

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.

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You may not use this form to
register a charge where the
instrument. Use form MRC

TUESDAY



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02/05/2017

#103

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

Company number 0 4 6 9 5 4 3 7

Company name in full AVIAGEN INTERNATIONAL FINANCE TWO LIMITED

For official use

→ Filling in this form

Please complete in typescript or in bold black capitals.

All fields are mandatory unless specified or indicated by *

2 Charge creation date

Charge creation date d 2 d 4 m 0 m 4 y 2 y 0 y 1 y 7

3 Names of persons, security agents or trustees entitled to the charge

Please show the names of each of the persons, security agents or trustees entitled to the charge.

Name HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED
(the "Security Agent")

Name

Name

Name

If there are more than four names, please supply any four of these names then tick the statement below.

☐ I confirm that there are more than four persons, security agents or trustees entitled to the charge.

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4

Brief description

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

Brief description

N/A

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 statement¹

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 *Lathan & Wathes* 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 **GEORGE NASSIF**

Company name **LATHAM & WATKINS LLP**

Address **99 BISHOPSGATE**

Post town **LONDON**

County/Region

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

Country **UNITED KINGDOM**

DX

Telephone **020 7710 1157**



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



FILE COPY

CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 4695437

Charge code: 0469 5437 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 24th April 2017 and created by AVIAGEN INTERNATIONAL FINANCE TWO LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 2nd May 2017.

P

Given at Companies House, Cardiff on 9th May 2017




Companies House



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

I certify that, save for material redacted pursuant to section 859G of the Companies Act 2006, the enclosed copy of the security instrument delivered as part of this application for registration under section 859A of the Companies Act 2006 is a correct copy of the original security instrument

Signature 
Date 27-04-2017

EXECUTION VERSION

24 April 2017

AVIAGEN INTERNATIONAL FINANCE TWO LIMITED
(as Chargor)

and

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED
(as Security Agent)

SHARE CHARGE

LATHAM & WATKINS

99 Bishopsgate
London EC2M 3XF
United Kingdom
Tel: +44.20.7710.1000
www.lw.com

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THIS CHARGE is made as a deed on 24 April 2017

BETWEEN

- (A) **AVIAGEN INTERNATIONAL FINANCE TWO LIMITED** a company incorporated in England and Wales with registered number 04695437 and having its registered office at Stratford Hatchery Alscott Industrial Estate, Atherstone On Stour, Stratford-Upon-Avon, Warwickshire, CV37 8BH, United Kingdom (the “**Chargor**”); and
- (B) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** a private limited company incorporated in England and Wales with registered number 6447555 and having its registered office at 8 Canada Square, London, E14 5HQ, United Kingdom as security agent for the Secured Parties (the “**Security Agent**”).

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

Save as otherwise provided in this Charge, the following words and phrases have the following meanings throughout this Charge:

“**Act**” means the Law of Property Act 1925.

“**Charged Assets**” means all the assets and undertakings of the Chargor which from time to time are the subject of the security and the trusts created hereby or expressed to be created in favour of the Security Agent by or pursuant to this Charge.

“**Company**” means Aviagen European Holdings Limited, a limited company incorporated in England and Wales with registered number 06819246 and having its registered office at Stratford Hatchery Alscott Industrial Estate, Atherstone on Stour, Stratford-Upon-Avon, Warwickshire CV37 8BH.

“**Event of Default**” has the meaning given to it in each Facilities Agreement.

“**Facilities Agreements**” has the meaning given to it in the Security Agency Deed and “**Facility Agreement**” means any one of them.

“**Finance Documents**” has the meaning given to it in the Security Agency Deed and “**Finance Document**” means any one of them.

“**Lender**” has the meaning given to it in the Security Agency Deed.

“**Obligor**” has the meaning given to it in the Security Agency Deed.

“**Parties**” means each of the parties to this Charge from time to time.

“**PSC Register**” means the “PSC register” within the meaning of section 790C(10) of the Companies Act 2006.

“**PSC Registrable Person**” means a “registrable person” or “registrable relevant legal entity” within the meaning of section 790C(4) and (8) of the Companies Act 2006.

“**Quasi-Security**” means a transaction in which the Chargor.

- (a) sells, transfers or otherwise disposes of any of its assets on terms whereby they are or may be leased to or re-acquired by the Chargor or any other member of its Group;

- (b) sells, transfers or otherwise disposes of any of its receivables on recourse terms;
- (c) enters into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (d) enters into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

“Receiver” means a receiver or receiver and manager or, where permitted by law, an administrative receiver of the whole or any part of the Charged Assets however appointed under or in connection with this Charge.

“Related Investment Rights” means in relation to any of the Securities:

- (a) all assets deriving from such Securities (or from any other asset referred to in paragraph (b) below) including all allotments, accretions, offers, rights, dividends, distributions, interest, income, benefits, powers, privileges, authorities, remedies and advantages at any time accruing, offered or otherwise derived from or incidental to such Securities (or to any other asset referred to in paragraph (b) below); and
- (b) all rights, money or property accruing or offered at any time by way of conversion, consolidation, redemption, bonus, preference, exchange, purchase, subdivision, substitution, option, interest or otherwise in respect thereof.

“Secured Obligations” means all money, obligations and liabilities due, owing or incurred of whatever nature to any Secured Party by the Chargor and/or any Obligor under or in connection with the Finance Documents (as amended from time to time and notwithstanding any increase of principal or interest or extension of term) at present or in the future, whether actual or contingent, whether incurred solely or jointly with any other person and whether as principal or surety, including without limitation any money, obligations and liabilities due under any guarantee, and claims based on unjust enrichment or tort.

“Secured Parties” means the Finance Parties, any Receiver and any Delegate from time to time.

“Securities” means at any time 65% of the Chargor’s shareholding from time to time in the Company.

“Security” means any mortgage, charge, pledge or lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect created by (or purported to be created by) this Charge.

“Security Agency Deed” means the security agency agreement dated on or about the date of this Charge and made between among others the Chargor and the Secured Parties.

1.2 Interpretation

- (a) Any reference in this Charge to (or to any specified provision of) this **“Charge”**, the **“Facilities Agreement”** or any other **“Finance Document”** or to any other agreement or document shall, unless the context otherwise requires, be construed as a reference to this Charge, the Facilities Agreement or such other Finance Document or such other agreement or document (or that provision) as the same may from time to time be amended, varied, supplemented, restated, re-affirmed, extended, novated or replaced (including any such amendment or variation increasing or extending the maturity of all or any part of the Secured Obligations or changing the obligors in respect thereof).

The reference shall include any document which is supplemental to or is entered into pursuant to or in accordance with, and any certificate, instrument, notification or document which is entered into or delivered in connection with or pursuant to or in accordance with, the terms of this Charge, the Facilities Agreement or such other Finance Document or, as the case may be, such other agreement or document.

