



Registration of a Charge

Company name: **Abengoa Concessions Investments Limited**

Company number: **08818214**

Received for Electronic Filing: **05/10/2016**



X5GYYSSQ

Details of Charge

Date of creation: **20/09/2016**

Charge code: **0881 8214 0014**

Persons entitled: **GLAS TRUST CORPORATION LIMITED AS SECURITY AGENT (AS SECURITY TRUSTEE FOR THE SECURED PARTIES)**

Brief description: **N/A**

Contains fixed charge(s).

Contains floating charge(s) .

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **CLIFFORD CHANCE LLP**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 8818214

Charge code: 0881 8214 0014

The Registrar of Companies for England and Wales hereby certifies that a charge dated 20th September 2016 and created by Abengoa Concessions Investments Limited was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 5th October 2016 .

Given at Companies House, Cardiff on 6th October 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

Execution Version

DATED 20 September 2016

ABENGOA CONCESSIONS INVESTMENTS LIMITED

AS THE CHARGOR

IN FAVOUR OF

GLAS TRUST CORPORATION LIMITED

AS THE SECURITY AGENT

CUSTODY ACCOUNT SECURITY AGREEMENT

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THIS AGREEMENT is made by way of deed on 20 September 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 borrower under the Facility Agreement); and
- (2) **GLAS TRUST CORPORATION LIMITED**, as security trustee for the Secured Parties (the "**Security Agent**").

RECITALS:

- (A) Further to a Facility Agreement (as defined below) the Lenders (as defined in the Facility Agreement) have agreed to make a facility (the "**Facility**") available to Abengoa Concessions Investments Limited in its capacity as Borrower.
- (B) The Chargor holds the Custody Account (as defined below) and a linked Cash Account with the Custodian pursuant to the terms of the Custody Agreement (as defined in the Facility Agreement). The Chargor has agreed to enter into this Agreement to create Transaction Security (as defined in the Facility Agreement) over the Custody Account and the Cash Account.
- (C) It is a condition precedent to the Facility being made available that the Chargor enters into this Agreement.
- (D) It is intended by the parties to this Agreement that this document will take effect as a deed despite the fact that the Security Agent may only execute this Agreement under hand.
- (E) The Security Agent holds the benefit of the rights conferred upon it in this Agreement on trust and as trustee for the Secured Parties (as defined in the Facility Agreement).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"Acceleration Event" means: (i) the Agent exercising any of its rights under clause 23.22 (*Acceleration*) of the Facility Agreement or (ii) all amounts owed by the Chargor under the Finance Documents becoming immediately due and payable in accordance with clause 23.23 (*Automatic acceleration*) of the Facility Agreement.

"Administration Event" means:

- (a) the presentation of an application to the court for the making of an administration order in relation to the Chargor; or

- (b) the giving of written notice by any person (who is entitled to do so) of its intention to appoint an administrator of the Chargor or the filing of such a notice with the court.

"Appropriation Closing Price" means the closing price quoted on the Reference Exchange (using, if at any time Shares are trading ex dividend, the ex dividend price) of Shares of the same class as the applicable Reference Shares on the date upon which the Appropriation Notice is delivered to the Chargor as displayed on the relevant Bloomberg or Reuters page (or such other source of information as the Calculation Agent may determine (acting reasonably)). If any such closing price is not available for any reason, as determined by the Calculation Agent, the Appropriation Closing Price shall be deemed to be the last available closing price in respect of such Shares.

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

"Cash Account" means the cash account which is held in the name of the Chargor with the Custodian pursuant to the terms of the Custody Agreement, with account number 76830443, as the same may be redesignated, substituted or replaced from time to time.

"Charged Assets" means all of the assets of the Chargor which from time to time are subject to any Security created or expressed to be created in favour of the Security Agent by or pursuant to this Agreement.

"Charged Portfolio" means the Reference Shares and the Related Assets in respect of the Reference 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.

"Completion" has the meaning given to it in the Escrow Agreement.

"Custodian" means HSBC Bank plc.

"Custody Account" means the segregated securities deposit account held in the name of the Borrower with the Custodian pursuant to the Custody Agreement, with account number 927723, including any present and future related sub-deposits in relation to the Reference Shares as the same may be redesignated, substituted or replaced from time to time.

"DTC" means The Depository Trust Company.

"DTC Requirements" means all requirements of DTC applicable to an issuer, limited user, user or participant including, without limitation, all the obligations, conditions and operating procedures applicable to that issuer, limited user, user or participant under or by virtue of: (i) the relevant agreement entered into by that issuer, limited user, user or participant with DTC; (ii) the rules and regulations of DTC, and (iii) any directions in force given by or for DTC in accordance with the DTC's applicable rules and regulations.

"Escrow Agreement" means the escrow agreement entered into on or about the date hereof, between Global Loan Agency Services Limited as escrow agent, Global Loan Agency Services Limited as Agent, Talos Capital Designated Activity Company (formerly Talos Capital Limited) and the Chargor.

"Facility Agreement" means the secured term facility agreement dated on or about the date of this Agreement and made between, *inter alios*, Abengoa Concessions Investments Limited as borrower and the Security Agent.

"Notice of Assignment and Charge" means a notice of assignment and charge substantially in the form of Schedule 1 (*Form of letter to Custodian*).

"Reference Shares" means at any time, the Shares that at such time are standing to the credit of the Custody Account (being, on the same date as Completion, 16,000,000).

"Related Assets" means all dividends, interest, sale proceeds and other monies payable at any time in respect of the Reference Shares or the Cash Account and all other rights, benefits and proceeds in respect of or derived from the Reference Shares or the Cash Account (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 Reference Shares and the Related Assets which arises in connection with any part of the Reference Shares and the Related Assets being held by the Custodian and any interest acquired while any part of the Reference Shares and the Related Assets is held by the Custodian.

"Secured Obligations" means all obligations at any time due, owing or incurred by the Chargor 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).

1.2 Terms defined in Facility Agreement

Unless defined in this Agreement or the context otherwise requires, a term defined in the Facility Agreement has the same meaning in this Agreement or any notice given under or in connection with this Agreement.

1.3 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.

1.4 Construction

- (a) The provisions of clause 1.2 (*Construction*) and clause 1.3 (*Currency symbols and definitions*) of the Facility Agreement shall apply to this Agreement as though they were set out in full, except references to "this Agreement" or a "Finance Document" will be construed as references to this Agreement and references to the "Borrower" as references to the Chargor.
- (b) Clause headings are for ease of reference only.

1.5 Present and future assets

- (a) A reference in this Agreement to any Charged Asset or other asset includes, unless the contrary intention appears, present and future Charged Assets and other assets.
- (b) The absence of or incomplete details of any Charged Assets shall not affect the validity or enforceability of any Security under this Agreement.

1.6 Security Agent

In acting hereunder, the Security Agent does so in accordance with its terms of appointment under the Facility Agreement and is entitled to the protections set out therein. In the event of any conflict or inconsistency between the terms of this Agreement and the Facility Agreement with regard to the rights, powers, discretions and/or obligations of the Security Agent, the terms of the Facility Agreement shall prevail.

1.7 Separate Security

Clause 2.2 (*Charge*) and Clause 2.3 (*Assignment*) shall be construed as creating a separate and distinct fixed charge or assignment over each relevant asset within any particular class of assets defined in this Agreement and the failure to create an effective fixed charge or assignment (whether arising out of this Agreement or any act or omission by any party) over one asset shall not affect the nature or validity of the charge or assignment imposed on any other asset whether within that same class of assets or not.

1.8 Further advances

Subject to the terms of the Facility Agreement the Lenders are under an obligation to make further advances to the Chargor and that obligation shall be deemed to be incorporated into this Agreement as if set out in this Agreement.

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

- (a) The Chargor charges all of its right, title and interest from time to time in and to the Charged Portfolio with full title guarantee and by way of first fixed equitable charge, in favour of the Security Agent, as continuing security for the payment and discharge of the Secured Obligations.
- (b) The Chargor charges (to the extent not validly and effectively assigned pursuant to Clause 2.3 (*Assignment*)) in favour of the Security Agent, with full title guarantee and by way of first fixed charge, all of its rights, claims, title and interest from time to time in and to the Cash Account and the Custody Account and all proceeds in respect thereof as continuing Security for the payment and discharge of the Secured Obligations.

2.3 Assignment

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:

- (a) the Custody Account and the Rights against the Custodian and all present and future claims, causes of action, payments and proceeds in respect thereof; and
- (b) the Cash Account, the proceeds in respect thereof and the Related Assets in respect of the Cash Account,

in each case as continuing security for the payment and discharge of all the Secured Obligations.

2.4 Security Agent Assumes no obligations

The Security Agent shall not be under any obligation in relation to the Custody Account as a consequence of this Agreement 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.

2.5 Floating security interest

The Security Agent and the Chargor acknowledge that the Chargor has granted fixed charges pursuant to Clause 2.2 (*Charge*) and assignments pursuant to Clause 2.3 (*Assignment*). Notwithstanding this, at any time during the Security Period, the Security Agent may permit any such assignment and/or charge to take effect as a floating security interest, at which time, the Security Agent will notify the Chargor accordingly and the provisions in Clause 2.6 (*Crystallisation: by notice*) and Clause 2.7 (*Crystallisation: automatic*) will apply.

