

MR01

Particulars of a charge

157289 / 13



**A fee is payable with this form**  
Please see 'How to pay' on the  
last page

**You can use the WebFiling service to file this form online**  
Please go to [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

☒ **What this form is for**  
You may use this form to register  
a charge created or evidenced by  
an instrument

☒ **What this form is NOT for**  
You may not use this form to  
register a charge where there is  
an instrument. Use form MR08

For further information, please  
refer to our guidance at  
[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

This form **must be delivered to the Registrar for registration within 21 days** beginning with the day after the date of creation of the charge. If delivered outside of the 21 days it will be rejected unless it is accompanied by a court order extending the time for delivery.

☒ You **must** enclose a certified copy of the instrument with this form. This must be scanned and placed on the public record.



A06 22/02/2014 #3  
COMPANIES HOUSE

**1 Company details**

Company number 07681175  
Company name in full HAMILTON METALS UK LIMITED

For official use  
Filing in this form  
Please complete in typescript or in  
bold black capitals  
All fields are mandatory unless  
specified or indicated by \*

**2 Charge creation date**

Charge creation date 01/02/2014

**3 Names of persons, security agents or trustees entitled to the charge**

Please show the names of each of the persons, security agents or trustees  
entitled to the charge

Name PNC BANK, NATIONAL ASSOCIATION

Name

Name

Name

If there are more than four names, please supply any four of these names then  
tick the statement below

☐ I confirm that there are more than four persons, security agents or  
trustees entitled to the charge

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**Description**

Please give a short description of any land (including buildings), ship, aircraft or intellectual property registered (or required to be registered) in the UK which is subject to this fixed charge or fixed security

**Continuation page**

Please use a continuation page if you need to enter more details

Description

5

**Fixed charge or fixed security**

Does the instrument include a fixed charge or fixed security over any tangible or intangible (or in Scotland) corporeal or incorporeal property not described above? Please tick the appropriate box

☒ **Yes**

☐ **No**

6

**Floating charge**

Is the instrument expressed to contain a floating charge? Please tick the appropriate box

☒ **Yes** Continue

☐ **No** Go to **Section 7**

Is the floating charge expressed to cover all the property and undertaking of the company?

☒ **Yes**

7

**Negative Pledge**

Do any of the terms of the charge prohibit or restrict the chargor from creating any further security that will rank equally with or ahead of the charge? Please tick the appropriate box

☒ **Yes**

☐ **No**

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**Trustee statement ①**

You may tick the box if the company named in Section 1 is acting as trustee of the property or undertaking which is the subject of the charge

☐

① This statement may be filed after the registration of the charge (use form MR06)

9

**Signature**

Please sign the form here

Signature

Signature

X Squire Sanders (UK) LLP

X

This form must be signed by a person with an interest in the charge

# MR01

## Particulars of a charge



### Presenter information

We will send the certificate to the address entered below. All details given here will be available on the public record. You do not have to show any details here but, if none are given, we will send the certificate to the company's Registered Office address.

Contact name Lauren Priest-Stephens

Company name Squire Sanders (UK) LLP

Address 7 Devonshire Square

Post town London

County/Region

Postcode E C 2 M 4 Y H

Country England

DX 136546 Bishopsgate 2

Telephone +44 (0)20 7655 1000



### Certificate

We will send your certificate to the presenter's address if given above or to the company's Registered Office if you have left the presenter's information blank.



### Checklist

**We may return forms completed incorrectly or with information missing.**

**Please make sure you have remembered the following:**

- ☐ The company name and number match the information held on the public Register
- ☐ You have included a certified copy of the instrument with this form
- ☐ You have entered the date on which the charge was created
- ☐ You have shown the names of persons entitled to the charge
- ☐ You have ticked any appropriate boxes in Sections 3, 5, 6, 7 & 8
- ☐ You have given a description in Section 4, if appropriate
- ☐ You have signed the form
- ☐ You have enclosed the correct fee
- ☐ Please do not send the original instrument, it must be a certified copy



### Important information

**Please note that all information on this form will appear on the public record.**



### How to pay

**A fee of £13 is payable to Companies House in respect of each mortgage or charge filed on paper.**

Make cheques or postal orders payable to 'Companies House'



### Where to send

**You may return this form to any Companies House address. However, for expediency, we advise you to return it to the appropriate address below.**

**For companies registered in England and Wales:**  
The Registrar of Companies, Companies House,  
Crown Way, Cardiff, Wales, CF14 3UZ  
DX 33050 Cardiff

**For companies registered in Scotland:**  
The Registrar of Companies, Companies House,  
Fourth floor, Edinburgh Quay 2,  
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF  
DX ED235 Edinburgh 1  
or LP - 4 Edinburgh 2 (Legal Post)

**For companies registered in Northern Ireland**  
The Registrar of Companies, Companies House,  
Second Floor, The Linenhall, 32-38 Linenhall Street,  
Belfast, Northern Ireland, BT2 8BG  
DX 481 N R Belfast 1



### Further information

For further information, please see the guidance notes on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) or email [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

**This form is available in an alternative format. Please visit the forms page on the website at [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)**



FILE COPY

## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 7681175

Charge code: 0768 1175 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th February 2014 and created by HAMILTON METALS UK LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 22nd February 2014

Given at Companies House, Cardiff on 25th February 2014



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

DATED 10 February 2014

(1) PNC BANK, NATIONAL ASSOCIATION  
in its capacity as Agent

- and -

(2) HAMILTON METALS UK LIMITED  
as Security Obligor

**COMPOSITE GUARANTEE AND  
DEBENTURE**

We hereby certify that this is a  
true and correct copy of the original  
Dated 21 February 2014  
Squire Sanders (UK) LLP  
SQUIRE SANDERS (UK) LLP  
7 DEVONSHIRE SQUARE  
LONDON  
EC2M 4YH

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THIS COMPOSITE GUARANTEE AND DEBENTURE is made on 10 February 2014

**BETWEEN**

- (1) **HAMILTON METALS UK LIMITED** a company registered in England and Wales with the company number 07681175 and having its registered office at The Annex, 143-145 Stanwell Road, Ashford, Middlesex, England TW15 3QN ("Security Obligor") and
- (2) **PNC BANK, NATIONAL ASSOCIATION** acting through its office at 2100 Ross Avenue, Suite 1850, Dallas, Texas 75201 United States of America in its capacity as Agent (the "Agent")

**IT IS AGREED** as follows

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed

- (a) terms defined in, or construed for the purposes of, the Credit Agreement (as defined below) have the same meanings when used in this Deed (unless the same are otherwise defined in this Deed), and

- (b) the following terms have the following meanings

"Accounts" means the bank accounts of the Security Obligor held with JP Morgan Chase Bank, N A , London Branch from time to time,

"Act" means the Law of Property Act 1925,

"Assigned Assets" means the Security Assets expressed to be assigned pursuant to clause 5.2 (*Security Assignments*),

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

"Charged Securities" means the Securities specified in part 3 of schedule 2 (*Details of Security Assets*) together with all other Securities held by the Security Obligor in the relevant company from time to time,

"Credit Agreement" means the revolving credit and security agreement dated the same date as this Deed and made between (1) Hamilton Metals, Inc., TBC Investments, LLC, the Security Obligor, Hamilton Metals Singapore PTE Ltd, HM Canada Sales LLC, Hamilton Metals México S De RL De CV, Hamilton Metals Manufacturing, LLC as borrowers, (2) PNC Bank National Association as lender and (3) PNC Bank National Association as Agent,

"Default Rate" means the rate which is two per cent per annum above the Revolving Interest Rate,

**"Fixtures"** means, in relation to any Real Property, all fixtures and fittings (including trade fixtures and fittings) and fixed plant, machinery and equipment and other items attached to the relevant Real Property whether or not constituting a fixture at law,

**"Insurances"** means, all policies of insurance (and all cover notes) which are at any time held by, or written in favour of, the Security Obligor or in which the Security Obligor from time to time has an interest, those policies of insurance (if any) specified in part 4 of schedule 2 (*Details of Security Assets*) and any other policies of insurance which may replace those policies of insurance,

