

MR01

Particulars of a charge

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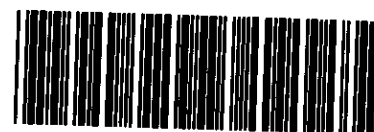
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Please see 'How to pay' on the

MONDAY



A07 \*A67YMQSR\* 05/06/2017 #118  
COMPANIES HOUSE

☒ **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.

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 will be  
scanned and placed on the public record. **Do not send the original.**

**1 Company details**

Company number 0 9 5 4 0 9 2 6

Company name in full NQ MINERALS PLC ✓

2 For official use

**Filling 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 2 4 0 5 2 0 1 7 ✓

**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 MCAF NQM NOMINEES LIMITED ✓

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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4

**Brief description**

Please give a short description of any land, ship, aircraft or intellectual property registered or required to be registered in the UK subject to a charge (which is not a floating charge) or fixed security included in the instrument.

Brief description

Please submit only a short description. If there are a number of plots of land, aircraft and/or ships, you should simply describe some of them in the text field and add a statement along the lines of, "for more details please refer to the instrument".

Please limit the description to the available space.

5

**Other charge or fixed security**

Does the instrument include a charge (which is not a floating 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 company from creating further security that will rank equally with or ahead of the charge? Please tick the appropriate box.

☒ Yes

☐ No

✓

8

**Trustee statement** <sup>1</sup>

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.

☐

<sup>1</sup> This statement may be filed after the registration of the charge (use form MR06).

9

**Signature**

Please sign the form here.

Signature

Signature

X

DNE Bechtel LLP

X

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

# MR01

## Particulars of a charge



### Presenter information

You do not have to give any contact information, but if you do, it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name

Rosemary Finn

Company name

DAC Beachcroft LLP

Address

100 Fetter Lane

London

Post town

County/Region

Postcode

E C 4 A 1 B N

Country

DX

DX 45 London

Telephone

+44 (0)20 72421011



### 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 £23 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.gov.uk/companieshouse](http://www.gov.uk/companieshouse) 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.gov.uk/companieshouse](http://www.gov.uk/companieshouse)

DX



**FILE COPY**

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

Company number: 9540926

Charge code: 0954 0926 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th May 2017 and created by NQ MINERALS PLC was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th June 2017.

Given at Companies House, Cardiff on 13th June 2017




**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

We hereby certify this to be a  
true and complete copy of the  
original

  
..... (MATT STONE, JUNIOR)  
DAC Beachcroft LLP  
2/6/17

## Specific Security Deed

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NQ Minerals PLC (**Grantor**)

MCAF NQM Nominees Limited (**Secured Party**)

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# Specific Security Deed

Date

24 May 2017

## Parties

NQ Minerals PLC (a company incorporated in England with company number 09540926) (**Grantor**)

MCAF NQM Nominees Limited (a company incorporated in New Zealand with company number 6270270) (**Secured Party**)

## It is agreed

### 1. Reference Schedule, definitions and interpretation

#### 1.1 Reference Schedule

Where a term used in this deed appears in bold type in the Reference Schedule, that term has the meaning shown opposite it in the Reference Schedule.

<b>Address:</b>	27/28 Eastcastle Street, London W1W 8DH, United Kingdom
<b>Electronic Mail:</b>	wd2020@icloud.com
<b>Attention:</b>	The Director/s
<b>Address:</b>	c/- Maui Capital, 151 Queen Street, Auckland, New Zealand
<b>Electronic Mail:</b>	john.sandford@mauicapital.co.nz
<b>Attention:</b>	The Director/s
<b>Facility Deed</b>	Facility Deed between NQ Minerals PLC (as Borrower) and MCAF NQM Nominees Limited (as Financier) dated 21 April 2017.
<b>None disclosed</b>	None disclosed to the Secured Party as at the date of this deed.
<b>The Grantor's present and future right, title and interest in the Shares and all Related Property but not including the Excluded Assets.</b>	The Grantor's present and future right, title and interest in the Shares and all Related Property but not including the Excluded Assets.
<b>Those Shares which are not Available Shares from time to time.</b>	Those Shares which are not Available Shares from time to time.
<b>For the avoidance of doubt, if at any time a Share becomes an Available Share, the Seller is not entitled to have a Security Interest over that Share, that Share will no longer be an Excluded Asset and will immediately form part of the Secured Property (regardless of whether the Seller continues to hold a Security Interest in respect of that Share).</b>	For the avoidance of doubt, if at any time a Share becomes an Available Share, the Seller is not entitled to have a Security Interest over that Share, that Share will no longer be an Excluded Asset and will immediately form part of the Secured Property (regardless of whether the Seller continues to hold a Security Interest in respect of that Share).
<b>The share sale agreement entered into by the Borrower for the purchase of all issued shares in Keen Pacific Limited (a company incorporated in the British Virgin Islands with company number 1477915) dated 21 April 2017.</b>	The share sale agreement entered into by the Borrower for the purchase of all issued shares in Keen Pacific Limited (a company incorporated in the British Virgin Islands with company number 1477915) dated 21 April 2017.
<b>The Inter-creditor Deed between KIWOZ Ltd, NQ Minerals PLC, Keen Pacific Limited, Ivy Resources Pty Ltd, Hellyer Gold Mines Pty Ltd, NQ Minerals Pty Ltd, Circle Resources Pty Ltd and others dated on or about 18 May 2017.</b>	The Inter-creditor Deed between KIWOZ Ltd, NQ Minerals PLC, Keen Pacific Limited, Ivy Resources Pty Ltd, Hellyer Gold Mines Pty Ltd, NQ Minerals Pty Ltd, Circle Resources Pty Ltd and others dated on or about 18 May 2017.

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<p>Section 3.1.1 Debt</p>	<p>The percentage calculated using the following formula:</p> $\frac{OPP}{PP} \times 100$
<p>Section 3.1.2 Debt</p>	<p>Where:</p> <p>OPP means Outstanding Purchase Price (as adjusted down from time to time in accordance with the Hellyer Share Sale Agreement)</p> <p>PP means the Purchase Price</p>
<p>Section 3.1.3 Debt</p>	<p>None disclosed to the Secured Party as at the date of this Deed.</p>

## 1.2 Definitions

Terms used but not defined in this deed take their meaning from the Facility Agreement, and in this deed:

**Attorney** means an attorney appointed under clause 24.

**Authorisation means:**

- (a) an approval, authorisation, consent, declaration, exemption, filing, licence, lodgement, notarisation, permit or waiver, however it is described, and including any condition attaching to it and any renewal or amendment of it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Body acts in any way within a specified period, the expiry of that period without that action being taken.

**Authorised Officer means:**

- (a) in the case of the Secured Party:
  - (1) an employee of the Secured Party whose title contains either of the words Director or Manager;
  - (2) a person performing the function of any of them;
  - (3) a solicitor acting on behalf of the Secured Party; or
  - (4) a person appointed by the Secured Party to act as an Authorised Officer for the purpose of this deed and notified to the Grantor;
- (b) in the case of the Grantor:
  - (1) a director or secretary of the Grantor; and
  - (2) any person appointed by the Grantor to act as an Authorised Officer for the purpose of this deed and notified in writing by the Grantor to the Secured Party.

**Available Shares** means all of the Shares, excluding a number of Shares equivalent to the aggregate of:

- (a) the Seller Share Entitlement;

# Specific Security Deed

- (b) the Seller Disposed Shares; and
- (c) the Group Financier Disposed Shares.

**Benefits** means, at any time, the present and future right, title and interest of the Grantor in or in connection with a holding of Present Shares or Future Shares including:

- (a) any money, distributions, dividends, interest, profits, shares, stock, stock units or units in the capital of a corporation, debentures, rights to take up Marketable Securities, allotments of further Marketable Securities and bonuses;
- (b) the proceeds of (within the ordinary meaning of those words), or of the Disposal of, anything described in paragraph (a);
- (c) all proceeds as defined in section 31 of the PPS Act;
- (d) the rights of the Grantor as a result of, or in any Marketable Security resulting from, any allotment, conversion, offer, reconstruction, redemption, reclassification, substitution, cancellation, forfeiture, consolidation, amalgamation or subdivision of any Marketable Security;
- (e) rights resulting from a reduction or return of capital, Liquidation or scheme of arrangement; and
- (f) any Title Certificate relating to anything described in paragraphs (a), (b), (c), (d) and (e).

**Beneficiaries** means the beneficiaries of the Trust.

**Business Day** means:

- (a) if determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the capital city of the Relevant Jurisdiction.

**Certificated Security** means a Marketable Security, title to which is evidenced by a Title Certificate.

**Certified** means a certification by a person or, in the case of a corporation, by a director or secretary of the corporation to which a document or information relates that the document is a correct and complete copy of the original document or the information is accurate and current as at the date of certification.

**Circulating Asset** means, subject to clause 3.2, any of the following categories of property which form part of the Secured Property but only if no Control Event has occurred and no direction has been given under subclause 4.3(b) in respect of it:

- (a) book debts;
- (b) accounts;
- (c) crops;
- (d) livestock;

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- (e) inventory;
- (f) negotiable instruments; and
- (g) currency.

**Collection Account** means an account opened with the Collection Account Bank to operate as the Collection Account for the purposes of this deed.

**Collection Account Bank** means the Secured Party or other financial institution nominated by the Secured Party from time to time with which the Collection Account is opened.

**Control Event** means:

- (a) in respect of all Secured Property that is, or would have been, a Circulating Asset:
  - (1) if an Insolvency Event occurs in relation to the Grantor; or
  - (2) if this deed or any other Encumbrance over any Secured Property is Enforced in any way; or
  - (3) on anything occurring (including a person taking a step or signing a notice or direction) which may result in any amounts (including Tax, an amount owing to a Government Body or employee entitlements) ranking ahead of the Security Interest created by this deed;
- (b) in respect of any Secured Property that is, or would have been, a Circulating Asset:
  - (1) if the Grantor breaches, or attempts to breach, subclause 4.1(a) in respect of the Circulating Asset or takes any step which would result in it doing so; or
  - (2) on any step being taken by any person to levy or Enforce any distress, attachment or other execution on or against that Circulating Asset or to Enforce an Encumbrance over that Circulating Asset; or
  - (3) if the Secured Party has control of that Circulating Asset.

