



**Registration of a Charge**

Company name: **EMPIRIBOX LIMITED**

Company number: **08261350**

Received for Electronic Filing: **24/08/2017**



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**Details of Charge**

Date of creation: **17/08/2017**

Charge code: **0826 1350 0002**

Persons entitled: **DOWNING LLP**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **FOOT ANSTEY LLP**



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

Company number: 8261350

Charge code: 0826 1350 0002

The Registrar of Companies for England and Wales hereby certifies that a charge dated 17th August 2017 and created by EMPIRIBOX LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 24th August 2017 .

Given at Companies House, Cardiff on 29th August 2017

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**

**Debenture**  
relating to  
**EMPIRIBOX LIMITED**

Dated 17<sup>th</sup> AUGUST 2017

Empiribox Limited (1)  
Downing LLP (2)

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DATE

17<sup>th</sup> AUGUST

2017

## PARTIES

- (1) **EMPIRIBOX LIMITED** a private company incorporated and registered in England and Wales with company number 08261350 whose registered office is at 24/26 Arcadia Avenue, London N3 2JU (the "**Note Issuer**"); and
- (2) **DOWNING LLP** (as security trustee for the Loan Note Holders) a limited liability partnership registered in England and Wales with registered number OC341575 and whose registered office is at 5th Floor, Ergon House, Horseferry Road, London SW1P 2AL (the "**Security Trustee**").

## BACKGROUND

- (A) The Loan Note Holders have agreed, pursuant to the Loan Note Instrument, to subscribe for the Loan Notes on a secured basis.
- (B) Under this deed, the Note Issuer provides security to the Security Trustee on behalf of the Loan Note Holders for the Loan Notes.

## AGREED TERMS

### 1 Definitions and interpretation

#### 1.1 Definitions

The following definitions apply in this deed.

**Administrator:** an administrator appointed to manage the affairs, business and property of the Note Issuer pursuant to this deed.

**Book Debts:** all present and future book and other debts, and monetary claims due or owing to the Note Issuer, and the benefit of all security, guarantees and other rights of any nature enjoyed or held by the Note Issuer in relation to any of them.

**Business Day:** a day (other than a Saturday or Sunday) on which commercial banks are open for general business in London.

**Cross Guarantee:** the cross guarantee entered into between, *inter alia*, the Note Issuer and the Security Trustee granted in favour of the Security Trustee for the Loan Note Holders as amended from time to time.

**Delegate:** any person appointed by the Security Trustee or any Receiver and any person appointed as attorney of the Security Trustee, Receiver or Delegate.

**Event of Default:** has the meaning given to that expression in the Loan Note Instrument.

**Financial Collateral:** shall have the meaning given to that expression in the Financial Collateral Regulations.

**Financial Collateral Regulations:** the Financial Collateral Arrangements (No 2) Regulations 2003 (*SI 2003/3226*).

**Floating Charge Assets:** means any assets that are not mortgaged, charged or assigned or purported to be mortgaged, charged or assigned pursuant to clause 3.1, 3.2 or 3.4 of this deed.

**Intellectual Property Rights:** any present or future interests (whether legal or equitable, and including the benefit of all licences) relating to any registered or unregistered trademarks, patents, copyrights, design rights, domain names, business names, confidential information, know-how and other intellectual property rights together with the rights to use any of the foregoing;

**Loan Note Instrument:** the instrument of even date creating the Loan Notes and any certificates or other documents issues thereunder, each as amended from time to time.

**Loan Note Holders:** the holders of Loan Notes from time to time.

**Loan Notes:** the secured interest bearing loan notes 2022 created by the Note Issuer.

**LPA 1925:** Law of Property Act 1925.

**Permitted Security:** any Security approved or consented to by the Security Trustee in writing (acting on the instructions of the Loan Note Holders).

**Properties:** all freehold and leasehold properties (whether registered or unregistered) and all commonhold properties, now or in the future (and from time to time) owned by the Note Issuer, or in which the Note Issuer holds an interest and "**Property**" means any of them.

**Receiver:** a receiver, receiver and manager or administrative receiver of any or all of the Secured Assets appointed by the Security Trustee.

**Related Rights:** means in respect of the Shares:

- (a) all moneys paid or payable in respect of the Shares (whether income, capital or otherwise); and
- (b) all rights derived from or incidental to the Shares.

**Secured Assets:** all the assets, property and undertaking for the time being subject to the Security created by, or pursuant to, this deed.

**Secured Liabilities:** all present and future monies, obligations and liabilities owed by the Note Issuer to the Loan Note Holders and or the Security Trustee, whether actual or contingent and whether owed jointly or severally, as principal or surety or in any other capacity, under or in connection with the Loan Note Instrument, the Cross Guarantee or this deed together with all interest (including, without limitation, default interest) accruing in respect of those monies or liabilities.

**Security Financial Collateral Arrangement:** shall have the meaning given to that expression in the Financial Collateral Regulations.

**Security:** any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person, or any other agreement or arrangement having a similar effect.

**Security Period:** the period starting on the date of this deed and ending on the date on which the Security Trustee is satisfied that all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**Shares:** the share capital in Empiribox Primary Science Ltd (company number 10815944) issued to the Note Issuer and all such additional share capital, if any, issued to the Note Issuer.

