



Companies House

**MR01**(ef)

**Registration of a Charge**

Company name **ABENGOA CONCESSIONS INVESTMENTS LIMITED**

Company number **08818214**



X53VBPIY

Received for Electronic Filing **30/03/2016**

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**Details of Charge**

Date of creation **29/03/2016**

Charge code **0881 8214 0011**

Persons entitled **AGENSynd, S.L.**

Brief description

**Contains fixed charge(s).**

**Contains negative pledge.**

**Chargor acting as a bare trustee for the property.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by

**NONA KEYHANI**



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

Company number 8818214

Charge code 0881 8214 0011

The Registrar of Companies for England and Wales hereby certifies that a charge dated 29th March 2016 and created by ABENGOA CONCESSIONS INVESTMENTS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th March 2016

Given at Companies House, Cardiff on 31st March 2016

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



**Companies House**



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

IN THE CENTRAL LONDON COUNTY COURT

CHANCERY BUSINESS

Before: ~~Master [illegible]~~ DISTRICT JUDGE LAMBERT

Dated: ~~10 May 2016~~ 12 MAY 2016

CLAIM No. 706

72016

Between.

AGENSynd, S L



Claimant

AND

ABENGOA CONCESSIONS INVESTMENTS LIMITED

First Defendant

AND

THE REGISTRAR OF COMPANIES



Second Defendant

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ORDER

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UPON the application of the Claimant by Part 8 Claim Form

AND UPON READING the written evidence filed

AND UPON HEARING the legal representative for the Claimant

AND UPON READING the letter supporting the application from the legal representative for the First Defendant

AND UPON READING the letter from the Second Defendant confirming that it has no objection to the application

AND UPON the Court being satisfied that the statutory register for the Claimant relating to a charge dated 29/03/2016 granted by the First Defendant in favour of the Claimant (with charge code 0881 8214 0011) incorrectly states that the First Defendant is "acting as a bare trustee for the property" subject to the charge, this mis-statement was due to a mistake and/or inadvertence, and it is just and equitable to grant relief pursuant to section 859M of the Companies Act 2006

IT IS ORDERED THAT



1 Upon delivery of an Office Copy of this Order to the Second Defendant the statutory register for the Claimant relating to the charge with charge code 0881 8214 0011 and registered on behalf of the Claimant on 30/03/2016 be rectified by deleting from the Details of Charge section of the Form MR01(e) relating thereto the words "Chargor acting as a bare trustee for the property"

2 This Order shall be served by the Claimant on the Defendants

3. *This order was made without a hearing. Any party affected by it may apply, no later than 7 days after receipt of it, to have it set aside, varied or stayed.*  
Service of Order

A copy of the sealed order was sent by the Claimant to



- (1) Linklaters LLP, solicitors for the First Defendant, at One Silk Street, London EC2A 3BH by courier
- (2) The Registrar of Companies, as Second Defendant, at Companies House, Crown Way, Cardiff CF14 3UZ by registered post

*order approved  
D. Harbottle  
12.5.16.*

**EXECUTION VERSION  
CONFIDENTIAL**

DATED 29 MARCH 2016

**ABENGOA CONCESSIONS INVESTMENTS LIMITED**

**AS THE CHARGOR**

**IN FAVOUR OF**

**AGENSynd, S.L.**

**AS THE SECURITY AGENT**

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**CUSTODY ACCOUNT SECURITY AGREEMENT**

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**THIS AGREEMENT** is made by way of deed on 29 March 2016

**BETWEEN:**

- (1) **ABENGOA CONCESSIONS INVESTMENTS LIMITED**, a private limited company incorporated in England with company number 08818214 and its registered office at St Martin's House, 1 Lyric Square, London, England, W6 0NB (the "Chargor"), and
- (2) **AGENSYND, S.L.**, as security agent (and trustee) for the Secured Parties on the terms and conditions set out in the Security Trust Agreement (the "Security Agent").

**RECITALS:**

- (A) Pursuant to the Facility Agreement (defined below), certain lenders advanced loans of an aggregate principal amount of €165,000,000 to Abengoa S.A. ("Abengoa").
- (B) Pursuant to a public deed granted on 14 October 2015 before the Notary Public from Madrid, Mr. Fernando Molina Stranz, the Chargor (among others) acceded to the Facility Agreement as a guarantor ("*Garantes*") and obligor ("*Obligados*"), and has guaranteed the performance of the obligations of Abengoa and the other obligors under the Facility Agreement.
- (C) The Chargor has agreed to enter into this Agreement, the Security Trust Agreement and to grant the Security created by or intended to be created by the Security Documents.
- (D) It is intended by the parties to this Agreement that this document will take effect as a deed despite the fact that a party may only execute this Agreement under hand.
- (E) The Security Agent is acting under and holds the benefit of the rights conferred upon it in this Agreement on trust and as agent for the Secured Parties on the terms and conditions under the Security Trust Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement.

"**ABY Shares**" means the \$0.10 nominal value ordinary shares of the Company, including those listed on the Reference Exchange and trading under the symbol "ABY".

"**Acceleration Event**" means the Agent or the Security Agent exercising any of its rights pursuant to Clause 15.2 (*Declaración de la resolución anticipada del Préstamo*) or Clause 15.3 (*Consecuencias de la resolución anticipada*) of the Facility Agreement.

"**Agent**" means "*Agente*" under (and as defined in) the Facility Agreement



**"Appropriation Notice"** has the meaning given to it in Clause 9.5 (*Right of Appropriation*)

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

**"Charged Portfolio"** means the Custody Account, the Shares and the Related Assets and the Rights against the Custodian.

**"Charged Property"** has the meaning given to it in the Security Trust Agreement

**"Closing Price"** means, in relation to ABY Shares, the closing price quoted on the Reference Exchange (using, if at any time ABY Shares are trading ex dividends, the ex dividend price) of ABY Shares on the Valuation Day immediately preceding the day on which an Appropriation Notice is served, as displayed on the relevant Bloomberg or Reuters page (or such other source of information as the Security Agent may determine (acting reasonably)). If any such closing price is not available for any reason, the closing price shall be deemed to be the last available closing price in respect of ABY Shares

**"Collateral Rights"** means, subject always to the provisions of Clause 5 (*Voting Rights*) in relation to the exercise of voting rights, all rights, powers and remedies of the Security Agent provided by this Agreement or by law.

**"Company"** means Abengoa Yield plc, a public limited company incorporated in England with company number 08818211 having its registered office at Great West House (GW1), Great West Road, Brentford, Middlesex, Greater London, United Kingdom, TW8 9DF.

**"Custodian"** means HSBC Bank plc.

**"Custody Account"** means the custody account with account number [REDACTED] (and any renewal, redesignation, replacement, sub-division or sub-account of such account) in the name of the Chargor held with the Custodian pursuant to the Custody Agreement.

**"Custody Agreement"** means the custody agreement relating to the Custody Account between the Chargor and the Custodian dated on or about the date of this Agreement, as amended or supplemented from time to time.

**"Event of Default"** means any event or circumstance specified as such in clause 15.1 (*Supuestos de vencimiento anticipado*) of the Facility Agreement

**"Facility Agreement"** has the meaning given to "Junior Facility Agreement" in the Security Trust Agreement.

**"Finance Documents"** has the meaning given to "Junior Finance Documents" in the Security Trust Agreement.

**"Lender"** means "*Acreditante*" as defined in the Facility Agreement

**"Notice of Assignment"** means a notice of assignment substantially in the form of Schedule I.

**"Property"** means stock, shares, bonds, debentures, notes, mortgages or other securities or obligations for the payment of money and any certificates, receipts, warrants or other instruments representing the right to receive, purchase or subscribe for the same or evidencing or representing any other right or interest therein and any cash or other property which may at any time be held by the Custodian under the Custody Agreement.

