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CHFP021

COMPANIES FORM No. 466(Scot)

Particulars of an instrument of alteration to a floating charge created by a company registered in Scotland

466

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

*Please do not
write in
this margin*

Pursuant to section 410 and 466 of the Companies Act 1985

*Please complete
legibly, preferably
in black type, or
bold block lettering*

To the Registrar of Companies
(Address overleaf - Note 6)

For official use

Company number

114

SC146610

Name of company

* DCM (OPTICAL HOLDINGS) LIMITED (THE "COMPANY")

** insert full name
of company*

Date of creation of the charge (note 1)

7 OCTOBER 2015

Description of the instrument creating or evidencing the charge or of any ancillary document which has
been altered (note 1)

FLOATING CHARGE

Names of the persons entitled to the charge

DAKOTA TRADING B.V.

Short particulars of all the property charged

ALL THE PROPERTY OR UNDERTAKING OF THE COMPANY

Presenter's name address and
reference (if any):

HARPER MACLEOD LLP
THE CA'D'ORO
45 GORDON STREET
GLASGOW
G1 3PE

For official use (02/06)
Charges Section

WEDNESDAY



SCT 25/11/2015 #301
COMPANIES HOUSE

Names, and addresses of the persons who have executed the instrument of alteration (note 2)

PLEASE SEE PAPER APART, PART A

*Please do not
write in
this margin*

*Please complete
legibly, preferably
in black type, or
bold block lettering*

Date(s) of execution of the instrument of alteration

PLEASE SEE PAPER APART, PART B

A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the company of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

PLEASE SEE PAPER APART, PART C

Short particulars of any property released from the floating charge

N/A

The amount, if any, by which the amount secured by the floating charge has been increased

N/A

A statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

*Please do not
write in
this margin*

*Please complete
legibly, preferably
in black type, or
bold block lettering.*

PLEASE SEE PAPER APART, PART D

*Please complete
legibly, preferably
in black type, or
bold block lettering*

*A fee is payable to
Companies House
in respect of each
register entry for a
mortgage or
charge.
(See Note 5)*

Signed  Date 24 11 15

On behalf of ~~[company]~~ [chargee] ☐

Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc as the case may be, should be given. For the date of creation of a charge see section 410(5) of the Companies Act. ☐ delete as appropriate
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders are to be made payable to **Companies House**.
6. The address of the Registrar of Companies is: Companies Registration Office, 139 Fountainbridge, Edinburgh EH3 9FF
DX 235 Edinburgh or LP - 4 Edinburgh 2



FILE COPY

**CERTIFICATE OF THE REGISTRATION
OF AN ALTERATION TO A FLOATING CHARGE**

COMPANY NO. 146610

CHARGE CODE SC14 6610 0014

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 5 NOVEMBER 2015 WERE DELIVERED
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985
ON 25 NOVEMBER 2015

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 7
OCTOBER 2015

BY DCM (OPTICAL HOLDINGS) LIMITED

IN FAVOUR OF
DAKOTA TRADING B.V.

GIVEN AT COMPANIES HOUSE, EDINBURGH 3 DECEMBER 2015



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

This is the paper apart referred to in the foregoing Form 466 relative to an instrument of alteration delivered on 19 November 2015 (the "Ranking Agreement") in respect of the floating charge by DCM (Optical Holdings) Limited in favour of Dakota Trading B.V. created on 7 October 2015.

The following terms shall have the following meanings in this paper apart:-

"Assigned Rights" has the meaning given to it in the BV Assignment in Security;

"BV Assignment in Security" means the assignment in security by DCM(OH) in favour of BV dated 2 November 2015;

"BV Discharge Date" means the date on which all of the BV Liabilities have been irrevocably and unconditionally paid and discharged in full;

"BV Documents" means:

- a) the BV Security Documents; and
- b) any other document from time to time constituting and/or evidencing any of the BV Liabilities;

"BV Floating Charge" means the floating charge by DCM(OH) in favour of BV created on 7 October 2015;

"BV Liabilities" means all Liabilities from time to time due, owing or incurred (actually or contingently) by DCM(OH) to BV howsoever arising, whether under the BV Documents or otherwise;

"BV Security" means the Security created or expressed to be created pursuant to the BV Security Documents (or either of them);

"BV Security Documents" means the BV Assignment in Security and the BV Floating Charge;

"Creditors" means BV and DCM;

"DCM Discharge Date" means the date on which the DCM Liabilities shall have been irrevocably and unconditionally discharged in full;

"DCM Documents" means:

- a) the DCM Floating Charges; and
- b) any other document from time to time constituting and/or evidencing any of the DCM Liabilities;

"DCM Floating Charges" means the DCM Floating Charge 2002 and the DCM Floating Charge 2004;

"DCM Floating Charge 2002" means the floating charge granted by DCM(OH) in favour of DCM created on 22 October 2002 and registered at Companies House on 5 November 2002;

"DCM Floating Charge 2004" means the floating charge granted by DCM(OH) in favour of DCM created on 8 April 2004 and registered at Companies House on 28 April 2004;

"DCM Liabilities" means all Liabilities from time to time due, owing or incurred (actually or contingently) by DCM(OH) to DCM howsoever arising, whether under DCM Documents or otherwise;

"DCM Security" means the Security created or expressed to be created in favour of DCM pursuant to DCM Floating Charges (or either of them);

"Liabilities" means all present and future obligations and liabilities (whether actual or contingent,

whether owed jointly or severally, whether as principal or surety or in any other capacity whatsoever) of DCM(OH) to any Creditor (and whether originally owing to that Creditor or purchased or acquired by that Creditor) together with any of the following matters relating to, or arising in respect of, those obligations and liabilities:

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

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

"Remaining Assets" means all of the assets, property and undertaking (including, without limitation, uncalled capital) of DCM (OH), save for the Assigned Rights;

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

"Security Documents" means the BV Security Documents and the DCM Floating Charges;

Part A – Names, and addresses of the persons who have executed the instrument of alteration

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

David Charles Moulds of 5 Deerdrykes Road, Cumbernauld, Glasgow, G68 9HF ("**DCM**");

and

DCM (Optical Holdings) Limited, a company incorporated and registered in Scotland (Company Number: SC146610) whose registered office is at The Ca'd'oro, 45 Gordon Street, Glasgow, G1 3PE ("**DCM(OH)**").

Part B – Date(s) of execution of the instrument of alteration

Subscribed:

- a) for and on behalf of BV on 5 November 2015;
- b) for and on behalf of DCM on 5 November 2015; and
- c) for and on behalf of DCM(OH) on 5 November 2015,

and delivered on 19 November 2015.

Part C – A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the company of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

- (1) Prior to the BV Discharge Date and notwithstanding any provision of the DCM Documents, DCM(OH) shall not (except as BV shall have previously consented to in writing):

- a. create or permit to subsist any Security over any of its assets or give any guarantee, indemnity or other assurance against loss (save for any Security created, or express to be created, pursuant to any Security Document); or
 - b. take or fail to take any action whereby the ranking, subordination or other obligations contemplated by the Ranking Agreement may be impaired.
- (2) Prior to the DCM Discharge Date and notwithstanding any provision of the BV Documents, DCM(OH) shall not (except as DCM shall have previously consented to in writing):
- a. create or permit to subsist any Security over any of its assets, or give any guarantee, indemnity or other assurance against loss (save for any Security created, or express to be created, pursuant to any Security Document); or
 - b. take or fail to take any action whereby the ranking, subordination or other obligations contemplated by the Ranking Agreement may be impaired.