## *Interpretation*

- 1.2 References to a clause are to the relevant clause of this deed.
- 1.3 The clause headings and the table of contents used in this deed are inserted for ease of reference only and shall not affect its construction.
- 1.4 References to persons shall include bodies corporate, unincorporated associations and partnerships, in each case whether or not having a separate legal personality.
- 1.5 References to a "**party**" or "**parties**" are to a party or parties to this deed.
- 1.6 References to those of the parties that are individuals include their respective legal personal representatives.
- 1.7 References to "**writing**" or "**written**" include any other non-transitory form of visible reproduction of words.
- 1.8 References to the word "**include**" or "**including**" (or any similar term) are not to be construed as implying any limitation and general words introduced by the word "**other**" (or any similar term) shall not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things.
- 1.9 Except where the context specifically requires otherwise, words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and *vice versa*, words importing the singular shall be treated as importing the plural and *vice versa*, and words importing the whole shall be treated as including a reference to any part thereof.
- 1.10 References to statutory provisions, enactments or EC Directives shall include references to any amendment, modification, extension, consolidation, replacement or re-enactment of any such provision, enactment or EC Directive (whether before or after the date of this deed), to any previous enactment which has been replaced or amended and to any regulation, instrument or order or other subordinate legislation made under such provision, enactment or EC Directive unless any such change imposes upon any party any liabilities or obligations which are more onerous than as at the date of this deed.
- 1.11 In this deed:
- (a) a reference to continuing in relation to an Event of Default means an Event of Default which has not been remedied or waived;
  - (b) a reference to this deed (or any provision of it) or any other document shall be construed as a reference to this deed, that provision or that document as it is in force for the time being and as amended in accordance with its terms or with the agreement of the relevant parties; and
  - (c) a reference to the Note Issuer or the Loan Note Holders or the Security Trustee shall include its successors, permitted transferees and permitted assigns.
- 1.12 **Clawback**
- If the Security Trustee acting reasonably gives written notice to the Note Issuer that it considers that an amount paid by the Note Issuer in respect of the Secured Liabilities is capable of being avoided or otherwise set aside on the liquidation or administration of the Note Issuer or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of this deed.
- 1.13 **Nature of security over real property**

A reference in this deed to a charge or mortgage of or over any Property includes:

- (a) all buildings and fixtures and fittings (including trade and tenant's fixtures and fittings) that are situated on or form part of that Property at any time;
- (b) the proceeds of the sale of any part of that Property and any other monies paid or payable in respect of or in connection with that Property;
- (c) the benefit of any covenants for title given, or entered into, by any predecessor in title of the Note Issuer in respect of that Property, and any monies paid or payable in respect of those covenants; and
- (d) all rights under any licence, agreement for sale or agreement for lease in respect of that Property.

**1.14 Law of Property (Miscellaneous Provisions) Act 1989**

For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, the terms of the Loan Note Instrument and of any side letters between any parties in relation to the Loan Note Instrument are incorporated into this deed.

**1.15 Third party rights**

Save as expressly provided in this deed, a person who is not a party to this deed (other than a permitted successor or assign, any Receiver or any Delegate) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this deed.

**1.16 Perpetuity period**

If the rule against perpetuities applies to any trust created by this deed, the perpetuity period shall be 125 years (as specified by section 5(1) of the Perpetuities and Accumulations Act 2009).

**2 Covenant to pay**

The Note Issuer shall, on demand, pay to the Loan Note Holders and or the Security Trustee as applicable and discharge the Secured Liabilities when they become due.

**3 Grant of security**

**3.1 Legal mortgage**

As a continuing security for the payment and discharge of the Secured Liabilities, the Note Issuer with full title guarantee charges to the Security Trustee by way of first legal mortgage all Properties in which the Note Issuer holds an interest.

**3.2 Fixed charges**

As a continuing security for the payment and discharge of the Secured Liabilities, the Note Issuer with full title guarantee charges to the Security Trustee by way of first fixed charge the following assets (wherever located) now or in the future vested in or belonging to the Note Issuer or in which it from time to time has an interest:

- (a) all other Properties not effectively mortgaged or charged by clause 3.1, together with all licences to enter upon or use such land and the proceeds of sale of all real property;
- (b) all plant, machinery, fixtures, fittings, furniture computers, vehicles, office equipment and other equipment not effectively mortgaged or charged by clauses



3.1 or 3.2(a), and all rights, title and interest under any agreements, licences and warranties relating to any of the foregoing, including in respect of their purchase, lease, hire purchase or maintenance;

(c) all the goodwill and uncalled capital of the Note Issuer;

(d)

(i) all stocks, shares, loan capital and other securities, all dividends, distributions and other income paid or payable upon the foregoing and all rights, money or property accruing or offered at any time in relation to the foregoing (excluding the Shares);

(ii) all Shares;

(iii) all Related Rights.

(e) any money standing to the credit of any present or future account of the Note Issuer with a bank or financial institution;

(f) all Intellectual Property Rights;

(g) all Book Debts;

(h) any assets expressed to be assigned under clause 3.4 which are not effectively assigned under clause 3.4; and

(i) the benefit of all agreements, licences, consents and authorisations relating to the business and/or assets of the Note Issuer not otherwise charged under this clause or assigned under clause 3.4.

### 3.3 Floating charge

As a continuing security for the payment and discharge of the Secured Liabilities, the Note Issuer with full title guarantee charges to the Security Trustee, by way of floating charge all the undertaking, property, assets and rights of the Note Issuer at any time not effectively mortgaged, charged or assigned pursuant to clauses 3.1, 3.2 or 3.4 of this deed.

### 3.4 Security assignments

As a continuing security for the payment and discharge of the Secured Liabilities, the Note Issuer hereby assigns to the Security Trustee by way of security all of its present and future right, title and interest in and to all insurance policies held by or in favour of the Note Issuer or in which the Note Issuer has an interest and all claims under and proceeds of such insurance policies.

