

EXECUTION

SECOND SUPPLEMENTAL TRUST DEED

28 NOVEMBER 2023

between

OCADO GROUP PLC

and

OCADO INTELLIGENT AUTOMATION LIMITED

and

OCADO SOLUTIONS CANADA INC.

and

BNY MELLON CORPORATE TRUSTEE SERVICES LIMITED

further modifying the provisions of the Principal Trust Deed dated 9 December 2019 constituting

**£600,000,000 0.875 per cent. Guaranteed Convertible Bonds due 2025
convertible into Ordinary Shares of Ocado Group plc**

ALLEN & OVERY

Allen & Overy LLP

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THIS SECOND SUPPLEMENTAL TRUST DEED is made on 28 November 2023

BETWEEN:

- (1) **OCADO GROUP PLC**, a public limited liability company, with registered office at Buildings One & Two Trident Place, Mosquito Way, Hatfield, Hertfordshire, AL10 9UL;
- (2) **OCADO INTELLIGENT AUTOMATION LIMITED**, a private limited company incorporated in England and Wales with company number 14744957 and with registered office at Buildings One & Two Trident Place, Mosquito Way, Hatfield, Hertfordshire, AL10 9UL;
- (3) **OCADO SOLUTIONS CANADA INC.**, a company limited by shares incorporated in the Province of Nova Scotia, Canada with registry number 3320697 and with registered office at Suite 1300, 1969 Upper Water Street, McInnes Cooper Tower, Purdy's Wharf, Halifax, Nova Scotia, B3J 3R7; and
- (4) **BNY MELLON CORPORATE TRUSTEE SERVICES LIMITED** whose principal place of business is at 160 Queen Victoria Street, London EC4V 4LA, United Kingdom (the "Trustee", which expression shall, where the context so admits, include all persons for the time being the trustee or trustees under the Trust Deed).

WHEREAS:

- (A) This Second Supplemental Trust Deed (this "Second Supplemental Trust Deed") is supplemental to the trust deed dated 9 December 2019 and made between the Issuer, the Initial Guarantors named therein and the Trustee (the "Principal Trust Deed") and the first supplemental trust deed dated 13 July 2022 made between the Issuer, Ocado Solutions USA Inc., Ocado Solutions (US) ProCo LLC and the Trustee and modifying the provisions of the Principal Trust Deed (the "First Supplemental Trust Deed", and together with the Principal Trust Deed, the "Trust Deed"), and which constitutes the £600,000,000 0.875 per cent. Guaranteed Convertible Bonds due 2025 of Ocado Group plc (the "Issuer") convertible into Ordinary Shares of the Issuer (the "Bonds"). The Terms and Conditions of the Bonds (the "Conditions", and references to a numbered "Condition" shall be construed accordingly) are set out in Schedule 4 to the Trust Deed.
- (B) On 20 June 2022, the Issuer obtained a £300,000,000 secured multicurrency revolving credit facility from a syndicate of banks (the "RCF"). In accordance with the terms of the RCF, Ocado Intelligent Automation Limited and Ocado Solutions Canada Inc. (together the "New Guarantors") acceded as guarantors in respect of the RCF on 28 November 2023. Consequently, the New Guarantors also acceded as guarantors in respect of the Issuer's outstanding 3.875 per cent. Senior Notes due 2026 (the "2026 Notes") and 0.75 per cent. Guaranteed Convertible Bonds due 2027 (the "2027 Notes"), in each case on 28 November 2023. As the RCF, the 2026 Notes and the 2027 Notes each constitute a Term Financing for the purposes of the Conditions, pursuant to Clause 3.9 of the Trust Deed and Condition 1(D)(d), the New Guarantors are acceding as Additional Guarantors in respect of the Bonds on and from 28 November 2023 (the "Effective Date").
- (C) Each of the New Guarantors has by resolutions of their respective Board of Directors, each passed on 14 November 2023, resolved to guarantee (on a joint and several basis with the other Guarantors) amounts payable by the Issuer in respect of the Bonds and under the Trust Deed upon and subject to the terms and conditions of the Trust Deed.
- (D) Pursuant to Clause 3.12 of the Trust Deed, each subsisting Guarantor is deemed to have consented to the accession of the New Guarantors as Additional Guarantors without the necessity for any other Guarantor to concur in or consent to this Second Supplemental Trust Deed.