- (b) Any reference in this Charge to the “**Security Agent**”, any “**Lender**” or any “**Secured Party**” shall be construed so as to include its and any subsequent successors, transferees and assigns in accordance with their respective interests and in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with the Finance Documents.

1.3 Incorporation of terms by reference

Unless the context requires otherwise, words and expressions defined or construed in the Security Agency Deed and which are not defined or construed in this Charge shall bear the same meanings when used in this Charge.

1.4 Use of lists and examples

In construing this Charge general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall 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.

1.5 Whole agreement

This Charge supersedes any previous agreement, whether written or oral, express or implied, between the Chargor and the Security Agent in relation to the subject matter of this Charge.

1.6 Headings

The index to and headings in this Charge are for convenience only and shall not affect its meaning and references to a Clause, Schedule or paragraph are (unless otherwise stated and as the case may be) to a Clause of, Schedule to or paragraph of, this Charge.

1.7 Counterparts

- (a) This Charge may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this Charge by signing any such counterpart.
- (b) Failure by one or more parties (“**Non-Signatories**”) to execute this Charge on the date hereof will not invalidate the provisions of this Charge as between the other Parties who do execute this Charge. Such Non-Signatories may execute this Charge on a subsequent date and will thereupon become bound by its provisions.

1.8 No partnership

Nothing in this Charge or envisaged hereby shall operate, whether directly or indirectly, to constitute a partnership between the Chargor and any Secured Party or the Security Agent.

1.9 Amount of Secured Obligations

A certificate of the Security Agent as to the amount of any Secured Obligations due at any time will, in the absence of manifest error, be conclusive and binding on the Chargor.

1.10 Security enforceable

The Security and the rights of the Security Agent and the Secured Parties under this Charge shall be enforceable notwithstanding any change in the constitution of the Security Agent or any Secured Party or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person.

1.11 Statutory references

Unless the context otherwise requires, a reference to a statute or any provision thereof is to be construed as a reference to that statute or such provision thereof as it may be amended, modified, extended, consolidated, re-enacted or replaced from time to time and shall also include all bye-laws, instruments, orders and regulations for the time being made under them or otherwise deriving validity from them.

1.12 “Person”

A reference in this Charge to a “person” includes any individual, company, firm, corporation, association, body (including a trust, fund, partnership, consortium or joint venture), government, state, agency or other entity whether or not having separate legal personality.

1.13 Deed

The Parties intend that this document shall take effect as a deed notwithstanding that any party may only execute this document under hand.

1.14 Security Agency Deed

The provisions of the Security Agency Deed shall govern the rights, duties and obligations of the Security Agent under this Charge and the Security Agent holds the benefit of this Charge on trust for the Secured Parties in accordance therewith.

1.15 Events of Default

A Default (including an Event of Default) is continuing if it has not been remedied or waived.

2. PAYMENT OF THE SECURED OBLIGATIONS

2.1 Covenant to pay

The Chargor hereby unconditionally and irrevocably, as primary obligor and not merely as surety, covenants with the Security Agent (for the benefit of itself and the other Secured Parties) that it shall on demand of the Security Agent pay or discharge the Secured Obligations when they fall due for payment, in the manner provided in the relevant Finance Document.

3. CHARGING PROVISIONS

The Chargor with full title guarantee and as continuing security for the payment, performance and discharge of all the Secured Obligations hereby:

- (a) charges in favour of the Security Agent (or, if the Security Agent so chooses its nominee) by way of equitable mortgage and fixed charge all of the Chargor’s right, title and interest from time to time in the Securities and, if and to the extent not effectively assigned by paragraph (b) below, all Related Investment Rights; and

- (b) assigns absolutely (to the fullest extent capable of assignment) by way of security to the Security Agent, all of its rights, title and interest from time to time in and to the Related Investment Rights.

4. PERFECTION OF SECURITY

- (a) The Chargor shall, without prejudice to the generality of the provisions of Clause 11 but only to the extent it has not already deposited with the Security Agent, deposit (or procure the deposit) with the Security Agent (or with the nominee of the Security Agent should the latter so direct) promptly after the execution of this Charge in relation to the Securities:
 - (i) all stock and share certificates, documents of title and other documentary evidence of ownership in relation to the Securities;
 - (ii) stock transfer forms duly stamped and executed or re-executed by the Chargor or its nominee with the name of the transferee and date left blank in respect of all the Securities, and such other documents as the Security Agent may reasonably require to enable the Security Agent (or the Security Agent's nominee) at any such time that it is permitted to do so in accordance with the terms of this Charge to be registered as the owner of, or otherwise obtain legal title to, the Securities; and
 - (iii) a duly executed declaration of trust in respect of any Security which is not in the sole name of the Chargor.
- (b) Any document required to be delivered to the Security Agent under this Clause 4 which is for any reason not so delivered shall be held on trust by the Chargor for the Security Agent.

5. RELEASE WHERE OVERSECURED

- 5.1 The shares and other rights charged pursuant to this Charge shall at no time exceed 65% of the shares issued by the Company to the Chargor. If at any time the number of shares charged or purported to be charged pursuant to this Charge exceeds 65% of the shares issued by the Company to the Chargor, an amount of shares shall be released from the Security constituted by this Charge to ensure that this limit is complied with (any such shares released pursuant to this Clause 5.1 being together the "**Released Shares**").
- 5.2 To the extent that any share certificate or other document delivered to the Security Agent by the Chargor in accordance with Clause 4 relates at any time to the Released Shares, the Security Agent shall, subject to Clause 5.3, promptly return such share certificate or other document to the Chargor and the Chargor shall, where appropriate, promptly procure the cancellation and reissue of such share certificate by the Company to enable it to deliver to the Security Agent all share certificates and other documentation relating only to the Securities.
- 5.3 If at any time any shares are released in accordance with Clause 5.1, the Company shall notify the Security Agent in writing that the Released Shares exceed the 65% threshold set out in Clause 5.1. For the purposes of performing its obligations under this clause, the Security Agent is entitled to rely in good faith on such written notice of the Company and shall not be liable for any action taken or omitted to be taken in relying in good faith on such information.

6. DEALING WITH COLLATERAL

- 6.1 **Negative pledge**

The Chargor undertakes in favour of the Security Agent that it will not, at any time during the subsistence of this Charge, save as permitted pursuant to the terms of the Finance Documents:

- (a) create, incur, assume or permit to subsist any security or Quasi-Security over all or any part of the Charged Assets or any interest therein ranking in priority to, *pari passu* with or subsequent to the Security, nor enter into any agreement or attempt to do any of the same;
- (b) sell, transfer, assign, lease, lend or otherwise dispose of (whether outright, by a sale and repurchase, sale and leaseback arrangement or otherwise), or grant any rights (whether of pre-emption or otherwise) over, all or any part of the Charged Assets or any interest therein, or the right to receive or to be paid the proceeds arising on the disposal of the same, nor enter into any agreement or attempt to do any of the same; or
- (c) do or cause or permit to be done anything which may materially depreciate, jeopardise or otherwise materially prejudice the market value or collateral value of any Charged Assets or the rights of the Security Agent under this Charge,

provided that nothing in this Clause 6 shall prevent the increase or decrease in the share capital of the Company undertaken in accordance with the provisions of the Finance Documents.