**"Intellectual Property"** means all present and future Intellectual Property Rights;

**"Intellectual Property Rights"** means

- (a) any patents, trade marks, service marks, designs, business names, copyrights, design rights, moral rights, inventions, confidential information, know-how and other intellectual property rights and interests whether registered or unregistered, and
- (b) the benefit of all applications and rights to use such assets of the Security Obligor,

**"Obligations"** shall mean and include any and all loans (including without limitation, all Advances), advances, debts, liabilities, obligations (including without limitation all reimbursement obligations and cash collateralization obligations with respect to Letters of Credit issued hereunder), covenants and duties owing by any Credit Party or any Subsidiary of any Credit Party to Issuer, Lenders or Agent (or to any other direct or indirect subsidiary or affiliate of Issuer, any Lender or Agent) of any kind or nature, present or future (including any interest or other amounts accruing thereon, any fees accruing under or in connection therewith, any costs and expenses of any Person payable by any Credit Party and any indemnification obligations payable by any Credit Party arising or payable after maturity, or after the filing of any petition in bankruptcy, or the commencement of any Insolvency Event or insolvency, reorganization or like proceeding relating to any Credit Party, whether or not a claim for post-filing or post-petition interest, fees or other amounts is allowable or allowed in such proceeding), whether or not evidenced by any note, guaranty or other instrument, whether arising under any agreement, instrument or document (including this Agreement, the Other Documents, Lender-Provided Interest Rate Hedges, Lender-Provided Foreign Currency Hedges and any Cash Management Products and Services) whether or not for the payment of money, whether arising by reason of an extension of credit, opening or issuance of a letter of credit, loan, equipment lease, establishment of any commercial card or similar facility or guarantee, under any interest or currency swap, future, option or other similar agreement, or in any other manner, whether arising out of overdrafts or deposit or other accounts or electronic funds transfers (whether through automated clearing houses or otherwise) or out of Agent's or any Lender's non-receipt of or inability to collect funds or otherwise not being made whole in connection with depository transfer check or other similar arrangements, whether direct or indirect (including those acquired by assignment or participation), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, contractual or tortious, liquidated or unliquidated, regardless of how such indebtedness or liabilities arise or by what agreement or instrument they may be evidenced or whether evidenced by any agreement or instrument, including, but not limited to, (i) any and all of any Credit Party's Indebtedness and/or liabilities (and any and all indebtedness, obligations and/or

liabilities of any Subsidiary of any Credit Party) under this Agreement, the Other Documents or under any other agreement between Issuer, Agent or Lenders and any Credit Party and any amendments, extensions, renewals or increases and all costs and expenses of Issuer, Agent and any Lender incurred in the documentation, negotiation, modification, enforcement, collection or otherwise in connection with any of the foregoing, including but not limited to reasonable attorneys' fees and expenses and all obligations of any Credit Party to Issuer, Agent or Lenders to perform acts or refrain from taking any action, (ii) all Hedge Liabilities and (iii) all Cash Management Liabilities. Notwithstanding anything to the contrary contained in the foregoing, the Obligations shall not include any Excluded Hedge Liabilities,

**"Party"** means a party to this Deed,

**"Real Property"** means all estates and interests in freehold, leasehold and other immovable property (wherever situated) now or in future belonging to the Security Obligor, or in which the Security Obligor has an interest at any time, together with

- (a) all buildings and fixtures (including trade fixtures) and fixed plant and machinery at any time thereon,
- (b) all easements, rights and agreements in respect thereof, and
- (c) the benefit of all covenants given in respect thereof;

**"Receivables"** has the meaning given to it in the Credit Agreement

**"Receiver"** means any receiver or receiver and manager appointed by the Agent under this Deed,

**"Securities"** means all stocks, shares, debentures, bonds, warrants, coupons, negotiable instruments, certificates of deposit or other securities or *"investments"* (as defined in part II of schedule II to the Financial Services and Markets Act 2000 as in force at the date of this Deed) now or in future owned (legally or beneficially) by the Security Obligor, held by a nominee on its behalf or in which the Security Obligor has an interest at any time,

**"Securities Rights"** means

- (a) all dividends, distributions and other income paid or payable on the relevant Securities or Charged Securities or on any asset referred to in paragraph (b) of this definition,
- (b) all rights, monies or property accruing or offered at any time in relation to such Securities or Charged Securities whether by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise,

**"Security"** means the Liens created by or pursuant to this Deed,

**"Security Assets"** means all property and assets from time to time mortgaged, charged or pledged (or expressed to be mortgaged, charged or pledged) by, under or pursuant to this Deed, and

**"Security Period"** means the period beginning on the date of this Deed and ending on the date on which

- (a) all the Obligations have been unconditionally and irrevocably paid and discharged in full, and

- (b) the Credit Agreement has been terminated according to its terms

"Specified P&M" means the P&M (if any) specified in part 2 of schedule 2 (*Details of Security Assets*),

"Specified Real Property" means the estates and interests in freehold property (if any) specified in part 1 of schedule 2 (*Details of Security Assets*), together with

- (a) all buildings and fixtures (including trade fixtures) and fixed P&M at any time thereon,
- (b) all easements, rights and agreements in respect thereof, and
- (c) the benefit of all covenants given in respect thereof

## 1.2 Interpretation

- (a) Unless a contrary indication appears, any reference in this Deed to
  - (i) the "Security Obligor" a "Secured Party" or the "Agent" shall be construed so as to include its successors in title, permitted assigns and permitted transferees,
  - (ii) "this Deed", the "Credit Agreement", any "Other Document" or any other agreement or instrument shall be construed as a reference to this Deed, the Credit Agreement, such Other Document or such other agreement or instrument as varied, amended, supplemented, extended, restated, novated and/or replaced in any manner from time to time (however fundamentally and even if any of the same increases the obligations of any Borrower or provides for further advances),
  - (iii) "assets" includes any present and future properties, revenues and rights of every description and includes uncalled capital,
  - (iv) A Default is "continuing" if it has not been remedied or waived in writing and an Event of Default is "continuing" if it has not been waived in writing, in each case to the satisfaction of the Required Lenders. Any waiver given by the Required Lenders shall only apply to the specific occurrence of the specific event referred to in such waiver
  - (v) "including" or "includes" means including or includes without limitation,
  - (vi) "Obligations" includes obligations and liabilities which would be treated as such but for the liquidation or dissolution of, or a similar event affecting, the Borrower;
  - (vii) a provision of law is a reference to that provision as amended or re-enacted, and

(viii) the singular includes the plural and vice versa

- (b) Where in connection with any legal jurisdiction outside England and Wales a word or phrase in this Deed has no precise counterpart, then this Deed shall be interpreted as if that word or phrase referred to the closest equivalent in the jurisdiction concerned
- (c) References to clauses, paragraphs and schedules are to be construed, unless otherwise stated, as references to clauses, paragraphs and schedules of and to this Deed and references to this Deed include its schedules
- (d) Clause and schedule headings are for convenience only and shall not affect the construction of this Deed
- (e) Each undertaking of the Security Obligor contained in this Deed must be complied with at all times during the Security Period
- (f) The terms of the Credit Agreement and any Other Document and of any side letters between any of the parties thereto in relation to any Other Document are incorporated in this Deed to the extent required to ensure that any disposition of the property contained in this Deed is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989
- (g) If the Agent reasonably considers that an amount paid by the Security Obligor to a Secured Party under the Credit Agreement or any Other Document in respect of the Secured Obligations is capable of being avoided or otherwise set aside on the liquidation or administration of the Security Obligor, then that amount shall not be considered to have been irrevocably paid for the purposes of this Deed
- (h) The Parties intend that this document shall take effect as a deed notwithstanding the fact that a Party may only execute this document under hand
- (i) The Parties agree and confirm that this Deed is an Other Document

### **1.3 Third party rights**

A person who is not a Party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed

### **1.4 Credit Agreement**

If there is any conflict between the provisions of this Deed and the Credit Agreement, the provisions of the Credit Agreement shall prevail

### **1.5 PNC Bank, National Associate as Agent**

- (a) All Security created by the Security Obligor in favour of the Agent under or pursuant to this Deed shall be held by it as Agent for benefit of the Secured Parties in accordance with their respective interests pursuant to the terms of the Credit Agreement

