



Registration of a Charge

Company Name: **ACORN HOLDCO II LIMITED**

Company Number: **NI669049**



XB0X5E3N

Received for filing in Electronic Format on the: **31/03/2022**

Details of Charge

Date of creation: **29/03/2022**

Charge code: **NI66 9049 0002**

Persons entitled: **NATIONAL WESTMINSTER BANK PLC**

Brief description:

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

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

Authentication of Instrument

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

Certified by: **A&L GOODBODY**



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: NI669049

Charge code: NI66 9049 0002

The Registrar of Companies for Northern Ireland hereby certifies that a charge dated 29th March 2022 and created by ACORN HOLDCO II LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 31st March 2022 .

Given at Companies House, Belfast on 31st March 2022

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



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

A&L Goodbody

Dated 29 March 2022

Acorn Holdco II Limited

(Chargor)

NATIONAL WESTMINSTER BANK PLC

(Security Agent)

SHARE CHARGE

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THIS DEED is dated 29 March 2022 and made between:

- (1) **ACORN HOLDCO II LIMITED** a company incorporated in Northern Ireland with registered number NI669049 and having its registered office at Lanyon Plaza West Tower, 8 Lanyon Place, Belfast, Northern Ireland, BT1 3LP (the **Chargor**); and
- (2) **NATIONAL WESTMINSTER BANK PLC** (the **Security Agent**).

RECITALS

- (A) Pursuant to the terms of the Facilities Agreement, the Lenders have made available certain facilities to the Borrowers.
- (B) It is a condition precedent to the availability of the Facilities under the Facilities Agreement that the Chargor enter into this Deed and grants the Security to the Security Agent.
- (C) It has been agreed between the Chargor and the Security Agent that the Secured Obligations now owing or which shall become owing shall be secured by this Deed.
- (D) The Security Agent has agreed to enter into this Deed as security agent for the Secured Parties.

1 INTERPRETATION

1.1 Definitions

In this Deed, the following terms shall, unless the context otherwise requires, have the following meanings:

1881 Act means the Conveyancing and Law of Property Act 1881;

1911 Act means the Conveyancing Act 1911;

Acceleration Event has the same meaning as such term in the Intercreditor Agreement;

Acts means the 1881 Act and the 1911 Act;

Business Day means any day on which banks are generally open for business in London, excluding Saturdays and Sundays;

Charged Securities means:

- (a) the shares specified in Schedule 2; and
- (b) all other shares in the capital of the Company which the Chargor may now or hereafter hold or beneficially own;

Company means Fibrus Networks Ltd, a company incorporated in Northern Ireland with registered number NI612703 and having its registered office at Lanyon Plaza West Tower, 8 Lanyon Place, Belfast, Northern Ireland, BT1 3LP;

Default Rate means the rate set out at clause 11.4 (*Default Interest*) of the Facilities Agreement;

Delegate means any person appointed by the Security Agent or any Receiver appointed pursuant to the provisions of clause 10.1.1 (*Delegation*);

Disposal means:

- (a) any sale, transfer, mortgage, assignment, grant of an option over, charge, pledge, loan or other disposal of Secured Assets, or an agreement to do any of the foregoing; and/or
- (b) entering into any transaction (including a derivative transaction) having an economic effect similar to any of the types of disposal described in sub-paragraph (a) above;

and **dispose** and shall be construed accordingly;

Dispute means any suit, action, proceedings and/or any dispute or difference which may arise out of or in connection with or which may relate in any way to this Deed (including but not limited to any suit, action, proceedings, dispute or difference relating to the formation, interpretation or performance of this Deed) or any dispute arising out of any non-contractual obligations of any nature arising between the parties or any of them;

Event of Default has the same meaning as such term in the Facilities Agreement;

Facilities Agreement means the facilities agreement entered into between (1) Fibrus Networks Ltd (as Original Borrower), (2) the Chargor (as the Parent), (3) The subsidiaries listed in Part 1 of Schedule 1 thereto (as the Original Guarantors), (4) ABN AMRO Bank N.V., ING Bank, a branch of ING-DIBA AG, Landesbank Baden-Württemberg London Branch, National Westminster Bank PLC trading as Ulster Bank, Banco de Sabadell S.A., London Branch and UK Infrastructure Bank Limited (as Mandated Lead Arrangers), (5) the financial institutions listed in Part 2 of Schedule 1 thereto (as the Original Lenders), (6) National Westminster Bank PLC (as Agent) and (6) National Westminster Bank PLC (as the Security Agent) dated 29 March 2022;

Finance Documents has the same meaning as such term in the Facilities Agreement;

Parties mean a party to this Deed;

Proceedings means suits, actions or proceedings arising out of or in connection with or relating in any way to this Deed or any dispute arising out of any non-contractual obligations of any nature arising between the parties or any of them (including but not limited to any suits, actions or proceedings relating to the formation, interpretation or performance of this Deed);

Receiver means any receiver and/or receiver and manager appointed by the Security Agent (whether pursuant to this Deed or otherwise) in respect of the Chargor or over all or any part of the Secured Assets (and the expression **Receiver** will, where the context so admits, include the plural and any substituted receiver or receiver and manager);

Related Rights mean, in relation to the Charged Securities:

- (a) all dividends, distributions, interest and other income paid or payable on the relevant Charged Securities or any asset referred to in (b) below;
- (b) all rights, monies, benefits or property accruing or offered at any time in relation to the Charged Securities whether by way of conversion, redemption, substitution, exchange, bonus or preference, under option rights or otherwise;
- (c) all rights relating to any Charged Securities which are deposited with, or registered in the name of, any depositary, custodian, nominee, clearing house or system, investment manager, Security Agent or other similar person or their nominee, in each case whether or not on a fungible basis (including rights against any such person);
- (d) all rights which the Chargor may have at any time against any clearance or settlement system or any custodian in respect of any Charged Securities; and