2.6 Crystallisation: by notice

The Security Agent may at any time by notice in writing to the Chargor convert the floating security interest effected pursuant to Clause 2.5 (*Floating security interest*) with immediate effect into a fixed security interest if:

- (a) an Acceleration Event has occurred;

- (b) the Security Agent considers acting reasonably that any part of the Charged Assets may be in jeopardy or in danger of being seized pursuant to any form of legal process;
- (c) the Security Agent considers acting reasonably that it is desirable in order to protect the priority of the security; or
- (d) the Chargor requests the Security Agent to exercise any of its powers under this Agreement.

2.7 **Crystallisation: automatic**

Notwithstanding Clause 2.6 (*Crystallisation: by notice*) and without prejudice to any law which may have a similar effect, any security interest effected pursuant to Clause 2.5 (*Floating security interest*), will automatically be converted (without notice) with immediate effect into a fixed security interest if:

- (a) the Chargor creates or attempts to create any Security (other than any Transaction Security), over any of the Charged Assets;
- (b) any person levies or attempts to levy any distress, execution or other process against any of the Charged Assets;
- (c) an Acceleration Event occurs;
- (d) an Administration Event occurs;
- (e) a Receiver is appointed over all or any part of the Charged Assets;
- (f) a meeting is convened for the passing of a resolution for the voluntary winding-up of the Chargor;
- (g) a petition is presented for the compulsory winding-up of the Chargor;
- (h) a provisional liquidator is appointed to the Chargor; or
- (i) a resolution is passed or an order is made for the dissolution or reorganisation of the Chargor,

or any analogous procedure or step is taken in any jurisdiction.

3. **NOTICE OF ASSIGNMENT AND CHARGE**

The Chargor shall:

- (a) promptly (and in any event by the earlier to occur of one Business Day after the date of this Agreement and the date of Completion) execute and deliver to the Custodian a Notice of Assignment and Charge and ensure delivery to the Security Agent of a copy of the Notice of Assignment and Charge duly executed by or on behalf of the Chargor; and

- (b) promptly (and in any event on or before the date of Completion) procure delivery to the Security Agent of an acknowledgement duly executed and delivered by the Custodian substantially in the form set out in such Notice of Assignment and Charge and in any case in a form and substance satisfactory to the Security Agent and ensure delivery to itself of a copy of the acknowledgement duly executed by or on behalf of the Custodian.

4. CUSTODY ACCOUNT, CASH ACCOUNT, RELATED ASSETS, RESTRICTIONS, RECERTIFICATION AND RELEASE

4.1 Instructions to Custodian

The Security Agent may:

- (a) following an Event of Default:
 - (i) give an Event of Default Notice (as defined in the Notice of Assignment and Charge) to the Custodian to exercise, subject to Clause 5.1 (*Voting rights prior to Security Agent notice*), its rights as sole signatory relating to the Custody Account; and/or
 - (ii) exercise in relation to the Cash Account all such rights as the Chargor was then entitled to exercise in relation to the Cash Account or might, but for the terms of this Agreement, exercise; and
- (b) following an Acceleration Event and without prejudice to Clause 9 (*Security enforcement*) and paragraph (a) above:
 - (i) give instructions to the Custodian to transfer the Charged Portfolio 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 require to facilitate the realisation of the Charged Portfolio; and/or
 - (ii) demand and receive all and any monies due under or arising out of the Cash Account.

4.2 No revocation

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 and Charge; 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):

- (a) such Related Assets (whether in the form of stocks, shares, warrants or other assets other than cash) are credited to the Custody Account; and
- (b) such Related Assets (in the case of cash) are credited to the Cash Account.

4.4 Restrictions

The Chargor shall not be entitled to receive, withdraw, redeem or otherwise transfer:

- (a) all or any part of the Charged Portfolio except with the prior written consent of the Security Agent delivered to the Custodian; and/or
- (b) any credit balance from time to time on the Cash Account,

in each case, 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:

- (a) permit or agree to any variation of the rights attaching to the Custody Account or the Cash Account; or
- (b) close the Custody Account or the Cash Account.

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 stamped stock transfer forms or other instruments of transfer in respect of those parts of the Charged Portfolio as the Security Agent may require.

4.7 Release

Upon the expiry of the Security Period, the Security Agent shall, at the request and cost of the Chargor, take all action required to release and cancel the Security constituted by this Agreement and procure the reassignment to the Chargor of any Charged Assets assigned to the Security Agent pursuant to this Agreement, in each case subject to Clause 12.8, and without recourse to, and without any representations or warranties by, the Security Agent or any of its nominee(s).

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*), and without prejudice to any other rights and remedies of the Security Agent hereunder, the Chargor shall be entitled to exercise all voting rights in relation to the Charged Portfolio provided that the Chargor shall not exercise those rights if such exercise would adversely affect the creation, perfection, preservation or enforcement of the Security over any of the Charged Assets.

5.2 Voting rights after Security Agent notice

Subject to Clause 5.3 (*Waiver of voting rights by Security Agent*) upon the occurrence of an Acceleration Event, the Security Agent may (but without having any obligation to do so) give notice to the Chargor (with a copy to the Agent) 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 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; 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, at any time, in its absolute discretion and without any consent or authority from other Secured Parties or the Chargor, by notice to the Chargor, at any time, (which notice shall be irrevocable), 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*) and the 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. 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 provided that the Chargor shall not exercise those rights and powers if such exercise would adversely affect the creation, perfection, preservation or enforcement of the Security over any of the Charged Assets.

6. CHARGOR'S REPRESENTATIONS AND UNDERTAKINGS

6.1 Representations

The Chargor makes the following representations and warranties to the Security Agent and acknowledges that the Security Agent has become a party to this Agreement in reliance on these representations and warranties:

- (a) ***No restrictions***

There are no restrictions on the Chargor's ability to assign the Rights against the Custodian to the Security Agent pursuant to the terms of this Agreement, whether contained in the Custody Agreement or in any other document.

- (b) ***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.

6.2 Repetition

The representations set out in 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, the date of the Utilisation Request, the Utilisation Date, the first day of each Interest Period and on the date that any Collateral is provided.

6.3 Undertakings

- (a) ***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 (but shall be under no obligation to) 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 8.2 (*Default interest*) of the Facility Agreement.

(b) ***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 without the prior written or authenticated consent of the Security Agent.

(c) ***DTC Accounts***

- (i) The Chargor shall procure that the Custodian shall maintain accounts with DTC and comply with the DTC Requirements.
- (ii) The Chargor shall ensure that at all times the Reference Shares are held through the DTC.

(d) ***Actions and dealings with DTC***

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 with the DTC may take place in respect of the Charged Portfolio without the prior written or authenticated consent of the Security Agent.

(e) ***Custody Agreement***

The Chargor shall promptly comply with its obligations under the Custody Agreement and shall not vary, rescind or amend the Custody Agreement except with the prior written consent of the Security Agent.

(f) ***Recertification***

If requested in writing by the Security Agent following an Acceleration Event, the Chargor shall cause all or part of the Charged Portfolio (in so far 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.

(g) ***Negative pledge***

The Chargor shall not at any time during the Security Period create or permit to subsist any Security over, or, save for any exercise of the voting rights under Clause 5.1 (*Voting rights prior to Security Agent notice*) or Clause 5.3 (*Waiver of voting rights by Security Agent*), otherwise deal in any way with any part of the Charged Assets.

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, maintaining and/or perfecting the Security created or intended to be created in respect of the Charged Assets (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 Assets or to deliver all or any of such assets to the Security Agent or its nominee) or for the exercise of the Collateral Rights or to enable the Security created or intended to be created in respect of the Charged Assets to be realised.
- (b) For the avoidance of doubt, in the event that, as referred to in the definitions of Custody Account and Cash Account, either the Cash Account or the Custody Account are at any point redesignated, substituted or replaced, the Chargor shall, prior to transferring any cash, Reference Shares or other assets into such redesignated, substitute or replacement account, provide equivalent security in respect of such redesignated, substitute or replacement account in favour of, and in form and substance satisfactory to, the Security Agent and take all necessary steps to perfect and deliver notifications in respect of such security.
- (c) 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 Extension of implied covenant

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 7.1 (*Further assurance*) above.

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 (with full power of substitution) and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things 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 the Transaction Security and perfecting and/or releasing the Transaction Security created or intended to be created by the Agreement), including in each case prior to an Event of Default, that the Chargor has failed to perform;

- (b) giving instructions to the Custodian in relation to all or any part of the Charged Assets; 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, all Collateral Rights (including after the occurrence of an Event of Default, the exercise of any right of a legal or beneficial owner of the Cash Account).

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

On and at any time after the occurrence of:

- (a) an Acceleration Event;
- (b) an Administration Event; 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 Assets (including transferring or procuring the transfer of the Charged Assets into the name of the Security Agent or its nominees or otherwise exercise in relation to the Charged Assets 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 Assets (and any assets of the Chargor which, when got in, would be part of the credit balance on the Cash Account) (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 chargees or Receivers; 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 Charged Assets, 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 Charged Assets.

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, which powers may be exercised by the Security Agent without notice to the Chargor on or at any time after the Security created by or pursuant to this Agreement has become enforceable in accordance with this Clause 9.

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 Assets.

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 Assets or be liable for any loss upon realisation or for any neglect or default of any nature whatsoever in connection with the Charged Assets for which a mortgagee or mortgagee in possession might as such be liable.

9.5 Right of Appropriation

- (a) The provisions of the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226), as amended, (the "**Regulations**") apply to the Charged Portfolio and any credit balance on the Cash Account and the Security Agent shall have the right to appropriate all or any part of the Charged Portfolio and any credit balance on the Cash Account 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.
- (b) The parties agree that the value of any financial collateral appropriated pursuant to this Clause 9.5 shall be:

- (i) in the case of any Reference Shares, the value of the applicable Reference Shares, determined by the Security Agent by:
 - (A) applying a discount to the Appropriation Closing Price of the Reference Shares which takes account of all information which is available at or about the date of any appropriation, whether publicly or otherwise, and considered by the Security Agent to be relevant to such determination (the "**Adjusted Appropriation Closing Price**") and multiplying the Adjusted Appropriation Closing Price by the number of Reference Shares to be appropriated; or
 - (B) reference to a marketing process in respect of all or part of the Reference Shares conducted prior to or as soon as reasonably practicable (having regard to all of the circumstances, including, without limitation, the practicalities of marketing the Reference Shares arising from relevant securities law and regulation) following the date of appropriation by an independent internationally recognised investment bank appointed by or on behalf of the Security Agent or the Lenders; or
 - (C) reference to an independent valuation in respect of the Reference Shares prepared on the instructions of the Security Agent by an independent investment bank, accountancy firm, or other professional services firm which is regularly engaged in the valuation of financial assets; or
 - (D) reference to a combination of some or all of the methods described at (A) to (C) above, or any other method chosen by the Security Agent (acting in accordance with the terms of the Facility Agreement); and
- (ii) in the case of any credit balance standing to the credit of the Cash Account, the amount of such credit balance, together with any accrued but unposted interest that is paid in relation to that credit balance, at the time the right of appropriation is exercised.
- (c) The Chargor and the Security Agent shall account for any difference between the value of the Secured Obligations and the value of the Reference Shares determined in accordance with this Clause 9.5 (*Right of Appropriation*) following appropriation in accordance with regulation 18 (*Duty to value collateral and account for any difference in value on appropriation*) of the Regulations.
- (d) 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.

- (e) The Security Agent's determination of the value of any financial collateral appropriated in accordance with the terms of this Clause 9.5 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 (as extended by this Agreement) and such powers shall remain exercisable from time to time by the Security Agent in respect of any Charged Asset. 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.

9.7 Effect of moratorium

The Security Agent shall not be entitled to exercise its rights under Clause 9.1 (*Time for enforcement*) or Clause 2.6 (*Crystallisation: by notice*) where the right arises as a result of an Event of Default occurring solely due to any person obtaining, or taking steps to obtain, a moratorium pursuant to Schedule A1 of the Insolvency Act 1986.

9.8 Set-off

After the Security created by or pursuant to this Agreement has become enforceable in accordance with Clause 9.1 (*Time for Enforcement*), the Security Agent may (but the Security Agent shall not be obliged to exercise such right), set off against the Secured Obligations any amount or other obligation (contingent or otherwise) owing by the Security Agent to the Chargor and apply any credit balance to which the Chargor is entitled on any account with the Security Agent in accordance with Clause 11 (*Application of proceeds*) (notwithstanding any specified maturity of any deposit standing to the credit of any such account).

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 Assets;
- (b) appoint one or more Receivers of separate parts of the Charged Assets 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 Assets.

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 Assets (and any assets of the Chargor which, when got in, would be Charged Assets) in respect of which it 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; and
- (d) 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 Assets); or

- (iii) bringing to its hands any assets of the Chargor forming part of, or which when got in would be, Charged Assets.

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 Assets 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

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.

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, subject to the terms and conditions of the Facility Agreement, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

10.8 Delegation

Each of the Security Agent and any Receiver (at the cost of the Chargor) shall have full 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 the subsequent exercise, any subsequent delegation or any revocation of such power, authority or discretion by the Security Agent or the Receiver itself.

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 by the Security Agent (notwithstanding any purported appropriation by the Chargor) in accordance with the terms of the Facility Agreement.

12. EFFECTIVENESS OF COLLATERAL

12.1 Cumulative rights

The Security constituted by 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 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 Assets 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/or the Facility Agreement/or any Finance Document. No election to affirm this Agreement on the part of the Security Agent shall be effective unless it is in writing. 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 such 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 Assets or the taking possession or realisation of all or any part of the Charged Assets, 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*) or Clause 2.3 (*Assignment*).
- (b) It shall be implied in respect of Clause 2.2 (*Charge*) and Clause 2.3 (*Assignment*) that, subject to operation of law, the Chargor is charging the Charged Assets free from all charges and encumbrances (whether monetary or not) save for the rights of the Custodian in respect of its charges, fees and expenses as specified in paragraph (f) of the Notice of Assignment and Charge and paragraph (c) of the acknowledgement thereto, from all other rights exercisable by third parties (including liabilities imposed and rights conferred by or under any enactment).

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 for the Secured Obligations until released or discharged by the Security Agent in writing.
- (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 it may have of first requiring any Secured Party 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 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*), the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Agreement 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.

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 other Secured Parties, to the extent necessary to enable all amounts which may be or become payable to the Security Agent and the other 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 it 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 other Secured Parties under or in connection with the Finance Documents to be repaid in full on trust for the Security Agent and the other 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 any member of the Group;
- (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 Finance Document or any other document or Security or of the Secured Obligations; 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 that 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 it 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.

12.14 Deferral of rights

Until the end of the Security Period, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under this Agreement:

- (a) to be indemnified by any other person;
- (b) to claim any contribution from any guarantor or other person in respect of any other 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 rights of any Secured Party under the Finance Documents or of any other guarantee or Security taken pursuant to, or in connection with, the Finance Documents by 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.

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

13. OTHER SECURITY INTERESTS

13.1 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.

13.2 Accounts

The Security Agent may settle and agree the accounts of the prior Security referred to in Clause 13.1 (*Redemption or transfer*) above and any accounts so settled and agreed will be conclusive and binding on the Chargor.

13.3 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).

13.4 Subsequent Interests

If the Security Agent (acting in its capacity as trustee or otherwise) or any of the other Secured Parties at any time receives or is deemed to have received notice of any subsequent Security, assignment, charge or other interest affecting all or any part of the Charged Assets which is prohibited by the terms of the Finance Documents, 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.

14. ASSIGNMENT

14.1 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.

14.2 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:

- (a) any assignee or successor in title of the Security Agent;
- (b) any entity into which the Security Agent is merged or converted or into which it may be consolidated;

- (c) any legal entity resulting from any merger, conversion or consolidation to which the Security Agent is a party; and
- (d) 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,

(such person described in paragraphs (a) to (d) above being a successor to the Security Agent for all purposes under the Finance Documents).

14.3 No assignments or transfers by the Chargor

The Chargor may not assign any of its rights or transfer any of its rights or obligations under this Agreement.

15. NOTICES

Any communication to be made under or in connection with this Agreement shall be made in accordance with clause 34 (*Notices*) of the Facility Agreement.

16. 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.

17. LAW

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

18. 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 18 is for the benefit of the Security Agent only. As a result and notwithstanding paragraph (a) of this Clause 18, 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 LETTER TO CUSTODIAN

[Date]

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

And to: **GLAS Trust Corporation Limited** (the "**Security Agent**")

From: **Abengoa Concessions Investments Limited**
St Martin's House, 1 Lyric Square, London, England, W6 0NB

Dear Sirs

Custody account number 927723 (the "Custody Account") and related cash account number 76830443 (the "Cash Account"), in the name of Abengoa Concessions Investments Limited secured in favour of GLAS Trust Corporation Limited as security trustee on behalf of the Secured Parties pursuant to an agreement dated [•] September 2016 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 or charged by way of first fixed charge to GLAS Trust Corporation Limited as security trustee on behalf of the Secured Parties (the "**Security Agent**") all rights, title and interest, present and future, in, under and to the Custody Account and the Cash Account (including, in each case, any renewal, redesignation, replacement, subdivision or sub-account of such account) and the debt or debts represented thereby, and all rights relating to the Custody Account and the Cash 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 (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) held by, to the order or on behalf of us (whether through you or otherwise) at any time (the "**Related Assets**", together with 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 underlying the Custody Account Security Agreement. Terms not defined in this notice have the meaning given to them in the Custody Account Security Agreement.

Accordingly, we hereby irrevocably instruct and authorise you that:

- (a) Prior to receipt of a notice of an Event of Default in the form set out in the Appendix to this Notice (an "**Event of Default Notice**"), any notice from us to you must be countersigned by the Security Agent to confirm its consent to the contents of such notice, and in accordance with the power of attorney contained in the Custody Account Security Agreement, the Security Agent shall be the sole signatory in relation to the Custody Account and the Cash Account following your receipt of an Event of Default Notice. Any existing instructions affecting the Custody Account or the Cash Account to which we are entitled are hereby revoked and terminated and all payments and communications in respect of the Custody Account and the Cash 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. You will however continue to receive sole instructions from us in the case of voting rights in relation to the Shares until such time that you receive a notice from the Security Agent that clause 5.2 (*Voting rights after Security Agent notice*) of the Custody Account Security Agreement applies (such notice being an "**Acceleration Notice**").
- (b) The Charged Portfolio will be held by you as custodian subject to the terms of this Notice and the Custody Agreement, as amended by this notice.
- (c) You will not permit any assets to be withdrawn from the Custody Account or the Cash Account without the Security Agent's prior written consent.
- (d) Pooling of the Shares shall be prohibited to the extent 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, the Custody Account and the Cash 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 thereto (a "**Notice of Discharge**"), you will not, without the prior written consent of the Security Agent, claim or exercise any right of combination, consolidation, lien, set-off or similar rights over the Charged Portfolio, the Custody Account or the Cash Account (except with respect to costs incurred by the Custodian in relation to returned or charged back items credited in error by the Chargor to the Custody Account or the Cash Account or the Custodian's charge, fees and expenses in acting as Custodian with respect to the Custody Account or the Cash Account under the terms of the Custody Agreement), or, subject to clauses 23.2 and 23.3 of the Custody Agreement, amend or vary any rights attaching to the Custody Account or the Cash 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) Other than in the case of an Insolvency Event (as defined in the Custody Agreement) in respect of Abengoa Concessions Investments Limited, you will give the Security Agent 30 days' prior written notice of any proposed termination of the Custody Agreement or the proposed closure of the Custody Account or the Cash Account, specifying any action necessary to avoid such termination or closure.
- (g) To the extent that we have any obligations under the Custody Agreement, we will remain liable for such obligations at all times.

- (h) Notwithstanding any terms of the Custody Agreement, no transfers or assignments by the Custodian to an Affiliate of the Custodian without the consent of the Security Agent shall be permitted unless such Affiliate of the Custodian 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 deemed to include the Custody Account Security Agreement.
- (j) In the event of any inconsistency between this Notice and the Custody Agreement, the terms of this Notice shall prevail and the Custody Agreement is hereby deemed to include this clause.

We irrevocably instruct and authorise you to disclose to the Security Agent without any reference to or further authority from us, such information relating to the Custody Agreement, the Custody Account and the Cash Account maintained with you from time to time as the Security Agent may request you to disclose to it.

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

Please execute the enclosed two copies of the acknowledgement in relation to the above as a deed and deliver one original to us at the address above and one original to the Security Agent at 45 Ludgate Hill, London, EC4M 7JU (*fax number* +44 (0)20 3070 0113) marked for the attention of Transaction Management Group.

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

Yours faithfully

ABENGOA CONCESSIONS INVESTMENTS LIMITED

FORM OF ACKNOWLEDGMENT FROM CUSTODIAN

(to be executed and delivered as a deed in favour of the Security Agent)

[on letterhead of Custodian]

To: **GLAS Trust Corporation Limited** (the "Security Agent")

Copy to: **Abengoa Concessions Investments Limited** (the "Chargor")

[date]

Notice of charge and assignment dated [•] September 2016 (the "Notice") in relation to a custody account number 927723 (the "Custody Account") and related cash account number 76830443 (the "Cash Account"), in the name of Abengoa Concessions Investments Limited

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. Terms used but not defined in this acknowledgment have the meaning given to them in the Notice.

We further hereby confirm that:

- (a) We shall notify you promptly upon any securities being credited to the Custody Account giving details of the date of the credit, the ISIN, the number of the securities and the currency of the securities.
- (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 or the Cash Account and to the best of our knowledge there are no restrictions on the transfer of securities or assets held in the Custody Account or on the assignment of the Custody Account or the Cash Account.
- (c) We have not received notice of any previous assignments of, charges over or trusts in respect of the Custody Account or the Cash Account, 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, claim or exercise any right of combination, consolidation, lien, set-off or similar rights over the Charged Portfolio, the Custody Account or the Cash Account, except with respect to costs incurred by the Custodian in relation to returned or charged back items credited in error by the Chargor to the Custody Account or the Cash Account or the Custodian's charge, fees and expenses in acting as Custodian with respect to the Custody Account or the Cash Account under the terms of the Custody Agreement, or, subject to clauses 23.2 and 23.3 of the Custody Agreement, amend or vary any rights attaching to the Charged Portfolio, the Custody Account or the Cash 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 Agreement.
- (d) We will not permit any assets to be withdrawn from the Custody Account or the Cash Account without the Security Agent's prior written consent.

- (e) We will not pool any of the Shares in respect of this Custody Account to the extent the Shares are capable of being held through DTC.
- (f) We confirm that prior to receiving an Event of Default Notice we will act solely in accordance with instructions provided by the Chargor which have been countersigned by the Security Agent and, following any such Event of Default Notice, we confirm that we will act solely on the instructions of the Security Agent (and acknowledge that the Security Agent shall be the sole signatory) in relation to the Custody Account and the Cash Account. We acknowledge that the Chargor has revoked and terminated any existing instructions affecting the Custody Account or the Cash Account to which the Chargor is entitled and confirm that all payments and communications in respect of the Custody Account and the Cash Account shall be made, or sent, to the Chargor and the Security Agent or as the Security Agent shall direct in accordance with the terms of the Notice. We will however continue to comply with sole instructions from the Chargor in the case of voting rights in relation to the Shares until such time as we receive an Acceleration Notice from the Security Agent, when we shall cease to comply with instructions received from the Chargor in respect of such voting rights and shall solely act in accordance with voting instructions from 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 and, other than in the case of an Insolvency Event (as defined in the Custody Agreement) of the Chargor, we will provide the Security Agent with 30 days' prior written notice of any proposed termination of the Custody Agreement or proposed closure of the Custody Account or the Cash Account, specifying any action necessary to avoid such termination or closure.
- (h) We confirm that we have noted on the Custody Account and the Cash Account (and all applicable books and records relating thereto) that the Custody Account and the Cash Account (as applicable) 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 the Chargor has any obligations under the Custody Agreement, it will remain liable for such obligations at all times.
- (j) We confirm that we will not transfer or assign the benefit and the burden of the Custody Agreement to an Affiliate without the consent of the Security Agent unless such Affiliate 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 deemed to include the Custody Account Security Agreement.
- (l) In the event of any inconsistency between the Notice and the Custody Agreement, the terms of the Notice shall prevail and the Custody Agreement is hereby deemed to include this clause.

