the Lender and make or join the Lender in making such representations as the Lender may request;
- 6.2.14 deposit with the Lender or its nominee all deeds and documents of title relating to all land, buildings and other real property belonging to the Borrower and insurance policies relating thereto, all certificates and documents of title relating to the Securities and all other documents relating to the Charged Assets as the Lender may request; or
- 6.2.15 if requested by the Lender, ensure that each subsidiary of the Borrower guarantees to the Lender payment of all monies covenanted to be paid under this Debenture and charge its undertaking, property and assets to secure such payment in such manner as the Lender may request.

7. Borrower's Liability

7.1 The Borrower's liability in respect of the Secured Liabilities shall not be discharged or prejudiced by:

7.1.1 the renewal, determination, variation or increase of the loan under the Facility Agreement or the acceptance or variation of any compromise, arrangement or settlement or the omission to claim or enforcement of payment from any other person by the Lender; or

7.1.2 any security, guarantee, indemnity, remedy or other right held by or available to the Lender being or becoming wholly or partially illegal, void or unenforceable on any ground; or

7.1.3 any other act or omission which but for this provision might have discharged or otherwise prejudiced the liability of the Borrower.

7.2 The Borrower may not require the Lender to:

7.2.1 enforce any security or other right; or

7.2.2 claim any payment from; or

7.2.3 otherwise proceed;

against any other person before enforcing this Debenture against the Borrower.

8. Enforcement

8.1 The Lender may enforce this Debenture at any time after:

8.1.1 the occurrence of an Event of Default;

8.1.2 the floating charge has crystallised under clause 4;

8.1.3 there has occurred any event which in the Lender's opinion is actually or potentially adverse to the Borrower; or

8.1.4 there has occurred any other event which in the Lender's opinion actually or potentially jeopardises the security created by this Debenture.

9. **Receivers**

- 9.1 At any time after the security created by this Debenture becomes enforceable the Lender may without further notice appoint in writing any one or more persons to be a receiver or a receiver and manager. Where more than one Receiver is appointed they will have the power to act separately (unless the appointment specifies otherwise).
- 9.2 The Lender may determine the remuneration of the Receiver.
- 9.3 The appointment of a Receiver will not preclude the Lender from appointing a subsequent Receiver over all or any of the Charged Assets whether the previously appointed receiver continues to act or not.
- 9.4 The Receiver will be the agent of the Borrower and the Borrower will be solely liable for the acts, defaults, and remuneration of the Receiver unless and until the Borrower goes into liquidation after which the receiver shall act as principal. In no event will the Receiver become the agent of the Lender.
- 9.5 The Receiver will have and be entitled to exercise all the powers set out in Schedule 1 and Schedule 2 of the Insolvency Act 1986 and the Law of Property Act 1925 and will also have the power, either in his name or in the name of the Borrower:
 - 9.5.1 in connection with any sale or other disposition of the Charged Assets, to receive the consideration in a lump sum or in instalments and to receive shares and loan notes by way of consideration;
 - 9.5.2 to grant options, licences or any other whatsoever in the Charged Assets;
 - 9.5.3 to sever fixtures from and to repair, improve and make any alterations to, the Charged Assets;
 - 9.5.4 to exercise any voting rights appertaining to the Borrower;
 - 9.5.5 to do all other acts and things which the Receiver may consider desirable or necessary for realising any Charged Assets or incidental or conducive to any of the rights, powers or discretion conferred on a Receiver under or by virtue of the Debenture; and

- 9.5.6 to exercise in relation to any Charged Assets all the powers, authorities and things which he would be capable of exercising if he was absolute beneficial owner of the same.
- 9.6 Neither the Lender nor the Receiver will be liable to account as mortgagee in possession or otherwise for any money not actually received by the Lender or the Receiver.
- 9.7 Section 109 of the Law of Property Act 1925 will not apply to this Debenture or to any security it creates.