- (e) all other rights attaching or relating to any Charged Securities and all cash or other securities or investments in the future deriving from the Charged Securities or such rights;

Secured Assets mean all the assets of the Chargor which are the subject of the Security and **Secured Asset** means any secured asset but shall exclude, for the avoidance of doubt, such property and assets to the extent that, and for so long as, the taking of any such security in respect of such assets would contravene the terms of any applicable law or regulation;

Secured Obligations means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group, the Parent (in any capacity whatsoever) and by each Debtor (in any capacity whatsoever) to the Secured Parties or the Security Agent under or in connection with each or any of the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity, together with all costs, charges and expenses incurred by the Secured Parties or the Security Agent in connection with the protection, preservation or enforcement of its rights under the Debt Documents;

Security means the security constituted or intended to be constituted by this Deed;

Security Interest means any mortgage, charge (fixed or floating), pledge, lien, assignment, hypothecation, retention of title, flawed asset agreement, preferential right, trust arrangement or any security interest whatsoever or any other agreement or arrangement having the effect of conferring security, a priority of payment or a disposition contrary to the provisions of this Deed, howsoever created or arising;

Security Period means the period beginning on the date of this Deed and ending on the date on which the Security Agent is satisfied that all of the Secured Obligations have been unconditionally and irrevocably paid and discharged in full and no Finance Party is under any further commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation or, if earlier, the date upon which all of the Security shall have been unconditionally and irrevocably released and discharged; and

Taxes means all forms of taxation, duties, imposts and levies whether of Northern Ireland or elsewhere, including (but without limitation) income tax, corporation tax, corporation profits tax, advance corporation tax, capital gains tax, capital acquisitions tax, residential property tax, wealth tax, value added tax, dividend withholding tax, deposit interest retention tax, customs and other import and export duties, excise duties, stamp duty, capital duty, social insurance, social welfare or other similar contributions and other amounts corresponding thereto whether payable in Northern Ireland or elsewhere, and any interest, surcharge, penalty or fine in connection therewith, and the word **taxation** shall be construed accordingly.

1.2 Construction

1.2.1 The principles of construction contained in clause 1.2 (*Construction*) of the Facilities Agreement shall apply in full to this Deed as if such provisions were set out in full herein mutatis mutandis, except that references to "this Agreement" will be construed as references to this Deed.

1.2.2 Unless the context otherwise requires or this Deed provides otherwise, a term which is defined in the Facilities Agreement or Intercreditor Agreement shall have the same meaning (or be subject to the same construction) in this Deed. If there is any conflict or inconsistency between the terms of this Deed and Facilities Agreement or Intercreditor Agreement then the terms of Facilities Agreement or Intercreditor Agreement shall prevail.

1.2.3 Unless otherwise provided, any reference to a section, clause, sub-clause, paragraph or schedule is a reference to a section, clause, sub-clause, paragraph or schedule (as the case may be) of this Deed.

1.2.4 Headings and the contents page are inserted for ease of reference only and do not affect the construction of this Deed.

- 1.2.5 Unless the context otherwise requires, any reference in this Deed to:
- (a) a word or phrase the definition of which is contained or referred to in the Companies Act shall have the meaning thereby given to it;
 - (b) any provision of law is a reference to that provision as amended, substituted, extended or re-enacted and includes any subordinate legislation;
 - (c) any Northern Irish legal term, concept, legislation or regulation (including those for any action, remedy, method of judicial proceeding, document, statute, court official, governmental authority or agency) or any accounting term or concept, in respect of any jurisdiction other than Northern Ireland will be construed as references to the term, concept, legislation or regulation which most nearly corresponds to it in that jurisdiction;
 - (d) the singular includes the plural and vice versa and any gender includes the other gender;
 - (e) a reference to time is a reference to time in Northern Ireland;
 - (f) a person includes that person's successors, personal representatives, permitted assignees and/or transferees, substitutes, executors, administrators, successors in title (as the case may be) whether direct or indirect or any person with whom they may from time to time merge or amalgamate;
 - (g) any phrase introduced by the terms **including** or **includes** or **in particular** or any similar expression is to be construed as illustrative without limitation;
 - (h) costs, charges or expenses include any value added tax or similar tax charged or chargeable in respect of such cost, charges or expenses; and
 - (i) an **authorisation** means an authorisation, consent, approval, licence, resolution, filing or registration.
- 1.2.6 This Deed shall take effect as a deed notwithstanding that the Security Agent may only execute this Deed under hand or not at all.
- 1.2.7 The absence of or incomplete details of any Secured Assets in any Schedule shall not affect the validity or enforceability of any Security.

2 PAYMENT PROVISIONS

2.1 Covenant to pay

The Chargor hereby covenants in favour of the Security Agent that it will pay and discharge the Secured Obligations when they are due or if no time for payment is specified for payment and discharge of the Secured Obligations, promptly on demand by the Security Agent.

2.2 Limited recourse

Notwithstanding Clause 2.1 (*Covenant to pay*):

- 2.2.1 the liability of the Chargor to the Secured Parties under Clause 2.1 (*Covenant to pay*) shall be:
- (a) limited in aggregate to an amount equal to that recovered by the Security Agent as a result of the enforcement of this Deed with respect to the Secured Assets; and
 - (b) satisfied only from the proceeds of sale or other disposal or realisation of the Secured Assets pursuant to this Deed; and

- 2.2.2 the Security Agent shall not have any recourse under Clause 2.1 (*Covenant to pay*) to any assets of the Chargor other than the Secured Assets.

2.3 Default interest

- 2.3.1 The Chargor hereby covenants in favour of the Security Agent to pay interest on the Secured Obligations (both before and after judgment) from the date of demand to the date of payment calculated on a daily basis at the rate and in the manner agreed in writing between the Chargor and the Security Agent in the Facilities Agreement and in the absence of such agreement, at the Default Rate.

- 2.3.2 Default interest shall accrue from day to day and will be compounded at such intervals as set out in the Facilities Agreement or in the absence of any such agreement, shall be decided by the Security Agent acting on the instructions of the Majority Senior Creditors.

2.4 Payment free of deduction

All payments to be made under this Deed by the Security Agent shall be made free and clear of and without deduction for or on account of any set-off or counterclaim or any present or future Taxes, levies, imposts, charges, deductions or withholdings of any nature whatsoever. If the Chargor shall be compelled by law to make any deduction or withholding from any payment to the Security Agent, the amount of the payment due from the Chargor shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Security Agent receives and retains (free from any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

2.5 Evidence and calculation

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

3 CHARGING PROVISIONS

3.1 Fixed charges

To the extent not prohibited by any applicable law or regulation, the Chargor, as legal and beneficial owner for the purpose of securing the payment and discharge in full of the Secured Obligations hereby absolutely, irrevocably and unconditionally **CHARGES** as a first fixed charge in favour of the Security Agent as a continuing security, all of its rights, title and interest whatsoever, present and future, actual and contingent, in and to the Charged Securities together with all Related Rights.

- 3.2 The Chargor hereby covenants and undertakes to deliver to the Security Agent, as soon as reasonably practicable (and in any event within five Business Days) following the date of execution of this Deed, or if later, as soon as reasonably practicable (and in any event within 5 Business Days of request by the Security Agent (acting reasonably)) following the acquisition by the Chargor of any Charged Securities:

- 3.2.1 an undated stock transfer form (executed in blank by or on behalf of the Chargor and/or its nominees) in respect of such Charged Securities as set out in Schedule 3 to this Deed; and
- 3.2.2 all share certificates, warrants and other documents of title representing such Charged Securities (including in the case of any Charged Securities which are not in the sole name of the Chargor, a declaration of trust in respect of the interest of the Chargor in such Charged Securities executed by each nominee).

4 CONTINUING SECURITY

4.1 Continuing Security

- 4.1.1 The Security is a continuing security and will extend to the ultimate balance of the Secured Obligations until released or discharged by the Security Agent in accordance with the terms of this Deed.
- 4.1.2 The Security will not be considered satisfied or discharged by any intermediate repayment or satisfaction of all or any part of the Secured Obligations.
- 4.1.3 If upon final repayment and satisfaction of the Secured Obligations there shall exist any right on the part of the Chargor or any other person to draw funds or otherwise which, if exercised, would or might cause the Chargor to become actually or contingently liable to the Security Agent, whether as principal debtor or as surety for another person, then the Security Agent will be entitled to retain the Security and all rights, remedies and powers conferred by this Deed and the Secured Assets for so long as shall or might be necessary to secure the discharge of such actual or contingent liability.

4.2 Additional security

This Deed is in addition to, without prejudice to, and shall not merge with, any other right, remedy, guarantee or Security Interest which the Security Agent may at any time hold for any of the Secured Obligations.

4.3 Right to enforce

This Deed may be enforced against the Chargor without the Security Agent first having recourse to any other right, remedy, guarantee or Security Interest held by or available to it, irrespective of any law or any provision of this Deed to the contrary.

4.4 Waiver of defences

Clause 19.4 (*Waiver of defences*) of the Facilities Agreement will apply to this Deed as if such provisions were set out in full herein mutatis mutandis, except that references to the obligations of each Obligor under that clause shall be construed as references to the obligations of the Chargor under this Deed.

4.5 Deferral of rights

- 4.5.1 Until all Secured Obligations have been irrevocably paid in full and unless the Security Agent otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations or of a liability arising under this Deed:
- (a) to be indemnified by an Obligor;
 - (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
 - (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Party under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Secured Party;
 - (d) to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Security, guarantee, undertaking or indemnity has been given pursuant to, or in connection with, the Finance Documents;

- (e) to exercise any right of set-off against any Obligor; and/or
- (f) to claim or prove as a creditor of any Obligor in competition with any Secured Party.

4.5.2 If the Chargor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable the Secured Obligations to be repaid in full on trust for the Secured Parties and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with the Finance Documents.

4.6 **Bail-in**

Clause 26 (*Contractual recognition of bail-in*) of the Intercreditor Agreement shall be deemed to be incorporated into this Deed as if set out in full herein with any necessary changes.

5 **UNDERTAKINGS**

5.1 **Secured Assets generally**

The Chargor covenants and undertakes to the Security Agent that at all times during the continuance of the Security that the Chargor will:

5.1.1 ***Negative pledge***

Except as permitted or not otherwise prohibited under the Finance Documents, the Chargor shall not without the prior written consent of the Security Agent:

- (a) agree to any variation, modification or amendment to the terms of the Secured Assets (to the extent applicable);
- (b) create or agree or attempt to create or permit to subsist any Security or any trust over all or any of the Secured Assets; or
- (c) enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer, license or sub-license, grant any interest in, or otherwise dispose or part with possession or ownership of, the whole or any part of the Secured Assets, or purport or agree to do so.

5.1.2 ***Voting rights and dividends of Charged Securities***

- (a) Subject to paragraph (d) below, prior to the occurrence of an Acceleration Event, the Chargor shall:

- (i) be entitled to receive and retain all dividends, distributions and other monies derived from the Charged Securities provided that such dividend, distribution or other payment does not breach the terms of the Finance Documents; and
- (ii) exercise all voting rights and other rights and powers attaching to the Charged Securities, subject to this clause 5 (*Undertakings*) above;

PROVIDED THAT the Chargor's rights and powers relating to the Charged Securities (or any part thereof) shall not be exercised in any manner which would adversely affect the validity or enforceability of the Security created pursuant to this Deed.

- (b) Subject to paragraph (d) below, upon the occurrence of an Acceleration Event, the Security Agent may acting on the instructions of the Majority Senior Creditors (in the name of the Chargor or otherwise and without any further consent or authority from the Chargor):
- (i) transfer the Charged Securities into the name of the Security Agent or such nominees(s) of the Security Agent as it shall require;
 - (ii) exercise (or refrain from exercising) all voting and other rights and powers attaching to the Charged Securities in such a manner as the Security Agent deems appropriate;
 - (iii) apply all dividends, interest and other monies derived from the Charged Securities as though they were proceeds of sale under this Deed;
 - (iv) complete the Director's letter(s) of resignation as set out in Schedule 4, Part 1;
 - (v) exercise (or refrain from exercising) the powers and rights conferred on or exercisable by the legal or beneficial owner of the Charged Securities including the right, in relation to any company whose shares or other securities are included in the Charged Securities, to concur or participate in:
 - (A) the reconstruction, amalgamation, sale or other disposal of such company or any of its assets or undertaking (including the exchange, conversion or reissue of any shares or securities as a consequence thereof);
 - (B) the release, modification or variation of any rights or liabilities attaching to such shares or securities; and
 - (C) the exercise, renunciation or assignment of any right to subscribe for any shares or securities,
 in each case in such manner and on such terms as instructed by the Majority Senior Creditors, and the proceeds of any such action shall form part of the Charged Securities.
- (c) The Chargor shall, if requested by the Security Agent after the occurrence of an Acceleration Event, instruct any clearance system to transfer any Charged Securities held by it for or on behalf of the Chargor to an account of the Security Agent or its nominee with that clearance system or otherwise as the Security Agent may direct.
- (d) To the extent that the National Security and Investment Act 2021 (the "NSIA") applies or would apply to any acquisition or transfer of the Charged Securities under or pursuant to this Deed, any right or interest therein or any other interest in the shares or share capital of any member of the Group (as defined in the Facilities Agreement), neither the Charged Securities nor any voting or other rights and powers attaching to the Charged Securities nor any other interest in the shares or share capital of any member of the Group (in each case apart from, to the extent permitted by the NSIA, the right to exercise such voting or other rights and powers for the purpose of preserving the value of the security constituted by this Deed, or of realising it) shall vest in, or be exercisable by the Security Agent or the Secured Parties (or any Receiver, Delegate or other person on their behalf) until and unless any requisite notification and approval pursuant to the NSIA has been made and obtained.

5.1.3 ***Payment of calls***

The Chargor shall pay when due all calls, instalments or other payments and shall discharge all other obligations, which may become due in respect of any of the Charged Securities.

5.1.4 ***Liability of the Security Agent***

Neither the Security Agent nor any Receiver shall have any duty to ensure that any dividends, distributions or other monies receivable in respect of the Charged Securities are duly and punctually paid, received or collected as and when the same become due and payable or to ensure that the correct amounts (if any) are paid or received on or in respect of such Charged Securities or to ensure the taking up of any (or any offer of any) stocks, shares, rights, moneys or other property paid, distributed, accruing or offered at any time by way of redemption, bonus, rights, preference, or otherwise on or in respect of, any of the Charged Securities.

6 ENFORCEMENT OF SECURITY

6.1 When enforceable

6.1.1 Subject to the terms of the Intercreditor Agreement, the Security shall become enforceable (i) upon the occurrence of an Acceleration Event; or (ii) if the Chargor requests that the Security Agent exercise any of its powers under this Deed, and the Secured Obligations will be deemed to have become due and payable as such time.

6.1.2 After the Security has become enforceable and subject to the terms of the Intercreditor Agreement, the Security Agent may, based on the instructions of the Majority Senior Creditors, enforce all or any part of the Security in such a manner as it sees fit or as the Security Agent directs and the Security Agent shall cease to be under any further commitment to the Chargor.

6.2 Statutory powers

6.2.1 At any time after the Security has become enforceable (in accordance with this clause 6 (*Enforcement of Security*)) the statutory power of sale conferred by section 19 of the 1881 Act and supplemented by Section 4 of the 1911 Act free from restrictions contained in Sections 17 and 20 of the 1881 Act will immediately arise and be exercisable by the Security Agent and/or any Receiver. The provisions of section 17 of the 1881 Act shall not apply to this Deed.

6.2.2 The statutory powers of leasing and accepting surrenders of leases conferred on the Security Agent and any Receiver by the Acts shall apply to this Deed and the Security Agent and any Receiver may exercise the powers conferred by the Acts to accept surrenders of leases for any purpose that it or he thinks fit without the need to comply with the requirements of section 18 of the 1881 Act and section 3 of the 1911 Act.

6.2.3 The Security Agent and each Receiver is entitled to all the rights, powers, privileges and immunities conferred by the Acts.

6.2.4 All of the powers and authorities which are conferred by this Deed upon a Receiver (either expressly or impliedly) may be exercised after the security constituted by this Deed becomes enforceable by the Security Agent in relation to all or any part of the Secured Assets both before and after the appointment of a Receiver.

6.3 Mortgagee in possession

In addition to the statutory powers incidental to the estate or interest of mortgagees contained in the Act as more particularly detailed in clause 6.2 (*Statutory powers*) and at any time after the Security has become enforceable, the Security Agent may, without further notice or demand and without the need to obtain the consent of the Chargor or obtain an order for possession of the Secured Assets.

6.4 No liability

- 6.4.1 Neither the Security Agent nor any Receiver will be liable for any loss or damages which arises out of the exercise or the attempted or purported exercise of, or the failure to exercise any of, its or his/her respective powers (unless such loss or damage is caused by its or his/her gross negligence or wilful misconduct) in relation to all or any part of the Secured Assets.
- 6.4.2 Without prejudice to the generality of clause 6.4.1 above, neither the Security Agent nor any Receiver will be liable to account as mortgagee in possession in respect of the Secured Assets or any part thereof nor be liable for any loss on realisation or in connection with the Secured Assets or for any default or omission for which a mortgagee in possession might be liable.

6.5 Protection of third parties

- 6.5.1 No person (including a purchaser) dealing with the Security Agent or a Receiver or its or his/her agents will be concerned to enquire:

- (a) whether the Secured Obligations have become payable;
- (b) whether any power which the Security Agent or a Receiver is purporting to exercise has become exercisable;
- (c) whether any of the Secured Obligations remain outstanding under the Finance Documents (or any of them); or
- (d) how any money paid to the Security Agent or a Receiver is to be applied,

and all protections to purchasers contained in sections 21(2), 22(1) and 24(4) of the 1881 Act shall apply to all persons (including a purchaser) dealing with the Security Agent or any Receiver in like manner as if the statutory powers of sale and appointing a receiver had not been varied or extended by this Deed.

- 6.5.2 No purchaser from the Security Agent or any Receiver, delegate or sub-delegate shall be entitled to rely on that part of Section 21(2) of the 1881 Act which states "but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power".

7 RECEIVERS

7.1 Appointment of a Receiver

- 7.1.1 At any time after the Chargor so requests or the Security becomes enforceable, the Security Agent may, without the need for the occurrence of any of the events specified in section 24 (1) of the 1881 Act, appoint under seal or under the hand of a duly authorised officer of the Security Agent, any person or persons considered by it to be competent to be a receiver or a receiver and manager (hereinafter called a **Receiver** which expression will, where the context so admits, include the plural and any substituted receiver or receiver and manager) of all or any part of the Secured Assets and shall be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Acts.
- 7.1.2 If at any time there is more than one Receiver of all or part of the Secured Assets, each such Receiver may, unless otherwise stated in any appointment document) exercise all of the powers conferred on a Receiver under this Deed individually and to the exclusion of each other Receiver.
- 7.1.3 All of the powers and authorities which are conferred by this Deed, either expressly or impliedly, upon any Receiver may be exercised by the Security Agent after the Security becomes

enforceable in relation to all or part of the Secured Assets without first appointing a Receiver or notwithstanding the appointment of a Receiver of the Secured Assets, or any part thereof.

7.2 Receiver as agent

Any Receiver so appointed shall be the agent of the Chargor and the Chargor will be solely responsible for his/her remuneration, acts, defaults, omissions and losses and for all costs, expenses, liabilities incurred by him/her. The Security Agent shall not incur any liability by reason of the appointment of a Receiver or for any other reason.

7.3 Remuneration

A Receiver shall be entitled to remuneration for his services at a rate to be fixed by the Security Agent (but without being limited to a maximum rate of commission as prescribed in sub-section 24(6) of the 1881 Act) and the Security Agent may direct payment thereof out of the Secured Assets but the Chargor alone will be liable for payment of such remuneration.

7.4 Removal of a Receiver

The Security Agent may in writing remove any Receiver so appointed and appoint another person or person as Receiver either in place of a Receiver whose appointment has been terminated or in addition to any Receiver already appointed.

7.5 Powers of a Receiver

A Receiver so appointed will have and be entitled to exercise, in addition to all powers conferred by the Acts (except where expressly disappplied in this Deed), all the powers of an administrative receiver set out in Schedule 1 of the Insolvency (Northern Ireland) Order 1989 (whether or not the receiver is an administrative receiver) and each of the additional powers, rights and obligations as set forth in Schedule 1.

8 APPLICATION OF PROCEEDS

8.1 Any monies received or recovered and any non-cash recoveries made or received by the Security Agent and/or any Receiver after the Security has become enforceable shall be applied in the order and manner specified in the Intercreditor Agreement.

8.2 This clause 9 (*Application of proceeds*) is without prejudice to the right of the Security Agent to recover any shortfall from the Chargor.

8.3 Consolidation

The Chargor agrees that the Security Agent may at any time without notice and notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of the Chargor's existing accounts wheresoever located (including accounts in the name of the Chargor jointly with others) whether such accounts are current, deposit, loan or of any other nature whatsoever, whether they are subject to notice or not and in any currency.

9 FURTHER ASSURANCES

9.1.1 Subject to the Agreed Security Principles, the Chargor shall promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):

- (a) to perfect the Security created or intended to be created under or evidenced by or otherwise contemplated by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or

are intended or so contemplated to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by law;

- (b) to confer on the Security Agent or confer on the Finance Parties Security over any property and assets of the Chargor located in any jurisdiction equivalent or similar to the Security contemplated or intended to be conferred by or pursuant to the Transaction Security Documents; and/or
- (c) after a Declared Default, to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

9.1.2 Subject to the Agreed Security Principles, the Chargor shall take all such action as is available to it (including making all filings, notarisations and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Transaction Security contemplated, conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.

10 POWER OF ATTORNEY

10.1 Power of attorney

10.1.1 Following either:

- (a) the occurrence of an Acceleration Event; or
- (b) failure by the Chargor to comply with a further assurance or perfection obligation within 10 Business Days of being notified of that failure and being requested to comply,

the Chargor hereby irrevocably appoints the Security Agent, each Receiver and any of their Delegates, jointly and also severally, to be their attorney:

- (i) to take any action which the Chargor is obliged to take under this Deed, including under clause 10 (*Further assurances*); and
- (ii) to do all such acts or things as may be required by the Security Agent or any Receiver under this Deed in exercise of any of their powers.

10.1.2 The Chargor ratifies and confirms all things done by any attorney appointed under this clause in the exercise or purported exercise of all or any of such attorney's powers.

10.2 Delegation

The Security Agent or any Receiver may delegate by power of attorney or in any other manner, to any person, any right, power or discretion exercisable by it under this Deed upon any terms (including the power to sub-delegate) as instructed by the Majority Senior Creditors but no such delegation shall preclude the subsequent exercise of such power by the Security Agent or any Receiver itself or himself/herself or preclude the Security Agent or the Receiver from making a subsequent delegation thereof to some other person. Any such delegation may be revoked by the Security Agent or the Receiver at any time.

10.3 Liability

Neither the Security Agent nor any Receiver will be in any way liable or responsible to the Chargor for any loss or liability arising from any act, default, omission or misconduct on the part of any such Delegate.

11 COSTS AND EXPENSES

11.1 Transaction expenses

The terms and provisions of clause 18 (*Costs and expenses*) of the Facilities Agreement shall apply to this Deed as if such terms and provisions were set out in full herein mutatis mutandis.

11.2 Taxes

The Chargor shall promptly pay all stamp, registration and other Taxes to which this Deed or any judgment given in connection with this Deed is or at any time may be subject and shall indemnify the Security Agent against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such Taxes.

12 CURRENCY CONVERSION AND INDEMNITY

12.1 Currency conversion

All monies received or held by the Security Agent or any Receiver under this Deed may be converted from their existing currency into such other currency as the Security Agent or the Receiver considers necessary or desirable to cover the obligations and liabilities comprised in the Secured Obligations in that other currency at the then prevailing spot rate of exchange (as conclusively determined by the Security Agent) for purchasing the currency to be acquired with the existing currency).

12.2 Currency indemnity

The terms and provisions of clause 16.1 (*Currency indemnity*) of the Facilities Agreement shall apply to this Deed as if such terms and provisions were set out in full herein mutatis mutandis.

13 MISCELLANEOUS PROVISIONS

13.1 Suspense Account

All monies received, recovered or realised by the Security Agent under this Deed (including the proceeds of any conversion of currency) may be credited by the Security Agent to any interest-bearing suspense account (with interest accruing thereon) as instructed by the Majority Senior Creditors without the Security Agent having any obligation to apply the same or any part thereof in or towards the discharge of any of the Secured Obligations.

13.2 New Accounts

If the Security Agent receives, or is deemed to be affected by, notice, whether actual or constructive, of any subsequent Security Interest affecting any Security Asset and/or the proceeds of sale of any Security Asset:

13.2.1 the Security Agent may open a new account for the Chargor; and

13.2.2 if the Security Agent does not open a new account, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received such notice,

and as from that time, all payment made to the Security Agent shall be credited or be treated as having been credited to the new account and will not operate to reduce any amount of the Secured Obligations.

13.3 Amendments

Any provision of this Deed may be amended, supplemented, varied, modified, released or discharged only if the Security Agent and the Chargor so agree in writing.

13.4 Severability

All the terms and provisions of this Deed are distinct and severable, and if any term or provision is held unenforceable, illegal or void in whole or in part (or any of the Security intended to be created by or pursuant to this Deed is ineffective) by any court, regulatory authority or other competent authority it shall to that extent be deemed not to form part of this Deed, and the enforceability, legality and validity of the remainder of this Deed will not be affected.

14 RIGHTS AND REMEDIES

14.1 Waiver and forbearance

14.1.1 No failure or delay by the Security Agent or any Receiver to exercise any right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise, or the exercise of any other right or remedy. A waiver or consent by the Security Agent under this Deed will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

14.1.2 The rights of the Security Agent or any Receiver under this Deed will not be prejudiced or restricted by any indulgence or forbearance extended to the Chargor or other parties including a release of any person or persons (whether or not a party hereto and whether or not such person or persons are jointly and/or severally liable with the Chargor) in respect of the Secured Obligations or of any other security without prejudice either to the Security or to the liability of the Chargor for the Secured Obligations.

14.2 Remedies cumulative

The rights and remedies of the Security Agent and any Receiver under this Deed are cumulative and not exclusive of any rights or remedies provided by law.

14.3 Company intent

The Chargor expressly confirms that it intends that the Security shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available or owing under or in connection with any of the Finance Documents for the purposes of or in connection with any of the following: acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any increase in any interest rate; any other variation or extension of the purposes for which any such facility or amount might be available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

15 ASSIGNMENT

15.1 Clause 27.1 (*Assignment and transfers by Obligors*) of the Facilities Agreement will apply to this Deed as if such provisions were set out in full herein mutatis mutandis.

15.2 Clause 25 (*Changes to the Lenders*) of the Facilities Agreement will apply to this Deed as if such provisions were set out in full herein mutatis mutandis.

15.3 This Deed shall be binding upon and inure to the benefit of each Party and their respective successors and permitted assigns and references in this Deed to any of them shall be construed accordingly.

16 NOTICES

17 The terms and provisions of clause 33 (Notices) of the Facilities Agreement shall apply to this Deed as if such terms and provisions were set out in full herein mutatis mutandis.

18 COUNTERPARTS

This Deed may be executed in counterparts and each such counterpart taken together shall be deemed to constitute one and the same instrument.

19 RELEASE OF SECURITY

19.1 Release of Security

Subject to and without prejudice to clause 19.2 (*Retention of Security*), upon the expiry of the Security Period, and at all times in accordance with the terms of the Intercreditor Agreement, the Security Agent shall, at the request and cost of the Chargor, take whatever action is necessary to release or re-assign and discharge the Secured Assets from the Security.

19.2 Retention of Security

If any payment or discharge of the Secured Obligations is, in the reasonable opinion of the Security Agent, liable to be avoided or invalidated under any enactment relating to insolvency, liquidation or otherwise (without limitation), the Security Agent may refuse to grant any release of the Security for such further period as the risk of such avoidance or invalidity continues.

19.3 Reinstatement

Where any discharge in respect of the Secured Obligations is made, in whole or in part or any arrangement is made on faith of any payment, security, assurance or otherwise which is avoided or must be restored on insolvency, liquidation or otherwise, the liability of the Chargor under this Deed shall continue as if the discharge or arrangement had not occurred.

20 GOVERNING LAW

This Deed and all relationships created by it and arising out of or in connection with it, together with all Disputes, will in all respects be governed by and construed in accordance with the laws of Northern Ireland.

21 ENFORCEMENT

21.1 Jurisdiction

21.1.1 The Chargor hereby agrees for the exclusive benefit of the Security Agent that any Proceedings brought against the Chargor with respect to this Deed may be brought in the High Court in Northern Ireland or such other competent court of Northern Ireland as the Security Agent may elect, and the Chargor waives any objection to Proceedings in such courts whether on grounds of venue or on the grounds that Proceedings have been brought in any inconvenient forum. The Chargor undertakes to enter an unconditional appearance within 14 days after the completion of any service or process in any Proceedings. The Chargor hereby consents to the service by post of any process issued in connection with this Deed. Nothing in this Deed will affect the right to serve process in any other manner permitted by law.

21.1.2 Nothing contained in this Deed will limit the right of the Security Agent to take Proceedings against the Chargor in any other court of competent jurisdiction, nor will the taking of any Proceedings in any one or more jurisdictions preclude the taking by the Security Agent of Proceedings in any other jurisdiction whether concurrently or not.

IN WITNESS whereof this Deed has been duly executed by the parties to it on the date set out at the beginning of this Deed.

SIGNATURES

CHARGOR

EXECUTED and DELIVERED as a DEED

for and on behalf of

ACORN HOLDCO II LIMITED


Director

in the presence of:


Witness

Name of Witness (print)

RAYMOND MC GINLEY

Address

145a STAFFORDSTOWN

RANDOLSTOWN

B74H 341

Occupation SOLICITOR

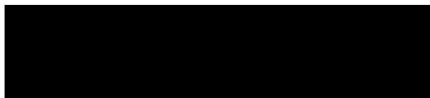
THE SECURITY AGENT

Signed by
for and on behalf of

NATIONAL WESTMINSTER BANK PLC



Authorised signatory



Authorised signatory

Notice details

Address: NatWest, Floor 2
250 Bishopsgate
London
EC2M 4AA

For the attention of: Ian Alderson

Email:

Tel: 0207 444 4445

SCHEDULE 1

POWERS OF A RECEIVER

1 POSSESSION

to take immediate possession of, get in and collect the property in respect of which the Receiver is appointed and to make such demands and take such proceedings as may seem expedient for that purpose, and to take possession of the property over which the Receiver is appointed with like rights;

2 REALISATION

to sell, realise or otherwise dispose of the Secured Assets and to make substitutions of, or improvements to, the Chargor's plant and machinery as the Receiver thinks fit;

3 MANAGE

to carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying any business of the Chargor in any manner the Receiver thinks fit;

4 APPOINT ADVISORS

to appoint and discharge managers, officers, agents, professional advisers, consultants, servants, workmen, employees and others for the purposes specified in this Schedule upon such terms as to remuneration or otherwise as the Receiver thinks fit and to remove any person so appointed to any such position by the Chargor;

5 BORROW MONEY/LEND MONEY

to raise and borrow money or incur any other liability, either unsecured or on the security of any Secured Asset or otherwise and generally on any terms and for whatever purpose the Receiver thinks fit and to lend money or advance credit to any customer of the Chargor;

6 SELL

to grant rights, options or easements over, dispose of, convert into money and realise any Secured Asset by public auction or private contract and generally in any manner and on any terms the Receiver thinks fit. The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period he or she thinks fit. Fixtures, plant and machinery may be severed and sold separately from the property containing them without the consent of the Chargor;

7 LEASE

to let, hire, lease, licence or grant any interest in any Secured Asset for any term and at any rent (with or without a premium) the Receiver thinks fit and to vary the terms, surrender or accept a surrender of any lease or tenancy of any Secured Asset on any terms which the Receiver thinks fit (including the payment of money to a lessee or tenant on a surrender) and to exercise on behalf of the Chargor, and without the consent of or notice to the Chargor, all the powers conferred on a landlord or a tenant by any legislation from time to time in force in any relevant jurisdiction relating to rents or agriculture in respect of any part of the secured assets.

8 SHARE CALLS

where the Chargor is a company, to require the Chargor, or the directors of the Chargor, to make calls conditionally or unconditionally upon the shareholders of the Chargor in respect of any of its uncalled

capital and enforce payment of any call so made by action (in the name of the Chargor or the Receiver as the Receiver may think fit) or otherwise;

9 RECEIVABLES

to sell or assign all or any of the Receivables in respect of which the Receiver is appointed in such manner, and generally on such terms and conditions, as the Receiver thinks fit.

10 VOTING RIGHTS

Subject to Clause 7.1.6(d), to exercise in respect of any Secured Asset all voting or other powers or rights in such manner as the Receiver thinks fit;

11 COMPROMISE

to settle, adjust, refer to arbitration, allow time for payment, compromise and arrange any claim, contract, account, dispute, question or demand with or by any person who is or claims to be a creditor of the Chargor or relating in any way to any Secured Asset;

12 LEGAL ACTIONS

to bring, prosecute, enforce, defend and abandon any action, suit or proceedings both in the Receiver's own name and in the name of the Chargor in relation to any Secured Asset which the Receiver thinks fit;

13 RECEIPTS

to give a valid receipt for any money and execute any assurance or thing that may be necessary or desirable for realising any Secured Asset;

14 COMPANY REORGANISATION

where the Chargor is a company, to form a subsidiary of the Chargor, arrange for any such subsidiary to trade or cease to trade as the Receiver sees fit, in his or her capacity as shareholder and transfer to that subsidiary any secured asset and sell or otherwise dispose of any such subsidiary;

15 DELEGATION

to delegate the Receiver's powers;

16 MATERIAL CONTRACTS

To enter into, abandon, perform, repudiate, rescind, vary or cancel any material contracts as the Receiver thinks fit;

17 INSURANCES

to effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurances required to be maintained by the Chargor;

18 TAXES

to make any election for value-added tax purposes that the Receiver thinks fit and to run the tax affairs of the Chargor in any manner that the Receiver thinks fit;

19 **SETTLE ACCOUNTS**

to redeem any prior Security Interest and to settle and pass the accounts to which that Security Interest relates. Any accounts so settled and passed are conclusive and binding on the Chargor, and any money so paid shall be taken to be an expense properly incurred by him or her;

20 **PROTECT AND MANAGE**

to effect any repair or insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect or improve any Secured Asset and to arrange for or provide any service proper for the efficient use or management of the Secured Assets.