You and the Chargor agree and acknowledge that:

1. we may rely on any notice, instruction, direction, communication or other document or information believed by us to be genuine and correct which have been signed or communicated by the person by who 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 yourself has been complied with or the making of any enquiry as to whether a security interest has become enforceable.
2. 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 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.

Executed as a deed by HSBC Bank plc and delivered by it on the date as a deed specified above.

By:

for and on behalf of

HSBC Bank plc

in the presence of

.....	Signature of witness
.....	Name of witness
.....	Address of witness

APPENDIX
FORM OF EVENT OF DEFAULT NOTICE

GLAS Trust Corporation Limited letterhead

[DATE]

To: HSBC Bank plc as Custodian

Copied to: Abengoa Concessions Investments Limited (the "**Company**")

Dear Sirs

Event of Default Notice in respect of the Custody Account and the Cash Account (as defined in the Letter (defined below))

Pursuant to the provisions of a letter dated [] 2016 from Abengoa Concessions Investments Limited (the "**Company**") to you (the "**Letter**"), we hereby give you notice that an Event of Default (as defined in the Custody Account Security Agreement) has occurred. This notice constitutes an Event of Default Notice for the purpose of the Letter.

Terms defined in the Letter shall have the same meaning in this notice unless given a different meaning.

In accordance with the Letter and the Custody Account Security Agreement, we hereby give notice that we [have appropriated the Charged Portfolio and all monies standing to the credit of, due under or arising out of the Cash Account and] will be exercising control over the Custody Account and the Cash Account.

[We also hereby give notice that clause 5.2 (*Voting rights after Security Agent notice*) of the Custody Account Security Agreement now applies such that any right of the Company to give instructions in the case of voting rights in relation to the Shares has ceased. This notice also constitutes an Acceleration Notice for the purpose of the Letter.]

[You are hereby instructed to transfer:

- (a) the Reference Shares and the Related Assets into the name of the [Security Agent]/[nominee of the Security Agent]; and
- (b) all monies standing to the credit of, due under or arising out of the Cash Account into the following account [*insert account details*].]

In accordance with the Letter, you are hereby notified to cease complying with instructions or other directions concerning the Custody Account or the Cash Account from the Company, their representatives or any other party.

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

Yours faithfully

.....

For and on behalf of

GLAS TRUST CORPORATION LIMITED as Security Agent

SCHEDULE 2
FORM OF NOTICE OF DISCHARGE OR RELEASE

[DATE]

To: HSBC Bank plc as Custodian

Copied to: Abengoa Concessions Investments Limited

Dear Sirs

Re: Notice of Discharge in respect of Custody Account number [•] and Cash Account number [•] (the "Accounts")

We refer to the letter dated [•] 2016 from Abengoa Concessions Investments Limited (the "**Client**") to you (the "**Letter**"). Terms used but not defined in this notice have the meaning given to them in the Letter. Pursuant to the provisions of the Letter, we hereby give you notice that the security over the Accounts 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

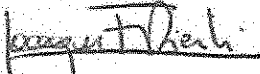
For and on behalf of

GLAS Trust Corporation Limited

**EXECUTION PAGE
CUSTODY ACCOUNT SECURITY AGREEMENT**

Chargor

**EXECUTED as a DEED by
ABENGOA CONCESSIONS
INVESTMENTS LIMITED**



Signature of director

JOAQUÍN FERNÁNDEZ DE PIÉROLA

Name of director

in the presence of



Signature of witness

JAVIER SÁNCHEZ

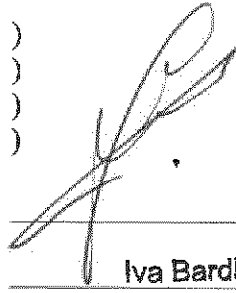
Name of witness

DANIEL POTRO ANGULO 26
28050 MADRID (SPAIN)

Address of witness

Security Agent

Signed by one duly authorised
signatory for and on behalf of
**GLAS TRUST CORPORATION
LIMITED**

)
)
)
)


Signature

Iva Bardhi

Name

Transaction Manager

Title