- (b) Every obligation, undertaking and representation and warranty given by the Security Obligor to the Agent under this Deed is given to it as Agent for the benefit of the Secured Parties in accordance with the terms of its appointment in the Credit Agreement
- (c) The Lenders and the Agent agree by their acceptance of the benefit of this Deed that this Deed may be enforced on their behalf only by the action of the Agent and that no other Secured Party shall have any right individually to seek to enforce or to enforce this Deed or realise the security to be granted hereby

## **2. GUARANTEE AND INDEMNITY**

### **2.1 Guarantee and indemnity**

The Security Obligor irrevocably and unconditionally jointly and severally

- (a) guarantees in favour of the Agent punctual performance by each Borrower of all Obligations of each Borrower under the Credit Agreement and the Other Documents,
- (b) undertakes with the Agent that whenever a Borrower does not pay any amount when due under, or in connection with, the Credit Agreement or any Other Document, the Security Obligor shall immediately on demand pay that amount as if it were the principal obligor; and
- (c) agrees with the Agent that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify the Agent immediately on demand against any cost, loss or liability it incurs as a result of a Borrower not paying an amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under the Credit Agreement or any Other Document on the date when it would have been due. The amount payable by the Security Obligor under this indemnity will not exceed the amount it would have had to pay under this Clause 2.1 if the amount claimed had been recoverable on the basis of a guarantee

### **2.2 Extension of guarantee**

The guarantee set out in this clause 2 (*Guarantee and Indemnity*) is given subject to and with the benefit of the provisions set out in schedule 1 (*The Guarantee*)

## **3. COVENANT TO PAY**

### **3.1 Covenant to pay**

The Security Obligor hereby covenants to the Agent to pay and discharge the Obligations to the Agent, for the account of the Secured Parties, from time to time when such Obligations fall due

### **3.2 Default interest**

- (a) Any amount which is not paid under this Deed when due shall bear interest (both before and after judgment and payable on demand) from the due date

until the date on which such amount is unconditionally and irrevocably paid and discharged in full on a daily basis at the rate and in the manner agreed in the Credit Agreement or relevant Other Document under which such amount is payable and, in the absence of such agreement, at the Default Rate from time to time

- (b) Default interest will accrue from day to day and will be compounded at monthly intervals

#### **4. GRANT OF SECURITY**

##### **4.1 Nature of security**

All Security and dispositions created or made by or pursuant to this Deed are created or made

- (a) in favour of the Agent,
- (b) with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994, and
- (c) as a continuing security for payment and discharge of the Obligations

##### **4.2 Qualifying floating charge**

Paragraph 14 of schedule B1 to the Insolvency Act 1986 applies to any floating charge created by or pursuant to this Deed (and each such floating charge is a qualifying floating charge for the purposes of the Insolvency Act 1986)

#### **5. FIXED SECURITY**

##### **5.1 Fixed charges**

The Security Obligor charges and agrees to charge all of its present and future right, title and interest in and to the following assets which are at any time owned by it, or in which it from time to time has an interest

- (a) by way of first legal mortgage the Specified Real Property,
- (b) by way of first fixed charge
  - (i) all Real Property and all interests in Real Property not charged by clause 5 1(a), other than any Excluded Property,
  - (ii) all licences to enter upon or use land and the benefit of all other agreements relating to land, and
  - (iii) the proceeds of sale of all Real Property other than the Specified Real Property,
- (c) by way of first fixed charge all Specified P&M,

- (d) by way of a first fixed charge all plant and machinery (not charged by clauses 5 1(a) or 5 1(b)), the benefit of all contracts, licences and warranties relating to the same and the proceeds of the sale of any plant and machinery,
- (e) by way of first fixed charge
  - (i) all computers, vehicles, office equipment and other equipment (not charged by clause 5 1(c)), and
  - (ii) the benefit of all contracts, licences and warranties relating to the same,
- (f) by way of first fixed charge the Charged Securities and the proceeds of the sale of any Charged Securities,
- (g) by way of first fixed charge all Securities Rights from time to time accruing to the Charged Securities,
- (h) by way of first fixed charge all rights which the Security Obligor may have at any time against any clearance or settlement system or any custodian in respect of any Charged Securities,
- (i) by way of first fixed charge all Securities (not charged by clause 5 1(f)),
- (j) by way of first fixed charge (A) all Securities Rights from time to time accruing to those Securities and (B) all rights which the Security Obligor may have at any time against any clearance or settlement system or any custodian in respect of any Securities,
- (k) by way of first fixed charge all Receivables and their proceeds now or in the future owing to the Security Obligor,
- (l) by way of first fixed charge the Intellectual Property (if any) specified in part 3 of schedule 2 (*Details of Security Assets*) and the proceeds of sale of any such Intellectual Property,
- (m) by way of first fixed charge all Intellectual Property (if any) not charged by clause 5 1(l),
- (n) by way of first fixed charge all rights in the Insurances, all claims under the Insurances and all proceeds of the Insurances;
- (o) by way of first fixed charge (to the extent not otherwise charged in this Deed)
  - (i) the benefit of all licences, consents, agreements and authorisations held or used in connection with the business of the Security Obligor or the use of any of its assets, and
  - (ii) any letter of credit issued in favour of the Security Obligor and all bills of exchange and other negotiable instruments held by it,
- (p) by way of first fixed charge all of the goodwill and its right in relation to uncalled capital of the Security Obligor; and

- (g) by way of a first fixed charge, all its rights in respect of any amount from time to time standing to the credit of the Accounts and the debt or debts represented thereby.

## **5.2 Security assignments**

- (a) The Security Obligor hereby assigns and agrees to assign absolutely (subject to a proviso for reassignment on redemption) all its present and future right, title and interest in and to
- (i) the proceeds of the sale of any Intellectual Property specified in part 4 of schedule 2 (*Details of Security Assets*), and
  - (ii) all proceeds of the Insurances, and
- (b) To the extent that any Assigned Asset described in clauses 5.2(a)(i) to 5.2(a)(ii) inclusive is not assignable, the assignment which that clause purports to effect shall operate as an assignment of all present and future rights and claims of the Security Obligor to any proceeds of an Assigned Asset.
- (c) Until this Security has become enforceable the Security Obligor shall be free to use any proceeds assigned to the Agent under this clause 5.2 subject to and in accordance with the provisions of the Credit Agreement and this Deed

## **5.3 Assigned Assets**

Neither the Agent nor any Secured Party is obliged to take any steps necessary to preserve any Assigned Asset, or to make any enquiries as to the nature or sufficiency of any payment received by it pursuant to this Deed

## **5.4 Notices of charge or assignment**

The Security Obligor undertakes

- (a) immediately to serve a notice of charge on each bank or other financial institution with which it holds the Accounts substantially in the form agreed between the Security Obligor and the Agent prior to the date of this Deed,
- (b) promptly to serve such other notices of the Agent's interest in the Secured Assets on such persons as the Agent may require from time to time
- (c) to use its reasonable endeavours to procure that each notice served under paragraphs (a) to (b) (inclusive) above is acknowledged by the recipient thereof to the satisfaction of the Agent (acting reasonably)

## **6. FLOATING CHARGE**

The Security Obligor charges and agrees to charge by way of first floating charge all of its present and future

- 6.1 Assets, property and undertaking (of whatever nature and wherever located) which are not effectively charged by way of first fixed mortgage or charge or assigned

pursuant to clause 5 1 (*Fixed charges*) or clause 5 2 (*Security assignments*) other than any Excluded Property; and

6.2 (whether or not effectively so charged or assigned pursuant to clause 5 1 (*Fixed charges*) or clause 5 2 (*Security assignments*)) all other property and assets situated in Scotland.

6.3 Subject to section 464(2) of the Companies Act 1985 and without prejudice to any other provision of this Deed relating to the priority of securities

(a) the Security Obligor shall not create any fixed security or other floating charge over any part of the Charged Assets ranking in priority to or equally with the Floating Charge created under this clause 6 after its execution of this Deed except any fixed or floating security in favour of the Agent, and

(b) the floating charge created under this clause 6 shall rank in priority to any fixed security or other floating charge created by the Security Obligor after its execution of this Deed, except any fixed security in favour of the Agent.