7. REPRESENTATIONS AND WARRANTIES

7.1 General

The Chargor makes the representations and warranties set out in this Clause 7 to the Security Agent acting on behalf of itself and each Secured Party.

7.2 Ownership of Charged Assets and ranking

- (a) It is the registered holder and the sole unfettered legal and beneficial owner of the Charged Assets;
- (b) the Securities and any shares comprised in any Related Investment Rights are duly authorised and validly issued and free from any restrictions on transfer or rights of pre-emption;
- (c) the Securities are fully paid and there are no moneys or liabilities outstanding in respect of any of the Charged Assets; and
- (d) the Charged Assets are not subject to any security, Quasi-Security, option to purchase, pre-emption or similar right.

7.3 PSC Register

- (a) It has not issued and does not intend to issue any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 in respect of any Securities which constitute Charged Assets; and
- (b) it has not received any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 in respect of any Securities which constitute Charged Assets.

7.4 Times for making representations and warranties

The representations and warranties set out in this Clause 7 are made on the date of this Charge and are deemed to be repeated on each date on which any of the representations and warranties set out in the Facilities Agreement are repeated, with reference to the facts and circumstances then existing.

8. LIMITATION OF LIABILITY

Notwithstanding any contrary provision of this Charge, the liability of the Chargor under this Charge shall be limited to the value of the Charged Assets at any time.

9. COVENANTS

9.1 General

The Chargor shall:

- (a) immediately on conversion of any Securities from certificated to uncertificated form, and on the creation or conversion of any other Securities which are for the time being comprised in the Related Investment Rights in or into uncertificated form, comply with such instructions or directions as the Security Agent may give in order to protect, perfect or preserve the Security in a manner equivalent to that of the certificated shares;
- (b) ensure that its Charged Assets are at all times free from any restriction on transfer by the Security Agent or its nominee to perfect or enforce the Security and procure that the board of directors of the Company approves any transfer of any of the Securities desired to be made by the Security Agent or its nominee in the exercise of the rights, powers and remedies conferred upon it by this Charge or by law;
- (c) take all action within its power to procure, maintain in effect and comply with all the terms and conditions of all approval authorisation, consents and registration necessary or appropriate to ensure and preserve the legal, valid, binding and enforceable nature of the Security and the ranking in priority thereto;
- (d) duly and promptly pay or procure the payment of all calls, instalments and other payments when due in respect of any of the Securities, provided that if the Chargor defaults in making any such payment, the Security Agent may (but shall not be obliged to) pay such amounts on behalf of the Chargor and shall be reimbursed by the Chargor promptly on demand and, pending reimbursement, that payment will constitute part of the Secured Obligations; and
- (e) use reasonable endeavours to notify the Security Agent of the contents of any material communication or document received by it in relation to any of the Securities in its capacity as a shareholder and, if requested by the Security Agent shall promptly following such request deliver to the Security Agent a copy of such communication or document.

9.2 Dividends and voting rights prior to enforcement

Until the occurrence of an Event of Default which is continuing:

- (a) the Chargor shall be entitled to receive and retain any cash dividends, interest and other distributions paid in respect of any of the Securities: and
- (b) all voting rights attached to the Securities may be exercised by the Chargor, provided, however, that the Chargor may not exercise voting rights in a manner inconsistent

with the terms of any Finance Document, or which would adversely affect the validity, enforceability or existence of this Charge.

9.3 Voting rights and dividend entitlement after enforcement

At any time after the occurrence of an Event of Default which is continuing:

- (a) all dividends, interest and other distributions paid or payable in connection with the Securities shall be paid directly to the Security Agent (or its nominee) for application in or towards the payment or discharge of the Secured Obligations in accordance with *the terms of the Facilities Agreement and the other Finance Documents; and*
- (b) the Security Agent or its nominee or, as the case may be, the Receiver may exercise or direct the exercise of all voting and other rights and powers attaching to the Securities as the Security Agent, nominee or the Receiver, as the case may be, may in its absolute discretion think fit and the Chargor shall, and shall procure that its nominees shall, comply with any directions of the Security Agent, such nominee or Receiver, as the case may be concerning the exercise of such rights and powers, or shall deliver to the Security Agent, such nominee or Receiver, as the case may be, such forms of proxy or other appropriate forms of authorisation as will enable the Security Agent, such nominee or Receiver, as the case may be, to exercise such voting and other rights,

unless in either case, the Security Agent has notified the Chargor in writing that it wishes to give up this right.

9.4 PSC Register

- (a) In respect of any Securities which constitute Charged Assets, the Chargor shall promptly (and in any event within 5 Business Days):
 - (i) notify the Security Agent of its intention to issue, or its receipt of, any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 and provide to the Security Agent a copy of any such warning notice or restrictions notice;
 - (ii) respond to that notice within the prescribed timeframe; and
 - (iii) provide to the Security Agent a copy of the response sent / received in respect of such notice.
- (b) For the purposes of withdrawing any restrictions notice or for any application to the court under Schedule 1B of the Companies Act 2006, the Chargor shall (and shall ensure that the relevant members of the Group will) provide such assistance as the Security Agent may reasonably request in respect of any Securities which constitute Charged Assets and provide the Security Agent with all information, documents and evidence that it may reasonably request in connection with the same.

9.5 Continuing liabilities

Subject to due notification thereof by the Security Agent where the Securities are registered in the Security Agent's name (or that of its nominee) in accordance with the terms of this Charge, it is expressly agreed that the Chargor shall remain liable to observe and perform all of the conditions and obligations attaching to any of the Securities including the payment of any sum due in respect of the Securities.

9.6 No obligation

The Security Agent shall not be required to perform or fulfil any obligation of the Chargor in respect of the Investments or to make any payment, or to make any enquiry as to the nature or sufficiency of any payment received by it or the Chargor, or to present or file any claim or take any other action to collect or enforce the payment of any amount to which it may have been or to which it may be entitled under this Charge at any time or times.

9.7 Retention of documents

The Security Agent may retain any document delivered to it under this Charge until the Security is released in accordance with the terms of this Charge and, if for any reason it ceases to hold any such document before that time, it may by notice to the Chargor require that the relevant document be redelivered to it and the Chargor shall promptly comply (or procure compliance) with that notice.

