

# MR01

## Particulars of a charge

645984/13



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 the charge  
is evidenced by an instrument. Use form MR02

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TUESDAY



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LD2 21/05/2013 #86  
COMPANIES HOUSE

Please return  
via  
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This form **must be delivered to the Registrar for registration**  
**21 days** beginning with the day after the date of creation of the charge.  
If the form is 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.  
The instrument must be scanned and placed on the public record.

### 1 Company details

Company number 8 3 8 2 3 8 4  
Company name in full OCCW (Duncanziemere) Limited (the "Chargor")

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 05 20 05 12 10 11 13

### 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 Aardvark TMC Limited (in liquidation)  
(the "Company")

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

# MR01

## Particulars of a 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

#### Land

Capitalised terms used and not otherwise defined in this Form MR01 are defined in the Debenture dated 15 May 2013 between the Chargor, the Liquidator and the Company (the "Debenture")

The Chargor charged.

- (a) by way of legal mortgage its interest in the Land referred to in Schedule 1 (Land charged by way of legal mortgage) of the Debenture, and
- (b) by way of fixed charge any right, title or interest which it has now or may subsequently acquire to or in any other Land

Land is defined in the Debenture

Please see Continuation page for further details

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### 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

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### 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)

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**Signature**

Please sign the form here

Signature

Signature

X *Denton UKTEA 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 C Lynch Jankes 58058 00582

Company name Dentons UKMEA LLP

Address One Fleet Place

Post town London

County/Region

Postcode E C 4 M 7 W S

Country

DX

Telephone 020 7242 1212



### 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)**

## MR01 - continuation page

### Particulars of a 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

Description

#### Intellectual Property

The Chargor charged by way of fixed charge its  
Intellectual Property

**Intellectual Property** is defined in the Debenture



**FILE COPY**

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

Company number: 8382384

Charge code: 0838 2384 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 15th May 2013 and created by OCCW (DUNCANZIEMERE) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 21st May 2013

Given at Companies House, Cardiff on 5th June 2013



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

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**DENTONS**

## Debenture

Dated 15 May 2013

**OCCW (Duncanziemere) Limited**  
(the Chargor)

**Aardvark TMC Limited (in liquidation)**  
(the Company (acting by its liquidators))

**The Liquidators**

Dentons UKMEA LLP  
One Fleet Place  
London EC4M 7WS  
United Kingdom  
DX 242

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## Debenture

Dated 15 May 2013

### Between

- (1) **OCCW (Duncanziemere) Limited**, a company incorporated under the laws of England and Wales with registered number 8382384 having its registered office at Aardvark House, Sidings Court, Doncaster, South Yorkshire, England, DN4 5NU (the **Chargor**),
- (2) **Aardvark TMC Limited (in liquidation)**, a company incorporated under the laws of England and Wales with registered number 3374330, whose registered office is at Aardvark House, Sidings Court, Doncaster, South Yorkshire, England, DN4 5NU (the **Company**), acting by its Liquidators, Mr Mark Granville Firmin, Mr Brian Green and Mr Howard Smith of KPMG LLP (the **Liquidators**), and
- (3) **The Liquidators**

### Recitals

- A The Liquidators were appointed as liquidators of the Chargor on 15 May 2013 by a resolution of the Chargor's members
- B By an order of the Court dated that same day, the Liquidators were granted the power to execute documents in the name of the Chargor
- C The Parties have agreed the Company shall sell and the Chargor shall buy certain assets of the Company on the terms and for the consideration set out in the SPA
- D The Chargor has agreed to provide Security to the Company to secure the payment and discharge of the Secured Liabilities

### This deed witnesses

#### 1 Definitions and interpretation

##### 1.1 Definitions

Words and expressions defined in the SPA have the same meanings in this Debenture unless they are expressly defined in it and, in addition, in this Debenture

**Act** means the Law of Property Act 1925

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

**Equipment** means all fixed and moveable plant, machinery, tools, vehicles, computers and office and other equipment and the benefit of all related Authorisations, agreements and warranties

**Insurance** means each contract or policy of insurance to which the Chargor is a party or in which it has an interest

**Intellectual Property means**

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, knowhow and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered, and
- (b) the benefit of all applications and rights to use such assets of the Chargor (which may now or in the future subsist)

**Investments means**

- (a) all or any stocks, shares, bonds and securities of any kind (marketable or otherwise), negotiable instruments and warrants and any other financial instruments (as defined in the Regulations), and
- (b) all allotments, accretions, offers, options, rights, bonuses, benefits and advantages, whether by way of conversion, redemption, preference, option or otherwise which at any time accrue to or are offered or arise in respect of them,

and includes all dividends, interest and other distributions paid or payable on or in respect of them

