



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 0031**

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 0031

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.

(1) **RB METALLOYD LIMITED**

Sign & Dated *Norton Rose Fulbright LLP* (2) **HSBC BANK plc**

3 July 2013

**CHARGE OVER
ACCOUNTS AND DEPOSIT MONEYS**

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THIS DEED is made on 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, England, SW1P 4QP (the “**Chargor**”); and
- (2) **HSBC BANK PLC**, registered in England with company number 14259, whose registered office is situated at 8 Canada Square, London, E14 5HQ as lender (the “**Bank**”).

WHEREAS:

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

NOW IT IS AGREED as follows:

1. Definitions and Interpretation

Definitions

1.1 In this Deed:

“**Accounts**”: means each and every account held by the Chargor with the Bank now or at any time hereafter, any account from time to time substituted for or additional to the same (including in each case such account as may be re-designated and/or renumbered from time to time), excluding the following accounts:

- a) Sort-code [REDACTED] / account number [REDACTED] (GBP Current Account);
- b) Sort-code [REDACTED] / account number: [REDACTED] (GBP BMM Savings Account);
- c) Sort-code: [REDACTED] / account number [REDACTED] (USD);
- d) Sort-code [REDACTED] / account number [REDACTED] (CAD);
- e) Sort-code: [REDACTED] / account number: [REDACTED] (EUR);
- f) Sort-code: [REDACTED] / account number [REDACTED] (GBP);
- g) Sort-code: [REDACTED] / account number: [REDACTED] (GBP);
- h) Sort-code [REDACTED] / account number: [REDACTED] (CNY); and
- i) Sort-code [REDACTED] / account number: [REDACTED] (AED).

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

“Business Day”: means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

“Charged Property”: means all the assets of the Chargor which from time to time are the subject of any security created or expressed to be created in favour of the Bank by or pursuant to this Deed.

“Default Rate”: means such rate or rates notified by the Bank to the Chargor from time to time as being applicable pursuant to the relevant terms of the Facility Agreement.

“Deposit Moneys”: means all moneys in any currency from time to time deposited in or standing to the credit of the Accounts (or any of them) (including all moneys in any currency representing the renewal or replacement of or for any such deposits), all interest from time to time accrued or accruing on all such moneys, all or any moneys payable or repayable pursuant to such deposits or in respect of the Accounts and in each case the debts represented thereby.

“Encumbrance”: means any mortgage, charge (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.

“Expenses”: means all reasonable costs (including legal fees), charges, expenses and damages sustained or incurred by the Bank at any time in connection with the Charged Property or the Secured Liabilities or in taking, holding or perfecting this Deed or in protecting, preserving, defending or enforcing the security constituted by this Deed or in exercising any rights, powers or remedies provided by or pursuant to this Deed (including any right or power to make payments on behalf of the Chargor under the terms of this Deed) or by law in each case on a full indemnity basis.

“Facility Agreement”: means the facility letter dated on or about the date of this Deed addressed to the Chargor 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).

“Liability Period”: means the period beginning on the date of this Deed and ending on the date on which the Bank is satisfied, acting in good faith, that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full.

“LPA”: means the Law of Property Act 1925.

“Secured Liabilities”: means all moneys from time to time owing under the Facility Agreement, together with all Expenses and all interest under Clause 2.2 (*Interest*).

