



Registration of a Charge

Company name: **AARDVARK CLEAR MINE LIMITED**

Company number: **SC080167**

Received for Electronic Filing: **12/10/2018**



X7GDND9A

Details of Charge

Date of creation: **25/09/2018**

Charge code: **SC08 0167 0018**

Persons entitled: **SENECA TRADE PARTNERS LTD**

Brief description:

Contains floating charge(s) (floating charge covers all the property or undertaking of the company).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S. 859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

ADDLESHAW GODDARD LLP



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 80167

Charge code: SC08 0167 0018

The Registrar of Companies for Scotland hereby certifies that a charge dated 25th September 2018 and created by AARDVARK CLEAR MINE LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 12th October 2018 .

Given at Companies House, Edinburgh on 12th October 2018

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



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



Delivered on 25 SEPTEMBER 2018

AARDVARK CLEAR MINE LIMITED
SENECA TRADE PARTNERS LTD

FLOATING CHARGE

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This Floating Charge is delivered on

25 SEPTEMBER

2018

Between

- (1) **AARDVARK CLEAR MINE LIMITED**, a company incorporated and registered in Scotland with company number SC080167 whose registered office is at 23 George Street 23 George Street, Dumfries, Scotland, DG1 1EA (**Chargor**); and
- (2) **SENECA TRADE PARTNERS LTD** a company registered in England and Wales with company number 10304563 and whose registered office is at 12 The Parks, Haydock, WA12 0JQ (**Lender**).

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Charge, the following definitions will apply:

Administrator means any person appointed to be an administrator of the Chargor pursuant to paragraph 14 of Schedule B1 to the Insolvency Act

Authorisation means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration, or any other similar permission

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

Charged Assets means the whole of the property (including uncalled capital) which is or may from time to time, while this Charge is in force, be comprised in the property and undertaking of the Chargor

Contract Rate means 10% above the base rate from time to time of the Bank of England per annum

Corporate Guarantee means the corporate guarantee and indemnity granted by the Corporate Guarantor in favour of the Lender dated on or around the date hereof in respect of the obligations and liabilities of the Chargor to the Lender

Corporate Guarantor means Aardvark Holdings Limited, incorporated and registered in Scotland with company number SC128709 whose registered office is at 23 George Street 23 George Street, Dumfries, Scotland, DG1 1EA

Delegate means any delegate, agent or attorney appointed by the Lender or a Receiver under this Charge

Enforcement Date means the date on which the Lender demands the payment or discharge of all or any part of the Secured Obligations

Environment means humans, animals, plants and all other living organisms including the ecological systems of which they form, part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground)

- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers) and
- (c) land (including, without limitation, land under water)

Environmental Law means any applicable law or regulation which relates to:

- (a) the pollution or protection of the environment
- (b) harm to or the protection of human health
- (c) the conditions of the workplace or
- (d) any emission or substance capable of causing harm to any living organism or the environment

Facilities Agreement means (i) the revolving supplier credit agreement dated on or around the date of this Charge and made between the Chargor and the Lender under which the Lender agrees to make available to the Chargor a revolving credit facility and (ii) the invoice discounting agreement dated on or around the date of this Charge and made between the Chargor and the Lender under which the Lender agrees to make available to the Chargor an invoice discounting facility

Finance Document means the Facilities Agreement, this Charge, the Corporate Guarantee, the Personal Guarantees, any document governing or evidencing the terms of the Secured Obligations and any other document designated as a Finance Document by the Lender and the Chargor

Financial Collateral shall have the meaning given to that expression in the Financial Collateral Regulations

Financial Collateral Regulations means the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226)

Insolvency Act means the Insolvency Act 1986

Intellectual Property means:

- (a) any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, topography rights, domain names, moral rights, inventions, confidential information, knowhow and any other associated or similar intellectual property rights and interests anywhere in the world (which may now or in the future subsist), and in each case whether registered or unregistered and
- (b) the benefit of all applications, rights to apply for and rights to use such assets (including, without limitation, any licences and sub-licences of the same granted by it or to it) of the Chargor (which may now or in the future subsist)