## **7. CONVERSION OF FLOATING CHARGE**

### **7.1 Conversion by notice**

The Agent may, by written notice to the Security Obligor as regards all or any of the assets of the Security Obligor that are specified in the notice convert the floating charge created under this Deed into a fixed charge if

(a) an Event of Default has occurred and is continuing, or

(b) the Agent (acting reasonably) considers any Security Assets (whether or not those specified in the notice) to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy

### **7.2 Small companies**

The floating charge created under this Deed shall not convert into a fixed charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of any Security Obligor

### **7.3 Automatic conversion**

The floating charge created under this Deed shall (in addition to the circumstances in which the same will occur under general law) automatically convert into a fixed charge

(a) in relation to any Security Asset which is subject to a floating charge if

(i) the Security Obligor creates (or attempts or purports to create) any Lien (other than Permitted Encumbrances) on or over the relevant Security Asset without the prior written consent of the Agent, or

- (ii) subject to the terms of the Credit Agreement, any third party levies or attempts to levy any distress, execution, attachment or other legal process against any such Security Asset, and

- (b) over all Security Assets which are subject to a floating charge if an administrator is appointed in respect of the Security Obligor or the Agent receives notice of intention to appoint such an administrator

**7.4 Partial conversion**

The giving of a notice by the Agent pursuant to clause 7.1 (*Conversion by notice*) in relation to any class of assets of the Security Obligor shall not be construed as a waiver or abandonment of the rights of the Agent to serve similar notices in respect of any other class of assets or of any other right of any Security Obligor

**8. CONTINUING SECURITY**

**8.1 Continuing security**

The Security is continuing and will extend to the ultimate balance of the Obligations regardless of any intermediate payment or discharge in whole or in part. This Deed shall remain in full force and effect as a continuing security for the duration of the Security Period.

**8.2 Additional and separate security**

This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Lien which the Agent or any Secured Party may at any time hold for any Secured Obligation.

**8.3 Right to enforce**

This Deed may be enforced against the Security Obligor without the Agent or any Secured Party first having recourse to any other right, remedy, guarantee or Lien held by or available to it.

**9. LIABILITY OF SECURITY OBLIGOR RELATING TO SECURITY ASSETS**

Notwithstanding anything contained in this Deed or implied to the contrary, the Security Obligor remains liable to observe and perform all conditions and obligations assumed by it in relation to the Security Assets. The Agent is under no obligation to perform or fulfil any such condition or obligation or to make any payment in respect of any such condition or obligation.

**10. ACCOUNTS**

No monies at any time standing to the credit of any account (of any type and however designated) of the Security Obligor with the Agent or any Secured Party or in which the Security Obligor has an interest (and no rights and benefits relating thereto) shall be capable of being assigned to any third party, save as permitted under the Credit Agreement.

## **11. REPRESENTATIONS**

### **11.1 General**

The Security Obligor makes the representations and warranties set out in this clause 11 to the Agent.

### **11.2 No Liens**

Its Security Assets are, or when acquired will be free from any Lien other than

- (a) as created by this Deed, or
- (b) Permitted Encumbrances

### **11.3 No avoidance**

No Security expressed to be created under this Deed is liable to be avoided or otherwise set aside on the liquidation or administration of the Security Obligor or otherwise

### **11.4 Ownership of Security Assets**

The Security Obligor is the legal and beneficial owner of all the Security Assets identified in schedule 2 (*Details of Security Assets*) except in respect of those Charged Securities (if any) which are held by a nominee for the Security Obligor, in which case the Security Obligor is the beneficial owner only of such Charged Securities

### **11.5 Charged Securities**

All Securities (including any Charged Securities) are fully paid

### **11.6 Time when representations made**

- (a) All the representations and warranties in this clause 11 (*Representations*) are made by the Security Obligor on the date of this Deed and are also deemed to be made by the Security Obligor on the date of each Advance
- (b) Each representation or warranty deemed to be made after the date of this Deed shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made

## **12. UNDERTAKINGS BY SECURITY OBLIGOR**

### **12.1 Restrictions on dealing**

The Security Obligor shall not do or agree to do any of the following during the Security Period without the prior written consent of the Agent:

- (a) create or permit to subsist any Lien on any Security Assets except for Permitted Encumbrances,
- (b) sell, transfer, lease, lend or otherwise dispose of (whether by a single transaction or a number of transactions and whether related or not) the whole or any part of its interest in any Security Asset, except for the sale at full market value of stock in trade in the usual course of trading as conducted by the Security Obligor at the date of this Deed or any sale, transfer, lease lending or disposal permitted by the Credit Agreement.

## 12.2 Security Assets generally

The Security Obligor shall during the Security Period

- (a) permit the Agent (or its designated representatives), within business hours or at reasonable times or at any time following the occurrence of an Event of Default which is continuing
  - (i) access during normal office hours to any documents and records relating to the Security Assets, and
  - (ii) to inspect, take extracts from, and make photocopies of, the same,and to provide (at the expense of the Security Obligor), such clerical and other assistance which the Agent may reasonably require to do this and the Security Obligor hereby grants an irrevocable licence to the Agent for the Agent (and any of its employees, servants or agents) to enter upon any premises or location owned or under the control or authority of the Security Obligor at any time during normal business hours or reasonable times, unless an Event of Default has occurred, for confirming and ensuring (at the expense of the Security Obligor), the compliance by the Security Obligor with the terms of the Credit Agreement and the Other Documents, and for the purposes of the Agent's assessment and monitoring from time to time as it may require of the location, state, nature, and value of any Security Assets at that time,
- (b) notify the Agent of every notice, order, application, requirement or proposal given or made by any public body or authority
  - (i) in relation to any Security Asset specified in schedule 2 (*Details of Security Assets*), promptly upon receipt of the same, and
  - (ii) within 14 days of receipt of every notice, order, application, requirement or proposal given or made in relation to any Security Assets other than any Security Asset specified in schedule 2 (*Details of Security Assets*)

and (if required by the Agent) as soon as is reasonably practicable provide it with a copy of the same and either (A) comply with such notice, order, application, requirement or proposal or (B) make such objections to the same as the Agent may require or approve **PROVIDED ALWAYS** that notices in respect of limb (a) of the definition of Securities Rights shall be dealt with in accordance with clause 12.2(b)(i) above following the exercise by the Agent

of its rights in accordance with clause 12.4(b) (*Rights in respect of Securities Charged Securities and Securities Rights*),

- (c) when due for payment, pay all rates, rents, Taxes, and other outgoings owed by it in respect of the Security Assets unless and only to the extent that
  - (i) such payment is being contested in good faith and adequate reserves are being maintained for those Taxes and such reserves are (or will be) disclosed in its latest financial statements delivered by the Security Obligor under the Credit Agreement, and
  - (ii) any such payment is subject to a deferral or payment plan agreed with the relevant authorities, or
  - (iii) non-payment of any such payment does not (or will not) incur any material penalty or charge
- (d) in addition to any provisions of the Credit Agreement relating to the Security Assets
  - (i) comply in all material respects with all obligations in relation to the Security Assets under any present or future law, regulation, order or instrument or under any by-laws, regulations or requirements of any public body or authority or other approvals, licences or consents,
  - (ii) comply with all material covenants and material obligations affecting the Security Assets (or their manner of use),
  - (iii) not, except with the prior written consent of the Agent or as permitted by the Credit Agreement, enter into any onerous or restrictive obligation affecting any Security Asset,
  - (iv) provide the Agent with all information which it may reasonably request in relation to the Security Assets, and
  - (v) not do, cause or permit to be done anything which would in any way materially depreciate, jeopardise or otherwise prejudice the value or marketability of any Security Asset (or make any omission which has such an effect).