### 3.5 Qualifying floating charge

Paragraph 14 of Schedule B1 to the Insolvency Act 1986 applies to the floating charge created by this deed.

### 3.6 Automatic crystallisation of floating charge

The floating charge created by this deed shall automatically and immediately (without notice) be converted into a fixed charge over the Secured Assets subject to that floating charge if:

(a) the Note Issuer:

- (i) creates, or attempts to create, without the prior written consent of the Security Trustee, a Security or a trust in favour of another person over all or any part of the Secured Assets (other than Permitted Security); or
  - (ii) disposes, or attempts to dispose of, all or any part of the Secured Assets (other than Secured Assets that are only subject to the floating charge while it remains uncrystallised);
- (b) any third party levies (or attempts to levy) any distress, attachment, execution or other legal process against all or any part of the Secured Assets; or
- (c) a resolution is passed or an order is made for the winding-up, dissolution, administration or re-organisation of the Note Issuer.

### 3.7 Crystallisation of floating charge by notice

The Security Trustee may by written notice to the Note Issuer, convert the floating charge created under this deed into a fixed charge as regards any part of the Secured Assets specified by the Security Trustee in that notice if an Event of Default has occurred.

### 3.8 Assets acquired after any floating charge has crystallised

Any asset acquired by the Note Issuer after any crystallisation of the floating charge created under this deed that, but for that crystallisation, would be subject to a floating charge under this deed, shall (unless the Security Trustee confirms otherwise to the Note Issuer in writing) be charged to the Security Trustee by way of first fixed charge.

## 4 Liability of the Note Issuer

### 4.1 Liability not discharged

The Note Issuer's liability under this deed in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any security, guarantee, indemnity, remedy or other right held by, or available to, the Security Trustee that is, or becomes, wholly or partially illegal, void or unenforceable on any ground;
- (b) the Security Trustee renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission that, but for this clause 4.1(c), might have discharged, or otherwise prejudiced or affected, the liability of the Note Issuer.

### 4.2 Immediate recourse

The Note Issuer waives any right it may have to require the Security Trustee to enforce any security or other right, or claim any payment from, or otherwise proceed against, any other person before enforcing this deed against the Note Issuer.

## 5 Representations and warranties

### 5.1 Representations and warranties

The Note Issuer makes the representations and warranties set out in this clause 5 to the Security Trustee.

### 5.2 Ownership of Secured Assets

The Note Issuer is the legal and beneficial owner of the Secured Assets.

5.3 No Security

The Secured Assets are free from any Security other than the Security created by this deed and Permitted Security.

5.4 No adverse claims

The Note Issuer has not received, or acknowledged notice of, any adverse claim by any person in respect of the Secured Assets or any interest in them other than pursuant to any Permitted Security.

5.5 No breach of laws

There is no breach of any law or regulation that materially and adversely affects the Secured Assets.

5.6 No overriding interests

Nothing has arisen, has been created or is subsisting, that would be an overriding interest in any Property.

5.7 Avoidance of security

No Security expressed to be created under this deed is liable to be avoided, or otherwise set aside, on the liquidation or administration of the Note Issuer or otherwise.

5.8 Enforceable security

This deed constitutes and will constitute the legal, valid, binding and enforceable obligations of the Note Issuer, and is and will continue to be effective security over all and every part of the Secured Assets in accordance with its terms.

5.9 Times for making representations and warranties

The representations and warranties set out in clause 5.1 to clause 5.8 are made by the Note Issuer on the date of this deed and are deemed to be repeated on each day of the Security Period with reference to the facts and circumstances existing at the time of repetition.

**6 General covenants**

6.1 Negative pledge and disposal restrictions

The Note Issuer shall not at any time, except with the prior written consent of the Security Trustee:

- (a) create, purport to create or permit to subsist any Security on, or in relation to, any Secured Asset other than any Security created by this deed or any other Security given in favour of the Security Trustee or other security already in existence as at the date of this deed or any Permitted Security;
- (b) sell, assign, transfer, part with possession of, or otherwise dispose of in any manner (or purport to do so), all or any part of, or any interest in, the Secured Assets (except, in the ordinary course of business, Secured Assets that are Floating Charge Assets); or
- (c) create or grant (or purport to create or grant) any interest in the Secured Assets in favour of a third party other than Permitted Security.

## 6.2 Preservation of Secured Assets

The Note Issuer shall not do, or permit to be done, any act or thing that would or might depreciate, jeopardise or otherwise prejudice the security held by the Security Trustee, or materially diminish the value of any of the Secured Assets or the effectiveness of the security created by this deed.

## 6.3 Compliance with laws and regulations

- (a) The Note Issuer shall not, without the Security Trustee's prior written consent, use or permit the Secured Assets to be used in any way contrary to law.
- (b) The Note Issuer shall:
  - (i) comply with the requirements of any law and regulation relating to or affecting the Secured Assets or the use of it or any part of them;
  - (ii) obtain, and promptly renew from time to time, and comply with the terms of all authorisations that are required in connection with the Secured Assets or their use or that are necessary to preserve, maintain or renew any Secured Asset; and
  - (iii) effect any maintenance, modifications, alterations or repairs that are required by any law or regulation to be effected on or in connection with the Secured Assets.