Participating Member State means any member state of the European Union that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Union

Party means a party to this Charge

Personal Guarantees means (i) the personal guarantee and indemnity granted by David St John-Claire of Windmill Hill Cottage, Warwick Road, Stratford-upon-Avon CV37 0PY in favour

of the Lender dated on or around the date hereof in respect of the obligations and liabilities of the Chargor to the Lender; (ii) the personal guarantee and indemnity granted by Russell Dolman of 62 Station Road, Penketh, Warrington WA5 2NZ in favour of the Lender dated on or around the date hereof in respect of the obligations and liabilities of the Chargor to the Lender; and (iii) the personal guarantee and indemnity granted by Wolfgang Herbert Heini of Tinode, Blessington, County Wicklow, Ireland in favour of the Lender dated on or around the date hereof in respect of the obligations and liabilities of the Chargor to the Lender;

Receiver means any receiver or administrative receiver appointed in respect of the Charged Assets under this Charge and includes joint receivers

Relevant Jurisdiction means in relation to the Chargor:

- (a) its jurisdiction of incorporation or organisation
- (b) any jurisdiction where any Charged Asset is situated and
- (c) any jurisdiction where it conducts its business

Secured Obligations means all monies, obligations and liabilities covenanted to be paid or discharged by the Chargor to the Lender from time to time including, without limitation, interest (both before and after decree or judgment) from the date when the sum was first due to the date of payment at the Contract Rate, commission, fees and other charges and all reasonable legal and other costs, charges and expenses on a full and unqualified indemnity basis which may be incurred by the Lender in relation to any such moneys, obligations or liabilities or generally in respect of the Chargor

Security means a mortgage, charge, pledge, lien, assignment, assignation in security, standard security, hypothec or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

Security Financial Collateral Arrangement has the meaning given to it in the Financial Collateral Regulations

Security Period means the period beginning on the date of this Charge and ending on the date on which the Lender is satisfied that the Secured Obligations have been irrevocably and unconditionally satisfied in full and all facilities made available by the Lender to the Chargor have been cancelled

Unpaid Sum means any sum due and payable to the Lender but unpaid by the Chargor

1.2 Interpretation

- (a) In this Charge, unless the context otherwise requires:
 - (i) the Lender, the Chargor, any Party or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (ii) references to clauses are to be construed as references to the clauses of this Charge;

- (iii) a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented or restated (however fundamentally) or replaced;
 - (iv) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (v) a **person** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or any other entity or body of any description;
 - (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, then being a type with which persons to which it applies customarily comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (vii) a provision of law is a reference to a provision, of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Charge;
 - (viii) a time of day is a reference to London time;
 - (ix) **sterling** and **£** shall be construed as a reference to the lawful currency of the United Kingdom;
 - (x) **euro** and **€** shall be construed as a reference to the single currency of Participating Member States;
 - (xi) **dispose** includes any sale, lease, licence, transfer or loan;
 - (xii) writing shall, subject to clause 18 (Notices), include any mode of reproducing words in a legible and non-transitory form; and
 - (xiii) references to a **fixed security** mean a fixed security as defined by section 486 of the Companies Act 1985.
- (b) Clause and schedule headings are for ease of reference only.
 - (c) Any word importing the singular shall include the plural and vice versa.
 - (d) A term defined in this Charge has the same meaning when used in any notices, acknowledgements or other documents issued under or in connection with this Charge.
 - (e) The contents table and headings in this Charge are for convenience only and do not affect the interpretation or construction of this Charge.
 - (f) The words **other**, **include**, **including** and **in particular** do not limit the generality of any preceding words and any words which follow them shall not be construed as being

limited in scope to the same class as the preceding words where a wider construction is possible.

1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Charge a person who is not a Party has no right under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or enjoy the benefit of any term of this Charge.
- (b) The consent of any person who is not a Party is not required to rescind or vary this Charge or any other agreement entered into under or in connection with it.

2 Covenant to pay

The Chargor as primary obligor shall, on demand, pay to the Lender and discharge the Secured Obligations when they become due without set-off, counterclaim or deduction.

3 Security

3.1 Floating charge

As a continuing security for the payment of the Secured Obligations, the Chargor hereby grants a floating charge over the Charged Assets in favour of the Lender.

3.2 Qualifying floating charge

This Charge contains a qualifying floating charge and paragraph 14 of Schedule B1 of the Insolvency Act applies to the floating charge created by or under this Charge.

3.3 Continuing security

The Security constituted by this Charge shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by the Chargor or any other person of the whole or any part of the Secured Obligations.

3.4 Waiver of rights

The obligations of the Chargor under this Charge and the rights, powers and discretions of the Lender under this Charge will not be reduced, discharged or otherwise affected by:

- (a) any time, waiver or consent granted to, or composition with the Chargor or any other person;
- (b) the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of the Chargor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights or remedies against, or Security over assets of the Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument;
- (d) the Lender failing to realise the full value of any Security held by it;

- (e) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person or any defective or excessive exercise of the Chargor's powers or authority;
- (f) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) termination or replacement of the Secured Obligations or any document, guarantee or Security related to the Secured Obligations including any change in the purpose of, any extension of or increase in any facility or the addition of any new facility or other document or Security;
- (g) any unenforceability, illegality, invalidity, irregularity or frustration of any obligation (actual or purported) of any person under this Charge or any other document, guarantee or Security held in connection with the Secured Obligations;
- (h) any claim or enforcement of payment from the Chargor or any other person;
- (i) any insolvency, bankruptcy, liquidation, administration, winding-up, incapacity, dissolution, limitation, disability, the discharge by operation of law or any similar proceedings in respect of the Chargor or any other person;
- (j) any change in the constitution, name or style of the Chargor or any other person, or if such other person is a partnership or other unincorporated organisation, its dissolution or any change in its status or membership; or
- (k) anything done or omitted to be done by the Lender or any other person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish the liability of the Chargor under this Charge

3.5 Recourse

The Security constituted by this Charge:

- (a) is in addition to any other Security which the Lender may hold at any time for the Secured Obligations (or any of them); and
- (b) may be enforced without first having recourse to any other rights of the Lender.

4 Negative pledge

The Chargor covenants with the Lender, unless agreed in writing by the Lender and subject to section 464(2) of the Companies Act 1985:

- (a) the Chargor shall not create any fixed security or other floating charge over any part of the Charged Assets after its execution of this Charge except any fixed security in favour of the Lender; and
- (b) this Charge shall rank in priority to any fixed security or other floating charge created by the Chargor after its execution of this Charge except any fixed security in favour of the Lender.

5 Power of attorney

The Chargor irrevocably and severally appoints the Lender, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to

take under this Charge. The Chargor ratifies and confirms whatever any attorney does or purports to do pursuant to its appointment under this clause 5.

6 Further assurance

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

- (a) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Charge (which may include the execution of a pledge, charge, assignment, assignment or assurance or other Security over all or any of the assets which are, or are intended to be, the subject of this Charge) or for the exercise of any rights, powers and remedies of the Lender provided by or pursuant to this Charge or by law;
- (b) to confer on the Lender Security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to this Charge;
- (c) creating any fixed security or charge over any of the Charged Assets;
- (d) to facilitate the exercise of any rights, powers and remedies exercisable by the Lender or any Receiver in respect of any of the Charged Assets or provided by or pursuant to the Finance Documents or by law; and/or
- (e) (if the Enforcement Date has occurred) to facilitate the realisation of the assets which are, or are intended to be, the subject of this Charge.

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

6.3 Any document required to be executed by the Chargor under this clause 6 will be prepared at the cost of the Chargor.

7 Enforcement of security

7.1 When security is enforceable

At any time on or after the Enforcement Date, the security created by and under this Charge is immediately enforceable.

7.2 Acts of enforcement

- (a) The Lender may, at its absolute discretion, at any time after the security created by or under this Charge is enforceable:
 - (i) appoint one or more persons as a Receiver or Receivers in respect of the Charged Assets, or apply to the Court for such appointment;
 - (ii) appoint one or more persons as an Administrator of the Chargor;

- (iii) make an administration application in respect of the Chargor; or
 - (iv) give notice of intention to appoint an Administrator in respect of the Chargor,
- in each case in accordance with and to the extent permitted by laws applicable to the Chargor and to this Charge.

- (b) The appointment of a Receiver or Receivers or an Administrator, or the giving of notice of intention to appoint an Administrator shall be effected by the Lender by written instrument or notice in accordance with and in such form as may be prescribed under the Insolvency Act. If any such person so appointed as Receiver or Administrator is removed from office by the Court or otherwise ceases to act, the Lender shall be entitled (subject to the provisions of the Insolvency Act) to appoint a replacement in the same manner.

7.3 Powers of Receiver

A Receiver appointed under this Charge shall have the following powers in addition to those specified in Schedule 2 of the Insolvency Act:

- (a) to promote or procure the incorporation of any new company (whether or not a subsidiary of the Chargor), to transfer any part of the Charged Assets to such company for any form of consideration (including shares, debentures, loan stock or loan capital in such company), and/or to subscribe for or otherwise acquire shares, debentures, loan stock or loan capital in such company in name of the Chargor, or the Receiver, or its or his/her nominee or trustee;
- (b) subject to the articles of association, to convene extraordinary general meetings of the Chargor;
- (c) to make any arrangement or compromise which the Receiver or the Lender may think fit;
- (d) generally, without prejudice to the other provisions of this clause to exercise all the rights, powers and discretions in respect of the Charged Assets it would be entitled to exercise if it were the absolute owner thereof and to do all acts and things the Receiver may consider necessary or expedient for the realisation of the Charged Assets and the application of the proceeds in or towards satisfaction of or their retention as continuing security for the Secured Obligations; and
- (e) in respect of any of the Charged Assets situated in England and Wales (or any other jurisdiction) to exercise in addition to the foregoing powers, all the powers conferred by the Insolvency Act or any other enactment or rule of law on receivers or receivers and managers (or analogous officers) in that jurisdiction.

7.4 Agent of the Chargor

The Receiver shall be the agent of the Chargor for all purposes of and in all respects arising under this Charge and, except as otherwise provided by the Insolvency Act, the Chargor alone shall be responsible for his/her acts, omissions, neglects and defaults and for all liabilities and obligations incurred by him/her, and his/her remuneration costs, charges and expenses.

7.5 Balance

The rights powers and discretions conferred on the Receiver under this clause are subject only to his/her obligation to account to the Chargor or any other person entitled thereto for any balance of the Charged Assets or their proceeds remaining in his/her hands after the Secured Obligations have been fully and unconditionally paid and discharged.

7.6 Security Financial Collateral Arrangement

- (a) At any time after the security constituted by this Charge has become enforceable and to the extent that any of the Charged Assets constitute Financial Collateral and are subject to a Security Financial Collateral Arrangement pursuant to this Charge, the Lender shall have the right to appropriate all or any part of those Charged Assets in or towards the payment or discharge of the Secured Obligations as are then due and payable as the Lender may think fit. The value of such Charged Assets appropriated in accordance with this clause 7.6(a) shall be the price of those Charged Assets at the time the right of appropriation is exercised as listed on any recognised market index, or as determined by such other method as the Lender may select (including independent valuation). The Chargor agrees that the methods of valuation provided for in this clause 7.6(a) are commercially reasonable.
- (b) To the extent that the Charged Assets constitute Financial Collateral, the Chargor agrees that such Charged Assets may, at the Lender's option, be held or designated so as to be under the control of the Lender for all purposes of the Financial Collateral Regulations.

8 Undertakings

8.1 Undertakings

- (a) Except with the Lender's prior written consent, the Chargor undertakes to the Lender that it shall not:
 - (i) dispose of any of its heritable, freehold or leasehold property or any interest or estate therein or grant any lease, sub-lease, tenancy, sub-tenancy or licence thereof or surrender or accept the surrender of any of the foregoing;
 - (ii) dispose of any other of the Charged Assets or any interest therein otherwise than in the ordinary course of its trading activities, for market value, on an arms-length basis and for consideration payable in cash on normal commercial terms;
 - (iii) pull down or remove the whole or any part of any buildings or erections forming part of the Charged Assets or make any structural or external alterations thereto or sever or unfix or remove any of the fixtures attaching thereto or (except for the purpose of effecting necessary repairs or replacing with new or improved models or substitutes) remove any fixed plant or machinery belonging to or used by it;
 - (iv) sell, factor, discount, assign or otherwise charge or dispose of its book debts or other accounts or payments receivable;
 - (v) become a guarantor or surety for any person;

- (vi) issue or create any debentures, debenture or loan stock or loan capital;
 - (vii) agree to postpone or subordinate the Chargor's right to receive or claim payment of any debt or monetary claim due to it; or
 - (viii) do or omit to do anything whereby any insurance in respect of the Chargor or the Charged Assets may be rendered void or voidable.
- (b) The Chargor undertakes that it shall:
- (i) conduct its business and affairs in a proper and efficient manner and provide the Lender on request with such trading, financial and other information as the Lender may reasonably require from time to time;
 - (ii) comply promptly with its obligations under the Finance Documents;
 - (iii) on request deposit with the Lender all title deeds, certificates and other documents of title or evidence of ownership in relation to the Charged Assets;
 - (iv) promptly notify the Lender of its acquisition of any heritable, freehold or leasehold property, and if so requested, deposit with the Lender all title deeds, leases and other documents of title or evidence of ownership or occupation in relation to that property;
 - (v) comply with all obligations, conditions and covenants relating to the heritable, freehold or leasehold property owned or occupied by the Chargor and promptly pay all rents, rates, taxes and other outgoings in respect thereof and give the Lender and its representatives access to such property at all reasonable times, on reasonable notice;
 - (vi) comply with all laws, statutes, directives and regulations (including, without limitation, Environmental Laws) and all notices, codes of practice and other requirements having the force of law which are applicable to it and obtain, effect, maintain and comply with all registrations, licenses, consents, authorisations and exemptions required (including, without limitation, under Environmental Law) for the efficient conduct of its business;
 - (vii) if so requested by the Lender appoint an accountant or firm of accountants nominated by the Lender to investigate its financial and trading affairs and report to the Lender;
 - (viii) keep the Charged Assets in good order (and where appropriate good working order) and repair and, where necessary, renew and replace them;
 - (ix) effect and maintain such insurances (in respect of the Chargor, its business and the Charged Assets) of such types, against such risks, with such insurers, for such amounts and on such terms and conditions as are usually maintained by prudent companies carrying on the same or similar activities as the Chargor and as the Lender may from time to time reasonably approve or require, pay the premiums and any other sums necessary to keep such insurances in force promptly when they fall due (and produce the relevant receipts to the Lender within 3 Business Days of being requested to do so); and otherwise comply with the terms and conditions applicable to such insurances. If the Chargor fails to effect any such insurance or pay any such premium or other sum, the Lender

shall be entitled to do so in accordance with clause 8.2. The Chargor shall procure that the name and interest of the Lender as sole loss payee under this Charge is endorsed or noted on all such insurances and so far as reasonably practicable that they each contain a non-vitiation provision whereby they will not be held void, voidable or otherwise unenforceable against the Lender by reason of any non-disclosure, misrepresentation or other act, neglect or default of or attributable to the Chargor;

- (x) apply all monies received, under any such insurances towards replacing, restoring or reinstating the property destroyed or damaged or making good the loss or damage otherwise sustained;
- (xi) notify the Lender immediately in the event of any creditor executing diligence, (whether effectual or not), levying distress or execution, or serving any garnishee order against the Chargor or any of the Charged Assets;
- (xii) take all appropriate action (in particular make all filings and registrations and pay all fees, taxes and similar amounts) as may be necessary to maintain in full force and effect all Intellectual Property (if any) owed or used by the Chargor and take such steps as may be necessary (including without limitation, instituting legal proceedings) to prevent third parties infringing such Intellectual Property in any material respect ; and
- (xiii) promptly notify the Lender of any breach of any Environmental Law applicable to it, or of any of the representations, warranties and undertakings on its part specified in this clause 8 where such breach has or likely to have a material adverse effect on the value of the Charged Assets, the financial condition, assets or revenues of the Chargor, the ability of the Chargor to fulfil the Secured Obligations, or the effectiveness of this Charge.

8.2 Power to remedy

- (a) If the Chargor fails to comply with any of the undertakings set out in clause 8, it shall allow and irrevocably authorises the Lender and/or such persons as it shall nominate to take such action on its behalf as shall be necessary to ensure that it complies with those undertakings.
- (b) If the Chargor fails to perform any obligation or other covenant affecting the Charged Assets, the Chargor shall permit the Lender or its agents and contractors:
 - (i) to enter on any heritable, freehold or leasehold property of the Chargor;
 - (ii) to comply with or object to any notice served on the Chargor relating to any Charged Asset; and
 - (iii) to take any action the Lender may reasonably consider expedient to prevent or remedy any breach of any such term or to comply with or object to any such notice.
- (c) The Chargor shall within 3 Business Days of demand indemnify the Lender against any cost, loss or liability incurred by it in taking any of the steps referred to in this clause 8.2.

9 Contingencies

If the Lender enforces the Security constituted by or under this Charge at a time when no amounts are due to the Lender but at a time when amounts may or will become so due, the Lender (or the Receiver) may pay the proceeds of any recoveries effected by it into an interest bearing suspense account.

10 Delegation

10.1 The Lender and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Lender and the Receiver (as appropriate) under this Charge to any person or persons as it shall think fit. Any such delegation may be made upon such terms and conditions (including the power to sub-delegate) as the Lender and Receiver (as appropriate) may think fit.

10.2 The Lender and any Receiver will not be liable or responsible to the Chargor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate.

11 Application of monies

11.1 All monies received by the Lender or any Receiver under this Charge shall be applied to the Secured Obligations in such order as the Lender may determine.

11.2 The Lender and any Receiver may place any money received, recovered or realised pursuant to this Charge in an interest bearing suspense account and it may retain the same for such period as it considers expedient without having any obligation to apply the same or any part of it in or towards discharge of the Secured Obligations.

12 Remedies and waivers

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

12.2 A waiver given or consent granted by the Lender under this Charge will be effective only if given in writing and then only in the instance and for the purpose for which it is given

13 Protection of third parties

13.1 No person (including a purchaser) dealing with the Lender or a Receiver or its or his agents has an obligation to enquire of the Lender, Receiver or others:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power purported to be exercised has become exercisable;
- (c) whether any Secured Obligations or other monies remain outstanding;
- (d) how any monies paid to the Lender or to the Receiver shall be applied; or
- (e) the status, propriety or validity of the acts of the Receiver or Lender.

13.2 The receipt by the Lender or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve him of any obligation to see to the application of any monies paid to or by the direction of the Lender or any Receiver.

13.3 In clauses 13.1 and 13.2, **purchaser** includes any person acquiring, for money or monies worth, any lease of, or Security over, or any other interest or right whatsoever in relation to, the Charged Assets or any of them.

14 Additional security

The Security created by or under this Charge is in addition to and is not in any way prejudiced by any guarantee or security now or subsequently held by the Lender.

15 Settlements conditional

15.1 If the Lender (acting reasonably) believes that any amount paid by the Chargor or any other person in respect of the Secured Obligations is capable of being avoided or set aside for any reason, then for the purposes of this Charge, such amount shall not be considered to have been paid.

15.2 Any settlement, discharge or release between the Chargor and the Lender shall be conditional upon no Security or payment to or for the Lender by the Chargor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any law relating to bankruptcy, insolvency or liquidation or otherwise.

16 Subsequent Security

If the Lender receives notice of any other subsequent Security or other interest affecting all or any of the Charged Assets it may open a new account or accounts for the Chargor in its books. If it does not do so then, unless it gives express written notice to the contrary to the Chargor, as from the time of receipt of such notice by the Lender, all payments made by the Chargor to the Lender shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations.

17 Set-off

17.1 The Lender may:

- (a) combine or consolidate all or any sums of money now or hereafter standing to the credit of the then existing accounts of the Chargor with the Lender with the liabilities to the Lender of the Chargor; and
- (b) set-off, retain as cover for, apply or transfer any sum or sums standing to the credit of any one or more of such accounts in or towards satisfaction of any of the liabilities of the Chargor to the Lender on any other account or in any other respect.

17.2 If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

17.3 If the relevant obligation or liability is unliquidated or unascertained the Lender may set-off the amount it estimates (in good faith) will be the final amount of such obligation or liability once it becomes liquidated or ascertained.

18 Notices

18.1 Communications in writing

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

18.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Charge:

- (a) in the case of the Chargor, that identified with its name below; and
- (b) in the case of the Lender, that identified with its name below,

or any substitute address, fax number or department or officer as the Party may notify to the others by not less than 5 Business Days' notice.

18.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Charge will only be effective:

- (i) if by way of fax, when received in legible form; or
 - (ii) if by way of letter, when it has been left at the relevant address or 3 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under clause 18.2, if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified with the Lender's signature below (or any substitute department or officer as the Lender shall specify for this purpose).

19 Invalidity

If, at any time, any provision of this Charge is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

20 Assignment

- 20.1 The Lender may assign or otherwise transfer all or any part of its rights under this Charge or any Security created by or under it.

- 20.2 The Chargor may not assign, transfer, charge, make the subject of a trust or deal in any other manner with this Charge or any of its rights under this Charge or purport to do any of the same without the prior written consent of the Lender.

21 Releases

Upon the expiry of the Security Period, the Lender shall, at the request and cost of the Chargor, take whatever action is necessary to discharge or release (without recourse or warranty) the Charged Assets from the Security created by this Charge.

22 Currency clauses

22.1 Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

- (a) any reference in this Charge to, and any obligations arising under this Charge in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Chargor); and
- (b) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).

22.2 If a change in any currency of a country occurs, this Charge will, to the extent the Lender (acting reasonably and after consultation with the Chargor) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

22.3 If a payment is made to the Lender under this Charge in a currency (**Payment Currency**) other than the currency in which it is expressed to be payable (**Contractual Currency**), the Lender may convert that payment into the Contractual Currency at the rate at which it (acting reasonably and in good faith) is able to purchase the Contractual Currency with the Payment Currency on or around the date of receipt of the payment and to the extent that the converted amount of the payment falls short of the amount due and payable the Chargor will remain liable for such shortfall.

23 Certificates and determinations

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

24 Chargor's Indemnity

24.1 The Chargor shall promptly indemnify the Lender and every Receiver and Delegate (each an **Indemnified Person**) against any cost, loss or liability together with any associated VAT incurred by any of them as a result of:

- (a) the taking, holding, protection or enforcement of this Charge;
- (b) the exercise of any of the rights, powers, discretions and remedies vested in the Lender and each Receiver and Delegate by this Charge or by law; and
- (c) any default by the Chargor in the performance of any of the obligations expressed to be assumed by it in this Charge.

24.2 The Chargor shall indemnify the Lender against any and all costs, losses, liabilities or expenses together with any associated VAT incurred by the Lender arising (directly or indirectly) out of or in connection with:

- (a) any breach or potential breach of or liability (whether civil and/or criminal) under any Environmental Law;
- (b) any responsibility on the part of the Lender in respect of any clean-up, repair or other corrective action; or
- (c) the business or any real property of the Chargor.

24.3 The Lender may indemnify itself out in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this clause and the proceeds of the enforcement of this Charge for all monies payable to it.

25 Exclusion of liability

25.1 No liability

Neither the Lender nor any Receiver shall be liable in respect of all or any part of the Charged Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers unless such loss or damage is caused by its gross negligence or wilful acts of default and recklessness.

25.2 Officers and agents

The Chargor may not take proceedings against any officer, employee or agent of the Lender in respect of any claim it might have against the Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to this Charge and any officer, employee or agent of the Lender may rely on this clause.