**Controller** has the meaning given in the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Dispose** in respect of any property means assign, transfer, sell, novate, lease, licence (or allow a surrender or variation of a lease or licence), grant a Security Interest over, declare a trust in respect of, give control of or otherwise dispose of the property and Disposal has a corresponding meaning.

**Enforce** means to exercise a right to enforce arising at law, in equity or from a Transaction Document, including a power of sale, appointment of Controller, entry into possession, collection of rents and profits, leasing and hiring but not including the collection of Principal and Interest after it becomes due and owing in the normal course..

**Enforceable** means, in relation to any right, that it is able to be Enforced.

**Enforcement** means, in relation to any right, all action taken to Enforce it.

**Event of Default** has the meaning given to that term in the Facility Agreement and, if the Secured Property includes Shares, an Event of Default also occurs if:

## Specific Security Deed

- (a) an order is made in respect of any Secured Property under all or any of sections 657D(2), 657E, 659C or part 9.5 of the Corporations Act or proceedings are commenced under section 659B of the Corporations Act; or
- (b) an Insolvency Event occurs in respect of an Issuer.

**Excluded Tax** means a Tax imposed by a jurisdiction:

- (d) on, or calculated by reference to, the net income of the Secured Party in the jurisdiction; or
- (e) as a result of the Secured Party being a resident of, organised or operating in, the jurisdiction;

but an Excluded Tax does not include a Tax:

- (1) which may otherwise fall within paragraph (d) above and which is calculated solely on or by reference to a payment (without allowance for any deduction) the Secured Party derives under any Transaction Document or a transaction contemplated by it; or
- (2) which may otherwise fall within paragraph (e) above solely as a result of the Secured Party being a party to any Transaction Document or a transaction contemplated by it.

**External Administrator** means an administrator, Controller, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

**First Loan Note** has the meaning given in the Hellyer Share Sale Agreement.

**Future Shares** means, at any time, the present and future right, title and interest of the Grantor in:

- (a) any shares, stock, stock units or other Marketable Securities issued by an Issuer of the Present Shares to which the Grantor becomes beneficially entitled (including any held by a trustee, nominee, broker or agent of the Grantor); and
- (b) any shares, stock, stock units or other Marketable Securities which the Grantor notifies the Secured Party are to form part of the Secured Property after the date of this deed.

**Government Body** means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
- (c) any person deriving a power directly or indirectly from any other Government Body.

**Group Financier Disposed Shares** means all Shares which have been released from any Security Interest in favour of the Secured Party under this deed.

**GST Law** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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## **Guarantee means:**

- (a) guarantee, indemnity, undertaking, letter of credit, any Security Interest, acceptance or endorsement of a bill of exchange, promissory note or other negotiable instrument or other Obligation given by any person in favour of any other person to secure or enable the payment by any third party of any money or the performance or observance of any other Obligation owed by the third party;
- (b) any Obligation to provide funds to a third party by the advance of money, the purchase of or subscription for marketable securities, the purchase of property or services or otherwise;
- (c) any Obligation to ensure the solvency or financial condition of any third party; and
- (d) any put option under which its grantor is obliged on the exercise of the option to buy:
  - (1) from a creditor any debt or liability owed by a third party; or
  - (2) any property which is the subject of a Security Interest.

## **Insolvency Event means:**

- (a) in relation to any corporation:
  - (1) its Liquidation;
  - (2) an External Administrator is appointed in respect of the corporation or any of its property;
  - (3) the corporation ceases or threatens to cease to carry on its business;
  - (4) the corporation being deemed to be, or stating that it is, unable to pay its debts when they fall due;
  - (5) any other ground for Liquidation or the appointment of an External Administrator occurs in relation to the corporation;
  - (6) the corporation resolves to enter into Liquidation;
  - (7) an application being made which is not dismissed or withdrawn within ten Business Days for an order, resolution being passed or proposed, a meeting being convened or any other action being taken to cause or consider anything described in paragraphs (1) to (6) (inclusive);
- (b) in relation to an individual, that person becoming an insolvent under administration as defined in section 9 of the Corporations Act; and
- (c) in relation to any person, anything analogous to or having a similar effect to anything described above in this definition under the law of any Relevant Jurisdiction.

## **Intellectual Property Rights means any intellectual and industrial property rights throughout the world including:**

- (a) any confidential information;
- (b) copyright (including future copyright and rights in the nature of, or analogous to, copyright);

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- (c) database rights;
- (d) performer's protection;
- (e) moral rights;
- (f) inventions (including patents);
- (g) trade marks;
- (h) service marks;
- (i) designs;
- (j) circuit layouts; and
- (k) any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields,

whether or not now existing and whether or not registered or registrable and includes any right to apply for the registration of such rights and includes all renewals and extensions.

**Issuer** means a corporation which has issued any Shares.

**Liquidation** means:

- (a) a winding up or liquidation (whether voluntary or involuntary), provisional liquidation, dissolution, bankruptcy or other analogous proceeding; or
- (b) an arrangement, assignment, composition or moratorium with or for the benefit of creditors or any class or group of creditors (including an administration or arrangement under part 5.3A of the Corporations Act).

**Obligation** means any obligation, commitment, liability, covenant, undertaking or duty whether arising by operation of law, in equity or by statute and whether expressed or implied.

**Outstanding Purchase Price** means the outstanding portion of the Purchase Price as adjusted down from time to time in accordance with the Hellyer Share Sale Agreement including, for the avoidance of doubt, the outstanding portion of the First Loan Note and the Second Loan Note.

**Partnership** means any partnership or joint venture of which the Grantor is a member including (if applicable) the partnership or joint venture described in the Reference Schedule.

**Permitted Disposal** means any Disposal:

- (a) which is a Permitted Security Interest;
- (b) to which the Secured Party has given its prior written consent; or
- (c) in the ordinary course of the Grantor's ordinary business of Secured Property which is, at the time of the Disposal, a Circulating Asset.

**Permitted Security Interest** means:

- (a) a Security Interest of which the Secured Party has been given full details in writing not more than two Business Days before the date of this deed and to which the Secured Party has given its written consent (but excluding any Security Interest to which the

## Specific Security Deed

Secured Party gave its consent on one or more conditions if those conditions are not fully complied with);

- (b) a Security Interest created after the date of this deed to which the Secured Party has given its prior written consent and in respect of which:
  - (1) the money secured does not increase above the amount to which the Secured Party has consented; and
  - (2) any conditions to the consent have been fully complied with; and
- (c) a Security Interest constituted or expressly permitted by the Transaction Documents.

**Potential Event of Default** means an event that, on the giving of notice, lapse of time or fulfilment of any condition would be likely to become an Event of Default.

**Power** means any power, right, authority, discretion or remedy conferred on the Secured Party, a Receiver or an Attorney by this deed or any Transaction Document or by law in relation to this deed or any Transaction Document.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**PPS Legislation** means, as the context permits or requires, all or any of:

- (a) the PPS Act;
- (b) the PPS Regulations; and
- (c) any other legislation, or any amendment to any existing legislation made at any time, resulting from or enacted as a consequence of, the PPS Act or the PPS Regulations.

**PPS Register** means the Personal Property Securities Register established under section 147 of the PPS Act.

**PPS Regulations** means, as the context permits or requires, all or any of:

- (a) the *Personal Property Securities Regulations 2010* (Cth); and
- (b) any other regulations made from time to time under, or for the purposes of, the PPS Act.

**Present Shares** means, at any time, the present and future right, title and interest of the Grantor in the shares, stock, stock units or other Marketable Securities described in Schedule 1.

**Purchase Price** means \$20,000,000 (being the cash and note component of the purchase price under the Hellyer Share Sale Agreement).

**Receiver** means any receiver or receiver and manager appointed under this deed or any Supporting Security.

**Reference Schedule** means the schedule in clause 1.1.

**Related Entity** has the meaning given in the Corporations Act.

**Related Property** means in respect of:

- (a) **Shares** - all Benefits accruing in respect of the Shares; and



# Specific Security Deed

- (b) **each of the categories of property described in a paragraph above** - to the extent not expressly included above for that category, all Title Certificates, all rights to receive and recover payment of any money and delivery of any other property under or in connection with the relevant Secured Property, all other choses in action, claims and remedies against any person in respect of the relevant Secured Property, all amounts standing to the credit of a Collection Account and any proceeds from the relevant Secured Property (including the proceeds of insurance or a Disposal).

**Relevant Jurisdiction** means the State in which the address of the Secured Party shown in the Reference Schedule is located.

**Representative** of a person means an officer, employee, contractor, attorney or agent of that person.

**Second Loan Note** has the meaning given in the Hellyer Share Sale Agreement.

**Secured Money** means all money which the Grantor (whether alone or not and in any capacity) is or at any time may become liable to pay (presently, prospectively or contingently) to or for the account of the Secured Party (whether alone or not and in any capacity) including money and amounts:

- (a) payable under or in connection with a Transaction Document;
- (b) *in the nature of principal, interest, fees, costs, expenses, indemnities, charges, duties and damages (liquidated or unliquidated) payable under, in connection with or as a result of a breach of or default under a Transaction Document;*
- (c) payable at any time (both before and after the date of this document) including money and amounts payable after or as a result of the assignment at any time (with or without the Grantor's consent) of any debt, liability or Transaction Document; and
- (d) which the Grantor would have been liable to pay but for an Insolvency Event in respect of the Grantor.

**Secured Obligations** means all Obligations of the Grantor (whether present, prospective or contingent and whether owed alone or not and in any capacity) to the Secured Party (whether alone or not and in any capacity) including Obligations:

- (a) arising under or in connection with a Transaction Document;
- (b) to do, or to refrain from doing, something;
- (c) arising or contemplated at any time (both before and after the date of this document) including Obligations arising as a result of the assignment at any time (with or without the Grantor's consent) of any debt, liability or Transaction Document; and
- (d) which the Grantor would have been liable to perform but for an Insolvency Event in respect of the Grantor.

**Secured Property** means the Secured Property described in the Reference Schedule.

**Security Interest** means:

- (a) an interest in or right:
  - (1) reserved over property (including any retention of title to property or any right to set off or withhold payment of any deposit or other money);

## Specific Security Deed

- (2) created or otherwise arising over property under a mortgage, charge, lien, pledge, trust or right;
- (3) by way of security for the payment of a debt or other monetary Obligation or the performance of or compliance with any other Obligation; or
- (4) which gives a person priority over unsecured creditors in relation to any property;
- (b) any instrument or transaction which reserves, constitutes or evidences the interests and rights referred to in paragraph (a); and
- (c) any other interest which is not included in paragraphs (a) or (b) and which constitutes or is defined as a security interest under the PPS Legislation.