### **12.3 Charged Securities**

- (a) In relation to any Charged Securities, the Security Obligor shall, immediately upon execution of this Deed or (if later), as soon as is practicable after its acquisition of any such Charged Securities in certificated form, by way of security for the Obligations
  - (i) deposit with the Agent or, as the Agent may direct, all certificates and other documents of title or evidence of ownership to such Charged Securities and their Securities Rights, and
  - (ii) execute and deliver to the Agent instruments of transfer in respect of such Charged Securities (executed in blank and left undated) and/or such other documents as the Agent shall require to enable it (or its

nominees) to be registered as the owner of or otherwise to acquire a legal title to such Charged Securities and their Securities Rights (or to pass legal title to any purchaser)

- (b) In relation to any Charged Securities, the Security Obligor shall
  - (i) promptly give notice to any custodian of any agreement with that Security Obligor in respect of any such Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities, in a form the Agent may require, and
  - (ii) use its reasonable endeavours to ensure that the custodian acknowledges that notice in a form the Agent may require
- (c) Without prejudice to the rest of this clause 12.3 (*Charged Securities*), the Agent may, at the expense of the Security Obligor, take whatever action is required for the dematerialisation or rematerialisation of any Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities
- (d) The Security Obligor shall promptly pay all calls or other payments which may become due in respect of Charged Securities and all present and future Securities Rights accruing to all or any of such Charged Securities
- (e) The Security Obligor shall immediately upon request by the Agent (acting reasonably) comply with the provisions of this clause 12.3 (*Charged Securities*) in relation to any Securities other than the Charged Securities and their Securities Rights

**12.4 Rights in respect of Securities Charged Securities and Securities Rights**

- (a) Until an Event of Default occurs and is continuing, the Security Obligor shall be entitled to
  - (i) receive and retain all dividends, distributions and other monies paid on or derived from its Securities and its Charged Securities, and
  - (ii) exercise all voting and other rights and powers attaching to its Securities and its Charged Securities, provided that it must not do so in a manner which (A) has the effect of changing the terms of the Securities or the Charged Securities (or any class of them) or of any Securities Rights or (B) which is prejudicial to the interests of the Agent
- (b) At any time following the occurrence of an Event of Default which is continuing, the Agent may complete the instrument(s) of transfer for all or any Securities or Charged Securities on behalf of any Security Obligor in favour of itself or such other person as it may select
- (c) At any time when any Securities or Charged Securities are registered in the name of the Agent or its nominee, the Agent shall be under no duty to

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- (i) ensure that any dividends, distributions or other monies payable in respect of such Securities or Charged Securities are duly and promptly paid or received by it or its nominee, or
  - (ii) verify that the correct amounts are paid or received, or
  - (iii) take any action in connection with the taking up of any (or any offer of any) Securities Rights in respect of or in substitution for any such Securities or Charged Securities

#### **12.5 Dealings with and realisation of Receivables**

The Security Obligor shall only deal with its Receivables and the proceeds thereof in accordance with the Credit Agreement

#### **12.6 Intellectual Property**

Unless the Agent is of the opinion (acting reasonably) that the relevant Intellectual Property is of minor importance to the business of the Security Obligor, the Security Obligor shall during the Security Period

- (a) do all acts as are reasonably practicable to maintain, protect and safeguard (including, without limitation, registration with all relevant authorities) the Intellectual Property necessary for its business and not discontinue the use of any of Intellectual Property necessary for its business;
- (b) not, in carrying on its businesses, knowingly infringe any Intellectual Property Rights of any third party in any respect which has or is reasonably likely to cause a Material Adverse Effect, and
- (c) take all such reasonable steps, including the commencement of legal proceedings, as may be necessary to safeguard and maintain the validity, reputation, integrity, registration or subsistence of Intellectual Property necessary for its business

#### **12.7 Proceeds of the sale of certain Charged Securities, P&M, Real Property and Intellectual Property**

The Security Obligor undertakes to deal with the proceeds of sale of Specified Real Property, Specified P&M, P&M, Real Property, Charged Securities and Intellectual Property in accordance with the terms of the Credit Agreement.

### **13. POWER TO REMEDY**

#### **13.1 Power to remedy**

If at any time the Security Obligor does not comply with any of its obligations under this Deed within 5 Business Days of the Security Obligor becoming aware of such breach or the date upon which the Agent has notified the Security Obligor of such breach (whichever is the earlier), the Agent (without prejudice to any other rights arising as a consequence of such non-compliance) shall be entitled (but not bound) to rectify that default. The Security Obligor irrevocably authorises the Agent and its employees and agents by way of security to do all things (including entering the property of the Security Obligor) which are necessary to rectify that default.

**13.2 Mortgagee in possession**

The exercise of the powers of the Agent under this clause-13 (*Power to Remedy*) shall not render it nor any Secured Party liable as a mortgagee in possession

**13.3 Monies expended**

The Security Obligor shall pay to the Agent on demand any monies which are properly expended by the Agent in exercising its powers under this clause 13 (*Power to Remedy*), together with interest at the Default Rate from the date on which those monies were expended by the Agent (both before and after judgment) and otherwise in accordance with clause 3 2 (*Default interest*)

**14. WHEN SECURITY BECOMES ENFORCEABLE**

**14.1 When enforceable**

The Security shall become immediately enforceable upon the occurrence of an Event of Default and shall remain so for so long as such Event of Default is continuing

**14.2 Statutory powers**

The power of sale and other powers conferred by section 101 of the Act (as amended or extended by this Deed) shall be immediately exercisable upon and at any time after the occurrence of any Event of Default and for so long as such Event of Default is continuing

**14.3 Enforcement**

After the Security constituted by this Deed has become enforceable, the Agent may subject to the terms of the Credit Agreement, enforce all or any part of the Security in such manner as it sees fit

**15. ENFORCEMENT OF SECURITY**

**15.1 General**

For the purposes of all powers implied by statute, the Obligations are deemed to have become due and payable on the date of this Deed Sections 93 and 103 of the Act shall not apply to the Security The statutory powers of leasing conferred on the Agent are extended so as to authorise the Agent to lease, make agreements for leases, accept surrenders of leases and grant options as the Agent may think fit and without the need to comply with section 99 or 100 of the Act

**15.2 Powers of the Agent**

(a) At any time after the Security constituted by this Deed become enforceable, the Agent may without further notice (unless required by law)

(i) (or, if so requested, by written notice at any time may) appoint any person or persons to be a Receiver of all or any part of the Security Assets and/or of the income of the Security Assets, and/or

- (ii) appoint or apply for the appointment of any person who is appropriately qualified as administrator of the Security Obligor; and/or
  - (iii) exercise all or any of the powers conferred on mortgagees by the Act (as amended or extended by this Deed) and/or all or any of the powers which are conferred by this Deed on a Receiver, in each case without first appointing a Receiver or notwithstanding the appointment of any Receiver, and/or
  - (iv) exercise (in the name of the Security Obligor and without any further consent or authority of the Security Obligor) any voting rights and any powers or rights which may be exercised by the person(s) in whose name the Charged Securities and any Securities Rights in relation to them are registered, or who is the holder of any of them
- (b) The Agent is not entitled to appoint a Receiver in respect of any Security Assets of the Security Obligor which are subject to a charge which (as created) was a floating charge solely by reason of a moratorium being obtained under the Insolvency Act 2000 (or anything done with a view to obtaining such a moratorium) in respect of the Security Obligor

#### **15.3 Redemption of prior mortgages**

At any time after the Security constituted by this Deed has become enforceable, the Agent may

- (a) redeem any prior Lien against any Security Asset, and/or
- (b) procure the transfer of that Lien to itself, and/or
- (c) settle and pass the accounts of the holder of any prior Lien and any accounts so settled and passed shall be conclusive and binding on the Security Obligor

All principal, interest, costs, charges and expenses of and incidental to any such redemption and/or transfer shall be paid by the Security Obligor to the Agent on demand

#### **15.4 Privileges**

Each Receiver and the Agent is entitled to all the rights, powers, privileges and immunities conferred by the Act on mortgagees and receivers when such receivers have been duly appointed under the Act, except that section 103 of the Act does not apply

#### **15.5 No liability**

- (a) None of the Agent, a Secured Party or any Receiver shall be liable (i) in respect of all or any part of the Security Assets or (ii) for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, its or his respective powers (unless such loss or damage is caused by its or his gross negligence or wilful misconduct)

- (b) Without prejudice to the generality of clause 15.5(a), none of the Agent, a Secured Party or any Receiver shall be liable, by reason of entering into possession of a Security Asset, to account as mortgagee in possession or for any loss on realisation or for any default or omission for which a mortgagee in possession might be liable