## 6.4 Enforcement of rights

The Note Issuer shall endeavour to:

- (a) procure the observance and performance of the covenants and other obligations imposed on the Note Issuer; and
- (b) enforce any rights and institute, continue or defend any proceedings relating to any of the Secured Assets which the Security Trustee may require from time to time.

## 6.5 Notice of misrepresentation and breaches

The Note Issuer shall, promptly on becoming aware of any of the same, give the Security Trustee notice in writing of:

- (a) any representation or warranty set out in this deed that is incorrect or misleading in any material respect when made or deemed to be repeated; and
- (b) any breach of any covenant set out in this deed.

## 6.6 Note Issuer's waiver of set-off

The Note Issuer waives any present or future right of set-off it may have in respect of the Secured Liabilities (including sums payable by the Note Issuer under this deed).

# 7 Powers of the Security Trustee

## 7.1 Power to remedy

- (a) The Security Trustee shall be entitled (but shall not be obliged) to remedy, at any time, a breach by the Note Issuer of any of its obligations contained in this deed.

- (b) The Note Issuer irrevocably authorises the Security Trustee and its agents to do all things that are necessary for that purpose to protect any relevant assets against the consequences of such breach.
- (c) Any monies expended by the Security Trustee in remedying a breach by the Note Issuer of its obligations contained in this deed shall be reimbursed by the Note Issuer to the Security Trustee on a full indemnity basis and shall carry interest in accordance with the rate set out in this deed.

## 7.2 Exercise of rights

The rights of the Security Trustee under this deed are without prejudice to any other rights of the Security Trustee. The exercise of any rights of the Security Trustee under this deed shall not make the Security Trustee liable to account as a mortgagee in possession.

## 7.3 Power to dispose of chattels

At any time after the security constituted by this deed has become enforceable, the Security Trustee or any Receiver may, as agent for the Note Issuer, dispose of any chattels or produce found on any Property.

## 7.4 Security Trustee has Receiver's powers

To the extent permitted by law, any right, power or discretion conferred by this deed on a Receiver may, after the security constituted by this deed has become enforceable, be exercised by the Security Trustee in relation to any of the Secured Assets whether or not it has taken possession of any Secured Assets and without first appointing a Receiver or notwithstanding the appointment of a Receiver.

## 7.5 New accounts

- (a) If the Security Trustee receives, or is deemed to have received, notice of any subsequent Security, or other interest, affecting all or part of the Secured Assets, the Security Trustee may open a new account for the Note Issuer in the Security Trustee's books. Without prejudice to the Security Trustee's right to combine accounts, no money paid to the credit of the Note Issuer in any such new account shall be appropriated towards, or have the effect of discharging, any part of the Secured Liabilities.
- (b) If the Security Trustee does not open a new account immediately on receipt of the notice, or deemed notice then, unless the Security Trustee gives express written notice to the contrary to the Note Issuer, all payments made by the Note Issuer to the Security Trustee shall be treated as having been credited to a new account of the Note Issuer and not as having been applied in reduction of the Secured Liabilities, as from the time of receipt of the relevant notice by the Security Trustee.

## 7.6 Security Trustee's set-off rights

If the Security Trustee has more than one account for the Note Issuer in its books, the Security Trustee may at any time after:

- (a) the security constituted by this deed has become enforceable; or
- (b) the Security Trustee has received, or is deemed to have received, notice of any subsequent Security or other interest affecting all or any part of the Secured Assets,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account that may be in debit. After making any such transfer, the Security Trustee shall notify the Note Issuer of that transfer.

## 7.7 Indulgence

The Security Trustee may, at its discretion, grant time or other indulgence, or make any other arrangement, variation or release with any person not being a party to this deed (whether or not any such person is jointly liable with the Note Issuer) in respect of any of the Secured Liabilities, or of any other security for them without prejudice either to this deed or to the liability of the Note Issuer for the Secured Liabilities.

## 7.8 Appointment of an Administrator

- (a) The Security Trustee may, without notice to the Note Issuer, appoint any one or more persons to be an Administrator of the Note Issuer pursuant to paragraph 14 of Schedule B1 of the Insolvency Act 1986 if the security constituted by this deed becomes enforceable.
- (b) Any appointment under this clause 7.8 shall:
  - (i) be in writing signed by a duly authorised signatory of the Security Trustee; and
  - (ii) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986.
- (c) The Security Trustee may apply to the court for an order removing an Administrator from office and may by notice in writing in accordance with this clause 7.8 appoint a replacement for any Administrator who has died, resigned, been removed or who has vacated office upon ceasing to be qualified.

## 7.9 Further advances

This deed secures further advances made under or pursuant to the terms of the Loan Note Instrument and the Loan Note Holders shall perform their obligations to make advances under the Loan Note Instrument (including any obligation to make available further advances).

# 8 When security becomes enforceable

## 8.1 Security becomes enforceable on Event of Default

The security constituted by this deed shall be immediately enforceable if an Event of Default occurs.

## 8.2 Discretion

After the security constituted by this deed has become enforceable, the Security Trustee may, in its absolute discretion, enforce all or any part of that security at the times, in the manner and on the terms it thinks fit, and take possession of and hold or dispose of all or any part of the Secured Assets.

# 9 Enforcement of security

## 9.1 Enforcement powers

- (a) The power of sale and other powers conferred by section 101 of the LPA 1925 (as varied or extended by this deed) shall, as between the Security Trustee and a purchaser from the Security Trustee, arise on and be exercisable at any time after the execution of this deed, but the Security Trustee shall not exercise such power of sale or other powers until the security constituted by this deed has become enforceable.