**Seller Disposed Shares** means all Shares which have ceased to be subject to the Seller's Share Securities as a consequence of any Enforcement of the Seller's Share Securities.

**Seller Share Entitlement** means a number of Shares calculated in accordance with the following formula (provided that, where the calculation results in a negative number, the Seller Share Entitlement will be taken to be nil):

$$(SSP \times TS) - SDS$$

Where:

SSP means the Seller Security Percentage from time to time.

TS means the total number of Shares from time to time.

SDS means the number of Seller Disposed Shares from time to time.

**Seller's Share Securities** means an Encumbrance permitted by the Inter-creditor Deed in favour of the Sellers (in their Seller's Security Proportion) over a number of Shares equivalent to the Seller Share Entitlement to secure payment of the Outstanding Purchase Price.

**Serial Numbered Property** means personal property that either may or must be described by serial number in a financing statement under the PPS Act.

**Shares** means all or any of the Present Shares and the Future Shares.

**Supporting Security** means any Security Interest (other than this deed), Guarantee or other agreement at any time created or entered into by the Grantor or another person as security for any Secured Money or the performance of any Secured Obligation.

**Tax** means any present or future tax, levy, deduction, impost, withholding, charge or duty which is levied or imposed by any Government Body together with any interest, penalty or fine on those amounts.

**Title Certificate** means any certificate or document of, or which evidences, title to any Secured Property.

**Transaction Document** means this deed, the Facility Agreement, the Supporting Security and any other document the Grantor and the Secured Party agree is to be a Transaction Document for the purposes of this deed or any other Transaction Document.

**Trust** means any trust of which the Grantor is a trustee including any trust disclosed in the Reference Schedule.

# Specific Security Deed

**Trust Deed** means the trust deed constituting the Trust as described in the Reference Schedule and all variations and amendments made to that deed.

**Trustee** means the person from time to time appointed as a trustee under a Trust Deed.

**Trust Property** means the trust fund comprising any assets which are the subject of and held by the Grantor as Trustee under the Trust Deed.

**Uncertificated Security** means a Marketable Security title to which is not evidenced by a Title Certificate.

## 1.1 Interpretation

- (a) Unless the contrary intention appears, a reference in this deed to:
- (1) this deed or another document includes any variation or replacement of it despite any change in the identity of the parties;
  - (2) one gender includes the others;
  - (3) the singular includes the plural and the plural includes the singular;
  - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
  - (5) *an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this deed and a reference to this deed includes any schedule or attachment;*
  - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
  - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
  - (8) money is to Australian dollars, unless otherwise stated; and
  - (9) a time is a reference to time in the capital city of the Relevant Jurisdiction unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this deed.
- (e) A provision of this deed must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this deed or the inclusion of the provision in this deed.

# Specific Security Deed

## 1.2 Business Day

- (a) If the day on which anything, other than a payment, is to be done is not a Business Day, that thing must be done on the preceding Business Day.
- (b) If the day on which a payment is to be made is not a Business Day it must be made on the next Business Day but if the next Business Day falls in the next calendar month it must be made on the preceding Business Day.
- (c) If an act, other than a payment or the giving of a communication, is required to be done on a particular day and the act is done after 5.00pm on that day, it will be deemed to have been done on the following day.

## 1.3 Parties

- (a) If a party consists of more than one person, this deed binds each of them separately and any two or more of them jointly.
- (b) An agreement, Obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, Obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.

## 1.4 GST terms

In this deed, the terms adjustment event, consideration, GST, input tax credit, supply, taxable supply and tax invoice each has the meaning given in the GST Law.

## 1.5 PPS Legislation terms

In this deed, unless the context requires otherwise, each of the following terms (and any grammatical variations of them) has the meaning given in the PPS Legislation:

**accession, account, advance, amendment demand, attach, chattel paper, commingled, consumer property, control, crops, currency, financing change statement, financing statement, livestock, intellectual property, inventory, negotiable instrument, perfected, personal property, proceeds, purchase money security interest, serial number and verification statement.**

## 2. Grant of Security Interest

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### 2.1 Grant

- (a) In consideration of the Secured Party entering into the Facility Agreement and providing financial accommodation to or at the request of the Grantor, the Grantor grants a Security Interest in the Secured Property to the Secured Party to secure payment of the Secured Money and the performance of the Secured Obligations.
- (b) The Security Interest created under this deed is:
  - (1) a transfer by way of security of Secured Property consisting of rights (contractual or otherwise) or accounts and chattel paper (which are not, or cease to be, Circulating Assets); and

## Specific Security Deed

- (2) a charge to the extent any Secured Property is not transferred. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over Circulating Assets and a fixed charge over all other Secured Property.

### 2.2 Attachment

The Grantor and the Secured Party acknowledge that they have not agreed to defer or postpone the date of attachment of the Security Interest created under this deed in any Secured Property.

## 3. Nature and priority of Security Interest

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### 3.1 Priority

Unless the Secured Party otherwise agrees in writing:

- (a) the Security Interest created under this deed will take priority over all other Security Interests and other interests in the Secured Property (including any Security Interest or other interest of the Grantor or any person taking an interest from the Grantor) except for a Permitted Security Interest:
  - (1) which has priority at law or which the Secured Party has agreed in writing to have priority; or
  - (2) that is a purchase money security interest;
- (b) nothing in this deed will be construed as an agreement or consent by the Secured Party *to subordinate the Security Interest created by this deed to any other Security Interest or any other interest affecting the Secured Property, or in favour of any person, at any time;*
- (c) the Security Interest created under this deed has the same priority in relation to all Secured Money (including future advances);
- (d) nothing in this deed or any other Transaction Document prevents or limits the Secured Party from claiming that a Security Interest in any personal property of the Grantor is a purchase money security interest in respect of all or any part of that personal property; and
- (e) nothing in this deed will be construed as an agreement or consent by the Secured Party to:
  - (1) any Secured Property becoming an accession or affixed to any asset that is not Secured Property; or
  - (2) any personal property that is not Secured Property becoming an accession to any Secured Property.

### 3.2 Control Events

If a Control Event occurs in respect of any Secured Property which is a Circulating Asset, then automatically:

- (a) that Secured Property is not (and immediately ceases to be) a Circulating Asset;
- (b) any floating charge over that Secured Property immediately operates as a fixed charge;
- (c) if the Secured Property is accounts or chattel paper, it is transferred to the Secured Party by way of security to the extent not transferred under clause 2.1; and

# Specific Security Deed

- (d) the Grantor may no longer deal with the Secured Property.

## 3.3 Conversion to Circulating Assets

If any Secured Property is not or ceases to be a Circulating Asset, and becomes subject to a fixed charge or transfer under clause 3.2, the Secured Party may give the Grantor a notice (at any time and from time to time) noting that, from the date specified in the notice, the Secured Property specified in the notice is a Circulating Asset, or becomes subject to a floating charge or is retransferred to the Grantor.

## 3.4 Inventory

Any Secured Property which is inventory which is not, or ceases to be, a Circulating Asset is specifically appropriated to a Security Interest under this deed. The Grantor may not remove it without obtaining the specific and express authority of the Secured Party to do so.

## 4. Dealings with Secured Property

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### 4.1 Disposals

- (a) Subject to subclauses 4.1(b) and 4.1(c), the Grantor must not, without the prior written consent of the Secured Party or unless expressly permitted by another Transaction Document:
  - (1) create or allow to exist another interest (including a Security Interest) in any Secured Property (whether ranking in priority to, equally with or after this deed) other than a Permitted Security Interest;
  - (2) Dispose of, deal with or part with possession of any interest in, the Secured Property other than by a Permitted Disposal; or
  - (3) make withdrawals or transfers from, close or otherwise operate, the Deposit Account.
- (b) In any case where, as a matter of law, the Secured Party is not permitted to prevent or restrict the grant or creation of a Security Interest in any Secured Property which ranks after the Security Interests granted under this deed then:
  - (1) paragraph 4.1(a)(1) will not apply to that proposed Security Interest; and
  - (2) the Grantor must procure the proposed holder of the Security Interest to enter into a priority arrangement satisfactory in all respects to the Secured Party.
- (c) If the Grantor Disposes of or otherwise deals with Secured Property or an interest in it in breach of subclause 4.1(a), then despite that Disposal or other dealing:
  - (1) the Grantor acknowledges that the Secured Party has not (expressly or implicitly) authorised the Disposal or other dealing or agreed that this will extinguish any Security Interest that the Secured Party holds in the Secured Property (including all proceeds); and
  - (2) the Security Interests created under this deed continue in the Secured Property unless the Secured Party has agreed otherwise in writing.
- (d) The Grantor must promptly give the Secured Party:

# Specific Security Deed

- (1) notice of any Disposal of, or other dealing with, Secured Property or an interest in it that is in breach of subclause 4.1(a); and
- (2) any information requested by the Secured Party in relation to the transferee or other disponent to enable the Secured Party to perfect the Security Interests granted under this deed as against the transferee or other disponent.

## 4.2 Deposit Title Certificates

The Grantor must deposit with the Secured Party any Title Certificates to the Secured Property and the Secured Party is entitled to retain possession of the Title Certificates until the Secured Money has been paid in full and all Secured Obligations have been performed.