#### **15.6 Protection of third parties**

No person (including a purchaser) dealing with the Agent or any Receiver or its or his agents will be concerned to enquire

- (a) whether the Obligations have become payable, or
- (b) whether any power which the Agent or the Receiver is purporting to exercise has become exercisable, or
- (c) whether any money remains due under the Credit Agreement or any Other Document, or
- (d) how any money paid to the Agent or to the Receiver is to be applied

### **16. RECEIVER**

#### **16.1 Removal and replacement**

The Agent may from time to time remove any Receiver appointed by it (subject, in the case of an administrative receivership, to section 45 of the Insolvency Act 1986) and, whenever it may deem appropriate, may appoint a new Receiver in the place of any Receiver whose appointment has terminated

#### **16.2 Multiple Receivers**

If at any time there is more than one Receiver of all or any part of the Security Assets and/or the income of the Security Assets, each Receiver shall have power to act individually (unless otherwise stated in the appointment document)

#### **16.3 Remuneration**

Any Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Agent (or, failing such agreement, to be fixed by the Agent)

#### **16.4 Payment by Receiver**

Only monies actually paid by a Receiver to the Agent in relation to the Obligations shall be capable of being applied by the Agent in discharge of the Obligations

#### **16.5 Agent of Security Obligor**

Any Receiver shall be the agent of the Security Obligor in respect of which it is appointed. Such Security Obligor shall (subject to the Companies Act 2006 and the Insolvency Act 1986) be solely responsible for his acts and defaults and for the payment of his remuneration. Neither the Agent nor any Secured Party shall incur any liability (either to the Security Obligor or to any other person) by reason of the

appointment of a Receiver or for any other reason (unless the liability arises as a result of that party's gross negligence or wilful misconduct)

## **17. POWERS OF RECEIVER**

### **17.1 General powers**

Any Receiver shall have

- (a) all the powers which are conferred by the Act on mortgagees in possession and receivers appointed under the Act,
- (b) (whether or not he is an administrative receiver) all the powers which are listed in schedule 1 of the Insolvency Act 1986, and
- (c) all powers which are conferred by any other law conferring power on receivers

### **17.2 Additional powers**

In addition to the powers referred to in clause 17.1 (*General powers*), a Receiver shall have the following powers

- (a) to take possession of, collect and get in all or any part of the Security Assets and/or income in respect of which he was appointed,
- (b) to manage the Security Assets and the business of the Security Obligor as he thinks fit,
- (c) to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Obligations for the purpose of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise,
- (d) to sell or concur in selling, leasing or otherwise disposing of all or any part of the Security Assets in respect of which he was appointed without the need to observe the restrictions imposed by section 103 of the Act. Fixtures may be severed and sold separately from the Real Property containing them, without the consent of the Security Obligor. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration (and the amount of such consideration may be dependent upon profit or turnover or be determined by a third party). Any such consideration may be payable in a lump sum or by instalments spread over such period as he thinks fit,
- (e) to alter, improve, develop, complete, construct, modify, refurbish or repair any building or land and to complete or undertake or concur in the completion or undertaking (with or without modification) of any project in which the Security Obligor was concerned or interested before his appointment (being a project for the alteration, improvement, development, completion, construction, modification, refurbishment or repair of any building or land),

- (f) to carry out any sale, lease or other disposal of all or any part of the Security Assets by conveying, transferring, assigning or leasing the same in the name of the Security Obligor and, for that purpose, to enter into covenants and other contractual obligations in the name of, and so as to bind, the Security Obligor,
- (g) to take any such proceedings (in the name of any the Security Obligor or otherwise) as he shall think fit in respect of the Security Assets and/or income in respect of which he was appointed (including proceedings for recovery of rent or other monies in arrears at the date of his appointment),
- (h) to enter into or make any such agreement, arrangement or compromise as he shall think fit,
- (i) to insure, and to renew any insurances in respect of, the Security Assets as he shall think fit (or as the Agent shall direct),
- (j) to appoint and employ such managers, officers and workmen and engage such professional advisers as he shall think fit (including, without prejudice to the generality of the foregoing power, to employ his partners and firm),
- (k) to form one or more Subsidiaries of the Security Obligor, and to transfer to any such Subsidiary all or any part of the Security Assets,
- (l) to operate any rent review clause in respect of any Real Property in respect of which he was appointed (or any part thereof) and to apply for any new or extended lease, and
- (m) to
  - (i) give valid receipts for all monies and to do all such other things as may seem to him to be incidental or conducive to any other power vested in him or necessary or desirable for the realisation of any Security Asset,
  - (ii) exercise in relation to each Security Asset all such powers and rights as he would be capable of exercising if he were the absolute beneficial owner of the Security Assets, and
  - (iii) use the name of the Security Obligor for any of the above purposes

## 18. APPLICATION OF PROCEEDS

### 18.1 Application

Subject to the terms of the Credit Agreement, all monies received by the Agent or any Receiver after the Security has become enforceable shall (subject to the rights and claims of any person having a security ranking in priority to the Security) be applied in the following order

- (a) *first*, in satisfaction of, or provision for, all costs, charges and expenses incurred, and payments made by the Agent, a Secured Party or any Receiver and of all remuneration due to the Receiver in connection with this Deed or the Security Assets,

(b) *secondly*, in or towards satisfaction of the remaining Obligations in accordance with the Credit Agreement, and

(c) *thirdly*, in payment of any surplus to the Security Obligor or other person entitled to it

#### **18.2 Contingencies**

If the Security is enforced at a time when no amounts are due under the Credit Agreement or any Other Documents (but at a time when amounts may become so due), the Agent or a Receiver may pay the proceeds of any recoveries effected by it into a blocked suspense account

### **19. SET-OFF**

#### **19.1 Set-off**

(a) The Agent may (but shall not be obliged to) set off any obligation (contingent or otherwise under the Credit Agreement or any Other Documents or which has been assigned to the Agent) against any obligation (whether or not matured) owed by the Agent to the Security Obligor, regardless of the place of payment, booking branch or currency of either obligation

(b) If the obligations are in different currencies, the Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off

(c) If either obligation is unliquidated or unascertained, the Agent may set off in an amount estimated by it in good faith to be the amount of that obligation

#### **19.2 Time deposits**

Without prejudice to clause 19.1 (*Set-off*) if at any time a deposit matures on any account which the Security Obligor has with the Agent or a Secured Party at a time when

(a) the Security constituted by this Deed has become enforceable, and

(b) no Secured Obligation is due and payable,

such deposit shall automatically be renewed for such further maturity as the Agent or such Secured Party in its absolute discretion considers appropriate unless the Agent or such Secured Party otherwise agrees in writing

### **20. DELEGATION**

Each of the Agent and any Receiver may delegate, by power of attorney (or in any other manner) to any person, any right, power or discretion exercisable by it under this Deed upon any terms (including power to sub-delegate) which it may think fit. Neither the Agent nor any Receiver shall be in any way liable or responsible to the Security Obligor for any loss or liability arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate unless such loss or liability arises as a result of the gross negligence or wilful misconduct of the Agent and/or the Receiver (as appropriate) in making such appointment.