THIS SECOND SUPPLEMENTAL TRUST DEED WITNESSES AND IT IS DECLARED as follows:

1. INTERPRETATION

1.1 Definitions and Construction

Subject as otherwise provided in this Second Supplemental Trust Deed and unless there is anything in the subject matter or context inconsistent therewith:

- (a) all words and expressions defined in the Trust Deed shall have the same meanings in this Second Supplemental Trust Deed; and
- (b) references in this Second Supplemental Trust Deed to a numbered Clause of the Trust Deed shall be construed as references to the relevant Clause of the Trust Deed (as amended, where appropriate).

1.2 Headings

Headings shall be ignored in construing this Second Supplemental Trust Deed.

2. GUARANTEE AND INDEMNITY

- 2.1 In accordance with clause 3.9 of the Trust Deed and Condition 1(D)(d), the provisions of this Clause 2 shall take effect on and from the Effective Date.
- 2.2 **Guarantee:** The New Guarantors unconditionally and irrevocably, notwithstanding the release of any other guarantor or any other person under the terms of any composition or arrangement with any creditors of the Issuer or any Subsidiary of the Issuer, guarantee on a joint and several basis with the other Guarantors that if the Issuer does not pay (or procure to be paid) any sum payable by it under the Trust Deed or the Bonds by the time and on the date specified for such payment or delivery (whether on the normal due date, on acceleration or otherwise), the New Guarantors will pay that sum to, or to the order of, the Trustee in the manner provided in Clause 2.2 of the Trust Deed (or, if in respect of sums due under Clause 10 of the Trust Deed, in sterling in immediately available funds) before close of business on that date in the city in which payment is so to be made. Clause 2.2 of the Trust Deed will apply (with consequential amendments as necessary) to such payments other than those in respect of sums due under Clause 10 of the Trust Deed. All payments to the Bondholders under the Guarantee by the New Guarantors will be made subject to Condition 9, Clause 3 of this Second Supplemental Trust Deed and Clause 5.2 of the Trust Deed.
- 2.3 **New Guarantors as Principal Debtor:** As between the New Guarantors, the Trustee and the Bondholders, but without affecting the Issuer's obligations, the New Guarantors will be liable under this Clause as if they were the principal debtors and not merely sureties. Accordingly, they will not be discharged, nor will their liability be affected, by anything which would not discharge them or affect their liability if they were the sole principal debtors (including (1) any time, indulgence, waiver or consent at any time given to the Issuer or any other person, (2) any amendment to any other provisions of the Trust Deed or to the Conditions or to any security or other guarantee or indemnity, (3) the making or absence of any demand on the Issuer or any other person for payment, (4) the enforcement or absence of enforcement of the Trust Deed, the Bonds or of any security or other guarantee or indemnity, (5) the taking, existence or release of any security, guarantee or indemnity, (6) the dissolution, amalgamation, reconstruction or reorganisation of the Issuer or any other person, or (7) the illegality, invalidity or unenforceability of or any defect in any provision of the Trust Deed, the Bonds or any of the Issuer's obligations under any of them).

2.4 **New Guarantors' Obligations Continuing:** The New Guarantors' obligations under the Trust Deed are, and will remain, in full force and effect by way of continuing security until no sum remains payable under the Trust Deed or the Bonds, subject always to Clause 3.10 of the Trust Deed. Furthermore, those obligations of each New Guarantor are additional to, and not instead of, any security or other guarantee or indemnity at any time existing in favour of any person, whether from such New Guarantor or otherwise and may be enforced without first having recourse to the Issuer, any other person, any security or any other guarantee or indemnity. Each New Guarantor irrevocably waives all notices and demands of any kind.

2.5 **Exercise of New Guarantors' Rights:** So long as any sum remains payable under the Trust Deed or the Bonds:

- (a) any right of any of the New Guarantors, by reason of the performance of any of their obligations under this Clause or otherwise under the Trust Deed, to be indemnified by the Issuer or to take the benefit of or to enforce any security or other guarantee or indemnity will be exercised and enforced by such New Guarantor only in such manner and on such terms as the Trustee may require or approve; and
- (b) any amount received or recovered by any New Guarantor (1) as a result of any exercise of any such right, or (2) in the dissolution, amalgamation, reconstruction or reorganisation of the Issuer will be held in trust for the Trustee and immediately paid to the Trustee and the Trustee will hold it on the trusts set out in Clause 7.1 of the Trust Deed.

2.6 **Avoidance of Payments:** Each New Guarantor shall on demand indemnify the Trustee and each Bondholder against any cost, loss, expense or liability sustained or incurred by the Trustee or such Bondholder as a result of the Trustee or such Bondholder being required for any reason (including any bankruptcy, insolvency, winding-up, dissolution, or similar law of any jurisdiction) to refund all or part of any amount received or recovered by it in respect of any sum payable by the Issuer under the Trust Deed or any Bond and each New Guarantor shall in any event pay to the Trustee or such Bondholder on demand the amount as refunded.

2.7 **Indemnity:** As separate, independent and alternative stipulations, each New Guarantor unconditionally and irrevocably agrees (1) that any sum which, although expressed to be payable by the Issuer under the Trust Deed or the Bonds, is for any reason (whether or not now existing and whether or not now known or becoming known to the Issuer, the New Guarantors, the other Guarantors, the Trustee or any Bondholder) not recoverable from such New Guarantor on the basis of a guarantee will nevertheless be recoverable from it as if it were the sole principal debtor and will be paid by it to the Trustee on demand, and (2) as a primary obligation to indemnify the Trustee and each Bondholder against any loss suffered by it as a result of any sum expressed to be payable by the Issuer under the Trust Deed or the Bonds not being paid on the date and otherwise in the manner specified in the Trust Deed or any payment obligation of the Issuer under the Trust Deed or the Bonds being or becoming void, voidable or unenforceable for any reason (whether or not now existing and whether or not now known or becoming known to the Issuer, the New Guarantors, the other Guarantors, Trustee or any Bondholder), the amount of that loss being the amount expressed to be payable by the Issuer in respect of the relevant sum.

2.8 **New Guarantors' Compliance:** The New Guarantors undertake to comply with all terms, provisions and conditions of the Trust Deed in all respects as if each New Guarantor had originally been a party to the Trust Deed and named therein as an Initial Guarantor, and references in the Conditions and the Trust Deed to an "Initial Guarantor" and "Guarantor" shall (without prejudice to any subsequent release of a New Guarantor under Clause 3.10 of the Trust Deed) be deemed to include each New Guarantor.

2.9 **Release of Guarantors and Deemed Consent:** Clauses 3.10 and 3.12 of the Trust Deed shall apply to the New Guarantors *mutatis mutandis* as if set out in this Second Supplemental Trust Deed.

3. TAXATION

3.1 All payments made by or on behalf of the New Guarantors in respect of the Bonds will be made free and clear of and be made without deduction or withholding for or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of, in the case of Ocado Intelligent Automation Limited, the United Kingdom and in the case of Ocado Solutions Canada Inc., Canada or any province or territory thereof, or in each case any political subdivision or any authority thereof or therein having power to tax, unless deduction or withholding of such taxes, duties, assessments or governmental charges is required to be made by law.

3.2 If any such withholding or deduction is required to be made, the relevant New Guarantor will pay such additional amounts as will result in the receipt by the Bondholders of the amounts which would have been received by them had no such withholding or deduction been required, except that no such additional amounts shall be payable in respect of interest on any Bond to a holder (or to a third party on behalf of a holder) which is subject to such taxes, duties, assessments or governmental charges in respect of such Bond by reason of having some connection with, in the case of Ocado Intelligent Automation Limited, the United Kingdom and in the case of Ocado Solutions Canada Inc., Canada or any province or territory thereof, in each case otherwise than merely by holding the Bond or by the receipt of amounts in respect of the Bond.

3.3 The provisions of this Clause 3 shall not apply in respect of any payments of interest which fall due after the relevant Tax Redemption Date in respect of any Bonds which are the subject of a Bondholder election pursuant to Condition 7(c).

