



**Registration of a Charge**

Company name: **ARCADIA GROUP LIMITED**

Company number: **00237511**

Received for Electronic Filing: **03/08/2020**



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**Details of Charge**

Date of creation: **31/07/2020**

Charge code: **0023 7511 0029**

Persons entitled: **OAKNORTH BANK PLC**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

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

Certified by: **GATELEY PLC**



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

Company number: 237511

Charge code: 0023 7511 0029

The Registrar of Companies for England and Wales hereby certifies that a charge dated 31st July 2020 and created by ARCADIA GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd August 2020 .

Given at Companies House, Cardiff on 4th August 2020

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

31 July 2020

**ARCADIA GROUP LIMITED AND OTHERS**

as the shareholders

and

**OAKNORTH BANK plc**

as security trustee

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**SHAREHOLDERS' SECURITY AGREEMENT**

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**THIS DEED** is made on 31 July 2020 **BETWEEN:**

- (1) **ARCADIA GROUP LIMITED** a company incorporated in England and Wales with registered number 00237511 and registered office at Colegrave House, 70 Berners Street, London, W1T 3NL;
- (2) **GUS HOLDINGS UNLIMITED** a company incorporated in England and Wales with registered number 03496850 and registered office at The Sir John Peace Building Experian Way, Ng2 Business Park, Nottingham, NG80 1ZZ;
- (3) **MARKS AND SPENCER PLC** a company incorporated in England and Wales with registered number 00214436 and registered office at Waterside House, 35 North Wharf Road, London, W2 1NW; and,
- (4) **NEXT HOLDINGS LIMITED** a company incorporated in England and Wales with registered number 00035161 and registered office at Desford Road, Enderby, Leicester, LE19 4AT,  
(each a "Shareholder" and together the "Shareholders"); and
- (5) **OAKNORTH BANK plc** as security trustee for each of the Finance Parties (the "Security Trustee").

**IT IS AGREED** as follows:

## 1. DEFINITIONS, CONSTRUCTION AND THIRD PARTY RIGHTS

### 1.1 Definitions

Terms defined in the Offer Letter shall, unless otherwise defined in this Deed or unless a contrary intention appears, bear the same meaning when used in this Deed and the following terms shall have the following meanings:

"**Administrator**" means a person appointed under Schedule B1 to the Insolvency Act 1986 to manage the Shareholders' affairs, business and property.

"**Borrower**" means Gresse Street Limited, a company incorporated in England and Wales with registered number 05279893 and registered office at Colegrave House, 70 Berners Street, London, W1T 3NL .

"**LPA**" means the Law of Property Act 1925.

"**Offer Letter**" means loan offer letter to the Borrower from the Security Trustee consisting of the particulars and the conditions dated on or about the date of this Deed.

"**Receiver**" means any person appointed by the Security Trustee to be a receiver or receiver and manager or administrative receiver of any property subject to the security created by this Deed.

"**Related Investment Rights**" means all allotments, rights, benefits and advantages (including all voting rights) whatsoever at any time accruing, offered or arising in respect of or incidental to the Shares and all money or property accruing or offered at any time by way of conversion, redemption, bonus, preference, option, dividend, distribution, interest or otherwise in respect of the Shares.

"**Related Property Rights**" means, in relation to any property or asset:

- (a) the proceeds of sale and/or other realisation of that property or asset (or class of assets) or right (or any part thereof or interest therein);
- (b) all security, options, agreements, rights, easements, benefits, indemnities, guarantees, warranties or covenants for title in respect of such property, asset (or class of assets) or right; and
- (c) all rights under any lease, licence or agreement for lease, sale or use in respect of such property or asset.

"**Secured Liabilities**" means all monies, obligations and liabilities covenanted to be paid or discharged under or pursuant to Clause 2 (*Covenants to Pay*).

"**Secured Party**" means a Finance Party, a Receiver or any Delegate.

"**Security Period**" means the period from the date of this Deed until the date on which the Secured Liabilities have been irrevocably and unconditionally paid and discharged in full.

"**Shares**" means:

- (a) the entire issued share capital of the Borrower from time to time, being at the date of this Deed the issued ordinary shares legally and beneficially owned by each of the Shareholders;
- (b) all Related Investment Rights in respect thereof; and

(c) all Related Property Rights in respect thereof.

## 1.2 Construction and Third Party Rights

1.2.1 The provisions of clause 1.3 (*Construction*) of the Conditions shall apply to this Deed as if they were set out in this Deed.

1.2.2 Unless a contrary intention appears, words defined in the Companies Act 2006 have the same meanings in this Deed.

1.2.3 No term of this Deed is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Deed (other than a Secured Party who is not a party to this Deed).

## 1.3 Implied Covenants for Title

The obligations of each of the Shareholders under this Deed shall be in addition to the covenants for title deemed to be included in this Deed by virtue of Part I of the Law of Property (Miscellaneous Provisions) Act 1994.

## 1.4 Effect as a Deed

This Deed is intended to take effect as a deed notwithstanding that the Security Trustee may have executed it under hand only.

## 1.5 Security Trust Provisions

The Security Trustee holds the benefit of this Deed on trust for the Finance Parties in accordance with clause 24 (*Role of the Agent and the Security Trustee*) of the Conditions.

## 2. COVENANTS TO PAY

### 2.1 Covenant to Pay Secured Liabilities

Subject to clause 2.3 (*Limited Recourse*), each Shareholder covenants that it shall on demand pay to the Security Trustee all monies and discharge all obligations and liabilities now or hereafter due, owing or incurred by it or any Obligor to any Finance Party in each case when the same becomes due for payment or discharge, whether by acceleration or otherwise, and whether such monies, obligations or liabilities are express or implied; present, future or contingent; joint or several; incurred as principal or surety; originally owing to a Finance Party or purchased (whether by assignment or otherwise) or acquired in any other way by it; denominated in sterling or any other currency; or incurred on any current or other banking account or in any other manner whatsoever.

### 2.2 Potential Invalidity

Neither the covenant to pay in Clause 2.1 (*Covenant to Pay Secured Liabilities*) nor the security created by this Deed shall extend to or include any liability or sum which would, but for this Clause 2.2, cause such covenant, obligation or security to be unlawful under any applicable law.

### 2.3 Limited Recourse

No liability under this Deed shall attach to any Shareholder in excess of the proceeds of realisation of the Shares and the Security Trustee shall not have recourse under this Deed to any of the Shareholders' assets other than the Shares.

## 3. SECURITY

Each Shareholder hereby charges to the Security Trustee, by way of first fixed charge with full title guarantee, and as a continuing security for the payment and discharge of the Secured Liabilities all of their rights to and title and interest from time to time in any and each of their own Shares in the Borrower.

## 4. FURTHER ASSURANCE

4.1 Each Shareholder must promptly upon request by the Security Trustee execute (in such form as the Security Trustee may require) such documents (including assignments, transfers, mortgages, charges, notices and instructions) in favour of the Security Trustee or its nominees and do all such assurances and things as the Security Trustee may require for:

- 4.1.1 perfecting and/or protecting (by registration or in any other way) the security created or intended to be created by this Deed;
  - 4.1.2 conferring upon the Security Trustee such security as it may require over the assets of the Shareholder outside of England and Wales which if in England or Wales would form part of or be intended to form part of its Shares;
  - 4.1.3 facilitating, at any time on or after the occurrence of an Event of Default, the realisation of all or any part of its Shares; and
  - 4.1.4 for exercising all powers, authorities and discretions conferred on the Security Trustee or any Receiver pursuant to this Deed or by law.
- 4.2 Each Shareholder shall take all such action as may be available to it for the purpose of creating, perfecting or maintaining the security created or intended to be created pursuant to this Deed which shall include, without limitation, the obtaining of any necessary consent (in form and content satisfactory to the Security Trustee) to enable all or any of its Shares to be mortgaged or charged pursuant to this Deed. Immediately upon obtaining any necessary consent the asset concerned shall become subject to the security created by this Deed. Each Shareholder shall promptly deliver a copy of each such consent to the Security Trustee.

## 5. UNDERTAKINGS WITH RESPECT TO THE SHARES

### 5.1 General Undertakings

Each Shareholder undertakes to the Security Trustee:

#### 5.1.1 Negative Pledge

It shall not, without the prior consent in writing of the Security Trustee, create or attempt to create or permit to subsist or arise any Security on, over or affecting its Shares or any part of them;

#### 5.1.2 Disposals

it shall not dispose of its Shares or any part of them or agree so to do. For these purposes the term "dispose" shall include any form of disposal of any interest in any asset including (without limitation) any transfer, declaration of trust, assignment, sale, or the creation of any other form of legal or equitable interest in or over any asset or any option in respect of any of the foregoing;

#### 5.1.3 Authorisations

it shall promptly:

(A) obtain, comply with and do all that is necessary to maintain in full force and effect; and

(B) supply certified copies to the Security Trustee of,

any authorisation required under any law or regulation of their jurisdiction of incorporation to enable it to enter into and perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence in their jurisdiction of incorporation of this Deed.

#### 5.1.4 Compliance with laws

it shall comply in all respects with all laws and regulations to which it or its assets may be subject, if failure so to comply would impair its ability to perform its obligations under this Deed;

#### 5.1.5 Prejudicial action

it shall not do or cause or permit to be done anything which may in any way reduce, jeopardise or otherwise prejudice the value to the Security Trustee of its Shares;

#### 5.1.6 Communications

it shall promptly deliver to the Security Trustee a copy of every circular, notice, resolution, minutes or other documents received by it in connection with its Shares; and

#### 5.1.7 Nominees

it has not and shall not appoint any nominee to exercise or enjoy all or any of its rights in relation to its Shares.

## 5.2 Deposit of Title Documents

Each Shareholder shall deposit with the Security Trustee or its nominee:

- 5.2.1 all stock and share certificates and documents of, or evidencing, title or the right to title relating to its Shares (provided that it shall not be required to deposit any stock or share certificates relating to its Shares to the extent that the relevant documents have been deposited with a clearance system, settlement system or custodian acceptable to the Security Trustee);
- 5.2.2 stock transfer forms or other instruments of transfer duly completed to the Security Trustee's satisfaction; and
- 5.2.3 such other documents as the Security Trustee may require from time to time for the purpose of perfecting its title to the Shareholder's Shares or for the purpose of vesting the same in itself, its nominee or any purchaser or presenting the same for registration at any time.

## 5.3 Registration of transfers

Each Shareholder shall procure that, as and when required by the Security Trustee at any time on or after the occurrence of an Event of Default, all its Shares which are in registered form are duly registered in the name of the Security Trustee or its nominee once a transfer relating to those Shares is presented for that purpose.

## 5.4 Calls

Each Shareholder shall duly and promptly pay all calls, instalments or other payments which may be due and payable in respect of its Shares and, for the avoidance of doubt, no Finance Party shall incur any liability in respect of any amounts due from the Shareholders in respect of their Shares.

## 5.5 Dividends

The Security Trustee (or its nominee) shall hold all dividends or other monies received by it in respect of the Shares for the account of the relevant Shareholder and, prior to the occurrence of an Event of Default shall pay the same to an account of the relevant Shareholder as soon as practicable following receipt of a written request so to do.

## 5.6 Voting Rights and Other Matters

- 5.6.1 Prior to the occurrence of an Event of Default and save as otherwise provided in this Clause 5.6, each Shareholder shall exercise (or direct the Security Trustee to exercise on its behalf) all voting rights in respect of its Shares provided that no Shareholder shall exercise (or direct the exercise of) such voting rights in any manner which, in the opinion of the Security Trustee, may prejudice the value of, or the ability of the Security Trustee to realise, the security over the Shares created pursuant to this Deed.
- 5.6.2 No Shareholder shall, without the prior written consent of the Security Trustee, permit or agree to any variation of their rights attaching to or conferred by any of its Shares, participate in any rights issue, elect to receive or vote in favour of receiving any dividends or other distributions other than in the form of cash or participate in any vote concerning a members voluntary winding-up or a compromise or arrangement pursuant to sections 895-901 of the Companies Act 2006.
- 5.6.3 At any time on or after the occurrence of an Event of Default the Security Trustee may in such manner and on such terms as it sees fit (in the name of each Shareholder or otherwise and without the need for further consent from each Shareholder):
  - (A) exercise (or refrain from exercising) any voting rights in respect of the Shares or, as the case may be, require each Shareholder to exercise (or refrain from exercising) any such voting rights in accordance with the directions of the Security Trustee (in which event, the Shareholders shall comply with all such directions of the Security Trustee); and/or
  - (B) apply all dividends and other monies arising from the Shares in accordance with Clause 13 (*Application of Monies Received Under this Deed*); and/or
  - (C) without prejudice to any other provision of this Deed, transfer the Shares into the name of a nominee or transferee of the Security Trustee as the Security Trustee may require; and/or
  - (D) exercise (or refrain from exercising) all or any of the powers and rights conferred upon or exercisable by the legal or beneficial owner of the Shares.

## 6. LIABILITY OF SECURITY TRUSTEE

The Shareholders agree with the Security Trustee that no Finance Party or any nominee will have any liability for:

- 6.1.1 failing to present any coupon or other document relating to any of the Shares;
- 6.1.2 accepting or failing to accept any offer relating to any of the Shares;
- 6.1.3 failing to attend or vote at any meetings relating to the Shares;
- 6.1.4 failing to notify each Shareholder of any matters referred to in this Clause 6 or of any communication received in relation to the Shares; or
- 6.1.5 any loss arising out of or in connection with the exercise or non-exercise of any rights or powers attaching or accruing to the Shares or which may be exercised by the Security Trustee or any nominee for the Security Trustee under this Deed (whether or not on sale or other realisation of the Shares a better price could have or might have been obtained by either deferring or advancing the date of sale or realisation or otherwise).

## 7. RIGHTS OF THE SECURITY TRUSTEE

### 7.1 Enforcement

At any time on or after the occurrence of an Event of Default, the security created pursuant to this Deed shall be immediately enforceable and the Security Trustee may in its absolute discretion and without notice to each Shareholder or the prior authorisation of any court:

- 7.1.1 enforce all or any part of the security created by this Deed and take possession of or dispose of all or any of the Shares in each case at such times and upon such terms as it sees fit; and
- 7.1.2 whether or not it has appointed a Receiver, exercise all of the powers, authorities and discretions granted to a Receiver by this Deed or by law.

### 7.2 Restrictions on Consolidation of Mortgages

Section 93 of the LPA shall not apply to this Deed or to any sale made under it. The Security Trustee shall have the right to consolidate all or any of the security created by or pursuant to this Deed with any other security in existence at any time. Such power may be exercised by the Security Trustee at any time on or after the occurrence of an Event of Default.

### 7.3 Restrictions on Exercise of Power of Sale

Section 103 of the LPA shall not apply to this Deed and the power of sale arising under the LPA shall arise on the date of this Deed (and the Secured Liabilities shall be deemed to have become due and payable for that purpose). The power of sale and other powers conferred by section 101 of the LPA as varied or extended by this Deed and those powers conferred (expressly or by reference) on a Receiver shall be immediately exercisable by the Security Trustee at any time on or after the occurrence of an Event of Default.

### 7.4 No Prior Notice Needed

The powers of the Security Trustee set out in Clauses 7.2 (*Restrictions on Consolidation of Mortgages*) and 7.3 (*Restrictions on Exercise of Power of Sale*) above may be exercised by the Security Trustee without prior notice to the Shareholders.

### 7.5 Right of Appropriation

- 7.5.1 Without prejudice to the other provisions of this Deed, to the extent that any of the Shares constitute "financial collateral", and this Deed and the obligations of each Shareholder hereunder constitutes a "security financial collateral arrangement" (in each case as defined in, and for the purposes of, the Financial Collateral Arrangements (No.2) Regulations 2003 (SI 2003/3226) (the "**Regulations**")), the Security Trustee shall at any time on and after the occurrence of an Event of Default have the right to appropriate all or any part of those Shares in or towards discharge of the Secured Liabilities. For this purpose, the parties agree that the value of any such Shares so appropriated shall be the market price of such Shares at the time the right of appropriation is exercised as determined by the Security Trustee by reference to such method or source of valuation as the Security Trustee may select, including by independent valuation. The parties agree that the methods or sources of valuation provided for in this Clause or selected by the Security Trustee in



accordance with this Clause shall constitute a commercially reasonable method of valuation for the purposes of the Regulations.

7.5.2 The Security Trustee shall notify the Shareholders as soon as reasonably practicable of the exercise of its right of appropriation as regards such of the Shares as are specified in such notice.

## 8. **EXONERATION**

### 8.1 **Exoneration**

No Finance Party or any Receiver shall, by reason of it entering into possession of the Shares or any part thereof, be liable to account as mortgagee in possession or be liable for any loss or realisation or for any default or omission for which a mortgagee in possession might be liable; but every Receiver duly appointed by the Security Trustee under this Deed shall for all purposes be deemed to be in the same position as a receiver duly appointed by a mortgagee under the LPA save to the extent that the provisions of that Act are varied by or are inconsistent with the provisions of this Deed when the provisions hereof shall prevail and every such Receiver and the Security Trustee shall in any event be entitled to all the rights, powers, privileges and immunities conferred by the LPA on mortgagees and receivers duly appointed under the LPA.

### 8.2 **Indemnity**

The Security Trustee and every Receiver, attorney, delegate, manager, agent or other person appointed by the Security Trustee hereunder shall be entitled to be indemnified out of the Shares or any part thereof in respect of all liabilities and expenses incurred by it or him in the execution of any of the powers, authorities or discretions vested in it or him pursuant to this Deed and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to the Shares or any part of them. The Security Trustee and any such Receiver may retain and pay all sums in respect of which it is indemnified out of any monies received under the powers conferred by this Deed.

## 9. **APPOINTMENT OF RECEIVER**

### 9.1 **Appointment**

At any time on or after the occurrence of an Event of Default, or at the request of a Shareholder, the Security Trustee may, without prior notice to the remaining Shareholders, in writing (under seal, by deed or otherwise under hand) appoint a Receiver in respect of the Shares or any part thereof and may in like manner from time to time (and insofar as it is lawfully able to do) remove any Receiver and appoint another in his stead.

### 9.2 **More than one Receiver**

Where more than one Receiver is appointed, each joint Receiver shall have the power to act severally, independently of any other joint Receiver, except to the extent that the Security Trustee may specify to the contrary in the appointment.

### 9.3 **Receiver as agent**

A Receiver shall be the agent of the Shareholders and shall be solely responsible for his acts or defaults and for his remuneration. No Receiver shall at any time act as agent of any Finance Party.

### 9.4 **Receiver's Remuneration**

A Receiver shall be entitled to remuneration for his services at a rate to be determined by the Security Trustee from time to time (and without being limited to any maximum rate specified by any statute or statutory instrument).

## 10. **RECEIVER'S POWERS**

### 10.1 **Powers**

A Receiver shall have (and be entitled to exercise) in relation to the Shares over which he is appointed the following powers (as the same may be varied or extended by the provisions of this Deed):

10.1.1 all of 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);

10.1.2 all of the powers conferred from time to time on receivers, mortgagors and mortgagees in possession by the LPA;

- 10.1.3 all the powers and rights of a legal and beneficial owner and the power to do or omit to do anything which the Shareholder itself could do or omit to do; and
- 10.1.4 the power to do all things which, in the opinion of the Receiver, are incidental to any of the powers, functions, authorities or discretions conferred or vested in the Receiver pursuant to this Deed or upon receivers by statute or law generally (including, without limitation, the bringing or defending of proceedings in the name of, or on behalf of, the Shareholder/Shareholders;
- 10.1.5 the collection and/or realisation of Shares in such manner and on such terms as the Receiver sees fit; and
- 10.1.6 and the execution of documents in the name of the Shareholder/s (whether under hand, or by way of deed or by utilisation of the company seal of the Shareholder/s).

## 10.2 **Powers may be Restricted**

The powers granted to a Receiver pursuant to this Deed may be restricted by the instrument (signed by the Security Trustee) appointing him but they shall not be restricted by any winding-up or dissolution of the Shareholder/s.

## 11. **PROTECTION OF PURCHASERS**

### 11.1 **Absence of Enquiry**

No person or persons dealing with the Security Trustee or any Receiver shall be concerned to enquire whether any event has happened upon which any of the powers in this Deed are or may be exercisable or otherwise as to the propriety or regularity of any exercise of such powers or of any act purporting or intended to be an exercise of such powers or whether any amount remains secured by this Deed. All the protections to purchasers and persons dealing with receivers contained in sections 104, 107 and 109(4) of the LPA shall apply to any person purchasing from or dealing with the Security Trustee or any such Receiver.

### 11.2 **Receipt: Conclusive Discharge**

The receipt of the Security Trustee or any Receiver shall be a conclusive discharge to any purchaser of the Shares.

## 12. **POWER OF ATTORNEY AND DELEGATION**

### 12.1 **Power of Attorney: General**

Each Shareholder hereby irrevocably and by way of security appoints the Security Trustee and any Receiver severally to be its attorney in its name and on its behalf and as its act and deed:

- 12.1.1 to execute and deliver any documents or instruments which the Security Trustee or such Receiver may require for perfecting the title of the Security Trustee to its Shares or for vesting the same in the Security Trustee, its nominee or any purchaser;
- 12.1.2 to sign, execute, seal and deliver and otherwise perfect any further security document which the Shareholder is required to enter into pursuant to this Deed; and
- 12.1.3 otherwise generally to sign, seal, execute and deliver all deeds, assurances, agreements and documents and to do all acts and things which may be required for the full exercise of all or any of the powers conferred on the Security Trustee or any Receiver under this Deed or which the Shareholder is required to do pursuant to this Deed or which may be deemed expedient by the Security Trustee or a Receiver in connection with any preservation, disposition, realisation or getting in by the Security Trustee or such Receiver of the Shares or any part thereof or in connection with any other exercise of any other power under this Deed,

provided that the power of attorney granted in this Clause 12.1 shall only be exercisable: (a) if a Default is continuing; or (b) following a failure by the Shareholder to comply with its obligations under this Deed.

### 12.2 **Power of Attorney: Ratification**

Each Shareholder ratifies and confirms and agrees to ratify and confirm all acts and things which any attorney mentioned in this Clause 12 (*Power of Attorney and Delegation*) does or purports to do in exercise of the powers granted by this Clause.

### 12.3 **General Delegation**

The Security Trustee and any Receiver shall have full power to delegate the powers, authorities and discretions conferred on it or him by this Deed (including the power of attorney) on such terms and conditions as it or he shall see fit which shall not preclude exercise of those powers, authorities or discretions by it or him or any revocation of the delegation or any subsequent delegation.

### 13. **APPLICATION OF MONIES RECEIVED UNDER THIS DEED**

Any monies received under the powers hereby conferred shall, subject to the repayment of any claims having priority to this Deed, be applied for the following purposes and in the following order of priority:

13.1 in satisfaction of all costs, charges, expenses, payments and liabilities (including payments made in accordance with paragraphs (i), (ii) and (iii) of section 109(8) of the LPA) made or incurred by the Security Trustee or the Receiver and of remuneration to the Receiver in such order as the Security Trustee shall in its absolute discretion decide; and

13.2 in or towards satisfaction of the Secured Liabilities which shall be applied in such order as the Security Trustee shall in its absolute discretion decide; and

13.3 the surplus, if any, shall be paid to the Shareholders or other person or persons entitled to it, save that the Security Trustee may credit any monies received under this Deed to a suspense account for so long and in such manner as the Security Trustee may from time to time determine and the Receiver may retain the same for such period as he and the Security Trustee consider appropriate.

### 14. **RELEASE OF SECURITY**

#### 14.1 **Release**

At the end of the Security Period the Security Trustee shall, at the request and cost of the Shareholders, execute or procure the execution by its nominee (in each case in a form acceptable to the Security Trustee) and do all such deeds, acts and things as are necessary to release and/or reassign the Shares from the security created by or in accordance with this Deed.

#### 14.2 **Avoidance of Payments**

14.2.1 No amount paid, repaid or credited to a Finance Party shall be deemed to have been irrevocably paid if the Security Trustee considers that the payment or credit of such amount is capable of being avoided or reduced because of any laws applicable on bankruptcy, insolvency, liquidation or similar laws.

14.2.2 If any amount paid, repaid or credited to a Finance Party is avoided or reduced because of any laws applicable on bankruptcy, insolvency, liquidation or any similar laws then any release, discharge or settlement between that Finance Party and the Shareholders shall be deemed not to have occurred and the Security Trustee shall be entitled to enforce this Deed subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.

### 15. **AMOUNTS PAYABLE**

#### 15.1 **No Deduction**

All payments under this Deed by the Shareholder/s shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If the Shareholder/s is/are compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to a Finance Party under this Deed or, if any such withholding or deduction is made in respect of any recovery under this Deed, the Shareholder/s shall pay such additional amount so as to ensure that the net amount received by that Finance Party shall equal the full amount due to it under the provisions of this Deed (had no such withholding or deduction been made).

#### 15.2 **Currency of Payment**

The obligation of the Shareholders under this Deed to make payments in any currency shall not be discharged or satisfied by any tender, or recovery pursuant to any judgment or otherwise, expressed in or converted into

any other currency, except to the extent that tender or recovery results in the effective receipt by a Finance Party of the full amount of the currency expressed to be payable under this Deed.

## 16. REPRESENTATIONS AND WARRANTIES

### 16.1 Representations

Each Shareholder makes the following representations and warranties in favour of the Finance Parties:

- 16.1.1 it is the sole legal and beneficial owner of its Shares free from Security (other than the Security created by this Deed) and this Deed confers the security it purports to confer over its Shares and the security created under or pursuant to this Deed is not subject to any prior or pari passu Security and is not liable to avoidance on liquidation or bankruptcy, composition or any other similar insolvency proceedings.;
- 16.1.2 its Shares are free from any restrictions as to transfer or registration and are not subject to any calls or other liability to pay money;
- 16.1.3 it is a company duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has the power to own its property and assets and carry on its business as it is being conducted;
- 16.1.4 the documents to which it is a party are within its powers and have been dully authorised and executed by it; and
- 16.1.5 this deed constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms and the entry into and performance by it of this deed does not and will not conflict with any law or regulation applicable to it, its constitutional documents, or in any material respect, with any agreement or instrument binding upon its or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

### 16.2 Times for Making Representations and Warranties

The representations and warranties set out in this Clause are made on the date of this Deed and are deemed to be repeated each day prior to the expiry of the Security Period by reference to the facts and circumstances then existing.

## 17. NEW ACCOUNTS

If a Finance Party receives notice of any subsequent charge or other interest affecting any part of the Shares (the date of receipt of such notice being the "Notice Date") it may, without prejudice to its rights under this Deed, open a fresh account or accounts with the Shareholder/s and continue any existing account in the name of the Shareholder/s and may appropriate to any such fresh account any monies paid in, received or realised for the credit of the Shareholder/s after that time without being under any obligation to apply the same or any part of them in discharge of any of the Secured Liabilities. If a Finance Party fails to open a fresh account it will be deemed to have done so and any monies received or realised after the Notice Date will not reduce the Secured Liabilities outstanding on the Notice Date.

## 18. MISCELLANEOUS

### 18.1 The Shareholders

This Deed is binding on the successors and assigns of each Shareholder.

### 18.2 Assignment and Transfer

- 18.2.1 Each Shareholder may not assign any rights or transfer any of the rights or obligations it has under this Deed.
- 18.2.2 The Security Trustee may assign and transfer all or any part of its rights and obligations under this Deed to a replacement security trustee appointed pursuant to the terms of the Offer Letter. Such replacement security trustee will, from the date of such assignment or transfer, be the security trustee for the Finance Parties under this Deed instead of the previous security trustee.

**18.3 Remedies and Waivers Cumulative**

Save as expressly provided in this Deed, no failure to exercise, or delay in exercising, on the part of any party hereto any right, power or privilege under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise, or the exercise of any other right, power or privilege. No waiver by the Security Trustee shall be effective unless it is in writing. The rights and remedies of the Security Trustee are cumulative and not exclusive of any rights or remedies provided by law.

**18.4 Set-Off, Combination of Accounts and Lien**

A Finance Party may (but shall not be obliged to) set-off any obligation in respect of Secured Liabilities which is due and payable by the Shareholder/s against any obligation (contingent or otherwise) owed by that Finance Party to the Shareholder/s (regardless of the place of payment, booking branch or currency of either obligation) and apply any credit balance to which the Shareholder/s is/are entitled on any account with that Finance Party in payment of the Secured Liabilities. That Finance Party may, at the cost of the Shareholder/s, effect such currency exchanges as such Finance Party considers are appropriate to implement such set-off.

**18.5 Partial Invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Deed, nor the legality, validity or enforceability of that provision under the law of any other jurisdiction, shall in any way be affected or impaired.

**18.6 Property**

This Deed is and will remain the property of the Security Trustee.

**18.7 Continuing Security and indemnity**

This Deed shall be a continuing security and shall not be discharged by any intermediate payment or satisfaction of the whole or any part of the Secured Liabilities.

**18.8 Additional Security**

This Deed shall be in addition to and not be affected by any other security or guarantee at any time held by a Finance Party for all or any part of the Secured Liabilities nor shall any such other security or guarantee of liability to a Finance Party of or by any person not a party to this Deed be in any way impaired or discharged by this Deed nor shall this Deed in any way impair or discharge such other security or guarantee.

**18.9 Variation of Security**

This Deed shall not in any way be affected or prejudiced by a Finance Party at any time dealing with, exchanging, releasing, varying or abstaining from perfecting or enforcing any security or guarantee referred to in Clause 18.8 (*Additional Security*) above or any rights which a Finance Party may at any time have or giving time for payment or granting any indulgence or compounding with any person whatsoever.

**18.10 Enforcement of Other Security**

No Finance Party shall be obliged to enforce any other Security it may hold for the Secured Liabilities before enforcing any of its rights under this Deed.

**18.11 Redemption of Prior Incumbrances**

The Security Trustee may redeem or take a transfer of any prior Security over the Shares and may agree the accounts of prior incumbrancers. An agreed account shall be conclusive and binding on the Shareholders. Any amount paid in connection with such redemption or transfer (including expenses) shall be paid on demand by the Shareholders to the Security Trustee and until such payment shall form part of the Secured Liabilities.

19. **CALCULATIONS AND CERTIFICATES**

19.1 **Accounts**

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

19.2 **Certificates and Determinations**

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

20. **GOVERNING LAW**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

**IN WITNESS** whereof this Deed has been duly executed and delivered as a deed on the date first above written.

**The Shareholders**

**EXECUTED AS A DEED by** )  
**ARCADIA GROUP LIMITED** )

acting by )

in the presence of: )



Signature of witness

*NAOMI RIDGEWAY*

Name of witness

(in BLOCK CAPITALS)



Address of witness



Director

**EXECUTED AS A DEED by** )  
**GUS HOLDINGS UNLIMITED** )

acting by )

in the presence of: )

.....  
Signature of witness

.....  
Name of witness  
(in BLOCK CAPITALS)

.....

.....

.....

Address of witness

.....  
Director

The Shareholders

EXECUTED AS A DEED by )  
ARCADIA GROUP LIMITED )

acting by )

in the presence of: )

.....  
Director

.....  
Signature of witness

.....  
Name of witness  
(in BLOCK CAPITALS)

.....  
Address of witness

EXECUTED AS A DEED by )  
GUS HOLDINGS UNLIMITED )

acting by A. BARNES )

in the presence of: )

.....  
Director

.....  
Signature of witness

JOEL MANN

.....  
Name of witness  
(in BLOCK CAPITALS)

.....  
Address of witness



**EXECUTED AS A DEED** by  
**MARKS AND SPENCER PLC**  
acting by two directors

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Director

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Director

**EXECUTED AS A DEED** by  
**NEXT HOLDINGS LIMITED**

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acting by

.....  
Director

in the presence of:

.....  
Signature of witness

.....  
Name of witness  
(in **BLOCK CAPITALS**)

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Address of witness

EXECUTED AS A DEED by  
MARKS AND SPENCER PLC

acting by

in the presence of:

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Director

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Signature of witness

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Name of witness  
(in BLOCK CAPITALS)

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Address of witness

EXECUTED AS A DEED by  
NEXT HOLDINGS LIMITED

acting by

in the presence of:

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)

.....  
Director

.....  
Signature of witness

SEONNA ANDERSON

.....  
Name of witness  
(in BLOCK CAPITALS)

.....  
Address of witness

**The Security Trustee**

**SIGNED** by

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**Vishal Shah**

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for and on behalf of

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**OAKNORTH BANK plc**

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