## 4.3 Income and Collection Account

- (a) Until an Event of Default occurs the Grantor may receive the income from any Secured Property, but must use that income only as permitted under the Transaction Documents.
- (b) Despite subclause 4.3(a) the Grantor must if directed at any time by the Secured Party:
  - (1) set up and continuously maintain a Collection Account in respect of all or any part of the Secured Property; and
  - (2) ensure the prompt collection and immediate deposit directly into the Collection Account of any money, proceeds or other amounts whatever on account of or in respect of the relevant Secured Property (including the proceeds of insurance or a Disposal).
- (c) If requested at any time by the Secured Party, the Grantor must:
  - (1) do everything necessary (including sign any documents) to ensure that one or more Authorised Officers of the Secured Party is a signatory to the Collection Account, including for the purposes of all withdrawals and transfers from the Collection Account;
  - (2) give notice in the form provided by the Secured Party to the Collection Account Bank (and any other person directed by the Secured Party) advising that the Collection Account is subject to a Security Interest and ensure the Collection Account Bank acknowledges the notice;
  - (3) if any money is withdrawn from the Collection Account in breach of this deed, hold that money on trust for the Secured Party and keep that money separate from any other money; and
  - (4) not make any withdrawals from, close, Dispose of or deal in any other way with the Collection Account without the prior written consent of the Secured Party.
- (d) If the Secured Party is not the Collection Account Bank, and if required by the Secured Party, the Grantor must procure execution of a document by the Collection Account Bank which includes (at the Secured Party's discretion) all or any of the following agreements with the Secured Party:
  - (1) that the Collection Account Bank will comply with and give effect to paragraph 4.3(c)(1);
  - (2) that the Collection Account Bank has no Security Interest or other interest in the Collection Account and waives any rights of set-off, netting or combination it may otherwise have in respect of the Collection Account;

## Specific Security Deed

- (3) if, despite paragraph 4.3(d)(2), it has a Security Interest or other interest in the Collection Account, then that Security Interest or other interest is subordinated in right and priority of payment to the Security Interest of the Secured Party and will not be exercised without the prior written consent of the Secured Party; and
- (4) that the Collection Account Bank will not seek to exercise any other rights or Enforce any Security Interests it may hold from time to time in connection with the Collection Account or any Related Property which are inconsistent with the Powers of the Secured Party.

### 5. Payments

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#### 5.1 Without deduction

The Grantor must pay the Secured Money to the Secured Party without set off or counterclaim and without deduction for Tax in accordance with the Transaction Documents.

#### 5.2 Interest

- (a) If the Grantor is not otherwise obliged to pay interest on the Secured Money the Grantor must pay interest on it from when it becomes payable, during the period that it remains unpaid, on demand or at times determined by the Secured Party, calculated on daily balances at the Overdue Rate.
- (b) Interest which is not paid when payable may be capitalised by the Secured Party at intervals which the Secured Party determines from time to time, or if no determination is made, every 30 days.
- (c) Interest is payable on capitalised interest at the rate and in the manner referred to in subclause 5.2(a).

#### 5.3 Merger

If the liability of the Grantor to pay to the Secured Party any money payable under this deed becomes merged in any agreement, judgment, order or other thing the Grantor must pay interest on the amount owing from time to time under that agreement, judgment, order or other thing at the higher of the rate payable under this deed and that fixed by or payable under that agreement, judgment, order or other thing.

#### 5.4 Currency conversion

- (a) If an amount is due in a currency and the Secured Party receives payment in another currency then the Secured Party may convert the amount received into the due currency at the spot rate determined by the Secured Party at which it is able to purchase the due currency with the amount received at the time of its receipt.
- (b) The Grantor:
  - (1) satisfies its Obligations to pay in the due currency only to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
  - (2) acknowledges that it may be necessary for the Secured Party to convert amounts received through a currency other than the due currency to ascertain the Secured Party's spot rate of exchange in respect of the due currency.



# Specific Security Deed

## 6. Obligations of Grantor

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### 6.1 Positive Obligations - general

The Grantor must:

- (a) pay on time all amounts payable now or in the future in connection with the Secured Property including all Tax other than any Excluded Tax;
- (b) at the Grantor's cost comply on time with all its Obligations in connection with the Secured Property including statutes and requirements and orders of Government Bodies;
- (c) comply on time with its Obligations in respect of any Security Interest over the Secured Property other than this deed;
- (d) comply on time with terms attaching to any consent given by the Secured Party in connection with this deed;
- (e) promptly give to the Secured Party the information and documents which the Secured Party requests from time to time in connection with:
  - (1) this deed; or
  - (2) any Secured Property;
- (f) do everything necessary to ensure that no Event of Default occurs;
- (g) at the Secured Party's request, promptly provide the Secured Party with a certificate (in the case of a corporate Grantor, signed by two directors or the sole director of the Grantor) which states whether an Event of Default or Potential Event of Default continues unremedied;
- (h) notify the Secured Party promptly after it occurs of full details of an Event of Default or Potential Event of Default, and the steps taken to remedy it;
- (i) obtain and renew on time each Authorisation necessary to enter into this deed, observe Obligations under it and allow it to be Enforced, and comply with its terms;
- (j) perfect and continuously maintain perfection of any Security Interest that itself forms part of the Secured Property (including perfecting as a purchase money security interest, if applicable); and
- (k) in the event that there is any increase in the number of Available Shares from time to time, within 10 Business Days of that increase:
  - (1) provide notice in writing to the Secured Party specifying:
    - (A) the number of Available Shares immediately prior to the increase;
    - (B) the number of Available Shares immediately following the increase;
  - (2) take all steps necessary or expedient to procure the release of sufficient Shares from any Security Interest in favour of the Seller as is required in order for all Available Shares to be released from any Security Interest in favour of the Seller (to the extent that such release has not already occurred); and

## Specific Security Deed

- (3) unless otherwise provided for in the terms of the Inter-creditor Deed, provide the Secured Party with Title Certificates in respect of all Shares which have become Available Shares.

### 6.2 Negative Obligations - general

The Grantor must not:

- (a) increase or allow to be increased the amount secured by a Security Interest in the Secured Property other than this deed or a Supporting Security;
- (b) without first giving the Secured Party 15 Business Days written notice, change its name, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the PPS Register in connection with any Security Interest created by this deed or any transaction contemplated by it;
- (c) without the Secured Party's prior written consent, lodge or serve a financing change statement or an amendment demand in relation to any Security Interest created by this deed or any transaction contemplated by it;
- (d) vary, terminate, rescind, discharge (except by performance), forfeit, cancel or otherwise render void or unenforceable any document which forms part of or relates to any Secured Property or agree to do any of those things;
- (e) abandon, settle, compromise or waive any rights or release any person from any Obligations in connection with the Secured Property;
- (f) allow any Secured Property to become an accession or fixture to any asset (other than land) that is not Secured Property (or otherwise subject to a Security Interest in favour of the Secured Party) or to be affixed to any land (other than any freehold interest in land in respect of which the Secured Party has a first-ranking registered mortgage);
- (g) without the Secured Party's prior written consent, allow any personal property which is not Secured Property to become an accession to, or to be commingled with, Secured Property;
- (h) change any serial number in respect of any Secured Property which is Serial Numbered Property; or
- (i) move (or permit the movement of) any Secured Property which is situated in Australia as at the date of this deed outside Australia.

### 6.3 Shares

If the Secured Property includes Shares then the additional provisions in Schedule 1 apply.

## 7. Perfecting securities

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### 7.1 General

At the Secured Party's request the Grantor must at its own expense:

- (a) execute in favour of the Secured Party, or as the Secured Party directs, and in the form required by the Secured Party, further documents, including Security Interests; and
- (b) do the things the Secured Party requires,

## Specific Security Deed

to provide control of, or more effective security to the Secured Party over, the Secured Property for the payment of the Secured Money and the performance of the Secured Obligations and to enable the Secured Party to exercise the Powers.

### 7.2 PPS Legislation

- (a) The Grantor must do anything, and must ensure that its Representatives do anything, that the Secured Party requires to:
  - (1) give full effect to the Transaction Documents;
  - (2) better secure all Security Interests contemplated by, or purported to be reserved or created by, any Transaction Document; or
  - (3) assist in the execution or exercise of any Power,including execute any transfer (including any transfer in blank) or other document.
- (b) Without limiting subclause 7.2(a), the Grantor agrees to make such amendments to the Transaction Documents, and to do (or procure anyone else who has an interest in the Secured Property or who claims under or as trustee for the Grantor to do) anything which the Secured Party requires from time to time to:
  - (1) ensure that any Security Interest which is purported to be reserved or created by any Transaction Document is a perfected Security Interest over all Secured Property with the priority contemplated by clause 3;
  - (2) obtain possession or control of any Secured Property to ensure that any Security Interest which is purported to be reserved or created by any Transaction Document over that Secured Property is perfected by possession or control for the purposes of, and to the extent possible under, the PPS Legislation;
  - (3) enable the Secured Party to register and maintain (including to renew before expiry) fully valid and effective financing statements or financing change statements with respect to any Security Interest over the Secured Property;
  - (4) remove any financing statement which is registered against the Grantor or in relation to any Security Interest which is not a Permitted Security Interest; and
  - (5) otherwise protect the Secured Party's position as the holder of Security Interests under the Transaction Documents in the context of the PPS Legislation.
- (c) Without limiting any other provision of this deed or any other Transaction Document, the Grantor waives its right to receive any notice that is required by any provision of the PPS Act (including a notice of a verification statement).

### 8. Secured Party's Power to rectify

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The Secured Party may do anything which should have been done by the Grantor under this deed but which has not been done or which the Secured Party considers has not been done properly.

# Specific Security Deed

## 9. Grantor's representations and warranties

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### 9.1 Representations and warranties

The Grantor represents and warrants (except in relation to the matters disclosed to the Secured Party and accepted by the Secured Party in writing) that:

- (a) if it is a corporation, it is validly subsisting and it has the power to conduct its business as it is now conducting it;
- (b) it is the beneficial owner of, and has good title to, the Secured Property and has the right to grant a Security Interest in the Secured Property to the Secured Party free from any Security Interest or other interest other than Permitted Security Interests subject to any Trust which is disclosed in the Reference Schedule (and the Grantor represents and warrants that the details of the Trust are accurately set out in the Reference Schedule in all respects);
- (c) it has the right to grant a Security Interest in the Secured Property in accordance with this deed;
- (d) there is no actual, impending or threatened proceedings, suit or other action which affects, or may reasonably be expected to affect, the Grantor or the Secured Property before any Government Body;
- (e) it has power to enter into this deed and comply with its Obligations under it;
- (f) this deed and the transactions under it do not contravene its constituent documents (if applicable) or any law or Obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers (or the powers of its directors) to be exceeded;
- (g) it has in full force and effect the Authorisations necessary for it to enter into this deed, to comply with its Obligations and exercise its rights under it and allow it to be Enforced;
- (h) its Obligations under this deed are valid and binding and are Enforceable against it in accordance with its terms;
- (i) it benefits by entering into this deed;
- (j) no Event of Default or Potential Event of Default continues unremedied;
- (k) it is not a trustee of any trust other than as expressly disclosed in the Reference Schedule;
- (l) it has disclosed to the Secured Party in writing details of all Secured Property which is located outside Australia;
- (m) if any of the Secured Property is Serial Numbered Property, the details of the relevant serial numbers of the Secured Property provided by the Grantor to the Secured Party are true and correct;
- (n) none of the Secured Property is consumer property; and
- (o) it has disclosed to the Secured Party in writing all matters in connection with the Transaction Documents and the Secured Property which may affect the nature and extent of the risk undertaken by the Secured Party in entering into the Transaction Documents and doing anything under them.