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

“Tax”: means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

“VAT”: means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

Construction

- 1.2 Any reference in this Deed to:
- 1.2.1 the **“Bank”**, the **“Chargor”** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - 1.2.2 **“assets”** includes present and future properties, revenues and rights of every description;
 - 1.2.3 a **“benefit”** includes the right to demand or receive money, to exercise all or any rights available at law or in equity, to compel performance and/or to give any notice;
 - 1.2.4 **“indebtedness”** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - 1.2.5 a **“person”** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - 1.2.6 a **“regulation”** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
 - 1.2.7 a provision of law is a reference to that provision as amended or re-enacted.
- 1.3 Clause and Schedule headings are for ease of reference only.
- 1.4 Any reference in this Deed to **“this Deed”** shall be deemed to be a reference to this Deed as a whole and not limited to the particular Clause, Schedule or provision in which the relevant reference appears and to this Deed as amended, novated, assigned, supplemented, extended or restated from time to time and any reference in this Deed to a **“Clause”** or a **“Schedule”** is, unless otherwise provided, a reference to a Clause or a Schedule of this Deed.
- 1.5 Unless the context otherwise requires, words denoting the singular number only shall include the plural and vice versa.
- 1.6 Where any provision of this Deed is stated to include one or more things, that shall be by way of example or for the avoidance of doubt only and shall not limit the generality of that provision.
- 1.7 It is intended that this document shall take effect as and be a deed of the Chargor notwithstanding the fact that the Bank may not execute this document as a deed.
- 1.8 Any change in the constitution of the Bank or its absorption of or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person shall not in any way prejudice or affect its rights under this Deed.

- 1.9 Any liberty or power which may be exercised or any determination which may be made under this Deed by the Bank may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

Third Party Rights

- 1.10 Nothing in this Deed is intended to confer on any person any right to enforce or enjoy the benefit of any provision of this Deed which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

2. Covenant to Pay

Covenant to Pay

- 2.1 The Chargor covenants with the Bank that it shall pay perform and discharge the Secured Liabilities as and when the same fall due for payment, performance or discharge in accordance with or, in the absence of any such express terms, on demand.

Interest

- 2.2 The Chargor covenants with the Bank to pay interest on any amounts due under Clause 2.1 (*Covenant to Pay*) from day to day until full discharge (whether before or after judgment, liquidation, winding-up or administration of any person) at such rate as may from time to time be fixed by the Bank and, if not so fixed, at the Default Rate, on the basis that all such interest will be payable upon such days in each year as the Bank shall from time to time fix and will be compounded with rests on such days in each year in the event of it not being so paid but without prejudice to the right of the Bank to require payment of such interest on demand at any time and provided that, in the case of any Expense, such interest shall accrue and be payable as from the date on which the relevant Expense arose without the necessity for any demand being made for payment.

3. Grant of Security

- 3.1 The Chargor, as security for the payment, performance and discharge of all the Secured Liabilities, charges in favour of the Bank by way of first fixed charge all of its present and future right, title, benefit and interest in and to:

3.1.1 the Accounts; and

3.1.2 the Deposit Moneys.

4. Perfection of Security

Acknowledgement

- 4.1 The execution of this Deed by the Chargor and the Bank shall constitute notice to the Bank of the charge created by this Deed over the Accounts and the Deposit Moneys.

Documents

- 4.2 The Chargor shall promptly deposit with the Bank, and permit the Bank during the subsistence of this Deed to hold and retain, at any branch of the Bank or with any correspondents or other agents of the Bank all certificates of deposit, deposit receipts

and other documents or securities from time to time relating to the Charged Property, together, where appropriate, with all forms of transfer or other instructions (duly executed) relating to the Charged Property as the Bank may from time to time reasonably require.

5. Further Assurance

Further Assurance

5.1 The Chargor shall promptly do all such acts and execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Bank may reasonably specify (and in such form as the Bank may reasonably require in favour of the Bank or its nominee(s)) to:

- 5.1.1 perfect the security created or intended to be created in respect of the Charged Property;
- 5.1.2 facilitate the exercise of any rights, powers and remedies of the Bank provided by or pursuant to this Deed or by law; and/or
- 5.1.3 facilitate the realisation of the assets which form part of, or are intended to form part of, the Charged Property.

Necessary Action

5.2 The Chargor shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Bank by or pursuant to this Deed.

Implied Covenants for Title

5.3 The charge granted by the Chargor under this Deed is granted with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994, save that the covenants set out in Section 2(1) (a) and Section 3 of that Act shall extend to the Chargor without, in each case, the benefit of Section 6(2) of that Act.