- (b) Section 103 of the LPA 1925 does not apply to the security constituted by this deed.

## 9.2 Extension of statutory powers of leasing

The statutory powers of leasing and accepting surrenders conferred on mortgagees under the LPA 1925 and by any other statute are extended so as to authorise the Security Trustee and any Receiver, at any time after the security constituted by this deed has become enforceable, whether in its own name or in that of the Note Issuer, to:

- (a) grant a lease or agreement to lease;
- (b) accept surrenders of leases; or
- (c) grant any option of the whole or any part of the Secured Assets with whatever rights relating to other parts of it,

whether or not at a premium and containing such covenants on the part of the Note Issuer, and on such terms and conditions (including the payment of money to a lessee or tenant on a surrender) as the Security Trustee or Receiver thinks fit without the need to comply with any of the restrictions imposed by sections 99 and 100 of the LPA 1925.

## 9.3 Access on enforcement

- (a) At any time after the Security Trustee has demanded payment of the Secured Liabilities or if the Note Issuer defaults in the performance of its obligations under this deed or the Loan Note Instrument, the Note Issuer will allow the Security Trustee or its Receiver, without further notice or demand, immediately to exercise all its rights, powers and remedies in particular (and without limitation) to take possession of any Secured Asset and for that purpose to enter on any premises where a Secured Asset is situated (or where the Security Trustee or a Receiver reasonably believes a Secured Asset to be situated) without incurring any liability to the Note Issuer for, or by any reason of, that entry.
- (b) At all times, the Note Issuer must use its best endeavours to allow the Security Trustee or its Receiver access to any premises for the purpose of clause 9.3(a) (including obtaining any necessary consents or permits of other persons) and ensure that its employees and officers do the same.

## 9.4 Prior Security

At any time after the security constituted by this deed has become enforceable, or after any powers conferred by any Security having priority to this deed shall have become exercisable, the Security Trustee may:

- (a) redeem that or any other prior Security;
- (b) procure the transfer of that Security to it; and
- (c) settle and pass any account of the holder of any prior Security,

subject in each case to the terms of any agreement between the Loan Note Holders and the proprietor of that prior security.

Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Note Issuer. All monies paid by the Security Trustee to an encumbrancer in settlement of any of those accounts shall, as from its payment by the Security Trustee, be due from the Note Issuer to the Security Trustee on current account and shall bear interest at the default rate of interest specified in the Loan Note Instrument and be secured as part of the Secured Liabilities.

## 9.5 Protection of third parties

No purchaser, mortgagee or other person dealing with the Security Trustee, any Receiver or Delegate shall be concerned to enquire:

- (a) whether any of the Secured Liabilities have become due or payable, or remain unpaid or undischarged;
- (b) whether any power the Security Trustee, a Receiver or Delegate is purporting to exercise has become exercisable or is properly exercisable; or
- (c) how any money paid to the Security Trustee, any Receiver or any Delegate is to be applied.

## 9.6 Privileges

Each Receiver and the Security Trustee is entitled to all the rights, powers, privileges and immunities conferred by the LPA 1925 on mortgagees and receivers.

## 9.7 No liability as mortgagee in possession

Neither the Security Trustee, any Receiver, any Delegate nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Secured Assets, nor shall any of them be liable for any loss on realisation of, or for any neglect or default of any nature in connection with, all or any of the Secured Assets for which a mortgagee in possession might be liable as such.

## 9.8 Conclusive discharge to purchasers

The receipt of the Security Trustee or any Receiver or Delegate shall be a conclusive discharge to a purchaser and, in making any sale or other disposal of any of the Secured Assets or in making any acquisition in the exercise of their respective powers, the Security Trustee, every Receiver and Delegate may do so for any consideration, in any manner and on any terms that it or he thinks fit.

## 9.9 Right of appropriation

- (a) To the extent that:
  - (i) the Secured Assets constitute Financial Collateral; and
  - (ii) this deed and the obligations of the Note Issuer under it constitute a Security Financial Collateral Arrangement,

the Security Trustee shall have the right, at any time after the security constituted by this deed has become enforceable, to appropriate all or any of those Secured Assets in or towards the payment or discharge of the Secured Liabilities in any order that the Security Trustee may, in its absolute discretion, determine.

- (b) The value of any Secured Assets appropriated in accordance with this clause shall be the price of those Secured Assets at the time the right of appropriation is exercised as listed on any recognised market index, or determined by any other method that the Security Trustee may select (including independent valuation).
- (c) The Note Issuer agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.



## **10 Receiver**

### **10.1 Appointment**

At any time after the security constituted by this deed has become enforceable, or at the request of the Note Issuer, the Security Trustee may, without further notice, appoint by way of deed, or otherwise in writing, any one or more persons to be a Receiver of all or any part of the Secured Assets.

### **10.2 Removal**

The Security Trustee may, without further notice (subject to section 45 of the Insolvency Act 1986), from time to time, by way of deed, or otherwise in writing, remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

### **10.3 Remuneration**

The Security Trustee may fix the remuneration of any Receiver appointed by it without the restrictions contained in section 109 of the LPA 1925, and the remuneration of the Receiver shall be a debt secured by this deed, to the extent not otherwise discharged.

### **10.4 Power of appointment additional to statutory powers**

The power to appoint a Receiver conferred by this deed shall be in addition to all statutory and other powers of the Security Trustee under the Insolvency Act 1986, the LPA 1925 or otherwise, and shall be exercisable without the restrictions contained in sections 103 and 109 of the LPA 1925 or otherwise.

