



Companies House

MR01(ef)

Registration of a Charge

Company name: **RB METALLOYD LIMITED**

Company number: **01683631**

Received for Electronic Filing: **03/07/2013**



Details of Charge

Date of creation: **03/07/2013**

Charge code: **0168 3631 0032**

Persons entitled: **HSBC BANK PLC**

Brief description:

Contains fixed charge(s).

Notification of addition to or amendment of charge.

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: **NORTON ROSE FULBRIGHT LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 1683631

Charge code: 0168 3631 0032

The Registrar of Companies for England and Wales hereby certifies that a charge dated 3rd July 2013 and created by RB METALLOYD LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd July 2013 .

Given at Companies House, Cardiff on 3rd July 2013



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

Dated

3 July

2013

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

Sign & Dated

Nathan Rose Fulbright LLP

3 July 2013

HSBC BANK PLC

-and-

RB METALLOYD LIMITED

GENERAL CHARGE OF RECEIVABLES
AND
CONTRACT RIGHTS

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THIS DEED is dated the 3rd day of July 2013

BETWEEN:

- (1) **RB METALLOYD LIMITED**, registered in England with company number 1683631, whose registered office is situated at 5th Floor Millbank Tower, 21-24 Millbank, London, SW1P 4QP (the “**Company**”); and
- (2) **HSBC BANK PLC**, registered in England with company number 14259, whose registered office is situated at 8 Canada Square, London, E14 5HQ (the “**Bank**” which expression shall include its successors and assigns)

WHEREAS:

- (A) The Company and the Bank are parties to the Facility Agreement.
- (B) The board of directors of the Company is satisfied that the giving of the security contained or provided for in this Deed is in the interests of the Company and has passed a resolution to that effect

NOW IT IS AGREED as follows:

1. Covenant to pay

- 1.1 The Company will pay or otherwise discharge to the Bank the Secured Liabilities as and when the same become due for payment or discharge or otherwise on demand.
- 1.2 The Company shall in respect of any Secured Liability that is not paid on its due date or on the date of demand, pay interest on such amount from its due date or the date of demand until the date of payment or discharge (both dates inclusive) (as well after as before judgment) at the Default Rate.

2. Charge

- 2.1 The Company with full title guarantee hereby charges to the Bank by way of first fixed legal charge all its right, title, benefit and interest which it now has and all the right, title, benefit and interest which it obtains at any time in the future in and to the Receivables as a continuing security for the payment or discharge to the Bank of the Secured Liabilities.
- 2.2 The Company hereby covenants that it will not without the prior consent in writing of the Bank sell, assign, transfer or otherwise dispose of, or create or attempt to create or permit to subsist or arise any Encumbrance on or over, the Receivables or any part thereof or agree so to do or release, vary, reduce, set-off or compound the same or deal with the same otherwise than in accordance with clause 5.1.1.
- 2.3 The Company irrevocably and unconditionally agrees that if there shall from time to time be any credit balance on any of its accounts with the Bank, the Bank shall have the absolute right to refuse to permit such credit balance to be utilised or withdrawn by the Company whether in whole or in part if at that time there are outstanding any of the Secured Liabilities.

3. Set-off and payments

- 3.1 The Company hereby agrees that the Bank may (but shall not be obliged to) at any time without notice, notwithstanding any settlement of account or other matter whatsoever, combine or

consolidate all or any of its then existing accounts wheresoever situate (including accounts in the name of the Bank or of the Company jointly with others), whether such accounts are current, deposit, loan or of any other nature whatsoever, whether they are subject to notice or not and whether they are denominated in sterling or in any other currency, and set-off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any of all of the Secured Liabilities which, to the extent not then payable, shall automatically become payable to the extent necessary to effect such set-off. For this purpose, the Bank is authorised to purchase with the moneys standing to the credit of such accounts such other currencies as may be necessary to effect such application at the Bank's spot exchange rate for the purchase with the moneys standing to the credit of such accounts of the other currency in the London foreign exchange market or in such other recognised foreign exchange markets as the Bank may, in its absolute discretion, select. Any risk or loss arising from any conversion of any amount from one currency to another, or from any fluctuation in any exchange rate or rates shall be borne by the Company.

- 3.2 All payments to be made by the Company under this Charge shall be made in full, without any set-off or counterclaim whatsoever and, subject as provided below, free and clear of any deductions or withholdings in the relevant currency on the due date to such account as the Bank may from time to time specify. If the Company is compelled by law to make any deduction or withholding from any payment due under this Charge for the account of the Bank, the sum due from the Company in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Bank receives on the due date for such payment (and retains, free from any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made.