6. Representations

General

6.1 The Chargor makes the representations and warranties set out in this Clause 6 to the Bank on the date of this Deed.

Status

6.2 It is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation and it has the power to own its assets and carry on its business as it is being conducted.

Binding Obligations

6.3 The obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations and (without limiting the generality of the foregoing) this

Deed creates the security which it purports to create and that security is valid and effective.

Power and Authority

- 6.4 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.
- 6.5 No limit on its powers will be exceeded as a result of the grant of security contemplated by this Deed.

Non-conflict with Other Obligations

- 6.6 The entry into and performance by it of, and the transactions contemplated by, this Deed and the granting of the security under this Deed do not and will not conflict with:
 - 6.6.1 any law or regulation applicable to it;
 - 6.6.2 its constitutional documents; or
 - 6.6.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument,

nor (except as provided in this Deed) result in the existence or imposition of, or oblige it to create, any Security in favour of any person over all or any of its assets.

Insolvency and Centre of Main Interests and Establishments

- 6.7 No corporate action, legal proceeding or other procedure or step in relation to:
 - 6.7.1 the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise);
 - 6.7.2 a composition, compromise, assignment or arrangement with any creditor; or
 - 6.7.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer,(or any analogous procedure or step in any jurisdiction) has been taken or, to its knowledge, threatened in relation to it or any of its assets.
- 6.8 No expropriation, post-judgment or post-award attachment, sequestration, distress or execution (or any analogous process in any jurisdiction) affecting any of its assets has been taken or, to its knowledge, threatened in relation to it.
- 6.9 It is not unable and has not admitted its inability to pay its debts as they fall due (and has not been deemed to or declared to be unable to pay its debts under applicable law) and it has not suspended or threatened to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commenced negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness

and the value of its assets is not less than its liabilities (taking into account contingent and prospective liabilities).

- 6.10 For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the “**Regulation**”), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation and it has no “**establishment**” (as that term is used in Article 2(h) of the Regulation) in any other jurisdiction.

Validity and Admissibility in Evidence

- 6.11 All authorisations, consents, approvals, resolutions, licences, exemptions, filings, notarisations or registrations required or desirable to:
- 6.11.1 enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;
 - 6.11.2 make this Deed admissible in evidence in its jurisdiction of incorporation; and
 - 6.11.3 enable it to create any security expressed to be created by it by or pursuant to, or, as the case may be, any security expressed to have been created by it and to be evidenced in, this Deed and to ensure that such security has the priority and ranking it is expressed to have,

have been obtained or effected and are in full force and effect, except for any registrations and filings referred to in Clause 6.15 (*No Filing or Stamp Taxes*).

Governing Law and Enforcement

- 6.12 The choice of English law as the governing law of this Deed will be recognised and enforced in its jurisdiction of incorporation.
- 6.13 Any judgment obtained in the courts of England in relation to this Deed (or, in the case that this Deed confers jurisdiction to settle disputes on any other courts, any judgment obtained in those other courts) will be recognised and enforced in its jurisdiction of incorporation.
- 6.14 It has entered into this Deed for private, commercial purposes and, in any proceedings taken in its jurisdiction of incorporation in relation to this Deed, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

No Filing or Stamp Taxes

- 6.15 Under the law of its jurisdiction of incorporation it is not necessary that this Deed be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar taxes or fees be paid on or in relation to this Deed or the transactions contemplated by this Deed, except registration of particulars of this Deed at the Companies Registration Office in England and Wales under Section 860 of the Companies Act 2006 and payment of associated fees, which registration and fees will be made and paid promptly after the date of this Deed.

No Breach of Law or Default

- 6.16 It has not breached any law or regulation which breach could or might result in any material adverse change in its financial condition, business or assets.
- 6.17 It is not in material breach under any agreement to which it is a party nor is it in default in respect of any material financial commitment or liability.