## **21. FURTHER ASSURANCES**

### **21.1 Further action**

The Security Obligor shall, at its own expense, promptly take whatever action the Agent or a Receiver may reasonably require for

- (a) creating, perfecting or protecting the Security intended to be created by this Deed, and
- (b) facilitating the realisation of any Security Asset or the exercise of any right, power or discretion exercisable by the Agent or any Receiver or any of its or his delegates or sub-delegates in respect of any Security Asset,

including the execution of any transfer, conveyance, assignment or assurance of any property whether to the Agent or to its nominees, the giving of any notice, order or direction and the making of any registration which in any such case the Agent may think expedient

### **21.2 Specific security**

Without prejudice to the generality of clause 21.1 (*Further action*), the Security Obligor shall forthwith at the reasonable request of the Agent execute a legal mortgage, charge, assignment, assignation or other security over any Security Asset which is subject to or intended to be subject to any fixed security created by this Deed in favour of the Agent (including any arising or intended to arise pursuant to clause 7 (*Conversion of floating charge*)) in such form as the Agent may reasonably require on terms no more onerous than those provided for in this Deed

## **22. POWER OF ATTORNEY**

- (a) The Security Obligor, by way of security, irrevocably and severally appoints the Agent, each Receiver and any of its or his delegates or sub-delegates to be its attorney to take any action which the Security Obligor is obliged to take under this Deed, including under clause 21 (*Further assurances*)
- (b) The Security Obligor ratifies and confirms whatever any attorney lawfully does or purports to do pursuant to its appointment under this clause

## **23. PAYMENTS**

### **23.1 Payments**

Subject to clause 23.2 (*Gross-up*), all payments to be made by the Security Obligor in respect of this Deed shall be made

- (a) in immediately available funds to the credit of such account as the Agent may designate, and
- (b) without (and free and clear of, and without any deduction for or on account of)
  - (i) any set-off or counterclaim, or

- (ii) except to the extent compelled by law, any deduction or withholding for or on account of Tax, other than any Excluded Tax

**23.2 Gross-up**

If the Security Obligor is compelled by law to make any deduction or withholding from any sum payable under this Deed to the Agent, the sum so payable by the Security Obligor shall be increased so as to result in the receipt by the Agent of a net amount equal to the full amount expressed to be payable under this Deed

**23.3 Credit Agreement**

Without prejudice to the Security Obligor's obligations under this Deed, but subject in all respects to the terms of the Credit Agreement, the Agent may at any time discharge the Security Obligor's obligation to make payment of any sums due by any Borrower to the Agent by debiting such sum to any account held by the Agent (in whatever capacity) in relation to the Security Obligor

**24. STAMP DUTY**

The Security Obligor shall

- (a) pay all Other Taxes or charges which may be payable, or determined to be payable, in connection with the execution, delivery, performance or enforcement of this Deed or any judgment given in connection therewith, to the extent that such Taxes are not Excluded Taxes, and
- (b) indemnify the Agent and any Receiver on demand against any and all reasonable costs, losses or liabilities (including, without limitation, penalties) incurred with respect to, or resulting from, its delay or omission to pay any such Taxes or charges

**25. COSTS AND EXPENSES**

**25.1 Transaction and amendment expenses**

Subject to the terms of the Credit Agreement, the Security Obligor shall promptly on demand pay to the Agent the amount of all reasonable costs, charges and expenses (including, without limitation, reasonable legal fees, valuation, accountancy and consultancy fees (and any VAT or similar Tax thereon)) reasonably incurred by the Agent or a Secured Party in connection with

- (a) the negotiation, preparation, printing, execution, registration, perfection and completion of this Deed, the Security or any document referred to in this Deed, or
- (b) any actual or proposed amendment or extension of, or any waiver or consent under, this Deed

**25.2 Enforcement and preservation costs**

The Security Obligor shall promptly on written demand pay to the Agent and any Receiver the amount of all costs, charges and expenses (including (without limitation) legal fees (and any VAT or similar Tax thereon)) properly incurred by any of them in

connection with the enforcement, exercise or preservation (or the attempted enforcement, exercise or preservation) of any of their respective rights under this Deed or any document referred to in this Deed or the Security (including all remuneration of the Receiver).

## **26. CURRENCIES**

### **26.1 Conversion**

All monies received or held by the Agent or any Receiver under this Deed may be converted from their existing currency into such other currency as the Agent or the Receiver considers necessary to cover the obligations and liabilities comprised in the Obligations in that other currency at the spot rate of exchange of the Agent on the date of such debit or credit. The Security Obligor shall indemnify the Agent against all reasonable costs, charges and expenses incurred in relation to such conversion. Neither the Agent nor any Receiver shall have any liability to any Security Obligor in respect of any loss resulting from any fluctuation in exchange rates after any such conversion.

### **26.2 Currency indemnity**

No payment to the Agent (whether under any judgment or court order or in the liquidation, administration or dissolution of the Security Obligor or otherwise) shall discharge the obligation or liability of the Security Obligor in respect of which it was made, unless and until the Agent shall have received payment in full in the currency in which the obligation or liability was incurred and, to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability expressed in that currency, the Agent shall have a further separate cause of action against the Security Obligor and shall be entitled to enforce the Security to recover the amount of the shortfall.

## **27. INDEMNITY**

The Security Obligor shall indemnify the Agent and any Receiver and any attorney, agent or other person appointed by the Agent under this Deed and the Agent's officers and employees (each an "**Indemnified Party**") on demand against any cost, loss, liability or expense (however arising) incurred by any Indemnified Party as a result of or in connection with

- (a) anything done or omitted in the exercise or purported exercise of the powers contained in this Deed,
- (b) taking, holding, perfecting, preserving or enforcing, or attempting to do so, the Security Assets, or
- (c) any breach by the Security Obligor of any of its obligations under this Deed.

## **28. MISCELLANEOUS**

### **28.1 Appropriation and suspense account**

- (a) The Agent may apply all payments received in respect of the Obligations in reduction of any part of the Obligations as it thinks fit. Any such

appropriation shall override any purported appropriation by the Security Obligor

- (b) All monies received, recovered or realised by the Agent under, or in connection with, this Deed may at the discretion of the Agent be credited to a separate interest bearing suspense account for so long as the Agent determines (with interest accruing thereon at such rate, if any, as the Agent may determine for the account of the Security Obligor) without the Agent having any intermediate obligation to apply such monies and interest or any part thereof in or towards the discharge of any of the Obligations

#### **28.2 New accounts**

If any of the Agent or a Secured Party receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent Lien affecting any Security Asset and/or the proceeds of sale of any Security Asset, it may open a new account or accounts for the Security Obligor. If it 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 to the Agent or such Secured Party will be credited or be treated as having been credited to the new account and will not operate to reduce any amount of the Obligations

#### **28.3 Changes to the Parties**

- (a) The Security Obligor may not assign any of its rights under this Deed
- (b) Subject to section 16.3 (*Successors and Assigns, Participations, New Lenders*) of the Credit Agreement, the Agent may assign or transfer all or any part of its rights under this Deed. The Security Obligor shall, promptly upon being requested to do so in writing by the Agent, enter into such documents as may be necessary to effect such assignment or transfer

#### **28.4 Tacking**

- (a) The Agent shall perform its obligations under the Credit Agreement (including any obligation to make available further advances)
- (b) This Deed secures advances already made and further advances to be made

#### **28.5 The Land Registry**

If the Security Obligor has any Specified Real Property the following provisions shall apply

- (a) the Security Obligor shall apply to the Chief Land Registrar (and consents to such an application being made by or on behalf of the Agent) for a restriction in the following terms to be entered on the Register of Title relating to any property registered at the Land Registry (or any unregistered land subject to first registration) and against which this Deed may be noted

*"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by the proprietor for the time being of the charge dated 2014 in favour of PNC Bank, National Association as Agent*

*referred to in the charges register or, if appropriate, signed on such proprietor's behalf by its secretary or conveyancer "*

- (b) the Security Obligor
  - (i) authorises the Agent to make any application which the Agent deems appropriate for the designation of this Deed, the Credit Agreement or any Other Document as an exempt information document under rule 136 of the Land Registration Rules 2003;
  - (ii) shall use its reasonable endeavours to assist with any such application made by or on behalf of the Agent, and
  - (iii) shall notify the Agent in writing as soon as reasonably practicable upon receiving notice of any person's application under rule 137 of the Land Registration Rules 2003 for the disclosure of this Deed, the Credit Agreement or any Other Document, following its designation as an exempt information document,
- (c) the Security Obligor shall not, without the prior written consent of the Agent, make any application under rule 138 of the Land Registration Rules 2003 for the removal of the designation of any such document as an exempt information document,
- (d) the Security Obligor shall promptly make all applications to and filings with the Land Registry which are necessary or desirable under the Land Registration Rules to protect the Security, and
- (e) the Security Obligor shall not, without the prior written consent of the Agent, permit any person to be or become registered under the Land Registration Act 2002 as the proprietor of a Security Asset who is not so registered under the Land Registration Act 2002 at the date of this Deed or, in the case of Real Property acquired after the date of this Deed, at the date of such acquisition