**Land** has the same meaning as it has in section 205(1) of the Act

**Party** means a party to this Debenture

**Price** has the meaning given to it under the SPA

**Receiver** means a receiver appointed pursuant to this Debenture or any applicable law, whether alone or jointly, and includes a receiver and/or manager and, if the Company is permitted by law to appoint an administrative receiver, includes an administrative receiver

**Regulations** means the Financial Collateral Arrangements (No 2) Regulations 2003 (S I 2003/3226) or equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements, and **Regulation** means any of them

**Secured Liabilities** means the obligations and liabilities of the Chargor to the Company under or pursuant to the SPA

**Security** means a mortgage, charge, pledge, lien, assignment by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect

**Security Assets** means all of the assets of the Chargor which are the subject of any Security created or to be created by this Debenture

**SPA** means the agreement dated on or around the date of this Debenture between the Company (acting by its Liquidators), the Liquidators and the Chargor for the sale and purchase of certain assets of the Company relating to the Company's Duncanziemere site

## 1.2 Interpretation

1 2 1 The principles of interpretation set out in clause 1 2 (*Interpretation*) of the SPA apply to this Debenture, insofar as they are relevant to it and subject to any necessary changes, as they apply to the SPA

1 2 2 Unless a contrary intention appears, any reference in this Debenture to

- (a) this **Debenture** is a reference to this Debenture as amended, varied, novated, supplemented and replaced from time to time,
- (b) the **Chargor**, the **Company** or a **Receiver** includes any one or more of its assigns, transferees and successors in title (in the case of the Chargor, so far as any such is permitted),
- (c) the **Company** or a **Receiver** (except for the references in Clause 14 (*Power of attorney*)), includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates,
- (d) any **Party** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and obligations under SPA,
- (e) the **Liquidators** also include any substitute or replacement liquidators appointed in place of the Liquidators and their respective firms or future firms, employees, agents, advisors, fellow members, partners and personal representatives (as agents only and without personal liability),
- (f) **assets** includes present, future, actual and contingent properties, revenues and rights of every description,
- (g) **debt** or **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 and whether owed jointly or severally or in any other capacity,
- (h) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality),
- (i) 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,
- (j) any **statute** or **statutory provision** includes any statute or statutory provision which amends, extends, consolidates or replaces it, or which has been amended, extended, consolidated or replaced by it, and any orders, regulations, instruments or other subordinate legislation made under it,
- (k) the words **include(s)**, **including** and **in particular** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words,

- (l) **liabilities** includes any obligation whether incurred as principal or as surety, whether or not in respect of indebtedness, whether present or future, actual or contingent and whether owed jointly or severally or in any other capacity,
- (m) the words **other** and **otherwise** shall not be construed ejusdem generis with any preceding words where a wider construction is possible, and
- (n) a **Clause** or **Schedule** is to be construed as a reference to the relevant clause of, or schedule to, this Debenture

### **1 3 Third party rights**

- 1 3 1 The Company, any Receiver and their respective officers, employees and agents may enforce any term of this Debenture which purports to confer a benefit on that person, but no other person who is not a party to this Debenture has any right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Debenture
- 1 3 2 Notwithstanding any term of the SPA, the parties to this Debenture and any Receiver may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Debenture without the consent of any person who is not a party to this Debenture

### **1.4 Effect as a deed**

This Debenture shall take effect as a deed even if it is signed under hand on behalf of the Company

### **1.5 Law of Property (Miscellaneous Provisions) Act 1989**

The terms of the SPA and of any side letters between any parties in relation to the SPA are incorporated in this Debenture to the extent required to ensure that any purported disposition of an interest in Land contained in this Debenture is a valid disposition in accordance with section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989

## **2 Covenant to pay**

The Chargor covenants with the Company that it will on demand pay and discharge the Secured Liabilities when due

## **3 Creation of Security**

### **3.1 Land**

The Chargor charges

- (a) by way of legal mortgage its interest in the Land referred to in Schedule 1 (*Land charged by way of legal mortgage*), and
- (b) by way of fixed charge any right, title or interest which it has now or may subsequently acquire to or in any other Land

### **3.2 Investments**

The Chargor mortgages or (if or to the extent that this Debenture does not take effect as a mortgage) charges by way of fixed charge all Investments, including those held for it by any nominee

### **3.3 Equipment**

The Chargor charges by way of fixed charge all Equipment in so far as it is not charged by way of legal mortgage under Clause 3.1 (*Land*)

### **3.4 Intellectual Property**

The Chargor charges by way of fixed charge all its Intellectual Property

### **3.5 Goodwill**

The Chargor charges by way of fixed charge its goodwill

### **3.6 Uncalled capital**

The Chargor charges by way of fixed charge its uncalled capital

### **3.7 Authorisations**

The Chargor charges by way of fixed charge the benefit of all Authorisations held in relation to any Security Asset