4. Representations and warranties

- 4.1 The Company represents and warrants to the Bank that on the date of this Charge:

- 4.1.1 it has and will at all times have the necessary power to enter into and perform its obligations under this Charge;
- 4.1.2 this Charge constitutes its legal, valid, binding and enforceable obligations and is a security over the Receivables and every part thereof effective in accordance with its terms;
- 4.1.3 it has power to enter into and perform its obligations under each Purchase Contract, Sale Contract, Wash-Out Agreement and Letter of Indemnity;
- 4.1.4 except pursuant to this Charge the Company has not sold, assigned, transferred or otherwise disposed of, or granted any Encumbrance over, all or any part of its right, title, benefits and interest in and to all or any Receivables or agreed so to do;
- 4.1.5 each Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit and Letter of Indemnity executed by the parties thereto constitute valid and binding obligations of the parties thereto in accordance with their respective terms and there have been no amendments thereto or defaults thereunder;
- 4.1.6 no right of action is vested in any party to any Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit or Letter of Indemnity in respect of any representation, breach of condition, breach of warranty or breach of any other express or implied term by the Company thereunder; and

- 4.1.7 it has no knowledge of any fact that would or might prejudice or affect any right, power or ability of the Bank to enforce any Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit or Letter of Indemnity or any term or condition thereof.
- 4.2 The representations and warranties contained in clause 4.1 above shall be repeated on each day while this security is continuing with reference to the circumstances existing on each such day.
- 5. Undertakings: notice and registration of charge**
- 5.1 The Company undertakes with the Bank that until the Secured Liabilities have been unconditionally and irrevocably repaid or discharged in full to the satisfaction of the Bank and no further Secured Liabilities are capable of being outstanding, the Company will:
- 5.1.1 collect in the ordinary course of its business in a proper and efficient manner and pay into its account with the Bank or such other account as the Bank may from time to time specify all moneys which it may receive in respect of the Receivables forthwith on receipt and until such payment shall hold all such moneys in trust for the Bank and will not, without the prior written consent of the Bank, seek to compromise, exchange, compound, vary, discharge, postpone, set-off, release or grant time or indulgence in respect of or otherwise deal with any of the Receivables or waive its right of action in connection therewith or do or omit to do anything which may delay or prejudice the full recovery thereof **PROVIDED THAT** this clause 5.1.1 shall not of itself prevent the Company from entering into, or acquiescing in, any Wash-Out Agreement details of which shall have been given to the Bank pursuant to clause 5.1.3 so long as the Wash-Out Rights deriving therefrom become subject to the charge hereby created;
- 5.1.2 provide the Bank promptly with originals or certified true copies, as the Bank may from time to time direct, of all documents and underlying contracts evidencing or relating to the Receivables and each Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit and Letter of Indemnity upon any of the Receivables becoming subject to this Charge together with, in the case of Letters of Credit and Letters of Indemnity, all demands, notices and certificates relating to the Receivables in due form and signed by the Company in blank;
- 5.1.3 notify the Bank forthwith of any proposal for the amendment or variation of the terms of any Purchase Contract or Sale Contract including, without limitation, any proposed Wash-Out Agreement;
- 5.1.4 do or procure to be done each and every act or thing and execute and procure the execution of each and every document which the Bank may from time to time require to be done or executed for the purpose of securing to the Bank the full benefit of, or enforcing the provisions of, this Charge;
- 5.1.5 duly perform and observe all its obligations under this Charge, each Purchase Contract, Sale Contract, Letter of Indemnity and Wash-Out Agreement and protect, maintain and enforce its rights under such contracts and each Letter of Credit as appropriate, promptly present invoices and the other specified documents for payment in accordance with each Sale Contract and/or Letter of Credit, promptly inform the Bank of any occurrence of which it becomes aware which in its opinion might adversely affect its ability to perform any of such obligations;
- 5.1.6 maintain or effect all governmental licences, authorisations, consents, registrations, filings or approvals at any time necessary or desirable to enable the Company to

comply with and/or perform its obligations under this Charge, each Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit and Letter of indemnity;

- 5.1.7 not without the prior written consent of the Bank terminate, amend or vary, or acquiesce in any amendment or variation of, any Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit or Letter of Indemnity or waive any of its rights under any such contracts or release any party from its obligations thereunder or waive any breach of the obligations of any other party thereto except as provided in clause 5.1.1 or do or permit, or omit to do or permit the omission of, any act or thing as a result of which any Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit or any Letter of Indemnity is or may be frustrated or may lawfully be terminated, withdrawn or cancelled by any person;
- 5.1.8 notify the Bank forthwith of any breach by any third party of any of its obligations under or in relation to a Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit or Letter of Indemnity and take all such action as may from time to time be necessary or desirable (including where appropriate the institution of legal proceedings) to enforce the performance by such third party of such obligations;
- 5.1.9 ensure that all Letters of Indemnity issued to or for the benefit of the Company contain provisions substantially to the effect of the matters specified in Schedule 2;
- 5.1.10 pay to the Bank on demand all moneys whatsoever which the Bank or any receiver, attorney, manager, agent or other person appointed under this Charge may expend in or about the protection, maintenance or enforcement of the security hereby created including, without limitation, the reasonable fees and expenses of lawyers instructed by the Bank or such receiver or other person, together with interest at the Default Rate, from the date on which such expenditure is incurred until the date of payment by the Company (as well after as before judgement);
- 5.1.11 supply to the Bank promptly on request all information, accounts and records in the possession or control of the Company that may be necessary or of assistance to enable the Bank to verify the amount of all payments to be made under any Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit or Letter of indemnity or by the other party to that contract or to verify the performance by such other party of all its obligations under any such contract;
- 5.1.12 send to the Bank copies of all notices given to or received from the other party under any Purchase Contract, Sale Contract, Letter of Indemnity or Wash-Out Agreement promptly after the same are given or as the case may be received; and
- 5.1.13 not do or cause or permit to be done or omit to do anything which may in any way depreciate, jeopardise or otherwise prejudice the value to the Bank or the collectability of any of the Receivables.

5.2 The Company irrevocably authorises the Bank:

- 5.2.1 to complete and serve any demands, notices and certificates as it may in its discretion deem appropriate including, without limitation to give notice of this Charge to the seller under each Purchase Contract, to the purchaser under each Sale Contract, to the issuer of each Letter of Credit and Letter of Indemnity and to the counterparty of each Wash-Out Agreement in the form or substantially in the form set out in Schedule 1 (completed as appropriate) or in such other form as the Bank may require and otherwise to perfect the security created or intended to be created by this Charge in

accordance with the laws of any jurisdiction which the Bank considers relevant including without limitation:

- (a) the jurisdiction by the laws of which any Receivables are (whether by virtue of the terms of the document or instrument constituting or evidencing the same or otherwise) governed or construed; and
- (b) the jurisdiction in which the obligor in respect of any Receivables is treated as being situated; and

5.2.2 to cause this Charge to be registered, filed or recorded with the Registrar of Companies in England and Wales and/or with each other governmental registry, agency or department or court where, in the Bank's opinion, such registration, filing or recording is necessary or desirable for the protection of the Bank's interests in relation to the security created or intended to be created by this Charge.

5.3 Without prejudice to clause 5.2.1, the Company shall at all times provide or procure that there be provided to the Bank in due and sufficient time all documents required to be presented under each Letter of Credit and each Letter of Indemnity and that these documents be fully in conformity with the relevant Letter of Credit or Letter of Indemnity, as the case may be, and generally take all steps necessary or advisable to procure the due acceptance and/or payment by the issuing or confirming bank, other financial institution or person under each Letter of Credit and Letter of Indemnity.

5.4 If the Company at any time defaults in complying with any of its obligations contained in this Charge, the Bank shall, without prejudice to any other rights arising as a consequence of such default, be entitled (but not bound) to make good such default and the Company hereby irrevocably authorises the Bank and its employees and agents by way of security to do all such things necessary or desirable in connection therewith. Any moneys so expended by the Bank shall be repayable by the Company to the Bank on demand together with interest at the Default Rate from the date of payment by the Bank until such repayment, as well after as before judgement.

6. Certain protections for the Bank

6.1 The Bank shall have no obligation or liability under or in connection with any of the Receivables or any Purchase Contract, Sale Contract, Wash-Out Agreement or Letter of Indemnity and shall not be under any obligation or liability whatsoever in the event of any failure by the Company to perform any of its obligations under any Purchase Contract, Sale Contract, Wash-Out Agreement or Letter of Indemnity. The Company shall, notwithstanding the charge in clause 2.1, remain liable to perform all its obligations under each Purchase Contract, Sale Contract, Wash-Out Agreement and Letter of Indemnity.

6.2 In the event of any circumstances whereby further performance of any Purchase Contract, Sale Contract or Wash-Out Agreement becomes impossible or unlawful or is otherwise frustrated moneys paid to the Bank shall not be recoverable from it.

6.3 If the Bank receives notice of any subsequent Encumbrance affecting the Receivables or any part thereof, the Bank may open a new account for the Company. If it does not do so then, unless the Bank gives express written notification to the contrary to the Company, it shall nevertheless be treated as if it had opened a new account at the time when it received such notice and as from that time all payments made by or on behalf of the Company to the Bank shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount of the Secured Liabilities at the time when it received such notice.

6.4 The Bank shall not be obliged:

- 6.4.1 to make any enquiry as to the nature or sufficiency of any payment received by it under this Charge or pursuant to any Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit or Letter of Indemnity; or
- 6.4.2 to make any enquiry as to the adequacy of performance by any other party to any Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit or Letter of Indemnity or of its obligations under that respective contract; or
- 6.4.3 to make any claim or take any other action under this Charge; or
- 6.4.4 to collect any moneys or to enforce any of its other rights under this Charge.