# Specific Security Deed

## 9.2 Repetition

The representations and warranties in clause 9.1 and in any of the Schedules are taken to be made on each date on which the Secured Party provides financial accommodation to the Grantor and on each date on which the Grantor acquires or Disposes of Secured Property.

## 10. Default

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### 10.1 Consequences

If an Event of Default has occurred (whether or not it is continuing), then the Secured Party may at any time by written notice to the Grantor do any one or more of the following:

- (a) sue the Grantor for the Secured Money;
- (b) declare all or any part of the Secured Money:
  - (1) payable on demand (in which case those amounts will be due and payable immediately on demand made at any time by notice from the Secured Party to the Grantor); or
  - (2) due and owing (in which case those amounts will be immediately due and owing);
- (c) appoint one or more Receivers;
- (d) exercise all or any of the Powers of a Receiver under clause 12.3;
- (e) exercise any of the Secured Party's other Powers including either or both of the following:
  - (1) seize any Secured Property; and
  - (2) Dispose of any Secured Property in the manner, and on the terms and conditions, as the Secured Party sees fit; and
- (f) at the cost of the Grantor, appoint a firm of accountants or other consultants to review and report to the Secured Party on the business, financial condition and affairs of the Grantor.

### 10.2 Exercise of rights by Secured Party

If the Secured Party exercises a Power in connection with this deed, that exercise is not to be taken as an exercise of a right, power or remedy under the PPS Act unless the Secured Party states otherwise at the time of exercise. This clause 10.2 does not apply to a Power which can only be exercised under the PPS Act.

## 11. Powers not affected

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The Powers of the Secured Party under this deed may be exercised notwithstanding that any negotiable or other instrument, security, contract or other engagement may still be current, in circulation, outstanding or not then due.

# Specific Security Deed

## 12. Appointment of Receiver

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### 12.1 Appointment

- (a) At any time after an Event of Default the Secured Party may:
  - (1) appoint any person or persons jointly, severally or both as Receiver of all or any of the Secured Property;
  - (2) remove any Receiver and in case of the removal, retirement or death of any Receiver may appoint another in his place; and
  - (3) fix the remuneration of any Receiver.
- (b) The Receiver may exercise Powers only in connection with that part of the Secured Property specified in his appointment and the appointment does not affect the rights of the Grantor to deal with the remainder of the Secured Property in the manner permitted by this deed.
- (c) The Power to appoint a receiver or receiver and manager over all of the Secured Property may be exercised whether or not a Receiver has already been appointed over part of it.
- (d) If a Receiver is appointed on the basis of an Event of Default which later ceases to subsist, that will not affect the validity of the appointment of the Receiver and the Event of Default will be deemed to have continued to subsist for the purposes of the appointment of the Receiver under this deed.

### 12.2 Agent of Grantor

Subject to clause 12.4, every Receiver will be the agent of the Grantor and the Grantor will alone be responsible for his acts, defaults and remuneration.

### 12.3 Receiver's Powers

- (a) In addition to any Powers granted by law, and except to the extent specifically excluded by the terms of his appointment, every Receiver will without the need for any consent of the Grantor have Power to do anything in respect of the Secured Property that the Grantor could do, including:
  - (1) to enter, take possession of, collect, manage and get in all or any of the Secured Property;
  - (2) to Dispose of any of the Secured Property on any terms;
  - (3) to register any Secured Property in the name of the Secured Party or its nominee;
  - (4) to operate, collect or do anything else which the Grantor could do in respect of Secured Property comprising an account, a debt, a bank account or an insurance policy including to obtain payment of any money payable in connection with any of them;
  - (5) to perform or Enforce, to exercise or refrain from exercising the Grantor's rights and powers under, or otherwise to obtain the benefit of, any documents or agreements or rights which form part of the Secured Property and any documents or agreements entered into in exercise of any Power;

# Specific Security Deed

- (6) if the Grantor is not a corporation to which the Corporations Act applies, to do anything else the law would allow a Receiver to do if the Grantor was a corporation incorporated under the Corporations Act; and
  - (7) to do anything incidental to the exercise of any other Power.
- (b) Each of the Powers in subclause 12.3(a) must be construed independently. None limits the generality of any other.
- (c) Any dealing under any Power will be on the terms and conditions which the Receiver determines.

## 12.4 Receiver appointment after commencement of Liquidation

The Power to appoint a Receiver under this clause 12 may be exercised even if:

- (a) at the time when this deed becomes Enforceable or at the time when an appointment is made an order has been made or a resolution has been passed for the Liquidation of the Grantor; and
- (b) a Receiver appointed in those circumstances may or may not in some respects act as the agent of the Grantor.

## 13. Powers of Secured Party

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### 13.1 Exercise of Powers

Whether or not a Receiver has been appointed, the Secured Party may at any time after an Event of Default without giving any notice exercise all or any of the Powers which may be exercised by a Receiver. Clause 13.5 applies, to the extent applicable, to any Enforcement by the Secured Party or any Receiver.

### 13.2 Not to account as mortgagee in possession

If either the Secured Party or a Receiver exercises Powers under this deed or takes possession of all or any part of the Secured Property, then neither of them is liable to account as a mortgagee in possession.

### 13.3 Withdrawal

The Secured Party may at any time give up possession of any of the Secured Property and may at any time withdraw any receivership.

### 13.4 Indemnity

The Secured Party may give any indemnities to the Receiver for the exercise by the Receiver of the Powers which are permitted by law and if the Secured Party pays any money under an indemnity it will become part of the Secured Money.

### 13.5 PPS Act Enforcement

The Grantor and the Secured Party agree that:

- (a) for the purposes of sections 115(1) and 115(7) of the PPS Act:
  - (1) the Secured Party need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and

# Specific Security Deed

- (2) sections 142 and 143 are excluded; and
- (b) for the purposes of section 115(7) of the PPS Act, the Secured Party need not comply with sections 132 and 137(3);
- (c) if the PPS Act is amended after the date of this deed to permit the Grantor and the Secured Party to agree to not comply with or to exclude other provisions of the PPS Act, the Secured Party may notify the Grantor that any of these provisions is excluded, or that the Secured Party need not comply with any of these provisions, as notified to the Grantor by the Secured Party; and
- (d) the Grantor agrees not to exercise its rights to make any request of the Secured Party under section 275 of the PPS Act, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

## **14. Protection of Secured Party and Receiver**

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To the extent permitted by law, the Secured Party and any Receiver are not liable in respect of any omission or delay in the exercise of any Power, nor for any losses which result from the exercise or non exercise of any Power, except where any omission, delay or loss arises from fraud or gross negligence on the part of the Secured Party or Receiver.

## **15. Protection of purchasers**

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### **15.1 No enquiry**

At the time of any Disposal or dealing purporting to be made in exercise of any Power, no purchaser or other party to any Disposal or dealing:

- (a) will be bound to enquire whether any default has been made or otherwise about the propriety or regularity of that Disposal or dealing; or
- (b) will be affected by express notice that any Disposal or dealing is unnecessary or improper.

### **15.2 Dealings valid**

Despite any irregularity or impropriety in any Disposal or dealing, for the purposes of protecting the purchaser or other party to that Disposal or dealing, the transaction is deemed to be authorised and valid.

## **16. Preservation of Secured Party's Powers**

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### **16.1 Liability not affected**

The liabilities under this deed of the Grantor and the Powers under this deed of the Secured Party, a Receiver or an Attorney are not affected by anything which might otherwise have that effect at law or in equity.



# Specific Security Deed

## 16.2 No merger

- (a) The Secured Party's right to payment of the Secured Money arising in any way (including under a negotiable instrument or another contract with the Grantor) does not merge with the Grantor's undertaking to pay the Secured Money under this deed.
- (b) *This deed does not merge with, postpone, lessen or otherwise prejudicially affect any other Security Interest over the Secured Property to which the Secured Party is entitled.*
- (c) The Secured Party will hold a judgment or order which it obtains against the Grantor in respect of the Secured Money collaterally with this deed, and this deed will not merge in the judgment or order.

## 16.3 Exercise of Secured Party's Powers

The Secured Party may exercise its Powers under this deed even if a negotiable instrument, Security Interest, contract or other Obligation relating to the Secured Money or any Secured Obligation is still current or has not fallen due.

## 16.4 Suspension of Grantor's rights

Until all Secured Money has been paid and discharged, and all Secured Obligations performed:

- (a) the Grantor will not:
  - (1) be entitled by contribution, subrogation, indemnity, marshalling or otherwise to the benefit of any Security Interest, Guarantee or document held by the Secured Party for the payment of the Secured Money irrespective of whether or not that Security Interest, Guarantee or document is given by the Grantor;
  - (2) raise a defence, set-off or counterclaim against the Secured Party if that might reduce or discharge the Grantor's liability under this deed; or
  - (3) unless expressly permitted to do so in a Transaction Document, prove, claim or vote in, or receive the benefit of a distribution, dividend or payment arising out of, the Liquidation of any person who has provided a Supporting Security; and
- (b) without limiting or affecting any other provision of this deed, the Grantor waives any right it has or may have at any time which may prevent the recovery by the Secured Party of all Secured Money (whether arising by subrogation, under a constructive or other trust or otherwise at law or in equity) including the right to require another person to pay to the Grantor any money or to assign the benefit of a Security Interest to the Grantor.

## 16.5 Prove in Liquidation

An Attorney may prove in the Liquidation of any person for all money that the Grantor is entitled to claim against that person on any account. The Attorney must account to the Grantor for any money which it receives in excess of the Secured Money but the Attorney is not obliged to pay any interest to the Grantor on that excess.

## 16.6 No marshalling

The Secured Party is not obliged to marshal, resort to, Enforce or appropriate any other Security Interest, money or assets it holds for, or to secure, payment of the Secured Money or the performance of the Secured Obligations before it Enforces this deed.