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Portfolio

**"Reference Exchange"** means the Nasdaq Global Select Market.

**"Related Assets"** means:

- (a) all right, title and interest of the Chargor in or in respect of any Property constituted by a credit standing from time to time to the Custody Account;
- (b) all Property which, or the evidence of title to which, are for the time being deposited with or held by the Custodian pursuant to the Custody Agreement; and
- (c) all dividends, interest, sale or other proceeds, and other monies payable at any time in respect of the Shares and all other cash, rights, benefits and proceeds in respect of, derived from, accrued on or offered in respect of the Shares or any Property referred to in paragraphs (a) and (b) above (whether by way of redemption, bonus, preference, exchange, option, substitution, conversion, compensation or otherwise) held by, to the order or on behalf of the Chargor, whether through the Custodian or otherwise, at any time

**"Rights against the Custodian"** means all rights relating to the Custody Account which the Chargor may have now or in the future against the Custodian, any sub-custodian or any third party including, without limitation, its rights against the Custodian under the Custody Agreement, any right to delivery of any part of the Shares and the Related Assets which arises in connection with any part of the Shares and the Related Assets being held by the Custodian, any right of the Chargor to require, enforce and compel performance of the Custody Agreement and otherwise to exercise all claims, rights and remedies including without limitation all rights of termination and to receive damages and compensation in respect of the Shares and the Related Assets and all rights to give and receive notices, reports, requests and consents, to make demands, to exercise discretions, options and elections thereunder and to take any other action under the Custody Agreement and any interest acquired while any part of the Shares and the Related Assets is held by the Custodian

**"Secured Obligations"** means all Junior Liabilities (as defined in the Security Trust Agreement) and all other liabilities and obligations at any time due, owing or incurred by any member of the Group and/or by the Obligor to any Secured Party under the Finance Documents, whether present or future, actual or contingent (and whether incurred solely or jointly and whether as principal or surety or in some other capacity).

**"Secured Parties"** has the meaning given to "Junior Secured Parties" in the Security Trust Agreement.

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

**"Security Document"** has the meaning given to "Junior Security Documents" in the Security Trust Agreement.

**"Security Trust Agreement"** means the security trust agreement dated 24 December 2015 as amended or restated on or about the date of this Agreement between the Security Agent, the Senior Agent (as defined therein), the Agent, the Senior Lenders (as defined therein), the Junior Lenders (as defined therein) and the Chargor.

**"Senior Security Document"** has the meaning given to "Security Document" in the Security Trust Agreement.

**"Shares"** means all of the ABY Shares held in or standing to the credit of the Custody Account from time to time.

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

**"Valuation Day"** means a day on which the Reference Exchange is open for business and the trading of securities listed thereon.

## **1.2 Third Party Rights**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

## **1.3 Construction**

- (a) Unless a contrary indication appears, any reference in this Agreement to
  - (i) a **"Finance Document"** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated,
  - (ii) **"guarantee"** includes any guarantee, letter of credit, bond, indemnity, or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness,
  - (iii) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (iv) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality); and
- (v) a provision of law is a reference to that provision as amended or re-enacted

- (b) An Event of Default is "**continuing**" if it has not been waived.
- (c) Section, Clause and Schedule headings are for ease of reference only.

#### **1.4 Security Trust Agreement and Senior Security Documents**

- (a) This Agreement and the Security created by it are subject to the Security Trust Agreement. Where there are any inconsistencies between the Security Trust Agreement and the provisions of this Agreement, the Security Trust Agreement shall prevail.
- (b) The Parties acknowledge the prior ranking Security taken over the Charged Portfolio pursuant to the Senior Security Documents. The Chargor shall not be in breach of any term of this Agreement by virtue of the provisions of or the Security arising pursuant to the Senior Security Documents, or complying with any direction or instruction given pursuant thereto, and in particular the representations and undertakings given herein shall be construed taking into account the Security Trust Agreement, the Senior Security Documents and the Security arising pursuant thereto.

## **2. COVENANT TO PAY AND CHARGE**

### **2.1 Covenant to Pay**

The Chargor covenants with the Security Agent to discharge each of the Secured Obligations on their due date in accordance with their respective terms.

### **2.2 Charge**

The Chargor charges all of its right, title and interest from time to time in and to the Charged Portfolio with, subject to the terms of the Security Trust Agreement and the Senior Security Documents, full title guarantee and by way of fixed charge, in favour of the Security Agent, as continuing security for the payment and discharge of the Secured Obligations

### **2.3 Assignment**

Subject to the Security Trust Agreement and the Senior Security Documents, the Chargor assigns absolutely and with full title guarantee to the Security Agent all of its rights, title and interest, present and future, in, under and to the Custody Account and the Rights against the Custodian and all present and future claims, causes of action, payments and proceeds in respect thereof as continuing security for the payment and discharge of the Secured Obligations.

#### **2.4 Secured Parties assume no obligations**

No Secured Party shall be under any obligation or liability to the Chargor or any other person under or in respect of the Custody Account and the Chargor shall at all times remain liable to perform all obligations expressed to be assumed by it in respect of the Custody Account and the Custody Agreement.

### **3. NOTICE OF ASSIGNMENT; TRANSFER FORM**

The Chargor shall on the date of this Agreement:

- (a) execute and deliver to the Custodian a Notice of Assignment; and
- (b) ensure delivery to the Security Agent of a copy of the Notice of Assignment duly executed by or on behalf of the Chargor and an acknowledgement by the Custodian substantially in the form set out in such Notice of Assignment and in any case in a form and substance satisfactory to the Security Agent.

### **4. CUSTODY ACCOUNT, RELATED ASSETS, RESTRICTIONS, RECERTIFICATION AND RELEASE**

#### **4.1 Instructions to Custodian**

Subject to the terms of the Security Trust Agreement, the Security Agent may, following an Acceleration Event, at any time and from time to time give the necessary instructions to the Custodian to (i) exercise all or any of the Chargor's rights relating to all or any part of the Charged Portfolio and (ii) transfer the Charged Portfolio (or any part of it) immediately into the Security Agent's own name or into that of its nominee(s) as it shall direct and the Chargor shall upon demand from the Security Agent do all things that the Security Agent may reasonably require to facilitate the realisation of the Charged Portfolio or any part of it.

#### **4.2 No revocation**

Subject to the Security Trust Deed and the Senior Security Documents, the Chargor hereby agrees and covenants that it shall not take any action which is inconsistent with, or revokes or purports to revoke:

- (a) any custody agreement or arrangement (including the Custody Agreement) with the Custodian (except with the prior written consent of the Security Agent and subject to any conditions that may be imposed by the Security Agent);
- (b) its instructions to the Custodian in the Notice of Assignment, or
- (c) the power of attorney granted pursuant to Clause 8 (*Power of Attorney*) hereof.

#### **4.3 Related Assets**

The Chargor shall ensure that, promptly upon the accrual, offer, issue or receipt of any Related Assets (and unless the Security Agent otherwise agrees) such Related Assets (whether in the form of stocks, shares, warrants, cash or other assets) are credited to the Custody Account

#### **4.4 Restrictions**

The Chargor shall not be entitled to receive, withdraw, redeem, dispose of or otherwise transfer all or any part of the Charged Portfolio except with the prior written consent of the Security Agent delivered to the Custodian.

#### **4.5 No Variation**

The Chargor shall not, without the Security Agent's prior written consent (i) permit or agree to any variation of the rights attaching to the Custody Account or (ii) novate, transfer or assign any of its rights or obligations under the Custody Agreement.

#### **4.6 Recertification**

If any part of the Charged Portfolio held in uncertificated form is recertificated, the Chargor shall give instructions to the Custodian that, immediately on receipt of the relevant investment in certificated form, it is delivered to the Security Agent or its nominee together with executed blank stock transfer forms, executed stamped share transfer forms (with any such transferee as the Security Agent may designate for the purpose of causing a dematerialisation of the Shares) or other instruments of transfer in each case in respect of those parts of the Charged Portfolio as the Security Agent may require.

#### **4.7 Release**

Upon the Security Agent being satisfied that the Secured Obligations have been irrevocably paid or discharged in full, and the Security Agent and the Secured Parties having no further actual or contingent obligations to make advances or provide other financial accommodation to the Chargor or any other person under the Facility Agreement, the Security Agent shall, at the request and cost of the Chargor, take all action required to release and reassign all or any part of the Security subject to Clause 12.8 (*Avoidance of Payments*) and without recourse to, and without any representations or warranties by, the Security Agent or any of its nominee(s).

#### **4.8 Application**

Subject to the Security Trust Agreement, while an Event of Default is continuing, the Chargor irrevocably authorises the Security Agent to apply cash balances credited to the Custody Account to pay amounts due and payable under the Finance Documents.

### **5. VOTING RIGHTS**

#### **5.1 Voting rights prior to Security Agent Notice**

Prior to the giving of notice pursuant to Clause 5.2 (*Voting rights after Security Agent Notice*), the Chargor shall be entitled to exercise all voting rights in relation to the Charged Portfolio.

