



**Registration of a Charge**

Company name: **BEDFORD NOMINEES NO. 2 LIMITED**

Company number: **06214228**



X3KU41UG

Received for Electronic Filing: **17/11/2014**

---

**Details of Charge**

Date of creation: **07/11/2014**

Charge code: **0621 4228 0002**

Persons entitled: **AREO S.A R.L.**

Brief description:

**Contains fixed charge(s).**

**Contains negative pledge.**

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

---

**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:

**ROHAN CAMPBELL**



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

Company number: 6214228

Charge code: 0621 4228 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 7th November 2014 and created by BEDFORD NOMINEES NO. 2 LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 17th November 2014 .

Given at Companies House, Cardiff on 19th November 2014

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**

DATED

7 NOV 2014

2014

BEDFORD NOMINEES NO. 2 LIMITED

(AS CHARGOR)

AND

AREO S.A R.L.

(AS SECURITY AGENT)

---

SHARE CHARGE

---

I CERTIFY THAT, SAVE FOR THE MATERIAL REDACTED  
PURSUANT TO S.859G OF THE COMPANIES ACT 2006,  
THIS COPY INSTRUMENT IS A CORRECT COPY OF THE  
ORIGINAL INSTRUMENT.

R. Hamilton

ON BEHALF OF IRWIN MITCHELL LLP

irwinmitchell<sup>(IM)</sup>  
solicitors

## TABLE OF CONTENTS

		Page No.
1	DEFINITIONS AND INTERPRETATION .....	1
2	COVENANT TO PAY .....	4
3	SECURITY .....	4
4	DEPOSIT OF TITLE DOCUMENTS .....	5
5	VOTING AND DIVIDENDS .....	5
6	REPRESENTATIONS AND WARRANTIES .....	6
7	UNDERTAKINGS .....	7
8	FURTHER ASSURANCE .....	9
9	ENFORCEMENT OF SECURITY .....	9
10	RECEIVER .....	11
11	APPLICATION OF MONEYS .....	12
12	SECURITY POWER OF ATTORNEY .....	12
13	REMEDIES AND WAIVERS .....	12
14	SETTLEMENTS CONDITIONAL .....	13
15	SUBSEQUENT SECURITY .....	13
16	COVENANT TO RELEASE .....	13
17	PROTECTION OF SECURITY AGENT AND RECEIVER .....	14
18	INDEMNITY .....	14
19	DELEGATION .....	14
20	SET-OFF .....	15
21	CURRENCY CLAUSES .....	15
22	PAYMENTS TO BE MADE WITHOUT DEDUCTION .....	15
23	CERTIFICATES .....	16
24	ASSIGNMENT AND TRANSFER .....	16
25	EXPENSES .....	16
26	NOTICES .....	16
27	MISCELLANEOUS .....	18
28	GOVERNING LAW AND JURISDICTION .....	18
	SCHEDULE .....	20
	Particulars of Initial Shares .....	20

THIS DEED is dated 27 NOVEMBER 2014

**BETWEEN:**

- (1) **BEDFORD NOMINEES NO. 2 LIMITED** a company registered in England and Wales with registered number 06214228 whose registered office is at 20-22 Bedford Row, London WC1R 4JS (the "**Chargor**"); and
- (2) **AREO S.À R.L.** a société à responsabilité limitée (private limited liability company) incorporated on January 6, 2011 under the laws of the Grand Duchy of Luxembourg (Luxembourg), with its registered office at 55 Avenue Pasteur L-2311 Luxembourg, duly registered with the Luxembourg Trades and Companies Register under number B156.948 as agent and trustee for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed, except where a different interpretation is necessary in the context:

"**Borrower**" means Shellco 142 Limited (registered in England and Wales with registration number 09205508) whose registered office is at c/o JMW Solicitors LLP, 1 Byrom Place, Spinningfields, Manchester M3 3HG as the borrower under the Facility Agreement;

"**Discharge Date**" means the date on which all the Secured Liabilities have been irrevocably discharged in full and no further Secured Liabilities are capable of arising;

"**Dividends**" means all present and future dividends and distributions of any kind, interest and any other income received or receivable in relation to any of the Shares;

"**Expenses**" means all expenses (on a full indemnity basis), including (without limitation) legal fees, from time to time paid or incurred by any Secured Party at any time in connection with the Secured Liabilities or in taking, perfecting, preserving, defending or enforcing this Deed (or any of the Security created by it) or in exercising any right or power under this Deed or otherwise;

"**Facility Agreement**" means a facility agreement [dated on or about the date of this Deed] and made between, amongst others, the Borrower and the Security Agent (as original lender, agent and security agent);

"**Initial Shares**" means those shares, stocks, debentures, bonds, warrants and other securities or investments described in the Schedule;

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

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

"**Related Rights**" means all present and future:

- (a) shares, stocks, debentures, bonds, warrants, securities, investments, money or other assets arising by way of conversion, exchange, substitution, rights issue, redemption, bonus, preference, option or otherwise in relation to any of the Shares;

- (b) rights to subscribe for, purchase or otherwise acquire any Shares through

options, warrants or otherwise;

- (c) rights accruing or relating to any Shares deposited with or registered in the name of any depository, custodian, nominee, clearing house or investment manager or similar person whether on a fungible basis or otherwise and including all rights against such person; and
- (d) all other rights and assets attaching to, deriving from or exercisable as a result of the ownership of any of the Shares;

**"Relevant Currency"** means, in relation to each of the Secured Liabilities, the currency in which it is from time to time denominated;

**"Relevant Jurisdiction"** means in relation to the Chargor;

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any Secured Asset is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of this Deed;

**"Secured Assets"** means the rights, interests and assets from time to time subject, or expressed to be subject, to the Security created or expressed to be created by this Deed;

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by a Transaction Obligor or some other person) of each Transaction Obligor to the Secured Parties (or any of them) under each of the Finance Documents; and

**"Shares"** means:

- (a) all present and future shares in each of the Barton Arcade Trustees including the Initial Shares; and
- (b) all Related Rights.

## 1.2 Construction

Unless a contrary indication appears, in this Deed each reference to:

- 1.2.1.1 **"Secured Assets"** or **"Secured Liabilities"** includes a reference to any part of them and to any proceeds deriving from them;
- 1.2.1.2 **"Chargor"**, **"Security Agent"** or **"Secured Parties"** or any other person shall be construed so as to include its successors in title, personal representatives, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the this Deed and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
- 1.2.1.3 this **"Deed"** or a **"Finance Document"** or any other agreement or instrument is a reference to this Deed, that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated from time to time;

- 1.2.1.4 "assets" includes present and future properties, revenues and rights of every description;
- 1.2.1.5 "disposal" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and "dispose" will be construed accordingly;
- 1.2.1.6 "guarantee" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- 1.2.1.7 "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.1.8 "losses" includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including legal fees) and liabilities and "loss" shall be construed accordingly;
- 1.2.1.9 a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.1.10 a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 1.2.1.11 a provision of law is a reference to that provision as amended or re-enacted;
- 1.2.1.12 a time of day is a reference to London time; and
- 1.2.1.13 a right of set-off includes any right of compensation, retention or balancing accounts in bankruptcy.
- 1.2.2 In this Deed section, clause and schedule headings are for ease of reference only.
- 1.2.3 In this Deed, unless the context otherwise requires or unless otherwise defined in this Deed, words and expressions defined in the Facility Agreement have the same meanings when used in this Deed.
- 1.2.4 The parties intend that this document shall take effect as a deed.

### 1.3 Third Party Rights

- 1.3.1 Unless expressly provided to the contrary in a Finance Document a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or to enjoy the benefit of any term of this Deed.
- 1.3.2 Notwithstanding any term of any Finance Document the consent of any person who is not a party to this Deed is not required to rescind or vary this



Deed at any time.

- 1.3.3 Any Receiver, Delegate or any other person may, subject to this clause 1.3 and the Third Parties Act, rely on any clause of this Deed which expressly confers rights on it.

## **2 COVENANT TO PAY**

- 2.1 Subject to clause 2.2 below, the Chargor covenants in favour of the Security Agent to pay and discharge immediately on demand the Secured Liabilities when due in accordance with the terms of the Finance Documents or, if the relevant terms do not specify a time for payment, immediately on demand by the Security Agent.

- 2.2 Notwithstanding the provisions of clause 2.1 above, It is expressly agreed and understood that:

- 2.2.1 the sole recourse of the Security Agent to the Chargor under this Deed is to the Chargor's interest in the Secured Assets; and

- 2.2.2 the liability of the Chargor to the Secured Parties pursuant to or otherwise in connection with this Deed in relation to the Secured Liabilities shall be satisfied only from the proceeds of sale or other disposal or realisation of the Secured Assets pursuant to this Deed and limited in aggregate to an amount equal to that recovered as a result of enforcement of this Deed with respect to the Secured Assets and upon payment of such sum, the Chargor (without prejudice to the rights of the Secured Parties against the Borrower and/or any other provider of Security in respect of the Secured Liabilities) shall be released and discharged from any further liability to the Secured Parties under this Deed.