#### **28.6 Right of appropriation**

Without prejudice to any other rights and remedies under this Deed, to the extent that any of the Security Assets constitutes "financial collateral" and are subject to a legal or equitable mortgage or other Security under this Deed which is or forms part of a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003 No 3226) (the "Regulations")), the Agent shall also have the right at any time while an Event of Default is continuing to appropriate all or any part of such financial collateral in or towards discharge of the Obligations. For this purpose, the parties agree that the value of such financial collateral so appropriated shall be

- (a) in the case of cash, the amount standing to the credit of the relevant account, together with accrued but unposted interest, at the time the right of appropriation is exercised, and
- (b) in the case of Securities, the market price of such Securities at such time as determined by the Agent (acting reasonably) by reference to a relevant public index or by such other process as the Agent may select, including independent valuation

In each case, the parties agree that the method of valuation provided for in this Deed shall constitute a commercially reasonable method of valuation for the purpose of the Regulations

**28.7 Amendments**

Any provision of this Deed may be amended only if the Agent and the Security Obligor so agree in writing and any breach of this Deed may be waived before or after it occurs only if the Agent so agrees in writing. A waiver given or consent granted by the Agent under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

**28.8 Calculations and certificates**

A certificate of the Agent specifying the amount of any Secured Obligation due from the Security Obligor (including details of any relevant calculation thereof) shall be prima facie evidence of such amount against the Security Obligor in the absence of manifest error.

**28.9 Waiver, rights and remedies**

No failure to exercise, nor any delay in exercising, on the part of the Agent, any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided are cumulative and not exclusive of any rights or remedies provided by law.

**29. NOTICES**

**29.1 Section 16.6 of the Credit Agreement**

Section 16.6 (Notices) of the Credit Agreement shall apply to all notices delivered under this Deed as if those provisions were set out mutatis mutandis herein.

**30. PARTIAL INVALIDITY**

All the provisions of this Deed are severable and distinct from one another and if at any time any provision is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of any of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**31. RELEASE**

Upon the expiry of the Security Period (but not otherwise) the Agent shall, promptly after the request and at the cost of the Security Obligor, take whatever action is necessary to unconditionally and irrevocably release and/or re-assign (without recourse or warranty) the Security Assets from the Security and return all deeds and documents of title delivered to the Agent under this Deed and execute and deliver any other documents as the Security Obligor may reasonably require in order to give effect to this clause 31 (*Release*).

**32. COUNTERPARTS**

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

**33. GOVERNING LAW**

**33.1 Governing law**

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

**33.2 Jurisdiction of English courts**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a "**Dispute**")
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary
- (c) This paragraph 33 is for the benefit of the Agent only. As a result, the Agent shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Agent may take concurrent proceedings in any number of jurisdictions

**IN WITNESS** of which this Deed has been duly executed by the Agent and the Security Obligor as a deed and has been delivered on the first date specified on page 1 of this Deed

## SCHEDULE 1

### ~~The Guarantee~~

#### 1. Continuing guarantee

The guarantee set out in clause 2 (*Guarantee and Indemnity*) and this schedule 1 (*The Guarantee*) is a continuing guarantee and will extend to the ultimate balance of sums payable by each Borrower under the Credit Agreement and Other Documents, regardless of any intermediate payment or discharge in whole or in part

#### 2. Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Borrower or any security for those obligations or otherwise) is made by the Agent in whole or in part on the basis of any payment, security or other disposition, which is avoided or must be restored in insolvency, or any other similar event, then the liability of the Security Obligor under this schedule 1 (*The Guarantee*) shall continue or be reinstated as if the discharge, release or arrangement had not occurred

#### 3. Waiver of defences

The obligations of the Security Obligor under this schedule 1 (*The Guarantee*) will not be affected by any act, omission, matter or thing which, but for this schedule 1 (*The Guarantee*), would reduce, release or prejudice any of its obligations under this schedule 1 (*The Guarantee*) (without limitation and whether or not known to it or to the Agent) including

- (a) any time, waiver or consent granted to, or composition with, the Security Obligor or other person,
- (b) the release of any other Borrower or any other person under the terms of any composition or arrangement with any creditor of any Borrower,
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Security Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security,
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Security Obligor or any other person,
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise), restatement or replacement (in each case, however fundamental and of any nature whatsoever including, without limitation, which results in any increase in any amount due or owing under the Credit Agreement or any Other Document or in the rate of interest or any other sum payable under the Credit Agreement or relevant Other Document) of the Credit Agreement or any Other Document or any other document or security,
- (f) any unenforceability, illegality or invalidity of any obligation of any person under the Credit Agreement or any Other Document or any other document or security, or
- (g) any insolvency, administration or similar proceedings

**4. Immediate recourse**

The Security Obligor waives any right it may have of first requiring the Agent to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Security Obligor under this schedule 1 (*The Guarantee*). This waiver applies irrespective of any law or any provision of the Credit Agreement or any Other Document to the contrary.

**5. Appropriations**

Until all amounts which may be or become payable during the Security Period by the Borrowers under or in connection with the Credit Agreement and the Other Documents have been irrevocably paid in full, the Agent may

- (a) refrain from applying or enforcing any other monies, security or rights held or received by the Agent in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and the Security Obligor shall not be entitled to the benefit of the same, and
- (b) hold in an interest-bearing suspense account any monies received from the Security Obligor or on account of the Security Obligor's liability under this schedule 1 (*The Guarantee*)

**6. Deferral of guarantors' rights**

Until all amounts which may be or become payable during the Security Period by the Security Obligor under, or in connection with, the Credit Agreement and the Other Documents have been irrevocably paid in full and unless the Agent otherwise directs, the Security Obligor will not exercise any rights which it may have by reason of performance by it of its obligations under the Credit Agreement and the Other Documents

- (a) to be indemnified by any Borrower,
- (b) to claim any contribution from any other guarantor of any Borrower's obligations under the Credit Agreement and/or the Other Documents, and/or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Agent under the Credit Agreement or any Other Documents or of any other guarantee or security taken pursuant to, or in connection with, the Credit Agreement or any Other Documents by the Agent

**7. Additional security**

This guarantee is in addition to, and is not in any way prejudiced by, any other guarantee or security at the date of this guarantee or subsequently held by the Agent

**SCHEDULE 2**

**Details of Security Assets**

**Part 1 - Specified Real Property**

None at the date of this Deed

**Part 2 - Specified P&M**

None at the date of this Deed

**Part 3- Charged Securities**

None at the date of this Deed

**Part 4 - Intellectual Property**

None at the date of this Deed


**Part 5 – Insurances**

None at the date of this Deed

EXECUTION PAGE

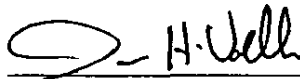
AGENT

Executed as a deed, but not delivered until the )  
first date specified on page 1, by PNC BANK )  
NATIONAL ASSOCIATION (for itself and in )  
its capacity as Agent) acting by )  
Anita Inkollu, a Vice President, )

  
Vice President

in the presence of

Witness signature:



Witness name:

James H. Uebelker

Witness address:

Holland & Knight LLP  
200 Crescent Court, Ste. 1600  
Dallas, TX 75201

SECURITY OBLIGOR

SIGNED as a deed, but not delivered until the )  
first date specified on page 1 by HAMILTON )  
METALS UK LIMITED acting by )

\_\_\_\_\_  
Director

\_\_\_\_\_  
a director, in the presence of

Witness signature:

\_\_\_\_\_

Witness name:

\_\_\_\_\_

Witness address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EXECUTION PAGE

AGENT

Executed as a deed, but not delivered until the )  
first date specified on page 1, by PNC BANK )  
NATIONAL ASSOCIATION (for itself and in )  
its capacity as Agent) acting by ) Vice President  
Anita Inkollu, a Vice President, )

in the presence of

Witness signature: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECURITY OBLIGOR

SIGNED as a deed, but not delivered until the )  
first date specified on page 1 by HAMILTON )  
METALS UK LIMITED acting by )  
\_\_\_\_\_, ) Director  
a director, in the presence of *JOHN GUNN*

Witness signature: *Mary Gauss*

Witness name: *Mary Gauss*

Witness address: *1902 Mossy Path Ln*  
*Katy TX 77494*  
\_\_\_\_\_  
\_\_\_\_\_