

MG01

Particulars of a mortgage or charge



130136/65
iris
LASERFORM

A fee is payable with this form

We will not accept this form unless you send the correct fee

Please see 'How to pay' on the last page



What this form is for

You may use this form to register particulars of a mortgage or charge in England and Wales or Northern Ireland



What this form is NOT for

You cannot use this form to register particulars of a charge for a Scottish company. To do this, please use form MG01s

THURSDAY



A1KA1QLD

A26

25/10/2012

#5

COMPANIES HOUSE

1

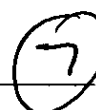
Company details

Company number

0 7 0 8 2 0 0 0

Company name in full

Atego Group Limited (the "Mortgagor")



Filling in this form

Please complete in typescript or in bold black capitals

All fields are mandatory unless specified or indicated by *

2

Date of creation of charge

Date of creation

01 05 2010 2012

3

Description

Please give a description of the instrument (if any) creating or evidencing the charge, e.g. 'Trust Deed', 'Debenture', 'Mortgage', or 'Legal charge'

Description

Mortgage over securities dated 15 October 2012 entered into between (1) the Mortgagor and (2) ESO Investco I S A R L as First Lender (the "First Lender") (the "Mortgage")

4

Amount secured

Please give us details of the amount secured by the mortgage or charge

Amount secured

The liabilities of each Obligor to the First Lender under or pursuant to the Finance Documents except for any liabilities which, if secured by the Mortgage, would result in a contravention by the Mortgagor of the prohibitions in Chapter 2 (Financial assistance for purchase of own shares) of Part 18 of the Companies Act 2006 (the "Secured Liabilities")

(See continuation page)

Continuation page

Please use a continuation page if you need to enter more details

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5**Mortgagee(s) or person(s) entitled to the charge (if any)**

Please give the name and address of the mortgagee(s) or person(s) entitled to the charge

Continuation page

Please use a continuation page if you need to enter more details

Name

ESO Investco I S A R L

Address

51 Avenue, JF Kennedy, Kirchberg

L1855 Luxembourg

Postcode

Name

Address

Postcode

6**Short particulars of all the property mortgaged or charged**

Please give the short particulars of the property mortgaged or charged

Continuation page

Please use a continuation page if you need to enter more details

Short particulars

Mortgage

The Mortgagor mortgages or (if or to the extent that this mortgage does not take effect as a mortgage) charges by way of fixed charge

3 1 1 the Shares, and

3 1 2 the Dividends

Negative pledge

The Mortgagor pledged not to create or permit to subsist any Security over any Security Asset other than the Permitted Security

(See continuation page)

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7 Particulars as to commission, allowance or discount (if any)

Please insert the amount or rate percent of any commission, allowance or discount paid or made either directly or indirectly by the company to any person on consideration of his

- subscribing or agreeing to subscribe, whether absolutely or conditionally, or
- procuring or agreeing to procure subscriptions, whether absolute or conditional,

for any debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered

Commission, allowance or discount Nil

8 Delivery of instrument

You must deliver the original instrument (if any) creating or evidencing the charge and these prescribed particulars to the Registrar of Companies within 21 days after the date of creation of the charge (section 860). If the property is situated and the charge was created outside the United Kingdom (UK), you must deliver the information to the Registrar within 21 days after the date on which the instrument could have been received in the UK in the normal course of post and assuming you had posted it promptly (section 870).

We will accept a verified copy of the instrument creating the charge where the property charged is situated and the charge was created outside the UK (section 866). The company or the person who has delivered the copy to the Registrar must verify it to be a correct copy and sign it. Where a body corporate gives the verification, an officer of that body must sign it. We will also accept a verified copy where section 867(2) applies (property situated in another part of UK).

9 Signature

Please sign the form here

Signature

Signature

X

Stephen & Harold LLP

X

This form must be signed by a person with an interest in the registration of the charge

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Particulars of a mortgage or charge



Presenter information

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form and will establish where we return the original documents. The contact information you give will be visible to searchers of the public record

Contact name Kate George

Company name Stephenson Harwood LLP

Address 1 Finsbury Circus

Post town London

County/Region

Postcode E C 2 M 7 S H

Country

DX DX 64 Chancery Lane

Telephone



Certificate

We will send your certificate to the presenter's address if given above or to the Company's Registered Office if you have left the presenter's information blank



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following

- ☐ The company name and number match the information held on the public Register
- ☐ You have included the original deed with this form
- ☐ You have entered the date the charge was created
- ☐ You have supplied the description of the instrument
- ☐ You have given details of the amount secured by the mortgagee or chargee
- ☐ You have given details of the mortgagee(s) or person(s) entitled to the charge
- ☐ You have entered the short particulars of all the property mortgaged or charged
- ☐ You have signed the form
- ☐ You have enclosed the correct fee



Important information

Please note that all information on this form will appear on the public record



How to pay

A fee of £13 is payable to Companies House in respect of each mortgage or charge.

Make cheques or postal orders payable to 'Companies House'



Where to send

You may return this form to any Companies House address, however for expediency we advise you to return it to the appropriate address below:

For companies registered in England and Wales

The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ
DX 33050 Cardiff

For companies registered in Scotland

The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post)

For companies registered in Northern Ireland:

The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG
DX 481 N R Belfast 1



Further information

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk

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| | | |
|---|--|--|
| 4 | Amount secured | |
| | Please give us details of the amount secured by the mortgage or charge | |

Amount secured

"Act" means the Companies Act, 2006,

"Borrower" means Atego Systems Limited,

"Finance Document" means each of

- (a) a facility agreement dated 6 July 2012 between the Borrower and the First Lender (the **"Agreement"**),
- (b) the Second Lender Loan Agreement,
- (c) the Intercreditor Deed,
- (d) the Security Documents,
- (e) any other document designated as a Finance Document by the First Lender and the Borrower, and
- (f) any document entered into or delivered in connection with any of the documents listed in the preceding paragraphs,

"Group" means the Mortgagor, its Subsidiaries from time to time and any Subsidiaries of the Borrower or any other Subsidiary from time to time and **"Group Company"** and **"member of the Group"** shall be construed accordingly

"Intellectual Property Rights" means

- (a) any patents, petty patents, trade marks, service marks, trade names, domain names, rights in designs, software rights, utility models, database rights, copyrights, rights in the nature of copyright, and all other forms of intellectual or industrial property,
 - (b) any rights in or to inventions, formulae, confidential or secret processes and information, know-how and similar rights, goodwill and any other rights and assets of a similar nature, and
 - (c) any other right to use, or application to register or protect, any of the items listed in paragraphs (a) or (b) above,
- arising or subsisting in any jurisdiction and whether registered or not

"Intercreditor Deed" means an intercreditor deed between the First Lender and the Second Lender and acknowledged by the Borrower and dated 6 July 2012 as amended and restated on 31 July 2012 and as amended, supplemented or amended and restated from time to time and which governs, inter alia, the enforcement and priority rights between the Lenders in respect of the Security Documents,

"Key Owner" means each of European Special Opportunities Master Fund II Limited, ETV Capital (Jersey) Limited, Kings Arms Yard VCT Plc, Jennifer Fox Gambrell, James (Jay) Gambrell or any transferee of either Jennifer Fox Gambrell and James (Jay) Gambrell, Pierre Cesarini and Richard Horsman,

"Lenders" means each the First Lender and the Second Lender and their successors and assignees

"Obligor" means each of

- (a) the Borrower,
- (b) the Mortgagor,
- (c) each Key Owner, and
- (d) any party the provides Security for any of the obligations of the

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Particulars of a mortgage or charge

| 4 | Amount secured | |
|----------------|---|--|
| Amount secured | | |
| | Please give us details of the amount secured by the mortgage or charge | |
| | <p>Borrower from time to time</p> <p>"Second Lender Loan Agreement" means a loan agreement relating to the Second Lender Loan Facility entered into between the Second Lender and the Borrower on the date of the Agreement,</p> <p>"Second Lender Loan Facility" means a term loan facility up to the amount of the Second Lender Commitment provided by the Second Lender pursuant to the Second Lender Loan Agreement,</p> <p>"Second Lender" means Kings Arms Yard VCT Plc,</p> <p>"Second Lender Commitment" means eight hundred and eighty five thousand Dollars US \$885,000,</p> <p>"Security" means any mortgage, charge, pledge, hypothecation or lien and any other arrangement or interest which has the effect of creating security or conferring priority of payment,</p> <p>"Security Document" means each of</p> <ul style="list-style-type: none"> (a) a guarantee and debenture in respect of all of the assets and undertaking of the Borrower granted by the Borrower in favour of the First Lender (the "First Borrower Debenture"), (b) a guarantee and debenture in respect of all of the assets and undertaking of the Borrower granted by the Borrower in favour of the Second Lender (the "Second Borrower Debenture"), (c) a guarantee and debenture in respect of all of the assets and undertaking of the Mortgagor (including the shares it owns in the Borrower) granted by the Mortgagor in favour of the First Lender (the "First Parent Debenture"), (d) a guarantee and debenture in respect of all of the assets and undertaking of the Mortgagor (including the shares it owns in the Borrower) granted by the Parent in favour of the Second Lender (the "Second Parent Debenture"), (e) the Mortgage, (f) a mortgage over securities or equivalent granted by the Borrower over the shares it owns in the US Buyer in favour of the Second Lender (the "Second US Buyer Charge"), (g) each mortgage over securities or equivalent granted by the Mortgagor over the shares it owns in any Transferring Obligor in favour of the First Lender (each a "First Parent Share Charge"), (h) each mortgage over securities or equivalent granted by the Mortgagor over the shares it owns in any Transferring Obligor in favour of the Second Lender (each a "Second Parent Share Charge"), (i) each mortgage over securities granted by each Key Owner over the shares it owns in the Mortgagor in favour of the First Lender (each a "First Key Owner Share Charge"), (j) each mortgage over securities granted by each Key Owner over the shares it owns in the Mortgagor in favour of the Second Lender (each a "Second Key Owner Share Charge"), | |

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Particulars of a mortgage or charge

| 4 | Amount secured | |
|----------------|--|--|
| | Please give us details of the amount secured by the mortgage or charge | |
| Amount secured | <p>(k) a mortgage over securities or equivalent granted by the Borrower over the shares it owns in any Transferring Obligor in favour of the First Lender (each a "First Borrower Share Charge"),</p> <p>(l) a mortgage over securities or equivalent granted by the Borrower over the shares it owns in any Transferring Obligor in favour of the Second Lender (each a "Second Borrower Share Charge"),</p> <p>(m) an escrow agreement between the NCC Group, the Borrower and the First Lender in respect of any source code which forms part of any Intellectual Property Rights owned by the Group (the "First Escrow Agreement"),</p> <p>(n) an escrow agreement between the NCC Group, the Borrower and the Second Lender in respect of any source code which forms part of any Intellectual Property Rights owned by the Group (the "Second Escrow Agreement"), and</p> <p>(o) any other document designated as a Security Document by the First Lender and the Borrower,</p> <p>"Subsidiary" means a subsidiary within the meaning of Section 1159 of the Act,</p> <p>"US Buyer" means Atego Systems Inc incorporated in the State of Delaware,</p> <p>"Transferring Obligors" means Atego Systems Inc, Atego SAS, High Rely Inc, Blue River Software GmbH, Atego Systems SRL, Aonix Inc and Atego Systems GmbH,</p> | |

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Particulars of a mortgage or charge

| 6 | Short particulars of all the property mortgaged or charged | |
|-------------------|---|--|
| | Please give the short particulars of the property mortgaged or charged | |
| Short particulars | <p>"Acceptable Bank" means any bank or financial institution approved by the First Lender,</p> <p>"Cash" means, at any time, cash in hand or at bank and (if at the bank) credited to an account in the name of a Group Company and to which only members of the Group are beneficially entitled and for so long as</p> <p>(a) that cash is payable to a Group Company on demand on not less than 60 days' notice,</p> <p>(b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any other person whatsoever or on the satisfaction of any other condition,</p> <p>(c) there is no Security over that cash except for Permitted Security or any Permitted Security constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements, and</p> <p>(d) the cash is freely and (except as mentioned in paragraph (a) above) immediately available to be applied in repayment or prepayment of the Loans,</p> <p>"Cash Equivalent Investments" means at any time</p> <p>(a) certificates of deposit maturing within one year after the relevant date of calculation and issued by an Acceptable Bank,</p> <p>(b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security,</p> <p>(c) any investment in money market funds which (i) have a credit rating of either A-1 or higher by Standard & Poor's Rating Services or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investor Services Limited, (ii) which invest substantially all their assets in securities of the types described in paragraphs (a) or (b) above and (iii) can be turned into cash on not more than 30 days' notice, or</p> <p>(d) any other debt security approved by the First Lender,</p> <p>in each case, to which members of the Group are beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Security (other than Security arising under the Security</p> | |

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Particulars of a mortgage or charge

6 Short particulars of all the property mortgaged or charged

Please give the short particulars of the property mortgaged or charged

Short particulars

Documents),

"Dividends" means all dividends, interest and other distributions paid or payable on or in respect of the Shares

"First Loan" means the aggregate principal amount outstanding from time to time under the Agreement

"Loans" means each the First Loan and the Second Loan,

"Minimum Cash Surplus" means the aggregate of Cash and Cash Equivalent Investments outstanding on the dates set out in Schedule 4, Column E of the Agreement, in the Operating Account of the Borrower,

"Operating Account" means the account of the Borrower numbered 140/001/215/08143 NXN FDSKK-USD00 with IBAN GB25 NWBK 6073 6121 508143 and held with National Westminster Bank Plc, which is designated Atego Systems Operating Account,

"Permitted Security" means

- (a) Security in favour of the First Lender,
- (b) Security in favour of the Second Lender and which is subject to the Intercreditor Deed,
- (c) Security arising by operation of law,
- (d) other Security created with the prior consent of the First Lender,
- (e) any normal title retention arrangements on arms length basis and included in a supplier's standard conditions of supply of goods acquired by a member of the Group in the ordinary course of trade, and
- (f) any netting or set-off arrangement entered into by a member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances provided that any netting or set-off arrangement shall not be taken into account when calculating the Minimum Cash Surplus,

"Second Loan" means the aggregate principal amount outstanding from time to time under the Second Lender Loan Agreement

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Particulars of a mortgage or charge

6 Short particulars of all the property mortgaged or charged

Please give the short particulars of the property mortgaged or charged

Short particulars

"Security" means a mortgage, charge, pledge, lien, assignment by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect

"Security Assets" means all of the assets of the Mortgagor which are the subject of any Security created or to be created by the Mortgage

"Shares" means the shares in High Rely Incorporated which are listed or described in the Schedule of the Mortgage and any additional shares in High Rely Incorporated in respect of which the Mortgagor deposits documents with the First Lender together with all allotments, accretions, offers, options, rights, bonuses, benefits and advantages, whether by way of conversion, redemption, preference, option or otherwise (except for Dividends) which at any time accrue to or are offered or arise in respect of them

Schedule of Mortgage

| Number of Shares or amount of stock or other securities | Name of Issuing Company | Description of Shares, stock or other securities |
|---|-------------------------|--|
| 100 | High Rely Incorporated | Common Stock |

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6

Short particulars of all the property mortgaged or charged

Please give the short particulars of the property mortgaged or charged

Short particulars

SCHEDULE 4 of the Agreement

Financial Covenant Testing

| Column A | Column B | Column C | Column D | Column E |
|----------------|----------------------------------|-------------------------------|--------------------------------|----------------------------------|
| Test Date | Quarterly Interest Payment (\$K) | Annual Interest Payment (\$K) | Annual Loan Amortisation (\$K) | Minimum Cash Surplus \$(Dollars) |
| 1 January 2013 | N/A | Not Tested | Not Tested | \$1,450,000 |
| 1 April 2013 | \$995,625 | Not Tested | Not Tested | Not Tested |
| 1 July 2013 | \$331,876 | Not Tested | Not Tested | \$2,400,000 |
| 1 October 2013 | \$331,876 | Not Tested | Not Tested | Not Tested |
| 1 January 2014 | \$331,876 | \$1,991,253 | Not Tested | \$3,000,000 |
| 1 April 2014 | \$331,876 | Not Tested | \$3,016,000 | Not Tested |
| 1 July 2014 | \$218,776 | Not Tested | Not Tested | \$2,200,000 |
| 1 October 2014 | \$218,776 | Not Tested | Not Tested | Not Tested |
| 1 January 2015 | \$218,776 | \$988,204 | Not Tested | \$2,900,000 |
| 1 April 2015 | \$218,776 | Not Tested | \$2,691,000 | Not Tested |
| 1 July 2015 | \$117,862 | Not Tested | Not Tested | \$2,500,000 |
| 1 October 2015 | \$117,862 | Not Tested | Not Tested | Not Tested |
| 1 January 2016 | \$117,862 | \$572,362 | Not Tested | \$3,500,000 |
| 1 April 2016 | \$117,862 | Not Tested | \$3,143,000 | - |



DX

CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 869(5) & (6) of the Companies Act 2006

**COMPANY NO. 7082000
CHARGE NO. 7**

**THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES
HEREBY CERTIFIES THAT A MORTGAGE OVER SECURITIES
DATED 15 OCTOBER 2012 AND CREATED BY ATEGO GROUP
LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME
DUE FROM EACH OBLIGOR TO ESO INVESTCO I S.A.R.L.
UNDER THE TERMS OF THE AFOREMENTIONED INSTRUMENT
CREATING OR EVIDENCING THE CHARGE WAS REGISTERED
PURSUANT TO CHAPTER 1 PART 25 OF THE COMPANIES ACT
2006 ON THE 25 OCTOBER 2012**

**GIVEN AT COMPANIES HOUSE, CARDIFF THE 29 OCTOBER
2012**



Companies House



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