### **3.8 Insurances**

The Chargor assigns absolutely all its rights and interests in the Insurances

### **3.9 Contractual rights**

The Chargor assigns absolutely all rights under all deeds and agreements to which it is a party and which are not mortgaged, charged by way of fixed charge or assigned under any of Clauses 3.1 (*Land*) to 3.8 (*Insurances*) (inclusive)

### **3.10 Other assets**

3.10.1 The Chargor charges by way of floating charge all its present and future business, undertaking and assets which are not effectively mortgaged, charged by way of fixed charge or assigned under this Clause 3

3.10.2 Paragraph 14 of Schedule B1 to the Insolvency Act 1986 shall apply to any floating charge created by this Debenture

### **3.11 Trust**

If or to the extent that the assignment or charging of any Security Asset is prohibited, the Chargor holds it on trust for the Company

## **4 Nature of Security created**

### **4.1 General**

The Security created under this Debenture is created

- (a) as a continuing security to secure the payment and discharge of the Secured Liabilities,
- (b) (except in the case of assets which are the subject of a legal mortgage under this Debenture) over all present and future assets of the kind described which are owned by the Chargor and, to the extent that it does not own those assets, shall extend to any right or interest which it may have in them,
- (c) in favour of the Company, and
- (d) with full title guarantee

## **5 Conversion of floating charge**

### **5.1 Conversion on notice**

Subject to Clause 5.2 (*Limitation*), the Company may by notice to the Chargor at any time during the Security Period convert the floating charge created by this Debenture into a fixed charge in respect of any Security Asset specified in that notice if the Company considers that Security Asset to be in danger of being seized, attached, charged, taken possession of or sold under any form of distress, sequestration, execution or other process or otherwise to be in jeopardy

### **5.2 Limitation**

Clause 5.1 (*Conversion on notice*) shall not apply by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986

### **5.3 Automatic conversion**

The floating charge created by this Debenture will convert automatically into fixed charges

- (a) if the Company receives notice of an intention to appoint an administrator of the Chargor,
- (b) if any steps are taken (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional liquidator, administrator or Receiver in respect of the Chargor over all or any part of its assets, or if such person is appointed,
- (c) if the Chargor creates or attempts to create Security over all or any of the Security Assets without the prior written consent of the Company,
- (d) on the crystallisation of any other floating charge over the Security Assets,

- (e) if any person seizes, attaches, charges, takes possession of or sells any Security Asset under any form of distress, sequestration, execution or other process, or attempts to do so, and
- (f) in any other circumstances prescribed by law

## **6 Positive covenants**

The covenants in this Clause 6 remain in force from the date of this Debenture until the expiry of the Security Period

### **6.1 Preservation of the Security Assets**

The Chargor shall

- (a) keep all Land, all Equipment and all other tangible assets which form part of the Security Assets in good and substantial repair, fair wear and tear excepted, and permit the Company free access at all reasonable times and on reasonable notice to view their state and condition,
- (b) preserve, maintain and renew as and when necessary all Intellectual Property which forms part of the Security Assets,
- (c) observe and perform all covenants, undertakings, laws and regulations from time to time affecting any Security Asset or its use or enjoyment,
- (d) pay all tax, rents, rates, duties, fees, charges, assessments, impositions, calls, instalments and outgoings which are properly payable at any time during the Security Period in respect of any Security Asset or by the owner or occupier of it (and if it fails to pay that amount when due, the Company may pay it),
- (e) notify the Company of any action commenced by a third party to seize, attach, charge, take possession of or sell any Security Asset which (to the best of its knowledge and belief) has been started or threatened, and
- (f) at its own cost, defend any proceedings (including proceedings to seize, attach, charge, take possession of or sell) brought by a third party relating to any Security Asset

### **6.2 Insurances and other assigned agreements**

6.2.1 The Chargor shall

- (a) promptly after the execution of this Debenture, or (as the case may be) promptly after the execution of any Insurance entered into after the date of this Debenture, give notice to the other parties to Insurances substantially in the form set out in Schedule 2 (*Form of notice for Insurances*) and deliver to the Company a copy of each notice, and
- (b) at the request of the Company, promptly give notice to the counterparties to any other agreement assigned under Clause 3.9 (*Contractual assignments*) of that assignment, such notice to be in the form set out in Schedule 3 (*Forms of Letter for Assignment Agreements*) (or any other form approved by the Company), and deliver to the Company a certified copy of each notice, and

- (c) use all reasonable endeavours to procure that each party served with a notice under paragraph (a) or (b) above countersigns and returns it to the Company within 14 days of the execution of this Debenture or, in the case of Insurances entered into after the date of this Debenture, within 14 days of the date of the execution of the Insurance

### **6.3 Payments without deduction**

The Chargor covenants with the Company that all payments to be made by it under this Debenture shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim

## **7 Negative covenants**

The covenants in this Clause 7 remain in force from the date of this Debenture until the expiry of the Security Period

### **7.1 Disposals**

- 7.1.1 The Chargor shall not enter into a single transaction or a series of transactions (whether related or not), whether voluntary or involuntary and whether at the same time or over a period of time, to sell, lease, transfer, license, loan or otherwise dispose of any Security Asset, or enter into an agreement to make any such disposal
- 7.1.2 Clause 7.1.1 does not apply to a disposal of any Security Asset which, at the time of that disposal, is subject to the floating charge created by this Debenture and which is made in the ordinary course of the day-to-day trading activities of the Chargor

### **7.2 Negative pledge**

The Chargor shall not create or permit to subsist any Security over any Security Asset

### **7.3 Preservation of the Security Assets**

The Chargor shall not without the written consent of the Company

- (a) enter into any onerous obligation or restriction affecting any Security Asset,
- (b) in relation to any Land forming part of the Security Assets
  - (i) part with possession of it, confer on any other person any right (save that nothing shall prevent the Chargor from entering into a site services agreement dated on or around the date of this Debenture with Hargreaves Surface Mining Limited (HSML) which entitles HSML to enter any Land forming part of the Security Assets) or licence to occupy it or grant any licence to assign, sub-let or create any Security over it,
  - (ii) exercise any of the powers conferred by sections 99 and 100 of the Act of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases,
  - (iii) vary, assign or otherwise dispose of or allow to be forfeited any leasehold interest,
  - (iv) agree any rent review,



- (v) make any structural or material alteration, or do or allow anything to be done which falls within the definition of development in section 55 of the Town and Country Planning Act 1990,
- (vi) allow any person other than itself to be registered under the Land Registration Act 2002 as proprietor, or create or permit to arise any interest which overrides under the Land Registration Act 2002 (and the Chargor shall reimburse the Company for its reasonable costs of lodging
  - (aa) a caution against first registration of the title to that Land, or
  - (bb) if that Land is unregistered, a land charge), or
- (vii) make an application, consent to or acquiesce in the application by any third party, to the Land Registry to enter any matter on the register of title,
- (c) in relation to any uncalled capital of the Chargor, call it up or receive it in advance of calls unless the Company otherwise directs, nor apply it, when paid, otherwise than in payment of the Secured Liabilities or as the Company otherwise directs, or
- (d) take any Security in connection with its liabilities under this Debenture from any guarantor of, or provider of Security for, any of the Secured Liabilities

## **8 Enforcement**

### **8.1 When Security becomes enforceable**

The Security created by this Debenture shall become enforceable

- (a) if the Company so requires in order to protect its interests, or
- (b) if the Chargor so requests

### **8.2 Powers on enforcement**

At any time after the Security created by this Debenture has become enforceable the Company may (without prejudice to any other of its rights and remedies and without notice to the Chargor) do all or any of the following

- (a) exercise all the powers and rights conferred on mortgagees by the Act, as varied and extended by this Debenture, without the restrictions contained in sections 103 or 109(1) of the Act,
- (b) exercise the power of leasing, letting, entering into agreements for leases or lettings or accepting or agreeing to accept surrenders of leases in relation to any Security Asset, without the restrictions imposed by sections 99 and 100 of the Act,
- (c) to the extent that any Security Asset constitutes Financial Collateral, as defined in the Regulations, appropriate it and transfer the title in and to it to the Company insofar as not already transferred, subject to paragraphs (1) and (2) of Regulation 18,
- (d) subject to Clause 9 1 1 (*Method of appointment and removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Security Assets, and

- (e) appoint an administrator of the Chargor

### **8.3 Disposal of the Security Assets**

In exercising the powers referred to in Clause 8 2(a) (*Powers on enforcement*), the Company or any Receiver may sell or dispose of all or any of the Security Assets at the times, in the manner and order, on the terms and conditions and for the consideration determined by it

### **8 4 Application of moneys**

- 8 4 1 The Company or any Receiver shall apply moneys received by them under this Debenture after the Security created under this Debenture has become enforceable in the following order

- (a) **first**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid costs and expenses of the Company and any Receiver under this Debenture or which are incidental to any Receiver's appointment, together with interest at the Base Rate (both before and after judgment) from the date those amounts became due until the date they are irrevocably paid in full,
- (b) **secondly**, in or towards the payment pro rata of, or the provision pro rata for, any unpaid fees, commission or remuneration of the Company and any Receiver,
- (c) **thirdly**, in or towards the discharge of all liabilities having statutory priority to the Secured Liabilities,
- (d) **fourthly**, in or towards the discharge of the Secured Liabilities in accordance with the SPA, and
- (e) **fifthly**, in the payment of any surplus to the Chargor or other person entitled to it,

and section 109(8) of the Act shall not apply

- 8 4 2 Clause 8 4 1 will override any appropriation made by the Chargor

## **9 Appointment and powers of Receivers**

### **9 1 Method of appointment and removal**

- 9 1 1 The Company may not appoint a Receiver by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986
- 9 1 2 Every appointment or removal of a Receiver, of any delegate or of any other person by the Company pursuant to this Debenture may be made in writing under the hand of any officer or manager of the Company (subject to any requirement for a court order in the removal of an administrative receiver)