9.8 No obligations in relation to Charged Property

The Security Agent is not obliged to do any of the following in respect of any Charged Assets:

- (a) perform any obligation of the Chargor;
- (b) make any payment;
- (c) make any enquiry as to the nature or sufficiency of any payment received by it or the Chargor;
- (d) present or file any claim or take any other actions to collect or enforce the payment of any amount which it or the Chargor may be entitled; or
- (e) exercise any rights to which it or the Chargor may be entitled.

10. INFORMATION AND REPORTING OBLIGATIONS

If the Chargor becomes aware of any action, event or circumstance which could adversely affect the value, saleability or use of any of the Charged Assets to a material extent, it will promptly notify the Security Agent in writing and provide details of the same.

11. FURTHER ASSURANCE

11.1 Further assurance

The Chargor shall from time to time, at its own expense, promptly following request by the Security Agent (acting reasonably) take such action as may be requested and do all such acts, deeds and things (including, without limitation, payment of all stamp duties, application, renewal registration and other fees) the Security Agent may reasonably require for:

- (a) perfecting or better perfecting or protecting the Security or the priority of the Security (but prior to the Security becoming enforceable, excluding arranging for any Securities which are in registered form to be registered in the name of the Security Agent or a nominee of the Security Agent);
- (b) after the Security has become enforceable, facilitating the realisation of any Charged Assets or the exercise of any rights vested in the Security Agent in respect of any Charged Assets, including, without limitation, the execution or re-execution of any transfer, conveyance, assignment or assurance of any property, whether to the Security Agent or its nominees, and the giving of any notice, order or direction and the making of any registration,

which, in either case, the Security Agent (acting reasonably) may think necessary or desirable.

11.2 Form of documents

The documents referred to in Clause 11.1 shall be in such form and contain such provisions as the Security Agent may require.

11.3 Section 2(1)(b)

The covenant set out in section 2(1)(b) of the Law of Property (Miscellaneous Provisions) Act 1994 shall extend to include the obligations set out in Clause 11.1 and Clause 11.2.

11.4 Consents

The Chargor shall use all reasonable endeavours to obtain as soon as possible any consents (in form and content reasonably satisfactory to the Security Agent) necessary for any mortgage.

12. ENFORCEMENT OF SECURITY

12.1 Exclusion of Secured Party rights

No Secured Party shall have any right to direct the Security Agent to take any action in respect of the Security and no Secured Party shall have any independent power to enforce or have recourse to any of the Security or to exercise any rights or powers arising under this Charge except through the Security Agent.

12.2 Right of appropriation under the Financial Collateral Regulations

The Security Agent shall, to the extent that any of the Charged Assets constitutes “financial collateral” and this Charge and the obligations of the Chargor hereunder constitute a “security financial collateral arrangement” (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No. 2) Regulations 2003 as amended (the “**Regulations**”)), have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise that right to appropriate by giving notice to the Chargor at any time after an Event of Default has occurred and is continuing. The Parties agree that the value of any such appropriated financial collateral constituting Charged Assets shall be: (x) in the case of Securities, the price at which such securities can be disposed of by the Security Agent; and (y) in the case of any other asset, the market price of such Charged Assets determined by the Security Agent by reference to a public index or by such other process as the Security Agent may select, including independent valuation. The Parties agree that the methods of valuation provided for in this Charge with respect to such Charged Assets shall constitute commercially reasonable methods of valuation for the purposes of the Regulations.

13. RECEIVER

13.1 Appointment of Receiver

(a) Subject to the Insolvency Act 1986, if:

- (i) the Chargor requests that a Receiver be appointed; or
- (ii) any Event of Default occurs under the Facilities Agreements which has not been waived or cured in accordance with the terms thereof,

then at any time or times thereafter the Security shall be enforceable and (without prejudice to any of its other rights under this Charge) the Security Agent may by

writing appoint any one or more qualified persons (except to the extent that such appointment is or would be prohibited by section 72A of the Insolvency Act 1986) to be a Receiver of any of the Charged Assets and of the rights of the Security Agent contained in this Charge in relation thereto. Section 109(1) of the Act shall not apply to this Charge.

- (b) In this Clause “qualified person” means a person who, under the Insolvency Act 1986, is qualified to act as a receiver of the property of any company with respect to which he is appointed or (as the case may require) an administrative receiver of any such company.

13.2 Joint Receivers

Where two or more persons are appointed to be a Receiver, the Security Agent may in the appointment declare whether any act required or authorised to be done by a Receiver is to be done by any one or more of them for the time being holding office and, subject thereto, any such persons may act jointly and/or severally.

14. POWERS OF A RECEIVER

14.1 General powers of Receiver

Every Receiver of any of the Charged Assets shall (subject to any limitations or restrictions which the Security Agent may in its absolute and unfettered discretion incorporate in the deed or other instrument appointing him but notwithstanding the liquidation, winding-up, or dissolution at any time of the Chargor and whether or not any such Receiver shall be an administrative receiver) have:

- (a) all the powers conferred from time to time on receivers (whether administrative receivers or otherwise) by law and/or statute (including the Act and the Insolvency Act 1986) so that the provisions set out in Schedule 1 to the Insolvency Act 1986 shall extend to every Receiver, whether or not an administrative receiver;
- (b) power on behalf and at the cost of the Chargor and whether in the name of the Chargor or otherwise to exercise all the powers and rights of an absolute owner and do or omit to do anything which the Chargor could do or omit to do or could have done or omitted to do but for any incapacity or the appointment of a liquidator, administrator or like officer in relation to the Chargor or the Charged Assets; and
- (c) power to use the name of the Chargor in connection with the exercise of any of such powers and, without prejudice to the generality of the provisions of paragraphs (a) and (b) above, on behalf and at the cost of, and in the name of the Chargor or otherwise, the powers referred to in Clause 14.2.

14.2 Specific powers of Receiver

Any Receiver shall, in relation to and the Charged Assets in respect of which it is appointed, have the power to:

- (a) carry on, manage, develop, reconstruct, amalgamate or diversify the business of the Chargor or any part thereof or concur in so doing;
- (b) purchase, acquire, accept a lease or licence of and/or any other interest in and/or develop or improve properties or other assets without being responsible for loss or damage;

- (c) raise and borrow any money (including, without limitation, money for the completion, with or without modification, of any building on the Property of the Chargor in the course of construction and any development or project in which the Chargor was engaged) from, or incur any other liability to, the Security Agent and/or others on such terms as he may think fit and secure the payment of any such money and liabilities, whether or not in priority to the Secured Obligations, in such manner as he shall think fit and with or without any encumbrance on or affecting any of such Charged Assets and enter into any form of hedging arrangement, whether in relation to any such borrowing or any Secured Obligation or otherwise, on such terms as he shall think fit;
- (d) without the restrictions imposed by section 103 of the Act, or the need to observe any of the provisions of sections 99 and 100 of the Act, sell by public auction or private contract, convey, transfer, assign, let, surrender or accept surrenders, grant licences or otherwise dispose of or deal with such Charged Assets or concur in so doing in such manner, for such consideration and generally on such terms and conditions as he may think fit;
- (e) promote the formation of companies with a view to the same purchasing, leasing, licensing or otherwise acquiring interests in such Charged Assets, or otherwise arrange for such companies to trade or cease to trade and to purchase, lease, license or otherwise acquire any of such Charged Assets on such terms and conditions whether or not including payment by instalments secured or unsecured as he may think fit;
- (f) make calls, conditionally or unconditionally, on the members of the Chargor in respect of uncalled capital; and
- (g) sign any document, execute any deed and do all such other acts and things, whether in the name of the Chargor or otherwise, in relation to, or as may be considered by him to be incidental or conducive to, any of the matters or powers aforesaid or to the protection and/or realisation of the security constituted or intended to be constituted by this Charge.