21 **USE THE CHARGOR'S NAME**

to use the name of the Chargor when exercising any of the rights, powers or discretions conferred on the Receiver;

22 **COMPANY SEAL**

where the Chargor is a company, to use the Chargor's seal;

23 **INSOLVENCY**

to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the Chargor and to receive dividends, and to accede to the trust deeds for the creditors of any such person;

24 **PAYMENTS**

to make any payment which is necessary or incidental to the performance of his or her functions;

25 **OTHER RIGHTS**

to do all other acts and things which he or she may consider desirable or necessary for realising any Secured Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver;

to exercise in relation to a Secured Asset all the rights, powers and authorities that he or she could exercise if he or she were the absolute beneficial owner of the Secured Asset;

to do all acts and to execute in the name and on behalf of the Chargor any deed, receipt or other document;

to draw, accept, make or endorse any bill of exchange or promissory note in the name of and on behalf of the Chargor.

SCHEDULE 2

CHARGED SECURITIES

Security Provider	Charged Company	Registered Number	Description of Securities	Number of Securities
Acorn Holdco II Limited	Fibrus Networks Ltd	NI612703	Ordinary shares of £1.00 each	100

SHARE TRANSFER FORM

23

The Security represented by the transfer overleaf has been

..... Shares/Stock	..... Shares/Stock
..... Shares/Stock	..... Shares/Stock
..... Shares/Stock	..... Shares/Stock
..... Shares/Stock	..... Shares/Stock
..... Shares/Stock	..... Shares/Stock
..... Shares/Stock	..... Shares/Stock
..... Shares/Stock	..... Shares/Stock
..... Shares/Stock	..... Shares/Stock
..... Shares/Stock	..... Shares/Stock
..... Shares/Stock	..... Shares/Stock
..... Shares/Stock	..... Shares/Stock

Balance (if any) due to Selling Broker(s) _____

Amount of Certificate(s)

Brokers Transfer Forms for above amounts certified

Stamp of Certifying Stock Exchange

Stamp of Selling Broker(s).

FORM OF CERTIFICATE REQUIRED WHERE TRANSFER IS NOT LIABLE TO

AD VALOREM STAMP DUTY

I/We hereby certify that the transaction in respect of which this transfer is made, and under which the fixed Duty of ten punds is payable, falls within the following description:-

- (a) Vesting the property in trustees on the appointment of a new Trustee of a pre-existing Trust, or on the retirement of a trustee.
- (b) *A transfer, where no beneficial interest in the property passes, (i) to a mere nominee of the Transferor, (ii) from a mere nominee of the Transferee, (iii) from one nominee to another nominee of the same beneficial owner.
- (c) *A transfer by way of security for a loan; or a re-transfer to the original Transferor on repayment of a loan.
- (d) A transfer to a residuary legatee of Shares, etc., which forms part of the residue divisible under a Will.
- (e) A transfer to a beneficiary under a Will of a specific *legacy of Shares, etc.*
- (f) A transfer of Shares, etc., being the property of a person dying intestate, to the person or persons entitled thereto.
- (g) A transfer to a beneficiary under a settlement on distribution of the trust funds, of Shares, etc., forming the share, or part of the share of those funds to which the beneficiary is entitled in accordance with the terms of the settlement.
- (h) A transfer on the occasion of a marriage to trustees of shares, etc., to be held on the terms of a settlement made in consideration of marriage.
- (i) A transfer by the liquidator of a Company of Shares, etc., forming part of the assets of the Company, to which the Transferee is entitled in satisfaction or part satisfaction of his/her rights as a shareholder of the Company.

Here set out concisely the facts explaining the transaction in cases falling within (b) and (c) or in any case which does not clearly fall within any one of the clauses (a) to (g). Adjudication may be required.

Date:

Transferors: _____

Transferees: _____

Signature: _____

Description:

Note:- The above certificate should be signed in the case of (b) and (c) either by (i) all the transferors and transferees, or (ii) a member of a Stock Exchange or a Solicitor acting for one or other of the parties, or (iii) an accredited representative of a Bank. Where the Bank or its official nominee is a party to the transfer, the Certificate may be to the effect that "the transfer is excepted from Section 74 of the Finance (1909-10) Act, 1910". The above Certificate in other cases should be signed by a Solicitor or other person (e.g. a Bank acting as Trustee or Executor) having a full knowledge of the facts.

SCHEDULE 4

Part 1 Director's letter of resignation

Date:

The Board of Directors

[•]

Dear [Addressee],

RESIGNATION OF DIRECTOR

I hereby resign as director of the Company and confirm that I have no claims against the Company for loss of office, arrears of pay or otherwise howsoever.

This resignation is to be effective as at the date specified above. You are hereby authorised to complete this letter by dating the same at any time after you are notified by the Security Agent that an [Event of Default]/[Acceleration Event] has occurred.

Yours faithfully

SIGNED and DELIVERED as a DEED

by

[Director]

Signature of Witness

Name of Witness

Address of Witness

Occupation of Witness