### **9.2 Powers of Receiver**

Every Receiver shall have all the powers

- (a) of the Company under this Debenture,

- (b) conferred by the Act on mortgagees in possession and on receivers appointed under the Act,
- (c) which are specified in Schedule 1 of the Insolvency Act 1986 in relation to, and to the extent applicable to, the Security Assets or any of them (whether or not the Receiver is an administrative receiver within the meaning of that Act), and
- (d) in relation to any Security Asset, which he would have if he were its only absolute beneficial owner

### **9.3 Joint or several**

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Debenture

### **9.4 Receiver as agent**

Every Receiver shall be the agent of the Chargor which shall be solely responsible for his acts and defaults and for the payment of his remuneration

### **9.5 Receiver's remuneration**

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Company, and the maximum rate specified in section 109(6) of the Act shall not apply

## **10 Protection of purchasers**

No purchaser or other person dealing with the Company or any Receiver shall be bound or concerned

- (a) to see or enquire whether the right of the Company or any Receiver to exercise any of the powers conferred by this Debenture has arisen or not,
- (b) with the propriety of the exercise or purported exercise of those powers, or
- (c) with the application of any moneys paid to the Company, to any Receiver or to any other person

## **11 Protection of the Company and Receivers**

### **11.1 Exclusion of liability**

None of the Company, any Receiver or any of their respective officers or employees shall have any responsibility or liability

- (a) for any action taken, or any failure to take any action, in relation to all or any of the Security Assets,
- (b) to account as mortgagee in possession or for any loss upon realisation of any Security Asset,

- (c) for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies under Clause 15 (*Currency*), or
- (d) for the loss or destruction of, or damage to, any of the Security Assets, or to any documents of or evidencing title to them, which are in the possession or held to the order of any such person (and which will be held by such persons at the expense and risk of the Chargor), or
- (e) for any other default or omission in relation to all or any of the Security Assets for which a mortgagee in possession might be liable,

except in the case of gross negligence or wilful misconduct on the part of that person

## **11.2 General indemnity**

11 2 1 The Chargor shall indemnify the Company, any Receiver and their respective officers and employees against all actions, proceedings, demands, claims, costs, expenses, and other liabilities incurred by them in respect of all or any of the following

- (a) any act or omission by any of them in relation to all or any of the Security Assets,
- (b) any payment relating to or in respect of all or any of the Security Assets which becomes payable at any time by any of them,
- (c) any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Debenture,
- (d) carrying out or purporting to carry out any of the rights, powers and discretions conferred on them by or permitted under this Debenture, and
- (e) any breach by the Chargor of any of its covenants or other obligations to the Company,

except in the case of gross negligence or wilful misconduct on the part of that person

11 2 2 The Chargor shall pay interest at the Base Rate on the sums payable under this Clause 11 from the date on which the liability was incurred to the date of actual payment (both before and after judgment)

## **11 3 Indemnity out of the Security Assets**

The Company, any Receiver and their respective officers and employees shall be entitled to be indemnified out of the Security Assets in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 11 2 (*General indemnity*)

## **11 4 Exclusion of personal liability**

The Liquidators incur no personal liability under or because of this Debenture, nor any related matter or claim arising, whether the claims are made in contract or tort by reference to any other right or remedy and in whatever jurisdiction or forum. In particular, the Liquidators are not liable on any deed or document executed with a view to putting this Debenture into effect, whether the deed or document so provides, and the Liquidators are entitled to have the deeds or documents amended to include an exclusion of personal liability in the above terms. The

Liquidators act as agents of the Company and have no personal liability by acting in that capacity

## **12 Preservation of Security**

### **12.1 Reinstatement**

If any payment by the Chargor or discharge given by the Company (whether in respect of the obligations of the Chargor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency, liquidation, administration or any similar event

- (a) the liabilities of the Chargor and the Security created by this Debenture shall continue as if the payment, discharge, avoidance or reduction had not occurred, and
- (b) the Company shall be entitled to recover the value or amount of that Security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred

### **12.2 Waiver of defences**

Neither the Security created by this Debenture nor the obligations of the Chargor under this Debenture will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to the Chargor or the Company) including

- (a) any time, waiver or consent granted to, or composition with, the Chargor or other person,
- (b) the release of the Chargor or any other person under the terms of any composition or arrangement with any person,
- (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over, assets of the Chargor 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 Chargor or any other person,
- (e) any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of the SPA or any other document or Security,
- (f) any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under the SPA or any other document, or
- (g) any insolvency, liquidation, administration or similar procedure

### **12.3 Chargor intent**

Without prejudice to the generality of Clause 12.2 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security created by this Debenture shall extend

from time to time to any (however fundamental) variation, extension or addition of or to the SPA

#### **12.4 Immediate recourse**

The Chargor waives any right it may have of first requiring the Company (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from the Chargor under this Debenture. This waiver applies irrespective of any law or any provision of the SPA to the contrary.

#### **12.5 Appropriations**

During the Security Period the Company may

- (a) refrain from applying or enforcing any moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities, or, subject to Clause 8.4.1 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities or otherwise) and the Chargor shall not be entitled to the benefit of the same, and
- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Secured Liabilities

#### **12.6 Additional Security**

This Debenture is in addition to, is not in any way prejudiced by and shall not merge with, any contractual right or remedy or other Security now or in the future held by or available to the Company.

#### **12.7 New accounts**

If the Company receives notice (actual or otherwise) of any subsequent Security over or affecting all or any of the Security Assets, it may open a new account or accounts in the name of the Chargor and, if it does not do so, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that subsequent Security, and as from the relevant time all payments made by or on behalf of the Chargor to the Company

- (a) shall be credited or be treated as having been credited to the new account, and
- (b) shall not operate to reduce the Secured Liabilities at the time when the Company received or was deemed to have received such notice

### **13 Further assurance**

#### **13.1 Application to Land Registrar**

The Chargor consents to the registration against the registered titles specified in Schedule 1 (*Land charged by way of legal mortgage*) of

- (a) a restriction in the following terms

No disposition of the registered estate by the proprietor of the registered estate [or by the proprietor of any registered charge, not being a charge registered before the entry

of this restriction] is to be registered without a written consent signed by the proprietor for the time being of the charge dated \*\* [date of Debenture] in favour of \*\* [insert name of Company] referred to in the charges register or their conveyancer (Form P)", and

- (b) a notice that the Company is under an obligation to make further advances on the terms and subject to the conditions of the Finance Documents

### **13.2 Further action**

The Chargor shall, at its own expense, promptly take any action and sign or execute any further documents which the Company may require in order to

- (a) give effect to the requirements of this Debenture,
- (b) protect, preserve and perfect the Security intended to be created by or pursuant to this Debenture,
- (c) protect and preserve the ranking of the Security intended to be created by or pursuant to this Debenture with any other Security over any assets of the Chargor, or
- (d) facilitate the realisation of all or any of the Security Assets or the exercise of any rights, powers and discretions conferred on the Company, any Receiver or any administrator in connection with all or any of the Security Assets,

and any such document may disapply section 93 of the Act

### **13.3 Deposit of documents**

The Chargor covenants that, on the date of this Debenture and at all times during the Security Period as soon as it receives them (and in any event as soon as the Company so requests), it shall deposit with the Company, in respect of or in connection with the Security Assets

- (a) all deeds, certificates and other documents of or evidencing title,
- (b) signed undated transfers of the Investments charged under Clause 3.2 (*Investments*), completed in blank and, if the Company so requires, pre-stamped, and
- (c) any other documents which the Company may from time to time require for perfecting its title, or the title of any purchaser

### **13.4 Law of Property (Miscellaneous Provisions) Act 1994**

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to the provisions set out in this Clause 13

## **14 Power of attorney**

The Chargor irrevocably and by way of security appoints each of

- (a) the Company,
- (b) any delegate or sub-delegate of, or other person nominated in writing by, an officer of the Company, and

(c) any Receiver,

jointly and severally as the Chargor's attorney, in the Chargor's name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit or following the failure by the Chargor to comply with a request from the Company, to take any action and sign or execute any further documents which the Chargor is required to take, sign or execute in accordance with this Debenture. The Chargor agrees, promptly on the request of the Company or any Receiver, to ratify and confirm all such actions taken and documents signed or executed

## **15 Currency**

### **15.1 The Spot Rate**

In this Clause 15 (*Currency*), the **Spot Rate** means, in relation to the Company, the spot rate of exchange of The Royal Bank of Scotland for the purchase of any currency with any other currency in the London foreign exchange market

### **15.2 Conversion of moneys received**

The Company may convert any moneys received, recovered or realised in any currency under this Debenture (including the proceeds of any previous conversion under this Clause 15 from their existing currency into any other currency, by purchasing that other currency at the Spot Rate

## **16 Discharge of Security**

Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities, unless any third party has any subrogation or other rights in respect of the Security created by this Debenture at that time, the Company shall, or shall procure that its appointees will, at the request and cost of the Chargor

- (a) release the Security Assets from this Debenture, and
- (b) re-assign to the Chargor those Security Assets that have been assigned to the Company under Clause 3 (*Creation of Security*)