# Specific Security Deed

## 16.7 Co-surety

The liability of the Grantor under this deed is not affected because:

- (a) any other person who was intended to become a co-surety or co-indemnifier for payment of the Secured Money or the performance of the Secured Obligations has not done so or has not done so effectively; or
- (b) a person who is a co-surety or co-indemnifier for payment of the Secured Money or the performance of the Secured Obligations is discharged under an agreement or under statute or a principle of law or equity.

## 16.8 Preference

If a claim is made that all or part of a payment, Obligation, settlement, transaction, conveyance or transfer in connection with the Secured Money or the Secured Obligations is void or voidable under law relating to insolvency or the protection of creditors or for any other reason and the claim is upheld, conceded or compromised:

- (a) the Secured Party is entitled immediately as against the Grantor to the Powers in respect of the Secured Money and the Secured Obligations to which it would have been entitled if all or that part of that payment, Obligation, settlement, transaction, conveyance or transfer had not taken place; and
- (b) the Grantor agrees to immediately do any act and sign any document at the Secured Party's request to restore to the Secured Party any Security Interest or Guarantee held by it from the Grantor immediately before that payment, Obligation, settlement, transaction, conveyance or transfer.

## 17. Release

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### 17.1 Execute release

The Secured Party must execute a release of the Secured Property from this deed and do all things necessary to remove any registered Security Interest created by this deed within 10 Business Days at the request of the Grantor on satisfaction of the Obligation to pay all of the Secured Money and perform all Secured Obligations unless the Secured Party considers that there is a prospect that money will become owing (actually, contingently or prospectively) by the Grantor to the Secured Party for any reason, including because a payment made by the Grantor or any other person to the Secured Party could be voided under any law relating to insolvency or for any other reason.

### 17.2 Retain documents

The Secured Party is entitled to retain all instruments and Title Certificates deposited under clause 4.2 until this deed is released in respect of the relevant Secured Property.

## 18. Costs and indemnities

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### 18.1 Costs

- (a) The Grantor must pay or reimburse on demand the Secured Party's costs, charges and expenses in connection with:
    - (1) the registration and maintenance of this deed and any financing statement or financing change statement;
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## Specific Security Deed

- (2) the general ongoing administration of this deed (including giving and considering consents, waivers, variations, discharges and releases and producing title documents);
  - (3) the occurrence of any Event of Default or Potential Event of Default;
  - (4) the Secured Party and any Receiver otherwise acting in connection with this deed, such as Enforcing or preserving Powers (or considering doing so), doing anything in connection with any enquiry by a Government Body involving the Grantor or responding to an amendment demand or a request under section 275 of the PPS Act; and
  - (5) any Tax other than any Excluded Tax in relation to this deed or any Transaction Document.
- (b) The Secured Party may debit any of these amounts to the Grantor's account before asking the Grantor to pay.

### 18.2 Indemnity

- (a) The Grantor must pay or reimburse on demand and indemnifies the Secured Party against any loss arising from, and any liability and costs incurred in connection with:
- (1) an Event of Default or Potential Event of Default;
  - (2) actions, claims, damages, demands or proceedings in connection with any of the Transaction Documents;
  - (3) any person exercising, or attempting to exercise, a Power in connection with this deed after an Event of Default or Potential Event of Default including in maintaining, preserving or protecting the Secured Property;
  - (4) improvements or enhancements made to the Secured Property by the Secured Party or a Receiver;
  - (5) a payment made by the Grantor in any currency other than the currency in which the payment was due to be made;
  - (6) any breach of any Secured Obligations; or
  - (7) obtaining legal, valuation or other professional advice on any matter of concern to the Secured Party, a Receiver or Attorney in connection with a Transaction Document or the Secured Property,
- to the extent that the liability or loss is not the result of fraud or wilful default by the Secured Party.
- (b) The Grantor agrees to pay amounts due under this indemnity on demand from the Secured Party.

## 19. GST

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### 19.1 Taxable supply

- (a) If GST is payable by the Secured Party on a supply made by the Secured Party to the Grantor under a Transaction Document, the Grantor must pay to the Secured Party an amount equal to the GST payable on the supply.

## Specific Security Deed

- (b) The amount payable under subclause 19.1(a) must be paid at the same time that the consideration for the supply is to be provided under the Transaction Document and must be paid in addition to the consideration for the supply otherwise payable.
- (c) If requested by the Grantor, the Secured Party must provide the Grantor with a tax invoice on or before payment of the amounts required by this clause 19.1.

### 19.2 Adjustment events

If an adjustment event occurs in respect of a supply made by the Secured Party under a Transaction Document, a corresponding adjustment must be made between the Secured Party and the Grantor in respect of any amount paid to the Secured Party by the Grantor under clause 19.1, and appropriate payments must be made.

### 19.3 Payments and reimbursement

If the Grantor is required under a Transaction Document to pay for or reimburse an expense or outgoing of the Secured Party, or is required to make a payment under an indemnity in respect of an expense or outgoing to the Secured Party, the amount to be paid by the Grantor is the aggregate of:

- (a) the amount of the expense or outgoing less any input tax credit in respect of that expense or outgoing to which the Secured Party is entitled; and
- (b) if the Secured Party's recovery from the Grantor is in respect of a taxable supply, an amount equal to the GST payable by the Secured Party in respect of that recovery.

## 20. Continuing security

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This deed and each Supporting Security will be a continuing security notwithstanding any settlement of account, intervening payment or other matter or thing whatever until a final discharge of this deed and each Supporting Security has been given to the Grantor.

## 21. Other securities

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### 21.1 Not to be affected by this document

Nothing contained in this deed or any Supporting Security merges in or otherwise in any way prejudicially affects:

- (a) any other Security Interest; or
- (b) any right or remedy against any person,

which the Secured Party or any person claiming through the Secured Party has at any time.

### 21.2 Not to affect other documents or Powers

No other Security Interest at any time held by the Secured Party will in any way prejudicially affect this deed, any Supporting Security or any Power.

# Specific Security Deed

## 22. Completion of blank instruments

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The Secured Party or any Authorised Officer of the Secured Party or any Receiver or Attorney may fill in any blanks in this deed and complete in favour of the Secured Party, or any purchaser, any document at any time executed by or on behalf of the Grantor in blank and deposited with the Secured Party under or as collateral security to this deed or any Supporting Security.

## 23. Application of money

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### 23.1 Order

- (a) All money received under this deed from time to time (even if less than is required to pay all Secured Money owing at that time) which is not required by law (including section 140 of the PPS Act) to be paid to another person in priority may be applied or appropriated by the Secured Party in or towards satisfaction of all or any part of the Secured Money or in discharge of all or any of the Secured Obligations in the order and the manner which the Secured Party determines in its absolute discretion, including in a manner which will enable the Secured Party to preserve any purchase money security interest held by the Secured Party.
- (b) Any application or appropriation purportedly made by the Grantor which is inconsistent with that of the Secured Party will have no effect and the Grantor and the Secured Party agree that subclause 23.1(a) is the method of application to which they have agreed for the purposes of section 14(6)(a) of the PPS Act.
- (c) To the extent required by law, any surplus money held by the Secured Party after payment in full of all Secured Money, the discharge of all Secured Obligations and the making of all payments that the Secured Party or any Receiver or Attorney is entitled or obliged to make under the Transaction Documents or at law must then be applied:
  - (1) in payment of money owing to any person of whom the Secured Party, Receiver or Attorney is actually aware who holds a Security Interest over Secured Property which ranks in priority after the Security Interest created by this deed (and if more than one, in the order of their priority); and
  - (2) to the extent not otherwise applied, to the Grantor or any other person entitled to it (and if more than one, in the order of their priority).

### 23.2 No interest

Money available for application under paragraph 23.1(c)(2) will not bear interest. The Secured Party may discharge its liability to account for it by crediting it to an account in its books in the name of the person to whom it is payable, or by paying it into court.

### 23.3 Actual receipt

In the application of money under clause 23.1 the Grantor is to be credited only with so much of that money as is actually received by the Secured Party. The credit dates from the time of receipt.

# Specific Security Deed

## 24. Power of attorney

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### 24.1 Appointment

The Grantor irrevocably appoints the Secured Party, each Authorised Officer of the Secured Party and each Receiver severally its Attorney.

### 24.2 Powers

Each Attorney may:

- (a) in the name of the Grantor or the Attorney do anything which the Grantor may lawfully authorise an attorney to do in connection with this deed or the Secured Property or which in the Attorney's opinion is necessary or expedient to give effect to any Power (including to prove in the Liquidation of any person as contemplated in clause 16.5);
- (b) delegate its Powers (including this Power of delegation) to any person for any period and may revoke a delegation; and
- (c) *exercise or concur in exercising its Powers even if the Attorney has a conflict of duty in exercising its Powers or has a direct or personal interest in the means or result of that exercise of Powers.*

### 24.3 Sale

Without limiting the generality of subclause 24.2(a), the Secured Party may sell the Secured Property by auction, tender or private treaty in any number of parcels which the Secured Party determines and for this purpose any Authorised Officer of the Secured Party may do all acts and things and sign and complete where necessary all transfers agreements and other documents necessary or expedient for the purpose of completing any sale.

## 25. Statutory Powers

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### 25.1 Powers in augmentation

The Powers conferred on the Secured Party by any law (including chapter 4 of the PPS Act):

- (a) are in augmentation of the Powers conferred by this deed or any Supporting Security;
- (b) (to the extent permitted by law) may be exercised by the Secured Party immediately if an Event of Default occurs; and
- (c) are excluded or varied only so far as they are inconsistent with the express terms of this deed or any Supporting Security.

### 25.2 Notice not required unless mandatory

The Secured Party need not give notice to the Grantor or allow time to elapse before exercising a Power unless notice or a lapse of time is required by a law which cannot be excluded. If the law stipulates that notice must be given or time elapse, then:

- (a) if a period of notice or lapse of time is mandatory, that period of notice must be given by the Secured Party or the time must elapse; or

## Specific Security Deed

- (b) if a period of notice or lapse of time is not mandatory but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

Nothing in this clause 25.2 prohibits the Secured Party or any Receiver from giving a notice under the PPS Act or any other law.