14.3 Receiver as agent

Any Receiver of any of the Charged Assets shall, so far as the law allows, be deemed to be the agent of the Chargor for all purposes and the Chargor shall be solely responsible for their acts, defaults, contracts, engagements, omissions, losses, liabilities, misconduct and remuneration and the Security Agent shall not be under any liability in such regard.

14.4 Remuneration

The remuneration of the Receiver shall be such sum or rate payable in such manner as may be agreed between him and the Security Agent at or at any time after his appointment without being limited to the maximum rate specified in section 109(6) of the Act.

14.5 Removal

The Security Agent may from time to time remove any Receiver appointed by it and, in the case of an administrative receiver, may at any time and from time to time apply to the court for removal of any administrative receiver appointed by it and may, whenever it may deem it expedient, appoint or as the case may be apply to the court for the appointment of another qualified person as a new Receiver in place of any Receiver whose appointment may for any reason have terminated.

14.6 Application of proceeds

All monies received or recovered by the Security Agent or any Receiver pursuant to this Charge or the powers conferred by it shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Act) be applied first in the payment of any costs, charges and expenses of or incidental to the Receiver's appointment, the payment of his remuneration and the payment and discharge of any other expenses incurred by or on behalf of the Receiver, and thereafter shall be applied by the Security Agent (notwithstanding any purported appropriation by the Chargor) in accordance with Clause [7.1] of the Security Agency Deed.

15. VARIATION AND EXTENSION OF STATUTORY POWERS

15.1 Statutory powers generally

The powers conferred on mortgagees or receivers (including administrative receivers) by the Act and the Insolvency Act 1986 shall apply to this Charge except insofar as they are expressly or impliedly excluded and where there is any ambiguity or conflict between the powers contained in the Act and/or the Insolvency Act 1986 and those contained in this Charge the terms of this Charge shall (so far as the law allows) prevail.

15.2 Security Agent's powers

- (a) For the purpose of all rights and powers implied or granted by statute, the Secured Obligations are deemed to have fallen due on the date of this Charge. The restrictions contained in sections 93 and 103 of the Act shall not apply to the Security and the power of sale and other powers contained in section 101 of the Act and all other enforcement powers conferred in this Charge with regard to the Security shall be immediately exercisable at any time after the occurrence and during the continuation of an Event of Default and shall be varied and extended so that the Security Agent shall at any such time be entitled (without prejudice to any other rights or powers of a mortgagee) to exercise any of the powers conferred upon a Receiver by Clause 13 and shall have the benefit of all the provisions of Clause 15.
- (b) If the Security is enforceable, the Security Agent may if so instructed by the Lenders but subject to the provisions of the Facilities Agreement and this Charge, enforce all or any part of the Security in any manner it sees fit.
- (c) The powers, trusts, authorities and discretion conferred upon the Security Agent by this Charge shall be in addition to any which may from time to time be vested in it by any applicable law (subject to Clause 1.14), and those which are set out in any other Finance Document.
- (d) All or any of the powers conferred upon mortgagees by the Act as varied or extended by this Charge, and all or any of the rights and powers conferred by this Charge on a Receiver (whether expressly or impliedly), may be exercised by the Security Agent without further notice to the Chargor at any time after an Event of Default has occurred and is continuing, irrespective of whether the Security Agent has taken possession or appointed a Receiver of the Charged Assets.

15.3 Protection for third parties

No person (including a purchaser) dealing with the Security Agent, any Receiver or any of their respective agents or nominees will be concerned to enquire:

- (a) whether the Secured Obligations have become payable; or

- (b) whether any power which the Security Agent or any Receiver is purporting to exercise has become exercisable; or
- (c) whether any money remains due under the Finance Documents; or
- (d) how any money paid to the Security Agent or any Receiver is to be applied.

In the absence of bad faith on the part of such purchaser or other person, such dealings shall be deemed, so far as regards the safety and protection of such purchaser or other person, to be within the powers conferred by this Charge and to be valid accordingly. The remedy of the Chargor in respect of any gross negligence or wilful misconduct in the exercise of such power shall be in damages only.

15.4 Delegation

The Security Agent or any Receiver may at any time delegate by power of attorney or in any other manner to any person or persons any of the powers (including the power of attorney contained in Clause 17), authorities and discretions which are for the time being exercisable by the Security Agent or any Receiver under this Charge in relation to the Charged Assets. Any such delegation may be made upon such terms (including power to sub-delegate) and subject to such regulations as the Security Agent or Receiver may think fit. Neither the Security Agent nor any Receiver shall be in any way liable or responsible to the Chargor for any loss or damage arising from any act, default, omission or misconduct on the part of any such delegate or sub-delegate except if such loss or damage arises as a result of the relevant Party's gross negligence or wilful default.

15.5 Suspense accounts

The Security Agent and any Receiver may at any time and from time to time place and keep (for such time as it or he shall consider prudent) any monies received, recovered or realised from the Chargor or in relation to any Charged Assets pursuant to this Charge in a separate suspense account (to the credit of either the Chargor or the Security Agent as the Security Agent shall think fit) without any intermediate obligation on its part to apply the same or any part thereof in or towards the discharge of the Secured Obligations provided that if such monies are at any time sufficient to discharge the Secured Obligations in full, they shall be promptly so applied.

15.6 Security Agent's power to remedy breaches

If at any time the Chargor fails to perform any of the covenants contained in this Charge it shall be lawful for the Security Agent, but the Security Agent shall have no obligation, to take such action on behalf of the Chargor (including, without limitation, the payment of money) as may in the Security Agent's reasonable opinion be required to ensure that such covenants are performed. Any losses, costs, charges and expenses reasonably incurred by the Security Agent in taking such action shall be reimbursed by the Chargor promptly on written demand.