Section 93 of the Act shall not apply to this Debenture

## **17 Costs and expenses**

### **17.1 Transaction expenses**

The Chargor shall promptly on demand pay the Company the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with the negotiation, preparation, printing and execution of this Debenture

### **17.2 Amendment costs**

If the Chargor requests an amendment, waiver, consent or release of or in relation to this Debenture, the Chargor shall, within three Business Days of demand, reimburse the Company for the amount of all costs and expenses (including legal fees) reasonably incurred by it in responding to, evaluating, negotiating or complying with that request or requirement



### **17.3 Enforcement costs**

The Chargor shall, within three Business Days of demand, pay to the Company or any Receiver the amount of all costs and expenses (including legal fees) incurred by the Company or any Receiver in connection with the enforcement of, or the preservation of any rights under, this Debenture or the investigation of any possible Default

## **18 Assignment**

### **18.1 Procedure**

The Company may assign any of its rights under this Debenture to any person to whom it assigns or transfers any of its rights or obligations under the SPA

### **18.2 Disclosure of information**

The Company may disclose to any assignee or proposing assignee any information it thinks fit in relation to the Chargor and the SPA

## **19 Notices**

### **19.1 Communications in writing**

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

### **19.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Debenture is that identified with its name set out in Clause 14 10 (*Notices*) of the SPA or any substitute address, fax number or department or officer as either party may notify to the other by not less than five Business Days' notice

## **19 3 Delivery**

19 3 1 Any communication or document made or delivered by one person to another under or in connection with this Debenture will only be effective

- (a) if by way of fax, when received in legible form, or
- (b) if by way of letter, (i) when it has been left at the relevant address or (ii) two Business Days (or, in the case of airmail, five Business Days) after being deposited in the post postage prepaid (or, as the case may be, airmail 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 19 2 (*Addressees*), if addressed to that department or officer

19 3 2 Any communication or document to be made or delivered to the Company will be effective only when actually received by the Company and then only if it is expressly marked for the attention of the department or officer identified in Clause 19 2 (*Addressees*) (or any substitute department or officer as the Company shall specify for this purpose)

#### **19.4 English language**

19.4.1 Any notice given under or in connection with this Debenture must be in English

19.4.2 All other documents provided under or in connection with this Debenture must be

- (a) in English, or
- (b) if not in English, and if so required by the Company 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

#### **20 Calculations and certificates**

##### **20.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Debenture, the entries made in the accounts maintained by the Company are *prima facie* evidence of the matters to which they relate

##### **20.2 Certificates and determinations**

Any certification or determination by the Company of a rate or amount under this Debenture is, in the absence of manifest error, conclusive evidence of the matters to which it relates

#### **21 Partial invalidity**

If, at any time, any provision of this Debenture 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 nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired

#### **22 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of the Company, any right or remedy under this Debenture 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 in this Debenture are cumulative and not exclusive of any rights or remedies provided by law

#### **23 Amendments and waivers**

Any term of this Debenture may be amended or waived only with the written consent of the Chargor and the Company

#### **24 Counterparts**

This Debenture 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 Debenture

## **25 Governing law and enforcement**

### **25.1 Governing law**

English law governs this Debenture, its interpretation and any non-contractual obligations arising from or connected with it

### **25.2 Jurisdiction**

25.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Debenture (including a dispute regarding the existence, validity or termination of this Debenture) (a **Dispute**)

25.2.2 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

**Executed** as a deed and delivered on the date appearing at the beginning of this Debenture

## **Schedule 1 – Land charged by way of legal mortgage**

### **Part 1 - Registered Land**

**Description and address**

**Title number**

### **Part 2 - Unregistered Land**

## Schedule 2 – Form of notice for Insurances

[On Chargor's notepaper]

To               \*\*               [insert name and address of insurance company]

Attention       \*\*

Date            \*\*

Dear Sirs

### Notice of assignment

- 1       We refer to the \*\*               [specify the relevant insurance policy] dated \*\*  
between us and you (the **Policy**)
- 2       We notify you that
  - (a)     under a debenture dated \*\*               between, among others, us and \*\*  
[insert name of the Company] (the **Company**) we have assigned to the Company all  
our right, title and interest in and to, and all benefits accruing under, the Policy as  
security for certain obligations owed to the Company,
  - (b)     we may not agree to amend or terminate the Policy without the prior written consent  
of the Company,
  - (c)     until you receive written notice to the contrary from the Company, you may continue  
to deal with us in relation to the Policy and credit all moneys to which we are entitled  
under the Policy to the following account in our name \*\*               [insert details of  
account] After receipt we will cease to have any right to deal with you in relation to  
the Policy and from that time you should deal only with the Company, and
  - (d)     you are authorised to disclose information relating to the Policy to the Company on  
request
- 3       We request that you
  - (a)     after receipt of written notice in accordance with paragraph 2(c), ensure that all  
moneys to which we are entitled under the Policy are credited to the account of the  
Company specified in that notice (and are not paid to us),
  - (b)     note on the Policy the Company's security interest under the Debenture, and
  - (c)     give the Company not less than [30] day's written notice of your [terminating/giving  
notice to terminate] the Policy or allowing the Policy to lapse
- 4       Please sign and return the enclosed copy of this notice to the Company (with a copy to the  
Chargor) to confirm that you
  - (a)     agree to the terms of this notice and to act in accordance with its provisions,