### **10.5 Power of appointment exercisable despite prior appointments**

The power to appoint a Receiver (whether conferred by this deed or by statute) shall be, and remain, exercisable by the Security Trustee despite any prior appointment in respect of all or any part of the Secured Assets.

### **10.6 Agent of the Note Issuer**

Any Receiver appointed by the Security Trustee under this deed shall be the agent of the Note Issuer and the Note Issuer shall be solely responsible for the contracts, engagements, acts, omissions, defaults, losses and remuneration of that Receiver and for liabilities incurred by that Receiver. The agency of each Receiver shall continue until the Note Issuer goes into liquidation and after that the Receiver shall act as principal and shall not become the agent of the Security Trustee.

## **11 Powers of Receiver**

### **11.1 General**

- (a) Any Receiver appointed by the Security Trustee under this deed shall, in addition to the powers conferred on him by statute, have the powers set out in this deed.
- (b) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise all of the powers conferred on a Receiver under this deed individually and to the exclusion of any other Receiver.
- (c) Any exercise by a Receiver of any of the powers given by this deed may be on behalf of the Note Issuer, the directors of the Note Issuer (in the case of the power contained in clause 11) or himself.

## 11.2 Repair and develop Properties

A Receiver may undertake or complete any works of repair, building or development on the Properties and may apply for and maintain any planning permission, development consent, building regulation approval or any other permission, consent or licence to carry out any of the same.

## 11.3 Surrender leases

A Receiver may grant, or accept surrenders of, any leases or tenancies affecting any Property and may grant any other interest or right over any Property on any terms, and subject to any conditions, that he thinks fit.

## 11.4 Employ personnel and advisors

A Receiver may provide services and employ, or engage any managers, officers, servants, contractors, workmen, agents, other personnel and professional advisers on any terms, and subject to any conditions, that he thinks fit. A Receiver may discharge any such person or any such person appointed by the Note Issuer.

## 11.5 Make VAT elections

A Receiver may make, exercise or revoke any value added tax option to tax as he thinks fit.

## 11.6 Remuneration

A Receiver may charge and receive any sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) that the Security Trustee may prescribe or agree with him.

## 11.7 Realise Secured Assets

A Receiver may collect and get in the Secured Assets or any part of them in respect of which he is appointed, and make any demands and take any proceedings as may seem expedient for that purpose, and take possession of the Secured Assets with like rights.

## 11.8 Manage or reconstruct the Note Issuer's business

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Note Issuer.

## 11.9 Dispose of Secured Assets

A Receiver may sell, exchange, convert into money and realise all or any of the Secured Assets in respect of which he is appointed in any manner (including, without limitation, by public auction or private sale) and generally on any terms and conditions as he thinks fit. Any sale may be for any consideration that the Receiver thinks fit and a Receiver may promote, or concur in promoting, a company to purchase the Secured Assets to be sold.

## 11.10 Sever fixtures and fittings

A Receiver may sever and sell separately any fixtures or fittings from any Property without the consent of the Note Issuer.

## 11.11 Sell Book Debts

A Receiver may sell and assign all or any of the Book Debts in respect of which he is appointed in any manner, and generally on any terms and conditions, that he thinks fit.

11.12 Valid receipts

A Receiver may give valid receipt for all monies and execute all assurances and things that may be proper or desirable for realising any of the Secured Assets.

11.13 Make settlements

A Receiver may make any arrangement, settlement or compromise between the Note Issuer and any other person that he may think expedient.

11.14 Bring proceedings

A Receiver may bring, prosecute, enforce, defend and abandon all actions, suits and proceedings in relation to any of the Secured Assets as he thinks fit.

11.15 Improve the equipment

A Receiver may make substitutions of, or improvements to, any equipment of the Note Issuer as he may think expedient.

11.16 Make calls on Note Issuer members

A Receiver may make calls conditionally or unconditionally on the members of the Note Issuer in respect of uncalled capital with (for that purpose and for the purpose of enforcing payments of any calls so made) the same powers as are conferred by the articles of association of the Note Issuer on its directors in respect of calls authorised to be made by them.

11.17 Insure

A Receiver may, if he thinks fit, but without prejudice to the indemnity in this deed effect with any insurer any policy of insurance either in lieu or satisfaction of, or in addition to, the insurance required to be maintained by the Note Issuer under this deed.

11.18 Powers under the LPA 1925

A Receiver may exercise all powers provided for in the LPA 1925 in the same way as if he had been duly appointed under the LPA 1925, and exercise all powers provided for an administrative receiver in Schedule 1 to the Insolvency Act 1986.

11.19 Borrow

A Receiver may, for any of the purposes authorised by this clause 11, raise money by borrowing from the Security Trustee (or from any other person) either unsecured or on the security of all or any of the Secured Assets in respect of which he is appointed on any terms that he thinks fit (including, if the Security Trustee consents, terms under which that security ranks in priority to this deed).

11.20 Redeem prior Security

A Receiver may redeem any prior Security and settle and pass the accounts to which the Security relates. Any accounts so settled and passed shall be, in the absence of any manifest error, conclusive and binding on the Note Issuer, and the monies so paid shall be deemed to be an expense properly incurred by the Receiver.

11.21 Delegation

A Receiver may delegate his powers in accordance with this deed.

11.22 Absolute beneficial owner

A Receiver may, in relation to any of the Secured Assets, exercise all powers, authorisations and rights he would be capable of exercising, and do all those acts and things, as an absolute beneficial owner could exercise or do in the ownership and management of the Secured Assets or any part of the Secured Assets.