15.7 No liability

In the execution or purported execution of the trusts and powers conferred on it under this Charge, none of the Security Agent, its nominee(s) or any Receiver shall have any liability for any loss or damage arising by reason of any mistake or omission made in good faith or of any other act or omission, neglect, or default in connection with the Charged Assets except for breach arising from fraud, gross negligence or wilful misconduct on the part of the Security Agent. Without prejudice to the foregoing, if the Security Agent enters into possession of the Charged Assets, it will not be liable to account as mortgagee in possession and may at any time at its discretion go out of such possession.

15.8 Excluded obligations

Notwithstanding anything to the contrary expressed or implied in the Finance Documents, neither the Security Agent nor any of its personnel or agents shall be bound to:

- (a) enquire as to the occurrence or continuation of any Default or Event of Default;
- (b) enquire as to whether or not any representation made by any person in connection with any Finance Document is true;
- (c) enquire as to the performance, breach or default by any person of its obligations under any of the Finance Documents;
- (d) disclose to any person any confidential information or other information relating to the Chargor or the Company if such disclosure might or would in its opinion constitute a breach of any applicable law or be otherwise actionable at the suit of any person;
- (e) account to any other Secured Party for any sum or the profit element of any sum received by it for its own account whether in connection with the Finance Documents or otherwise.

15.9 No responsibility to perfect Security

The Security Agent shall not be liable for any failure, omission or defect in perfecting the Security, including without limitation any failure to:

- (a) record or file any document relating to this Charge and/or the Facilities Agreements;
- (b) require the deposit with it of any deed or document certifying, representing or constituting the title of the Chargor to any of the Charged Assets;
- (c) obtain any license, consent or other authority for the execution, delivery, validity, legality, adequacy, performance, enforceability or admissibility in evidence of this Charge;
- (d) register or notify any of the foregoing in accordance with the provisions of any of the documents of title of the Chargor;
- (e) effect or procure registration of or otherwise protect any of the Security by registering the same under any applicable registration laws in any territory and the Security Agent shall under no circumstances be deemed to have made representations as to the Security or as to the validity or sufficiency of any document relating thereto;
- (f) take, or to require the Chargor to take, any steps to render the Security effective as regards any property situate outside England and Wales or to secure the creation of any ancillary charge under the laws of any other jurisdiction; or
- (g) require any further assurances in relation to this Charge.

15.10 Disclaimer

The Security Agent shall not accept responsibility or be liable for:

- (a) the adequacy, accuracy or completeness of any information supplied by any person in connection with the Finance Documents or the transactions contemplated thereby, or

any other document arrangement or agreement entered into in connection with the Finance Documents;

- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other document, arrangement or agreement entered into in connection with the Finance Documents;
- (c) any losses to any person caused as a result of taking or omitting to take any action in relation to any of the Finance Documents or the Security;
- (d) any shortfall which arises on enforcement of the Security; or
- (e) the use or application by the Chargor, or any other person, of any funds which the Security Agent has released or directed the release of under this Charge or the Facilities Agreements.

16. CONTINUATION AND PRESERVATION OF SECURITY

16.1 Subsequent security

If the Security Agent or any other Secured Party receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent security or other interests affecting the Charged Assets and/or the proceeds of sale thereof, the Security Agent or such other Secured Party may open a new account or accounts for the Chargor in its books. If the Security Agent or such other Secured Party does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice (unless it gives express notice to the contrary to the Chargor). As from that time all payments by or on behalf of the Chargor to the Security Agent or such other Secured Party will (in the absence of any express appropriation to the contrary) be credited or be treated as having been credited to the new account and will not operate to reduce the Secured Obligations.

16.2 Waiver of defences

The Chargor shall be deemed to be a principal debtor and the sole, original and independent obligor for the Secured Obligations and the Charged Assets shall be deemed to be a principal security for the Secured Obligations. The liability of the Chargor under this Charge shall not be discharged, impaired or otherwise affected by any circumstance, act, omission, matter or thing which but for this provision might operate to reduce, release, prejudice or otherwise exonerate the Chargor from its obligations under the Finance Documents in whole or in part, including without limitation and whether or not known to any Obligor, the Security Agent or any other person:

- (a) the winding-up, dissolution, administration, re-organisation, amalgamation, merger or reconstruction of the Chargor or any other person or any change in its status, function, control or ownership; or
- (b) any time, indulgence, concession, waiver or consent granted to, or composition with, the Chargor or any other person; or
- (c) the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor thereof; or
- (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, the 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 or any failure to release or to realise the full value of any security; or

- (e) any legal limitation, disability, incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of, or other circumstance relating to, the Chargor or any other person; or
- (f) any amendment or other variation (however fundamental including any amendment or variation increasing or extending the maturity of all or any part of the Secured Obligations or changing the obligors in respect thereof) or replacement of any Finance Document or any other document or security; or
- (g) any unenforceability, illegality, invalidity or frustration of any obligation of the Chargor or any other person under any Finance Document or any other document or security, or any failure of the Chargor or any Obligor to become bound by the terms of any other Finance Document, in each case whether through any want of power or authority or otherwise; or
- (h) any postponement, discharge, reduction, non-provability or similar circumstances affecting any obligation of the Chargor or any Obligor under a Finance Document resulting from any insolvency, liquidation or dissolution proceedings or from any law, regulation or order,

so that the Chargor's obligations under this Charge remain in full force and effect and that this Charge shall be construed accordingly as if there were no such circumstance, act, omission, matter or thing.

16.3 Immediate recourse

The Chargor waives any right it may have of first requiring the Security Agent (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security in respect of the Secured Obligations or claim payment from any person before enforcing the Security. This waiver applies irrespective of any law or provision of the Finance Documents to the contrary.

16.4 Non-competition

Subject as provided below, until the Security Agent is satisfied that all of the Secured Obligations have been unconditionally and irrevocably paid and discharged in full, the Chargor shall not, by virtue of any payment made, security realised or moneys received or recovered under any of the Finance Documents for or on account of the liability of any Obligor:

- (a) take the benefit (whether by way of subrogation or otherwise) of any rights, security or moneys held, received or receivable by the Security Agent or any other Secured Party or be entitled to any right of contribution or indemnity; or
- (b) claim, rank, prove or vote as a creditor of any Obligor or its estate in competition with the Security Agent or any other Secured Party; or
- (c) receive, claim or have the benefit of any payment, distribution or security from or on account of any Obligor, or exercise any right of set-off against any Obligor.

The Chargor shall hold in trust for and forthwith pay or transfer to the Security Agent (acting as agent and trustee as aforesaid) any payment or distribution or benefit of security received by it contrary to the above. If the Chargor exercises any right of set-off contrary to the above

it will forthwith pay an amount equal to the amount set off to the Security Agent (acting as agent and trustee as aforesaid). Notwithstanding the foregoing, following any enforcement of the Security by the Security Agent under this Charge, the Chargor will (at its own cost) promptly take such steps or actions as are referred to above as the Security Agent may from time to time stipulate.

16.5 Security held by the Chargor

The Chargor warrants that it has not taken, and agrees that it will not take, from any Obligor or any person party to any related security any security, guarantee, indemnity, bond or other assurance in respect of or in connection with its obligations under this Charge. If the Chargor takes any such security, guarantee, indemnity, bond or other assurance in contravention of this Clause, it shall hold it on trust for the Secured Parties until such time as all of the Secured Obligations have been satisfied in full (and the Secured Parties are not under any further obligation, actual or contingent, to any Obligor) and shall on request promptly deposit the same with and/or charge the same to the Secured Parties in such manner as the Security Agent may require as security for the due and punctual payment, performance and discharge by the Chargor of the Secured Obligations.

16.6 Continuing Security

The Security shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Security Agent and shall extend to the ultimate balance of the Secured Obligations notwithstanding any interim or intermediate payment, discharge or settlement of account or other matter of the whole or any part of the Secured Obligations or any other act, matter or thing.

16.7 No prejudice

The Security shall not be prejudiced or affected by the invalidity or unenforceability of any other document or agreement, or by the Security Agent now or hereafter dealing with, exchanging, releasing or abstaining from perfecting or enforcing any of the Security, or by any time or indulgence granted to the Chargor, the Security Agent (in any capacity) or any other Secured Party, or by any modification of the terms of the trust upon which the Security Agent holds the Security or by any other act or thing which might otherwise prejudice that Security.

16.8 Cumulative Security

The Security shall be cumulative, in addition to and independent of every other security which the Security Agent or any Secured Party may at any time hold in respect of the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. The Security shall not merge with nor in any way exclude or prejudice or be affected by any prior security held by the Security Agent (acting in any capacity) or by any Secured Party over the whole or any part of the Charged Assets.

17. POWER OF ATTORNEY

17.1 Appointment

The Chargor, by way of security, hereby irrevocably appoints the Security Agent and the persons deriving title under it and separately any Receiver jointly or severally to be its attorney or attorneys for them (with full power of substitution and delegation) and in the name and on behalf and as its act and deed to sign, seal, execute, deliver, perfect and do all deeds, instruments, acts and things which may be required:

- (a) for carrying out any obligations imposed on the Chargor by or pursuant to this Charge where the Chargor has failed to perform such obligations and following the occurrence of an Event of Default;
- (b) following the occurrence of an Event of Default that is continuing, for carrying any sale, lease or other dealing by the Security Agent or Receiver into effect;
- (c) following the occurrence of an Event of Default that is continuing, for conveying or transferring any legal estate or other interest in land or any other property;
- (d) following the occurrence of an Event of Default that is continuing, for realising all or any part of the Charged Assets; and
- (e) generally for enabling the Security Agent and any Receiver to exercise the respective powers, authorities and discretions conferred on them by or pursuant to this Charge or by law.

The provisions of this Clause 17.1 shall take effect as and by way of variation to the provisions of sections 109(6) and 109(8) of the Act which provisions as so varied and extended shall be deemed incorporated in this Charge as if they related to a Receiver of the Charged Assets and not merely a Receiver of the income thereof.

17.2 Ratification

The Chargor covenants with the Security Agent and separately with any Receiver that, on request, it will ratify and confirm all security agreements, documents and acts and all transactions entered into by the Security Agent or any Receiver (or by the Chargor at the instance of the Security Agent (and the persons deriving title under it) or any Receiver) in the proper exercise of its or his powers set out in this Charge and the Chargor irrevocably acknowledges and agrees that the power of attorney contained in this Clause 17 is given to secure the proprietary interest of, and the performance of obligations owed to, the respective donees within the meaning of the Powers of Attorney Act 1971.

18. INDEMNITIES

18.1 General

The Chargor shall as primary obligor and not merely as surety notwithstanding any release or discharge of all or any part of the Security, indemnify and hold harmless the Security Agent (and its nominees, delegates and sub-delegates), each other Secured Party from time to time and any Receiver on demand against any losses, actions, claims, expenses, demands or liabilities as a consequence of any breach by the Chargor of the provisions of this Charge, the exercise or purported exercise of any of the rights and powers conferred on them by this Charge or otherwise relating to the Charged Assets or the Security (otherwise than as a result of its bad faith, gross negligence, wilful misconduct or material breach of the Finance Documents).

18.2 Taxes

The Chargor agrees to indemnify the Security Agent, each other Secured Party and any Receiver to the extent that such parties are not indemnified under any other Finance Document on demand against all present or future stamp, withholding or other taxes or duties and any penalties or interest with respect thereto which may be imposed by any competent authority in connection with the execution or enforcement of this Charge, repayment and discharge of the Secured Obligations or in consequence of any payment made pursuant hereto being impeached or declared void for any reason.

18.3 Costs and expenses

Within 2 (two) Business Days of a demand, the Chargor shall pay all fees, costs and expenses (including legal fees and any value added tax) properly incurred from time to time in connection with the enforcement of or preservation of rights under this Charge by the Security Agent, or any Receiver, attorney, manager, trustee or any other person appointed by the Security Agent under this Charge or by statute.

19. WAIVERS AND REMEDIES

19.1 Waivers

No failure or delay by any Secured Party (or the Security Agent on their behalf) in exercising any right or remedy shall operate as a waiver thereof, nor shall any single or any partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy as though no waiver had been made and no relaxation or indulgence granted.

19.2 Severability

If any provision of this Charge shall be prohibited, illegal, invalid or unenforceable under applicable law, it shall be ineffective only to such extent and in the relevant jurisdiction, without invalidating or otherwise detrimentally affecting the validity, legality and enforceability of, or otherwise impairing in any way, the remaining provisions of this Charge.

20. REINSTATEMENT AND RELEASE

20.1 Reinstatement

Any settlement or discharge under this Charge between the Chargor and the Security Agent or the Secured Parties (or any of them) shall be conditional upon no security or payment to the Security Agent or the Secured Parties (or any of them) by any Obligor or the Chargor or any other person on behalf of any Obligor or, as the case may be, the Chargor being avoided or set aside or ordered to be refunded or reduced by or pursuant to any applicable law or regulation and, if such condition is not satisfied, the Security Agent and/or the Secured Parties shall be entitled to recover from the Chargor on demand the value of any such security or the amount of any such payment as if such settlement or discharge had not occurred. The Security Agent or any other Secured Party may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

20.2 Release

- (a) Once all the Secured Obligations have been irrevocably paid in full and neither the Security Agent nor any other Secured Party has any actual or contingent liability to advance further monies to, or incur liability on behalf of, the Chargor or any Obligor, the Security Agent and each other Secured Party shall, at the request and cost of the Chargor, promptly take any action which may be necessary to release and discharge the Security and reassign the Charged Assets to the Chargor.
- (b) On the completion of the sale or disposal of any Charged Assets in accordance with the terms of the Finance Documents, the Security Agent hereby agrees with the Chargor that, upon at least 5 (five) Business Days' prior written request from the Chargor, it shall release, discharge or reassign (as the case may be) the Charged Assets being so sold or disposed of from the Security, provided that the Chargor has certified to the Security Agent that the sale or disposition is made in compliance with the provisions of the Finance Documents, and that:

- (i) the Security Agent shall not be required to execute any such release, discharge or reassignment on terms which, in the Security Agent's opinion, would expose the Security Agent to liability or create any obligation or entail any consequence other than the release of such Security without recourse or warranty; and
- (ii) such release, discharge or reassignment shall not in any manner discharge, affect or impair the Secured Obligations or the Security upon (or obligations of the Chargor in respect of) all interests retained by the Chargor, including the proceeds of sale, all of which shall continue to form part of the Security.

21. CURRENCY

Any amount received or recovered by the Security Agent in respect of any sum expressed to be due to it from the Chargor under this Charge in a currency other than the currency (the "**contractual currency**") in which such sum is so expressed to be due (whether as a result of, or the enforcement of, any judgement or order of a court or tribunal of any jurisdiction, the winding-up of the Chargor or otherwise) shall only constitute a discharge to the Chargor to the extent of the amount of the contractual currency that the Security Agent is able, in accordance with its usual practice (acting reasonably), to purchase with the amount of the currency so received or recovered on the date of receipt or recovery (or, if later, the first date on which such purchase is practicable). If the amount of the contractual currency so purchased is less than the amount of the contractual currency so expressed to be due the Chargor shall indemnify the Security Agent against any loss sustained by it as a result, including the cost of making any such purchase.

22. NOTICES

22.1 General

Any demand, notice or other communication or document to be made on or delivered to the Chargor under this Charge or in respect of the Secured Obligations shall be made or delivered by fax or otherwise in writing and shall be treated as having been served if served in accordance with Clause 22.2. Each demand, notice, communication or other document to be made on or delivered to any party to this Charge may (unless that party has by 10 Business Days' written notice to the other party or parties specified another address or fax number) be made or delivered to that other person at the address or fax number set out under its name at the end of this Charge. Such notice or communication will only be deemed to have been delivered to the Security Agent when it is actually received by the Security Agent.

22.2 Mode of service

Service of any demand, notice, communication or other document to be made or delivered under this Charge may be made:

- (a) by leaving it at the relevant address for service referred to in Clause 22.1;
- (b) by sending it by pre-paid first class letter (or by airmail if to or from an address outside the United Kingdom) through the post to the relevant address for service referred to in Clause 22.1; or
- (c) by fax to the relevant fax number referred to in Clause 22.1 and so that any fax shall be deemed to be in writing and, if it bears the signature of the server or its authorised representative or agent, to have been signed by or on behalf of the server.

22.3 Proof of service

In proving service of a demand, notice, communication or other document served:

- (a) by post, it shall be sufficient to prove that such demand, notice, communication or other document was correctly addressed, full postage paid and posted; and
- (b) by fax, it shall be sufficient to prove that the fax was followed by such machine record as indicates that the entire fax was sent to the relevant number.

23. SET OFF

23.1 After Event of Default

Any Secured Party may at any time after an Event of Default has occurred and is continuing (without giving notice to the Chargor):

- (a) set off or otherwise apply sums standing to the credit of the Chargor's accounts with that Secured Party (irrespective of the terms applicable to those accounts and whether or not those sums are then due for repayment to that Secured Party); and
- (b) set off any other obligations (whether or not then due for performance) owed by that Secured Party to the Chargor, in each case against any liability of the Chargor to the relevant Secured Party under the Finance Documents.

23.2 Unliquidated obligations

If the relevant obligation or liability is unliquidated or unascertained, the Secured Party may set off the amount which it estimates (in good faith) will be the final amount of that obligation or liability once it becomes liquidated or ascertained.

24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Except as expressly provided in this Charge, a party who is not a party hereto has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Charge. Any Receiver or any Delegate, may, subject to this Clause 24 and the Third Party Rights Act, rely on any Clause of this Charge which expressly confers rights on it.

25. ASSIGNMENTS AND TRANSFERS

25.1 No assignment

The Chargor shall not be entitled to assign or transfer all or any of its rights or obligations under this Charge.

25.2 Assignment by Security Agent

The Security Agent may at any time assign or otherwise transfer all or any part of its rights under this Charge in accordance with the Finance Documents and the Chargor authorises the Security Agent to execute on its behalf any document required to effect the necessary transfer of rights and obligations.

26. GOVERNING LAW AND JURISDICTION

26.1 Governing law

This Charge and the any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, English law.

26.2 Jurisdiction

(a) Submission

The Chargor agrees for the benefit of the Security Agent that the courts of England shall have jurisdiction to hear and determine, any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Charge and, for such purposes, irrevocably submits to the jurisdiction of such courts.

(b) Forum

The Chargor irrevocably waives any objection which it might now or hereafter have to the courts referred to in paragraph (a) of Clause 26.2 being nominated as the forum to hear and determine any suit, action or proceeding, and to settle any dispute, which may arise out of or in connection with this Charge and agrees not to claim that any such court is not a convenient or appropriate forum.

(c) Other competent jurisdictions

The submission to the jurisdiction of the courts referred to in paragraph (a) of Clause 26.2 shall not (and shall not be construed so as to) limit the right of the Security Agent to take proceedings against the Chargor in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

IN WITNESS whereof the Chargor has duly executed this Charge as a deed and intends to deliver and hereby delivers the same on the date first above written and, before such delivery, this Charge has been duly signed on behalf of the Security Agent, in the manner appearing below.

SIGNATORIES

THE CHARGOR

EXECUTED as a DEED

by AVIAGEN INTERNATIONAL FINANCE TWO LIMITED

acting by:

REDACTED

Name: Wendy W. Dye

Title: Director

REDACTED

Witness

Name: Michael Terry
Occupation: Group Accounting Manager
Address: 920 Explorer Blvd
Huntsville, AL 35806

Notice details:

Address: 920 Explorer Blvd, Huntsville, AL 35806 USA
Attention: Wendy Dye
Telephone: 256-890-3800
Facsimile: 256-890-3919

THE SECURITY AGENT

SIGNED for and on behalf of

by **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**

acting by:

REDACTED

Name:

James McComb

Title:

Authorised Signatory

REDACTED

Witnessed by:

Name:

Jason Blondell

Occupation:

Director

Address:

**HSBC Bank plc
8 Canada Square
London
E14 5HQ**

Notice details:

Address: **Level 28, 8 Canada Square, London, E14 5HQ**
Attention: **CTLA Trustee Services Administration**
Facsimile: **+44 (0) 207 991 4350**