- (b) have not received notice that the Chargor has assigned its rights under the Policy to a third party or created any other interest (whether by way of security or otherwise) in the Policy in favour of a third party, and
- (c) have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Chargor, any right of set-off, counter-claim or other right relating to the Policy

5 The provisions of this notice are governed by English law

Yours faithfully

for and on behalf of  
***[Insert name of Chargor]***

Copy to the Company

***[On acknowledgement copy]***

To **[insert name and address of the Company]**

We acknowledge receipt of the above notice and confirm the matters set out in paragraph 4

for and on behalf of  
***[insert name of insurance company]***

Date            \*\*

## Schedule 3 – Form of notice for Assigned Agreements

[On Chargor's notepaper]

To                \*\*                [insert name and address of counterparty]

Attention        \*\*

Date             \*\*

Dear Sirs

### Notice of assignment

- 1        We refer to the \*\*                [specify the relevant Assigned Agreement] dated \*\*  
             between us and you (the **Agreement**)
- 2        We notify you that
  - (a)        under a debenture dated \*\*                between us and \*\*                [insert name  
             of the Company] (the **Company**) we have assigned to the Company all our right, title  
             and interest in and to, and all benefits accruing under, the Agreement as security for  
             certain obligations owed to the Company,
  - (b)        we may not agree to amend or terminate the Agreement without the prior written  
             consent of the Company,
  - (c)        until you receive written notice to the contrary from the Company, you may continue  
             to deal with us in relation to the Agreement and credit all moneys to which we are  
             entitled under the Agreement to the following account in our name \*\*  
             [insert details of account] After receipt we will cease to have any right to deal with  
             you in relation to the Agreement and from that time you should deal only with the  
             Company, and
  - (d)        you are authorised to disclose information relating to the Agreement to the Company  
             on request
- 3        We request that you
  - (a)        after receipt of written notice in accordance with paragraph 2(c), ensure that all  
             moneys to which we are entitled under the Agreement are credited to the account of  
             the Company specified in that notice (and are not paid to us),
  - (b)        give the Company written notice of any breach of the Agreement as soon as you  
             become aware of it, and
  - (c)        give the Company not less than [30] days' written notice of your [terminating/giving  
             notice to terminate] the Agreement
- 4        Please sign and return the enclosed copy of this notice to the Company (with a copy to the  
             Chargor) to confirm that you

- (a) agree to the terms of this notice and to act in accordance with its provisions,
- (b) have not received notice that the Chargor has assigned its rights under the Agreement to a third party or created any other interest (whether by way of security or otherwise) in the Agreement in favour of a third party, and
- (c) have not claimed or exercised, nor do you have any outstanding right to claim or exercise against the Chargor, any right of set-off, counter-claim or other right relating to the Agreement

5 The provisions of this notice are governed by English law

Yours faithfully

for and on behalf of  
**[insert name of Chargor]**

Copy to Security Trustee

**[On acknowledgement copy]**

To **[insert name and address of the Company]**

Copy to **[insert name and address of Chargor]**

We acknowledge receipt of the above notice and confirm the matters set out in paragraph 4

for and on behalf of  
**[insert name of counterparty]**

Date           \*\*



Executed as a deed by )  
OCCW (Duncanziemere) Limited )  
acting by a )  
director in the presence of )

ALISTAIR BLACK

[REDACTED]

Signature of witness

[REDACTED]

Name of witness

TANA BRAY

Address

[REDACTED]

[REDACTED]

[REDACTED]

#### The Company

Signed by Aardvark TMC Limited (In )  
liquidation), acting by )  
)  
(one of) its liquidators under )  
the powers conferred on him/them )  
by Schedule 4 to the Insolvency )  
Act 1986 )

#### The Liquidators – as liquidators

Signed by )  
)  
as liquidators of )  
Aardvark TMC Limited (in liquidation) )  
without personal liability )



*I certify that, save for material redacted pursuant to s 859G of the Companies Act 2006, this is a true copy of the part of the charging instrument signed by or on behalf of the chargor, and attaches a true copy of the signature page to each other part of such charging instrument*

Dated 21 May 2013

Signed *[Signature]*

Name *Christine Lynne Jones*

Dentons UKMEA LLP