### 25.3 Appointment of nominee for PPS Register

For the purposes of section 153 of the PPS Act, the Secured Party appoints the Grantor as its nominee, and authorises the Grantor to act on its behalf, in connection with a registration under the PPS Act of any Security Interest in favour of the Grantor which is:

- (a) evidenced or created by chattel paper;
- (b) perfected by registration under the PPS Act; and
- (c) transferred to the Secured Party under this document.

This authority ceases when the registration is transferred to the Secured Party.

## 26. Trustee provisions

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### 26.1 Acknowledgements

If the Grantor is or becomes a Trustee of a Trust (whether or not that fact has been disclosed to the Secured Party) it:

- (a) acknowledges that this deed binds or as the case may be will bind it personally and in its capacity as Trustee; and
- (b) agrees that the definition of Secured Property includes the present and future right, title and interest in the Trust Property.

### 26.2 Undertakings

Each Grantor which is a Trustee must:

- (a) ensure that the Trust is operated and maintained in accordance with all applicable laws and Authorisations and good business practice;
- (b) not allow or permit any material variation to the Trust's objectives and management processes without the prior written consent of the Secured Party;
- (c) allow the Secured Party or any of its Representatives at any time on reasonable notice during normal business hours to inspect the Trustee's premises and for that purpose will provide copies of books and records and all other information reasonably requested;
- (d) not cause or permit any Trust Property to be mixed with any other property;
- (e) not default in the performance or observance of its Obligations as trustee of the Trust or trustee of the Trust Property;
- (f) not release, Dispose of or otherwise prejudice its right of indemnity against the Trust Property or its equitable lien over the Trust Property;

## Specific Security Deed

- (g) not do anything which effects or facilitates the retirement, removal or replacement of the Trustee or the appointment of any other person as trustee of the Trust or trustee of the Trust Property;
- (h) not do anything which could restrict the Trustee's right of indemnity from the Trust Property in respect of Obligations or liabilities incurred by the Obligor under the Transaction Documents;
- (i) not do anything which could restrict or impair the ability of the Obligor to observe their Obligations under the Transaction Documents;
- (j) not do anything which effects or facilitates the termination of the Trust or the determination of the vesting date of the Trust;
- (k) not do anything which effects or facilitates the variation of the Trust Deed;
- (l) not, without the prior consent of the Secured Party, do anything which effects or facilitates the transfer or distribution of the Trust Property and each Trustee undertakes that unless the Secured Party has given its prior written consent:
  - (1) there will be no:
    - (A) capital distribution under the Trust;
    - (B) exercise of any power of determination, revocation, appropriation or advancement; or
    - (C) settlement, setting aside or transfer to other trusts of any of the Trust Property,but these restrictions do not apply:
    - (D) to a distribution of Trust income in terms of the Trust Deed; or
    - (E) so as to infringe the law against perpetuities or relating to accumulation;
- (m) ensure that the Trustee exercises its indemnity against and equitable lien over the Trust Property in order to ensure payment of all money and damages of any nature owing (actually or contingently) from time to time under the Transaction Documents;
- (n) ensure that the Trustee assigns to the Secured Party, and otherwise facilitates the subrogation of the Secured Party to, the indemnities and equitable lien referred to in subclause 26.2(m);
- (o) not, without the prior consent of the Secured Party, create a Security Interest or allow one to exist over the Trustee's right of indemnity out of the Trust Property other than a Permitted Security Interest;
- (p) not increase or allow to be increased the remuneration payable to it as Trustee of the Trust;
- (q) where the Trust is a unit trust, not permit the issue of new units in the Trust or the transfer, transmission or redemption of existing units in the Trust without the prior written consent of the Secured Party; and
- (r) not exercise any power or provision of the Trust after the occurrence of an Event of Default without the prior written consent of the Secured Party.



# Specific Security Deed

## 26.3 Warranties

The Grantor warrants (or if the Grantor becomes a Trustee after the date of this deed is deemed to warrant on the date it becomes a Trustee) that:

- (a) the Trustee has power under the Trust Deed to execute the Transaction Documents and enter into every transaction contemplated by the Finance Documents;
- (b) in executing the Transaction Documents the Trustee has properly performed its Obligations and discharged its duties to the Beneficiaries;
- (c) the Trustee is the only trustee of the Trust and the only trustee of the Trust Property;
- (d) no action has been taken to remove the Trustee as trustee of the Trust or of the Trust Property or to appoint an additional trustee of the Trust or of the Trust Property;
- (e) the Trustee has a right to be fully indemnified out of all the Trust Property in relation to money owing under the Transaction Documents;
- (f) the Trust Property is sufficient to satisfy the right of indemnity referred to in subclause 26.3(d) and all other Obligations in respect of which the Trustee has a right to be indemnified out of the Trust Property;
- (g) the Trustee has not defaulted in the performance, observance and discharge of its Obligations and duties as trustee of the Trust or trustee of the Trust Property;
- (h) no action has been taken to terminate the Trust or to determine a vesting date under the Trust Deed;
- (i) the rights of the Beneficiaries in relation to and their interest in the Trust Property are subject to:
  - (1) the rights of the Secured Party in relation to any Security Interest held by it over the Trust Property; and
  - (2) any rights or interests in the Trust Property to which the Secured Party may from time to time be subrogated;
- (j) the document described as the Trust Deed of the Trust (including any variations) provided to the Secured Party prior to the date of this deed represents a complete and up to date copy of the Trust Deed as at that date;
- (k) the Trust Deed fully discloses all of the terms of the Trust;
- (l) the Trustee has complied, and will continue to comply, with all laws and the Trust Deed in entering into and performing every transaction contemplated by the Transaction Documents;
- (m) the Trust has been duly constituted and the Trust Deed is not void, voidable or otherwise unenforceable;
- (n) subject to the Trust, the Trustee is the legal owner of all of the Trust Property held by it, free from Security Interests other than Permitted Security Interests;
- (o) there has been no resettlement of the Trust since its establishment; and

# Specific Security Deed

- (p) the Trustee has carefully considered the purpose of the Transaction Documents and considers that its entry into the Transaction Documents is for the benefit, and in the interests, of the Beneficiaries.

## 27. Partnership

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### 27.1 Binding nature

Where any of the Secured Money or any Secured Obligations relate to the indebtedness or Obligations of a Partnership:

- (a) this deed continues to bind the Grantor notwithstanding any changes which take place at any time in the partners or joint venturers whether by the death or retirement of any partner or joint venturer or the admission of any new partner or joint venturer or otherwise and notwithstanding that the Partnership no longer carries on business; and
- (b) this deed binds each Grantor notwithstanding that a Grantor is not, or is no longer, a member of the Partnership.

### 27.2 Discontinuance of transactions

*If anything described in subclauses 27.1(a) or 27.1(b) occurs, the Secured Party may, without notice to the Grantor or the Partnership, discontinue all or any transactions with the Grantor or the Partnership and decline to make any advances or meet any Obligations to, for or on account of the Grantor or the Partnership.*

### 27.3 Obligations

Unless expressly provided otherwise in this deed, the Obligations, representations, warranties, undertakings, indemnities and other liabilities of the Partnership under this deed are given and assumed by each Grantor jointly and by each of them separately. References to the Partnership include references to each Grantor as a member of the Partnership.

## 28. Notices

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### 28.1 Form

Any notice or other communication to or by any party must be:

- (a) in writing and in the English language;
- (b) addressed to the address of the recipient in clause 28.4 or to any other address as the recipient may have notified the sender; and
- (c) be signed by the party or by an Authorised Officer of the sender.

### 28.2 Manner

In addition to any other method of service authorised by law, the notice may be:

- (a) personally served on a party;
- (b) left at the party's current address for service;

## Specific Security Deed

- (c) sent to the party's current address for service by prepaid ordinary mail or if the address is outside Australia by prepaid airmail;
- (d) sent by facsimile to the party's current numbers for service; or
- (e) sent by electronic mail to the party's electronic mail address.

### 28.3 Time

If a notice is sent or delivered in the manner provided in clause 28.2 it must be treated as given to or received by the addressee in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
  - (1) in Australia to an Australian address the fourth Business Day after posting; or
  - (2) in any other case on the tenth Business Day after posting; or
- (c) facsimile when a transmission report has been printed by the sender's facsimile machine stating that the document has been sent to the recipient's facsimile number; or
- (d) electronic mail, when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee,

but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

### 28.4 Initial details

The addresses and numbers for service are initially:

- (a) for the Grantor, those set out in the Grantor's Address Details; and
- (b) for the Secured Party, those set out in the Secured Party's Address Details.

### 28.5 Changes

A party may from time to time change its address or numbers for service by notice to the other party.

## 29. Governing law and jurisdiction

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### 29.1 Governing law

This deed is governed by and construed in accordance with the laws of the Relevant Jurisdiction. To the extent permitted by law, the law of the Commonwealth as it applies in the Relevant Jurisdiction governs the Security Interest created under this deed.

# Specific Security Deed

## 29.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of the Relevant Jurisdiction and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within subclause 29.2(a).

## 30. Miscellaneous

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### 30.1 Exercise Powers

- (a) A single or partial exercise or waiver by the Secured Party of any Power under or relating to this deed will not prevent any other exercise of that Power or the exercise of any other Power.
- (b) The Secured Party and its Representatives will not be liable for any loss, cost or expense of the Grantor caused or contributed to by the waiver of, exercise of, attempted exercise of, failure to exercise or delay in exercising a Power and the Secured Party holds the benefit of this clause 30.1 on trust for itself and its Representatives.

### 30.2 Legal effect

Each party acknowledges and agrees for the benefit of each other party that this document is intended to take effect as a deed. Each party executes this document with the intention that it will be immediately legally bound by this document.

### 30.3 Effect of execution

This deed is binding on each person who executes it other than the Secured Party despite the failure of any other person named as a party to execute it.

### 30.4 Moratorium legislation

Any law which varies, prevents or prejudicially affects the exercise by the Secured Party of any Power is excluded to the extent permitted by law.

### 30.5 Assignment by Secured Party

The Secured Party may assign, transfer, or otherwise Dispose of (including by way of novation) or deal with all or any of its Powers or Obligations under this deed and each Transaction Document without the consent of the Grantor.

### 30.6 Assignment by Grantor

The Grantor must not assign, transfer or otherwise Dispose of or deal with all or any part of its rights, interests or Obligations under this deed or any Transaction Document without the prior written consent of the Secured Party.