#### **5.2 Voting rights after Security Agent Notice**

Subject to the terms of the Security Trust Agreement and Clause 5.3 (*Waiver of voting rights by Security Agent*) upon the occurrence of an Acceleration Event, the Security

Agent may (acting in accordance with the Security Trust Agreement) give notice to the Custodian (with a copy to the Chargor) that this Clause 5.2 will apply. With effect from the giving of that notice, the Security Agent may, at its discretion (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor).

- (a) exercise (or refrain from exercising) any voting rights in respect of the Charged Portfolio;
- (b) transfer the Charged Portfolio into the name of such nominee(s) of the Security Agent as it shall require; and
- (c) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Charged Portfolio including the right, in relation to any company whose shares or other securities are included in the Charged Portfolio, to concur or participate in:
  - (i) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion, consolidation, sub-division or reissue of any shares or securities as a consequence thereof),
  - (ii) the release, modification or variation of any rights or liabilities attaching to such shares or securities or amendment of the memorandum or articles of association of any issuer of such shares or securities, and
  - (iii) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,

in each case in the manner and on the terms the Security Agent thinks fit, and the proceeds of any such action shall form part of the Charged Portfolio.

### **5.3. Waiver of voting rights by Security Agent**

- (a) The Security Agent may, acting on instructions in accordance with the terms of the Security Trust Agreement, by notice to the Chargor, at any time (which notice may only be revoked by the Security Agent's written notice to the Chargor), with a copy to the Agent, elect to give up the right to exercise (or refrain from exercising) all voting rights and powers in respect of the Charged Portfolio conferred or to be conferred on the Security Agent pursuant to Clause 5.2 (*Voting rights after Security Agent Notice*). Other Secured Parties unconditionally waive any rights they may otherwise have to require the Security Agent not to make such election or to require the Security Agent to indemnify, compensate or otherwise make them good for any losses, costs or liabilities incurred by any of them in relation to or as a consequence of the Security Agent making such election
- (b) Once a notice has been issued by the Security Agent under paragraph (a) of this Clause 5.3, on and from the date of such notice, the Security Agent shall cease to have the rights to exercise or refrain from exercising voting rights and powers in respect of the Charged Portfolio conferred or to be conferred on it

pursuant to Clause 5.2 (*Voting rights after Security Agent Notice*) or any other provision of this Agreement and all such rights will be exercisable by the Chargor until the date on which such notice is revoked by the Security Agent. The Chargor shall be entitled on and from the date of such notice, to exercise all voting rights and powers in relation to the Charged Portfolio until (but excluding) the date on which such notice has been revoked by the Security Agent.

## **6. CHARGOR'S REPRESENTATIONS AND UNDERTAKINGS**

### **6.1 Representations**

The Chargor makes the representations and warranties set out in Schedule 2 to the Security Agent and acknowledges that the Security Agent has become a party to this Agreement in reliance on these representations and warranties.

### **6.2 Repetition**

The representations and warranties made under Clause 6.1 are deemed to be made by the Chargor by reference to the facts and circumstances then existing on the date of this Agreement and on each date on which any part of the Secured Obligations remains outstanding.

### **6.3 General Undertakings**

#### **(a) *Negative Pledge***

The Chargor shall not create or permit to subsist any Security (subject to any Security arising by operation of law) or similar impediment (including any right of set-off) over or in respect to the Custody Account and any part of the Charged Portfolio, in each case except pursuant to this Agreement, the Custody Agreement and the Senior Security Documents

#### **(b) *Calls on Shares***

The Chargor undertakes to pay all calls or other payments when due in respect of any part of the Charged Portfolio. If the Chargor fails to make any such payment, the Security Agent may make that payment on behalf of the Chargor and any sums so paid by the Security Agent shall be reimbursed by the Chargor on demand together with interest on those sums. Such interest shall be calculated from the due date up to the actual date of payment (after, as well as before, judgment) in accordance with clause 6.8 (*Tipo de Interés de Demora*) of the Facility Agreement.

#### **(c) *Shares***

The Chargor shall ensure at all times that the Shares are held through The Depository Trust Company.



(d) *Actions and dealings*

The Chargor will give such electronic and other instructions and take all such other action as may be necessary to ensure that no actions or dealings may take place in respect of the Charged Portfolio (other than as permitted by the Facility Agreement) without the prior written or authenticated consent of the Security Agent.

(e) *Not Jeopardise*

The Chargor shall not do or permit to be done any act or thing which would jeopardise the rights of the Secured Parties in the Charged Portfolio.

(f) *Custody Agreement*

The Chargor shall promptly comply with its obligations under the Custody Agreement.

(g) *Recertification*

If requested in writing by the Security Agent following the occurrence of an Acceleration Event, the Chargor shall cause all or part of the Charged Portfolio (insofar as in the form of stocks, shares, warrants or other securities) to be recertificated as soon as reasonably practicable. The Chargor shall not recertificate any part of the Charged Portfolio unless so requested by the Security Agent.

**7. FURTHER ASSURANCE**

**7.1 Covenant for Further Assurance**

- (a) The Chargor will promptly at its own cost do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may specify (and in such form as the Security Agent may require in favour of the Security Agent or its nominee(s)) for the purpose of preserving, protecting or exercising the Collateral Rights or perfecting or protecting the Security or the priority of the Security created or intended to be created in respect of the Charged Portfolio (which may include the execution by the Chargor of a mortgage, charge or assignment over all or any of the assets constituting, or intended to constitute, the Charged Portfolio or to deliver all or any of such assets to the Security Agent or its nominee or to enable the Security to be realised) or for the exercise of the rights, powers and remedies of the Security Agent provided by or pursuant to this Agreement or by law, in each case in accordance with the rights vested in it under this Agreement.
- (b) The Chargor shall procure that the Custodian will perform (or cause to be performed) the Chargor's obligations under this Clause 7.1.

## **7.2 Prescribed Wording**

The following covenants shall be implied in respect of any action taken by the Chargor to comply with its obligations under this Clause 7

- (a) the Chargor has the right to take such action in respect of the Charged Portfolio; and
- (b) the Chargor will at its own cost do all that he reasonably can to give the Security Agent or its nominee the title and/or rights that he purports to give

## **8 POWER OF ATTORNEY**

### **8.1 Appointment and powers**

The Chargor by way of security irrevocably appoints the Security Agent and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things at such time and in such manner which the attorney may consider to be required or desirable for.

- (a) carrying out any obligation imposed on the Chargor by this Agreement or any other agreement binding on the Chargor to which the Security Agent is a party (including the execution and delivery of any deeds, charges, assignments or other Security and any transfers of the assets subject to, and perfecting and/or releasing, the Security created or intended to be created by this Agreement);
- (b) giving instructions to the Custodian in relation to the Charged Portfolio; and
- (c) enabling the Security Agent and any Receiver to exercise (subject to Clause 5.3 (*Waiver of voting rights by Security Agent*), or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Agreement or by law.

### **8.2 Ratification**

The Chargor shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of its powers.

## **9. SECURITY ENFORCEMENT**

### **9.1 Time for Enforcement**

Subject to the terms of the Security Trust Agreement, on and at any time after the occurrence of:

- (a) an Acceleration Event;
- (b) a petition or application is presented for the making of an administration order (or any analogous order in any applicable jurisdiction) in relation to the Chargor or any person who is entitled to do so gives written notice of its intention to appoint an administrator (or any analogous officer in any applicable jurisdiction) of the Chargor or files such a notice with the court of any applicable jurisdiction, or

- (c) the Chargor requesting the Security Agent to exercise any of its powers under this Agreement,

the Security created by or pursuant to this Agreement is immediately enforceable and the Security Agent may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

- (i) secure and perfect its title to all or any part of the Charged Portfolio (including transferring or procuring the transfer of the Charged Portfolio into the name of the Security Agent or its nominees or otherwise exercise in relation to the Charged Portfolio all the rights of an absolute owner);
- (ii) enforce all or any part of the Security (at the times, in the manner and on the terms it thinks fit) and take possession of and hold, sell, or otherwise dispose of all or any part of the Charged Portfolio (at the time, in the manner and on the terms it thinks fit (including whether for cash or non-cash consideration)),
- (iii) whether or not it has appointed a Receiver, exercise all or any of the rights, powers, authorisations and discretions conferred by the Law of Property Act 1925 (as varied or extended by this Agreement) on chargees and by this Agreement on any Receiver or otherwise conferred by law on mortgagees or Receivers and any of the rights set out in Schedule 3 to this Agreement; and
- (iv) collect, recover or compromise, and give good discharge for any monies paid or payable to the Chargor under or in respect of the Custody Account and/or the Rights against the Custodian, and enforce (in any way whatsoever including, without limitation, by way of instituting proceedings in the Chargor's name) any rights or claims arising or in respect of the Custody Account or the Rights against the Custodian.