26 Fees, costs and expenses

26.1 Transaction expenses

The Chargor shall promptly on demand pay the Lender the amount of all costs, fees and expenses (including legal fees) together with any associated VAT reasonably incurred by it in connection with the negotiation, preparation, printing, execution and perfection of this Charge.

26.2 Amendment costs

If the Chargor requests an amendment, waiver or consent of this Charge, the Chargor shall, within 3 Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) together with any associated VAT reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with the request or requirement.

26.3 Enforcement and preservation costs

The Chargor shall, within 3 Business Days of demand, pay to the Lender the amount of all costs, fees and expenses (including legal fees) together with any associated VAT incurred by the Lender in connection with the enforcement of or the preservation of any rights under this Charge and any proceedings instituted by or against the Lender as a consequence of taking or holding the Security created or expressed to be created in favour of the Lender under this Charge or enforcing these rights.

26.4 Interest on late payments

- (a) If the Chargor fails to pay any amount payable by it under this Charge on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at the annual percentage rate equal to the Contract Rate. Any interest accruing under this clause 26.4 shall be immediately payable by the Chargor on demand by the Lender.
- (b) Default interest (if unpaid) arising on Unpaid Sums will be compounded with the overdue amount at the end of each calendar month but will remain immediately due and payable.

27 Consent to registration

The Chargor consents to the registration of this Charge and of any certificate referred to in clause 23 (Certificates and determinations) for preservation and execution.

28 Counterparts and delivery

28.1 Counterpart execution

This Charge may be executed in any number of counterparts and by the parties on separate counterparts.

28.2 Delivery where Charge is executed in counterpart

Where executed in counterpart:

- (a) this Charge shall not take effect until all of the counterparts have been delivered;
- (b) each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered; and
- (c) the parties may choose to evidence the date of delivery of this Charge by inserting this on the front page of this Charge.

28.3 Delivery where Charge is not executed in counterpart

If this Charge is not executed in counterparts, this Charge shall be delivered on the date inserted on the front page of this Charge or, if no such date is inserted, the date on which the last party signed this Charge.

28.4 Appointment of nominated person

The parties to this Charge, in accordance with section 2(1) of the Legal Writings (Counterparts and Delivery)(Scotland) Act 2015 (**Counterparts Act**), nominate Addleshaw Goddard LLP to take delivery of all counterparts of this Charge. The parties agree that the provisions of section 2(3) of the Counterparts Act shall not apply to any counterpart of this Charge.

29 Governing law

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

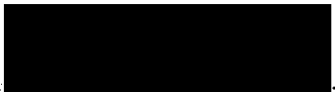
30 Jurisdiction of Scottish courts

- 30.1 The courts of Scotland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Charge (including a dispute relating to the existence, validity or termination of this Charge or any non-contractual obligation arising out of or in connection with this Charge) (Dispute).
- 30.2 The Parties agree that the courts of Scotland are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- 30.3 This clause 30 is for the benefit of the Lender. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

In witness whereof these presents consisting of this and the preceding 17 pages are executed by the parties hereto as follows:

Subscribed for and on behalf of
Aardvark Clear Mine Limited

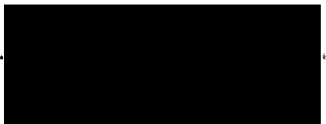
at *WINDMILL HILL COTTAGE*
on *25/09/2018*


.....
) Director
) *David St John-Cumrie*
.....
) Full Name

in the p 

.....
Signature of witness

Full name *Seamus Price*
.....

Address .. 
.....

Address for notice: 

Fax number: 

Subscribed for and on behalf of
Seneca Trade Partners Ltd
at **MANCHESTER**

on **25 SEPTEMBER 2018**

)
) ~~Director/Secretary/Authorised Signatory~~
)
) **CHRU GARY WILLIAMS**
) Full Name

in the presence of:

.....
Signature of witness

Full name **GEMMA GREGORY**

Address
.....

Address for notice:

Fax number: