



Registration of a Charge

Company name: **OPTICAL EXPRESS LIMITED**

Company number: **SC161469**

Received for Electronic Filing: **27/10/2015**



X4IWWJWA

Details of Charge

Date of creation: **07/10/2015**

Charge code: **SC16 1469 0006**

Persons entitled: **DAKOTA TRADING B.V.**

Brief description:

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

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by:

JACQUI FRASER



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 161469

Charge code: SC16 1469 0006

The Registrar of Companies for Scotland hereby certifies that a charge dated 7th October 2015 and created by OPTICAL EXPRESS LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th October 2015 .

Given at Companies House, Edinburgh on 28th October 2015

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

Bond and Floating Charge

by

Optical Express Limited

in favour of

Dakota Trading B.V.

HARPER MACLEOD LLP ARE ONLY ADVISING DAKOTA TRADING B.V. AND NO OTHER PARTY IN RESPECT OF THIS DOCUMENT. EACH OTHER PARTY TO THIS DOCUMENT SHOULD TAKE THEIR OWN INDEPENDENT LEGAL ADVICE BEFORE ENTERING INTO THIS DOCUMENT AS THE EXECUTION OF THIS DOCUMENT WILL HAVE LEGAL EFFECT AND IMPLICATIONS



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BOND AND FLOATING CHARGE

by

Optical Express Limited, a company registered in Scotland (registered number: SC161469) and whose registered office is at The Ca'd'oro, 45 Gordon Street, Glasgow, G1 3PE ("OEL");

in favour of

Dakota Trading B.V., a company incorporated under the laws of the Netherlands, having its corporate seat in Amsterdam, the Netherlands and its principal place of business at Strawinskyiaan 411, 1077 XX Amsterdam, the Netherlands, registered with the trade register of the Dutch Chamber of Commerce under number 60396563 ("BV").

IT IS AGREED as follows:-

1 Definitions And Interpretation

1.1 In this Instrument, and the foregoing recitals hereto, unless the context otherwise requires or permits, the following shall have the following meanings:

"**Act**" means the Companies Act 1985;

"**Administrator**" means any administrator appointed in respect of OEL (whether pursuant to this Instrument, pursuant to any statute, by a court or otherwise);

"**Business Day**" means a day, excluding Saturdays or Sundays, on which banks are generally open for business in Glasgow and Amsterdam;

"**Default Rate**" means 15% per annum;

"**Enforcement Event**" means any of the following events:

(a) OEL has failed to pay all or any of the Secured Liabilities in accordance with Clause 2.1;

(b) any breach of the terms of this Instrument;

(c) the occurrence of any event, howsoever described, which entitles BV to accelerate, demand repayment of or the delivery of cash collected in respect of any of the Secured Liabilities; and/or

(d) the occurrence of an Insolvency Event in relation to any member of the Group;

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

"**Financial Collateral Regulations**" means the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003 No. 3226);

"**Group**" means DCM (Optical Holdings) Limited (Company Number: SC146640) and its subsidiaries from time to time;

"**Insolvency Act**" means the Insolvency Act 1986;

"Insolvency Event" means, in relation to the Group:

- (a) any application, notice, resolution or order being made, passed or given for or in connection with the winding up, liquidation, dissolution, administration or reorganisation of any member of the Group;
- (b) any member of the Group becoming subject to any insolvency, reorganisation, receivership (whether relating to all or only some of its assets), administration, liquidation, dissolution or other similar proceedings, whether voluntary or involuntary and whether or not involving insolvency;
- (c) any member of the Group assigning all or any of its assets for the benefit of its creditors generally (or any class thereof) or entering into any composition or arrangement with its creditors generally or any arrangement being ordered or declared by a court of competent jurisdiction whereby all or any of its affairs and/or assets are submitted to the control of, or are protected from, its creditors;
- (d) any member of the Group becoming subject to any distribution of its assets in consequence of insolvency, reorganisation, liquidation, dissolution or administration; or

any event analogous to any of the foregoing occurring in relation to any member of the Group or any of its assets in any jurisdiction;

"Insolvency Representative" means any liquidator, administrator, receiver, receiver and manager, administrative receiver, custodian, trustee or any similar officer in any jurisdiction;

"Instrument" means this bond and floating charge;

"Insurances" means OEL's interest in all contracts and policies of insurance which are from time to time taken out or effected by or on behalf of OEL in connection with the Secured Assets;

"Receiver" means any receiver or administrative receiver appointed in respect of the Secured Assets (whether pursuant to this Instrument, pursuant to any statute, by a court or otherwise) and includes (without limitation) joint receivers and joint administrative receivers;

"Secured Assets" means the whole of the property (including without limitation, uncalled capital) which is or may be from time to time while this Instrument is in force comprised in the property and undertaking of OEL;

"Secured Liabilities" means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly or severally and whether as principal or surety or in any other capacity whatsoever) of OEL to BV (and whether originally owing BV or purchased or acquired by BV) together with any of the following matters relating to or arising in respect of, those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for damages or restitution; and
- (c) any claim as a result of any recovery by OEL of a payment or discharge on the grounds of preference,

and any amounts which would be included in any of the above but for any discharge, non-provability or unenforceability of those amounts in any insolvency or other proceedings;

"Secured Liabilities Discharge Date" means the date on which the Secured Liabilities have been unconditionally and irrevocably and fully and completely paid and/or discharged

to the satisfaction of BV and no further Secured Liabilities are capable of becoming outstanding;

"**Security**" means a mortgage, charge (fixed or floating), standard security, assignation in security, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect; and

"**Security Financial Collateral Arrangements**" shall have the meaning given to that expression in the Financial Collateral Regulations.

- 1.2 References in this Instrument to a "fixed security" shall be construed as a reference to a fixed security as defined by Section 486 of the Act as in force at the date of this Instrument.
- 1.3 Reference to any statute or statutory provision shall include a reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.4 References to "**including**", "**includes**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the generality of the words preceding it.
- 1.5 Any reference in this Instrument to a document of any kind whatsoever (including, without limitation, this Instrument) is to that document as amended, varied, supplemented, novated or substituted from time to time.
- 1.6 Words importing persons shall include individuals, firms, partnerships, corporations, governments, governmental bodies and departments, authorities, agencies, unincorporated bodies of persons or associations and any other organisations having legal capacity.
- 1.7 The singular includes the plural and vice versa and any gender includes all genders.
- 1.8 The clause headings are inserted for convenience and shall not affect the construction of this Instrument.
- 1.9 References to Clauses are references to the relevant clause in this Instrument.
- 1.10 References to persons shall include their respective successors and permitted assignees and permitted transferees.
- 1.11 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 Reference to the "**winding-up**" of a person also includes the amalgamation, reconstruction, reorganisation, insolvency, bankruptcy, sequestration, administration, dissolution, provisional liquidation, liquidation, receivership, merger or consolidation of that person, the entering into of a scheme of arrangement of affairs, voluntary arrangement or trust deed for creditors (or other composition in satisfaction of debts) in respect of that person, the appointment of an administrator, administrative receiver, receiver, trustee in sequestration, judicial factor or any other equivalent officer in any jurisdiction in respect of that person, and any other analogous procedure under the law of any jurisdiction which has a similar effect to the foregoing.
- 1.13 Any reference to an Enforcement Event being described as "**continuing**" means that it has not been remedied to the satisfaction of BV or expressly waived in writing by BV.
- 1.14 Unless the context otherwise requires, a reference to a Secured Asset includes:
 - 1.14.1 any part of that Secured Asset; and

1.14.2 the proceeds of that Secured Asset.

2 **Bond**

2.1 OEL undertakes to BV that it will pay and discharge to BV (or to such other person as BV may direct) all of the Secured Liabilities on demand in writing when the same are due.

2.2 OEL agrees that if it shall fail to pay and discharge any part of the Secured Liabilities when due then such amount shall bear interest (after as well as before decree and payable on demand) on a daily basis based on a year of 365 days at the Default Rate from the due date thereof until paid in full. Any such interest accrued shall be payable by OEL to BV on demand in writing.

2.3 A certificate signed by or on behalf of BV as to the amount, calculation or nature of the Secured Liabilities or any part of them will, in the absence of manifest error, be conclusive and binding on OEL.

2.4 All the Security created under this Instrument:

2.4.1 is created in favour of the BV; and

2.4.2 is security for the payment and discharge of each and all of the Secured Liabilities.

3 **Floating Charge**

3.1 OEL, as security for the payment and discharge of all the Secured Liabilities, hereby grants in favour of BV a floating charge over the Secured Assets.

3.2 Paragraph 14(2)(a) of Schedule B1 to the Insolvency Act shall apply to the floating charge created by this Instrument which is a "qualifying floating charge" for the purpose of paragraph 14(1) of Schedule B1 of the Insolvency Act.

4 **Ranking**

4.1 OEL agrees that, except with the prior written consent of BV, it shall be prohibited from granting or creating subsequent to the date of this Instrument, any fixed security or any other floating charge having priority over or ranking pari passu with the floating charge created by this Instrument, otherwise than in favour of BV.

4.2 The floating charge created by this Instrument shall, if OEL grants another charge in breach of Clause 4.1, subject to section 464(2) of the Act, rank in priority to any other fixed security which shall be created by OEL after its execution of this Instrument (other than a fixed security in favour of BV) and to any other floating charge which shall be created by OEL after its execution of this Instrument and (subject as aforesaid) no such fixed security or other floating charge shall rank in priority to or equally with the floating charge hereby created by it.

5 **Undertakings**

5.1 OEL hereby represents and warrants to BV as follows:-

5.1.1 the documents which contain or establish OEL's constitution include provisions which give power, and all necessary corporate authority has been obtained and action taken, for OEL to grant the floating charge hereby created and to execute, deliver and perform the undertakings and obligations contained in this Instrument;

5.1.2 this Instrument constitutes legal, valid and binding obligations of OEL enforceable in accordance with their terms; and

- 5.1.3 OEL's execution and delivery of this Instrument and OEL's performance of any of the undertakings or obligations contained in this Instrument does not, and will not, conflict with:
- 5.1.3.1 any law or regulation applicable to it;
 - 5.1.3.2 its constitutional documents; and/or
 - 5.1.3.3 any agreement, deed, certificate, instrument or other document whatsoever binding upon it or any of its assets or constitute a default or termination event (howsoever described) thereunder.

5.2 Except as BV may otherwise agree in writing, OEL hereby undertakes that it shall (save as otherwise agreed in writing by BV):-

- 5.2.1 carry on and conduct its business and affairs in a proper and efficient manner;
- 5.2.2 not make any substantial alteration in the nature of, or mode of conduct of, its business;
- 5.2.3 not sell, transfer, assign, lease, hire out, lend, discount, factor, charge or otherwise dispose of, deal in or remove all or any of the Secured Assets, save for in the ordinary course of business;
- 5.2.4 keep, or cause to be kept, proper books of account relating to its business;
- 5.2.5 permit BV or any person authorised by BV to have access to, and inspect free of charge its company books;
- 5.2.6 not pull down or remove the whole or any part, of any buildings forming part of the Secured Assets or sever or unfix or remove any of the fixtures attaching to them nor (except for the purposes of effecting necessary repairs or of replacing any of them with new or improved models or substitutes) remove any of the plant and machinery belonging to or used by OEL;
- 5.2.7 keep all of the Secured Assets in good and sufficient repair and all plant and machinery and other moveable property in good working order and condition and, as and when requisite (whether by reason of an original or inherent defect, obsolescence, destruction or otherwise), rebuild, renew and replace the same;
- 5.2.8 not grant or agree to grant any tenancy or licence affecting all or any of the Secured Assets or grant or agree to grant a lease of, or accept a surrender of a lease or tenancy of, all or any part of them;
- 5.2.9 not become cautioner, guarantor or surety for any person, firm or company;
- 5.2.10 not undertake any obligation to any third party whereby its rights to recover or take payment of any monies due or which may become due to it from any debtor of it are postponed or subordinated to the claims of such third party;
- 5.2.11 pay (and indemnify BV, any Receiver and any Administrator against) all rents, rates, taxes, levies, assessments, impositions and outgoings whatsoever (whether imposed by agreement, statute or otherwise, whether in the nature of capital or revenue and even if wholly novel and whether governmental, municipal or otherwise) which may be imposed upon or payable in respect of the Secured Assets as and when the same shall become payable, taking into account agreed periods of grace (if any), and also punctually pay and discharge all debts and obligations which by law may have priority over the floating charge created by this Instrument;

- 5.2.12 maintain its centre of main interests (COMI) for the purposes of the Council Regulation (EC) No 1346/2000 on Insolvency Proceedings in the United Kingdom;
 - 5.2.13 not transfer, factor, discount, sell, assign, release, compound, subordinate, defer, or vary the terms of any book or other debts or moneys for the time being due, owing or payable to OEL, or otherwise deal with the same except in the usual course of business;
 - 5.2.14 subject always to Clause 5.2.13, promptly get in and realise in the ordinary course of its trade or business all its book debts apart from balances standing to the credit of any account with any bank or financial institution;
 - 5.2.15 observe and perform, in all respects, all restrictive and other covenants, stipulations and burdens for the time being affecting its heritable, freehold and leasehold property and the mode of use and the enjoyment of the same and affecting its moveable and personal property and its ancillary and connected rights and will not, without the prior consent in writing of BV, enter into any onerous or restrictive obligations with regard thereto, make any structural or material alteration thereto, suffer to be done on any such property anything which is a "development" as defined in Section 55 of the Town and Country Planning Act 1990 or Section 26 of the Town and Country Planning (Scotland) Act 1997 as from time to time amended and/or do, suffer and/or omit to be done any act, matter and/or thing whereby any provisions of any Act of Parliament, order or regulation whatsoever from time to time in force affecting such property and/or rights shall be infringed;
 - 5.2.16 not negotiate, compromise, abandon or settle any claim for compensation (whether payable under any enactment or otherwise) or any claim under any Insurances in respect of any land or buildings for the time being (or an interest in which for the time being is) comprised in the Secured Assets or any other material compensation, insurance or other claim; and
 - 5.2.17 not do or cause or permit to be done, nor omit to do, or allow the omission of, anything which may in any way materially and adversely depreciate, jeopardise or otherwise prejudice the value to BV of the Secured Assets or the Security hereby constituted.
- 5.3 OEL undertakes to comply to the satisfaction of BV with the following obligations in respect of insurance:-
- 5.3.1 OEL hereby undertakes, at its own expense, to insure and keep insured in its own name and in such manner as to protect the interests of BV as BV may require all of the Secured Assets whatsoever of an insurable nature with reputable underwriters or insurers against loss or damage by fire, civil commotion, explosion, earthquake, landslip, heave, aircraft and articles dropped therefrom, flood, storm, lightning, burst pipes, theft, malicious damage, impact and such other risks and contingencies as BV shall from time to time request to the full replacement value thereof from time to time, including, without limitation, architects', surveyors' and engineers' fees and all other professional fees and demolition charges and to maintain such other insurance policies containing like provisions for the protection of BV as are required by law or are normally maintained by prudent companies carrying on similar businesses;
 - 5.3.2 OEL undertakes, if BV in any case so requires, to use its best endeavours to obtain the agreement of the insurers not to cancel any such policy without first giving fourteen days' notice in writing to BV and to obtain confirmation in writing from the insurer that a breach by OEL will not vitiate the policy in respect of BV's interest or affect BV's right to claim under the policy;
 - 5.3.3 OEL undertakes to punctually pay all premiums and other sums payable in respect of all insurances effected by OEL, to comply with all warranties or other

requirements relating thereto, and to produce to (or, if required, deposit with) BV on demand all or any of the relevant policies and the receipts for the last premiums payable thereunder; and

5.3.4 OEL undertakes to hold any moneys payable to or received by OEL on any insurance (whether maintained under any statutory provision, this Instrument or otherwise) upon trust to apply them in replacing or repairing the property or assets in respect of which the moneys are received in accordance with BV's instructions.

5.4 OEL hereby undertakes to notify BV in writing:

5.4.1 of its acquisition of any heritable, freehold or leasehold property and if required to do so by BV, deposit with BV during the continuance of this Instrument all charges and documents of title relating to that property;

5.4.2 in the event of any creditor executing diligence against OEL and/or the Secured Assets (whether effectual or not) or any distress or execution being levied or enforced against OEL or any third party debt order or freezing order being made and served on OEL; and

5.4.3 if any steps (including, without limitation, the making of an application or the giving of any notice) are taken by any person (including, without limitation, OEL) in respect of an Insolvency Event in relation to OEL;

promptly following the occurrence thereof.

5.5 If OEL for any reason fails to observe or punctually to perform any of its obligations to BV hereunder, BV shall have power (but shall not be obliged), on behalf of or in the name of OEL or otherwise and at OEL's expense, to perform the relevant obligation and to take any steps which BV may (in its absolute discretion) consider appropriate with a view to remedying or mitigating the consequences of the failure, but so that the exercise of this power, or the failure to exercise it, shall in no circumstances prejudice BV's rights under this Instrument.

6 **Payments**

6.1 All sums payable by OEL hereunder shall be paid in full to BV (or to such other person as BV may direct) without any set off or counterclaim whatsoever and, except to the extent compelled by law, without any withholding or deduction. Where OEL is required by law to make any withholding or deduction, it shall pay to BV such additional sums to the extent necessary to ensure that BV receives on the due date a sum equal to the sum which it would have received had there been no such withholding or deducting. If BV subsequently receives a credit which is referable to the increased payment and which enhances its position, then it will reimburse OEL sufficient to redress the position up to the lower of (a) the increased payment and (b) the amount received, so long as doing so does not prejudice receipt or retention of such credit.

6.2 BV may:-

6.2.1 refrain from applying or enforcing any other moneys, Security or rights held or received by it in respect of Secured Liabilities (or any part thereof) or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and OEL shall not be entitled to the benefit of the same; and/or

6.2.2 hold in an interest bearing account any money received from OEL or on account of OEL's liability under this Instrument without any immediate obligation to apply such monies or any part thereof in or towards discharge of any of the Secured Liabilities.

6.3 All payments to be made under this Instrument shall be made in the currency or currencies in which the relevant Secured Liabilities are expressed to be payable by OEL.

7 Enforcement

7.1 In addition to BV's statutory rights, at any time while an Enforcement Event has occurred and is continuing, the floating charge created pursuant to this Instrument shall be immediately enforceable and the power to appoint an Administrator or (subject, if applicable, to Section 72A of the Insolvency Act) a Receiver in respect of OEL and/or the Secured Assets (or any part thereof) shall be immediately enforceable and exercisable in relation to the Security created by OEL by or pursuant to this Instrument, and BV may then by instrument in writing appoint any person or persons (if more than one with power to act both jointly and severally) to be an Administrator or a Receiver in respect of OEL and/or the Secured Assets (or any part thereof). In addition, and without prejudice to the foregoing provisions of this Clause 7.1, in the event that any person appointed to be an Administrator or a Receiver as aforesaid shall be removed by a Court or shall otherwise cease to act as such, then BV shall be entitled so to appoint another person as an Administrator or Receiver in his place.

7.2 An Administrator appointed hereunder shall have and be permitted to exercise, in addition to and without limiting all of the powers of an administrator under the Insolvency Act, all the powers of a receiver under Schedule 2 of the Insolvency Act and a Receiver appointed in terms of this Instrument shall have and be entitled to exercise, in addition to and without limiting all the powers of a receiver and an administrative receiver under the Insolvency Act, all the powers of an administrator and an administrative receiver set out in Schedule 1 of the Insolvency Act, together with (in either case) the power to exercise any powers or rights incidental to ownership of the Secured Assets, including, without limitation, (as regards shares and other securities) any voting rights or rights of enforcing the same together with power to:

7.2.1 implement and exercise all and any of OEL's powers and rights and obligations under any contract or other agreement forming part of the Secured Assets;

7.2.2 make any arrangement or compromise which he shall think expedient of, or in respect of, any claim by or against OEL;

7.2.3 promote or procure the formation of any new company or corporation;

7.2.4 subscribe for or acquire for cash or otherwise any share capital of such new company or corporation in the name of OEL and on its behalf and/or in the name(s) of a nominee(s) or trustee(s) for it;

7.2.5 sell, feu, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise the Secured Assets or any part thereof to any such new company or corporation and accept as consideration or part of the consideration therefor in the name of OEL and on its behalf and/or in the name(s) of any nominee(s) or trustee(s) for it any shares or further shares in any such company or corporation or allow the payment of the whole or any part of such consideration to remain deferred or outstanding by way of loan or debt or credit;

7.2.6 sell, feu, assign, transfer, exchange, hire out, grant leases of or otherwise dispose of or realise on behalf of OEL any such shares or deferred consideration or part thereof or any rights or benefits attaching thereto;

7.2.7 convene a meeting of the members of OEL;

7.2.8 acquire any property on behalf of OEL; and

7.2.9 do all such other acts and things as he may consider necessary or desirable for protecting or realising the Secured Assets, or any part thereof, or incidental or

conducive to any of the matters, powers or authorities conferred on an Administrator or a Receiver under or by virtue of or pursuant to this Instrument and exercise in relation to the Secured Assets, or any part thereof, all such powers and authorities and do all such things as he would be capable of exercising or doing if he were the absolute beneficial owner of the same and use the name of OEL for all and any of the purposes aforesaid.

7.3 To the extent that any Secured Assets constitute Financial Collateral and are subject to a Security Financial Collateral Arrangement created by or pursuant to this Instrument, BV shall have the right, at any time after this Instrument becomes enforceable, to appropriate all or any part of those Secured Assets in or towards the payment or discharge of the Secured Liabilities. The value of any Secured Assets appropriated in accordance with this Clause 7.3 shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as BV may select (including, without limitation, independent valuation). OEL agrees that the methods of valuation provided for in this Clause 7.3 are commercially reasonable for the purposes of Regulation 18 of the Financial Collateral Regulations. To the extent that any Secured Assets constitute Financial Collateral, OEL agrees that such Secured Assets shall be held or designated so as to be under the control of BV for all purposes of the Financial Collateral Regulations.

8 Office Of Receiver

8.1 Any Receiver appointed under Clause 7 shall be the agent of OEL for all purposes and (subject to the provisions of the Insolvency Act) OEL alone shall be responsible for his contracts, engagements, acts, omissions, defaults and losses and for Secured Liabilities incurred by him and for his remuneration and his costs, charges and expenses and BV shall not incur any liability therefor (either to OEL or any other person) by reason of BV making his appointment as such Receiver or for any other reason whatsoever.

8.2 Any Receiver appointed under Clause 7 shall be entitled to remuneration for his services and the services of his firm appropriate to the responsibilities involved. Such remuneration shall be payable by OEL alone and the amount of such remuneration shall form part of the Secured Liabilities and accordingly be secured on the Secured Assets under the floating charge constituted by this Instrument.

9 Application of Security Proceeds

9.1 All monies received by BV in terms of this Instrument shall be applied in the following order of priority:

9.1.1 first, in or towards payment of or provision for all costs, charges and expenses properly incurred by BV;

9.1.2 second, towards satisfaction of any indemnities granted by OEL hereunder;

9.1.3 third, towards application of the Secured Liabilities in such order and manner as BV sees fit; and

9.1.4 fourth, in payment of the surplus (if any) to OEL or other person entitled to it.

9.2 Clause 9.1 is subject to the payment of any claims having priority over this Instrument.

9.3 Clause 9.1 does not prejudice the right of BV to recover any shortfall from OEL.

10 Protection of Third Parties

No person (including, without limitation, a purchaser) dealing with BV or its agents will be concerned to enquire:

- 10.1 whether the Secured Liabilities have become payable;
- 10.2 whether any power which BV is purporting to exercise has become exercisable or is being properly exercised;
- 10.3 whether any money remains due in respect of the Secured Liabilities; or
- 10.4 how any money paid to BV is to be applied.

11 Further Assurance

OEL shall do all acts and things (including, without limitation, execute such documents and provide such assurances) as BV may require for implementing, effecting, maintaining, perfecting or protecting the the rights of BV hereunder and/or the Security created by and pursuant to this Instrument over the Secured Assets and/or for facilitating the protection, maintenance, enforcement and/or realisation of any rights or assets in the manner as foreseen hereunder and/or the exercise of all powers, rights, authorities and discretions vested in BV pursuant to this Instrument, and shall, in particular, execute all fixed securities, floating charges, assignments, Securities, transfers, dispositions and assurances of or relating to the Secured Assets (whether to BV or its nominee(s) or otherwise) and give all notices, orders and directions which BV may think appropriate or expedient.

12 Protection of Security

- 12.1 The Security created by this Instrument shall be a continuing security notwithstanding any intermediate payment or satisfaction of the Secured Liabilities and shall remain in full force and effect and may not be revoked until the Secured Liabilities Discharge Date has occurred. As soon as practicable following the Secured Liabilities Discharge Date, BV shall execute and deliver, at the cost of OEL, a release of this Instrument and retrocess to OEL the Secured Assets.
- 12.2 The Securities created by this Instrument shall be in addition to and shall not in any way prejudice or be prejudiced by any other Security, right or remedy which BV may now or at any time hereafter hold for all or any part of the Secured Liabilities.
- 12.3 No failure on the part of BV to exercise and no delay on its part in exercising any right, remedy, power or privilege under or pursuant to this Instrument or any other document relating to or securing all or any part of the Secured Liabilities will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Instrument and any such other document are cumulative and not exclusive of any right or remedies provided by law.
- 12.4 Each of the provisions in this Instrument shall be severable and distinct from one another and if at any time any one or more of such provisions is or becomes or is declared null and void, invalid, illegal or unenforceable in any respect under any law or otherwise howsoever, the validity, legality and enforceability of the remaining provisions of this Instrument shall not in any way be affected or impaired thereby.
- 12.5 Neither the Securities created by this Instrument nor the rights, powers, discretions and remedies conferred upon BV by this Instrument or by law shall be discharged, impaired or otherwise affected by reason of:
 - 12.5.1 any increase in or waiver or discharge of the Secured Liabilities;
 - 12.5.2 any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which BV may have now or in the future from or against OEL or any other person in respect of any of the Secured Liabilities;

- 12.5.3 any act or omission by BV or any other person in taking up, perfecting or enforcing any Security or guarantee from or against OEL or any other person or the invalidity or unenforceability of any such Security or guarantee;
 - 12.5.4 any amendment, variation, restatement or supplement of or to, or novation, transfer or termination (in whole or in part) of, any document relating to the Secured Liabilities or any exercise by BV (in its absolute discretion) of its rights to refuse, grant, continue, vary, review, determine or increase any credit or facilities to OEL;
 - 12.5.5 any grant of time, indulgence, waiver or concession by BV to OEL or any other person;
 - 12.5.6 any arrangement or compromise entered into between BV and OEL or any other person;
 - 12.5.7 the winding-up, incapacity, limitation, disability, discharge by operation of law or any change in the constitution, name and/or style of OEL;
 - 12.5.8 the invalidity, illegality, unenforceability, irregularity or frustration of the Secured Liabilities or any other obligations of OEL;
 - 12.5.9 any legal limitation, disability, incapacity or similar circumstances relating to OEL;
 - 12.5.10 any claim or enforcement of payment from OEL;
 - 12.5.11 the existence of any claim, set-off or other right which OEL may have at any time against any person, whether in connection with the Secured Liabilities or otherwise; or
 - 12.5.12 any other act or omission done or omitted by any person which but for this provision might operate to exonerate or discharge or otherwise reduce or extinguish OEL's liability under this Instrument.
- 12.6 BV shall not be obliged, before exercising any of the rights, powers or remedies conferred upon it by or pursuant to this Instrument or by law, to:
- 12.6.1 take any action or obtain judgement or decree in any court against OEL; or
 - 12.6.2 make or file any claim to rank in a winding-up of OEL.

13 **Power of Attorney**

- 13.1 OEL appoints BV as its mandatory and attorney and in OEL's name or otherwise and on its behalf:
- 13.1.1 to create, negotiate, consider, amend, settle, approve, sign, execute, deliver, perfect, register and/or issue all agreements, documents, certificates and instruments, including any fixed security, floating charge, transfer, disposition, assignation, Security, assurance or other document (all whether as a deed or not), to use OEL's name, and to take all steps and do all things which BV in its absolute discretion considers necessary or desirable (i) to obtain for itself or its nominee the full benefit of this Instrument; (ii) in connection with effecting the transactions sought to be implemented by this Instrument; (iii) for perfecting or protecting the title of BV to the Secured Assets (or any of them); (iv) for vesting any of the Secured Assets in BV; (v) pursuant or relating to the exercise of its rights hereunder; and/or (vi) otherwise in connection with any sale, lease, disposition, protection, maintenance, enforcement, realisation, getting in or other enforcement by BV of or in relation to all or any of the Charged Assets, all in the manner as foreseen hereunder; and

- 13.1.2 to appoint one or more persons to act as a substitute attorney for BV and to exercise one or more of the powers conferred on BV by the power of attorney under this Clause 13 and revoke any such appointment without giving a reason.
- 13.2 Without prejudice to clause 13.1, BV may, in any way it thinks fit and in the name and on behalf of OEL, as mandatory and attorney of OEL:
 - 13.2.1 take any action that this Agreement requires OEL to take; and/or
 - 13.2.2 exercise any rights which this Agreement gives to OEL.
- 13.3 BV (or any substitute appointed pursuant to Clause 13.1.2 which is a legal person) may delegate one or more of the powers conferred on it by this Clause 13 to an officer or officers of them appointed for that purpose by their board of directors by resolution or otherwise.
- 13.4 The power of attorney under this Clause 13 shall be irrevocable save with the consent of BV.
- 13.5 OEL undertakes to ratify and confirm whatever BV, or any substitute appointed pursuant to Clause 13.1.2, or any delegate of them, does or purports to do in good faith in the exercise of any power conferred by this Clause 13.
- 13.6 OEL declares that a person who deals with BV, or any substitute appointed pursuant to Clause 13.1.2, or any delegate of them, in good faith may accept a written statement signed by BV (or that substitute, or such delegate) to the effect that the power of attorney under this Clause 13 has not been revoked as conclusive evidence of that fact.
- 13.7 A certificate in writing, signed by BV, or any substitute appointed pursuant to Clause 13.1.2, or any delegate of them, that any instrument or act falls within the authority conferred by this Clause 13, shall be conclusive evidence that such is the case so far as any third party is concerned.
- 13.8 OEL indemnifies and shall keep indemnified BV, and any substitute appointed pursuant to Clause 13.1.2, and any delegate of them, against all liabilities, costs, expenses, damages and losses (including, but not limited to, any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) which any of them sustains or incurs in connection with any action taken by any of them in pursuant to the power of attorney set out in this Clause 13 (including, without limitation, any cost incurred in enforcing this indemnity).

14 Examination of Secured Assets

- 14.1 At any time following the occurrence of an Enforcement Event which is continuing, OEL shall permit BV and any persons appointed by it, during normal business hours and following receipt of reasonable prior notice in writing, to enter in or upon the property of or premises used or occupied by OEL or any part thereof at all times:
 - 14.1.1 to view the state and condition thereof or of any buildings, fixtures, fittings (including, without limitation, trade fixtures and fittings) or any plant and machinery;
 - 14.1.2 in the event of OEL failing to comply with any undertaking or obligation hereunder, to execute any works and do anything thereon necessary to ensure such compliance; and
 - 14.1.3 in the event of OEL failing so to do, to comply with any order, direction, requisition, permission, notice or other matter and to do all acts and things necessary or proper for complying therewith.

14.2 At any time following the occurrence of an Enforcement Event which is continuing, OEL shall permit BV and any persons appointed by it, during normal business hours and following receipt of reasonable prior notice in writing, full access to the Secured Assets to carry out any survey, inspection, assessment or review of the Secured Assets and shall permit an inspection to be made and copies and extracts to be taken of books, accounts, records and documents relating to the Secured Assets or the undertakings and obligations of OEL under this Instrument and any costs, fees and expenses properly incurred by BV in connection with all such inspection, assessment or review shall be payable by OEL.

14.3 At any time while an Enforcement Event has occurred and is continuing unremedied or unwaived, OEL shall at its own cost, if requested by BV, appoint such persons as BV may specify to investigate or review the financial affairs or operations of OEL and report thereon to BV.

15 **Costs and expenses**

15.1 OEL shall pay, on a full indemnity basis, immediately on demand, all costs, charges, expenses and Secured Liabilities incurred by BV or to be incurred by BV or any attorney, manager, agent or other person appointed by BV in connection with the preparation, negotiation, completion, execution, registration, perfection, modification, amendment, issue of waivers and consents under, enforcement and/or attempted enforcement, preservation of rights under, exercise or purported exercise of rights under or decision as to whether to exercise rights under, assignation, release or discharge of this Instrument or actions, proceedings or claims in respect of this Instrument and/or the Secured Assets which costs, charges and expenses shall form part of the Secured Liabilities.

16 **Avoidance of Payments**

16.1 Any amount which has been paid by OEL to BV and which is, in the opinion of BV, capable of being reduced or restored or otherwise avoided, in whole or in part, by virtue of any applicable law relating to insolvency for the time being in force shall not be regarded as having been irrevocably paid for the purposes of this Instrument.

16.2 Any settlement, discharge or release of this Instrument and/or the Secured Liabilities granted by BV to OEL shall be conditional upon no Security or payment to BV by OEL or any other person or any other transaction with any such person being terminated, avoided or reduced by virtue of any applicable law relating to insolvency for the time being in force. If that happens, BV shall be entitled to recover the Secured Liabilities from OEL and enforce this Instrument as if the settlement, discharge or release had not been given.

17 **Notices**

17.1 Any demand or notice given to OEL under this Instrument may be by letter addressed to OEL or any officer of OEL sent by first class post, or hand delivered, to OEL's address last known to BV or to OEL's registered office.

17.2 If sent by post, the demand or notice will be taken to have been made or given at noon the second day following the day the letter was posted.

17.3 Unless otherwise advised by BV any notices given by OEL to BV under this Instrument will be delivered to BV by hand delivery or by registered post at:

Strawinskylaan 411
1077 XX Amsterdam
The Netherlands.

18 **Delegation**

18.1 BV may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Instrument.

18.2 Any such delegation may be made upon any terms (including, without limitation, power to sub-delegate) which BV may think fit.

18.3 BV will not be in any way liable or responsible to OEL for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate other than to the extent which the same is caused by the wilful default or gross negligence of any such delegate or sub-delegate.

19 **Changes to the Parties**

19.1 BV may assign, transfer and/or otherwise dispose of all or any part of its rights and/or obligations under this Instrument to any person at any time.

19.2 OEL shall not be entitled to assign, transfer or otherwise dispose of any of its rights and/or obligations under this Instrument.

20 **Miscellaneous**

20.1 BV may disclose any information in its possession relating to OEL to its advisers or any applicable regulatory authority.

20.2 If any subsequent charge or other interest affects any Secured Asset in breach of the terms of this Instrument, BV may open a new account with OEL. If BV does not open a new account, it will nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that charge or other interest. As from that time all payments made to BV will be credited or be treated as having been credited to the new account and will not operate to reduce any Liability.

21 **Registration**

OEL consents to the registration for preservation and execution in the Books of Council and Session of this Instrument and of any certificate referred to in Clause 2.3 hereof.

22 **Governing Law**

22.1 This Instrument and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including, without limitation, non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Scotland.

22.2 The parties hereto irrevocably agree that, subject as provided below, the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Instrument or its subject matter or formation (including, without limitation, non-contractual disputes or claims). Nothing in this Clause 22 shall limit the right of BV to take proceedings against OEL in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of that other jurisdiction.

IN WITNESS WHEREOF these presents consisting of this and the preceding 14 pages are subscribed as follows:

Subscribed for and on behalf of **OPTICAL EXPRESS LIMITED**

by DAVID MOULSDALE
at GLASGOW
on 7 OCTOBER 2015
before



Director



Witness

ANTHONY CAMERON

Full Name

THE CA'DORIE, 45 SOAROW STREET

Address

GLASGOW, G1 3PE