#### 11.23 Incidental powers

A Receiver may do any other acts and things:

- (a) that he may consider desirable or necessary for realising any of the Secured Assets;
- (b) that he may consider incidental or conducive to any of the rights or powers conferred on a Receiver under or by virtue of this deed or law; and
- (c) that he lawfully may or can do as agent for the Note Issuer.

### 12 Delegation

#### 12.1 Delegation

The Security Trustee or any Receiver may delegate (either generally or specifically) by power of attorney or in any other manner to any person any right, power, authority or discretion conferred on it by this deed (including the power of attorney granted under this deed).

#### 12.2 Terms

The Security Trustee and each Receiver may make a delegation on the terms and conditions (including the power to sub-delegate) that it thinks fit.

#### 12.3 Liability

Neither the Security Trustee nor any Receiver shall be in any way liable or responsible to the Note Issuer for any loss or liability arising from any act, default, omission or misconduct on the part of any Delegate.

### 13 Application of proceeds

#### 13.1 Order of application of proceeds

All monies received by the Security Trustee, a Receiver or a Delegate pursuant to this deed, after the security constituted by this deed has become enforceable, shall (subject to the claims of any person having prior rights and by way of variation of the LPA 1925) be applied in the following order of priority:

- (a) in or towards payment of or provision for all costs, charges and expenses incurred by or on behalf of the Security Trustee (and any Receiver, Delegate, attorney or agent appointed by it) under or in connection with this deed, and of all remuneration due to any Receiver under or in connection with this deed;
- (b) in or towards payment of or provision for the Secured Liabilities in any order and manner that the Security Trustee determines; and
- (c) in payment of the surplus (if any) to the Note Issuer or other person entitled to it.

#### 13.2 Appropriation

Neither the Security Trustee, any Receiver nor any Delegate shall be bound (whether by virtue of section 109(8) of the LPA 1925, which is varied accordingly, or otherwise) to pay or

appropriate any receipt or payment first towards interest rather than principal or otherwise in any particular order between any of the Secured Liabilities.

### 13.3 Suspense account

All monies received by the Security Trustee, a Receiver or a Delegate under this deed:

- (a) may, at the discretion of the Security Trustee, Receiver or Delegate, be credited to any suspense or securities realised account;
- (b) shall bear interest, if any, at the rate agreed in writing between the Security Trustee and the Note Issuer; and
- (c) may be held in that account for so long as the Security Trustee, Receiver or Delegate thinks fit.

## 14 Costs and indemnity

### 14.1 Costs

The Note Issuer shall pay to, or reimburse, the Security Trustee and any Receiver within seven (7) days of demand, on a full indemnity basis any costs reasonably and properly incurred and taxes and liabilities of any kind incurred by the Security Trustee, any Receiver or any Delegate in connection with:

- (a) this deed or the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Security Trustee's, a Receiver's or a Delegate's rights under this deed;
- (c) taking proceedings for, or recovering, any of the Secured Liabilities,

together with interest, which shall accrue and be payable (without the need for any demand for payment being made) from the date on which the relevant cost or expense arose until full discharge of that cost or expense (whether before or after judgment, liquidation, winding up or administration of the Note Issuer) at the rate and in the manner specified in the Loan Note Instrument.

### 14.2 Indemnity

The Note Issuer shall indemnify the Security Trustee, each Receiver and each Delegate, and their respective employees and agents, on a full indemnity basis against any costs reasonably and properly incurred, and any cost, charge, expense, tax, loss, liability or damage incurred by any of them as a result of:

- (a) the exercise or purported exercise of any of the rights, powers, authorities or discretions vested in them under this deed or by law in respect of the Secured Assets;
- (b) taking, holding, protecting, perfecting, preserving or enforcing (or attempting to do so) the security constituted by this deed; or
- (c) any default or delay by the Note Issuer in performing any of its obligations under this deed.

## 15 Further assurance

The Note Issuer shall, at its own expense, take whatever action the Security Trustee or any Receiver may reasonably require for:

- (a) creating, perfecting or protecting the security intended to be created by this deed;
- (b) facilitating the realisation of any Secured Asset; or
- (c) facilitating the exercise of any right, power, authority or discretion exercisable by the Security Trustee or any Receiver in respect of any Secured Asset,

including, without limitation (if the Security Trustee or Receiver thinks it expedient) the execution of any transfer, conveyance, assignment or assurance of all or any of the assets forming part of (or intended to form part of) the Secured Assets (whether to the Security Trustee or to its nominee) and the giving of any notice, order or direction and the making of any registration.

## **16 Power of attorney**

### **16.1 Appointment of attorneys**

By way of security, the Note Issuer irrevocably appoints the Security Trustee, every Receiver and every Delegate separately to be the attorney of the Note Issuer and, in its name, on its behalf and as its act and deed, to execute any documents and do any acts and things that:

- (a) the Note Issuer is required to execute and do under this deed; or
- (b) any attorney deems proper or desirable in exercising any of the rights, powers, authorities and discretions conferred by this deed or by law on the Security Trustee, any Receiver or any Delegate.

### **16.2 Ratification of acts of attorneys**

The Note Issuer ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in this clause 16.

## **17 Release**

### **17.1 Subject as otherwise provided in this deed, on the expiry of the Security Period (but not otherwise), the Security Trustee shall, at the request and cost of the Note Issuer, take whatever action is necessary to:**

- (a) release the Secured Assets from the security constituted by this deed; and
- (b) (where appropriate) reassign the Secured Assets to the Note Issuer.

