



Registration of a Charge

Company name: **AIKENGALL COMMUNITY WIND COMPANY LIMITED**
Company number: **SC313596**



X3KWSR63

Received for Electronic Filing: **18/11/2014**

Details of Charge

Date of creation: **04/11/2014**
Charge code: **SC31 3596 0008**
Persons entitled: **HSBC BANK PLC AS SECURITY TRUSTEE**
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: **PINSENT MASONS LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 313596

Charge code: SC31 3596 0008

The Registrar of Companies for Scotland hereby certifies that a charge dated 4th November 2014 and created by AIKENGALL COMMUNITY WIND COMPANY LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 18th November 2014 .

Given at Companies House, Edinburgh on 19th November 2014

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

ASSIGNATION IN SECURITY

by

AIKENGALL COMMUNITY WIND COMPANY LIMITED
as Assignor

in favour of

HSBC BANK PLC
as Security Trustee

**ASSIGNATION IN SECURITY in respect of the
Aikengall Community Wind Farm Project**

CERTIFIED TO BE A TRUE AND COMPLETE
COPY OF THE ORIGINAL
DATED THIS 18 DAY OF 11 2014

Pinaent Messons LLP

Pinaent Messons LLP.

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- (1) **AIKENGALL COMMUNITY WIND COMPANY LIMITED** incorporated in Scotland (Registered Number SC313596) whose registered office is at Caledonian Exchange, 19A Canning Street Edinburgh, EH3 8HE (the "Assignor")

in favour of

- (2) **HSBC BANK PLC** incorporated in England (Registered Number 00014259) whose registered office is at 8 Canada Square, London E14 5HQ as security trustee for the Finance Parties under and as defined in the Loan Agreement, and its successor(s) as such security trustee (the "Security Trustee").

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Security unless the context requires otherwise:

"**Default Rate**" means the rate of interest payable under clause 8.4 (*Default Interest*) of the Loan Agreement;

"**Enforcement Notice**" means written notice given by the Security Trustee to the counterparty or counterparties to the Project Document pursuant to Clause 6.1 notifying it or them that it has become entitled to enforce this Security;

"**Loan Agreement**" means the agreement so called dated 30 November 2007 entered into among, *inter alios*, the Assignor, and the Security Trustee as amended, supplemented or novated from time to time;

"**Project Document**" means the document listed in Part 1 of the Schedule;

"**Related Rights**" means all rights, remedies, benefits and entitlements now or at any time hereafter accrued or accruing in respect of the Assignor's part of the Project Document hereby assigned including, without limitation:

- (a) the right to payment of all monies due thereunder;
- (b) the proceeds of all payments thereunder and of all claims, awards, adjudications and judgments under or in respect thereof;
- (c) all claims for damages in respect of any breach thereof (other than a breach by the Assignor);
- (d) the benefit of all (if any) warranties and indemnities;
- (e) all (if any) rights of termination or rescission;
- (f) the right to require and enforce performance by the other party or parties of its or their obligations thereunder by way of adjudication, arbitration, proceedings or otherwise; and
- (g) the right to perform and fulfil the obligations on the Assignor's part thereunder;

"**Schedule**" means the Schedule annexed as relative to this Security;

"**Secured Obligations**" means all or any monies, liabilities and obligations, whether actual or contingent and whether owed jointly or severally or as principal debtor, guarantor, cautioner, surety or otherwise, which are now or may at any time hereafter (whether before or at any time after demand) be or become due in any manner by the Assignor to the Finance Parties under the Loan Agreement and the other Finance Documents, and all or any monies, liabilities and obligations due by the Assignor under this Security;

"**Secured Rights**" means the Assignor's whole right, title and interest, past, present and future, in and to the Project Document and the Related Rights; and

"this Security" means these presents (including the Schedule) as amended or supplemented from time to time.

1.2 Loan Agreement Definitions

In this Security, unless the context requires otherwise terms defined in clause 1.1 (*Definitions*) of the Loan Agreement shall have the same meaning in this Security.

1.3 Interpretation

The provisions of clause 1.2 (*Construction*) and clause 1.5 (*Non-Business Days*) of the Loan Agreement shall apply *mutatis mutandis* to this Security as if set out in full herein.

1.4 Conflict

If there is any conflict between the provisions of this Security and the provisions of the Loan Agreement, the provisions of the Loan Agreement shall prevail.

2 SECURITY

2.1 Security

In security for the payment and discharge of the Secured Obligations, the Assignor hereby ASSIGNS the Secured Rights to the Security Trustee on the terms and conditions specified in this Security.

2.2 Intimation

Immediately upon execution of this Security, the Assignor shall intimate its terms to the other party or parties to the Project Document and procure its/their acknowledgement in (or as near as may be) the form set out in Part 2 of the Schedule or in such other form as the Security Trustee may agree except to the extent that such notice is given and acknowledged in a Finance Document.

2.3 Prohibition of other securities etc

Save as otherwise provided in the Security Trust and Intercreditor Deed or unless otherwise agreed in writing by the Security Trustee, the Assignor shall not assign or create or permit any form of security, charge or encumbrance to arise over or otherwise deal with the Secured Rights or any part thereof until the Secured Obligations have been fully and unconditionally paid or discharged.

3 PROTECTION OF SECURITY

3.1 Continuing security

This Security shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Obligations and shall remain in force until the Secured Obligations have been fully and unconditionally paid and discharged.

3.2 No prejudice

This Security shall be in addition to and shall not in any way prejudice or be prejudiced by any other security, right or remedy which the Security Trustee or any other Finance Party may now or at any time hereafter hold for all or any part of the Secured Obligations.

3.3 No waiver

Failure or delay on the part of the Security Trustee in exercising any right, power or discretion under or pursuant to this Security shall not operate as a waiver thereof, nor will any single or partial exercise of any such right, power or discretion preclude any other or further exercise thereof. The rights, powers and discretions contained in this Security are in addition to and not substitution for any right of set-off, compensation, retention, combination of accounts, lien or other right or remedy provided by law.

3.4 Severability

The provisions of this Security shall be severable and distinct from one another and if at any time one or more of such provisions is or becomes or is declared void, invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Security shall not in any way be affected or impaired thereby.

3.5 Non impairment

The Assignor agrees that none of its obligations or the Security Trustee's rights, powers and discretions under this Security shall be reduced, discharged or otherwise adversely affected by:

- (a) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any security or any right or remedy which the Security Trustee or any other Finance Party may have now or in the future from or against the Assignor or any other person in respect of any of the Secured Obligations; or
- (b) any failure, act or omission by the Security Trustee or any other person in taking up, perfecting or enforcing any security or guarantee, surety or indemnity from or against the Assignor or any other person in respect of the Secured Obligations; or
- (c) any increase in or waiver or discharge of any of the Secured Obligations or any termination, amendment, variation, supplement, restatement, novation or replacement of the Loan Agreement and/or the Finance Documents; or
- (d) any grant of time, indulgence, waiver or concession to the Assignor or any other person; or
- (e) any of the administration, receivership, liquidation, winding-up, insolvency, bankruptcy, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name or style of the Assignor or any other person; or
- (f) any invalidity, illegality, unenforceability, irregularity or frustration of any document relating to the Secured Obligations; or
- (g) any amendment, variation, supplement or restatement of the Project Document; or
- (h) anything done or omitted to be done by the Security Trustee or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Assignor under this Security.

3.6 Further assurance

The Assignor shall promptly after being requested to do so by the Security Trustee do all such acts and things and execute and deliver all such documents as the Security Trustee may require (in particular, without limitation, further securities, transfers or assignments of or other instruments relating to the Secured Rights) for perfecting or protecting the security created by or pursuant to this Security in respect of the Secured Rights or its priority or for facilitating the realisation or application of the Secured Rights and the exercise of the rights, powers and discretions conferred on the Security Trustee under this Security.

3.7 New accounts

At any time after the Security Trustee or any other Finance Party has received or is deemed to be affected by notice (whether actual or constructive) of the creation of any subsequent security, charge or encumbrance over or affecting any part of the Secured Rights or the proceeds of realisation the Security Trustee or any other Finance Party may open a new account or accounts with the Assignor. If the Security Trustee or any other Finance Party does not open a new account or accounts it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice and as from that time all payments made to the Security Trustee or any other Finance Party shall be credited

or be treated as having been credited to the new account and shall not operate to reduce the amount covered by this Security.

4 **POWER OF ATTORNEY**

4.1 **Appointment**

The Assignor hereby irrevocably appoints the Security Trustee as its attorney on its behalf and in its name or otherwise, at such times and in such a manner as the attorney may think fit:

- (a) to do anything which the Assignor is obliged to do (but has not done) under this Security including, without limitation, to execute further securities, transfers or assignments of and other instruments relating to, the Secured Rights; and
- (b) generally to exercise all or any of the rights, powers and discretions conferred on the Security Trustee in relation to the Secured Rights under this Security,

provided that the appointment hereby made shall cease to have any force and effect when the provisions for discharge under Clause 7 have been satisfied.

4.2 **Ratification**

The Assignor hereby ratifies and confirms and agrees to ratify and confirm whatever its attorney may do or purport to do in the exercise or purported exercise of the power of attorney given by the Assignor under this Clause.

4.3 **Exercise of power**

The appointment effected under Clause 4.1 shall take effect immediately, but the powers conferred shall only become exercisable upon this Security becoming enforceable or if the Assignor does not fulfil any of its obligations under Clause 3.6 (*Further assurance*) within 3 Business Days of notice from the Security Trustee to do so.

5 **RIGHTS AND OBLIGATIONS UNDER PROJECT DOCUMENT**

5.1 **Assignor's continuing liability**

Notwithstanding the terms of this Security, the Assignor agrees that prior to enforcement of this Security pursuant to Clause 6 (*Enforcement*) it shall remain liable to perform all the obligations incumbent on it and entitled to exercise all rights, remedies, powers and discretions conferred on it under the Project Document and Related Rights and the Security Trustee shall not have any liability or responsibility under the Project Document or Related Rights to the Assignor or any other party.

5.2 **Right to perform obligations**

Without prejudice to Clause 5.1 (*Assignor's continuing liability*), if the Assignor fails to perform any of the obligations incumbent on it under the Project Document and Related Rights, the Security Trustee shall be entitled, but not required, to perform or procure such performance of such obligations, and the amount of all payments made or costs incurred by the Security Trustee in that respect, shall be repayable by the Assignor in accordance with Clause 9.2 (*Non-compliance by Assignor*).

6 **ENFORCEMENT**

6.1 **Powers**

At any time whilst an Event of Default is continuing, the Security Trustee shall be entitled, on giving an Enforcement Notice to the counterparty or counterparties to the Project Document (but without any requirement to give notice to the Assignor), either in its own name or in the name of the Assignor, or otherwise and in such manner and upon such terms and conditions as it thinks fit:

- (a) to sell, transfer, assign or otherwise dispose of the Secured Rights by public or private sale with or without advertisement in such manner and on such terms and conditions as the Security Trustee may consider expedient, and apply the proceeds in or towards satisfaction of, or retain them as continuing security for, the Secured Obligations; and
- (b) generally, without prejudice to the other provisions of this Clause, to exercise all the rights powers and discretions and fulfil all the obligations in respect of the Secured Rights it would be entitled to exercise if it were the absolute owner of the Secured Rights, and to do all acts and things it may consider necessary or expedient for the realisation of the Secured Rights and the application of the proceeds in or towards settlement of, or their retention as continuing security for, the Secured Obligations, or as may be incidental to the exercise of any of the rights, powers and discretions conferred on the Security Trustee under this Security.

6.2 **Application of proceeds**

All monies realised or otherwise arising from the enforcement of this Security shall, subject to Clause 6.3 (*Monies on Suspense Account*) and Clause 7 (*Discharge*), be applied by the Security Trustee in or towards settlement of the Secured Obligations in accordance with clause 10.2 of the Security Trust and Intercreditor Deed and any surplus shall be paid to the Assignor or any other person entitled thereto.

6.3 **Monies on suspense account**

Nothing in this Security shall limit the right of the Security Trustee (and the Assignor acknowledges that the Security Trustee is so entitled) if and for so long as the Security Trustee in its discretion shall consider it appropriate, to place all or any monies arising from the enforcement of this Security into a suspense account or accounts (which may be with the Security Trustee, the Agent or any other Finance Party), without any obligation to apply the same or any part thereof in or toward the discharge of the Secured Obligations provided that if the aggregate of such monies so placed to the credit of such suspense account or accounts shall equal or exceed the Secured Obligations, the Security Trustee shall, subject always to Clause 7 (*Discharge*), forthwith apply the same towards settlement of the Secured Obligations.

6.4 **Balance**

The rights powers and discretions conferred on the Security Trustee under this Clause are subject only to its obligation to account to the Assignor for any balance of the Secured Rights or their proceeds remaining in its hands after the Secured Obligations have been fully and unconditionally paid and discharged.

6.5 **Third parties**

6.5.1 No purchaser from or other person dealing with the Security Trustee in relation to the Secured Rights shall be concerned to enquire whether any of the powers exercised or purported to be exercised by it hereunder has become exercisable, whether any of the Secured Obligations remains outstanding, or generally as to the propriety or validity of the exercise or purported exercise of any power hereunder.

6.5.2 The receipt or discharge of the Security Trustee shall be an absolute discharge to any purchaser or other person dealing with the Security Trustee in relation to the Secured Rights and any such purchaser or third party shall not have any obligation to enquire after or see to the application of any payments made by it to the Security Trustee or at its direction.

7 DISCHARGE

7.1 Discharge

When the Secured Obligations have been fully and unconditionally paid or discharged the Security Trustee shall at the Assignor's request and expense take whatever action the Assignor requires for the discharge of this Security and retrocede and re-assign to the Assignor (or as it may direct) its whole, right, title and interest in and to the Secured Rights. Any payment or realisation in respect of the Secured Obligations which in the reasonable opinion of the Security Trustee is liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, shall not be regarded as having been irrevocably settled or discharged until the expiry of the period during which it may be challenged on any such ground.

7.2 Retention of Security

If any payment or realisation in respect of the Secured Obligations is, in the Security Trustee's reasonable opinion, liable to be avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, the Security Trustee shall be entitled to retain this Security undischarged until the expiry of the period during which it may be challenged on any such ground.

7.3 Avoidance of payments

The Security Trustee's right to recover the Secured Obligations in full shall not be affected or prejudiced by any payment or realisation which is avoided or otherwise invalidated or adjusted by law, including any enactment or rule of law relating to insolvency, or by any release or discharge given by the Security Trustee on the faith of any such payment or realisation.

8 LIABILITY OF SECURITY TRUSTEE

The Security Trustee shall not in any circumstances be liable to the Assignor or any other person for any losses, damages, liabilities or expenses arising from or in connection with the application or enforcement of this Security or any realisation, appropriation or application of the Secured Rights or from any act, default or omission of the Security Trustee, or its officers, employees or agents in relation to the Secured Rights or otherwise in connection with this Security, except to the extent caused by the wilful neglect or default of the Security Trustee or its officers, employees or agents.

9 MISCELLANEOUS

9.1 Financial assistance

If and to the extent that this Security would constitute the provision of unlawful financial assistance for the purpose of the acquisition of shares in the Assignor or its holding company, it shall not apply to such part of the Secured Obligations as may have been incurred by the Assignor directly or indirectly for such purpose.

9.2 Non compliance by Assignor

If the Assignor fails to make any payment or fulfil any obligation due by it under or pursuant to this Security, the Security Trustee shall be entitled to do so on its behalf and in its name (or in its own name as it considers expedient) and/or to take such action to remedy or mitigate the consequences of such failure as it considers expedient, and the amount of any such payment and/or the costs incurred in fulfilling such obligation or mitigating the consequences of such failure, shall be repayable by the Assignor on demand, together with interest at the Default Rate from the date of demand until settlement and shall constitute Secured Obligations.

9.3 **Assignment**

9.3.1 The Security Trustee may at any time (without notice or consent) assign the benefit of this Security or any of its rights or obligations hereunder in accordance with the Loan Agreement.

9.3.2 The Assignor may not assign, transfer or otherwise deal with the benefit or burden of this Security or any of its rights or obligations hereunder.

9.4 **Certificate**

A certificate signed by any authorised signatory on behalf of the Security Trustee shall, save in the case of manifest error, conclusively constitute the amount of the Secured Obligations at the relevant time for all purposes of this Security.

9.5 **Entire agreement**

This Security constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Security.

9.6 **Non-reliance**

Each of the parties acknowledges and agrees that in entering into this Security it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether a party to this Security or not) other than as expressly set out in this Security.

9.7 **Amendments**

No amendment or variation of this Security shall be effective unless it is in writing and signed by or on behalf of each of the parties.

9.8 **Expenses**

The Assignor shall indemnify the Security Trustee on demand against all liabilities, costs, charges and expenses properly and reasonably incurred by the Security Trustee (including the fees and expenses of any legal advisers employed by the Security Trustee and where appropriate any VAT) in connection with the preparation and execution of this Security (and any further security taken by the Security Trustee hereunder) and the enforcement or preservation of the Security Trustee's rights under this Security, together with interest at the Default Rate, from the date of demand until settlement, and the amount thereof shall be a Secured Obligation.

10 **COMMUNICATIONS**

The provisions of clause 37 (*Notices*) of the Loan Agreement shall apply *mutatis mutandis* to this Security as if set out in full herein.

11 GOVERNING LAW

This Security shall be governed by and construed in accordance with the law of Scotland and in so far as not already subject thereto the parties irrevocably submit to the non-exclusive jurisdiction of the Scottish Courts.

IN WITNESS WHEREOF these presents consisting of this and the 7 preceding pages and the Schedule are executed as follows:

SUBSCRIBED for and on behalf of
AIKENGALL COMMUNITY WIND COMPANY LIMITED

at F. roads house
on the 4th day
of [redacted] 2014
by [redacted]

Director/Attorney

[redacted] Full Name
RODOLPH RICHARD HAYDN [redacted]

Director/Secretary/Witness

[redacted] Full Name
DAVID RUSSELL THOMSON

Address
[redacted]

SUBSCRIBED for and on behalf of
HSBC BANK PLC

at Canary Wharf, London
on the 17th day
of November 2014
by [redacted]

Authorised signatory

[redacted] Full Name
CHRIS WARETT

Witness Full Name

[redacted] Full Name Witness
[redacted] Full Name Witness

Address
[redacted]

SCHEDULE

This is the Schedule referred to in the foregoing Assignment in Security by Aikengall Community Wind Company Limited in favour of HSBC Bank plc as Security Trustee

Part i

The Project Document

- 1 the interface agreement between the Assignor and Aikengall II Community Wind Company Limited dated 29th October 2014

Part 2

Form of Intimation and acknowledgement

[On letterhead of Aikengall Community Wind Company Limited]

To: [Name of [each] counterparty to [each] Project Document]
[Address]
Attention: []

Dear Sirs,

Interface agreement between us, Aikengall Community Wind Company Limited, and you, Aikengall II Community Wind Company Limited, dated 29th October 2014 (the "Project Document")]

We hereby give notice that by an Assignment in Security by us in favour of HSBC Bank plc as Security Trustee therein specified (the "**Security Trustee**") dated the [] day of [] 2014 (the "**Security**"), we have assigned our part of the above defined Project Document and our Related Rights thereunder (as defined in the Security) to the Security Trustee in security of the Secured Obligations (as defined in the Security). A certified copy of the Security is annexed to this notice.

In terms of the Security:

- 1 Unless and until the Security Trustee gives you written notice that it has become entitled to enforce the Security (an "**Enforcement Notice**"):
 - 1.1 We remain liable to perform all our obligations and entitled to exercise all our rights, powers and discretions, under our part of the Project Document and Related Rights, and
 - 1.2 You should make all payments due under the Project Document to our account number [REDACTED] with HSBC Bank plc at Canary Wharf sort code [REDACTED]
- 2 Upon the Security Trustee giving you an Enforcement Notice:
 - 2.1 The Security Trustee shall be entitled (but not obliged) immediately or at any time thereafter to exercise all the rights, powers and discretions (subject to performance of the counterpart obligations) under our part of the Project Document and Related Rights;
 - 2.2 You should make all further payments under the Project Document to such account or accounts (if any) or otherwise as the Security Trustee may direct; and
 - 2.3 The Security Trustee shall be entitled to assign our part of the Project Document to a third party or parties as provided in the Project Document.
- 3 We irrevocably agree that you shall be entitled to rely and act on any Enforcement Notice without enquiry.

Please confirm that you have not received notice of any other assignment or security, charge or encumbrance in respect of the said Project Document and that all claims or rights of set-off, counterclaim, deduction, lien or retention in respect of the said Project Document are excluded.

Please acknowledge receipt of this intimation by signing and returning the acknowledgement on the enclosed duplicate.

Yours faithfully

For and on behalf of Aikengall Community Wind Company Limited

..... Director/Authorised Signatory
..... Full Name

[On duplicate]

To: Aikengall Community Wind Company Limited
[Address]
Attention: []

Dear Sirs

We, [Counterparty to Project Document] [Limited] [plc] of [address] acknowledge receipt of the notice of intimation of which this is a duplicate and will fulfil its terms.

We confirm that we have not received notice of any other assignation or security charge or encumbrance in respect of the said Project Document and that all claims or rights of set-off, counterclaim, deduction, lien or retention in respect of the Project Document.

Yours faithfully

For and on behalf of [Counterparty to Project Document] [Limited] [plc]

..... Director/Authorised Signatory

..... Full Name