7. Enforcement: appointment and powers of receiver

7.1 If at any time:

- 7.1.1 the Company fails to pay any of the Secured Liabilities to the Bank on the due date and/or the Bank has demanded the payment or discharge of all or any part of the Secured Liabilities;
- 7.1.2 any event of default or cancellation event (howsoever described) occurs under any agreement, letter, document or other instrument evidencing or constituting the terms and conditions of any facility or other arrangement between the Company and the Bank relating to the Secured Liabilities;
- 7.1.3 any step is taken by any person to put the Company into administration; or
- 7.1.4 the Company requests the Bank to enforce the security created by this Charge,

the Bank may, without further notice, enforce the security created by this Charge.

7.2 The Bank may enforce the security created by this Charge by:

- 7.2.1 appointing a receiver or joint receivers or several receivers or joint and several receivers of all or any part of the Receivables;
- 7.2.2 receiving the benefit of, or selling all or any part of the Receivables, giving a notice to the Company or any other person in relation to any of the Receivables, exercising a right of set-off or in any other way it may decide; or
- 7.2.3 taking any other action it may decide in any jurisdiction other than England.

7.3 Section 103 of the Law of Property Act 1925 shall not restrict the exercise by the Bank of the statutory power of sale conferred on it by section 101 of the Law of Property Act 1925 which power shall arise on the execution of this Charge and may be exercised by the Bank at any time after having been requested so to do by the Company or after the occurrence of an event set out in clause 7.1 above in relation to any part of the Receivables, and the provisions of the Law of Property Act 1925 relating to and regulating the exercise of the power of sale shall, so far as they relate to this security, be varied or extended accordingly.

7.4 The appointment of a receiver may be made subject to such limitations as are specified by the Bank in the deed or instrument appointing him.

- 7.5 If more than one person is appointed as a receiver, each person will have power to act independently of any other, except to the extent that the Bank may specify to the contrary in the deed or other instrument appointing him.
- 7.6 The Bank may remove any receiver previously appointed hereunder and appoint another person or persons as receiver or receivers, either in place of a receiver so removed or who has otherwise ceased to act or to act jointly with a receiver previously appointed.
- 7.7 Every such appointment or removal of a receiver, and every delegation, appointment or revocation by the Bank in the exercise of any rights to delegate its powers or to revoke any such delegation contained in this Charge, shall be made either by deed or by instrument in writing under the hand of any officer of the Bank or any person authorised in writing in that behalf by any officer of the Bank.
- 7.8 Any receiver, will have the following powers in respect of the Receivables:
- 7.8.1 all the powers conferred by statute, as varied and extended by this Charge, on mortgagors but without the restrictions imposed on the Company by this Charge;
 - 7.8.2 with the consent of the Bank, all the powers conferred by statute on mortgagees in possession as such powers are varied and extended by this Charge and applicable to the Bank in accordance with the provisions of it;
 - 7.8.3 all the powers conferred by statute on receivers appointed under the Law of Property Act 1925 as in force at the date of this Charge;
 - 7.8.4 all the powers listed in the Insolvency Act 1986 Schedule 1 as in force at the date of this Charge;
 - 7.8.5 the power to do, or omit to do, on behalf of the Company at the cost of the Company, anything which the Company itself could have done, or omitted to do, if the Receivables were not the subject of the security created by this Charge and the Company were not in insolvency proceedings; and
 - 7.8.6 any of the other powers conferred by this Charge.
- 7.9 Except to the extent provided by law, none of the powers described in this clause 7 will be affected by an Insolvency Event in relation to the Company.
- 7.10 The Bank may from time to time fix the remuneration of any receiver appointed under this Charge at a rate to be agreed with him, or failing such agreement to be fixed by the Bank, appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted in accordance with his current practice or the current practice of his firm and without being limited to the maximum rate specified in section 109(6) of the Law of Property Act 1925.
- 7.11 A receiver appointed under this Charge shall have no authority to act as agent of the Bank but shall be the agent of the Company until the Company goes into liquidation and the Company shall be solely responsible for his acts or defaults and for the payment of his remuneration. A receiver will have no authority to act as agent for the Bank, even in the liquidation of the Company.

- 7.12 A person dealing with the Bank or with a receiver is entitled to assume, unless it has actual knowledge to the contrary, that:
- 7.12.1 those persons have the power to do those things which they are purporting to do; and
 - 7.12.2 they are exercising their powers properly.
- 7.13 All money received by the Bank or a receiver in the exercise of any powers conferred by this Charge (whether during, or before, its enforcement) will, subject to the rights of any persons having priority, be applied in the following order of priority:
- 7.13.1 in payment of the costs, charges and expenses of and incidental to the receiver's appointment and payment of his remuneration;
 - 7.13.2 in payment and discharge of any liabilities incurred by the receiver on the Company's behalf in the exercise of any of the powers of the receiver;
 - 7.13.3 in providing for the matters, other than the remuneration of the receiver, specified in the first three paragraphs of section 109(8) of the Law of Property Act 1925; and
 - 7.13.4 in or towards the satisfaction of the Secured Liabilities,
- and any surplus shall be paid to the Company or other person entitled to it.
- 7.14 Clauses 7.7 and 7.10 shall take effect as and by way of variation and extension to section 109 of the Law of Property Act 1925, which as so varied and extended shall be deemed incorporated herein.

8. Attorney

- 8.1 The Company by way of security hereby irrevocably appoints each of the Bank and any receiver appointed under this Charge severally to be its attorney in its name and on its behalf:
- 8.1.1 to execute and complete any documents or instruments which the Bank or any receiver may require for perfecting the title of the Bank to the Receivables or for vesting the same in the Bank, its nominees or any purchaser;
 - 8.1.2 to perform all or any of the acts that may be required to be performed by the Company under this Charge including, without limitations, to sign, execute, seal and deliver and otherwise perfect any further document referred to in clause 5.1.4; and
 - 8.1.3 otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Bank or any receiver under this Charge or which may be deemed expedient by the Bank or any receiver in connection with any disposition, realisation or getting in by the Bank or any receiver of the Receivables or any part thereof or in connection with any other exercise of any power under this Charge.
- 8.2 The Bank and any officer or other authorised official of the Bank or of any branch or any receiver appointed under this Charge, as appropriate, is hereby irrevocably empowered to ask, require, demand and receive all Receivables and on payment to give an effectual discharge therefor and on non-payment to take (if the Bank or any receiver in its sole discretion so decides) all steps and proceedings either in the name of the Company or in the name of the Bank for the recovery thereof and also to agree accounts and to make allowances and to give

time to any surety. The Bank or any receiver shall have no liability or responsibility of any kind to the Company arising out of the exercise or non-exercise of such rights and shall not be obliged to make any enquiry as to the sufficiency of any sums received by it in respect of any Receivables or to make any claims or take any other action to collect or enforce the same.

- 8.3 The Company hereby ratifies and confirms and agrees to ratify and confirm any instrument, act or thing which any such attorney may execute or do.

9. Nature of security

- 9.1 This Charge and the obligations of the Company under this Charge shall:

- 9.1.1 secure the ultimate balance from time to time owing to the Bank by the Company and shall be a continuing security notwithstanding any intermediate payment or settlement of account or other matter whatsoever and until expressly discharged in writing by the bank;
- 9.1.2 be in addition to, and not prejudice or affect, any present or future Collateral Instrument, right or remedy held by or available to the Bank; and
- 9.1.3 not merge with or be in any way prejudiced or affected by the existence of any such Collateral Instruments, rights or remedies or by the same being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Bank dealing with, exchanging, releasing, varying or failing to perfect or enforce any of the same, or giving time for payment or indulgence or compounding with any other person liable.

- 9.2 The liability of the Company under this Charge shall not be lessened or impaired by:

- 9.2.1 any legal limitation, disability, incapacity or other circumstances relating to the Company or to any other person liable whether or not known to the Bank;
- 9.2.2 any invalidity in or irregularity or unenforceability of any Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit or Letter of Indemnity or of the obligations of the Company or of any other person liable;
- 9.2.3 any amendment of, or variation to, any Purchase Contract, Sale Contract, Wash-Out Agreement, Letter of Credit or Letter of Indemnity; or
- 9.2.4 anything done or omitted which but for this provision might constitute a legal or equitable discharge or defence of the Company.

- 9.3 The Bank shall not be obliged to resort to any Collateral Instrument or other means of payment now or hereafter held by or available to it before enforcing this Charge and no action taken or omitted by the Bank in connection with any such Collateral Instrument or other means of payment shall discharge, reduce, prejudice or affect the liability of the Company nor shall the Bank be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such Collateral Instrument or other means of payment.

- 9.4 Any release, discharge or settlement between the Company and the Bank shall be conditional upon no security, disposition or payment to the Bank by the Company or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Bank shall be entitled to enforce this Charge subsequently as

if such release, discharge or settlement had not occurred and any such payment had not been made.

