

MG01

Particulars of a mortgage or charge



276538/13

A fee is payable with this form.
We will not accept this form unless you send the correct fee
Please see 'How to pay' on the last page

What this form is for
You may use this form to register
particulars of a mortgage or charge
in England and Wales or Northern
Ireland

What this form is NOT
You cannot use this form
particulars of a charge for
company. To do this, please
form MG01s

FRIDAY



A11 *A14B3AMJ* #122
09/03/2012
COMPANIES HOUSE

1 Company details 2 For official use

Company number: 0 4 2 9 8 0 3 7

Company name in full: Aardvark TFC Limited (the "Chargor")

→ **Filing in this form**
Please complete in typescript or in
bold black capitals

All fields are mandatory unless
specified or indicated by *

2 Date of creation of charge

Date of creation: d2 d9 m0 m2 y2 y0 y1 y2

3 Description

Please give a description of the instrument (if any) creating or evidencing the charge, e.g. 'Trust Deed', 'Debenture', 'Mortgage', or 'Legal charge'

Description: Debenture (the "Debenture")

4 Amount secured

Please give us details of the amount secured by the mortgage or charge

Amount secured: As specified in the continuation page to this form

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

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5 Mortgagee(s) or person(s) entitled to the charge (if any)

Please give the name and address of the mortgagee(s) or person(s) entitled to the charge

Continuation page

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

Name Euler Hermes UK, UK Branch (the "Security Agent")

Address Surety House, Lyons Crescent

Tonbridge, Kent

Postcode T N 9 1 E N

Name

Address

Postcode

6 Short particulars of all the property mortgaged or charged

Please give the short particulars of the property mortgaged or charged

Continuation page

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

Short particulars

As specified in the continuation page to this form

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7 Particulars as to commission, allowance or discount (if any)

Please insert the amount or rate percent of any commission, allowance or discount paid or made either directly or indirectly by the company to any person on consideration of his

- subscribing or agreeing to subscribe, whether absolutely or conditionally, or
- procuring or agreeing to procure subscriptions, whether absolute or conditional,

for any debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered

Commission, allowance or discount Nil

8 Delivery of instrument

You must deliver the original instrument (if any) creating or evidencing the charge and these prescribed particulars to the Registrar of Companies within 21 days after the date of creation of the charge (section 860). If the property is situated and the charge was created outside the United Kingdom (UK), you must deliver the information to the Registrar within 21 days after the date on which the instrument could have been received in the UK in the normal course of post and assuming you had posted it promptly (section 870)

We will accept a verified copy of the instrument creating the charge where the property charged is situated and the charge was created outside the UK (section 866). The company or the person who has delivered the copy to the Registrar must verify it to be a correct copy and sign it. Where a body corporate gives the verification, an officer of that body must sign it. We will also accept a verified copy where section 867(2) applies (property situated in another part of UK)

9 Signature

Please sign the form here

Signature

Signature

X *Ershedo UP* X

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

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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 and will establish where we return the original documents. The contact information you give will be visible to searchers of the public record.

Contact name James Oxley

Company name Eversheds LLP

Address Bridgewater Place, Water Lane

Post town Leeds

County/Region

Postcode L S 1 1 5 D R

Country

DX DX 12027 Leeds - 27

Telephone 0845 498 4417



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 the original deed with this form
- You have entered the date the charge was created
- You have supplied the description of the instrument
- You have given details of the amount secured by the mortgagee or chargee
- You have given details of the mortgagee(s) or person(s) entitled to the charge
- You have entered the short particulars of all the property mortgaged or charged
- You have signed the form
- You have enclosed the correct fee



Important information

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



How to pay

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

Make cheques or postal orders payable to 'Companies House'.



Where to send

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

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

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

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



Further information

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk

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Amount secured

Please give us details of the amount secured by the mortgage or charge

Amount secured

The amount secured by the Debenture is any liability expressed to be due, owing or payable by ATH Resources plc (company number 04928463), Aardvark TMC Limited (company number 03374330), the Chargor, ATH Garleffan Limited (company number 04928517), ATH Regeneration Limited (company number 05406293), A Ogden & Sons Limited (company number 0571880) and Northumbrian Power Limited (company number 06839075) to the Beneficiaries under or in connection with any of the Bonding Facility Documents (together the "**Secured Liabilities**")

All capitalised terms used in this form are defined in the Appendix to this form.

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Short particulars of all the property mortgaged or charged

Please give us the short particulars of the property mortgaged or charged

Short particulars

Mortgages and Fixed Charges

- 1 As a continuing security for payment of the Secured Liabilities, the Chargor with full title guarantee charged to the Security Agent all its right, title and interest from time to time in each of the following assets
 - 1.1 by way of first legal mortgage, all Land which is described in Schedule 2 to the Debenture (as described in Schedule 1 to part 6 of this form),
 - 1.2 by way of first fixed charge all other Land at the date of the Debenture vested in the Chargor (to the extent not effectively charged by Clause 3 1 1 of the Debenture (as described at paragraph 1 1 above)) and all Land acquired by the Chargor after the date of the Debenture,
 - 1.3 by way of equitable mortgage or (if or to the extent that the Debenture does not take effect as a mortgage) by way of first fixed charge the Shares,
 - 1 4 by way of first fixed charge -
 - (a) the Securities,
 - (b) the Intellectual Property,
 - (c) the Monetary Claims,
 - (d) the Fixed Plant and Equipment;
 - (e) the Loose Plant and Equipment;
 - (f) the Accounts (other than the Assigned Accounts),
 - (g) the Related Rights under or in connection with the Shares, the Securities, the Accounts (other than the Assigned Accounts), the Intellectual Property, the Monetary Claims, the Fixed Plant and Equipment and the Loose Plant and Equipment,
 - (h) to the extent not assigned or effectively assigned by Clause 3 3 (*Assignments*) of the Debenture (as described at paragraph 3 below), the Specific Contracts, the Insurances, the Assigned Accounts and other agreements and all Related Rights in respect of such Charged Property; and
 - (i) its present and future goodwill and uncalled capital

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Short particulars

Floating Charge

2 As continuing security for payment of the Secured Liabilities, the Chargor with full title guarantee charged to the Security Agent by way of first floating charge the whole of the Chargor's undertaking and assets, present and future and wherever situated, which were not for any reason effectively charged or assigned (whether in law or equity) by way of fixed security by the Debenture, including, without limitation, any heritable property of the Chargor situated in Scotland. The floating charge created by the Debenture shall be valid over any assets and undertaking of the Chargor located in Scotland regardless of whether they are effectively charged or assigned by way of fixed security pursuant to the Debenture.

Assignments

3 The Chargor with full title guarantee assigned absolutely in favour of the Security Agent, but subject to the right of the Chargor to redeem such assignment upon the full payment or discharge of the Secured Liabilities, its right, title and interest from time to time in each of the following assets:-

3 1 the Specific Contracts;

3 2 the Insurances,

3 3 the Assigned Accounts, and

3.4 all rights under any agreement to which it is a party and which is not mortgaged or charged under Clause 3 1 (*Mortgages and Fixed Charges*) of the Debenture (as described at paragraph 1 above),

together with all Related Rights in respect of such Charged Property, provided that the Chargor is entitled until the Enforcement Date to exercise all rights assigned under Clause 3 3 (*Assignments*) of the Debenture (as described in this paragraph 3) (subject to the terms of the Bonding Facility Documents) and the Security Agent will reassign any such rights to the extent necessary to enable the Chargor to do so.

Crystallisation of floating charge

4 **Crystallisation: By Notice**

The Security Agent may at any time by notice in writing to the Chargor convert the floating charge created by Clause 3 2 (*Floating Charge*) of the Debenture (as described at paragraph 2 above) with immediate effect into a fixed charge as regards any property or assets specified in the notice if -

4 1 the Enforcement Date has occurred, or

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Short particulars of all the property mortgaged or charged

Please give us the short particulars of the property mortgaged or charged

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4 2 the Security Agent considers that any of the Charged Property may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process; or

4 3 the Security Agent considers that it is necessary in order to protect the priority of the Security created by or pursuant to the Debenture

5 **Crystallisation: Automatic**

The floating charge created by Clause 3 2 (*Floating Charge*) of the Debenture (as described at paragraph 2 above) will automatically be converted (without notice) with immediate effect into a fixed charge as regards all of the undertaking and assets subject to the floating charge if -

5 1 the Chargor creates or attempts to create any Security (other than as permitted pursuant to the terms of the Senior Secured Finance Documents) over any of the Charged Property, or

5 2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Property, or

5.3 any step is taken (including the presentation of a petition, the passing of a resolution or the making of an application) to appoint a liquidator, provisional liquidator, administrator or Receiver in respect of the Chargor, over all or any part of its assets, or if such person is appointed

Restrictions on dealing

6 **Negative Pledge**

The Chargor undertook that it shall not, at any time during the subsistence of the Debenture, create or permit to subsist any Security over all or any part of the Charged Property, except as expressly permitted under the terms of the Senior Secured Finance Documents

7 **Disposals**

The Chargor undertook that it shall not (and shall not agree to) at any time during the subsistence of the Debenture, except as expressly permitted under the terms of the Senior Secured Finance Documents, sell, transfer, assign, lease or hire out, factor, discount, licence, lend, part with its interest in or otherwise dispose of any of the Charged Property or permit the same to occur, or agree to do any of the foregoing, provided that, until -

7 1.1 the floating charge created by Clause 3 2 (*Floating Charge*) of the Debenture (as described at paragraph 2 above) is converted into a fixed charge; or

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7 1 2 the occurrence of the Enforcement Date,

the Chargor may hold, enjoy and deal with, in accordance with the Senior Secured Finance Documents, the Charged Property which is not at the relevant time expressed to be subject to a fixed charge or mortgage

Definitions

8 All capitalised terms used in this form are defined in the Appendix to this form

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Schedule 1 (Details of Land)

The Debenture does not specify any Land relating to the Chargor.

Schedule 2 (Details of Shares)

The Debenture does not specify any Shares relating to the Chargor.

Schedule 3 (Details of Material Insurances)

The Debenture does not specify any Material Insurances relating to the Chargor

Schedule 4 (Details of Intellectual Property)

The Debenture does not specify any Intellectual Property relating to the Chargor

Schedule 5 (Specific Contracts)

The Debenture does not specify any Specific Contracts relating to the Chargor

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APPENDIX

DEFINITIONS AND CONSTRUCTION

Definitions

In this form and its Appendices the following definitions apply

"Account" means any account opened or maintained by the Chargor at any bank or financial institution

"Assigned Account" means any Account that may from time to time be agreed by the Security Agent and the Parent to be an Assigned Account

"Beneficiaries" means the Bond Providers, the Security Agent and any Receiver (as defined in the Security Trust Deed) or Delegate (as defined in the Security Trust Deed) from time to time

"Bonding Facility Documents" means any agreement or document under the terms of which the Bond Providers have provided a bond, guarantee or indemnity on behalf of an Obligor and/or any agreement, counter-indemnity, or general agreement or indemnity or document supplemental thereto or entered into in connection thereto

"Bond Providers" means the entities listed in Part II of Schedule 1 (*Original Parties*) of the Security Trust Deed as original Bond Providers and any entity which becomes a party of the Security Trust Deed as a Bond Provider pursuant to the terms of the Security Trust Deed

"Charged Property" means all the assets and undertaking of the Chargor which from time to time are, or purport to be, the subject of the security created in favour of the Security Agent by or pursuant to the Debenture.

"Chargor" has the meaning given to it on page 1 of this form

"Debenture" has the meaning given to it on page 1 of this form.

"Enforcement Action" means:-

- (a) the acceleration of any Secured Liability or any declaration that any Secured Liability is prematurely due and payable or payable on demand (other than as a result of it becoming unlawful for a Beneficiary to perform its obligations under or of any mandatory prepayment arising under, the Bonding Facility Documents),

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- (b) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security),
- (c) the making of any demand against any Obligor in relation to any guarantee, indemnity or other assurance against loss in respect of any Secured Liability (including exercising any put or call option against any Obligor for the redemption or purchase of any Secured Liability),
- (d) the exercise of any right of set-off against any Obligor in respect of any Secured Liability;
- (e) the suing for, commencing or joining of any legal or arbitration proceedings against any Obligor to recover any Secured Liability, or
- (f) the petitioning, applying or voting for, or the taking of any steps which may lead to any administration, winding-up, insolvency or dissolution of or in relation to any Obligor

"Enforcement Date" means the date on which the Security Agent or any other Beneficiary first takes Enforcement Action.

"Fixed Plant and Equipment" means all plant, machinery or equipment of the Chargor of any kind which does not for any reason constitute a Fixture, but is at the date of the Debenture or at any time directly or indirectly attached by any means and for any purpose to any land or building, whether or not it is removable or intended to form part of the land or building

"Fixture" means all things of any kind at the date of the Debenture or at any time affixed to land for any purpose, including, without limitation, trade and tenants fixtures

"Insurances" means, together with those insurance policies (if any) details of which are set out in Schedule 4 (*Details of Material Insurances*) to the Debenture (as set out in Schedule 3 to this form), any policy of insurance or assurance

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Please give us the short particulars of the property mortgaged or charged

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"Intellectual Property" means together with, but not limited to, the intellectual property (if any) details of which are set out in Schedule 5 (*Details of Intellectual Property*) to the Debenture (as set out in Schedule 4 to this form), any of the following.-

- (a) any registered intellectual property right in any territory or jurisdiction, including, without limitation, patents, trade marks, service marks, registered designs, and any similar right in any territory or jurisdiction and any applications or right to apply for any of the above,
- (b) any invention, copyright, design right or performance right,
- (c) any trade secrets, know-how and confidential information; and
- (d) the benefit of any agreement or licence for the use of any such right

"Land" means any estate, right or interest in or over land, whether legal or equitable, and wherever the land is situated including, without limitation, any buildings and Fixtures on land, and the benefit of any covenants or rights owed to any person or enforceable by him by virtue of the ownership, possession or occupation of land but for these purposes **"Land"** excludes any such estate, covenants, rights or interests, in or over land situated in Scotland

"Loose Plant and Equipment" means, in relation to the Chargor, all plant, machinery, equipment and motor vehicles at the date of the Debenture or at any time owned by the Chargor as a capital asset which is not Fixed Plant and Equipment

"Monetary Claims" means all book and other debts and monetary claims at the date of the Debenture or in the future owing to the Chargor (whether alone or jointly with any other person), whenever payable and whether liquidated or unliquidated, certain or contingent including, without limitation, credit balances on any Account, and together with all cheques, bills of exchange, negotiable instruments, credits and securities at any time given in relation to, or to secure payment of, any such debt

"Obligor" has the meaning given in the Security Trust Deed.

"Parent" means ATH Resources plc

"Receiver" means any receiver, receiver and manager or administrative receiver of the whole or any part of the Charged Property.

"Related Rights" means in relation to any Charged Property.-

- (a) the proceeds of sale of any part of that Charged Property;
- (b) all rights under any licence, agreement for sale or agreement for lease in

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respect of that Charged Property,

- (c) all rights, benefits, claims, contracts, warranties, remedies, security, indemnities or covenants for title in respect of that Charged Property, and
- (g) any moneys and proceeds paid or payable in respect of that Charged Property.

"Secured Liabilities" has the meaning given to it in the continuation page to section 4 of this form

"Securities" means all the right, title and interest of the Chargor, at the date of the Debenture or in the future, in any -

- (a) stocks, shares, bonds, debentures, loan stocks, or other securities issued by any person,
- (b) warrants, options or other rights to subscribe, purchase or otherwise acquire any stocks, shares, bonds, debentures, loan stocks or other securities or investments issued by any person, and
- (c) units or other interests in any unit trust or collective investment scheme,

other than the Shares

"Security" means a mortgage, charge, pledge, lien or any other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Security Agent" has the meaning given to it on page 2 of this form and includes the Security Agent's successors in title and any successor appointed in accordance with the Security Trust Deed

"Security Documents" has the meaning given in the Security Trust Deed

"Security Trust Deed" means the security trust deed dated 29 February 2012 and entered into, amongst others, by Euler Hermes UK, UK Branch as Security Agent, the Chargor and the entities listed in part II of schedule 1 thereto as bond providers

"Senior Facility Agreement" means the facility agreement, dated 2 November 2009, between, amongst others, the Chargor, the financial institutions listed therein as lenders and HSBC Corporate Trustee Company (UK) Limited as security agent, as amended and restated on 28 July 2010 and 29 September 2011 and as the same may be further amended, novated, restated, supplemented and varied from time to time

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"Senior Secured Finance Documents" means the Finance Documents and the Hard Exposure Facility Documents, each as defined in the Senior Facility Agreement

"Shares" means all of the shares in the capital of each of the companies specified in Schedule 3 (*Details of Shares*) to the Debenture (as set out in Schedule 2 to this form) held by, to the order of or on behalf of, the Chargor at any time

"Specific Contracts" means the contracts (if any) details of which are set out in Schedule 6 (*Material Contracts*) to the Debenture (as set out in Schedule 5 to this form).

"Transaction Security" means the Security created or expressed to be created in favour of the Security Agent pursuant to the Security Documents

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Interpretation

In this form and its Appendices the following applies

- 1 words importing the singular shall include the plural and vice versa and reference to any gender includes the other gender,
2. the term "**assets**" includes all property, rights and revenues whatsoever, and wheresoever, present and future,
- 3 references to a "**guarantee**" include an indemnity or any other form of surety,
- 4 all references to documents include all variations and replacements of such documents and supplements to such documents,
- 5 all references to a party include references to its personal representatives, permitted assigns and transferees and its successors in title and (where applicable) to any replacement or additional trustee or agent,
- 6 references to persons include bodies corporate, unincorporated associations and partnerships,
7. words and phrases defined in the Companies Act 1985 (or the Companies Act 2006 as the context may require) have the same meanings in the Debenture but the word "**company**" includes any body corporate; and
- 8 any reference to any statute or statutory instrument includes any enactment replacing or amending it or any instrument, order or regulation made under it and also includes any past statutory provisions (as from time to time modified or re-enacted) which such provision has directly or indirectly replaced.



**CERTIFICATE OF THE REGISTRATION
OF A MORTGAGE OR CHARGE**

Pursuant to section 869(5) & (6) of the Companies Act 2006

**COMPANY NO. 4298037
CHARGE NO. 2**

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES
HEREBY CERTIFIES THAT A DEBENTURE DATED 29
FEBRUARY 2012 AND CREATED BY AARDVARK TFC LIMITED
FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM
THE COMPANY AND/OR ALL OR ANY OF THE COMPANIES
NAMED THEREIN TO EULER HERMES UK,UK BRANCH (THE
"SECURITY AGENT") ON ANY ACCOUNT WHATSOEVER
UNDER THE TERMS OF THE AFOREMENTIONED INSTRUMENT
CREATING OR EVIDENCING THE CHARGE WAS REGISTERED
PURSUANT TO CHAPTER 1 PART 25 OF THE COMPANIES ACT
2006 ON THE 9 MARCH 2012

GIVEN AT COMPANIES HOUSE, CARDIFF THE 15 MARCH 2012

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