No Misleading Information

- 6.18 All financial and other information provided by it (including its advisers) to the Bank was true, complete and accurate in all material respects as at the date it was provided or as at the date it was stated and is not misleading in any respect.

No Proceedings Pending or Threatened

- 6.19 No litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, could or might result in any material adverse change in its financial condition, business or assets.

Creation of Security

- 6.20 This Deed creates or, as applicable, evidences in favour of the Bank the security which it purports to create or evidence with the ranking and priority which it is expressed to have.
- 6.21 Without limiting Clause 6.20 above, its payment obligations under this Deed rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.
- 6.22 No Security exists over all or any of its Charged Property prior to the date of this Deed.

Good Title to Assets

- 6.23 It has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as it is being conducted.
- 6.24 It is the sole legal and beneficial owner of the assets over which it purports to grant security under this Deed.

Continuing Representations

- 6.25 The Chargor undertakes with the Bank that the representations and warranties in this Clause 6 will be true and accurate throughout the continuance of this Deed by reference to the facts and circumstances existing from time to time.

7. Undertakings

General

- 7.1 The undertakings in this Clause 7 remain in force from the date of this Deed for so long as any amount is outstanding under this Deed.

Negative Pledge

- 7.2 The Chargor shall not create or extend or permit to arise or subsist any Security (other than any Security constituted by this Deed) or other encumbrance over the whole or any part of the Charged Property without the prior written consent of the Bank.
- 7.3 The Chargor shall not enter into any arrangement under which all or any of the Deposit Moneys or the benefit of the Accounts (or any of them) may be applied, set-off or made subject to a combination of accounts or enter into any other preferential arrangement having a similar effect in circumstances where the arrangement is entered into primarily as a method of raising finance or of financing the acquisition of an asset, other than as permitted under the Facility Agreement or with the prior written consent of the Bank.

Restriction on Disposals

- 7.4 The Chargor shall not enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, assign, transfer or otherwise dispose of the whole or any part of the Charged Property, other than as permitted under the Facility Agreement or with the prior written consent of the Bank.

Restrictions on Repayment and Withdrawals

- 7.5 Notwithstanding any term express or implied pursuant to which any of the Deposit Moneys are or may be deposited in or paid to the credit of the Accounts (or any of them), the Chargor undertakes and agrees with the Bank that it shall not be entitled to and shall not:
- 7.5.1 make any request or demand to the Bank for the payment or repayment of all or any part of the Deposit Moneys;
 - 7.5.2 withdraw all or any part of the Deposit Moneys; and/or
 - 7.5.3 close the Account,
- except in any case with the prior written consent of the Bank.
- 7.6 If, but for the application of Clause 7.5 above, any Deposit Moneys would be payable or repayable to the Chargor at the expiry of any period of time under any term express or implied pursuant to which those Deposit Moneys were deposited in or paid to the credit of any Account, then the Chargor undertakes and agrees with the Bank that, notwithstanding any such term, the following conditions shall apply:
- 7.6.1 the Deposit Moneys shall be re-deposited (or successively re-deposited) in or paid to the credit of the relevant Account on such terms concerning time and interest as may from time to time be agreed between the Chargor and the

Bank or, failing such agreement, on such terms as the Bank may reasonably decide; and

- 7.6.2 all such Deposit Moneys from time to time re-deposited (or successively re-deposited) in or paid to the credit of the relevant Account, together with all interest from time to time accrued or accruing on all such moneys and all or any moneys payable or repayable pursuant to such re-deposits and in each case the debts represented thereby shall form part of the Charged Property and shall be subject to the terms of this Deed.

Authorisations

- 7.7 The Chargor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect, and supply certified copies to the Bank of, any Authorisation required under any law or regulation of its jurisdiction of incorporation:
- 7.7.1 to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of this Deed; and
- 7.7.2 to enable it to properly operate its business or to preserve, maintain or renew any Charged Property.

Compliance with Laws and Regulations

- 7.8 The Chargor shall comply in all respects with all laws and regulations to which it or any Charged Property may be subject, if failure so to comply would materially impair its ability to perform its obligations under this Deed.

Information and Notification

- 7.9 The Chargor shall promptly supply to the Bank such information as the Bank may reasonably require about the Charged Property and its compliance with the terms of this Deed and such further information regarding its financial condition, assets and operations as the Bank may reasonably request.
- 7.10 The Chargor shall promptly notify the Bank in writing of any action, claim or demand made by or against it in connection with all or any part of the Charged Property or of any fact, matter or circumstance which may with the passage of time give rise to such an action, claim or demand, together with the Chargor's proposals for settling, liquidating, compounding or contesting the same and shall, subject to the Bank's approval of such proposals, implement them at its own expense.

Not Jeopardise Security

- 7.11 The Chargor shall not do or cause or permit to be done anything which might in any way depreciate, jeopardise or otherwise prejudice the value to the Bank of the security constituted or intended to be constituted by this Deed.

8. Enforcement of Security

When Security becomes Enforceable

- 8.1 At any time after a notice by the Bank demanding payment, performance and/or discharge of any of the Secured Liabilities shall have been served by the Bank on the Chargor the security constituted by this Deed shall become immediately enforceable and the Bank may, without notice, in its absolute discretion enforce all or any part of that security by appropriating, applying or transferring as the Bank shall think fit all or any part of the Deposit Moneys at any time or times in or towards satisfaction of the Secured Liabilities in accordance with Clause 11.1 (*Order of Application*).

Timed Deposits

- 8.2 The rights and powers of the Bank contained in Clause 8.1 (*When Security becomes Enforceable*) shall apply notwithstanding that:
- 8.2.1 all or any part of the Deposit Moneys may have been or may be deposited with the Bank for a fixed or minimum period or be subject to a period of notice;
 - 8.2.2 any interest on the Deposit Moneys is calculated by reference to a fixed or minimum period; and/or
 - 8.2.3 any such fixed or minimum period or period of notice may or may not have expired or been given.
- 8.3 The Chargor authorises the Bank at any time after the security constituted by this Deed has become enforceable to break or determine the Deposit Moneys in whole or in part and/or to renew all or any of the Deposit Moneys for such fixed periods as the Bank may (in its absolute discretion) from time to time think fit.

Currency Conversion

- 8.4 For the purpose of Clause 8.1 (*When Security becomes Enforceable*) and/or for the purpose of or pending the discharge of any of the Secured Liabilities, the Bank may (in its absolute discretion) convert any Deposit Moneys or any moneys received or recovered by the Bank pursuant to this Deed or any moneys subject to application by the Bank pursuant to this Deed from one currency to another and any such conversion shall be made at the Bank's spot rate of exchange for the time being for obtaining such other currency with the first currency and the Secured Liabilities shall be discharged only to the extent of the net proceeds of such conversion realised by the Bank. Nothing in this Deed shall require the Bank to make, or shall impose any duty of care on the Bank in respect of, any such currency conversion.

Financial Collateral

- 8.5 To the extent that any of the Charged Property constitutes “**financial collateral**” and this Deed and the obligations of the Chargor under this Deed constitute a “**security financial collateral arrangement**” (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No.2) Regulations 2003 (the “**FCA Regulations**”)), the Bank shall have, in addition, the right, at any time after the security constituted by this Deed has become enforceable, to appropriate all or any part of such financial collateral in or towards satisfaction of the Secured Liabilities in

accordance with Clause 11.1 (*Order of Application*). For this purpose, the parties agree that the value of such financial collateral shall be, in the case of cash, the amount standing to the credit of the Accounts (or any of them), together with all interest accrued but unposted, at the time that the right of appropriation is exercised. The parties further agree that the manner of valuation provided for in this Clause 8.5 shall constitute a commercially reasonable manner of valuation for the purposes of the FCA Regulations.

9. Extension and Variation of the LPA

Statutory Powers

- 9.1 The rights and powers of the Bank contained in Clause 8 (*Enforcement of Security*) shall be in addition to and not to the prejudice of all or any of the powers, authorities and discretions conferred by the LPA (as varied or extended by this Deed) on mortgagees or otherwise conferred by law on mortgagees. For the purposes of all powers implied by the LPA, such powers shall arise (and the Secured Liabilities shall be deemed to have become due and payable for that purpose) on the date of this Deed and shall be immediately exercisable by the Bank at any time after the security constituted by this Deed has become enforceable.

Restrictions

- 9.2 Section 103 of the LPA (restricting the power of sale) and Section 93 of the LPA (restricting the right of consolidation) shall not apply to the security constituted by this Deed.

10. Power of Attorney

Appointment and Powers

- 10.1 The Chargor, by way of security, irrevocably appoints the Bank to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

10.1.1 carrying out any obligation imposed on the Chargor by this Deed; and

10.1.2 enabling the Bank to exercise, or delegate the exercise of, any of the rights, powers, authorities and discretions conferred on it or him by or pursuant to this Deed or by law (including the exercise of any right of an absolute legal or beneficial owner of the Charged Property).

Ratification

- 10.2 The Chargor shall ratify and confirm whatever any attorney does or purports to do pursuant to its appointment under Clause 10.1 (*Appointment and Powers*).

11. Application of Proceeds

Order of Application

- 11.1 All moneys received or recovered by the Bank pursuant to this Deed, after the security constituted by this Deed has become enforceable, shall (subject to the claims of any

person having prior rights thereto and by way of variation of the provisions of the LPA) be applied in the following order (but without prejudice to the right of the Bank to recover any shortfall from the Chargor):

- 11.1.1 in or towards payment of all Secured Liabilities or such part of them as is then due and payable to the Bank in such order as the Bank may select; and
- 11.1.2 in payment of the surplus (if any) to the Chargor or other person entitled to it.

- 11.2 Clause 11.1 (*Order of Application*) will override any appropriation made by the Chargor.

New Accounts

- 11.3 If the Bank at any time receives, or is deemed to have received, notice of any subsequent Security or other interest affecting any Charged Property or of any disposal of any Charged Property which is prohibited by the terms of this Deed or of any other matter which may cause the security constituted by this Deed to cease to be a continuing security, the Bank may open a new account with the Chargor.
- 11.4 If the Bank does not open a new account, 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. As from that time all payments made by or on behalf of the Chargor to the Bank shall be credited or be treated as having been credited to the new account of the Chargor and not as having been applied in reduction of the Secured Liabilities.

12. No Liability

- 12.1 The Bank shall not in any circumstances (either by reason of taking possession of any Charged Property or for any other reason and whether as mortgagee in possession or on any other basis) be liable to account to the Chargor for anything, except actual receipts, or be liable to the Chargor for any costs, charges, losses, liabilities or expenses arising from the realisation of any Charged Property or from any act, default or omission of the Bank or any of its officers, agents or employees in relation to the Charged Property or from any exercise or purported exercise or non-exercise by the Bank of any power, authority or discretion provided by or pursuant to this Deed or by law or for any other loss of any nature whatsoever in connection with the Charged Property or this Deed (including, without limitation, any loss of interest caused by the determination before maturity of any Deposit Moneys or by the fluctuation in any exchange rate at which currency may be bought or sold by the Bank).

13. Set-Off

Set-off

- 13.1 Without prejudice to the rights conferred on the Bank by Clause 8 (*Enforcement of Security*) and without limiting any other rights conferred on the Bank by law or by any other agreements entered into with the Chargor, the Bank may (but shall not be obliged to) set off any matured obligation due from the Chargor under this Deed (to the extent beneficially owned by the Bank) against any obligation (whether matured or not) owed by the Bank to the Chargor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at a market rate of exchange in its usual course

of business for the purpose of the set-off. If the obligation owed by the Bank is unliquidated or unascertained, the Bank may set off in an amount estimated by it in good faith to be the amount of that obligation.

14. Effectiveness of Security

Continuing Security

- 14.1 The security constituted by this Deed shall remain in full force and effect as a continuing security for the Secured Liabilities, unless and until discharged by the Bank, and will extend to the ultimate balance of all the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

Cumulative Rights

- 14.2 The security constituted by this Deed and all rights, powers and remedies of the Bank provided by or pursuant to this Deed or by law shall be cumulative, in addition to and independent of any right of set-off, combination, lien or other rights exercisable by the Bank as banker against any person and of any other guarantee or Security now or subsequently held by the Bank for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior Security held by the Bank over the whole or any part of the Charged Property shall be superseded by, supersede or merge into, the security constituted by this Deed.

Reinstatement

- 14.3 If any discharge, release or arrangement (whether in respect of the obligations of the Borrower or the Chargor or any Security for those obligations or otherwise) is made by the Bank in whole or in part on the faith of any payment, Security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Chargor under, the security constituted by this Deed will continue or be reinstated as if the discharge, release or arrangement had not occurred.
- 14.4 The Bank may concede or compromise any claim that any payment or any discharge is liable to avoidance or restoration.

15. Payments

Manner of Payments

- 15.1 The Chargor shall make all payments required to be made by it under this Deed available to the Bank (unless a contrary indication appears in this Deed) for value on the due date at the time and in such funds specified by the Bank as being customary at the time for settlement of transactions in the relevant currency in the place of payment. Payment shall be made in the currency in which the relevant indebtedness is denominated or, if different, is expressed to be payable and to such account in the principal financial centre of the country of that currency with such bank as the Bank specifies.

No Set-off by Chargor

- 15.2 All payments to be made by the Chargor under this Deed shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

Tax Gross-Up

- 15.3 The Chargor shall make all payments to be made by it under this Deed without any deduction or withholding for or on account of Tax, unless such a deduction or withholding is required by law. The Chargor, promptly upon becoming aware that it must make such a deduction or withholding (or that there is any change in the rate or the basis of such a deduction or withholding), shall notify the Bank accordingly.
- 15.4 If a deduction or withholding for or on account of Tax from a payment under this Deed is required by law to be made by the Chargor, the amount of the payment due from the Chargor shall be increased to an amount which (after making any such deduction or withholding) leaves an amount equal to the payment which would have been due if no such deduction or withholding had been required.
- 15.5 If the Chargor is required to make a deduction or withholding for or on account of Tax from a payment under this Deed, the Chargor shall make that deduction or withholding and any payment required in connection with that deduction or withholding within the time allowed and in the minimum amount required by law. Within thirty days of making such a deduction or withholding or any payment required in connection with that deduction or withholding, the Chargor shall deliver to the Bank evidence reasonably satisfactory to the Bank that the deduction or withholding has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

16. Expenses, Stamp Taxes and Indemnities

Expenses

- 16.1 The Chargor shall promptly on demand pay to the Bank the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing, execution and perfection of this Deed and any other documents referred to in this Deed and in responding to, evaluating, negotiating or complying with any request for an amendment, waiver or consent made by the Chargor in relation to this Deed.
- 16.2 The Chargor shall, within three business days of demand, pay to the Bank the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of, or the defence, protection and/or preservation of, any rights, remedies and powers under this Deed or the security constituted, or intended to be constituted, by this Deed and any proceedings instituted by or against the Bank as a consequence of taking or holding the security constituted, or intended to be constituted, by this Deed or enforcing any such rights, powers and remedies.

Stamp Taxes

- 16.3 The Chargor shall pay, and shall promptly on demand indemnify the Bank against any cost, loss or liability it incurs in relation to, all stamp duty, registration and similar Taxes payable in connection with the entry into, performance or enforcement, of this Deed, the security constituted by this Deed or any judgment given in connection with this Deed.

and charge any account of the Chargor with any cost or expense referred to in this Clause 16.

17. Certificates and Determinations

- 17.1 Any certificate or determination by the Bank of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

18. Partial Invalidity

- 18.1 If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired and, if any part of the security constituted, or intended to be constituted, by this Deed is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the security.