3.4 Notwithstanding any other provision of the Conditions or the Trust Deed, in no event will either New Guarantor be required to pay any additional amounts in respect of the Bonds for, or on account of, any withholding or deduction required pursuant to FATCA (including pursuant to any agreement described in Section 1471(b) of the Code) or any law implementing an intergovernmental approach to FATCA.

3.5 The parties hereto acknowledge and agree that the undertakings and covenants by each New Guarantor in this Clause 3 are equivalent to that in Condition 9, and Condition 7(c) shall be construed accordingly.

4. GOVERNING LAW AND JURISDICTION

4.1 **Governing law:** This Second Supplemental Trust Deed, and any non-contractual obligations arising out of or in connection with it, shall be governed by, and construed in accordance with, English law.

4.2 **Submission to Jurisdiction:** The courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Second Supplemental Trust Deed or the Trust Deed (and any non-contractual obligations arising out of or in connection with it) and accordingly any legal action or proceedings arising out of or in connection with this Second Supplemental Trust Deed or the Trust Deed ("Proceedings") may be brought in such courts. The New Guarantors irrevocably submit to the jurisdiction of such courts and waive any objections to Proceedings in such courts on the ground of venue or on the ground that the Proceedings have been brought in an inconvenient forum. This submission is for the benefit of each of the Trustee and the Bondholders and shall not limit the right of any of them to take Proceedings in any other court of competent jurisdiction nor shall the taking of Proceedings in any one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction (whether concurrently or not).

4.3 **Process Agent:** Ocado Solutions Canada Inc. hereby appoints the Issuer at its registered office for the time being in England to accept service of any Proceedings on its behalf and the Issuer hereby accepts such appointment. Ocado Solutions Canada Inc. further agrees that, in the event of the Issuer being unable or unwilling for any reason so to act, it will appoint another person as its agent for service of process in England in respect of any Proceedings. Nothing in this Clause shall affect the right to serve process in any other manner permitted by law.

5. GENERAL

- 5.1 This Second Supplemental Trust Deed may be executed and delivered in any number of counterparts, all of which, taken together, shall constitute one and the same deed and any party to this Second Supplemental Trust Deed may enter into the same by executing and delivering a counterpart.
- 5.2 A person who is not a party to this Second Supplemental Trust Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Second Supplemental Trust Deed. The parties to this Second Supplemental Trust Deed shall have the right to amend, vary or rescind any provision of this Second Supplemental Trust Deed without the consent of any such third party.
- 5.3 The Trust Deed shall henceforth be read and construed as one document with this Second Supplemental Trust Deed.
- 5.4 The provisions of the Trust Deed as modified by this Second Supplemental Trust Deed shall be valid and binding obligations of each of the Issuer, the New Guarantors and the Trustee. Save as expressly set out above, all terms and conditions of the Trust Deed shall remain in full force and effect.
- 5.5 A memorandum of this Second Supplemental Trust Deed shall be endorsed by the Trustee on the Principal Trust Deed.

IN WITNESS whereof this Second Supplemental Trust Deed has been executed and delivered as a deed on the date stated at the beginning.

SIGNATORIES

EXECUTED as a DEED by
OCADO GROUP PLC
acting by
and

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DocuSigned by:

Stephen Daintith
.....F9963987A224472.....
Director

EXECUTED as a DEED by
OCADO INTELLIGENT
AUTOMATION LIMITED
acting by
and

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)
)

DocuSigned by:

Stephen Daintith
.....F9963987A224472.....
Director

EXECUTED as a DEED by
OCADO SOLUTIONS CANADA INC.
acting by
and

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)
)

DocuSigned by:

Nill Abrams
.....058BDCCFBA3A4AB.....
Authorized Signatory

TRUSTEE

**EXECUTED as a DEED by
BNY MELLON CORPORATE
TRUSTEE SERVICES LIMITED
acting by two directors-**

and

John Kane

)
)
)
)
)
)

Julie Marshall

.....
Director
Julie Marshall

Authorised Signatory
Julie Marshall

.....
Director
Justin Chow

.....
Authorised Signatory

in the presence of:

Witness's Signature:
John T. Kane

Name: **JOHN KANE**
Address:

The Bank of New York Mellon
160 Queen Victoria Street
London EC4V 4LA