Part D – A statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

Unless expressly provided to the contrary in the Ranking Agreement, all existing and future Security which constitutes BV Security and/or DCM Security will rank in the following order of priority:

- (1) in respect of the Assigned Rights:
- a. firstly, the BV Assignment in Security to the extent of all sums secured thereby;
 - b. secondly, the BV Floating Charge to extent of all sums secured thereby; and
 - c. thirdly, the DCM Floating Charge 2002 to the extent of all sums secured thereby and the DCM Floating Charge 2004 to the extent of all sums secured thereby, pari passu between them; and
- (2) in respect of the Remaining Assets:
- a. firstly, the BV Floating Charge to extent of all sums secured thereby; and
 - b. secondly, the DCM Floating Charge 2002 to the extent of all sums secured thereby and the DCM Floating Charge 2004 to the extent of all sums secured thereby, pari passu between them.

Ranking Agreement

among

Dakota Trading B.V.

David Charles Mouldsdale

and

DCM (Optical Holdings) Limited

GLASGOW 24 November 2015

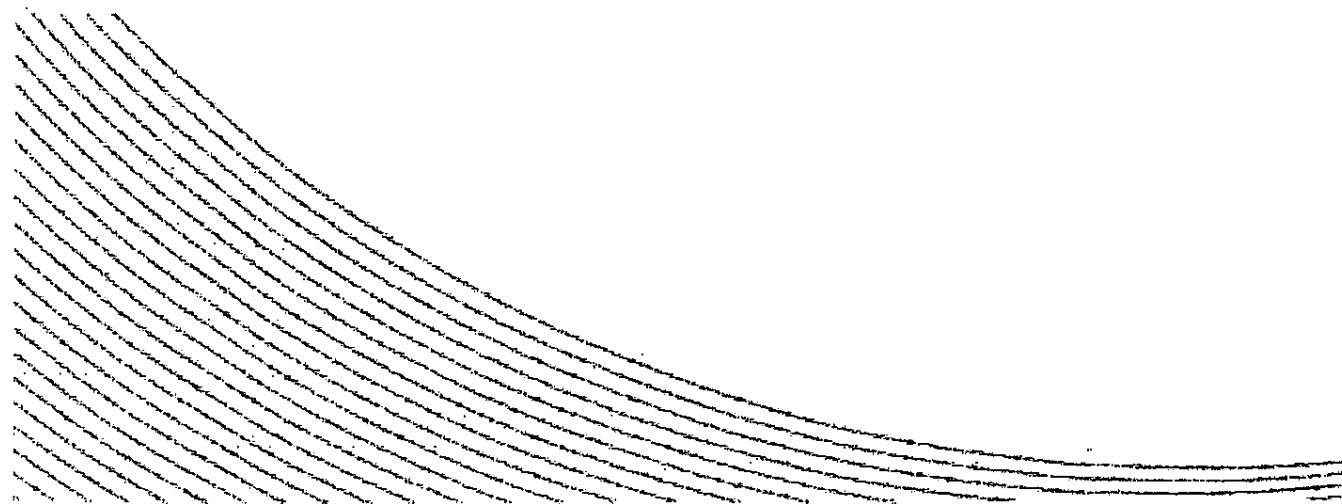
CERTIFIED A TRUE COPY



SOLICITOR
HARPER MACLEOD LLP

Ref: TC/JP/403615
FAS:

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



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

This agreement is delivered on 19 November 2015

RANKING AGREEMENT

among

Dakota Trading B.V., a company incorporated under the laws of the Netherlands, having its corporate seat in Amsterdam, the Netherlands and its principal place of business at Strawinskyalaan 41.1, 1077 XX Amsterdam, the Netherlands, registered with the trade register of the Dutch Chamber of Commerce under number 60396563 ("**BV**");

David Charles Mouldsdaile of 5 Deerdykes Road, Cumbernauld, Glasgow, G68 9HF ("**DCM**");

and

DCM (Optical Holdings) Limited, a company incorporated and registered in Scotland (Company Number: SC146610) whose registered office is at The Ca'd'oro, 45 Gordon Street, Glasgow, G1 3PE ("**DCM(OH)**").

WHEREAS:

- (A) The Creditors have agreed that the ranking and priority of the BV Security and the DCM Security shall be as set out in this Agreement.
- (B) DCM(OH) has agreed to enter this Agreement to acknowledge its terms, give certain undertakings to the Creditors and acknowledge that none of the undertakings given in this Agreement are given to, or enforceable by, DCM(OH).

IT IS AGREED AS FOLLOWS:

1 Definitions and interpretation

1.1 In this Agreement, and in the recitals hereto, unless the context otherwise requires:

"Agreement" means this ranking agreement;

"Assigned Rights" has the meaning given to it in the BV Assignment in Security;

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

"Business Name" means the name "Optical Express";

"BV Assignment in Security" means the assignment in security by DCM(OH) in favour of BV dated 2 November 2015;

"BV Default" means a BV Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the BV Documents or any combination of any of the foregoing) be a BV Event of Default;

"BV Discharge Date" means the date on which all of the BV Liabilities have been irrevocably and unconditionally paid and discharged in full;

"BV Documents" means:

- (a) the BV Security Documents; and
- (b) any other document from time to time constituting and/or evidencing any of the BV Liabilities;

"BV Event of Default" means any event, howsoever described, which entitles BV to accelerate, demand repayment of or the delivery of cash collateral in respect of any of the BV Liabilities;

"BV Floating Charge" means the floating charge by DCM(OH) in favour of BV created on 7 October 2015;

"BV Liabilities" means all Liabilities from time to time due, owing or incurred (actually or contingently) by DCM(OH) to BV howsoever arising, whether under the BV Documents or otherwise;

"BV Security" means the Security created or expressed to be created pursuant to the BV Security Documents (or either of them);

"BV Security Documents" means the BV Assignment in Security and the BV Floating Charge;

"Creditors" means BV and DCM;

"DCM Default" means a DCM Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the DCM Documents or any combination of any of the foregoing) be a DCM Event of Default;

"DCM Discharge Date" means the date on which the DCM Liabilities shall have been irrevocably and unconditionally discharged in full;

"DCM Documents" means:

- (a) the DCM Floating Charges; and
- (b) any other document from time to time constituting and/or evidencing any of the DCM Liabilities;

"DCM Event of Default" means any event, howsoever described, which entitles DCM to accelerate, demand repayment of or the delivery of cash collateral in respect of any of the DCM Liabilities;

"DCM Floating Charge 2002" means the floating charge granted by DCM(OH) in favour of DCM created on 22 October 2002 and registered at Companies House on 5 November 2002;

"DCM Floating Charge 2004" means the floating charge granted by DCM(OH) in favour of DCM created on 8 April 2004 and registered at Companies House on 28 April 2004;

"DCM Floating Charges" means the DCM Floating Charge 2002 and the DCM Floating Charge 2004;

"DCM Liabilities" means all Liabilities from time to time due, owing or incurred (actually or contingently) by DCM(OH) to DCM howsoever arising, whether under DCM Documents or otherwise;

"DCM Security" means the Security created or expressed to be created in favour of DCM pursuant to DCM Floating Charges (or either of them);

"Delegate" means any delegate, agent or attorney appointed by any Creditor;

"Documents" means any one or more of the BV Documents and the DCM Documents and **"Document"** shall be construed accordingly;

"Enforcement Action" means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable;
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand in relation to a Liability that is payable on demand;
 - (iv) the making of any demand against DCM(OH) in relation to any of its Liabilities to a Creditor;
 - (v) the exercise of any right of set-off, account combination, payment netting, attachment or execution against DCM(OH) in respect of any Liabilities;
 - (vi) the suing, or commencing or joining of any legal or arbitration proceedings against DCM(OH), to recover any Liabilities or in respect of the enforcement of any obligations (whether or not for the payment of money) of DCM(OH); and/or
 - (vii) the suing for, or the institution of, any creditors process (whether before or after judgement) against DCM(OH) in respect of any obligations owing to it (whether or not for the payment of money) in respect of a Liability;
- (b) the taking of any steps to enforce, or require the enforcement of, any Security or any guarantee, indemnity or other assurance against loss (including, without limitation, the Documents and the crystallisation of any floating charge forming part of any Document) or the exercise of any rights thereunder on default;
- (c) the entering into of any composition, compromise, assignation or arrangement with DCM(OH);
- (d) the petitioning, applying or voting for, or the taking of any steps (including, without limitation, the appointment of any Insolvency Representative) in relation to, or with a view to, an Insolvency Event in respect of DCM(OH) (or any of its assets), whether under the Securities or otherwise; and/or
- (e) bringing or supporting any legal process against DCM(OH) whatsoever or applying or taking any proceedings for an interdict or specific implement (or the equivalent in any jurisdiction) in respect of DCM(OH) and/or any of its obligations;

"Event of Default" means a BV Event of Default and a DCM Event of Default;

"Insolvency Event" means, in relation to DCM(OH):

- (a) any application, notice, resolution or order being made, passed or given for or in connection with the winding up, liquidation, dissolution, administration or reorganisation of DCM(OH);
- (b) DCM(OH) becoming subject to any insolvency, reorganisation, receivership (whether relating to all or only some of its assets), administration, liquidation, dissolution or other similar proceedings, whether voluntary or involuntary and whether or not involving insolvency; ~~DCM(OH)~~

- (c) DCM(OH) assigning all or any of its assets for the benefit of its creditors generally (or any class thereof) or entering into any composition or arrangement with its creditors generally or any arrangement being ordered or declared by a court of competent jurisdiction whereby all or any of its affairs and/or assets are submitted to the control of, or are protected from, its creditors;
- (d) DCM(OH) becoming subject to any distribution of its assets in consequence of insolvency, reorganisation, liquidation, dissolution or administration; or
- (e) any event analogous to any of the foregoing occurring in relation to DCM(OH) or any of its assets in any jurisdiction;

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

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

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

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

"Party" means a party to this Agreement;

"Remaining Assets" means all of the assets, property and undertaking (including, without limitation, uncalled capital) of DCM (OH), save for the Assigned Rights;

"Secured Assets" means all of the assets of DCM(OH) which from time to time are, or are expressed to be, the subject of any Security created, or expressed to be created, pursuant to any Security Document;

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

"Security Documents" means the BV Security Documents and the DCM Floating Charges;

1.2 Unless a contrary indication appears, a reference in this Agreement to:

- 1.2.1 any of the Parties to this Agreement or any other person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
- 1.2.2 **"assets"** includes present and future properties, revenues and rights of every description;
- 1.2.3 this Agreement, a **BV Document**, a **DCM Document** or any other document, agreement or instrument is a reference to this Agreement, that Document or other document as amended, novated, supplemented, extended, restated or replaced in whole or in part;

- 1.2.4 "Indebtedness" includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.5 a "person" includes any person, 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);
- 1.2.6 a "company" includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.7 one gender shall include a reference to the other genders;
- 1.2.8 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;
- 1.2.9 a provision of law is a reference to that provision as amended or re-enacted;
- 1.2.10 "document" includes any agreement, deed, certificate, instrument (including negotiable instrument) or other document of any kind;
- 1.2.11 a time of day is a reference to London time;
- 1.2.12 "writing" or "written" includes fax, but not e-mail;
- 1.2.13 any words following the terms "including", "include", "in particular", or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.14 "disposal" includes a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary (and "dispose" shall be construed accordingly);
- 1.2.15 the "winding up", "dissolution", or "administration" of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or established, or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors; and
- 1.2.16 clauses are to the clauses of this Agreement.
- 1.3 Headings and sub-headings of this Agreement are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and *vice versa*.
- 1.5 Any obligation of the Parties not to do something shall include an obligation not knowingly to permit, suffer or allow the same.
- 2 Consents
 - 2.1 DCM hereby:
 - 2.1.1 consents to the creation and subsistence of the BV Security; and

2.1.2 confirms that neither the creation nor subsistence of the BV Security constitutes, or will constitute, a DCM Default.

2.2 BV hereby:

2.2.1 consents to the creation and subsistence of the DCM Security; and

2.2.2 confirms that neither the creation nor subsistence of the DCM Security of itself constitutes, or will of itself constitute, a BV Default.

3 Ranking and priority of Security

Unless expressly provided to the contrary in this Agreement, all-existing and future Security which constitutes BV Security and/or DCM Security will rank in the following order of priority:

3.1 in respect of the Assigned Rights:

3.1.1 firstly, the BV Assignment in Security to the extent of all sums secured thereby;

3.1.2 secondly, the BV Floating Charge to extent of all sums secured thereby; and

3.1.3 thirdly, the DCM Floating Charge 2002 to the extent of all sums secured thereby and the DCM Floating Charge 2004 to the extent of all sums secured thereby, pari passu between them; and

3.2 in respect of the Remaining Assets:

3.2.1 firstly, the BV Floating Charge to extent of all sums secured thereby; and

3.2.2 secondly, the DCM Floating Charge 2002 to the extent of all sums secured thereby and the DCM Floating Charge 2004 to the extent of all sums secured thereby, pari passu between them.

4 Continuing status of Security

Nothing in this Agreement shall affect the Security created by the Security Documents as continuing security, nor shall the ranking and priority set out in clause 3 be affected by any matter or thing which could, but for this provision, prejudice such ranking and priority, including, but not limited to:

4.1 the nature of the Security created by the Security Documents and the dates of execution and registration of them;

4.2 any provision contained in any of the Security Documents;

4.3 the respective date (or dates) upon which any person received notice of the existence or creation of any Security constituted by any Security Document;

4.4 the respective date (or dates) upon which the Liabilities arose;

4.5 whether any Creditor is obliged to advance or make available any such Liabilities;

4.6 any fluctuations from time to time in the outstanding amount, or any intermediate discharge in whole or in part of the Liabilities;

4.7 the existence at any time of a credit balance on any current or other account of DCM(OH);

4.8 any amendment or supplement to or variation, novation, restatement or replacement of any Document;

- 4.9 the appointment of any Insolvency Representative either in respect of DCM(OH) or over all or any part of the assets of DCM(OH);
- 4.10 the sale or disposal of any land or buildings or any interest in any land or buildings prior to enforcement; and
- 4.11 any future Security granted by DCM(OH) to any Creditor (other than the Security Documents).
- 5 Challenge to security
No Creditor shall challenge or question:
 - 5.1 the validity or enforceability of any Security constituted by a Security Document;
 - 5.2 the nature of any Security constituted by a Security Document; or
 - 5.3 (without prejudice to the generality of the foregoing) whether any Security constituted by a Security Document is fixed or floating.
- 6 Undertakings of DCM(OH)
 - 6.1 Prior to the BV Discharge Date and notwithstanding any provision of the DCM Documents, DCM(OH) shall not (except as BV shall have previously consented to in writing):
 - 6.1.1 create or permit to subsist any Security over any of its assets or give any guarantee, indemnity or other assurance against loss (save for any Security created, or express to be created, pursuant to any Security Document); or
 - 6.1.2 take or fail to take any action whereby the ranking, subordination or other obligations contemplated by this Agreement may be impaired.
 - 6.2 Prior to the DCM Discharge Date and notwithstanding any provision of the BV Documents, DCM(OH) shall not (except as DCM shall have previously consented to in writing):
 - 6.2.1 create or permit to subsist any Security over any of its assets, or give any guarantee, indemnity or other assurance against loss (save for any Security created, or express to be created, pursuant to any Security Document); or
 - 6.2.2 take or fail to take any action whereby the ranking, subordination or other obligations contemplated by this Agreement may be impaired.
- 7 Undertakings of BV and DCM
 - 7.1 Until the BV Discharge Date, except as BV shall have previously consented to in writing, DCM shall not:
 - 7.1.1 permit to subsist or receive any Security or any guarantee, indemnity or other assurance against loss from DCM(OH) for, or in respect of, any Liabilities from time to time due, owing or incurred (actually or contingently) by DCM(OH) to him, save for the DCM Security; or
 - 7.1.2 take or fail to take any action whereby the ranking, subordination or other obligations contemplated by this Agreement may be impaired.
 - 7.2 Until the DCM Discharge Date, except as DCM shall have previously consented to in writing, BV shall not:

7.2.1 permit to subsist or receive any Security or any guarantee, indemnity or other assurance against loss from DCM(OH) for, or in respect of, any Liabilities from time to time due, owing or incurred (actually or contingently) by DCM(OH) to it, save for the BV Security; or

7.2.2 take or fail to take any action whereby the ranking, subordination or other obligations contemplated by this Agreement may be impaired.

8 Entitlement to enforce

8.1 Subject to clause 8.4, a Creditor (the "**Relevant Creditor**") shall only be entitled to take any Enforcement Action if it has first given to the other Creditor five (5) Business Days prior written notice ("**Enforcement Notice Period**") that it intends to take such Enforcement Action. Each Creditor agrees to consult with the other Creditors during the Enforcement Notice Period.

8.2 Where a Relevant Creditor consults with the other Creditor under clause 8.1 above, the Creditors shall all consult together with a view to agreeing on the method of Enforcement Action or other relevant action and, where appropriate, with a view to agreeing on a suitable person to be appointed as Insolvency Representative (and such consultation and agreement shall also precede any removal of any Insolvency Representative and any appointment of a successor) and each Creditor shall respond as quickly as is reasonably practicable to the other Creditors during any such consultation.

8.3 Following the expiry of the Enforcement Notice Period, subject to clause 8.4, the Relevant Creditor having given the notice contemplated under clause 8.1, shall be entitled to take the Enforcement Action.

8.4 Any Creditor may take any Enforcement Action, without consulting or reaching agreement with the other Creditor, if it reasonably believes that taking any such action immediately is necessary to protect its interests. No action taken by any Creditor in accordance with this clause 8.4 shall be invalid or ineffective because of its failure to consult or reach agreement with the other Creditor.

8.5 As soon as reasonably practicable after taking any Enforcement Action in accordance with clause 8.4, the Creditor which has taken such Enforcement Action shall inform the other Creditor of the action taken.

8.6 Without prejudice to the terms of clause 9.1, each Creditor (the "**Requested Creditor**") will, at the request of the other Creditor who has taken Enforcement Action to the extent permitted by this clause 8 (the "**Requesting Creditor**") or any Insolvency Representative appointed by the Requesting Creditor, join in such documents or otherwise take such action as may be reasonably required by the Requesting Creditor or such Insolvency Representative appointed by the Requesting Creditor to facilitate the disposal of any Secured Asset to give effect to the ranking and priorities set out in this Agreement, whether or not there will be any balance of proceeds available for the Requested Creditor arising from that disposal.

9 Co-operation and information disclosure

9.1 In the event of the provisions of this Agreement being regarded by an Insolvency Representative in respect of DCM(OH) (or all or any part of its assets) as failing to bind him or them in respect of the Secured Assets, or the proceeds of sale thereof, and insofar as the refusal or failure of such Insolvency Representative to be bound by this Agreement shall cause prejudice to any Creditor, the other Creditor shall compensate that Creditor to the extent that it is enriched as a result.

9.2 Each Party undertakes to use all reasonable endeavours to ensure that the provisions of this Agreement as to the relative ranking of securities, priorities and subordination as between the Parties shall be given effect to in all relevant jurisdictions.

9.3 Each of the Creditors and DCM(OH) will take all reasonable and necessary steps and will co-operate with the other Parties so as to ensure that the intentions as to priorities set out in this Agreement are reflected and recorded timeously in any registry or register or with any filing or registration authority in any jurisdiction, and if required, that third parties are informed of such priorities:

9.4 DCM(OH) authorises each Creditor for so long as such party remains a Party to disclose to each other Party and to any shareholder or other creditor in DCM(OH) any information concerning DCM(OH) that comes into their possession in connection with the Documents as that Creditor may see fit.

10 Effect of this Agreement

10.1 DCM(OH):

10.1.1 enters into this Agreement for the purposes of acknowledging the arrangements between the Parties and giving the undertakings expressed to be given by it in this Agreement;

10.1.2 agrees that it does not have rights against the Creditors under this Agreement and that none of the undertakings in this Agreement are given (or shall be deemed to be given) to it, or for its benefit, or are enforceable by it; and

10.1.3 acknowledges that the arrangements made between the Creditors (including, without limitation, as to priorities) may be varied by them without the need to obtain the agreement of DCM(OH) and DCM(OH) waives any rights which it may have, or acquire, to challenge any such arrangements or have them varied or set aside.

10.2 Nothing in this Agreement shall:

10.2.1 require any Creditor to make any advance or provide any facility to DCM(OH); or

10.2.2 as between DCM(OH) and any of the Creditors, affect or prejudice any of the rights or remedies of any of the Creditors under the Documents which shall remain in full force and effect.

10.3 In the event of any conflict or inconsistency arising between any of the provisions of this Agreement and any provision of any Document, the provisions of this Agreement shall prevail.

11 Protection of ranking

11.1 The ranking provisions in this Agreement constitute a continuing ranking and benefit to (i) the ultimate balance of the BV Liabilities and (ii) the ultimate balance of the DCM Liabilities respectively regardless of any intermediate payment or discharge of any such Liabilities in whole or in part.

11.2 The ranking in this Agreement and the obligations of each Creditor and DCM(OH) under this Agreement will not be reduced, discharged or otherwise adversely affected by any act, omission or circumstance which, but for this clause 11.2 might operate to release, reduce, discharge, impair or otherwise adversely affect such subordination and ranking or any of those obligations in whole or in part, including (but without limitation) and whether or not known to the other Creditors (or any of them):

11.2.1 any time, waiver or consent granted to, or composition with, DCM(OH) or other person;

11.2.2 the taking, variation, compromise, exchange, renewal or release of, or any refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets

of, DCM(OH) or 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;

- 11.2.3 any incapacity of, lack of power, authority or legal personality of, or dissolution or change in the members or status of DCM(OH) or any other person;
 - 11.2.4 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Document or any other document or Security (other than a Security Document) including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Document or other document or Security (other than a Security Document);
 - 11.2.5 any unenforceability, illegality or invalidity of any obligation of any person under any Document or any other document or Security;
 - 11.2.6 any Insolvency Event or similar proceedings; or
 - 11.2.7 any other act, event or omission which, but for this clause 11.2, might operate to discharge, impair or otherwise adversely affect any of the obligations of any Creditor or DCM(OH) under this Agreement or any of the rights, powers or remedies conferred upon the Creditors (or any of them) by this Agreement.
- 11.3 If any provision of this Agreement is or becomes invalid, illegal or unenforceable in whole or in part in any jurisdiction, this Agreement shall, as to such jurisdiction, continue to be valid as to its other provisions and the remainder of the affected provision and the legality, validity and enforceability of such provision in any other jurisdiction shall be unaffected.
- 11.4 Any waiver of a breach of any of the terms of this Agreement or of any default under this Agreement:
- 11.4.1 shall not be deemed a waiver of any subsequent breach or default and shall not affect the other terms of this Agreement; and
 - 11.4.2 shall be effective only if made in writing and specifically.
- 11.5 No failure to exercise and no delay on the part of any Party in exercising any right, remedy, power or privilege of that Party under this Agreement and no course of dealing between the Parties shall be construed or operate as a waiver, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of such rights, remedies, powers or privileges or the exercise of any other right, remedy, power or privilege.
- 11.6 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 12 Change of parties
- No Creditor may assign, novate, transfer and/or otherwise dispose of any of its rights, title and/or interest in all and/or obligations or liabilities under any of the Security Documents to which it is a party unless that assignation, novation, transfer or disposal is in accordance with the terms of the relevant Security Document and any such assignee, novatee, transferee or dispositive first agrees in writing with the other Creditors to be bound by the provisions of this Agreement as if it is a "Creditor" hereunder.
- 13 Service of notices
- 13.1 All communications to be made under this Agreement shall be made in writing and, unless otherwise stated, may be made by letter.

- 13.2 The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is that identified with its name at the end of this Agreement, or any substitute address (or department or officer) as such Party may notify to the other Parties by not less than five Business Days' notice.
- 13.3 Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective 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 it at that address.
- 14 Miscellaneous
- 14.1 This Agreement contains the entire agreement and understanding of the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement.
- 14.2 The Parties acknowledge and agree that this Agreement is an instrument of alteration in terms of section 466 of the Companies Act 1985.
- 14.3 BV confirms and undertakes to DCM that it will, within 21 days of the date of this Agreement, register the required details of this Agreement with the Registrar of Companies in Edinburgh in respect of the BV Floating Charge.
- 14.4 DCM confirms and undertakes to BV that it will, within 21 days of the date of this Agreement, register the required details of this Agreement with the Registrar of Companies in Edinburgh in respect of each of the DCM Floating Charges.
- 15 Counterparts and delivery
- 15.1 This agreement may be executed in any number of counterparts and by each of the parties on separate counterparts.
- 15.2 Where executed in counterparts:
- 15.2.1 this agreement will not take effect until each of the counterparts has been delivered;
- 15.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered;
- 15.2.3 the date of delivery may be inserted on page 1 in the blank provided for the delivery date of this agreement; and
- 15.2.4 and the parties to this agreement have nominated a person to take delivery of one or more of the counterparts, the parties to this agreement hereby agree that the terms of s.2(3) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 shall not apply.
- 16 Governing law and jurisdiction
- 16.1 This Agreement shall be governed by and construed in accordance with the law of Scotland.
- 16.2 The Parties submit to the non-exclusive jurisdiction of the courts of Scotland.

17 Consent to registration

The Parties consent to the registration of this Agreement for preservation and execution.

IN WITNESS WHEREOF these presents consisting of this and the preceding 11 pages is executed as follows:

Subscribed for and on behalf of **DAKOTA TRADING B.V.**

by

at

on

before

Director

Witness

Full Name

Address

Notice details:

Address: Strawinskylaan 411, 1077 XX Amsterdam, The Netherlands.

Attention of: Eduardo Silva

Subscribed by **David Charles Moulds**

at

on

before

Witness

Full Name

Address

Notice details:

Address: 5 Deerdrykes Road, Cumbernauld, Glasgow, G68 9HF

Subscribed for and on behalf of DCM (Optical Holdings) Limited

by DAVID MOULSDALE

at Glasgow

on 5 NOVEMBER 2015

before


Director


Witness

Full Name

Address

MARY O'MAHONY

THE CA'D'ORO, 45 GORDON

STREET, GLASGOW, G1 3PE

Notice details:

Address: The Ca'd'oro, 45 Gordon Street, Glasgow, G1 3PE

Attention of: David Charles Mouldale

Ranking Agreement

among

Dakota Trading B.V.

David Charles Mouldsdaie

and

DCM (Optical Holdings) Limited

Ref: TC/JP/403615
FAS:

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

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

This agreement is delivered on ~~19 November~~ 2015

RANKING AGREEMENT

among

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

David Charles Moulds of 5 Deerdrykes Road, Cumbernauld, Glasgow, G68 9HF ("**DCM**");

and

DCM (Optical Holdings) Limited, a company incorporated and registered in Scotland (Company Number: SC146610) whose registered office is at The Ca'd'oro, 45 Gordon Street, Glasgow, G1 3PE ("**DCM(OH)**").

WHEREAS:

- (A) The Creditors have agreed that the ranking and priority of the BV Security and the DCM Security shall be as set out in this Agreement.
- (B) DCM(OH) has agreed to enter this Agreement to acknowledge its terms, give certain undertakings to the Creditors and acknowledge that none of the undertakings given in this Agreement are given to, or enforceable by, DCM(OH).

IT IS AGREED AS FOLLOWS:

1 Definitions and interpretation

1.1 In this Agreement, and in the recitals hereto, unless the context otherwise requires:

"Agreement" means this ranking agreement;

"Assigned Rights" has the meaning given to it in the BV Assignment in Security;

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

"Business Name" means the name "Optical Express";

"BV Assignment in Security" means the assignment in security by DCM(OH) in favour of BV dated 2 November 2015;

"BV Default" means a BV Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the BV Documents or any combination of any of the foregoing) be a BV Event of Default;

"BV Discharge Date" means the date on which all of the BV Liabilities have been irrevocably and unconditionally paid and discharged in full;

"BV Documents" means:

- (a) the BV Security Documents; and
- (b) any other document from time to time constituting and/or evidencing any of the BV Liabilities;

"BV Event of Default" means any event, howsoever described, which entitles BV to accelerate, demand repayment of or the delivery of cash collateral in respect of any of the BV Liabilities;

"BV Floating Charge" means the floating charge by DCM(OH) in favour of BV created on 7 October 2015;

"BV Liabilities" means all Liabilities from time to time due, owing or incurred (actually or contingently) by DCM(OH) to BV howsoever arising, whether under the BV Documents or otherwise;

"BV Security" means the Security created or expressed to be created pursuant to the BV Security Documents (or either of them);

"BV Security Documents" means the BV Assignment in Security and the BV Floating Charge;

"Creditors" means BV and DCM;

"DCM Default" means a DCM Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the DCM Documents or any combination of any of the foregoing) be a DCM Event of Default;

"DCM Discharge Date" means the date on which the DCM Liabilities shall have been irrevocably and unconditionally discharged in full;

"DCM Documents" means:

- (a) the DCM Floating Charges; and
- (b) any other document from time to time constituting and/or evidencing any of the DCM Liabilities;

"DCM Event of Default" means any event, howsoever described, which entitles DCM to accelerate, demand repayment of or the delivery of cash collateral in respect of any of the DCM Liabilities;

"DCM Floating Charge 2002" means the floating charge granted by DCM(OH) in favour of DCM created on 22 October 2002 and registered at Companies House on 5 November 2002;

"DCM Floating Charge 2004" means the floating charge granted by DCM(OH) in favour of DCM created on 8 April 2004 and registered at Companies House on 28 April 2004;

"DCM Floating Charges" means the DCM Floating Charge 2002 and the DCM Floating Charge 2004;

"DCM Liabilities" means all Liabilities from time to time due, owing or incurred (actually or contingently) by DCM(OH) to DCM howsoever arising, whether under DCM Documents or otherwise;

"DCM Security" means the Security created or expressed to be created in favour of DCM pursuant to DCM Floating Charges (or either of them);

"Delegate" means any delegate, agent or attorney appointed by any Creditor;

"Documents" means any one or more of the BV Documents and the DCM Documents and **"Document"** shall be construed accordingly;

"Enforcement Action" means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable;
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand in relation to a Liability that is payable on demand;
 - (iv) the making of any demand against DCM(OH) in relation to any of its Liabilities to a Creditor;
 - (v) the exercise of any right of set-off, account combination, payment netting attachment or execution against DCM(OH) in respect of any Liabilities;
 - (vi) the suing, or commencing or joining of any legal or arbitration proceedings against DCM(OH), to recover any Liabilities or in respect of the enforcement of any obligations (whether or not for the payment of money) of DCM(OH); and/or
 - (vii) the suing for, or the institution of, any creditors process (whether before or after judgement) against DCM(OH) in respect of any obligations owing to it (whether or not for the payment of money) in respect of a Liability;
- (b) the taking of any steps to enforce, or require the enforcement of, any Security or any guarantee, indemnity or other assurance against loss (including, without limitation, the Documents and the crystallisation of any floating charge forming part of any Document) or the exercise of any rights thereunder on default;
- (c) the entering into of any composition, compromise, assignation or arrangement with DCM(OH);
- (d) the petitioning, applying or voting for, or the taking of any steps (including, without limitation, the appointment of any Insolvency Representative) in relation to, or with a view to, an Insolvency Event in respect of DCM(OH) (or any of its assets), whether under the Securities or otherwise; and/or
- (e) bringing or supporting any legal process against DCM(OH) whatsoever or applying or taking any proceedings for an interdict or specific implement (or the equivalent in any jurisdiction) in respect of DCM(OH) and/or any of its obligations;

"Event of Default" means a BV Event of Default and a DCM Event of Default;

"Insolvency Event" means, in relation to DCM(OH):

- (a) any application, notice, resolution or order being made, passed or given for or in connection with the winding up, liquidation, dissolution, administration or reorganisation of DCM(OH);
- (b) DCM(OH) becoming subject to any insolvency, reorganisation, receivership (whether relating to all or only some of its assets), administration, liquidation, dissolution or other similar proceedings, whether voluntary or involuntary and whether or not involving insolvency;

- (c) DCM(OH) assigning all or any of its assets for the benefit of its creditors generally (or any class thereof) or entering into any composition or arrangement with its creditors generally or any arrangement being ordered or declared by a court of competent jurisdiction whereby all or any of its affairs and/or assets are submitted to the control of, or are protected from, its creditors;
- (d) DCM(OH) becoming subject to any distribution of its assets in consequence of insolvency, reorganisation, liquidation, dissolution or administration; or
- (e) any event analogous to any of the foregoing occurring in relation to DCM(OH) or any of its assets in any jurisdiction;

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

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

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

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

"Party" means a party to this Agreement;

"Remaining Assets" means all of the assets, property and undertaking (including, without limitation, uncalled capital) of DCM (OH), save for the Assigned Rights;

"Secured Assets" means all of the assets of DCM(OH) which from time to time are, or are expressed to be, the subject of any Security created, or expressed to be created, pursuant to any Security Document;

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

"Security Documents" means the BV Security Documents and the DCM Floating Charges;

1.2 Unless a contrary indication appears, a reference in this Agreement to:

- 1.2.1 any of the Parties to this Agreement or any other person shall be construed so as to include its successors in title, permitted assignees and permitted transferees;
- 1.2.2 **"assets"** includes present and future properties, revenues and rights of every description;
- 1.2.3 this Agreement, a **BV Document**, a **DCM Document** or any other document, agreement or instrument is a reference to this Agreement, that Document or other document as amended, novated, supplemented, extended, restated or replaced in whole or in part;

- 1.2.4 "Indebtedness" includes any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.5 a "person" includes any person, 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);
- 1.2.6 a "company" includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.7 one gender shall include a reference to the other genders;
- 1.2.8 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;
- 1.2.9 a provision of law is a reference to that provision as amended or re-enacted;
- 1.2.10 "document" includes any agreement, deed, certificate, instrument (including negotiable instrument) or other document of any kind;
- 1.2.11 a time of day is a reference to London time;
- 1.2.12 "writing" or "written" includes fax, but not e-mail;
- 1.2.13 any words following the terms "including", "include", "In particular", or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- 1.2.14 "disposal" includes a sale, transfer, grant, lease or other disposal, whether voluntary or involuntary (and "dispose" shall be construed accordingly);
- 1.2.15 the "winding up", "dissolution", or "administration" of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such person is incorporated or established, or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, administration, arrangement, adjustment, protection or relief of debtors; and
- 1.2.16 clauses are to the clauses of this Agreement.
- 1.3 Headings and sub-headings of this Agreement are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and *vice versa*.
- 1.5 Any obligation of the Parties not to do something shall include an obligation not knowingly to permit, suffer or allow the same.
- 2 Consents
- 2.1 DCM hereby:
 - 2.1.1 consents to the creation and subsistence of the BV Security; and

- 2.1.2 confirms that neither the creation nor subsistence of the BV Security constitutes, or will constitute, a DCM Default.
- 2.2 BV hereby:
- 2.2.1 consents to the creation and subsistence of the DCM Security; and
- 2.2.2 confirms that neither the creation nor subsistence of the DCM Security of itself constitutes, or will of itself constitute, a BV Default.
- 3 Ranking and priority of Security
- Unless expressly provided to the contrary in this Agreement, all existing and future Security which constitutes BV Security and/or DCM Security will rank in the following order of priority:
- 3.1 in respect of the Assigned Rights:
- 3.1.1 firstly, the BV Assignment in Security to the extent of all sums secured thereby;
- 3.1.2 secondly, the BV Floating Charge to extent of all sums secured thereby; and
- 3.1.3 thirdly, the DCM Floating Charge 2002 to the extent of all sums secured thereby and the DCM Floating Charge 2004 to the extent of all sums secured thereby, *pari passu* between them; and
- 3.2 in respect of the Remaining Assets:
- 3.2.1 firstly, the BV Floating Charge to extent of all sums secured thereby; and
- 3.2.2 secondly, the DCM Floating Charge 2002 to the extent of all sums secured thereby and the DCM Floating Charge 2004 to the extent of all sums secured thereby, *pari passu* between them.
- 4 Continuing status of Security
- Nothing in this Agreement shall affect the Security created by the Security Documents as continuing security, nor shall the ranking and priority set out in clause 3 be affected by any matter or thing which could, but for this provision, prejudice such ranking and priority, including, but not limited to:
- 4.1 the nature of the Security created by the Security Documents and the dates of execution and registration of them;
- 4.2 any provision contained in any of the Security Documents;
- 4.3 the respective date (or dates) upon which any person received notice of the existence or creation of any Security constituted by any Security Document;
- 4.4 the respective date (or dates) upon which the Liabilities arose;
- 4.5 whether any Creditor is obliged to advance or make available any such Liabilities;
- 4.6 any fluctuations from time to time in the outstanding amount, or any intermediate discharge in whole or in part of the Liabilities;
- 4.7 the existence at any time of a credit balance on any current or other account of DCM(OH);
- 4.8 any amendment or supplement to or variation, novation, restatement or replacement of any Document;

- 4.9 the appointment of any Insolvency Representative either in respect of DCM(OH) or over all or any part of the assets of DCM(OH);
- 4.10 the sale or disposal of any land or buildings or any interest in any land or buildings prior to enforcement; and
- 4.11 any future Security granted by DCM(OH) to any Creditor (other than the Security Documents).
- 5 Challenge to security
No Creditor shall challenge or question:
 - 5.1 the validity or enforceability of any Security constituted by a Security Document;
 - 5.2 the nature of any Security constituted by a Security Document; or
 - 5.3 (without prejudice to the generality of the foregoing) whether any Security constituted by a Security Document is fixed or floating.
- 6 Undertakings of DCM(OH)
 - 6.1 Prior to the BV Discharge Date and notwithstanding any provision of the DCM Documents, DCM(OH) shall not (except as BV shall have previously consented to in writing):
 - 6.1.1 create or permit to subsist any Security over any of its assets or give any guarantee, indemnity or other assurance against loss (save for any Security created, or express to be created, pursuant to any Security Document); or
 - 6.1.2 take or fail to take any action whereby the ranking, subordination or other obligations contemplated by this Agreement may be impaired.
 - 6.2 Prior to the DCM Discharge Date and notwithstanding any provision of the BV Documents, DCM(OH) shall not (except as DCM shall have previously consented to in writing):
 - 6.2.1 create or permit to subsist any Security over any of its assets, or give any guarantee, indemnity or other assurance against loss (save for any Security created, or express to be created, pursuant to any Security Document); or
 - 6.2.2 take or fail to take any action whereby the ranking, subordination or other obligations contemplated by this Agreement may be impaired.
- 7 Undertakings of BV and DCM
 - 7.1 Until the BV Discharge Date, except as BV shall have previously consented to in writing, DCM shall not:
 - 7.1.1 permit to subsist or receive any Security or any guarantee, indemnity or other assurance against loss from DCM(OH) for, or in respect of, any Liabilities from time to time due, owing or incurred (actually or contingently) by DCM(OH) to him, save for the DCM Security; or
 - 7.1.2 take or fail to take any action whereby the ranking, subordination or other obligations contemplated by this Agreement may be impaired.
 - 7.2 Until the DCM Discharge Date, except as DCM shall have previously consented to in writing, BV shall not:

7.2.1 permit to subsist or receive any Security or any guarantee, indemnity or other assurance against loss from DCM(OH) for, or in respect of, any Liabilities from time to time due, owing or incurred (actually or contingently) by DCM(OH) to it, save for the BV Security; or

7.2.2 take or fail to take any action whereby the ranking, subordination or other obligations contemplated by this Agreement may be impaired.

8 Entitlement to enforce

8.1 Subject to clause 8.4, a Creditor (the "**Relevant Creditor**") shall only be entitled to take any Enforcement Action if it has first given to the other Creditor five (5) Business Days prior written notice ("**Enforcement Notice Period**") that it intends to take such Enforcement Action. Each Creditor agrees to consult with the other Creditors during the Enforcement Notice Period.

8.2 Where a Relevant Creditor consults with the other Creditor under clause 8.1 above, the Creditors shall all consult together with a view to agreeing on the method of Enforcement Action or other relevant action and, where appropriate, with a view to agreeing on a suitable person to be appointed as Insolvency Representative (and such consultation and agreement shall also precede any removal of any Insolvency Representative and any appointment of a successor) and each Creditor shall respond as quickly as is reasonably practicable to the other Creditors during any such consultation.

8.3 Following the expiry of the Enforcement Notice Period, subject to clause 8.4, the Relevant Creditor having given the notice contemplated under clause 8.1, shall be entitled to take the Enforcement Action.

8.4 Any Creditor may take any Enforcement Action, without consulting or reaching agreement with the other Creditor, if it reasonably believes that taking any such action immediately is necessary to protect its interests. No action taken by any Creditor in accordance with this clause 8.4 shall be invalid or ineffective because of its failure to consult or reach agreement with the other Creditor.

8.5 As soon as reasonably practicable after taking any Enforcement Action in accordance with clause 8.4, the Creditor which has taken such Enforcement Action shall inform the other Creditor of the action taken.

8.6 Without prejudice to the terms of clause 9.1, each Creditor (the "**Requested Creditor**") will, at the request of the other Creditor who has taken Enforcement Action to the extent permitted by this clause 8 (the "**Requesting Creditor**") or any Insolvency Representative appointed by the Requesting Creditor, join in such documents or otherwise take such action as may be reasonably required by the Requesting Creditor or such Insolvency Representative appointed by the Requesting Creditor to facilitate the disposal of any Secured Asset to give effect to the ranking and priorities set out in this Agreement, whether or not there will be any balance of proceeds available for the Requested Creditor arising from that disposal.

9 Co-operation and information disclosure

9.1 In the event of the provisions of this Agreement being regarded by an Insolvency Representative in respect of DCM(OH) (or all or any part of its assets) as failing to bind him or them in respect of the Secured Assets, or the proceeds of sale thereof, and insofar as the refusal or failure of such Insolvency Representative to be bound by this Agreement shall cause prejudice to any Creditor, the other Creditor shall compensate that Creditor to the extent that it is enriched as a result.

9.2 Each Party undertakes to use all reasonable endeavours to ensure that the provisions of this Agreement as to the relative ranking of securities, priorities and subordination as between the Parties shall be given effect to in all relevant jurisdictions.

- 9.3 Each of the Creditors and DCM(OH) will take all reasonable and necessary steps and will co-operate with the other Parties so as to ensure that the intentions as to priorities set out in this Agreement are reflected and recorded timeously in any registry or register or with any filing or registration authority in any jurisdiction, and if required, that third parties are informed of such priorities.
- 9.4 DCM(OH) authorises each Creditor for so long as such party remains a Party to disclose to each other Party and to any shareholder or other creditor in DCM(OH) any information concerning DCM(OH) that comes into their possession in connection with the Documents as that Creditor may see fit.
- 10 Effect of this Agreement
- 10.1 DCM(OH):
- 10.1.1 enters into this Agreement for the purposes of acknowledging the arrangements between the Parties and giving the undertakings expressed to be given by it in this Agreement;
- 10.1.2 agrees that it does not have rights against the Creditors under this Agreement and that none of the undertakings in this Agreement are given (or shall be deemed to be given) to it, or for its benefit, or are enforceable by it; and
- 10.1.3 acknowledges that the arrangements made between the Creditors (including, without limitation, as to priorities) may be varied by them without the need to obtain the agreement of DCM(OH) and DCM(OH) waives any rights which it may have, or acquire, to challenge any such arrangements or have them varied or set aside.
- 10.2 Nothing in this Agreement shall:
- 10.2.1 require any Creditor to make any advance or provide any facility to DCM(OH); or
- 10.2.2 as between DCM(OH) and any of the Creditors, affect or prejudice any of the rights or remedies of any of the Creditors under the Documents which shall remain in full force and effect.
- 10.3 In the event of any conflict or inconsistency arising between any of the provisions of this Agreement and any provision of any Document, the provisions of this Agreement shall prevail.
- 11 Protection of ranking
- 11.1 The ranking provisions in this Agreement constitute a continuing ranking and benefit to (i) the ultimate balance of the BV Liabilities and (ii) the ultimate balance of the DCM Liabilities respectively regardless of any intermediate payment or discharge of any such Liabilities in whole or in part.
- 11.2 The ranking in this Agreement and the obligations of each Creditor and DCM(OH) under this Agreement will not be reduced, discharged or otherwise adversely affected by any act, omission or circumstance which, but for this clause 11.2 might operate to release, reduce, discharge, impair or otherwise adversely affect such subordination and ranking or any of those obligations in whole or in part, including (but without limitation) and whether or not known to the other Creditors (or any of them):
- 11.2.1 any time, waiver or consent granted to, or composition with, DCM(OH) or other person;
- 11.2.2 the taking, variation, compromise, exchange, renewal or release of, or any refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets

of, DCM(OH) or 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;

- 11.2.3 any incapacity of, lack of power, authority or legal personality of, or dissolution or change in the members or status of DCM(OH) or any other person;
 - 11.2.4 any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Document or any other document or Security (other than a Security Document) including, without limitation, any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Document or other document or Security (other than a Security Document);
 - 11.2.5 any unenforceability, illegality or invalidity of any obligation of any person under any Document or any other document or Security;
 - 11.2.6 any Insolvency Event or similar proceedings; or
 - 11.2.7 any other act, event or omission which, but for this clause 11.2, might operate to discharge, impair or otherwise adversely affect any of the obligations of any Creditor or DCM(OH) under this Agreement or any of the rights, powers or remedies conferred upon the Creditors (or any of them) by this Agreement.
- 11.3 If any provision of this Agreement is or becomes invalid, illegal or unenforceable in whole or in part in any jurisdiction, this Agreement shall, as to such jurisdiction, continue to be valid as to its other provisions and the remainder of the affected provision and the legality, validity and enforceability of such provision in any other jurisdiction shall be unaffected.
- 11.4 Any waiver of a breach of any of the terms of this Agreement or of any default under this Agreement:
- 11.4.1 shall not be deemed a waiver of any subsequent breach or default and shall not affect the other terms of this Agreement; and
 - 11.4.2 shall be effective only if made in writing and specifically.
- 11.5 No failure to exercise and no delay on the part of any Party in exercising any right, remedy, power or privilege of that Party under this Agreement and no course of dealing between the Parties shall be construed or operate as a waiver, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of such rights, remedies, powers or privileges or the exercise of any other right, remedy, power or privilege.
- 11.6 The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 12 Change of parties
- No Creditor may assign, novate, transfer and/or otherwise dispose of any of its rights, title and/or interest in all and/or obligations or liabilities under any of the Security Documents to which it is a party unless that assignation, novation, transfer or disposal is in accordance with the terms of the relevant Security Document and any such assignee, novatee, transferee or disposee first agrees in writing with the other Creditors to be bound by the provisions of this Agreement as if it is a "Creditor" hereunder.
- 13 Service of notices
- 13.1 All communications to be made under this Agreement shall be made in writing and, unless otherwise stated, may be made by letter.

- 13.2 The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is that identified with its name at the end of this Agreement, or any substitute address (or department or officer) as such Party may notify to the other Parties by not less than five Business Days' notice.
- 13.3 Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective 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 it at that address.
- 14 Miscellaneous
- 14.1 This Agreement contains the entire agreement and understanding of the Parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement.
- 14.2 The Parties acknowledge and agree that this Agreement is an instrument of alteration in terms of section 466 of the Companies Act 1985.
- 14.3 BV confirms and undertakes to DCM that it will, within 21 days of the date of this Agreement, register the required details of this Agreement with the Registrar of Companies in Edinburgh in respect of the BV Floating Charge.
- 14.4 DCM confirms and undertakes to BV that it will, within 21 days of the date of this Agreement, register the required details of this Agreement with the Registrar of Companies in Edinburgh in respect of each of the DCM Floating Charges.
- 15 Counterparts and delivery
- 15.1 This agreement may be executed in any number of counterparts and by each of the parties on separate counterparts.
- 15.2 Where executed in counterparts:
- 15.2.1 this agreement will not take effect until each of the counterparts has been delivered;
- 15.2.2 each counterpart will be held as undelivered until the parties agree a date on which the counterparts are to be treated as delivered;
- 15.2.3 the date of delivery may be inserted on page 1 in the blank provided for the delivery date of this agreement; and
- 15.2.4 and the parties to this agreement have nominated a person to take delivery of one or more of the counterparts, the parties to this agreement hereby agree that the terms of s.2(3) of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 shall not apply.
- 16 Governing law and jurisdiction
- 16.1 This Agreement shall be governed by and construed in accordance with the law of Scotland.
- 16.2 The Parties submit to the non-exclusive jurisdiction of the courts of Scotland.

17 Consent to registration

The Parties consent to the registration of this Agreement for preservation and execution.

IN WITNESS WHEREOF these presents consisting of this and the preceding 11 pages is executed as follows:

Subscribed for and on behalf of **DAKOTA TRADING B.V.**

by Eduardo D'Angelo P Silva
at George Town, Cayman Islands

on 5 November 2015

before

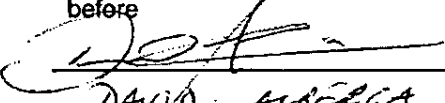


Director

Witness

Full Name

Address



DAVID CHARLES MOULDS
398 OMEGA DRIVE
GRAND CAYMAN, CAYMAN ISLANDS

Notice details:

Address: Strawinskylaan 411, 1077 XX Amsterdam, The Netherlands.

Attention of: Eduardo Silva

Subscribed by David Charles Moulds

at

on

before

Witness

Full Name

Address

Notice details:

Address: 5 Deerdrykes Road, Cumbernauld, Glasgow, G68 9HF

Subscribed for and on behalf of **DCM (Optical Holdings) Limited**

by

at

on

before

Director

Witness

Full Name

Address

Notice details:

Address: The Ca'd'oro, 45 Gordon Street, Glasgow, G1 3PE

Attention of: David Charles Mouldsdaie