19. Remedies and Waivers

- 19.1 No failure to exercise, nor any delay in exercising, on the part of the Bank, any right, remedy or power under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right, remedy or power prevent any further or other exercise or the exercise of any other right, remedy or power. The rights, remedies and powers provided in this Deed are cumulative and not exclusive of any rights, remedies or powers provided by law.
- 19.2 Any amendment, waiver or consent by the Bank under this Deed must be in writing and may be given subject to any conditions thought fit by the Bank. Any waiver or consent shall be effective only in the instance and for the purpose for which it is given.

20. Notices

Communications in writing

- 20.1 Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

Addresses

- 20.2 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of the Chargor and the Bank for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below:

Bank

Address:	60 Queen Victoria Street, London, EC4N 4TR
Fax Number:	084 5587 8676
For the Attention of:	Paul Mackin

Chargor

Address: Millbank Tower, 21-24 Millbank, London, SW1P 4QP

Fax Number: 020 7802 5201

For the Attention of: Gary Sher

or any substitute address, fax number or department or officer as the Chargor may notify to the Bank or, as the case may be, the Bank may notify to the Chargor, in each case by not less than five Business Days' notice.

Delivery

20.3 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

20.3.1 if by way of fax, when received in legible form; or

20.3.2 if by way of letter, when it has been left at the relevant address or five business days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 20.2 (*Addresses*), if addressed to that department or officer.

20.4 Any communication or document to be made or delivered to the Bank will be effective only when actually received by it and then only if it is expressly marked for the attention of the department or officer identified with the Bank's name in Clause 20.2 (*Addresses*) (or any substitute department or officer as it shall specify for this purpose).

English Language

20.5 Any notice or communication given or made under or in connection with this Deed must be in English.

20.6 All other documents provided under or in connection with this Deed must be:

20.6.1 in English; or

20.6.2 if not in English, and if so required by the Bank, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

21. Counterparts

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

22. Assignment

22.1 The Chargor may not assign, charge, transfer or otherwise dispose of all or any of its rights or obligations under this Deed. The Bank may assign, charge or transfer all or

any of its rights under this Deed without the consent of the Chargor. The Bank may disclose any information about the Chargor and this Deed as the Bank shall consider appropriate to any actual or proposed direct or indirect successor or to any person to whom information is required to be disclosed by any applicable law or regulation.

23. Releases

- 23.1 Upon the expiry of the Liability Period (but not otherwise) and subject to Clauses 14.3 and 14.4 (*Reinstatement*), the Bank shall, at the request and cost of the Chargor, take whatever action is necessary to release the Charged Property from the security constituted by this Deed.

24. Governing Law

- 24.1 This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

25. Enforcement

Jurisdiction

- 25.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a “**Dispute**”).
- 25.2 The Chargor agrees that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly it will not argue to the contrary or take proceedings relating to a Dispute in any other courts.
- 25.3 Clauses 25.1 and 25.2 above are for the benefit of the Bank only. As a result, the Bank shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Bank may take concurrent proceedings in any number of jurisdictions.
- 25.4 The Chargor irrevocably waives any right it may have to the trial by jury in any proceedings relating to a Dispute.

Waiver of Immunity


- 25.5 To the extent that the Chargor may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself or its assets such immunity (whether or not claimed), the Chargor irrevocably agrees not to claim and irrevocably waives such immunity to the fullest extent permitted by the laws of that jurisdiction.

IN WITNESS of which this Deed has been entered into as a deed and is intended to be and is delivered on the day and year first before written.

EXECUTION PAGE

SIGNED and DELIVERED as a DEED
on behalf of RB METALLOYD LIMITED
acting by:

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)
)
)


.....
Director

in the presence of:



Name of witness: FARLEIGH LANGRIDGE

Address: 




JAN-ERIK BACK
CHAIRMAN

For and on behalf of HSBC BANK plc


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