### 30.7 Powers Cumulative

The Powers provided to the Secured Party in this deed are cumulative and not exclusive of any Powers provided by law.

# Specific Security Deed

## 30.8 Severability

- (a) If a provision of this deed is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (b) Without limiting subclause 30.8(a):
  - (1) the definitions of Secured Money and Secured Obligations do not include any Obligation to the extent that that Obligation if included would avoid or invalidate or render ineffective either or both of clauses 2 and 3; and
  - (2) the definition of the Secured Property does not include any property so long as and to the extent that that property if included would avoid or invalidate or render ineffective this deed,but the Grantor must use its best endeavours to satisfy any condition or obtain any consent which may be necessary so that the Obligation or property may validly be included under this deed.

## 30.9 Indemnities

The indemnities in this deed are continuing Obligations, independent from the other Obligations of the Grantor under this deed and continue after this deed ends. It is not necessary for the Secured Party to incur expense or make payment before enforcing a right of indemnity under this deed.

## 30.10 Further assurance

The Grantor must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this deed and the transactions contemplated by it.

## 30.11 Time

Time is of the essence in respect of any Obligation of the Grantor under this deed.

## 30.12 Variation

An amendment or variation to this deed is not effective unless it is in writing and signed by the parties.

## 30.13 Waiver

- (a) Subject to any express provision of this deed to the contrary, a waiver by the Secured Party of a Power under or relating to this deed, whether prospectively or retrospectively, is not effective unless it is in writing and signed by the Secured Party.
- (b) No other act, omission or delay by the Secured Party will constitute a waiver of a Power.

## 30.14 Counterparts

This deed may be executed in any number of counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart of this deed may deliver it to, or exchange it with, another party by:

- (a) faxing; or

## Specific Security Deed

- (b) emailing a pdf (portable document format) copy of,  
the executed counterpart to that other party.

### 30.15 Set off

The Grantor authorises the Secured Party (but without Obligation on its part) if an Event of Default occurs:

- (a) to apply any credit balance in any currency (whether or not matured) in any of its accounts with the Secured Party in or towards satisfaction of any amount due under any Transaction Document;
- (b) to debit and charge to any account of the Grantor with the whole or any part of any money owing under this deed; and
- (c) to effect any currency exchanges necessary to implement the set off or debit in the payment currency of this deed.

### 30.16 Certificate

- (a) A certificate by the Secured Party relating to this deed is, in the absence of manifest error, conclusive evidence against the Grantor of the matters Certified.
- (b) If under this deed any matter is to be resolved by the determination or opinion of the Secured Party:
  - (1) the determination or opinion of the Secured Party will be binding on the Grantor:
    - (A) if it is expressly required to be reasonable, then if it is reasonable; or
    - (B) if it is not expressly required to be reasonable, then if it is not made or formed in bad faith;
  - (2) the Secured Party is not obliged to give the reasons for a determination or opinion; and
  - (3) the Grantor will have the onus of proving that a determination or opinion of the Secured Party is made or formed in bad faith or is unreasonable, as the case may be.
- (c) A determination or an opinion of an Authorised Officer of the Secured Party which is given to the Grantor or otherwise expressed or acted on by the Secured Party as being a determination or an opinion of the Secured Party will be deemed to be a determination or opinion of the Secured Party.

### 30.17 Exchange rates

Subject to any express provision to the contrary, if for the purposes of this deed it is necessary to convert one currency into another currency the conversion will be effected using an exchange rate approved of by the Secured Party in good faith.

### 30.18 Confidentiality

- (a) The Grantor must not disclose the contents or terms of this deed or any information or documents received by it in connection with the negotiation or terms of this deed without the prior written consent of the Secured Party unless:

## Specific Security Deed

- (1) disclosure is permitted by the express terms of this deed;
  - (2) information is available to the public generally (except as a result of a previous breach of this clause 30.18);
  - (3) the Grantor is required to make the disclosure by law (provided that this paragraph 30.18(a)(3) is not to be construed to, and does not, require the Grantor to send, make available or otherwise provide or disclose any of the documents or information referred to in section 275(1) of the PPS Act); or
  - (4) the disclosure is made on a confidential basis to the Representatives or professional advisers of the Grantor for the purpose of obtaining advice.
- (b) The Secured Party may disclose any information provided to it by the Grantor, or in its possession, including the contents or terms of this deed or any information or documents received by it in connection with the negotiation or terms of this deed in any of the following circumstances:
- (1) disclosure is permitted by the express terms of this deed;
  - (2) information is available to the public generally (except as a result of a previous breach of this clause 30.18);
  - (3) the Secured Party is required to make the disclosure by law (provided that this paragraph 30.18(b)(3) is not to be construed to, and does not, require the Secured Party to send, make available or otherwise provide or disclose any of the documents or information referred to in section 275(1) of the PPS Act);
  - (4) the disclosure is made on a confidential basis to the Representatives or professional advisers of the Secured Party for the purpose of obtaining advice;
  - (5) the disclosure is in connection with an exercise of rights or a dealing with rights or Obligations under a Transaction Document (including an assignment or other Disposal of rights or Obligations under a Transaction Document);
  - (6) the disclosure is made to a person who has provided Supporting Security; or
  - (7) the disclosure is required for the purpose of registering and maintaining any financing statement or financing change statement relating to the Security Interests held by the Secured Party in the Secured Property.

## Schedule 1 - Present Shares

Number of Shares	Number of Beneficiaries
Keen Pacific Limited (a company incorporated in the British Virgin Islands with company number 1477915)	All Marketable Securities owned or held by the Grantor in the Issuer (beneficially or otherwise).

### Additional provisions (clause 6.3)

1. The Grantor must ensure that at all times the Secured Party has control of the Shares and (without limitation) must deliver to the Secured Party on request by the Secured Party (which may be made at any time and from time to time) registrable transfers of the Secured Property (subject only to stamping) executed by the Grantor with the name of the transferee and date left blank.
2. The Grantor must if required by the Secured Party, at the Grantor's cost, execute and do all things necessary:
  - (a) to vest the Secured Property in the Secured Party; and
  - (b) if an Event of Default occurs, to enable the Secured Party to receive any Benefits due or receivable in respect of the Secured Property.
3. The Grantor must not do or permit any act which could result in the Secured Property being forfeited.
4. The Grantor must pay all calls and other money which is payable in respect of the Secured Property and the Secured Party may (but without being obliged to do so) make any payments. All money paid by the Secured Party for that purpose forms part of the Secured Money and bears interest from the date of payment by the Secured Party at the Overdue Rate.
5. The Grantor must notify the Secured Party in writing if the Grantor becomes entitled to any Benefits in relation to the Secured Property and the Secured Party may (without being obliged to do so) accept the transfer or allotment of any Benefits and make or pay all calls or other money payable in respect of those Benefits (and that money will form part of the Secured Money).
6. If required by the Secured Party, the Grantor must cause any Benefits to be transferred, received, paid or allotted to the Secured Party.
7. The Grantor must promptly deliver or cause to be delivered to the Secured Party any notice (or a Certified copy) relating to any proposed special or extraordinary resolutions or extraordinary general meetings or general meetings of the Issuer and copies of all other notices, reports, circulars and documents received by the Grantor in connection with the Issuer.
8. The Secured Party or any Authorised Officer of the Secured Party may in its absolute discretion at any time, whether or not an Event of Default has occurred, complete the transfers of the Secured Property delivered pursuant to paragraph 1 above by inserting the name of the Secured Party or any other person and cause those transfers to be registered.
9. The Secured Party may following an Event of Default under its power of sale:
  - (a) insert the name or names of the Secured Party or of any purchaser in any transfers;
  - (b) in the name of the Grantor, sign, seal and deliver any transfers and other transfers which are required to enable the transfer of the Secured Property;



- (c) cause any of those transfers to be registered; and
- (d) for the purpose of carrying out the sale, deliver the Title Certificates relating to the Secured Property being sold to any purchaser.

10. Until an Event of Default occurs:

- (a) all Benefits in respect of the Secured Property may be received by the Grantor; and
- (b) the Secured Party must not exercise any voting power in respect of the Secured Property at any meeting of the Issuer without the consent of the Grantor.

If an Event of Default occurs, the provisions of this paragraph 10 will have no further effect and all Benefits will then be receivable by the Secured Party and all voting rights associated with the Secured Property will be exercisable solely by the Secured Party.

11. The Secured Party is not obliged at any time to:

- (a) give any notice of this deed to the Issuer, any member of the Grantor or any other person;
- (b) enforce payment of any dividends, bonuses or other money or Benefits in respect of the Secured Property;
- (c) take any steps or proceedings;
- (d) vote at any meeting of shareholders of the Issuer;
- (e) exercise any rights in respect of the Secured Property; or
- (f) sell the Secured Property,

even if at any time there is reason to believe that the Secured Property may be reduced in value and the Secured Party is not answerable or responsible for any loss caused by any delay or omission in taking any of the actions described in this paragraph 11.

12. The Grantor must:

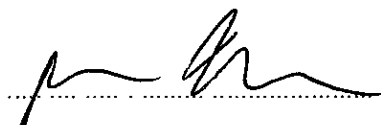
- (a) pay all calls and instalments as they become due in respect of any of the Secured Property;
- (b) promptly inform the Secured Party when any Certificated Security included in the Secured Property is, or is proposed to be, converted into an Uncertificated Security;
- (c) if any Uncertificated Security included in the Secured Property is replaced with a Certificated Security, ensure that the relevant Title Certificate is deposited with the Secured Party promptly;
- (d) not give control of the Secured Property to any person other than the Secured Party;

- (e) do everything within its powers to remove any holder record lock on any Secured Property; and
- (f) not take any steps to:
  - (1) convert any Secured Property that is a Certificated Security to an Uncertificated Security or vice versa; or
  - (2) redeem any Secured Property.

**Signing page**

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**EXECUTED** as a **DEED** by **NQ MINERALS PLC** acting by **Roger Alan Jackson**, a director, in the presence of:

.....  
DIRECTOR

WITNESS

Signature:  - Solicitor

Name: Trudi Procter

Address: L11 66 Eagle St  
Brisbane  
QLD 4000

**Executed as a deed** by MCAF NQM Nominees Limited (a company incorporated in New Zealand with company number 6270270)

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Print full name of Director

\_\_\_\_\_  
Print full name of Director/Secretary