

MR01

Particulars of a charge



Companies House



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

☒ **What this form is NOT for**
You may not use this form to
register a charge where the
instrument. Use form MR01



A27 *A7HCCSGG* #11
25/10/2018
COMPANIES HOUSE

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	For official use
Company number	0 0 8 9 7 6 0 8	Filing in this form Please complete in typescript or in bold black capitals. All fields are mandatory unless specified or indicated by *
Company name in full	ANGLO PACIFIC GROUP PLC	
	("Grantor")	

2	Charge creation date
Charge creation date	01 09 2018

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	BARCLAYS BANK PLC, as security trustee for the Secured Parties ("Security Agent")
Name	
Name	
Name	
Name	
If there are more than four names, please supply any four of these names then tick the statement below.	
<input type="checkbox"/> I confirm that there are more than four persons, security agents or trustees entitled to the charge.	

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Particulars of a charge

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 ^①

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

☐

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

9

Signature

Please sign the form here.

Signature

Signature

X Mayer Brown International 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 **Havin Jagtiani**

Company name **Mayer Brown International LLP**

Address **201 Bishopsgate**

Post town **London**

County/Region

Postcode **E C 2 M 3 A F**

Country

DX **DX 556 London and City**

Telephone **020 3130 3000**



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 or email 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



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 897608

Charge code: 0089 7608 0011

The Registrar of Companies for England and Wales hereby certifies that a charge dated 19th October 2018 and created by ANGLO PACIFIC GROUP PLC was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 25th October 2018.

Dx

Given at Companies House, Cardiff on 1st November 2018



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

EXECUTION VERSION

SPECIFIC SECURITY DEED (SHARES)

DATED 19 October 2018

Between

**ANGLO PACIFIC GROUP PLC
as Grantor**

- and -

**BARCLAYS BANK PLC
as Security Agent**

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

Signed

Mayer Brown International LLP
Mayer Brown International LLP

Date

23/10/2018

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THIS DEED is dated 19 October 2018 and is made

BETWEEN:

- (1) **ANGLO PACIFIC GROUP PLC ARBN 009 475 398** (the **Grantor**); and
- (2) **BARCLAYS BANK PLC** (the **Security Agent**) as security trustee for the Secured Parties (as defined in the Intercreditor Agreement defined below).

BACKGROUND:

- (A) The Grantor enters into this deed in connection with the Finance Documents.
- (B) The Grantor has agreed to grant a security interest over the Secured Property to secure the payment, discharge and performance of the Secured Obligations.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this deed words and phrases defined in the Facility Agreement or the Intercreditor Agreement have the same meaning when used in this deed unless otherwise defined in this deed and:

Additional Rights means the Grantor's title, rights and interest (whether present or future):

- (a) in any dividend, dividend reinvestment scheme, bonus issue, rights issue, allotment, offer, benefit, privilege, note, stock, debenture, distribution or right to take up Marketable Securities in another corporation, trust or other entity;
- (b) resulting from any conversion, redemption, cancellation, reclassification, forfeiture, consolidation or subdivision; or
- (c) resulting from any reduction of capital, liquidation or scheme of arrangement,

in each case in connection with the Secured Property.

Additional Security means any Marketable Security, other than a Present Security or an Additional Right, that the Grantor and the Security Agent agree at any time is to be subject to this deed.

Attorney means an attorney appointed under this deed.

Collateral Security means any Security Interest, Guarantee or other agreement entered into by any person as security for the payment, discharge or performance of any of the Secured Obligations.

Company means APG Aus No 7 Pty Ltd (ACN 602 351 717).

Controller means a controller as defined in section 9 of the Corporations Act.

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

Costs include costs, charges, expenses and disbursements.

Distribution means any dividend, distribution or other amount declared or paid on any Marketable Security.

Facility Agreement means the facility agreement dated 4 February 2015, as amended or amended and restated from time to time, including pursuant to an agreement dated 1 February 2017 and a deed dated 21 September 2018, between (among others) the Grantor and the Security Agent.

Guarantee means any guarantee, indemnity, letter of credit, letter of comfort or other obligation to be responsible for, or provide funding for, any debt or monetary obligation of another person, or the assumption of any responsibility for the solvency or financial condition of another person.

Intercreditor Agreement means the intercreditor agreement dated 10 February 2017, as amended from time to time, including pursuant to a deed dated 21 September 2018, between, among others, the Anglo Pacific Group Plc as debtor and the Security Agent.

Marketable Securities means:

- (a) marketable securities as defined in section 9 of the Corporations Act;
- (b) an Investment Instrument;
- (c) an Intermediated Security;
- (d) a unit or other interest in a trust or partnership;
- (e) a Negotiable Instrument; and
- (f) any right or option in respect of or in connection with any of the above, regardless of whether it has been issued.

Party means a party to this deed.

Power means any right, power, authority, discretion or remedy which the Security Agent or a Controller has under any Finance Document or under any applicable law.