10. **Powers of Sale**

- 10.1 Section 103 of the Law of Property Act 1925 shall not apply to this Debenture but the statutory power of sale will as between the Lender and a purchaser arise on and be exercisable at any time after the execution of this Debenture but the Lender will not exercise such power unless the security created by this Debenture has become enforceable or after the appointment of a Receiver under clause 9.
- 10.2 The statutory powers of sale, leasing and accepting surrenders exercisable by the Lender are extended to allow the Lender to grant or surrender leases of any land vested in the Borrower or in which it has an interest on such terms and conditions as the Lender may think fit provided that the security constituted by this Debenture has become enforceable.
- 10.3 The statutory power of sale exercisable by the Lender is extended to allow the Lender to sever any fixtures from the land and sell them separately.
- 10.4 No person dealing with the Lender or a Receiver, its agents or delegates will be concerned with whether this Debenture has become enforceable, whether any power exercised or purported to be exercised has become exercisable, whether any of the Secured Liabilities remain due upon this Debenture, as to the necessity or expediency of any stipulations and conditions subject to which the sale of any Charged Asset is made, as to the propriety or regularity of the sale of any Charged Asset or to see to the application of any money paid to the Lender or the Receiver, or its agents or delegates and each dealing shall be deemed to be within the powers conferred by this Debenture and to be valid and effectual accordingly.
- 10.5 Section 93 of the Law of Property Act 1925 will not apply to this Debenture or to any security it creates.

11. **Accounts**

- 11.1 On receiving notice that the Borrower has encumbered or disposed of any of the Charged Assets the Lender may rule off the Borrower's account and open a new account in the name of the Borrower.
- 11.2 If the Lender does not open a new account on receipt of a notice as from that time all payments made to the Lender will be treated as if they had been credited to a new account and will not reduce the amount owing from the Borrower at the time when the notice was received.

12. Attorney

- 12.1 By way of security the Borrower irrevocably appoints the Lender, whether or not a Receiver has been appointed, and any Receiver separately as Borrower's attorney with full power to appoint substitutes and to delegate in its name and on its own behalf and as its act and deed or otherwise at any time after this security has become enforceable to execute and deliver and otherwise perfect any agreement, assurance, deed, instrument or document, or perform any act that may be required of the Borrower under this Debenture, or may be deemed by such attorney necessary or desirable for any purpose of this Debenture or to enhance or perfect the security intended to be constituted by the Attorney or to convey or transfer legal ownership of any Charged Assets.
- 12.2 The Borrower will ratify and confirm all transactions entered into by the Lender or Receiver in the proper exercise of their powers in accordance with this Debenture and all transactions entered into by the Lender or the Receiver in signing, sealing, delivering and otherwise perfecting any assignment, mortgage, charge, security, deed, assurance, document or act as aforesaid.

13. Sums Received

- 13.1 Any money received under this Debenture will, subject to the discharge of any prior-ranking claims, be paid or applied in the following order of priority:
- 13.1.1 in satisfaction of all costs, charges and expenses incurred and payments made by the Lender and/or the Receiver and of the remuneration of the Receiver;
 - 13.1.2 in or towards satisfaction of the Secured Liabilities; and
 - 13.1.3 as to the surplus, if any, to the person or persons entitled to it.
- 13.2 The Lender may, in its absolute discretion on or at any time or times after demand and pending the payment to the Lender of the whole of the Secured Liabilities, place and keep to the credit of a separate or suspense account any money received, recovered or realised by the Lender by virtue of this Debenture for so long and in such manner as the Lender may determine

without any intermediate obligation to apply it in or towards the discharge of any of the Secured Liabilities.

14. Indemnities

14.1 The Borrower will indemnify the Lender against all and any costs, charges and expenses arising:

14.1.1 out of any of the assets charged or assigned pursuant to clause 3 resulting in the Borrower or the Lender or the Receiver infringing or allegedly infringing any third-party rights; and

14.1.2 in relation to any proceedings referable to the Borrower brought against the Lender and/or the Receiver or to which the Lender and/or the Receiver may be joined whether as the plaintiff or defendant that relate to any of the Charged Assets.

14.2 The Borrower agrees that if it fails to pay any monies in respect of the Charged Assets or to take (or not take) any action which might diminish the value of the Charged Assets to the Lender, the Lender may pay such monies or take such action and recover the cost from the Borrower.

14.3 The Borrower indemnifies the Lender and its employees and agents fully at all times against any claim, liability, loss or expense incurred by the Lender directly or indirectly as a result of any delay or failure of the Borrower in complying with clause 6 or with any law, regulation, directive or code of practice applicable to the Borrower or to its business or the Charged Assets or relating to the protection of the environment or to health and safety matters.

14.4 Without prejudice to the generality of this clause the costs recoverable by the Lender and/or any Receiver under this Debenture shall include:

14.4.1 all reasonable costs incurred by the Lender and the beneficiaries in preparing and administering this Debenture or perfecting the security created by it;

14.4.2 all reasonable costs, whether or not allowable on a taxation by the Court, of all proceedings for the enforcement of this Debenture or for the recovery or attempted recovery of the Secured Liabilities;

14.4.3 all money expended and all costs arising out of the exercise of any power, right or discretion conferred by this Debenture;

14.4.4 all costs and losses arising from any default by the Borrower in the payment when due of any of the Secured Liabilities or the performance of its obligations under this Debenture; and

14.4.5 all administrative charges of the Lender based on time spent by its employees and agents in connection with the affairs of the Borrower.

14.5 Any overdue amounts secured by the Debenture will carry interest at the Default Rate. Interest will accrue on a day to day basis to the date of repayment in full and, if unpaid, will be compounded with quarterly rates on the Lender's usual quarter days. Interest shall continue to be charged and compounded on this basis after as well as before any demand or judgment.

14.6 Money received or held by the Lender pursuant to this Debenture may, from time to time after demand of all or any part of the Secured Liabilities has been made, be converted into such currency as the Lender considers necessary or desirable to discharge the Secured Liabilities in that currency at the Lender's then prevailing spot rate of exchange, as conclusively determined by the Lender, for purchasing the currency to be acquired with the existing currency.

15. Release

15.1 Subject to clause 15.2 below, the Lender will, at the request and cost of the Borrower, execute all documents as the Borrower may reasonably require to release the Charged Assets from the security constituted by this Debenture.

15.2 Any release, discharge or settlement between the Lender and the Borrower will be conditional upon no payment or security received by the Lender 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 and, notwithstanding any such release, discharge or settlement:

15.2.1 the Lender or its nominee will be at liberty to retain this Debenture and the security created by or pursuant to this Debenture, including all certificates and documents relating to the whole or any part of the Charged Assets, for such period as the Lender may deem necessary to provide the Lender with security against any such avoidance, reduction or order for refund; and

15.2.2 the Lender will be entitled to recover the value or amount of such security or payment from the Borrower subsequently as if such release, discharge or settlement had not occurred.

16. Confidential Information

16.1 The Lender may disclose:

16.1.1 on a confidential basis to a subsidiary and any actual or potential assignee, transferee or sub-participant of its rights or obligations under this agreement in addition to any publicly available information such information about the Borrower and its subsidiaries as the Lender shall consider appropriate; and

16.1.2 any information about the Borrower and its subsidiaries to any person to the extent that it is required to do so by any applicable law, regulation or court order.

16.2 Subject to clause 16.1 above, neither party will, without the other's prior written consent, disclose:

16.2.1 the existence or terms of this Debenture;

16.2.2 any information relating to the customers, suppliers, methods, products, plans, s, trade secrets or otherwise to the business or affairs of the other party; and

16.2.3 any information developed by either party in performing its obligations under, or otherwise pursuant to this Debenture.

16.3 Neither party will use the other's Confidential Information except to perform this Debenture.

16.4 Disclosure of Confidential Information may be made to a party's:

16.4.1 officers;

16.4.2 employees;

16.4.3 professional advisers; and

16.4.4 consultants and other agents,

on condition that the party disclosing is responsible for compliance with the obligations of confidence hereunder.

- 16.5 Confidential Information does not include information which:
- 16.5.1 is or becomes public other than by breach of this Debenture;
 - 16.5.2 was known to the other party before this Debenture without breach of confidence;
 - 16.5.3 is independently developed by or becomes available to the other party;
or
 - 16.5.4 is required to be disclosed by law or regulatory authority.
- 16.6 On termination of this Debenture all confidential information relating to or supplied by a party and which is or should be in the other's possession will be returned by the other or (at the first party's option) destroyed and certified as destroyed.
- 16.7 This clause 16 will remain in force for a period of two years from the date of termination of this Debenture.

17. **Pari Passu Ranking**

- 17.1 The payment obligations of the Borrower under the Finance Documents rank and will rank at least pari passu, without any preference among themselves, with all its other present and future obligations.

18. **Prior Charges**

- 18.1 At any time after this Debenture has become enforceable the Lender may redeem any prior Security Interest or procure the transfer of that Security Interest to itself and may settle and pass the accounts of the person entitled to that Security Interest. Any accounts which are settled and passed by the Lender are conclusive and binding on the Borrower. The Borrower shall reimburse the Lender for any monies paid out and Costs incurred by the Lender in exercise of its rights under this clause.

19. **Variation**

- 19.1 Variations to this Debenture will only have effect when agreed in writing by the parties or by their authorised representatives.

20. **Severance**

- 20.1 If any provision of this Debenture shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Debenture which shall remain in full force and effect.
- 20.2 If any provision on of this Debenture is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.
- 20.3 The parties agree to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

21. Waiver

21.1 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Debenture shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Debenture.

22. Rights of Third Parties

22.1 This Debenture is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

23. Assignment and Subcontracting

23.1 The Lender may assign any of its rights under this Debenture or transfer all its rights or obligations by novation to another bank or financial institution. The consent of the Borrower is required for an assignment or transfer by the Lender unless:

- a) the assignment or transfer is to a subsidiary of the Lender; or
- b) an Event of Default is continuing.

Any such consent must not be unreasonably withheld or delayed and if not expressly refused within five Business Days shall be deemed given.

23.2 The Borrower may not assign any of its rights or transfer any rights or obligations under this Debenture.

24. **Succession**

24.1 This Debenture will bind and benefit each party's successors and assignees.

25. **Notices**

25.1 Any notice required to be given under this Debenture shall be in writing and signed by the person giving it and may be delivered personally or sent by facsimile transmission or other electronic means or by first class post to the address set out above in respect of each of the parties or to such other address as may otherwise be notified by either party to the other as being an alternative address for service.

25.2 Any notice so served shall be deemed to be received:

25.2.1 if delivered personally, at the time of delivery;

25.2.2 if sent by facsimile transmission or other electronic means, on the day of transmission provided it is sent during Business Hours on a Business Day and if not on the next Business day; and

25.2.3 if sent by post, 48 hours after the date of posting.

26. **Governing Law and Jurisdiction**

26.1 This Debenture shall be governed by and construed in accordance with English law.

26.2 Any dispute or difference between the parties arising out of or in accordance with the terms and effect of this Debenture shall be determined by the exclusive jurisdiction of the English courts.

IN WITNESS WHEREOF the parties have executed and delivered this Deed on the day and year first above written.

EXECUTED (but not delivered until the date .
of this deed) as a **DEED** by

THORPE MARSH POWER LIMITED

acting by a director in the presence of:



Director

Name of witness: **ANNE M PATIL**

Address of Witness: **11 ETHEL ROAD
BIRMINGHAM
B17 0EL**

EXECUTED (but not delivered until the date
of this deed) as a **DEED** by

WAINSTONES INVESTMENTS LIMITED

acting by a director in the presence of:



Director

Name of witness: **ANNE M PATIL**

Address of Witness: **11 ETHEL ROAD
BIRMINGHAM
B17 0EL**

Schedule 1
Assigned Agreements

None