## **3 SECURITY**

### **3.1 General**

All Security created by the Chargor by or pursuant to this Deed is:

- 3.1.1 created in favour of the Security Agent as trustee for the Secured Parties;
- 3.1.2 a continuing security for the payment and discharge of the Secured Liabilities and will extend to the ultimate balance of the Secured Liabilities notwithstanding any intermediate payment or discharge of all or any part of the Secured Liabilities or any other matter or thing;
- 3.1.3 granted with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994;
- 3.1.4 granted in respect of all the right, title and interest (if any), present and future, of the Chargor in and to the Secured Assets;
- 3.1.5 is in addition to and shall neither be merged in nor in any way exclude or prejudice or be affected by any other Security or other right which any Secured Party may now or after the date of this Deed hold in respect of any of the Secured Liabilities; and
- 3.1.6 may be enforced against the Chargor without first having recourse to any other rights of any Secured Party.

### 3.2 Charge

The Chargor charges all its present and future rights, title and interest in or in connection with the Shares and the Dividends in favour of the Security Agent by way of first fixed charge.

## 4 DEPOSIT OF TITLE DOCUMENTS

The Chargor undertakes to deposit with the Security Agent or the Security Agent's nominee:

- 4.1 on or before execution of this Deed, all share certificates or other documents of title relating to the Initial Shares; and
- 4.2 immediately upon its acquisition of any Secured Asset all share certificates and other documents of title relating to that Secured Asset,

together with pre-stamped stock transfer forms (or other appropriate transfer instruments) signed by the Chargor (or its nominee, where appropriate) as transferor but with details of the transferee, date and consideration left blank, on the basis that the Security Agent may hold all those certificates, forms and documents until the Discharge Date. The Security Agent is entitled at any time after the occurrence of an Event of Default to complete the stock transfer forms (or other transfer instruments) on behalf of the Chargor in favour of itself or its nominee, using the power of attorney contained in clause 12 (*Security Power of Attorney*).

## 5 VOTING AND DIVIDENDS

### 5.1 Voting and other rights

Subject to clause 5.2 (*Voting and other rights following an Event of Default*), the Chargor is entitled to exercise or direct the exercise of the voting and other rights attached to any Secured Asset as it sees fit provided that:

- 5.1.1 it does so for a purpose not inconsistent with its obligations under any Finance Document; and
- 5.1.2 the exercise or failure to exercise those rights does not have an adverse effect on the value of the Secured Assets and does not otherwise prejudice the Security Agent's interests under this Deed.

### 5.2 Voting and other rights following an Event of Default

After an Event of Default has occurred:

- 5.2.1 the Security Agent will be entitled to exercise or direct the exercise of the voting and other rights attached to any Secured Asset as it sees fit; and
- 5.2.2 the Chargor shall comply, or procure compliance with, any directions of the Security Agent in relation to the exercise of those rights and shall promptly execute and deliver to the Security Agent all forms of proxy as it may require in connection with the exercise of those rights.

### 5.3 Dividends

Prior to the occurrence of an Event of Default, the Chargor will be entitled to receive all Dividends. After an Event of Default has occurred, all Dividends will be paid or transferred to the Security Agent (or to its order) and any Dividends received by the Chargor will be held by the Chargor on trust for the Security Agent and immediately paid by it to the Security Agent or to any nominee designated by the Security Agent. The Security Agent will be entitled to apply those Dividends in such manner as it sees

fil.

#### **5.4 Nominee shareholders**

If any Secured Asset is not held in the Chargor's name (other than as a result of the operation of this Deed) the Chargor shall procure the prompt delivery to the Security Agent of an irrevocable power of attorney, expressed to be given by way of security and executed as a deed, by the person in whose name that Secured Asset is held. That power of attorney shall appoint the Security Agent and every Receiver as the attorney of the holder in relation to that Secured Asset and shall be in a form approved by the Security Agent.

### **6 REPRESENTATIONS AND WARRANTIES**

The Chargor represents and warrants to the Security Agent that:

#### **6.1 Status**

6.1.1 It is a limited liability corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

6.1.2 It has the power to own its assets and carry on its business as it is being conducted.

#### **6.2 Binding obligations**

6.2.1 The obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations.

6.2.2 Without limiting the generality of clause 6.2.1 above, this Deed creates the Security which it purports to create and that Security is valid, effective and not liable to be avoided or set aside on the Chargor's liquidation or administration or otherwise.

#### **6.3 Non-conflict with other obligations**

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

6.3.1 any law or regulation applicable to it;

6.3.2 any of its constitutional documents; or

6.3.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

#### **6.4 Power and authority**

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

6.4.2 No limit on its powers will be exceeded as a result of creating any Security or giving any indemnity contemplated by this Deed.

#### **6.5 Validity and admissibility in evidence**

All Authorisations required or desirable:

- 6.5.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;
- 6.5.2 to make this Deed admissible in evidence in any Relevant Jurisdiction; and
- 6.5.3 to enable it to create the Security constituted, or expressed to be constituted, by this Deed and to ensure that such Security has and will have the priority and ranking which it is expressed to have in this Deed.

have been obtained or effected and are in full force and effect, save for the making of any appropriate registrations of this Deed in any Relevant Jurisdiction which registration will be promptly effected after the date of this Deed.

#### **6.6 Ranking**

Subject to the requirements specified at the end of clause 6.5 (*Validity and admissibility in evidence*) this Deed creates first ranking Security in favour of the Security Agent.

#### **6.7 Beneficial ownership etc**

6.7.1 The Chargor is the sole legal and beneficial owner of the Secured Assets free from any claims, third party rights or competing interests.

6.7.2 The Initial Shares represent, as at the date of this Deed, the entire issued share capital of each of the Barton Arcade Trustees.

#### **6.8 Shares fully paid etc.**

The Shares are fully paid, validly issued, freely transferable and not subject to any option to purchase or any similar right. The constitutional documents of the Barton Arcade Trustees do not restrict or inhibit any transfer of the Shares on the creation or enforcement of the Security constituted, or expressed to be constituted, by this Deed. There are no agreements in force other than any Finance Document or as permitted by any Finance Document which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any Shares.

#### **6.9 No existing Security**

Except for the Security constituted by this Deed, no Security exists in respect of any of the Secured Assets.

#### **6.10 Repetition**

Each of the representations and warranties in this clause 6 (other than clause 6.7.2 (*Beneficial ownership etc*)) are deemed to be made by the Chargor by reference to the facts and circumstances then existing at all times during the continuance of this Deed.

### **7 UNDERTAKINGS**

#### **7.1 Negative pledge**

The Chargor shall not create or permit to subsist any Security over the Secured Assets other than pursuant to this Deed.

#### **7.2 Disposal**

The Chargor shall not (nor agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of any of the Secured Assets except for any disposal permitted by a Finance Document.

**7.3 Acquisition of Shares**

The Chargor shall promptly notify the Security Agent of:

7.3.1 its acquisition of, or agreement to acquire, any Shares; and

7.3.2 the declaration or payment of any Dividend.

**7.4 Circulars**

The Chargor shall promptly deliver to the Security Agent a copy of every circular, notice, report, set of accounts or other documents received by it or its nominee in connection with the Secured Assets.

**7.5 Calls**

The Chargor shall pay all calls and other payments due in relation to the Secured Assets. If the Chargor fails to do so, the Security Agent may pay those calls or other payments on the Chargor's behalf and the Chargor shall immediately on demand reimburse the Security Agent for any such payment.

**7.6 Compliance with laws and other agreements**

The Chargor shall comply with all laws relating to the Secured Assets and with all conditions and obligations assumed by it in any agreement relating to any of the Secured Assets.

**7.7 Rights relating to Secured Assets**

The Chargor shall not take any action (or permit any action to be taken) which results or could result in any of the rights relating to any Secured Asset being impaired.

**7.8 Authorisations**

The Chargor shall promptly:

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

7.8.2 supply a copy (certified as being a true and correct copy by a director of the Chargor) to the Security Agent of,

any Authorisation required under any law or regulation of any Relevant Jurisdiction to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence of this Deed in any Relevant Jurisdiction.

**7.9 Restriction on subdivision**

The Chargor shall not cause or permit any of the Shares to be consolidated, subdivided or converted without the Security Agent's prior written consent.

**7.10 Security not to be prejudiced**

The Chargor shall not do, or permit to be done, anything which could prejudice the

Security constituted by this Deed.

#### **7.11 Non-competition**

7.11.1 Until all the Secured Liabilities have been unconditionally and irrevocably paid in full and none of the Secured Parties have any actual or contingent liability to advance further moneys to, or incur liability on behalf of, the Borrower or unless the Security Agent otherwise directs, the Chargor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Deed:

7.11.1.1 to be indemnified by any person;

7.11.1.2 to claim any contribution from any other provider of Security or any guarantor of the Secured Liabilities;

7.11.1.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any of the Security Agent's rights under the Finance Documents or of any other guarantee, indemnity or security taken pursuant to, or in connection with, the Secured Liabilities by the Security Agent; and/or

7.11.1.4 to claim rank, prove or vote as a creditor of the Borrower or its estate in competition with the Security Agent.

7.11.2 If the Chargor receives any benefit, payment or distribution contrary to the terms of this clause, 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 in connection with the Secured Liabilities to be repaid in full) on trust for the Security Agent and shall promptly pay or transfer the same to the Security Agent or to the Security Agent's nominee.

### **8 FURTHER ASSURANCE**

The Chargor shall, at its own cost, promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges or assurance, giving any notice, instructions, orders or direction and making any registration) as may be necessary or as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require) in favour of the Security Agent, its nominee(s) or any Receiver or Delegate:

8.1 to create, perfect, protect and maintain the Security created or intended to be created by or under this Deed or the priority of that Security;

8.2 to facilitate the exercise of any rights, powers and remedies of the Security Agent, the Secured Parties or any Receiver or Delegate provided by or pursuant to this Deed or by law;

8.3 to facilitate the realisation of the Secured Assets; and/or

8.4 to confer on the Security Agent or the Secured Parties, Security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the Security intended to be created by or under this Deed.

### **9 ENFORCEMENT OF SECURITY**

#### **9.1 When Security is enforceable**

On the occurrence of any Event of Default which is continuing, any Security created

by and under this Deed is immediately enforceable.

#### **9.1 Acts of enforcement**

The Security Agent may, in its absolute discretion, at any time after the Security created by or under this Deed has become enforceable:

- 9.1.1 enforce all or any part of the Security created by or under this Deed in any manner it sees fit;
- 9.1.2 exercise its rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Secured Assets;
- 9.1.3 appoint one or more qualified persons to be a Receiver to all or any part of the Secured Assets; or
- 9.1.4 exercise its power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed).

#### **9.2 Statutory powers - general**

- 9.2.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- 9.2.2 Sections 93 and 103 of the Law of Property Act 1925 do not apply to the Security created by or under this Deed.
- 9.2.3 Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers when such Receivers have been duly appointed under the relevant Act. If there is ambiguity or conflict between the powers contained in those Acts and those contained in this Deed, those contained in this Deed shall prevail.

#### **9.3 Suspense account**

- 9.3.1 Until the Secured Liabilities are paid in full, the Security Agent and any Receiver may place and keep (for such time as it shall determine) any money received pursuant to this Deed or on account of the Chargor's liability in respect of the Secured Liabilities in an interest bearing separate suspense account and may retain the same for the period as it and he considers expedient without having any obligation to apply all or any part of that money in or towards discharge of the Secured Liabilities.
- 9.3.2 If the Security created by this Deed is enforced at a time when no amount is due under the Finance Documents but at the time when amounts may or will become due, the Security Agent (or Receiver) may pay the proceeds of recoveries into a suspense account.

#### **9.4 Protection of Third Parties**

- 9.4.1 No purchaser from, or other person dealing with, the Security Agent or any Receiver (or its or his agents) shall be obliged or concerned to enquire:
  - 9.4.1.1 whether the right of the Security Agent or any Receiver to exercise any of the powers conferred by this Deed has arisen or become exercisable or as to the propriety or validity of the

exercise or purported exercise of any such power;

9.4.1.2 whether any of the Secured Liabilities remain outstanding or have become payable or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters; or

9.4.1.3 how any monies paid to the Security Agent or to any Receiver shall be applied.

9.4.2 The receipt by the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve it or him of any obligation to see to the application of any moneys paid to or at the direction of the Security Agent or any Receiver.

## **9.5 Redemption of Prior Charges**

The Security Agent and/or any Receiver may, at any time after the Security created by or under this Deed has become enforceable, redeem any prior Security on or relating to any of the Secured Assets or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor. The Chargor will on demand pay to the Security Agent and/or such Receiver all principal moneys, interest, costs, charges and expenses of and incidental to any such redemption or transfer.

# **10 RECEIVER**

## **10.1 Receiver as agent**

Each Receiver shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts, defaults and liabilities and for his remuneration and expenses and be liable on any agreements or engagements made or entered into by him. The Security Agent will not be responsible for any misconduct, negligence or default of a Receiver.

## **10.2 Powers of Receiver**

Each Receiver appointed under this Deed shall have all the powers conferred from time to time on receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (each of which is deemed incorporated in this Deed) so that the powers set out in Schedule 1 to the Insolvency Act 1986 shall extend to every Receiver, whether or not an administrative receiver and in addition shall have the power to do all other acts and things (including signing and executing all documents and deeds) as the Receiver considers to be incidental or conducive to any of the rights, powers or discretions of the Receiver under or by virtue of this Deed or granted by law, or otherwise incidental or conducive to the preservation, improvement or realisation of the Secured Assets and may exercise in relation to any Secured Asset all the powers and rights which he would have if he were the absolute beneficial owner of that Secured Asset and in each case may use the name of the Chargor and exercise the relevant power in any manner which he may think fit.

## **10.3 Removal of Receiver**

The Security Agent may by notice remove any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has for whatever reason terminated.

## **10.4 Remuneration of Receiver**



The Security Agent may from time to time fix the remuneration of any Receiver appointed by it and any such remuneration shall not be limited to the maximum rate specified in sections 109(6) and (8) of the Law of Property Act 1925.

#### **10.5 Several Receivers**

If at any time there is more than one Receiver, each Receiver may separately or together exercise all of the powers conferred by this Deed or under the Insolvency Act 1986 (unless the document appointing such Receiver states otherwise).

### **11 APPLICATION OF MONEYS**

#### **Order of application**

All moneys received by the Security Agent or any Receiver appointed under this Deed shall be applied in the following order:

- 11.1 in payment of the costs and losses incurred and payments made by the Security Agent and/or any Receiver (including the payment of preferential debts);
- 11.2 in payment of remuneration to the Receiver at such rates as may be agreed between the Receiver and the Security Agent (acting reasonably) at or any time after the Receiver's appointment;
- 11.3 in or towards satisfaction of the Secured Liabilities (in such order or manner as the Security Agent shall determine); and
- 11.4 the surplus (if any) shall be paid to the Chargor or other person entitled to it.

### **12 SECURITY POWER OF ATTORNEY**

The Chargor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed or any other Finance Document to which it is a party. The Chargor covenants with the Security Agent and each Receiver and any of their delegates or sub-delegates to ratify and confirm whatever any attorney does or purports to do pursuant to its appointment under this clause.

### **13 REMEDIES AND WAIVERS**

#### **13.1 Remedies**

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

#### **13.2 Waivers**

A waiver given or consent granted by the Security Agent under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

#### **13.3 Waiver of defences**

Neither the obligations of the Chargor under this Deed nor the Security constituted by this Deed will be affected by any act, omission or thing which, but for this clause,

would reduce, release or prejudice any of its obligations under this Deed or release or prejudice any of that Security (without limitation and whether or not known to the Chargor or the Security Agent) including:

- 13.3.1 any time, waiver or consent granted to, or composition with, the Chargor or any other person;
- 13.3.2 the release of the Chargor or any other person under the terms of any composition or arrangement;
- 13.3.3 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, the Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 13.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- 13.3.5 any amendment (however fundamental) or replacement of a Finance Document or any other document or Security;
- 13.3.6 any unenforceability, illegality or invalidity of any Security or of any obligation of any person under any Finance Document or any other document; or
- 13.3.7 any insolvency or similar proceedings relating to the Chargor or any other person.

#### **14 SETTLEMENTS CONDITIONAL**

##### **14.1 Amounts avoided**

If any amount paid by the Chargor or any other person in respect of the Secured Liabilities is capable of being avoided, set aside or reduced for any reason then, for the purposes of this Deed, that amount shall not be considered to have been paid.

##### **14.2 Discharge conditional**

Any settlement or discharge between the Chargor and any Secured Party shall be conditional upon no Security or payment to or for that Secured Party by the Chargor or any other person being avoided, set aside, ordered to be refunded or reduced by virtue of any law relating to insolvency or otherwise and accordingly (but without limiting the other rights of the Security Agent under this Deed) the Security Agent shall be entitled to recover from the Chargor the value which the Security Agent has placed on that Security or the amount of any such payment as if that settlement or discharge had not occurred.

#### **15 SUBSEQUENT SECURITY**

If the Security Agent receives (or is deemed to be affected by) notice of any subsequent Security or other interest affecting any of the Secured Assets it may open a new account for the Chargor in its books. If it does not do so then, unless it gives express notice to the contrary to the Chargor, as from the time the Security Agent receives (or is deemed to have received) that notice, all payments made by the Chargor to the Security Agent or to any other Secured Party (in the absence of any express appropriation to the contrary) 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 Liabilities.

#### **16 COVENANT TO RELEASE**

Once all the Secured Liabilities have been unconditionally and irrevocably paid in full and none of the Secured Parties have any actual or contingent liability to advance further moneys to, or incur liability on behalf of, the Borrower, the Security Agent shall, at the request and cost of the Chargor, take all action which may be necessary to release the Secured Assets from the Security created by this Deed and return any documents or deeds of title delivered to it pursuant to this Deed.

## **17 PROTECTION OF SECURITY AGENT AND RECEIVER**

### **17.1 No liability**

Neither the Security Agent nor any Receiver shall be liable in respect of any of the Secured Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers under this Deed, unless such loss or damage is caused by its or his gross negligence or wilful acts of default.

### **17.2 Officers and agents**

The Chargor may not take proceedings against any officer, employee or agent of the Security Agent in respect of any claim it might have against the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document (and any officer, employee or agent of the Security Agent may rely on this clause).

### **17.3 Exoneration**

The Chargor is and will remain liable to perform all the obligations assumed by it under the Shares and neither the Security Agent nor any Receiver or Delegate or any of their agents will have any duty:

17.3.1 to perform any of the Chargor's obligations or exercise any rights in relation to any Secured Asset;

17.3.2 to take any action to enforce any other person's obligations as regards any Secured Asset;

17.3.3 to take up any offer in relation to any Secured Asset; or

17.3.4 to give notification to anyone in relation to a Secured Asset.

## **18 INDEMNITY**

The Chargor will indemnify each Secured Party on demand against any loss or expense (including, without limitation, legal fees) sustained or incurred as a result either of a failure by it to perform any of its obligations under this Deed or of any representation or warranty made by it in this Deed having been incorrect when made.

## **19 DELEGATION**

### **19.1 Delegation**

The Security Agent and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Security Agent or any Receiver (as appropriate) under this Deed to any person or persons upon such terms and conditions (including the power to sub-delegate) as it may think fit.

**19.2 No liability**

Neither the Security Agent nor any Receiver will be liable or responsible to the Chargor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

**20 SET-OFF**

The Security Agent may set off any matured obligation due from the Chargor under the Finance Documents (to the extent beneficially owned by it) against any matured obligation owed by the Security Agent to the Chargor regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies the Security Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. Any exercise by the Security Agent of its rights under this clause shall be without prejudice to any other rights or remedies available to it under this Deed or otherwise.

**21 CURRENCY CLAUSES**

**21.1 Conversion**

All moneys received or held by the Security Agent or any Receiver under this Deed may be converted into any other currency which the Security Agent or such Receiver considers necessary to cover the obligations and liabilities comprised in the Secured Liabilities in that other currency at the rate at which the Security Agent and/or such Receiver determines (acting reasonably and in good faith) it is able to purchase that other currency with the existing currency.

**21.2 No discharge**

No payment to the Security Agent or any Receiver (whether under any judgement or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Security Agent has received payment in full in the currency in which the obligation or liability was incurred. To the extent that the amount of any such payment shall on actual conversion into that currency fall short of that obligation or liability expressed in that currency, the Security Agent shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Security constituted by this Deed to recover the amount of the shortfall.

**22 PAYMENTS TO BE MADE WITHOUT DEDUCTION**

**22.1 No deductions**

All sums payable by the Chargor under this Deed shall be paid in the Relevant Currency in immediately available funds and shall be paid to the credit of such account as the Security Agent may designate. All such payments shall be made in full without set-off of any sum owing by the Security Agent to the Chargor or counterclaim and free and clear of any deductions of or withholding for or on account of any Tax or for any other reason, except to the extent that any such deduction or withholding is required by law.

**22.2 Grossing-up**

If at any time the Chargor is required by law to make any deduction or withholding from any payment due from the Chargor to the Security Agent, the Chargor shall simultaneously pay to the Security Agent whatever additional amount is necessary to ensure that the Security Agent receives a net sum equal to the payment it would have received had no deduction or withholding been made.

## **23 CERTIFICATES**

A certificate signed by an official of any Secured Party as to the amount at any time of the Secured Liabilities and/or the value of the Secured Assets shall be conclusive evidence as against the Chargor of the relevant amount or value.

## **24 ASSIGNMENT AND TRANSFER**

### **24.1 Consent to assignment/transfer by Security Agent**

By this Deed the Chargor gives its irrevocable consent and continuing agreement to the assignment and/or transfer by the Security Agent of any one or more of its rights and/or obligations under this Deed.

### **24.2 Effect of assignment by Security Agent of rights**

Upon receipt by the Chargor of written notice of any assignment of rights against it under this Deed, such assignment shall take effect as an absolute assignment and Security Agent's assignee shall accordingly be entitled to sue the Chargor without joining the Security Agent (as assignor) as a party to the proceedings. For the avoidance of doubt, the Security Agent (as assignor) shall be entitled to sue the Chargor pursuant to any right not assigned without joining its assignee as a party to the proceedings.

### **24.3 Effect of transfer by Security Agent of obligations**

The Chargor irrevocably agrees that, if it receives written notice of any transfer of obligations owed to it under this Deed and the transferee confirms in such notice that it will perform such transferred obligations, then upon receipt of such notice such obligations shall be novated and after that shall be owed to the Chargor by the transferee and not by the Security Agent (as transferor).

### **24.4 No assignment/transfer by Chargor**

The Chargor may not assign and/or transfer any one or more of its rights (if any) and/or obligations under this Deed.

### **24.5 Confidentiality**

The Security Agent may give such information relating to the Chargor or this Deed as it thinks fit to any person proposing to take an assignment and/or transfer from any Secured Party and/or to enter into contractual relations with such Secured Party with respect to this Deed.

## **25 EXPENSES**

The Chargor covenants to pay on demand from time to time the Expenses from the date of any Secured Party's payment unless paid by the Borrower.

## **26 NOTICES**

### **26.1 Notices in writing**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **26.2 Addresses**

The address and fax number of the Security Agent and Chargor for any

communication or document to be made or delivered under or in connection with this Deed is that identified with its name below, or any substitute address or fax number as one party may notify to the other by not less than five Business Days' notice.

### **26.3 Delivery**

26.3.1 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

26.3.1.1 if by way of fax, when received in legible form; or

26.3.1.2 if by way of letter, when it has been left at the relevant address or five Business Days' after being deposited in the post postage prepaid in an envelope addressed to the relevant party at that address,

and, in the case of the Security Agent, if a particular department or officer is specified as part of its address details provided under clause 26.2 (Addresses), if addressed to that department or officer.

26.3.2 Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified in clause 26.2 (Addresses) (or any substitute department or officer as the Security Agent may specify for this purpose).

26.3.3 Any communication or document which becomes effective, in accordance with clauses 26.3.1 and 26.3.2 above, after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.

### **26.4 Electronic communication**

26.4.1 Any communication to be made between the Security Agent and the Chargor under or in connection with this Deed may be made by electronic mail or other electronic means to the extent that the parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if they:

26.4.1.1 notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

26.4.1.2 notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

26.4.2 Any electronic communication made between the Security Agent and the Chargor will be effective only when actually received in readable form and in the case of any electronic communication made by the Chargor to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

26.5 Any electronic communication which becomes effective, in accordance with clause 26.4.2 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **26.6 English language**

26.6.1 Any notice given under or in connection with this Deed must be in English.

26.6.2 All other documents provided under or in connection with this Deed must be:

26.6.2.1 in English; or

26.6.2.2 if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation shall prevail unless the document is a constitutional, statutory or other official document.

## 26.7 Probate/administration

Until the Security Agent receives notice in writing of grant of probate or administration of the Chargor, any communication by the Security Agent sent or delivered in accordance with clause 24 (Communications in writing) will be deemed duly served if served on the Chargor or his personal representative(s).

## 27 MISCELLANEOUS

### 27.1 Severability

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

### 27.2 Variations

No variation of the terms of this Deed will be valid unless in writing signed by the Chargor and the Security Agent.

### 27.3 Counterparts

This Deed 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 Deed.

## 28 GOVERNING LAW AND JURISDICTION

### 28.1 Governing law

This Deed and any non-contractual obligation arising out of or in connection with it, is governed by English law.

### 28.2 Jurisdiction of English courts

4.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").

4.1.2 The Chargor and the Security Agent 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.

4.1.3 This clause 28.2 is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented 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.

28.3 The Chargor expressly agrees and consents to the provisions of this clause 28.

This Deed is executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this Deed.



# SCHEDULE

## Particulars of Initial Shares

Name of Shareholder	Issuer	Description	Number of Shares held
Bedford Nominees No. 2 Limited	Barton Nominee Limited	Arcade Ordinary Shares of £1 (No. 1) each	4
Bedford Nominees No. 2 Limited	Barton Nominee Limited	Arcade Ordinary Shares of £1 (No. 2) each	4

EXECUTION PAGES

Chargor

EXECUTED as a DEED by  
duly authorised by EXPRESSCO LIMITED  
as a director of BEDFORD NOMINEES NO.2  
LIMITED

duly authorised signatory on behalf of  
Expressco Limited as Director

in the presence of

Witness Signature

Witness Name Philip JACQUES

Witness Address 21 ST THOMAS ST

BRISTOL BS1 6JS

Witness Occupation SOLICITOR

Notice details

Address: 21 St Thomas Street, Bristol BS1 6JS

Fax: +44 (0) 117 923 0063

Attention: Martin Palmer

**Security Agent**

EXECUTED as a DEED by ..... )  
AREO S.À R.L acting by ..... )  
..... )

.....  
Authorised signatory

.....  
Authorised signatory

**Notice details**

Address: 55 Avenue Pasteur, L-2311 Luxembourg  
Fax: +352 26 20 0196  
Attention: the Managers

**With a copy to:**

Address: Chenavari Investment Managers, 1 Grosvenor Place, London SW1X 7JH  
Fax: +344 (0) 207 235 3606  
Attention: Real Estate Team

**And a copy to:**

Address: Quintillion Ltd, 24-26 City Quay, Dublin 2, Ireland  
Fax: +353 1 523 8300  
Attention: Kevin O'Farrell

DATED

7 November

2014

BEDFORD NOMINEES NO. 2 LIMITED

(AS CHARGOR)

AND

AREO S.A R.L.

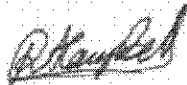
(AS SECURITY AGENT)

---

SHARE CHARGE

---

I CERTIFY THAT, SAVE FOR THE MATERIAL REJECTED  
PURSUANT TO S.859G OF THE COMPANIES ACT 2006,  
THIS COPY INSTRUMENT IS A CORRECT COPY OF THE  
ORIGINAL INSTRUMENT.



ON BEHALF OF IRWIN MITCHELL LLP

irwinmitchell<sup>(IM)</sup>  
solicitors

## TABLE OF CONTENTS

		Page No.
1	DEFINITIONS AND INTERPRETATION .....	1
2	COVENANT TO PAY .....	4
3	SECURITY .....	4
4	DEPOSIT OF TITLE DOCUMENTS .....	5
5	VOTING AND DIVIDENDS .....	5
6	REPRESENTATIONS AND WARRANTIES .....	6
7	UNDERTAKINGS .....	7
8	FURTHER ASSURANCE .....	9
9	ENFORCEMENT OF SECURITY .....	9
10	RECEIVER .....	11
11	APPLICATION OF MONEYS .....	12
12	SECURITY POWER OF ATTORNEY .....	12
13	REMEDIES AND WAIVERS .....	12
14	SETTLEMENTS CONDITIONAL .....	13
15	SUBSEQUENT SECURITY .....	13
16	COVENANT TO RELEASE .....	13
17	PROTECTION OF SECURITY AGENT AND RECEIVER .....	14
18	INDEMNITY .....	14
19	DELEGATION .....	14
20	SET-OFF .....	15
21	CURRENCY CLAUSES .....	15
22	PAYMENTS TO BE MADE WITHOUT DEDUCTION .....	15
23	CERTIFICATES .....	16
24	ASSIGNMENT AND TRANSFER .....	16
25	EXPENSES .....	16
26	NOTICES .....	16
27	MISCELLANEOUS .....	18
28	GOVERNING LAW AND JURISDICTION .....	18
	SCHEDULE .....	20
	Particulars of Initial Shares .....	20

THIS DEED is dated

2014

BETWEEN:

- (1) **BEDFORD NOMINEES NO. 2 LIMITED** a company registered in England and Wales with registered number 06214228 whose registered office is at 20-22 Bedford Row, London WC1R 4JS (the "**Chargor**"); and
- (2) **AREO S.À R.L.** a société à responsabilité limitée (private limited liability company) incorporated on January 6, 2011 under the laws of the Grand Duchy of Luxembourg (Luxembourg), with its registered office at 55 Avenue Pasteur L-2311 Luxembourg, duly registered with the Luxembourg Trades and Companies Register under number B158.948 as agent and trustee for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed, except where a different interpretation is necessary in the context:

**"Borrower"** means Shellco 142 Limited (registered in England and Wales with registration number 09205508) whose registered office is at c/o JMW Solicitors LLP, 1 Byrom Place, Spinningfields, Manchester M3 3HG as the borrower under the Facility Agreement;

**"Discharge Date"** means the date on which all the Secured Liabilities have been irrevocably discharged in full and no further Secured Liabilities are capable of arising;

**"Dividends"** means all present and future dividends and distributions of any kind, interest and any other income received or receivable in relation to any of the Shares;

**"Expenses"** means all expenses (on a full indemnity basis), including (without limitation) legal fees, from time to time paid or incurred by any Secured Party at any time in connection with the Secured Liabilities or in taking, perfecting, preserving, defending or enforcing this Deed (or any of the Security created by it) or in exercising any right or power under this Deed or otherwise;

**"Facility Agreement"** means a facility agreement [dated on or about the date of this Deed] and made between, amongst others, the Borrower and the Security Agent (as original lender, agent and security agent);

**"Initial Shares"** means those shares, stocks, debentures, bonds, warrants and other securities or investments described in the Schedule;

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

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

**"Related Rights"** means all present and future:

- (a) shares, stocks, debentures, bonds, warrants, securities, investments, money or other assets arising by way of conversion, exchange, substitution, rights issue, redemption, bonus, preference, option or otherwise in relation to any of the Shares;
- (b) rights to subscribe for, purchase or otherwise acquire any Shares through

options, warrants or otherwise;

- (c) rights accruing or relating to any Shares deposited with or registered in the name of any depository, custodian, nominee, clearing house or investment manager or similar person whether on a fungible basis or otherwise and including all rights against such person; and
- (d) all other rights and assets attaching to, deriving from or exercisable as a result of the ownership of any of the Shares;

**"Relevant Currency"** means, in relation to each of the Secured Liabilities, the currency in which it is from time to time denominated;

**"Relevant Jurisdiction"** means in relation to the Chargor;

- (a) its jurisdiction of incorporation;
- (b) any jurisdiction where any Secured Asset is situated;
- (c) any jurisdiction where it conducts its business; and
- (d) the jurisdiction whose laws govern the perfection of this Deed;

**"Secured Assets"** means the rights, interests and assets from time to time subject, or expressed to be subject, to the Security created or expressed to be created by this Deed;

**"Secured Liabilities"** means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by a Transaction Obligor or some other person) of each Transaction Obligor to the Secured Parties (or any of them) under each of the Finance Documents; and

**"Shares"** means:

- (a) all present and future shares in each of the Barton Arcade Trustees including the Initial Shares; and
- (b) all Related Rights.

## 1.2 Construction

Unless a contrary indication appears, in this Deed each reference to:

- 1.2.1.1 **"Secured Assets"** or **"Secured Liabilities"** includes a reference to any part of them and to any proceeds deriving from them;
- 1.2.1.2 **"Chargor"**, **"Security Agent"** or **"Secured Parties"** or any other person shall be construed so as to include its successors in title, personal representatives, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the this Deed and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with the Finance Documents;
- 1.2.1.3 this **"Deed"** or a **"Finance Document"** or any other agreement or instrument is a reference to this Deed, that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated from time to time;

- 1.2.1.4 "assets" includes present and future properties, revenues and rights of every description;
- 1.2.1.5 "disposal" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and "dispose" will be construed accordingly;
- 1.2.1.6 "guarantee" means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- 1.2.1.7 "indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.1.8 "losses" includes losses, actions, damages, claims, proceedings, costs, demands, expenses (including legal fees) and liabilities and "loss" shall be construed accordingly;
- 1.2.1.9 a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.1.10 a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 1.2.1.11 a provision of law is a reference to that provision as amended or re-enacted;
- 1.2.1.12 a time of day is a reference to London time; and
- 1.2.1.13 a right of set-off includes any right of compensation, retention or balancing accounts in bankruptcy.
- 1.2.2 In this Deed section, clause and schedule headings are for ease of reference only.
- 1.2.3 In this Deed, unless the context otherwise requires or unless otherwise defined in this Deed, words and expressions defined in the Facility Agreement have the same meanings when used in this Deed.
- 1.2.4 The parties intend that this document shall take effect as a deed.

### 1.3 Third Party Rights

- 1.3.1 Unless expressly provided to the contrary in a Finance Document a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 (the "Third Parties Act") to enforce or to enjoy the benefit of any term of this Deed.
- 1.3.2 Notwithstanding any term of any Finance Document the consent of any person who is not a party to this Deed is not required to rescind or vary this



Deed at any time.

- 1.3.3 Any Receiver, Delegate or any other person may, subject to this clause 1.3 and the Third Parties Act, rely on any clause of this Deed which expressly confers rights on it.

## **2 COVENANT TO PAY**

- 2.1 Subject to clause 2.2 below, the Chargor covenants in favour of the Security Agent to pay and discharge immediately on demand the Secured Liabilities when due in accordance with the terms of the Finance Documents or, if the relevant terms do not specify a time for payment, immediately on demand by the Security Agent.
- 2.2 Notwithstanding the provisions of clause 2.1 above, it is expressly agreed and understood that:
- 2.2.1 the sole recourse of the Security Agent to the Chargor under this Deed is to the Chargor's interest in the Secured Assets; and
- 2.2.2 the liability of the Chargor to the Secured Parties pursuant to or otherwise in connection with this Deed in relation to the Secured Liabilities shall be satisfied only from the proceeds of sale or other disposal or realisation of the Secured Assets pursuant to this Deed and limited in aggregate to an amount equal to that recovered as a result of enforcement of this Deed with respect to the Secured Assets and upon payment of such sum, the Chargor (without prejudice to the rights of the Secured Parties against the Borrower and/or any other provider of Security in respect of the Secured Liabilities) shall be released and discharged from any further liability to the Secured Parties under this Deed.

## **3 SECURITY**

### **3.1 General**

All Security created by the Chargor by or pursuant to this Deed is:

- 3.1.1 created in favour of the Security Agent as trustee for the Secured Parties;
- 3.1.2 a continuing security for the payment and discharge of the Secured Liabilities and will extend to the ultimate balance of the Secured Liabilities notwithstanding any intermediate payment or discharge of all or any part of the Secured Liabilities or any other matter or thing;
- 3.1.3 granted with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994;
- 3.1.4 granted in respect of all the right, title and interest (if any), present and future, of the Chargor in and to the Secured Assets;
- 3.1.5 is in addition to and shall neither be merged in nor in any way exclude or prejudice or be affected by any other Security or other right which any Secured Party may now or after the date of this Deed hold in respect of any of the Secured Liabilities; and
- 3.1.6 may be enforced against the Chargor without first having recourse to any other rights of any Secured Party.

### 3.2 Charge

The Chargor charges all its present and future rights, title and interest in or in connection with the Shares and the Dividends in favour of the Security Agent by way of first fixed charge.

## 4 DEPOSIT OF TITLE DOCUMENTS

The Chargor undertakes to deposit with the Security Agent or the Security Agent's nominee:

- 4.1 on or before execution of this Deed, all share certificates or other documents of title relating to the Initial Shares; and
- 4.2 immediately upon its acquisition of any Secured Asset all share certificates and other documents of title relating to that Secured Asset.

together with pre-stamped stock transfer forms (or other appropriate transfer instruments) signed by the Chargor (or its nominee, where appropriate) as transferor but with details of the transferee, date and consideration left blank, on the basis that the Security Agent may hold all those certificates, forms and documents until the Discharge Date. The Security Agent is entitled at any time after the occurrence of an Event of Default to complete the stock transfer forms (or other transfer instruments) on behalf of the Chargor in favour of itself or its nominee, using the power of attorney contained in clause 12 (*Security Power of Attorney*).

## 5 VOTING AND DIVIDENDS

### 5.1 Voting and other rights

Subject to clause 5.2 (*Voting and other rights following an Event of Default*), the Chargor is entitled to exercise or direct the exercise of the voting and other rights attached to any Secured Asset as it sees fit provided that:

- 5.1.1 it does so for a purpose not inconsistent with its obligations under any Finance Document; and
- 5.1.2 the exercise or failure to exercise those rights does not have an adverse effect on the value of the Secured Assets and does not otherwise prejudice the Security Agent's interests under this Deed.

### 5.2 Voting and other rights following an Event of Default

After an Event of Default has occurred:

- 5.2.1 the Security Agent will be entitled to exercise or direct the exercise of the voting and other rights attached to any Secured Asset as it sees fit; and
- 5.2.2 the Chargor shall comply, or procure compliance with, any directions of the Security Agent in relation to the exercise of those rights and shall promptly execute and deliver to the Security Agent all forms of proxy as it may require in connection with the exercise of those rights.

### 5.3 Dividends

Prior to the occurrence of an Event of Default, the Chargor will be entitled to receive all Dividends. After an Event of Default has occurred, all Dividends will be paid or transferred to the Security Agent (or to its order) and any Dividends received by the Chargor will be held by the Chargor on trust for the Security Agent and immediately paid by it to the Security Agent or to any nominee designated by the Security Agent. The Security Agent will be entitled to apply those Dividends in such manner as it sees

fil.

#### **5.4 Nominee shareholders**

If any Secured Asset is not held in the Chargor's name (other than as a result of the operation of this Deed) the Chargor shall procure the prompt delivery to the Security Agent of an irrevocable power of attorney, expressed to be given by way of security and executed as a deed, by the person in whose name that Secured Asset is held. That power of attorney shall appoint the Security Agent and every Receiver as the attorney of the holder in relation to that Secured Asset and shall be in a form approved by the Security Agent.

### **6 REPRESENTATIONS AND WARRANTIES**

The Chargor represents and warrants to the Security Agent that:

#### **6.1 Status**

6.1.1 It is a limited liability corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation.

6.1.2 It has the power to own its assets and carry on its business as it is being conducted.

#### **6.2 Binding obligations**

6.2.1 The obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations.

6.2.2 Without limiting the generality of clause 6.2.1 above, this Deed creates the Security which it purports to create and that Security is valid, effective and not liable to be avoided or set aside on the Chargor's liquidation or administration or otherwise.

#### **6.3 Non-conflict with other obligations**

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

6.3.1 any law or regulation applicable to it;

6.3.2 any of its constitutional documents; or

6.3.3 any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument.

#### **6.4 Power and authority**

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

6.4.2 No limit on its powers will be exceeded as a result of creating any Security or giving any indemnity contemplated by this Deed.

#### **6.5 Validity and admissibility in evidence**

All Authorisations required or desirable:

- 6.5.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in this Deed;
- 6.5.2 to make this Deed admissible in evidence in any Relevant Jurisdiction; and
- 6.5.3 to enable it to create the Security constituted, or expressed to be constituted, by this Deed and to ensure that such Security has and will have the priority and ranking which it is expressed to have in this Deed,

have been obtained or effected and are in full force and effect, save for the making of any appropriate registrations of this Deed in any Relevant Jurisdiction which registration will be promptly effected after the date of this Deed.

## 6.6 Ranking

Subject to the requirements specified at the end of clause 6.5 (*Validity and admissibility in evidence*) this Deed creates first ranking Security in favour of the Security Agent.

## 6.7 Beneficial ownership etc

- 6.7.1 The Chargor is the sole legal and beneficial owner of the Secured Assets free from any claims, third party rights or competing interests.
- 6.7.2 The Initial Shares represent, as at the date of this Deed, the entire issued share capital of each of the Barton Arcade Trustees.

## 6.8 Shares fully paid etc.

The Shares are fully paid, validly issued, freely transferable and not subject to any option to purchase or any similar right. The constitutional documents of the Barton Arcade Trustees do not restrict or inhibit any transfer of the Shares on the creation or enforcement of the Security constituted, or expressed to be constituted, by this Deed. There are no agreements in force other than any Finance Document or as permitted by any Finance Document which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any Shares.

## 6.9 No existing Security

Except for the Security constituted by this Deed, no Security exists in respect of any of the Secured Assets.

## 6.10 Repetition

Each of the representations and warranties in this clause 6 (other than clause 6.7.2 (*Beneficial ownership etc*)) are deemed to be made by the Chargor by reference to the facts and circumstances then existing at all times during the continuance of this Deed.

# 7 UNDERTAKINGS

## 7.1 Negative pledge

The Chargor shall not create or permit to subsist any Security over the Secured Assets other than pursuant to this Deed.

## 7.2 Disposal

The Chargor shall not (nor agree to) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of any of the Secured Assets except for any disposal permitted by a Finance Document.

**7.3 Acquisition of Shares**

The Chargor shall promptly notify the Security Agent of:

- 7.3.1 its acquisition of, or agreement to acquire, any Shares; and
- 7.3.2 the declaration or payment of any Dividend.

**7.4 Circulars**

The Chargor shall promptly deliver to the Security Agent a copy of every circular, notice, report, set of accounts or other documents received by it or its nominee in connection with the Secured Assets.

**7.5 Calls**

The Chargor shall pay all calls and other payments due in relation to the Secured Assets. If the Chargor fails to do so, the Security Agent may pay those calls or other payments on the Chargor's behalf and the Chargor shall immediately on demand reimburse the Security Agent for any such payment.

**7.6 Compliance with laws and other agreements**

The Chargor shall comply with all laws relating to the Secured Assets and with all conditions and obligations assumed by it in any agreement relating to any of the Secured Assets.

**7.7 Rights relating to Secured Assets**

The Chargor shall not take any action (or permit any action to be taken) which results or could result in any of the rights relating to any Secured Asset being impaired.

**7.8 Authorisations**

The Chargor shall promptly:

- 7.8.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and
- 7.8.2 supply a copy (certified as being a true and correct copy by a director of the Chargor) to the Security Agent of,

any Authorisation required under any law or regulation of any Relevant Jurisdiction to enable it to perform its obligations under this Deed and to ensure the legality, validity, enforceability or admissibility in evidence of this Deed in any Relevant Jurisdiction.

**7.9 Restriction on subdivision**

The Chargor shall not cause or permit any of the Shares to be consolidated, subdivided or converted without the Security Agent's prior written consent.

**7.10 Security not to be prejudiced**

The Chargor shall not do, or permit to be done, anything which could prejudice the

Security constituted by this Deed.

#### **7.11 Non-competition**

7.11.1 Until all the Secured Liabilities have been unconditionally and irrevocably paid in full and none of the Secured Parties have any actual or contingent liability to advance further moneys to, or incur liability on behalf of, the Borrower or unless the Security Agent otherwise directs, the Chargor shall not exercise any rights which it may have by reason of performance by it of its obligations under this Deed:

7.11.1.1 to be indemnified by any person;

7.11.1.2 to claim any contribution from any other provider of Security or any guarantor of the Secured Liabilities;

7.11.1.3 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any of the Security Agent's rights under the Finance Documents or of any other guarantee, indemnity or security taken pursuant to, or in connection with, the Secured Liabilities by the Security Agent; and/or

7.11.1.4 to claim rank, prove or vote as a creditor of the Borrower or its estate in competition with the Security Agent.

7.11.2 If the Chargor receives any benefit, payment or distribution contrary to the terms of this clause, 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 in connection with the Secured Liabilities to be repaid in full) on trust for the Security Agent and shall promptly pay or transfer the same to the Security Agent or to the Security Agent's nominee.

#### **8 FURTHER ASSURANCE**

The Chargor shall, at its own cost, promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges or assurance, giving any notice, instructions, orders or direction and making any registration) as may be necessary or as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require) in favour of the Security Agent, its nominee(s) or any Receiver or Delegate:

8.1 to create, perfect, protect and maintain the Security created or intended to be created by or under this Deed or the priority of that Security;

8.2 to facilitate the exercise of any rights, powers and remedies of the Security Agent, the Secured Parties or any Receiver or Delegate provided by or pursuant to this Deed or by law;

8.3 to facilitate the realisation of the Secured Assets; and/or

8.4 to confer on the Security Agent or the Secured Parties, Security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the Security intended to be created by or under this Deed.

#### **9 ENFORCEMENT OF SECURITY**

##### **9.1 When Security is enforceable**

On the occurrence of any Event of Default which is continuing, any Security created

by and under this Deed is immediately enforceable.

#### **9.1 Acts of enforcement**

The Security Agent may, in its absolute discretion, at any time after the Security created by or under this Deed has become enforceable:

- 9.1.1 enforce all or any part of the Security created by or under this Deed in any manner it sees fit;
- 9.1.2 exercise its rights and powers conferred upon mortgagees by the Law of Property Act 1925, as varied and extended by this Deed, and rights and powers conferred on a Receiver by this Deed, whether or not it has taken possession or appointed a Receiver to any of the Secured Assets;
- 9.1.3 appoint one or more qualified persons to be a Receiver to all or any part of the Secured Assets; or
- 9.1.4 exercise its power of sale under section 101 of the Law of Property Act 1925 (as amended by this Deed).

#### **9.2 Statutory powers - general**

- 9.2.1 For the purposes of all powers implied by statute, the Secured Liabilities are deemed to have become due and payable on the date of this Deed.
- 9.2.2 Sections 93 and 103 of the Law of Property Act 1925 do not apply to the Security created by or under this Deed.
- 9.2.3 Each Receiver and the Security Agent is entitled to all the rights, powers, privileges and immunities conferred by the Law of Property Act 1925 and the Insolvency Act 1986 on mortgagees and Receivers when such Receivers have been duly appointed under the relevant Act. If there is ambiguity or conflict between the powers contained in those Acts and those contained in this Deed, those contained in this Deed shall prevail.

#### **9.3 Suspense account**

- 9.3.1 Until the Secured Liabilities are paid in full, the Security Agent and any Receiver may place and keep (for such time as it shall determine) any money received pursuant to this Deed or on account of the Chargor's liability in respect of the Secured Liabilities in an interest bearing separate suspense account and may retain the same for the period as it and he considers expedient without having any obligation to apply all or any part of that money in or towards discharge of the Secured Liabilities.
- 9.3.2 If the Security created by this Deed is enforced at a time when no amount is due under the Finance Documents but at the time when amounts may or will become due, the Security Agent (or Receiver) may pay the proceeds of recoveries into a suspense account.

#### **9.4 Protection of Third Parties**

- 9.4.1 No purchaser from, or other person dealing with, the Security Agent or any Receiver (or its or his agents) shall be obliged or concerned to enquire:
  - 9.4.1.1 whether the right of the Security Agent or any Receiver to exercise any of the powers conferred by this Deed has arisen or become exercisable or as to the propriety or validity of the

exercise or purported exercise of any such power;

9.4.1.2 whether any of the Secured Liabilities remain outstanding or have become payable or be concerned with notice to the contrary and the title and position of such a purchaser or other person shall not be impeachable by reference to any of those matters; or

9.4.1.3 how any monies paid to the Security Agent or to any Receiver shall be applied.

9.4.2 The receipt by the Security Agent or any Receiver shall be an absolute and a conclusive discharge to a purchaser and shall relieve it or him of any obligation to see to the application of any moneys paid to or at the direction of the Security Agent or any Receiver.

## **9.5 Redemption of Prior Charges**

The Security Agent and/or any Receiver may, at any time after the Security created by or under this Deed has become enforceable, redeem any prior Security on or relating to any of the Secured Assets or procure the transfer of that Security to itself, and may settle and pass the accounts of any person entitled to that prior Security. Any account so settled and passed shall (subject to any manifest error) be conclusive and binding on the Chargor. The Chargor will on demand pay to the Security Agent and/or such Receiver all principal moneys, interest, costs, charges and expenses of and incidental to any such redemption or transfer.

# **10 RECEIVER**

## **10.1 Receiver as agent**

Each Receiver shall be the agent of the Chargor and the Chargor shall be solely responsible for his acts, defaults and liabilities and for his remuneration and expenses and be liable on any agreements or engagements made or entered into by him. The Security Agent will not be responsible for any misconduct, negligence or default of a Receiver.

## **10.2 Powers of Receiver**

Each Receiver appointed under this Deed shall have all the powers conferred from time to time on receivers by the Law of Property Act 1925 and the Insolvency Act 1986 (each of which is deemed incorporated in this Deed) so that the powers set out in Schedule 1 to the Insolvency Act 1986 shall extend to every Receiver, whether or not an administrative receiver and in addition shall have the power to do all other acts and things (including signing and executing all documents and deeds) as the Receiver considers to be incidental or conducive to any of the rights, powers or discretions of the Receiver under or by virtue of this Deed or granted by law, or otherwise incidental or conducive to the preservation, improvement or realisation of the Secured Assets and may exercise in relation to any Secured Asset all the powers and rights which he would have if he were the absolute beneficial owner of that Secured Asset and in each case may use the name of the Chargor and exercise the relevant power in any manner which he may think fit.

## **10.3 Removal of Receiver**

The Security Agent may by notice remove any Receiver appointed by it and, whenever it may deem appropriate, appoint a new Receiver in the place of any Receiver whose appointment has for whatever reason terminated.

## **10.4 Remuneration of Receiver**



The Security Agent may from time to time fix the remuneration of any Receiver appointed by it and any such remuneration shall not be limited to the maximum rate specified in sections 109(6) and (8) of the Law of Property Act 1925.

#### **10.5 Several Receivers**

If at any time there is more than one Receiver, each Receiver may separately or together exercise all of the powers conferred by this Deed or under the Insolvency Act 1986 (unless the document appointing such Receiver states otherwise).

### **11 APPLICATION OF MONEYS**

#### **Order of application**

All moneys received by the Security Agent or any Receiver appointed under this Deed shall be applied in the following order:

- 11.1 in payment of the costs and losses incurred and payments made by the Security Agent and/or any Receiver (including the payment of preferential debts);
- 11.2 in payment of remuneration to the Receiver at such rates as may be agreed between the Receiver and the Security Agent (acting reasonably) at or any time after the Receiver's appointment;
- 11.3 in or towards satisfaction of the Secured Liabilities (in such order or manner as the Security Agent shall determine); and
- 11.4 the surplus (if any) shall be paid to the Chargor or other person entitled to it.

### **12 SECURITY POWER OF ATTORNEY**

The Chargor, by way of security, irrevocably and severally appoints the Security Agent, each Receiver and any of their delegates or sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed or any other Finance Document to which it is a party. The Chargor covenants with the Security Agent and each Receiver and any of their delegates or sub-delegates to ratify and confirm whatever any attorney does or purports to do pursuant to its appointment under this clause.

### **13 REMEDIES AND WAIVERS**

#### **13.1 Remedies**

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

#### **13.2 Waivers**

A waiver given or consent granted by the Security Agent under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

#### **13.3 Waiver of defences**

Neither the obligations of the Chargor under this Deed nor the Security constituted by this Deed will be affected by any act, omission or thing which, but for this clause,

would reduce, release or prejudice any of its obligations under this Deed or release or prejudice any of that Security (without limitation and whether or not known to the Chargor or the Security Agent) including:

- 13.3.1 any time, waiver or consent granted to, or composition with, the Chargor or any other person;
- 13.3.2 the release of the Chargor or any other person under the terms of any composition or arrangement;
- 13.3.3 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, the Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- 13.3.4 any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- 13.3.5 any amendment (however fundamental) or replacement of a Finance Document or any other document or Security;
- 13.3.6 any unenforceability, illegality or invalidity of any Security or of any obligation of any person under any Finance Document or any other document; or
- 13.3.7 any insolvency or similar proceedings relating to the Chargor or any other person.

#### **14 SETTLEMENTS CONDITIONAL**

##### **14.1 Amounts avoided**

If any amount paid by the Chargor or any other person in respect of the Secured Liabilities is capable of being avoided, set aside or reduced for any reason then, for the purposes of this Deed, that amount shall not be considered to have been paid.

##### **14.2 Discharge conditional**

Any settlement or discharge between the Chargor and any Secured Party shall be conditional upon no Security or payment to or for that Secured Party by the Chargor or any other person being avoided, set aside, ordered to be refunded or reduced by virtue of any law relating to insolvency or otherwise and accordingly (but without limiting the other rights of the Security Agent under this Deed) the Security Agent shall be entitled to recover from the Chargor the value which the Security Agent has placed on that Security or the amount of any such payment as if that settlement or discharge had not occurred.

#### **15 SUBSEQUENT SECURITY**

If the Security Agent receives (or is deemed to be affected by) notice of any subsequent Security or other interest affecting any of the Secured Assets it may open a new account for the Chargor in its books. If it does not do so then, unless it gives express notice to the contrary to the Chargor, as from the time the Security Agent receives (or is deemed to have received) that notice, all payments made by the Chargor to the Security Agent or to any other Secured Party (in the absence of any express appropriation to the contrary) 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 Liabilities.

#### **16 COVENANT TO RELEASE**

Once all the Secured Liabilities have been unconditionally and irrevocably paid in full and none of the Secured Parties have any actual or contingent liability to advance further moneys to, or incur liability on behalf of, the Borrower, the Security Agent shall, at the request and cost of the Chargor, take all action which may be necessary to release the Secured Assets from the Security created by this Deed and return any documents or deeds of title delivered to it pursuant to this Deed.

## **17 PROTECTION OF SECURITY AGENT AND RECEIVER**

### **17.1 No liability**

Neither the Security Agent nor any Receiver shall be liable in respect of any of the Secured Assets or for any loss or damage which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, their respective powers under this Deed, unless such loss or damage is caused by its or his gross negligence or wilful acts of default.

### **17.2 Officers and agents**

The Chargor may not take proceedings against any officer, employee or agent of the Security Agent in respect of any claim it might have against the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document (and any officer, employee or agent of the Security Agent may rely on this clause).

### **17.3 Exoneration**

The Chargor is and will remain liable to perform all the obligations assumed by it under the Shares and neither the Security Agent nor any Receiver or Delegate or any of their agents will have any duty:

17.3.1 to perform any of the Chargor's obligations or exercise any rights in relation to any Secured Asset;

17.3.2 to take any action to enforce any other person's obligations as regards any Secured Asset;

17.3.3 to take up any offer in relation to any Secured Asset; or

17.3.4 to give notification to anyone in relation to a Secured Asset.

## **18 INDEMNITY**

The Chargor will indemnify each Secured Party on demand against any loss or expense (including, without limitation, legal fees) sustained or incurred as a result either of a failure by it to perform any of its obligations under this Deed or of any representation or warranty made by it in this Deed having been incorrect when made.

## **19 DELEGATION**

### **19.1 Delegation**

The Security Agent and any Receiver may delegate by power of attorney or in any other manner all or any of the powers, authorities and discretions which are for the time being exercisable by the Security Agent or any Receiver (as appropriate) under this Deed to any person or persons upon such terms and conditions (including the power to sub-delegate) as it may think fit.

**19.2 No liability**

Neither the Security Agent nor any Receiver will be liable or responsible to the Chargor or any other person for any losses, liabilities or expenses arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

**20 SET-OFF**

The Security Agent may set off any matured obligation due from the Chargor under the Finance Documents (to the extent beneficially owned by it) against any matured obligation owed by the Security Agent to the Chargor regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies the Security Agent may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. Any exercise by the Security Agent of its rights under this clause shall be without prejudice to any other rights or remedies available to it under this Deed or otherwise.

**21 CURRENCY CLAUSES**

**21.1 Conversion**

All moneys received or held by the Security Agent or any Receiver under this Deed may be converted into any other currency which the Security Agent or such Receiver considers necessary to cover the obligations and liabilities comprised in the Secured Liabilities in that other currency at the rate at which the Security Agent and/or such Receiver determines (acting reasonably and in good faith) it is able to purchase that other currency with the existing currency.

**21.2 No discharge**

No payment to the Security Agent or any Receiver (whether under any judgement or court order or otherwise) shall discharge the obligation or liability of the Chargor in respect of which it was made unless and until the Security Agent has received payment in full in the currency in which the obligation or liability was incurred. To the extent that the amount of any such payment shall on actual conversion into that currency fall short of that obligation or liability expressed in that currency, the Security Agent shall have a further separate cause of action against the Chargor and shall be entitled to enforce the Security constituted by this Deed to recover the amount of the shortfall.

**22 PAYMENTS TO BE MADE WITHOUT DEDUCTION**

**22.1 No deductions**

All sums payable by the Chargor under this Deed shall be paid in the Relevant Currency in immediately available funds and shall be paid to the credit of such account as the Security Agent may designate. All such payments shall be made in full without set-off of any sum owing by the Security Agent to the Chargor or counterclaim and free and clear of any deductions of or withholding for or on account of any Tax or for any other reason, except to the extent that any such deduction or withholding is required by law.

**22.2 Grossing-up**

If at any time the Chargor is required by law to make any deduction or withholding from any payment due from the Chargor to the Security Agent, the Chargor shall simultaneously pay to the Security Agent whatever additional amount is necessary to ensure that the Security Agent receives a net sum equal to the payment it would have received had no deduction or withholding been made.

## **23 CERTIFICATES**

A certificate signed by an official of any Secured Party as to the amount at any time of the Secured Liabilities and/or the value of the Secured Assets shall be conclusive evidence as against the Chargor of the relevant amount or value.

## **24 ASSIGNMENT AND TRANSFER**

### **24.1 Consent to assignment/transfer by Security Agent**

By this Deed the Chargor gives its irrevocable consent and continuing agreement to the assignment and/or transfer by the Security Agent of any one or more of its rights and/or obligations under this Deed.

### **24.2 Effect of assignment by Security Agent of rights**

Upon receipt by the Chargor of written notice of any assignment of rights against it under this Deed, such assignment shall take effect as an absolute assignment and Security Agent's assignee shall accordingly be entitled to sue the Chargor without joining the Security Agent (as assignor) as a party to the proceedings. For the avoidance of doubt, the Security Agent (as assignor) shall be entitled to sue the Chargor pursuant to any right not assigned without joining its assignee as a party to the proceedings.

### **24.3 Effect of transfer by Security Agent of obligations**

The Chargor irrevocably agrees that, if it receives written notice of any transfer of obligations owed to it under this Deed and the transferee confirms in such notice that it will perform such transferred obligations, then upon receipt of such notice such obligations shall be novated and after that shall be owed to the Chargor by the transferee and not by the Security Agent (as transferor).

### **24.4 No assignment/transfer by Chargor**

The Chargor may not assign and/or transfer any one or more of its rights (if any) and/or obligations under this Deed.

### **24.5 Confidentiality**

The Security Agent may give such information relating to the Chargor or this Deed as it thinks fit to any person proposing to take an assignment and/or transfer from any Secured Party and/or to enter into contractual relations with such Secured Party with respect to this Deed.

## **25 EXPENSES**

The Chargor covenants to pay on demand from time to time the Expenses from the date of any Secured Party's payment unless paid by the Borrower.

## **26 NOTICES**

### **26.1 Notices in writing**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **26.2 Addresses**

The address and fax number of the Security Agent and Chargor for any

communication or document to be made or delivered under or in connection with this Deed is that identified with its name below, or any substitute address or fax number as one party may notify to the other by not less than five Business Days' notice.

### **26.3 Delivery**

26.3.1 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

26.3.1.1 if by way of fax, when received in legible form; or

26.3.1.2 if by way of letter, when it has been left at the relevant address or five Business Days' after being deposited in the post postage prepaid in an envelope addressed to the relevant party at that address,

and, in the case of the Security Agent, if a particular department or officer is specified as part of its address details provided under clause 26.2 (Addresses), if addressed to that department or officer.

26.3.2 Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified in clause 26.2 (Addresses) (or any substitute department or officer as the Security Agent may specify for this purpose).

26.3.3 Any communication or document which becomes effective, in accordance with clauses 26.3.1 and 26.3.2 above, after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.

### **26.4 Electronic communication**

26.4.1 Any communication to be made between the Security Agent and the Chargor under or in connection with this Deed may be made by electronic mail or other electronic means to the extent that the parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if they:

26.4.1.1 notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

26.4.1.2 notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

26.4.2 Any electronic communication made between the Security Agent and the Chargor will be effective only when actually received in readable form and in the case of any electronic communication made by the Chargor to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

26.5 Any electronic communication which becomes effective, in accordance with clause 26.4.2 above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **26.6 English language**

26.6.1 Any notice given under or in connection with this Deed must be in English.

26.6.2 All other documents provided under or in connection with this Deed must be:

26.6.2.1 in English; or

26.6.2.2 If not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation shall prevail unless the document is a constitutional, statutory or other official document.

**26.7 Probate/administration**

Until the Security Agent receives notice in writing of grant of probate or administration of the Chargor, any communication by the Security Agent sent or delivered in accordance with clause 24 (Communications in writing) will be deemed duly served if served on the Chargor or his personal representative(s).

**27 MISCELLANEOUS**

**27.1 Severability**

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

**27.2 Variations**

No variation of the terms of this Deed will be valid unless in writing signed by the Chargor and the Security Agent.

**27.3 Counterparts**

This Deed 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 Deed.

**28 GOVERNING LAW AND JURISDICTION**

**28.1 Governing law**

This Deed and any non-contractual obligation arising out of or in connection with it, is governed by English law.

**28.2 Jurisdiction of English courts**

4.1.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (a "Dispute").

4.1.2 The Chargor and the Security Agent 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.

4.1.3 This clause 28.2 is for the benefit of the Security Agent only. As a result, the Security Agent shall not be prevented 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.

28.3 The Chargor expressly agrees and consents to the provisions of this clause 28.

**This Deed is executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this Deed.**



# SCHEDULE

## Particulars of Initial Shares

Name of Shareholder	Issuer	Description	Number of Shares held
Bedford Nominees No. 2 Limited	Barton Nominee Limited	Arcade Ordinary Shares of £1 each (No. 1)	4
Bedford Nominees No. 2 Limited	Barton Nominee Limited	Arcade Ordinary Shares of £1 each (No. 2)	4

**EXECUTION PAGES**

**Chargor**

**EXECUTED as a DEED by** .....)  
**duly authorised by EXPRESSCO LIMITED** .....)  
**as a director of BEDFORD NOMINEES NO.2** .....)  
**LIMITED** .....)

.....  
duly authorised signatory on behalf of  
Expressco Limited as Director

in the presence of:

Witness Signature: .....

Witness Name: .....

Witness Address: .....

Witness Occupation: .....

**Notice details**

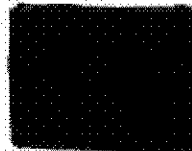
Address: 21 St Thomas Street, Bristol BS1 6JS

Fax: +44 (0) 117 923 0063

Attention: Martin Palmer

Security Agent

EXECUTED as a DEED by.....)  
AREO S.A R.L acting by.....)  
JEAN-PIERRE BAUDOUX, Manager.....)



Authorised signatory

Authorised signatory

Notice details

Address: 55 Avenue Pasteur, L-2311 Luxembourg

Fax: +352 26 20 0196

Attention: the Managers

With a copy to:

Address: Chenavari Investment Managers, 1 Grosvenor Place, London SW1X 7JH

Fax: +344 (0) 207 235 3606

Attention: Real Estate Team

And a copy to:

Address: Quintillion Ltd, 24-26 City Quay, Dublin 2, Ireland

Fax: +353 1 523 8300

Attention: Kevin O'Farrell