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

PPSA Security Interest means a security interest as defined in the PPS Act.

Present Security means each of the shares held by the Grantor in the Company.

Receiver means a receiver or receiver and manager, in each case, appointed under this deed.

Secured Obligations has the meaning given to that term in the Intercreditor Agreement.

Secured Property means all of the Grantor's present and after-acquired rights and interests and all entitlements (including damages), dividends, proceeds, rights and other benefits payable, accruing or arising at any time to or in favour of the Grantor in respect of:

- (a) each Present Security;
- (b) each Additional Right; and
- (c) each Additional Security.

Security means the Security Interest over the Secured Property created under this deed.

Security Interest means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest, or any other agreement or arrangement having a similar commercial or legal effect, and includes an agreement to grant or create any of those agreements or arrangements. It includes a security interest within the meaning of section 12 of the PPS Act.

Security Period means the period beginning on the date of this deed and ending on the Senior Discharge Date.

Senior Discharge Date has the meaning given to that term in the Intercreditor Agreement.

Title Document means any document of title, whether an original, duplicate or counterpart. It includes a share certificate, a real property certificate of title, a contract note or transfer form.

1.2 References to certain other general words and terms

In this deed:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
 - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this deed;
 - (ii) any legislation which that legislation re-enacts with or without modification; and
 - (iii) any subordinate legislation made before or after execution of this deed under that legislation, including (where applicable) that legislation as amended, extended or applied as described in Clause 1.2(a)(i), or under any legislation which it re-enacts as described in Clause 1.2(a)(ii);
- (b) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (c) references to an individual or a natural person include his estate and personal representatives;
- (d) the schedules and appendices form part of this deed and a reference to a Clause, Schedule or Appendix is a reference to a clause, schedule or appendix of or to this deed;
- (e) references to a Party include the successors or permitted assigns or permitted transferees (immediate or otherwise) of that Party; and
- (f) unless otherwise indicated, a reference to any time is a reference to that time in Perth, Western Australia.

1.3 References to certain other specific words and terms

- (a) In this deed, unless the contrary intention appears, a reference to:
 - (i) an **amendment** includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous), and **amended** will be construed accordingly;
 - (ii) **assets** includes present and future properties, revenues and rights of every description;

- (iii) **disposal** means a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and whether in a single transaction or a series of transactions, and **dispose** will be construed accordingly;
 - (iv) **indebtedness** includes any obligation (whether incurred as principal or as surety and whether present or future, actual or contingent) for the payment or repayment of money;
 - (v) a **person** includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity, whether or not having separate legal personality;
 - (vi) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
 - (vii) a Default being **outstanding** or **continuing** or **subsisting** means that it has not been remedied or waived in accordance with the Finance Documents;
 - (viii) a *Finance Document or other document, instrument or security includes (without prejudice to any prohibition on amendments) any amendment to that Finance Document or other document, instrument or security, including any change in the purpose of, any extension for or any increase in the amount of, a facility or any additional facility; and*
 - (ix) any of the following terms is a reference to that term as defined in the PPS Act: **Control, Intermediary, Intermediated Securities, Investment Instrument, Negotiable Instrument, Perfected, Possession, Proceeds and Securities Account.**
- (b) Unless the contrary intention appears:
- (i) a reference to a Party will not include that Party if it has ceased to be a Party under this deed;
 - (ii) a word or expression used in any notice given in connection with this deed has the same meaning in that notice as in this deed; and
 - (iii) any obligation of a Party under this deed which is not a payment obligation remains in force for so long as any payment obligation of a Party is, may be or is capable of becoming outstanding under this deed.

1.4 Rules of interpretation and construction

In this deed:

- (a) singular words include the plural and vice versa;
- (b) a word of any gender includes the corresponding words of any other gender;
- (c) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (d) general words must not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (e) an agreement, covenant, representation or warranty on the part of, or in favour of, two or more people binds or is for the benefit of those people both jointly and severally and a reference to a group of people (including the Grantor) is a reference to each of them individually and any two or more of them collectively;
- (f) nothing is to be construed adversely to a Party just because that Party put forward this deed or the relevant part of this deed; and
- (g) the headings do not affect interpretation.

1.5 Intercreditor Agreement

To the extent there is any conflict between the terms of the Intercreditor Agreement and this deed, the terms of the Intercreditor Agreement shall prevail.

1.6 Protections from the Facility Agreement to apply in full

- 2. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE SECURITY AGENT ENTERS INTO THIS DEED IN ITS CAPACITY AS AGENT AND TRUSTEE FOR THE SECURED PARTIES IN ACCORDANCE WITH THE FACILITY AGREEMENT AND THE INTERCREDITOR AGREEMENT AND WITH THE RIGHTS AND OBLIGATIONS AS SET OUT IN THE FACILITY AGREEMENT AND THE INTERCREDITOR AGREEMENT. NOTHING IN THIS DEED IS INTENDED TO AFFECT THE BENEFITS, PROTECTIONS, INDEMNIFICATIONS OR PROVISIONS LIMITING THE LIABILITY OF THE SECURITY AGENT (PROTECTIONS) UNDER THE FACILITY AGREEMENT OR THE INTERCREDITOR AGREEMENT AND THOSE PROTECTIONS WILL APPLY TO THIS DEED AS IF SET OUT IN FULL IN THIS DEED. CREATION OF SECURITY**

2.1 Security

- (a) The Grantor grants a security interest in the Secured Property to the Security Agent on behalf of the Secured Parties as security for the due and punctual payment, discharge and performance of all of the Secured Obligations. The Grantor does this as legal and beneficial owner of the Secured Property.
- (b) For the purposes of section 20(2)(b) of the PPS Act, this security interest is taken in all the Grantor's present and after-acquired property, except any such property which is not Secured Property.
- (c) This security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a fixed charge over all Secured Property.

2.2 Priority

- (a) Each Party intends the Security to take priority over all other Security Interests over the Secured Property of the Grantor except those Security Interests which are mandatorily required by any applicable law to have priority.
- (b) Nothing in this deed will be construed as an agreement by the Security Agent to subordinate the Security to any other Security Interest or interest attaching to the Secured Property at any time.

2.3 Proceeds and continuation of Security

- (a) The Security will continue in the Proceeds of any dealing with the Secured Property (whether or not that dealing was authorised by the Security Agent) and the Grantor must do all things which the Security Agent reasonably requests to ensure that the Security Agent has a Perfected Security Interest in any Proceeds.
- (b) The Grantor acknowledges that, in the event the Grantor breaches any of its obligations under Clause 4.1, whether by a disposal or other dealing with any Secured Property, the Security Agent has not:
 - (i) authorised any such disposal; or
 - (ii) agreed that any such dealing would extinguish the Security,and the Security continues in the relevant property or interest, despite the disposal or other dealing.

3. REPRESENTATIONS AND WARRANTIES

3.1 Nature of security

The Grantor represents and warrants to the Security Agent that (subject to the Legal Reservations and to any necessary stamping and registration requirement in the Relevant Jurisdiction) the obligations expressed to be assumed by it in this deed are legal, valid, binding and enforceable obligations, this deed creates the Security Interest it purports to create and the Security Interest is valid and effective and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Grantor or otherwise.

3.2 Representations and warranties

- (a) The Grantor represents and warrants to the Security Agent that:
 - (i) each representation and warranty made by it in each Finance Document is true, correct and not misleading when made or repeated;
 - (ii) it:
 - (A) has good title to all Secured Property; and
 - (B) has the right to grant the Security over the Secured Property in the manner contemplated by this deed, free of any other security interest except for any Security Interest permitted under the Finance Documents;
 - (iii) no Distribution or any other consideration, rent, profit, amount or other entitlement (whether in the nature of capital or income) in respect of any of the Secured Property has been assigned or encumbered pursuant to a Security Interest (other than the Security and any other Security Interest permitted under the Finance Documents); and

- (iv) other than as notified in writing to the Security Agent from time to time, each Present Security is fully paid up and validly issued and each Additional Right and Additional Security will be fully paid up and validly existing when it becomes subject to this deed.
- (b) The Grantor acknowledges that:
 - (i) the representations and warranties provided in this Clause 3.2:
 - (A) have been relied upon by the Security Agent and each Secured Party; and
 - (B) survive the execution and delivery of the Finance Documents and the provision of financial accommodation under these documents; and
 - (ii) it has not entered into this deed or any other Finance Document on any representation, warranty, assurance, undertaking or statement of the Security Agent or any Secured Party or of any person on behalf of the Security Agent or any Secured Party.

3.3 Times for making representations and warranties

- (a) The representations and warranties set out in this deed are made on the date of this deed.
- (b) Unless a representation and warranty is expressed to be given on a specific date, each representation and warranty under this deed is deemed to be repeated by the Grantor on each date which is specified under the Facility Agreement as a day on which representations and warranties are repeated or deemed to be repeated.
- (c) When a representation and warranty is repeated, it is repeated by reference to the circumstances existing at the time of repetition.

4. UNDERTAKINGS

4.1 Restricted dealings

The Grantor must not do, or agree to do, any of the following unless it is permitted to do so by another provision in a Finance Document:

- (a) create or allow another interest in any Secured Property; or
- (b) dispose, or part with possession of any Secured Property.

4.2 Undertakings in relation to Secured Property

The Grantor must:

- (a) promptly notify the Security Agent if it becomes entitled to any Additional Rights and must exercise and take up any entitlement that it has to any Additional Rights, unless the Security Agent agrees otherwise;
- (b) pay all calls and premiums and all other amounts payable in respect of the Secured Property as they become due and payable; and
- (c) comply with the constitution of the Company and any other constituent documents of any entity which issues any Secured Property, and not do anything which could entitle any person to a lien over any Secured Property or which could result in the forfeiture of any Secured Property.

4.3 Voting and Distributions

- (a) At any time after an Event of Default occurs and while it subsists, the Security Agent may direct the Grantor:
- (i) to pay all cash Distributions in relation to the Secured Property to the Security Agent or as it may direct; and
 - (ii) how to exercise its voting rights in respect of the Secured Property.
- (b) The Grantor must comply with any direction given under Clause 4.3(a).

4.4 Control of Secured Property

The Grantor must:

- (a) save for the exercise of voting rights in respect of the Secured Property the exercise of which is subject to Clause 4.3(a), exercise all its rights and entitlements arising directly or indirectly at any time from or in relation to the Secured Property in accordance with the instructions of the Security Agent;
- (b) procure that all returns of capital in respect of the Secured Property are paid to or at the direction of the Security Agent;
- (c) provide the Security Agent with Control over the Secured Property in the manner requested by the Security Agent, including:
 - (i) providing to the Security Agent all Title Documents in respect of the Secured Property and a transfer of any certificated Marketable Securities that are Secured Property, executed by the Grantor in blank and otherwise in a form satisfactory to the Security Agent; and
 - (ii) entering into any tripartite agreement requested by the Security Agent with the Grantor's sponsor or Intermediary, if applicable.

4.5 Security Agent as holder of Secured Property

At any time after an Event of Default occurs and while it subsists, the Security Agent may procure itself or its nominee to be registered as the holder of any or all of the Secured Property. To facilitate this, the Grantor irrevocably and unconditionally authorises the Security Agent to:

- (a) date and complete any transfers referred to in Clause 4.4 and lodge those transfers for stamping (if required) and registration accompanied by any applicable Title Documents; and
- (b) do all other things necessary to have the Secured Property registered in the name of the Security Agent (including sending any necessary electronic communications) and where the Secured Property is Intermediated Securities, to have the Securities Account maintained in the name of the Security Agent.

4.6 Further assurances

- (a) The Grantor must do whatever the Security Agent, Receiver or Attorney reasonably requires for:

- (i) perfecting, protecting or maintaining the effectiveness of the Security (including in accordance with the PPS Act);
- (ii) securing or protecting the priority of the Security, including enabling any Secured Party to have Possession of or Control over any Secured Property, in accordance with the PPS Act (where it is possible to do so under the PPS Act); and
- (iii) facilitating the realisation of any Secured Property, or the exercise of any power or rights by the Security Agent, Receiver or Attorney.

(b) The Grantor must take any action required of it under Clause 4.6(a) at its own cost.

5. PPS ACT UNDERTAKING

Without limiting any other provision of any Finance Document, the Grantor must promptly do all acts and execute and deliver all documents (in form and substance satisfactory to the Security Agent, and at the cost of the Grantor) reasonably requested by the Security Agent:

- (a) to ensure that the interests of the Security Agent under or in connection with the Finance Documents are Perfected (including their interest in the Secured Property) under and in accordance with the PPS Act; and
- (b) to protect the priority of each Security Interest and each PPSA Security Interest granted under any Finance Document, including enabling any Secured Party to have Possession of or Control over any Secured Property in accordance with the PPS Act (where it is possible to do so under the PPS Act).

6. WHEN SECURITY BECOMES ENFORCEABLE

6.1 Timing

The Security will be immediately enforceable at any time after an Event of Default has occurred and while it subsists, without further notice to any Party, except to the extent that any notice is required by any applicable law in which case the period of notice shall be one day.

6.2 Enforcement

After the Security has become enforceable, the Security Agent may in its absolute discretion enforce all or any part of this deed in any manner it sees fit or as the Instructing Group may direct, in each case in accordance with the terms of the Intercreditor Agreement.

6.3 Assistance in realisation

After the Security has become enforceable, the Grantor must, at its own cost, do whatever the Security Agent, Receiver or Attorney reasonably requires to assist any of them to realise any Secured Property and exercise any Power. This includes executing transfers of any Secured Property.

7. RECEIVER

7.1 Appointment

- (a) The Security Agent may appoint any one or more persons to be a Receiver of all or any part of the Secured Property if:
 - (i) the Security has become enforceable; or
 - (ii) the Grantor so requests the Security Agent in writing at any time.
- (b) Any appointment under Clause 7.1(a) may be by deed, under seal or in writing under hand.

7.2 Removal

The Security Agent may, on written notice, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

7.3 Remuneration

The Security Agent may fix the remuneration of any Receiver and direct payment of that remuneration and any costs, charges and expenses of the Receiver out of the proceeds of any realisation of the Secured Property.

7.4 Agent of the Grantor

- (a) A Receiver will be deemed to be the agent of the Grantor for all purposes and to the extent permitted under law. The Grantor is responsible for the contracts, remuneration, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver.
- (b) No Secured Party will incur any liability (either to the Grantor or to any other person) by reason of the appointment of a Receiver or the exercise of any Power by a Receiver.
- (c) A Receiver may still be appointed even if it is in circumstances where there has been an order made or resolution passed for the winding-up of the Grantor, and a Receiver appointed in such circumstances may not, or may not in some respects, act as the agent of the Grantor.

8. POWERS OF RECEIVER

8.1 General

- (a) A Receiver has all of the rights, powers and discretions set out below in this Clause 8.1 in addition to those conferred on it by any applicable law and, except to the extent specifically excluded by this deed, a Receiver may do anything in respect of the Secured Property that an absolute beneficial legal owner of the property is permitted to do under law.
- (b) A Receiver may:
 - (i) enter into and execute documents or agreements on its own behalf or on behalf of the Grantor in relation to the Secured Property, which includes use of the Grantor's common seal and signing, accepting and endorsing cheques, promissory notes and bills of exchange;
 - (ii) take immediate possession of, enter and collect and manage, any Secured Property;

- (iii) appoint and discharge managers, officers, agents, accountants, employees, contractors, workmen, auctioneers and others for the purposes of the Security and discharge any person appointed in relation to the Secured Property by the Grantor;
- (iv) raise and borrow money either unsecured or on the security of any Secured Property either in priority to the Security or otherwise;
- (v) sell, exchange, convert into money and realise any Secured Property by public auction, tender or private contract. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration, and any such consideration may be payable in a lump sum or by instalments spread over a period or by deferred payment of consideration, in whole or in part, with or without interest or security over any period;
- (vi) surrender or transfer Secured Property to any person or exchange it for other property with any person;
- (vii) acquire in the name, or on behalf, of the Grantor any interest in any assets, which on acquisition forms part of the Secured Property;
- (viii) obtain the benefit of, perform or enforce, or exercise or refrain from exercising, the Grantor's rights and powers under, or vary, rescind or terminate, 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 in relation to the Secured Property;
- (ix) settle, adjust, refer to arbitration, compromise and arrange any claim, action, proceeding, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Grantor or relating in any way to any Secured Property;
- (x) bring, prosecute, conduct, enforce, defend and abandon any action, suit or proceedings and to submit to arbitration, mediation or conciliation, in the name of the Grantor or otherwise and on any terms, any proceeding, claim, question, or dispute in relation to any Secured Property;
- (xi) give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Secured Property;
- (xii) delegate his powers in accordance with this deed;
- (xiii) do anything to manage or obtain income or revenue from any of the Secured Property;
- (xiv) do any act which the Grantor might do in the ordinary conduct of its business, to maintain, protect or improve any Secured Property;
- (xv) grant or take put or call options in relation to the Secured Property;
- (xvi) exercise any voting or other rights or powers in respect of any of the Secured Property; and
- (xvii) pay any outgoings or indebtedness of the Grantor or any other person in relation to the Secured Property.

- (c) A Receiver may:
- (i) do all other acts and things which it may consider desirable or necessary for realising any Secured Property or incidental or conducive to any of the rights, powers or discretions conferred on it under or by virtue of this deed or law;
 - (ii) exercise, in relation to any Secured Property, all the powers, authorities and things which it would be capable of exercising as if it were the absolute beneficial owner of that Secured Property; and
 - (iii) use the name of the Grantor for any of the above purposes.

8.2 Security Agent may exercise Powers

- (a) Whether or not a Receiver is appointed under this deed, the Security Agent may, following the occurrence of an Event of Default and while it subsists, exercise any Power of the Receiver in addition to any Power of the Security Agent. It may do so without giving notice to any person except as required by law or by the express terms of a Finance Document.
- (b) The exercise of any Power by the Security Agent, Receiver or Attorney does not cause or deem the Security Agent, Receiver or Attorney to be a mortgagee in possession.

8.3 Notice not required

- (a) The Security Agent, Receiver or Attorney is not required to:
- (i) give notice of the Security or any Collateral Security to any person, other than a notice expressly required by a Finance Document or required by law;
 - (ii) enforce payment of any money payable to the Grantor; or
 - (iii) obtain the consent of the Grantor to any exercise of a Power.
- (b) To the extent the law permits, the Grantor waives its rights to receive any notice that is required by any provision of the PPS Act (including a notice of a verification statement).
- (c) Nothing in this Clause prohibits the Security Agent or any Receiver or Attorney from giving a notice under the PPS Act or any other law.

8.4 Termination of receivership and possession

At any time, the Security Agent may terminate the appointment of a Receiver. The Security Agent may, at any time, give up or re-take possession of any of the Secured Property.

8.5 Chapter 4 of the PPS Act

- (a) To the extent the law permits:
- (i) for the purposes of sections 115(1) and 115(7) of the PPS Act:
 - (A) the Security Agent need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - (B) sections 142 and 143 are excluded;

- (ii) for the purposes of section 115(7) of the PPS Act, the Security Agent need not comply with sections 132 and 137(3);
 - (iii) if the PPS Act is amended after the date of this deed to permit the Grantor and the Security Agent to agree to not comply with or to exclude other provisions of the PPS Act, the Security Agent may notify the Grantor that any of these provisions is excluded, or that the Security Agent need not comply with any of those provisions, as notified to the Grantor by the Security Agent.
- (b) If the Security Agent exercises a right, power or remedy in connection with this deed, that exercise is taken not to be an exercise of a right, power or remedy under the PPS Act unless the Security Agent states otherwise at the time of exercise. However, this Clause does not apply to a right, power or remedy which can only be exercised under the PPS Act.

8.6 PPS Act disclosure

- (a) Notwithstanding any other provision of any Finance Document, each Party agrees that no Party will disclose any information of the kind referred to in section 275(1) of the PPS Act (subject to section 275(7) of the PPS Act).
- (b) The Grantor agrees not to exercise its rights to make any request of the Security Agent 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.

9. APPLICATION OF PROCEEDS

9.1 Order

Any moneys received by the Security Agent or any Receiver after the Security has become enforceable must be applied in the manner and order set out in Clause 14 (Application of Proceeds) of the Intercreditor Agreement.

9.2 Money actually received

In applying any money towards satisfaction of the Secured Obligations, the Grantor will be credited only with as much of the money which is available for that purpose and which is actually received by the Security Agent, Receiver or Attorney and which is not required to be disgorged.

9.3 Contingent amounts due

- (a) If at the time of a distribution of any money under Clause 9.1, any part of the Secured Obligations is contingently owing to the Security Agent or a Secured Party, the Security Agent, Receiver or Attorney may retain an amount equal to the amount contingently owing.
- (b) If an amount is retained under Clause 9.3(a), it must be placed on deposit until the amount contingently owing becomes actually due and payable, at which time the amount, together with any interest on the amount contingently owing, must be applied in accordance with Clause 9.1.

9.4 Certification of indebtedness

A certificate signed by any authorised officer of the Security Agent which sets out:

- (a) the amount of the Secured Obligations due and payable; or

- (b) the amount of the Secured Obligations, whether currently due and payable or not, is sufficient evidence of that unless the contrary is proved.

10. DISCHARGE

- (a) At the end of the Security Period, the Security Agent must, at the request and cost of the Grantor, take whatever action is necessary to release the Secured Property from the Security.
- (b) If the Grantor wishes to undertake a Permitted Disposal of any Secured Property, the Security Agent must, at the request and cost of the Grantor, take whatever action is necessary to release the relevant Secured Property from the Security.

11. DELEGATION

11.1 Power of attorney of Security Agent or Receiver

- (a) The Security Agent or any Receiver may delegate by power of attorney or in any other manner to any person any Power exercisable by it under this deed.
- (b) A delegation under Clause 11.1(a) may be made upon any terms which the Security Agent or any Receiver determines.
- (c) Neither the Security Agent nor any Receiver will be in any way liable or responsible to the Grantor for any liability which arises because of any act, default, omission or misconduct on the part of any delegate or sub-delegate.

11.2 Power of attorney of Grantor

- (a) In consideration of the Security Agent entering into the Finance Documents and for any other consideration received, the Grantor irrevocably and severally appoints the Security Agent, any Receiver and any of their respective authorised officers to be its Attorney with the power, after an Event of Default has occurred and while it subsists, to do anything which the Grantor is required to do under this deed and has not done.
- (b) The Grantor ratifies and confirms whatever any Attorney does or purports to do following its appointment under this Clause 11.2.

12. LIABILITY AND PROTECTION

12.1 Third-party protection

No person dealing with the Security Agent, Receiver or Attorney is obliged to enquire:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power which the Security Agent or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
- (c) whether any money remains due under the Finance Documents; or
- (d) how any money paid to the Security Agent or to that Receiver is to be applied.

12.2 No liability

- (a) The Security Agent, Receiver or Attorney is not liable for any loss or damage, including consequential loss or damage, arising directly or indirectly from:
 - (i) any omission or delay in the exercise or non-exercise of any Power; or
 - (ii) the neglect, default or dishonesty of any manager, officer, employee, agent, accountant, auctioneer or solicitor of the Grantor, the Security Agent, Receiver or Attorney.
- (b) Clause 12.2(a) does not apply to any loss or damage which arises from the wilful default, fraud or gross negligence of the Security Agent, Receiver or Attorney (as the case may be).

13. EXPENSES AND INDEMNITY

The Grantor must:

- (a) pay all stamp duty payable in relation to this deed as and when such stamp duty is required to be paid by any applicable law and, within 3 Business Days of demand, pay all costs and expenses (including legal fees) incurred in connection with the enforcement of or the preservation of any rights under this deed by any Secured Party, any Receiver, Attorney, manager, agent or other person appointed by the Security Agent under this deed and any proceedings instituted by or against any Secured Party, any Receiver, Attorney, agent or other person appointed by the Security Agent under this deed as a consequence of taking or holding the Security or enforcing these rights; and
- (b) keep each Secured Party and each Receiver, Attorney, manager, agent or other person appointed by the Security Agent under this deed indemnified against any failure or delay in paying such stamp duty or those costs or expenses.

14. SAVING PROVISIONS

14.1 Powers at law

- (a) Any rights or remedies which the Security Agent, Receiver or Attorney have independently under law are in addition to the Powers conferred under this deed.
- (b) The Security Agent, Receiver or Attorney may exercise any Power without any notice or the allowance of any lapse of time to any person, to the extent permitted by law.
- (c) If a law which is unable to be excluded requires a period of time to lapse before the exercise of any Power but provides for the election or variation of that period of time, that period of time is one day.

14.2 Security does not merge

- (a) This deed is a principal obligation and is not ancillary or collateral to, and does not merge with:
 - (i) any other Security Interest or other right or remedy to which the Security Agent or any Secured Party is entitled; or
 - (ii) a judgment obtained by the Security Agent against the Grantor or any other person in connection with the Secured Obligations.

- (b) The Security Agent may exercise its Powers under this deed as well as under the judgment, other Security Interests or other rights or remedies.
- (c) The Security remains a continuing security despite any settlement of amount or any other matter until the Security Agent provides a notice of final release to the Grantor in respect of the Security.

14.3 Conflicts of interest

To the extent permitted by law, any Power may be exercised by the Security Agent or a Receiver, even if such exercise gives rise to a conflict of interest or duty.

14.4 Payment avoidance

- (a) If a payment by the Grantor (or any other person on account of an amount owing by the Grantor) to the Security Agent or a Secured Party is avoided for any reason, including any legal limitation, and whether or not:
 - (i) any transaction relating to the Secured Obligations was wholly or partially illegal or void; or
 - (ii) anything was, or ought to have been, within the knowledge of the Security Agent,
 then the Grantor separately indemnifies the Security Agent and each Secured Party against that avoided payment.
- (b) The liability of the Grantor and the rights of the Security Agent and each Secured Party under the Finance Documents will be the same as if the avoided payment had not been made and is reinstated as if the relevant payment had not occurred.

14.5 Suspense accounts

- (a) If the Security is enforced at a time when no amount is due under the Finance Documents, the Security Agent may apply amounts received under this deed and any other amounts received from the Grantor or any other person in connection with the Secured Obligations to the credit of a suspense account.
- (b) Amounts may be retained in the suspense account for as long as the Security Agent determines. The Security Agent is not obliged to apply those amounts towards satisfaction of the Secured Obligations.

14.6 No preconditions to enforceability

- (a) No Secured Party is required to marshal, enforce or have recourse to any Collateral Security, any other right or remedy or any other property before the Security is enforced.
- (b) The Security is enforceable and may be enforced whether or not the Security Agent has given notice to or made demand on any person other than the Grantor. It is enforceable whether or not the Secured Obligations are due and payable and whether or not any event listed in Clause 16.10 has occurred.

14.7 No competition

- (a) Until the Secured Obligations have been fully paid, the Grantor will not, for any reason:
 - (i) be subrogated to any rights, security or moneys held, received or receivable by any Secured Party (or any trustee or agent on its behalf);

- (ii) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Grantor's liability under this Clause 14.7;
 - (iii) claim, rank, prove or vote as a creditor of any Obligor or its estate in competition with any Secured Party (or any trustee or agent on its behalf);
 - (iv) receive, claim or have the benefit of any payment, distribution or security from or on account of, or exercise any right of set-off as against, any Obligor; or
 - (v) raise any defence or counterclaim in reduction of its obligation under the Finance Documents.
- (b) The Grantor must hold in trust for and immediately pay or transfer to the Security Agent any payment or distribution or benefit of security received by it contrary to this Clause 14.7.

15. NOTICES

- (a) Any notice given under or in connection with this deed must be delivered in accordance with Clause 33 of the Facility Agreement, as if that clause was set out in full in this deed.
- (b) The contact details of each Party for all communications in connection with this deed are:
- (i) for the Security Agent, as specified in Clause 33 of the Facility Agreement; and
 - (ii) for the Grantor:

Address: 1 Saville Row
London W1S 3JR

Attention: Chief Financial Officer

Facsimile: +44 (0) 20 7629 0370
- (c) Any Party may change its contact details by giving five Business Days' notice to the other Party.

16. GENERAL

16.1 Assignment

- (a) The Grantor may not assign any of its rights or transfer any of its rights or obligations under this deed without the prior written consent of the Security Agent.
- (b) Subject to the provisions of the Facility Agreement, the Security Agent may assign any of its rights and transfer any of its obligations under this deed without the consent of the Grantor.

16.2 Binding on each signatory

This deed binds and is enforceable against the Grantor, despite:

- (a) any other person not executing this deed or its execution being defective in any way; or
- (b) any obligation or liability of any other Party under this deed not being binding or enforceable against that Party for any reason.

16.3 Consents

- (a) Except as otherwise expressly provided in this deed, the Security Agent may give or withhold its consent to any matter referred to in this deed in its absolute discretion. A Party that gives its consent to any matter referred to in this deed is not taken to have made any warranty or representation as to any matter or circumstance connected with the subject matter of that consent.
- (b) Any consent given by the Security Agent in connection with this deed may be conditional. The Grantor must comply with any conditions imposed by the Security Agent.

16.4 Continuing provisions

The provisions of this deed and each Finance Document constitute continuing obligations regardless of any intermediate payment or discharge of the Secured Obligations in whole or in part, or any other thing.

16.5 Counterparts

This deed may be executed in counterparts which taken together constitute one and the same agreement, and any Party may enter into this deed by executing a counterpart.

16.6 Exercise and waiver of rights

The rights of each Secured Party under the Finance Documents:

- (a) may be exercised as often as necessary;
- (b) except as otherwise expressly provided by the Finance Documents, are cumulative and not exclusive of its rights under the general law; and
- (c) may be waived only in writing and specifically,

and delay in exercising or non-exercise of any right is not a waiver of that right.

16.7 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion, expiration or release of this deed.
- (b) It is not necessary for the Security Agent or any Secured Party to incur any expense or to make any payment before enforcing a right of indemnity conferred by this deed.

16.8 Moratorium legislation

To the fullest extent permitted by law, all laws which at any time operate directly or indirectly to lessen, stay, reduce or otherwise affect in favour of the Grantor any obligation under this deed, or to delay or otherwise prevent or prejudicially affect the exercise by any Secured Party of any power or right under this deed or otherwise, are expressly waived.

16.9 Prohibition and enforceability

If a term of this deed is illegal, invalid or unenforceable in any respect under any jurisdiction, that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this deed; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this deed.

16.10 Waiver of defences

The provisions of this deed and the obligations of the parties to this deed are not affected by any act, omission, matter or thing which, but for this Clause 16.10, might have that effect, including:

- (a) any time, waiver, postponement or other concession granted to, or composition or arrangement with, the Grantor or any other person;
- (b) any full, partial or conditional release or discharge of the Grantor or any other person by operation of law or under the terms of any composition or arrangement with any creditor of any person;
- (c) a person ceasing to be a Secured Party;
- (d) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, the Grantor or any other person under the Finance Documents or otherwise;
- (e) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (f) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Grantor or any other person;
- (g) any variation, amendment or replacement (however fundamental and whether or not such variation, amendment or replacement imposes any additional liability or disadvantages the Grantor or any other person) of any Finance Document or any other document or security (in each case other than this deed);
- (h) any unenforceability, illegality, invalidity, non-provability or frustration of any obligation of any person under any Finance Document or any other document or security;
- (i) any set-off, combination of accounts or counterclaim;
- (j) any insolvency, liquidation, dissolution or similar proceedings or anything resulting from such proceedings which affects any obligation of the Grantor or any other person;
- (k) any determination, rescission, repudiation or termination of any Finance Document or any obligations under any Finance Document or any other document or security by any person (or the acceptance of any of those actions by any person);
- (l) the release or substitution of any property the subject of any Transaction Security Document;
- (m) the failure to obtain any Security Interest or the loss or impairment of any Security Interest by operation of law or otherwise, whether or not the same is in breach of an express or implied condition to obtain or preserve that Security Interest or is in breach of any equitable duty which might otherwise have been imposed on any Secured Party;
- (n) the transfer, assignment or novation by any Secured Party or any other person of all or any of its rights or obligations under any Finance Document;

- (o) any failure by any Secured Party to disclose to any person any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Secured Party relating to or affecting the Grantor or any other person at any time before or during the currency of any Finance Document, whether prejudicial or not to the rights and liabilities of any person and whether or not the Secured Party was under an obligation or duty to disclose that fact, circumstance, event or thing to any person; and
- (p) any person, whether named as a party or not, does not execute any Finance Document or the execution of any Finance Document by any person is invalid, forged or irregular in any way.

16.11 Waiver of immunity

The Grantor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by any Secured Party against it in relation to a Finance Document and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

17. GOVERNING LAW AND JURISDICTION

17.1 Governing law

This deed is governed by the law applying in Western Australia.

17.2 Jurisdiction

- (a) The Grantor irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may at any time be brought in relation to this deed.
- (b) The Grantor irrevocably 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, where that venue falls within Clause 17.2(a).

SIGNATORIES


EXECUTED as a DEED by:

Grantor

Signed sealed and delivered by ANGLO
PACIFIC GROUP PLC in the presence of

)
)
)





Signature of witness



Signature of authorised signatory

JASON GRAY 


Name of witness (print)

JULIAN TREGER

Name of authorised signatory

Security Agent

SIGNED as a deed by BARCLAYS BANK PLC

Acting by: 

Authorised signatory

SIGNATURE PAGE - SPECIFIC SECURITY DEED (SHARES)