10. Currency clauses

- 10.1 All moneys received or held by the Bank under this Charge may from time to time be converted into such other currency as the Bank considers necessary or desirable to cover the Secured Liabilities in that other currency at the then prevailing spot rate of exchange of the Bank (as conclusively determined by the Bank) for purchasing that other currency with the existing currency.
- 10.2 If the Company fails to pay any amount due in respect of the Secured Liabilities on demand, the Bank may in its absolute discretion without prior notice to, or authority from, the Company purchase at any time thereafter in accordance with its normal procedures for carrying out foreign exchange transactions such amounts in such currencies as the Bank considers necessary or desirable to cover the Secured Liabilities remaining unpaid and the Company hereby agrees to indemnify the Bank on demand against the full cost (including all costs, charges and expenses) and any losses incurred in relation to such purchase.
- 10.3 No payment to the Bank (whether under any judgment or order of any court or otherwise) shall operate to discharge the liability of the Company in respect of which it was made unless and until the Bank shall have received payment in full in the currency in which such liability was incurred (the “**Contractual Currency**”) and, to the extent that the amount of any such payment shall on actual conversion into the Contractual Currency fall short of such liability expressed in the Contractual Currency the Bank shall have a further and separate cause of action against the Company for the recovery of such sum as shall after conversion into the Contractual Currency be equal to the amount of the shortfall and shall be entitled to enforce the charges hereby created to recover the amount of the shortfall.

11. Indemnities: costs and expenses

- 11.1 The Company hereby covenants with the Bank to pay on demand all reasonable costs, charges and expenses incurred by the Bank in or about the preparation and execution of this Charge or the perfection, enforcement, preservation or attempted preservation of any of the security created by or pursuant to this Charge or of any of the Receivables and all reasonable costs, charges and expenses incurred in the exercise of the powers, rights or remedies of the Bank on a full indemnity basis, together with interest at the Default Rate from the date on which such costs, charges or expenses are so incurred until the date of payment by the Company (as well after as before judgement).
- 11.2 The Bank shall not be liable for any loss upon realisation so long as, in any particular case, the Bank has acted with due regard to the duties imposed by law on mortgagees, and shall not be liable for any neglect or default of any nature whatsoever for which a mortgagee in possession may be liable as such.
- 11.3 The Company hereby agrees to indemnify the Bank on demand against all losses, actions, claims, expenses, demands or liabilities whether in contract, tort or otherwise and whether arising at common law, in equity or by statute which may be incurred by, or made against, the Bank (or by or against any manager, agent, officer or employee for whose liability, act or omission the Bank may be answerable) as a consequence of (a) anything done or omitted to be done in the exercise or purported exercise of the powers contained in this Charge or (b) any breach by the Company of any of its obligations under this Charge. The Company shall pay interest on the sum demanded at the Default Rate from the date of demand until the date of payment by the Company (as well after as before judgement).

12. Successors and assigns

- 12.1 This Charge shall be binding upon and enure to the benefit of the Company and the Bank and their respective successors.
- 12.2 The Company may not assign or transfer all or any of its rights or obligations under this Charge.
- 12.3 The Bank may assign all or any part of its rights or benefits under this Charge without the consent of the Company. If the Bank assigns the whole or any part of its rights or interests in respect of the Secured Liabilities to another bank or financial institution it may also assign the whole or the appropriate portion of its rights under this Charge in which event references in this Charge to the Bank shall thenceforth be deemed to include a reference to each assignee to the extent of its interest.

13. Miscellaneous

- 13.1 No failure or delay or other relaxation or indulgence on the part of the Bank to exercise any power, right or remedy shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.
- 13.2 The security granted by this Charge shall remain valid and effective in all respects in favour of any assignee, transferee or other successor in title of the Bank in the same manner as if such assignee, transferee or other successor in title had been named in this Charge as a party instead of, or in addition to, the Bank.
- 13.3 Section 93 of the Law of Property Act 1925 shall not apply to the security created by this Charge or to any security given to the Bank pursuant to this Charge.
- 13.4 Any change in the constitution of the Bank or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person or any reconstruction or reorganisation of the Bank shall not in any way prejudice or affect its rights hereunder.
- 13.5 Any right or power which may be exercised or any determination which may be made under this Charge by the Bank may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give any reasons therefor.
- 13.6 A certificate by any officer or other authorised official of the Bank as to the money and liabilities for the time being due or accrued from or by the Company pursuant to this Charge or the amount of interest, commission or other sums owing pursuant to this Charge shall save for manifest error be conclusive evidence in any legal proceedings.
- 13.7 Each of the provisions of this Charge is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 13.8 All rights of the Bank contained in this Charge are cumulative and are in addition to all rights vested or to be vested in the Bank pursuant to any contract or other document or common law or statute.
- 13.9 The rights conferred on any officer or employee of the Bank or any receiver, attorney, manager, agent or other person appointed by the Bank under this Charge are enforceable by each of them under the Contracts (Rights of Third Parties) Act 1999. No other term of this Charge is

enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone who is not a party to this Charge.

14. Notices

Any notice or demand for payment by the Bank under this Charge shall, without prejudice to any other effective mode of making the same, be deemed to have been properly served on the Company if served on any one of the directors or on the secretary of the Company or delivered or sent by first class letter post, facsimile transmission or telex to the Company at its registered office shown below or such other office (if any) as is specified for this purpose below or to any of its principal places of business for the time being. Any such notice or demand sent by first class letter post shall be deemed to have been served on the addressee at 10 a.m. (London time) on the next business day unless returned undelivered, and in proving such service it shall be sufficient to prove that the notice or demand was properly addressed and posted. Any notice or demand sent by facsimile transmission shall be deemed to have been served when an acknowledgement of receipt is received by the Bank and any notice or demand sent by telex shall be deemed to have been served at the time of despatch.

15. Law and jurisdiction

15.1 This Charge is governed by and shall be construed in accordance with English law.

15.2 The Company agrees for the benefit of the Bank that any legal action or proceedings arising out of or in connection with this Charge against the Company or any of its assets may be brought in the English courts and the Company irrevocably and unconditionally submits to the non-exclusive jurisdiction of such courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Bank to take proceedings against the Company in the courts of any other competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

15.3 The Company irrevocably waives any objection it may now or hereafter have to the laying of venue of any action or proceeding in any court and any claim it may now or hereafter have that any action or proceeding has been brought in an inconvenient forum.

16. Definitions and interpretation

16.1 In this Charge, unless the context otherwise requires:

“Collateral Instruments”: negotiable and non-negotiable instruments, guarantees, indemnities and other assurances against financial loss and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any liabilities of any person and includes any document or instrument creating or evidencing an Encumbrance;

“Default Rate”:

(a) 3%, per annum over:

- (i) (in the case of any unpaid sum outstanding in sterling) the sterling base lending rate of the Bank from time to time; or
- (ii) (in the case of any unpaid sum outstanding in another currency) the cost from time to time (as conclusively certified by the Bank) of acquiring deposits in the currency concerned in the London Interbank Market; or

- (b) if the Company has agreed to pay any higher rate on any account with the Bank such higher rate;

“Encumbrance”: any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment by way of security or other encumbrance of any kind or any contractual arrangement in relation to an asset which has the same commercial effect as if security had been created over it;

“Facility Agreement”: the facility letter dated on or about the date of this Charge addressed to the Company from the Bank, as it may from time to time be amended, restated, novated or replaced (however fundamentally, including by an increase of any size in the amount of the facility made available under it, the alteration of the nature, purpose or period of the facility or the change of its parties).

“Insolvency Event”: in relation to a person:

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

“Letter of Credit”: a letter of credit or other payment undertaking issued or confirmed in favour of the Company in respect of the payment to the Company of the price under a Sale Contract;

“Letter of Indemnity”: a letter of indemnity, guarantee or other assurance against financial loss issued in favour of, or for the account of, the Company by or on behalf of the seller of any produce or goods the subject of a Purchase Contract;

“Purchase Contract”: a contract entered into by or on behalf of the Company for the purchase by the Company of produce or goods from a third party being a contract which has been financed wholly or in part directly or indirectly by the Bank, whether by the issue or confirmation of a guarantee, letter of credit, payment undertaking, indemnity or other assurance, the making of cash advances, the acceptance or discount of bills or otherwise howsoever, and includes any amendment replacement, restatement and/or supplement thereto from time to time;

“Receivables”: all moneys payable now or in the future to or for the account of the Company arising out of or as a result of or pursuant to:

- (a) each present and future Sale Contract including, without limitation, the sales proceeds of the produce or goods the subject of each Sale Contract, all claims for damages arising out of any breach of any Sale Contract and all insurance moneys which may be or become payable to the Company under any insurances relating to any Sale Contract;
- (b) each present and future Letter of Indemnity including, without limitation, all claims for damages arising out of any breach of any Letter of Indemnity;
- (c) any and all present and future Wash-Out Rights;

- (d) each present and future Purchase Contract including, without limitation, all claims for damages arising out of any breach of any Purchase Contract and all insurance moneys which may be or become payable to the Company under any insurances relating to any Purchase Contract;
- (e) each present and future Letter of Credit;
- (f) any present or future claim which the Company may have against a carrier of any produce or goods the subject of a Sale Contract or a Purchase Contract, whether under or pursuant to a bill of lading or otherwise;
- (g) all present and future things in action which may give rise to any debt, revenue or claim under or pursuant to any property referred to in (a) to (f) above inclusive, together with the full benefit of any Collateral Instruments and any other rights relating to any such property including, without limitation, reservations of proprietary rights, rights of tracing and unpaid vendor's liens and associated rights;

"Sale Contract": a contract entered into by or on behalf of the Company for the sale by the Company of produce or goods to a third party being produce or goods acquired pursuant to a Purchase Contract and includes any amendment, replacement, restatement and/or supplement thereto from time to time;

"Secured Liabilities": all moneys from time to time owing under the Facility Agreement, together with all expenses and all interest due under this Charge.

"Wash-Out Agreement": any wash-out, book-out, circle settlement, netting or other similar agreement or arrangement (by whatever name called) pursuant to which the rights and obligations of parties to two or more contracts for the sale and purchase of a particular commodity (the purchase of which has been financed by the Bank pursuant to facilities made available to the Company (including, but not limited to, the facility made available to the Company under the Facility Agreement)) are effectively cancelled and substituted by new payment obligations (whether the paying party is a seller or a buyer) calculated by reference to the sale prices agreed in such contracts;

"Wash-Out Rights": any and all rights from time to time vested in, or accruing to, the Company as a consequence of the operation of any Wash-Out Agreement.

16.2 In this Charge, unless the context otherwise requires, references to clauses and schedules are to be construed as references to clauses of, and the schedules to, this Charge and references to this Charge include the schedules; clause headings are for convenience of reference only and shall not affect the construction of this Charge; words importing the plural shall include the singular and vice versa; references to a document are to that document as from time to time amended, supplemented, restated, novated or replaced, however fundamentally; references to a person shall be construed as references to an individual, firm, company, corporation, unincorporated body of persons of any State or any agency thereof and references to statutes shall include any re-enactment or modification thereof from time to time in force.

16.3 It is intended that this Charge takes effect as a deed even though the Bank may only execute it under hand.

IN WITNESS whereof the Company has caused this Charge to be executed as a deed the day and year below written.

Schedule 1

Form of notice of charge (clause 5.2)

To: [Seller]/[Purchaser]/[L/C or LOI Issuer]

We refer to [the contract (the “Contract”) dated [●] made between (the “Company”) and yourselves] [the letter of indemnity (“LOI”) dated [●] issued by you to [●] (the “Company”)] [the Letter of Credit (“L/C”) dated [●] number [●] opened/confirmed by you in favour of «Customer_Name» (the “Company”)] [the contract (the “Wash-Out Agreement”) dated [●] made between «Customer_Name» (the “Company”) and yourselves] relating to [●].

We hereby give you notice that the Company has charged to HSBC Bank plc., acting through its London branch at [●] (the “Bank”) all its right, title, benefits and interest [under the Contract and all rights and benefits whatsoever in respect of all moneys payable by you to the Company under the Contract] [under the LOI and all rights and benefits whatsoever in respect of all moneys payable by you to the Company under the LOC] [under the L/C and all rights and benefits whatsoever in respect of all moneys payable by you to the Company under the LC] [under the Wash-Out Agreement and all rights and benefits whatsoever in respect of all moneys payable by you to the Company under the Wash-Out Agreement]. Notwithstanding such Charge the Company remains liable to perform all its obligations under [the Contract] [the LOI] [the L/C] [the Wash-Out Agreement] and the Bank shall have no liability whatsoever in respect thereof.

None of the Bank, any officer or employee of the Bank or any receiver, attorney, manager, agent or other person appointed by the Bank under the Charge referred to above, nor any other person will at any time be under any obligation or liability to you or in respect of [the Contract] [the LOI] [the L/C] [the Wash-Out Agreement].

[We hereby irrevocably instruct you to pay all moneys payable by you to the Company under [the Contract] [the LOI] [the L/C] to account no [●] with [●]. These instructions may not be revoked or varied without the Bank’s prior written consent.]

Unless we hear from you to the contrary we will assume that (a) you have received no other notice of assignment, charge or other disposition in relation to [the Contract] [the LOI] [the L/C] and (b) you have no rights of set-off between yourselves and the Company in relation to [the Contract] [the LOI] [the L/C] [other than claims arising in the ordinary course of trading not exceeding in aggregate \$ [●]].

This letter is governed by English law.

for and on behalf of
HSBC Bank plc

Schedule 2

Fundamental requirements of Letters of Indemnity

1. Particulars of cargo and vessel.
2. Date of bill[s] of lading.
3. Warranty as to title of seller free from liens and encumbrances and entitlement of seller to transfer title to the Company.
4. Undertaking to deliver to the Company original bill[s] of lading within one year of date of bill[s] of lading.
5. Indemnity for losses flowing from inability to transfer bill[s] of lading to the Company.
6. Each Letter of Indemnity to be addressed to the Company and the Bank or to be addressed to the Company with provision entitling the Company to assign the benefit of such Letter of Indemnity to the Bank.

Signatories

Executed and delivered as a deed by
pursuant to a resolution of the Board by:

)
)
)

.....
Director

.....
Director/Secretary

Signed for and on behalf of
HSBC BANK plc
By: P MACKIN

)
)
)

.....
(Authorised Signatory)

Dated 3 July 2013