## **9.2 Power of sale**

- (a) The power of sale or other disposal conferred on the Security Agent and on the Receiver by this Agreement shall operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Agreement.
- (b) The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 shall not apply to this Agreement or to the exercise by the Security Agent of its right to consolidate all or any of the Security created by or pursuant to this Agreement with any other security in existence at any time or to its power of sale.

### 9.3 Certificate

A certificate in writing by an officer or agent of the Security Agent that the power of sale or disposal has arisen and is exercisable shall be conclusive evidence of that fact, in favour of a purchaser of all or any part of the Charged Portfolio

### 9.4 Chargee's liability

Neither the Security Agent nor any Receiver will be liable to account as mortgagee or mortgagee in possession in respect of the Charged Portfolio or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever in connection with the Charged Portfolio for which a mortgagee or mortgagee in possession might as such be liable

### 9.5 Right of Appropriation

To the extent that any of the Charged Portfolio constitutes "financial collateral" and this Agreement 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 (SI 2003 No. 3226), as amended, (the "**Regulations**")) the Security Agent shall have the right to appropriate all or any part of such financial collateral in or towards discharge of the Secured Obligations and may exercise such right to appropriate upon giving written notice to the Chargor (an "**Appropriation Notice**"), following which the Chargor shall have no further right in, or title to, such financial collateral.

The parties agree that the value of any financial collateral appropriated pursuant to this Clause 9.5 (*Right of Appropriation*) shall be:

- (a) in the case of any Shares which constitute financial collateral, the market price of the applicable Shares, determined by the Security Agent by:
  - (i) applying a 5% (five per cent) discount to the Closing Price of the Shares (the "**Adjusted Closing Price Value**") and multiplying the Adjusted Closing Price Value by the number of Shares to be appropriated; or
  - (ii) by reference to an independent valuation prepared by an independent investment bank, accountancy firm, or other professional services firm which is regularly engaged in the valuation of financial assets; or
  - (iii) any other method chosen by the Security Agent (acting reasonably),as the Security Agent may decide, in its absolute discretion;
- (b) in the case of any cash balance standing to the credit of the Custody Account which constitutes financial collateral, the amount of such credit balance with any accrued but unposted interest that is paid in relation to the Custody Account in respect of that credit balance, at the time any appropriation takes effect; and/or

- (c) in the case of any other collateral, the market price determined by the Security Agent by reference to a public index, independent valuation or any other method chosen by the Security Agent (acting reasonably), in each case as the Security Agent may decide in its absolute discretion

The Chargor acknowledges and agrees that each of the foregoing methods of calculating the value of any financial collateral appropriated under this Agreement is commercially reasonable (including for the purposes of the Regulations), and irrevocably waives any right that it may have to argue to the contrary, including (without limitation) in circumstances where an alternative valuation method, or where carrying out any valuation at a different time, would have attributed a higher value to any financial collateral appropriated. The Security Agent's determination of the value of any financial collateral appropriated in accordance with the terms of this Clause 9.5 (*Right of Appropriation*) shall, in the absence of manifest error, be final and binding

#### **9.6 Statutory powers**

The powers conferred by this Agreement on the Security Agent are in addition to and not in substitution for the powers conferred on mortgagees and mortgagees in possession under the Law of Property Act 1925, the Insolvency Act 1986 or otherwise by law and in the case of any conflict between the powers contained in any such Act and those conferred by this Agreement the terms of this Agreement will prevail

### **10. RECEIVERS AND ADMINISTRATORS**

#### **10.1 Appointment and removal**

At any time after having been requested to do so by the Chargor or after this Agreement becomes enforceable in accordance with Clause 9 (*Security Enforcement*), the Security Agent may by deed or otherwise (acting through an authorised officer of the Security Agent), without prior notice to the Chargor:

- (a) appoint one or more persons to be a Receiver of the whole or any part of the Charged Portfolio,
- (b) appoint one or more Receivers of separate parts of the Charged Portfolio respectively,
- (c) remove (so far as it is lawfully able) any Receiver so appointed; and
- (d) appoint another person(s) as an additional or replacement Receiver(s)

#### **10.2 Capacity of Receivers**

Each person appointed to be a Receiver pursuant to Clause 10.1 (*Appointment and removal*) will be.

- (a) entitled to act individually or together with any other person appointed or substituted as Receiver;
- (b) for all purposes deemed to be the agent of the Chargor which shall be solely responsible for its acts, defaults and liabilities and for the payment of its

remuneration and no Receiver shall at any time act as agent for the Security Agent or any Secured Party, and

- (c) entitled to remuneration for its services at a rate to be fixed by the Security Agent from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925)

### **10.3 Statutory powers of appointment**

The powers of appointment of a Receiver shall be in addition to all statutory and other powers of appointment of the Security Agent under the Law of Property Act 1925 (as extended by this Agreement) or otherwise and such powers shall remain exercisable from time to time by the Security Agent in respect of any part of the Charged Portfolio.

### **10.4 Powers of Receivers**

Every Receiver shall (subject to any restrictions in the instrument appointing it but notwithstanding any winding-up or dissolution of the Chargor) have and be entitled to exercise, in relation to the Charged Portfolio in respect of which he was appointed, and as varied and extended by the provisions of this Agreement (in the name of or on behalf of the Chargor or in its own name and, in each case, at the cost of the Chargor):

- (a) all the powers conferred by the Law of Property Act 1925 on mortgagors and on mortgagees in possession and on receivers appointed under that Act;
- (b) all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not the Receiver is an administrative receiver);
- (c) all the powers and rights of an absolute owner and power to do or omit to do anything which the Chargor himself could do or omit to do;
- (d) the power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this Agreement or any of the Finance Documents (including the power of attorney) on such terms and conditions as it shall see fit which delegation shall not preclude either the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Receiver itself; and
- (e) the power to do all things (including bringing or defending proceedings in the name or on behalf of the Chargor) which seem to the Receiver to be incidental or conducive to.
  - (i) any of the functions, powers, authorities or discretions conferred on or vested in it,
  - (ii) the exercise of any Collateral Rights (including realisation of all or any part of the Charged Portfolio), or
  - (iii) bringing to its hands any assets of the Chargor forming part of, or which when got in would be, Charged Portfolio.

### **10.5 Consideration**

The receipt of the Security Agent or any Receiver shall be a conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Portfolio or making any acquisition, the Security Agent or any Receiver may do so for such consideration (whether cash or non-cash), in such manner and on such terms as it thinks fit.

### **10.6 Protection of purchasers**

- (a) No purchaser or other person dealing with the Security Agent or any Receiver shall be bound to inquire whether the right of the Security Agent or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any propriety or regularity on the part of the Security Agent or such Receiver in such dealings.
- (b) All the protection to purchasers contained in Sections 104 and 107 of the Law of Property Act 1925, Section 42(3) of the Insolvency Act 1986 or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any Receiver or any delegate of either

### **10.7 Discretions**

Any liberty or power which may be exercised or any determination which may be made under this Agreement by the Security Agent or any Receiver may be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

## **11. APPLICATION OF PROCEEDS**

All monies received or recovered and any non-cash recoveries made or received by the Security Agent or any Receiver pursuant to this Agreement 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 Law of Property Act 1925) be applied (notwithstanding any purported appropriation by the Chargor) in accordance with the terms of the Security Trust Agreement.

## **12. EFFECTIVENESS OF COLLATERAL**

### **12.1 Collateral Cumulative**

The Security created by or pursuant to this Agreement, and the Collateral Rights, shall be cumulative, in addition to and independent of every other Security which the Security Agent or any other Secured Party may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law and shall operate as an independent security notwithstanding any receipt, release or discharge endorsed on or given in respect of or under any such other Security. No prior Security held by the Security Agent or any other Secured Party over the whole or any part of the Charged Portfolio shall merge into the Security constituted by this Agreement.

## **12.2 No Waiver**

No failure to exercise, nor any delay in exercising, on the part of the Security Agent, any right or remedy under this Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement, the Facility Agreement or any Finance Document. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy of the Security Agent. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## **12.3 Illegality, Invalidity, Unenforceability**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired thereby and, if any part of the Security intended to be created by or pursuant to this Agreement is invalid, unenforceable or ineffective for any reason, that shall not affect or impair any other part of the Security.

## **12.4 No liability**

None of the Security Agent, its nominee(s) or any receiver appointed pursuant to this Agreement shall be liable by reason of (a) taking any action permitted by this Agreement or (b) any neglect or default in connection with the Charged Portfolio or (c) the taking possession or realisation of all or any part of the Charged Portfolio, except in the case of gross negligence or wilful default upon its part.

## **12.5 Implied Covenants for Title**

- (a) The covenants set out in Sections 3(1), 3(2) and 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 will not extend to Clause 2.2 (*Charge*).
- (b) It shall be implied in respect of Clause 2.2 (*Charge*) that, subject to operation of law, the Chargor is charging the Charged Portfolio free from all charges and encumbrances (whether monetary or not) and from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment) other than as contemplated by the Senior Security Documents and the Security Trust Agreement.

## **12.6 Continuing security**

- (a) The Security from time to time constituted by this Agreement is a continuing security and will remain in full force and effect as a continuing security until released or discharged by the Security Agent.
- (b) No part of the Security from time to time constituted by this Agreement will be considered satisfied or discharged by any intermediate payment, discharge or satisfaction of the whole or any part of the Secured Obligations.



#### **12.7 Immediate recourse**

The Chargor waives any right he may have of first requiring the Security Agent or a Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Agreement or enforcing the Security created by or pursuant to this Agreement. This waiver applies irrespective of any law or any provision of this Agreement to the contrary.

#### **12.8 Avoidance of Payments**

Notwithstanding Clause 4.7 (*Release*), if the Security Agent considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Chargor under this Agreement and the Security constituted by this Agreement shall continue and that amount shall not be considered to have been irrevocably paid.

#### **12.9 Non-competition**

Until the irrevocable discharge of the Secured Obligations referred to in Clause 4.7 (*Release*), and unless the Security Agent otherwise directs, the Chargor will not exercise any rights which he may have by reason of performance by it of its obligations under the Finance Documents:

- (a) to be indemnified by the Chargor or any other person,
- (b) to claim any contribution from any other provider of Security for or any other guarantor of any person's obligations under the Finance Documents;
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any right of the Security Agent under this Agreement or the Security Agent or any other Secured Party under any other guarantee or other Finance Document or security taken pursuant to, or in connection with, this Agreement or any other Finance Document by the Security Agent or any Secured Party;
- (d) to bring legal or other proceedings for an order requiring any other person to make any payment, or perform any obligation, in respect of which any other person has given a guarantee, undertaking or indemnity under any Finance Document,
- (e) to exercise any right of set-off against any other person, and/or
- (f) to claim or prove as a creditor of any other person in competition with any Secured Party.

#### **12.10 Turnover Trust**

- (a) The Chargor shall not accept or permit to subsist any collateral from any other person in respect of any rights the Chargor may have arising out of this Agreement: if, despite this provision, any such collateral shall be accepted or subsisting, the Chargor acknowledges that the Chargor's rights under such

collateral shall be held on trust for the Security Agent and the Secured Parties, to the extent necessary to enable all amounts which may be or become payable to the Security Agent and the Secured Parties by the Chargor under or in connection with the Finance Documents to be repaid in full, and the Chargor shall if requested promptly transfer the same to the Security Agent or as it may direct for application in accordance with Clause 11 (*Application of Proceeds*)

- (b) If the Chargor receives any benefit, payment or distribution relating to the rights mentioned in Clause 12.9 (*Non-competition*) above he shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Security Agent and the Secured Parties under or in connection with the Finance Documents to be repaid in full on trust for the Security Agent and the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as it may direct for application in accordance with Clause 11 (*Application of Proceeds*).

#### 12.11 Waiver of defences

The obligations of the Chargor under this Agreement and this Security will not be affected by any act, omission, matter or thing which, but for this Clause 12.11 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under this Agreement and this Security and whether or not known to the Chargor or the Security Agent or any Secured Party including

- (a) any time, waiver or consent granted to, or composition with any other person;
- (b) the release of any other person under the terms of any composition or arrangement with any creditor of the Chargor;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of any other person or any non-presentment or non-observance of any formality or other requirement in respect of any instruments or any failure to realise the full value of any other security,
- (d) any incapacity or lack of powers, authority or legal personality of or dissolution or change in the members or status of any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other documents and any amendment, variation, waiver or release of any of the Secured Obligations,
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any document or security, or
- (g) any insolvency or similar proceedings

## **12.12 No prejudice**

The Security created by or pursuant to this Agreement and the Collateral Rights shall not be prejudiced by any unenforceability or invalidity of any other agreement or document or by any time or indulgence granted to the Chargor or any other person by the Security Agent or any other Secured Party or by any variation of the terms of the trust upon which the Security Agent holds the Transaction Security or by any other thing which might otherwise prejudice the Security or any Collateral Rights

## **12.13 Chargor intent**

Without prejudice to the generality of Clause 12.11 (*Waiver of Defences*), the Chargor expressly confirms that he intends that the Security created under this Agreement, and the Collateral Rights, shall extend from time to time to any (however fundamental and of whatsoever nature, and whether or not more onerous) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature, increasing working capital, enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities, refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time, and any fees, costs and/or expenses associated with any of the foregoing.

# **13. EXPENSES, STAMP TAXES AND INDEMNITY**

## **13.1 Enforcement expenses**

On and at any time after the occurrence of an Acceleration Event, the Chargor shall within three Business Days of demand, pay to the Security Agent the amount of all costs, liabilities and expenses (including legal fees) incurred by the Security Agent, any Receiver or any other person in connection with the exercise, preservation and/or enforcement of the Security contemplated by this Agreement or any proceedings instituted by or against the Security Agent or any other person as a consequence of taking or holding such Security.

## **13.2 Stamp Taxes**

The Chargor shall pay all stamp, registration, notarial and other taxes and fees to which this Agreement, the Security contemplated in this Agreement or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Security Agent on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

## **13.3 Indemnity**

The Chargor shall, notwithstanding any release or discharge of all or any part of the Security, indemnify the Security Agent, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by the Chargor of the provisions of this Agreement or the exercise or purported exercise of any of the rights and powers conferred on them by this Agreement.

#### **13.4 Interests on Demands**

If the Chargor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on such sum from the date of demand until the date of payment) calculated on a daily basis at the rate determined in accordance with and on the terms set out in clause 6.8 (*Tipo de Interés de Demora*) of the Facility Agreement

### **14. OTHER SECURITY INTERESTS**

#### **14.1 Redemption or transfer**

In the event of any action, proceeding or step being taken to exercise any powers or remedies conferred by any prior ranking security in case of exercise by the Security Agent or any Receiver of any power of sale under this Agreement the Security Agent may redeem such prior security or procure the transfer thereof to itself.

#### **14.2 Accounts**

The Security Agent may settle and pass the accounts of the prior security referred to in Clause 14.1 (*Redemption or transfer*) above and any accounts so settled and passed will be conclusive and binding on the Chargor

#### **14.3 Costs of redemption or transfer**

All principal monies, interest, costs, charges and expenses of and incidental to any redemption or transfer will be paid by the Chargor to the Security Agent on demand together with accrued interest thereon (after as well as before judgment) at the rate from time to time applicable to unpaid sums specified in the Facility Agreement from the time or respective times of the same having been paid or incurred until payment thereof (after as well as before judgment).

#### **14.4 Subsequent Interests**

If the Security Agent at any time receives notice of any subsequent mortgage, assignment, charge or other interest affecting all or any part of the Charged Portfolio, all payments made by the Chargor to the Security Agent or any of the Secured Parties after that time shall be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Obligations as at the time when the Security Agent received notice

### **15. SUSPENSE ACCOUNTS AND CURRENCY CONVERSION**

#### **15.1 Suspense Accounts**

All monies received, recovered or realised by the Security Agent under this Agreement (including the proceeds of any conversion of currency) may in the discretion of the Security Agent be credited to any interest bearing suspense or impersonal account(s) maintained with any bank, building society, financial institution or other person which the Security Agent considers appropriate (including itself) for so long as it may think fit (the interest being credited to the relevant

account) pending their application from time to time at the Security Agent's discretion, in or towards the discharge of any of the Secured Obligations and save as provided herein no party will be entitled to withdraw any amount at any time standing to the credit of any suspense or impersonal account referred to above.

#### **15.2 Currency Conversion**

For the purpose of or pending the discharge of any of the Secured Obligations the Security Agent may convert any money received, recovered or realised or subject to application by it under this Agreement from one currency to another, as the Security Agent thinks fit and any such conversion shall be effected at the Security Agent's spot rate of exchange for the time being.

### **16. CALCULATIONS AND CERTIFICATES**

#### **16.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Agreement, the entries made in the accounts maintained by the Security Agent are *prima facie* evidence of the matters to which they relate

#### **16.2 Certificates and Determinations**

Any certificate or determination by the Security Agent of a rate or amount under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **17. ASSIGNMENT**

#### **17.1 Permitted Successors**

This Agreement shall be binding upon and shall inure to the benefit of each party and its direct or subsequent legal successors, permitted transferees and assigns.

#### **17.2 Security Agent Successors**

This Agreement shall remain in effect despite any amalgamation or merger (however effected) relating to the Security Agent, and references to the Security Agent shall include any assignee or successor in title of the Security Agent and any other person who, under the laws of its jurisdiction of incorporation or domicile, has assumed the rights and obligations of the Security Agent under this Agreement or to which, under such laws, those rights and obligations have been transferred.

### **18. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

### **19. LAW**

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

## 20 ENFORCEMENT

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or the consequences of its nullity) or any non-contractual obligations arising out of or in connection with this Agreement (a "Dispute").
- (b) The parties agree that the courts of England are the most appropriate and convenient courts to settle disputes and accordingly no party will argue to the contrary.
- (c) This Clause 20 is for the benefit of the Security Agent only. As a result and notwithstanding paragraph (a) of this Clause 20, it does not prevent the Security Agent from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Security Agent may take concurrent proceedings in any number of jurisdictions.

**THIS AGREEMENT** has been signed on behalf of the Security Agent and executed as a deed by the Chargor and is delivered by it on the date specified above.

**SCHEDULE 1  
FORM OF NOTICE OF ASSIGNMENT**

[Date]

To: **HSBC Bank plc as Custodian**  
**8 Canada Square, London E14 5HQ**

From: **Abengoa Concessions Investments Limited**  
**C/ Energía Solar**  
**1 Palmas Altas, 41014 Seville, Spain**

Dear Sirs

**Custody Account number [REDACTED] (the "Custody Account") opened in the name of Abengoa Concessions Investments Limited pursuant to an agreement dated 23 December 2015 between Abengoa Concessions Investments Limited and the Custodian (the "Custody Agreement")**

We hereby notify you that, in accordance with a custody account security agreement dated [●] 2016 (the "Custody Account Security Agreement"), we have (a) assigned to AgenSynd, S.L. as security agent (the "Security Agent") all rights relating to the Custody Account which we may have now or in the future against you, any sub-custodian or any third party including, without limitation, our rights against you under the Custody Agreement, any right to delivery of any part of the Shares and the Related Assets (each as defined below) which arises in connection with any part of the Shares and Related Assets being held by you and any interest acquired while any part of the Shares or Related Assets is held by you (the "Rights against the Custodian"), and (b) charged all the shares from time to time standing to the credit of the Custody Account or otherwise delivered to you in connection with the Custody Agreement (the "Shares") and all dividends, interest and other monies payable at any time in respect of the Shares and all other rights, benefits and proceeds in respect of or derived from the Shares (whether by way of redemption, bonus, preference, exchange, option, substitution, conversion, compensation or otherwise) and any other rights, assets or benefit constituted by a credit standing from time to time to the Custody Account held by, to the order or on behalf of us (whether through you or otherwise) at any time (the "Related Assets", together with the Custody Account, the Shares and the Rights against the Custodian, the "Charged Portfolio") in favour of the Security Agent, in each case as security for the discharge of all our obligations owing to the Security Agent under the Finance Documents (as defined in the Custody Account Security Agreement).

We also refer to the letter dated 24 December 2015 from us to you relating to a custody account security agreement dated 24 December 2015 and the Custody Account ("Senior Security Notice") This letter is subject to the Senior Security Notice until the date of receipt of a "Notice of Discharge" under and as defined in the Senior Security Notice ("Senior Discharge Notice").

Accordingly, we hereby irrevocably instruct and authorise you that:

- (a) Until the date of receipt of a Senior Discharge Notice, you shall act in accordance with the instructions as set out in the Senior Security Notice. On and after the date of receipt of the Senior Discharge Notice, the Security Agent shall be the sole signatory in relation to the Custody Account. Any existing instructions affecting the Custody Account to which we are entitled are to be terminated and all payments and communications in respect of the Custody Account shall be made, or sent, to us and the Security Agent or as the Security Agent shall direct in accordance with the terms of this notice. Following the date of receipt of the Senior Discharge Notice, you will however continue to receive sole instructions from us in the case of voting rights in relation to the Shares until such time as the Security Agent has notified you that an Acceleration Event (as defined in the Custody Account Security Agreement) has occurred.
- (b) The Charged Portfolio will be held by you as custodian subject to the terms of this notice and the Custody Agreement.
- (c) On or after the date of receipt of the Senior Discharge Notice, you will not permit any assets to be withdrawn or transferred from, or delivered out of, the Custody Account without the Security Agent's prior written consent.
- (d) We hereby instruct you to place the Shares into a segregated account and pooling shall be prohibited. You confirm that the Shares will remain held in such segregated account irrespective of any sub-custodian arrangements that may exist in respect of the Shares. This confirmation applies only to the extent that the Shares are capable of being held through DTC.
- (e) Prior to receipt by you from the Security Agent of a written notice stating that the Charged Portfolio and the Custody Account have been released or discharged from the Security granted by us pursuant to the Custody Account Security Agreement in the form set out in Schedule 2 (a "Notice of Discharge"), you will not, without the prior written consent of the Security Agent, exercise any right of combination, consolidation, lien, set-off or similar rights over the the Charged Portfolio and the Custody Account except with respect to returned or charged back items or the Custodian's charge, fees and expenses with respect to the Custody Account or any request of the Security Agent, or (other than pursuant to the Senior Security Notice and the "Custody Account Security Agreement" under and as defined in the Senior Security Notice) grant any rights to third parties in respect of the Custody Account or the Charged Portfolio, or, subject to Clause 23.3 of the Custody Agreement, amend or vary any rights attaching to the Custody Account or provide to us any credit facility or other form of financial accommodation (including, without limitation, contractual settlement of securities transactions) in connection with the Custody Agreement.
- (f) You will note on the Custody Account (and all applicable books and records relating thereto) that the Custody Account is subject to the security interest granted in favour of the Security Agent and constituted by the Custody Account Security Agreement.
- (g) To the extent that we have any obligations under the Custody Agreement, we will remain liable for such obligations at all times.



- (h) On and after the date of receipt of the Senior Discharge Notice, notwithstanding any terms of the Custody Agreement, no transfers or assignments by the Custodian to an affiliate of the Custodian or any other person without the consent of the Security Agent shall be permitted unless such affiliate of the Custodian or person is of equal or greater creditworthiness, is authorised and regulated in the provision of the services by the FCA or any successor, is incorporated in England and Wales and you provide not less than 20 Business Days' Notice in accordance with Clause 24 of the Custody Agreement.
- (i) The definition of 'Security Document' in the Custody Agreement shall be amended to include the Custody Account Security Agreement
- (j) In the event of any inconsistency between this Notice and the Custody Agreement, and (prior to the date of receipt of the Senior Discharge Notice) subject only to the Senior Security Notice, the terms of this Notice shall prevail and the Custody Agreement is hereby amended to include this clause

We acknowledge that you may rely on this letter without any further permission from us.

The Security Agent hereby confirms that it has received a copy of the Custody Agreement and the letter relating thereto dated on or about the date of the Custody Agreement and acknowledges the terms and conditions set out therein

Please execute the enclosed two copies of the acknowledgement in relation to the above and return one original to us at the address above and one original to AgenSynd, S.L. at Velázquez, 78 – 4º Derecha, 28001, Madrid, Spain (+34 91 769 72 10) with copies via fax (+34 91 769 72 30) and email address ([agencias1@agensynd.com](mailto:agencias1@agensynd.com)) marked for the attention of Fernando García Molina.

This notice shall be governed by English law.

Yours faithfully

.....  
**ABENGOA CONCESSIONS INVESTMENTS LIMITED**

Acknowledged and agreed

Security Agent

.. .. .  
For and on behalf of

AgenSynd, S.L.

*[on letterhead of Custodian]*

To: **Abengoa Concessions Investments Limited** (the "Chargor" or "you")

Copy to: **AgenSynd, S.L.** (the "Security Agent")

*[date]*

**Notice of charge and assignment dated [•] 2016 (the "Notice") in relation to account number [REDACTED] opened in the name of Abengoa Concessions Investments Limited (the "Custody Account")**

At the request of the Security Agent and the Chargor, we hereby acknowledge receipt of the Notice and agree to the terms of the Notice.

We further hereby confirm that

- (a) The following securities are credited to the Custody Account in the name of Abengoa Concessions Investments Limited

Account Number [REDACTED]

Account Name **Abengoa Concessions Investments Limited** pledged to AgenSynd, S.L. as security trustee for lenders in connection with the December Loan.

ISIN **GB00BLP5YB54**

No of Shares **11,203,719**

Currency **USD**

- (b) At the date of this acknowledgement, there are no outstanding amounts due from the Chargor to us as Custodian in relation to the Custody Account and, to the best of our knowledge and other than as contemplated by the Senior Security Notice, there are no restrictions on the transfer of securities or assets held in the Custody Account or on the assignment of that account
- (c) We have not received notice of any previous assignments of, charges over or trusts in respect of the Custody Account other than the Senior Security Notice, and, prior to receipt from the Security Agent of a Notice of Discharge, we shall not, without the prior written consent of the Security Agent, exercise any right of combination, consolidation, lien, set-off or similar rights over the Charged Portfolio and the Custody Account, except with respect to returned or charged back items or the Custodian's charge, fees and expenses with respect to the Custody Account or any request of the Security Agent, or (other than pursuant to the Senior Security Notice and the "Custody Account Security Agreement" under and as defined in the Senior Security Notice) grant any rights to third parties in respect of the Custody Account or the Charged Portfolio, or subject to Clause 23.3 of the Custody Agreement, amend or vary any rights attaching to the Custody Account, or provide to the Chargor any credit facility or other form of financial accommodation (including, without limitation,

contractual settlement of securities transactions) in connection with the Custody Account

- (d) Subject to the terms of the Senior Security Notice, we will not permit any assets to be withdrawn or transferred from, or delivered out of, the Custody Account without the Security Agent's prior written consent.
- (e) We hereby confirm that the Shares will be placed into a segregated account and pooling shall not be permitted in respect of this Custody Account. We confirm that the Shares will remain held in such segregated account irrespective of any sub-custodian arrangements that may exist in respect of the Shares. This confirmation applies only to the extent that the Shares are capable of being held through DTC.
- (f) We confirm that, on and after the date of receipt of the Senior Discharge Notice, we will act solely in accordance with the instructions provided by the Security Agent in connection with the Custody Account and, with respect to the voting rights in relation to the Shares, the Chargor's instructions until we receive notice of an Acceleration Event (as defined in the Custody Account Security Agreement) from the Security Agent. Following the date of receipt of the Senior Discharge Notice, and with effect from the date of notification of an Acceleration Event referred to in the preceding sentence to us from the Security Agent, we shall cease to act in accordance with voting instructions from the Chargor in the case of voting rights in relation to the Custody Account and shall act solely in accordance with the voting instructions of the Security Agent.
- (g) The Charged Portfolio will be held by us as custodian subject to the terms of the Notice and the Custody Agreement.
- (h) We confirm that we have noted on the Custody Account (and all applicable books and records relating thereto) that the Custody Account is subject to the security interest granted in favour of the Security Agent and constituted by the Custody Account Security Agreement.
- (i) To the extent that you have any obligations under the Custody Agreement, you will remain liable for such obligations at all times.
- (j) We confirm that, on and after the date of receipt of the Senior Discharge Notice, we will not transfer or assign the benefit and the burden of the Custody Agreement to an affiliate or any other person without the consent of the Security Agent unless such affiliate or person is of equal or greater creditworthiness, is authorised and regulated in the provision of the services by the FCA or any successor, is incorporated in England and Wales and we provide not less than 20 Business Days' Notice of such assignment in accordance with Clause 24 of the Custody Agreement.
- (k) The definition of 'Security Document' in the Custody Agreement shall be amended to include the Custody Account Security Agreement.
- (l) In the event of any inconsistency between the Notice and the Custody Agreement, and (prior to the date of receipt of the Senior Discharge Notice) subject only to the Senior Security Notice, the terms of the Notice shall prevail and the Custody Agreement is hereby amended to include this clause.

You agree and acknowledge that.

- 1 You agree that we may rely on any notice, instruction, direction, communication or other document or information believed by us to be genuine and correct which has been signed or communicated by the person by whom it purports to be signed and communicated and we shall not be liable for the consequences such as we have no obligation whatsoever to verify the facts or matters stated therein as true and correct, including whether the terms of any agreement between the Chargor and the Security Agent has been complied with or the making of any enquiry as to whether a security interest has become enforceable.
- 2 You acknowledge that we shall not be obliged to comply with any instructions received if due to circumstances which are not within our direct control, we are unable to comply with such instructions or to comply with those instructions which should breach a Court Order or be contrary to applicable law or regulation

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

By. ....

for and on behalf of  
**HSBC Bank plc** as Custodian

**Schedule 1**

**Form of Notice of Discharge or Release**

[DATE]

To: **HSBC Bank plc**

Copied to: **Abengoa Concessions Investments Limited**

Dear Sirs

**Re: Notice of Discharge in respect of Custody Account No.: [REDACTED] (the "Account")**

Pursuant to the provisions of a letter dated [•] 2016 from Abengoa Concessions Investments Limited (the "Client") to you (the "Letter"), we hereby give you notice that the security granted pursuant to the Custody Account Security Agreement has been discharged. This Notice of Discharge takes effect immediately.

You are hereby instructed that following receipt of this Notice of Discharge, you are entitled to act on instructions given solely by the Client in accordance with the Custody Agreement

Yours faithfully

For and on behalf of

[•]

## **SCHEDULE 2 REPRESENTATIONS AND WARRANTIES**

**(1) Status**

It is duly incorporated (or, as the case may be, organised) and validly established under the laws of its jurisdiction of incorporation (or, as the case may be, organised)

**(2) Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions contemplated by this Agreement

**(3) Binding obligation**

The obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law) or the time barring of claims under applicable law.

**(4) Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, this Agreement do not conflict with:

- (a) any law or regulation applicable to it in any material respect,
- (b) its constitutional documents; or
- (c) any agreement or instrument binding upon it or its subsidiaries or affiliates or any of such person's assets

**(5) No restrictions**

Other than pursuant to the Senior Security Documents and Security Trust Agreement, there are no restrictions on the Chargor's ability to assign the Rights against the Custodian, whether contained in the Custody Agreement or in any other document.

**(6) Custody Agreement**

The Custody Agreement is in full force and effect, enforceable in accordance with its terms and the Chargor is not in breach of any term or condition of the Custody Agreement

**(7) Transaction Security**

- (a) Each Security Document validly creates the Security which is expressed to be created by that Security Document and evidences the Security it is expressed to evidence.

- (b) Subject to the Senior Security Documents and the Security Trust Deed, all Shares that are subject to or are expressed to be subject to the Transaction Security are freely transferable, fully paid and not subject to any overriding trust, option to purchase, pre-emption or similar rights.

**(8) Charged Property**

The Chargor is, subject only to the Security created or expressed to be created pursuant to the Security Documents and the "Security Documents" under and as defined in the Security Trust Agreement,

- (a) the sole beneficial owner (legal title to uncertificated shares being held by the Custodian pursuant to the Custody Agreement) of the Charged Portfolio; and
- (b) the sole absolute legal and beneficial owner of any other Charged Property

in each case free from any other Security (subject to any Security arising by operation of law) or similar impediment (including any right of set-off) or judicial order (arrest) or trust or third party claims.

**(9) Lock-up Period**

All contractual lock-up periods to which the Chargor is subject in connection with the listing of the Company's ordinary shares on the Reference Exchange have expired.

**(10) Shares**

- (a) The Shares.
  - (i) are duly vested in the Chargor as sole beneficial owner (legal title being held by Cede & Co. as nominee of The Depository Trust Company) and are not subject to any risk that any transfer of such Shares from the Chargor will or may be avoided or restored on insolvency, liquidation, administration or otherwise,
  - (ii) are fully paid and not subject to any option to purchase, trust or similar rights;
  - (iii) are capable of being settled by book entry in the records of the Custodian without the need for any document of transfer of any kind or any notification to any person (other than the Custodian);
  - (iv) are not "restricted securities" within the meaning of Rule 144 under the U.S. Securities Act of 1933; and
  - (v) are free and clear of any Security, liens, claims, charges or encumbrances or judicial order (arrest) or trust or third party claims other than pursuant to the Finance Documents, the Senior Security Documents or arising by operation of law
- (b) Neither the creation nor the enforcement of Transaction Security over any Shares would (and could not reasonably be expected to).



- (i) constitute a breach by the Chargor of any shareholders' (or similar) agreement,
  - (ii) cause any person to be in breach of its obligations under any rules or regulations applicable in any relevant jurisdiction;
  - (iii) oblige any person to make a mandatory offer for any Shares;
  - (iv) inhibit the Company from exercising control over any of its Subsidiaries, or
  - (v) otherwise have a material adverse effect on the business, operations, property or condition (financial or otherwise) of the Company.
- (c) The creation of the Transaction Security over any Shares would not (and could not reasonably be expected to) trigger any right of any person to request that any financial indebtedness of the Chargor or the Company be prepaid or declare financial indebtedness of the Chargor or the Company due and payable prior to its specified maturity

### **SCHEDULE 3 RIGHTS OF THE SECURITY AGENT**

The Security Agent shall have the right, either in its own name or in the name of the Chargor or otherwise and in such manner and upon such terms and conditions as the Secured Party thinks fit, and either alone or jointly with any other person, after this Agreement becomes enforceable in accordance with Clause 9 (*Security Enforcement*) and subject to the terms of the Security Trust Agreement

**(a) Take possession**

to take possession of, get in and collect the Charged Portfolio, and to require payment to it of all Related Assets,

**(b) Deal with Charged Portfolio**

to sell, transfer, assign, exchange or otherwise dispose of or realise the Charged Portfolio (each a "Disposal") to any person either by public offer or auction, tender, private contract or placement and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred) and whether in one lot or any number and size of smaller lots and whether at the same time or over a period of time;

**(c) Act as broker, agent, dealer or otherwise**

to act, or to appoint any person (including any affiliate or related person) to act on its behalf, as broker, agent, dealer or otherwise to assist with or implement any Disposal of the Charged Portfolio, and to transfer the Charged Portfolio into the name of any such person in order to facilitate such Disposal,

**(d) Borrow money**

to borrow or raise money on the security of the Charged Portfolio (either in priority to the security created by the Agreement or otherwise);

**(e) Rights of ownership**

to exercise and do (or permit the Chargor or any nominee of it to exercise and do) all such rights and things as the Secured Party would be capable of exercising or doing if it were the absolute beneficial owner of the Charged Portfolio;

**(f) Claims**

to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person relating to the Charged Portfolio,

**(g) Legal actions**

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Portfolio;

**(h) Redemption of Security**

to redeem any Security (whether or not having priority to the Security pursuant to the terms of this Agreement) over the Charged Portfolio and to settle the accounts of any person with an interest in the Charged Portfolio,

(i) **Other powers**

to do anything else it may think fit for the realisation of the Charged Portfolio or incidental to the exercise of any of the rights conferred on the Security Agent under or by virtue of any Finance Document to which the Chargor is party, the Law of Property Act 1925 or the Insolvency Act 1986;

(j) **Appointment of receivers**

to appoint one or more persons to be a Receiver and to remove any Receiver and appoint any person instead of any Receiver, and

(k) **Instructions to the Custodian**

to give instructions to the Custodian in respect of the Charged Portfolio in respect of or to exercise any of the rights described above

EXECUTION PAGE  
CUSTODY ACCOUNT SECURITY AGREEMENT

Chargor

EXECUTED as a DEED by )  
ABENGOA CONCESSIONS )  
INVESTMENTS LIMITED

Signature

[Redacted Signature]

Name JOAQUIN FERNANDEZ DE ARDOLA

Title DIRECTOR

in the presence of

[Redacted Signature]

Signature of witness

TERREDES, ADRIANO

Name of witness

[Redacted Address]

Address of witness

[Redacted Address]

**Security Agent**

For and on behalf of  
**AGENSynd, S.L.**



Name: **MANUEL RODRIGUEZ**

Title: **DIRECTOR**

# CUSTOMER DELIVERY DIRECTORATE – BAND D'S AND ABOVE MONTHLY MEETING

**Date:** 3 00pm Tuesday 17<sup>th</sup> May 2016

**Venue:** Oak Meeting Room

**Attendees:** Nick Riddle (Chair), Meryl Jones, Jackie Haralambos, Simon Powell, Lynda Brown, Louise Hunter, Fiona Milligan, James Baillie, Linda Day, Mark Threadgold, Kim Williams, Mark Sly, Andrew Vanstone, James Frowen, Leeann Crumb, Lauren Cooksey, Steve Lihou, Steve Knight, Daniel Cooper, Kevin Hughes, Diane Beer (Actions)

**Apologies:** Steve Roberts, Nigel Williams, Mel Griffiths, Jane Abbott, Sara Williams, Mark Buckley, Suzanne Hinchey, Sarah Bell, Nick Parker

Action No.				
<b>Meeting held 15<sup>th</sup> March</b>				
124	Special Band D Meeting to be arranged – to look at improving attendance, Catrin Fleet to be invited.	Diane Beer	19 <sup>th</sup> April	19 <sup>th</sup> April - carry forward – to be held as soon as possible. closed
<b>Meeting held 21<sup>st</sup> April</b>				
125	Mark Threadgold to canvas the group – to get the best from the Band D meetings.	Mark Threadgold	17 <sup>th</sup> May	17 <sup>th</sup> May – Band D workshop held on 17 <sup>th</sup> May to look at this.
126	Ian Smith – faxes Action: Apart from Belfast and Finance, all to let Ian know their fax number, volumes and whether they need to retain this. This should be done by 30 <sup>th</sup> April	All (Apart from Belfast and Edinburgh)	30 <sup>th</sup> April	
<b>Meeting held 17<sup>th</sup> May</b>				
127	Main Panel Scorecard Action: Diane to request this Scorecard from Meinir Morgan ; this to be looked at by next Band D Meeting	Diane/ Ian Gronland/ Scorecard Review group		

**Action No.**

**Welcome**

Nick - Welcomed the group

**Band D Workshop held during this meeting.**

The Workshop was held to look at making better use of the time spent at Band D meetings and to have a different agenda for the meeting rather than the predicted monthly agenda

The Agenda - could include anything you would like to discuss or raise

The group were asked to consider - "What is the role/ purpose of this group"?

The following points were listed from this workshop, from the above question -

- Managing & Leading
- Delivery Of Services - Targets, Planning, Delivery
- Strategy – Vision, Link, Direction
- Networking - Sharing ideas, Best Practice
- Responsibility
- Support – Teams, Team Leaders, Each other, Act as Leadership Group
- Escalation – Issues, Internal, External
- Decision Making
- Communicate
- Deliver Companies House Services– getting things done
- Engage People
- Managing & Leading
- Link to Corporate Strategy
- Manage Change and Vision
- Share ideas & Best Practice
- Networking – share experience
- Responsible for success
- Set Strategic Direction
- Operational planning
- Agree approach
- Grow/ Develop/Support/Each Other
- Make Decisions
- Act as a joined up Leadership Group
- Assessing Quality

**Action No.**

**Proposal for the Band D Meetings**

Monthly Band D Meetings - ½ hour

Quarterly - 2 hour meeting – prepared- topic, issues, best practice, ideas, consistent approach, documented

**Other discussion –**

**Nick** – Scorecard has improved – action on Scorecard Group, by next Band D meeting to look at Panel Scorecard

Feed back - if we didn't use CDD Scorecard and used Main Panel Scorecard would we see a difference?

Agenda item - Where are we with SBEEA - An agenda item for the next Band D Meeting scheduled for the 16<sup>th</sup> June

PDR'S – currently – 468 PDR'S on system, 433 are showing as not complete

Yammer – lots of discussion concerning this

VIBE - there is a need to advise staff what is expected before this is launched

**Date of next meeting is 16<sup>th</sup> June in the Oak Meeting Room 11.00am until 12.00**