## **18 Assignment and transfer**

### **18.1 Assignment by Security Trustee**

- (a) at any time, without the consent of the Note Issuer, the Security Trustee may assign or transfer the whole or any part of the Security Trustee's rights and/or obligations under this deed to any person.
- (b) The Security Trustee may disclose to any actual or proposed assignee or transferee any information about the Note Issuer, the Secured Assets and this deed that the Security Trustee considers appropriate.

### **18.2 Assignment by Note Issuer**

The Note Issuer may not assign any of its rights, or transfer any of its obligations, under this deed, or enter into any transaction that would result in any of those rights or obligations passing to another person.

## 19 Further provisions

### 19.1 Independent security

This deed shall be in addition to, and independent of, any other security or guarantee that the Security Trustee may hold for any of the Secured Liabilities at any time. No prior security held by the Security Trustee over the whole or any part of the Secured Assets shall merge in the security created by this deed.

### 19.2 Continuing security

This deed shall remain in full force and effect as a continuing security for the Secured Liabilities, despite any settlement of account, or intermediate payment, or other matter or thing, unless and until the Security Trustee discharges this deed in writing.

### 19.3 Discharge conditional

Any release, discharge or settlement between the Note Issuer and the Security Trustee shall be deemed conditional on no payment or security received by the Security Trustee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to insolvency, bankruptcy, winding-up, administration, receivership or otherwise. Despite any such release, discharge or settlement:

- (a) the Security Trustee or its nominee may retain this deed and the security created by or pursuant to it, including all certificates and documents relating to the whole or any part of the Secured Assets, for any period that the Security Trustee deems necessary to provide the Security Trustee with security against any such avoidance, reduction or order for refund; and
- (b) the Security Trustee may recover the value or amount of such security or payment from the Note Issuer subsequently as if the release, discharge or settlement had not occurred.

### 19.4 Certificates

A certificate or determination by the Security Trustee as to any amount for the time being due to it from the Note Issuer under this deed shall be, in the absence of any manifest error, conclusive evidence of the amount due.

### 19.5 Rights cumulative

The rights and remedies of the Security Trustee conferred by this deed are cumulative, may be exercised as often as the Security Trustee considers appropriate, and are in addition to its rights and remedies under the general law.

### 19.6 Amendments

Save as expressly provided in this deed, no variation of this deed shall be effective unless it is made in writing and signed by or on behalf of each of the parties. For the purposes of this clause the expression "**variation**" includes any supplement, deletion or replacement however effected.

### 19.7 Waivers and consents

Any waiver of any right or remedy (whether arising under this deed or under the general law), or any consent given under this deed, is only effective if it is in writing and signed by the waiving, varying or consenting party, and applies only in the circumstances for which it was given, and shall not prevent the party giving it from subsequently relying on the relevant provision.

19.8 Further exercise of rights

No act or course of conduct or negotiation by, or on behalf of, the Security Trustee shall, in any way, preclude the Security Trustee from exercising any right or remedy under this deed or constitute a suspension or variation of any such right or remedy.

19.9 Delay

No delay or failure to exercise any right or remedy under this deed shall operate as a waiver of that right or remedy or constitute an election to affirm this deed. No election to affirm this deed on the part of the Security Trustee shall be effective unless it is in writing.

19.10 Single or partial exercise

No single or partial exercise of any right or remedy under this deed shall prevent any further or other exercise of that right or remedy, or the exercise of any other right or remedy under this deed.

19.11 Consolidation

The restriction on the right of consolidation contained in section 93 of the LPA 1925 shall not apply to this deed.

19.12 Partial invalidity

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this deed under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with any modification necessary to give effect to the commercial intention of the parties.

19.13 Declaration of Trust

The Security Trustee declares that it holds the security constituted by this deed on trust for the Loan Note Holders.

**20 Counterparts**

20.1 This deed may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart and each counterpart, when executed, shall be an original of this deed and all counterparts shall together constitute one and the same deed.

20.2 Transmission of the executed signature page of a counterpart of this deed by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If this method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

**21 Entire agreement**

This deed and the documents referred to in it constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this deed.

**22 Notices**

22.1 Any notice in relation to this deed shall be given in writing and may be delivered personally or recorded delivery to the address of the party who is to receive such notice as set out in



this deed or to such other address in the United Kingdom as that party may have notified (in accordance with this clause 22).

22.2 Notices shall be deemed to have been received:

- (a) if delivered personally, on the day of delivery if delivered before 5pm on a Business Day, but otherwise on the next Business Day; or
- (b) if sent by recorded delivery on the second Business Day after the day of posting.

22.3 In proving service:

- (a) by personal delivery, it shall be necessary only to produce a receipt for the notice signed by or on behalf of the party due to receive it; or
- (b) by post, it shall be necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this clause 22.

## **23 Governing law and jurisdiction**

23.1 This deed and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by English law.

23.2 The parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this deed, its subject matter or formation.

This document has been executed and delivered as a deed on the date stated at the beginning of it.

## SIGNATURES

### THE NOTE ISSUER

Executed as a deed by  
**EMPIRIBOX LIMITED**  
acting by DSAME  
a director, in the presence of:



Signature of Witness: Julian Gomez

Name: JULIAN GOMEZ

Address: Ward House Ward St. Guildford Surrey

Occupation: Owner

### THE SECURITY TRUSTEE

Executed as a deed by  
**DOWNING LLP**  
acting by \_\_\_\_\_  
a member, in the presence of:

.....

Signature of Witness:

Name:

Address:

Occupation: